It was in 1875 that Sir Robert Christison, the same who had led the opposition in Edinburgh, was president of the British Medical Association. Both women on the *Medical Register* were members, and both had been admitted through the Metropolitan Counties Branch, a step stoutly defended by the Honorary Secretary of the Branch in a letter to the *British Medical Journal*. Elizabeth Garrett Anderson was invited to give a paper in the section on obstetrics, and this Sir Robert firmly opposed. Elizabeth Garrett Anderson stood her ground, saying that she would withdraw only if her paper was considered unworthy to be delivered. It is well to know that not only was she allowed to give her paper but when, later in the year, the referendum vote proved to be 3—1 against the admission of women to membership, the final decision was not made retrospective. Elizabeth Blackwell seems to have resigned, but Elizabeth Garrett Anderson remained an isolated figure in the Association for almost 20 years.

In 1894, with speeches of superb gallantry, the B.M.A. welcomed "female members" once more, after the resolution rescinding the veto of 1875 had been passed with almost no opposition. The loyalty and the professional unity resulting need no reference.

Conclusion

I have tried to show that the presence of this isolated middle-aged woman, Elizabeth Blackwell, in this country in the years from 1858 to 1879 had a considerable influence on events. Her family tradition and training, her wealth of

Elizabeth Blackwell at the age of 84.

professional administrative experience, were always behind the younger women. She had great personal courage, stability, and far-sightedness. She was essentially a product of the first half of the nineteenth century in the scale of her ideals and achievements and the width of her contacts. She personally selected Elizabeth Garrett Anderson, and one of her first pupils advised Sophia Jex-Blake to become a doctor. Her friends, and friends of friends on both sides of the Atlantic, were untiring and active supporters of the movement to secure medical training and registration for women. Above all, her qualities of mind, her personality, and the innovations of her work in New York and this country must have been effective in steering this group of women and those who helped them through these years.

"It is my nature to start anew; and what is done is done, I will leave it"—strange words, and a big legacy.

Professor JOHN BRUCE, president of the Royal College of Surgeons of Edinburgh, on November 14 opened an extension to Duncan, Flockhart & Co.'s research laboratories in Edinburgh, consisting of additional development and biological laboratories. The former are in the chemical laboratory building, which also houses the analytical control department and the library. The new biological laboratories form part of a quadrangle of buildings where biological research and assay are carried out.

THE DISCIPLINARY COMMITTEE AND THE COURTS

BY

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The Disciplinary Committee of the G.M.C. sitting in the Council Chamber looks rather like a court of law; so much so that people are apt to suppose that it must be exactly like a court of law and that its rules and procedures will therefore be practically identical with those which a court would apply. There is, of course, a good deal of substance in the analogy. In general the Committee does model its proceedings on the pattern set by the courts, and when difficulties arise the Legal Assessor naturally advises the Committee in the light of his own experience as a practising lawyer. None the less, there are quite a number of instances in which the analogy breaks down, and the result is sometimes surprising to those who are inclined to regard the Committee as just another sort of court.

In the first place, most people, when they think of a court of law in this connexion, have not made up their minds whether they are thinking of a civil court trying actions or of a criminal court trying prisoners. Looking at the end-result, which may be a sentence of erasure, one is put in mind at once of a criminal court sentencing a convicted man. But even here the analogy is not apt; for the Committee, unlike the judge, has only one sentence that it can pronounce. It is true that it can postpone its sentence for a year or two in order to see how the practitioner behaves in the meanwhile, but in the end decision can only be: to erase or not to erase. Moreover, the Committee is always studious to remind itself that its function is not to punish the delinquent practitioner but simply to determine with high-minded objectivity whether the public interest requires that he be erased from the *Register*. In a case, therefore, where the practitioner has already been convicted and sentenced by a court of law—for example, for indecent assault—and is now before the Committee as a consequence of that conviction, it is injudicious for his advocate to plead that he has already been punished enough without the added penalty of erasure. What he ought to say is that the sentence which the practitioner has already served (or is serving) has brought home to his mind the enormity of his misconduct and is thus itself a guarantee that he will never offend again. (It is merely a question of putting the point tactfully.)

But the nature of the charge made against the practitioner often suggests a different line of thought. A canvassing case, for instance, is seldom in the least like a criminal prosecution. As often as not, it is a quarrel between two practitioners who were recently in partnership, and closely resembles civil litigation.

Some Difficulties

It is more fruitful to examine the differences than the analogies between the Committee and the courts. Let us look first at the Committee's members. They come from all over Great Britain and both parts of Ireland. Most of them are either in general practice as doctors or hold teaching, clinical, or administrative appointments. They assemble at 44, Hallam Street twice a year and are always, and understandably, anxious to finish their business by the end

of the week. There are great difficulties, therefore, about adjournments. It is quite common in courts of law to stand a case over for a few days to meet the convenience of a witness or because one of the parties is not well. But a case before the Committee cannot normally be stood over for less than six months, and is therefore less likely to be stood over at all. (It is possible to convene a special meeting of the Committee out of season, but it is hugely inconvenient.)

Then again, it must be remembered that there is only one Committee. The Dental Board of the United Kingdom once tried a case of alleged indecent conduct by a dentist towards one of his patients. During the luncheon adjournment the Legal Assessor, who had only recently been appointed, discovered that he was the only person present at the hearing who did not know that a similar complaint against the same dentist by another patient had come before the Board two years previously. (One is happy to add that in both cases the practitioner was acquitted.) In a criminal case, if counsel for the defendant is aware that the jury, or some of them, know about the previous record of his client he will challenge them and have them replaced by jurymen who do not. But there was only one Dental Board; its members were irreplaceable; they had a duty to try the case; and there was therefore nothing that could be done about it. The composition of the Disciplinary Committee of the G.M.C. varies from time to time, but it is obvious that a similar (if not precisely similar) situation could arise. At any rate, the opportunities of challenge are severely restricted.

Jurisdiction

More striking than the matter of personnel is the matter of jurisdiction. The jurisdiction of the Disciplinary Committee is world-wide so far as charges of infamous conduct are concerned. A practitioner can be erased on the ground that he has been convicted in a court of law only if the court was sitting in the United Kingdom or Ireland; but he can be erased for infamous conduct wherever his infamy was perpetrated.

An instructive example is the case of Ong Bak Hin (reported on appeal to the Privy Council in [1956] 1 W.L.R. 515). Dr. Ong, who qualified in Edinburgh in 1915, was convicted in the High Court of Malacca in 1953 of having unlawfully performed an operation of abortion. Since the conviction had been recorded abroad it could not be treated as a conviction for the purposes of the Disciplinary Committee; but, supposing Dr. Ong to have been rightly convicted, he had clearly been guilty of infamous conduct in Malacca. This, therefore, was the charge made against him, and, in effect, the Committee tried over again the issue which had already been determined by the criminal court. But it had to do so without seeing the witnesses, and had to devise its own means for getting on without them. In these respects it was quite different from any British law court. A criminal court sitting in England would simply have declined jurisdiction to try an offence of this sort committed in Malacca. A civil court sitting in England and investigating events which happened in Malacca would have sent a commission out to Malacca to take the evidence of the local witnesses; but the Disciplinary Committee has no power to do this.

Again, no criminal court in England will ever try a defendant in his absence. Either he will have been previously arrested and held in custody until his trial, or he will have been released on bail and will have to surrender on the opening of the Assize or Quarter Sessions. But the Disciplinary Committee has no power to order the arrest of a practitioner or to require bail. It can therefore order (and has in fact ordered) the erasure of a practitioner who does not choose to appear in answer to the charge.

A case like Ong's raises in an acute form the question, What evidence may the Committee receive in support of the charge? Although the Committee may subpoena witnesses, a subpoena will not run outside the United Kingdom—for

example in Eire, the Channel Islands, or anywhere further afield—and, lacking the powers of a court to take evidence abroad, the Committee must in many cases manage as best it can on something less than the sort of evidence which would be acceptable in the courts. In Ong's case the judge's notes, taken at the trial in Malacca, of the evidence given by the Malayan witnesses were used as evidence before the Committee, and this procedure was approved on appeal by the Privy Council.

Many other cases can be imagined, and have indeed presented themselves, where the rules of evidence which prevail in courts of law cannot be applied strictly to proceedings before the Committee. Accordingly, a rule has been adopted, after discussion not only with the Medical Defence Societies but with the Privy Council Office and the Lord Chancellor's Department, which provides, in effect, that where possible the rules of evidence prevailing in criminal courts shall be applied, but that, where this is not possible, "the Committee may receive as evidence any such oral, documentary or other matter as, after consultation with the Legal Assessor, they may think fit." The Legal Assessor naturally inclines to the view that he can be trusted to advise the Committee properly, but he is also sobered by the reflection that, if he does not, the Judicial Committee of the Privy Council can be trusted to say so.

It should be noted that an appeal against erasure is the only appeal provided by the Medical Act. A practitioner whose name has been erased may apply to the Committee in due course (and most of them do) for its restoration to the Register, but there is no appeal against their refusal to restore it. (It is best to avoid erasure in the first place.)

Inability to Award Costs

Another point which distinguishes the Committee from courts of all kinds is that it has no power to award costs. This may seem hard on the practitioner who has successfully defended himself against a charge of infamous conduct in a professional respect. But often the injustice is more apparent than real. There is always a *prima facie* case of some sort against the accused practitioner (otherwise he would not have been summoned to appear before the Disciplinary Committee), and the facts which are proved are generally more or less discreditable. It by no means follows from the fact that the Committee is not prepared to describe the practitioner's conduct as "infamous" that any of them regard it as unobjectionable. Those of us who have extensive experience of the criminal courts are inclined to be sceptical of the view that he whom the jury finds to be not guilty ought never to have been tried. It often does him all the good in the world to be tried.

Moreover, the Committee's inability to award costs sometimes acts as a protection against ill-founded complaints. Many patients and other people seem to be of the opinion that if the family doctor behaves in a way that they disapprove of they have only to write a letter to the G.M.C. to get him hauled over the coals. Such people are often deterred on being told by the Registrar that no complaint made by a private person can even be considered until it has been supported by a statutory declaration. Some are not deterred by this requirement, but, having filed one or more statutory declarations, are inclined to suppose that the complaint will then go forward without further trouble to themselves. When they are told that they will be expected to present the case and produce their witnesses to the Disciplinary Committee at their own expense they sometimes decide to proceed no further.

The Penal Cases Committee

This is one of the most delicate and important aspects of the work of the Penal Cases Committee, which has the preliminary duty of determining whether a complaint should be referred to the Disciplinary Committee or not. The Penal Cases Committee has the power, and has exercised it, to

direct that the case shall be presented to the Disciplinary Committee by the Council's solicitor and at the expense of the Council. If the complaint is of a serious nature and the supporting evidence seems likely to be strong it is plainly in the public interest that it should be investigated, even though the complainant has not the means to pay for his part in the inquiry. It may also be thought fair, if a patient conceives himself to have a serious grievance against his doctor, to allow him to ventilate it, even though the evidence on which he relies appears to be somewhat feeble; but in such a case it may not be unfair to tell him that he will have to bear his own costs of the inquiry. The Penal Cases Committee is almost unknown to the profession, but it acts as a most valuable filter, and the President has been heard to describe its work as more important than that of the Disciplinary Committee.

As already mentioned, a complaint of infamous conduct will not be considered by the Penal Cases Committee unless (to quote the language of the rule) "there has been furnished to the satisfaction of the President one or more statutory declarations in support thereof." By another rule the accused practitioner, if the complaint goes forward to the Disciplinary Committee, is entitled to have copies "of any statutory declaration sent to the Council." But it must be borne in mind that if, on the strength of "one or more" statutory declarations, the Penal Cases Committee sends the case forward, the complainant will be entitled at the hearing to call as many other witnesses as he chooses. In comparison with the procedure of the courts this puts the accused practitioner in a position midway between that of a defendant to a civil action and that of a defendant to a criminal prosecution. The former has no right to see the statements of any of the witnesses proposed to be called by the plaintiff; the latter has a right to see the statements of all the witnesses proposed to be called by the prosecution. The accused practitioner may see the statements of those who have made statutory declarations but not of others.

Conviction of Criminal Offences

The last point of difference to be noted between the courts and the Disciplinary Committee is that there are two matters on which the Committee may not hear evidence at all. The fact that a practitioner has been convicted of a criminal offence by a court of the United Kingdom or Ireland is of itself sufficient to give the Committee jurisdiction to erase his name from the *Register*. Whether it will do so or not will depend on the gravity of the crime, the circumstances which led up to it, the previous character of the practitioner, and similar matters. What it may not consider is the correctness of the conviction itself. The practitioner, unlike a litigant in the courts, cannot be heard to say that he was wrongly convicted. This rule and its practical results are not nearly so widely understood as they should be.

Let us suppose (for such things have happened) that a young practitioner has been to an evening celebration in London—a celebration perhaps of his own admission to full registration. After the dinner he strolls back to his hotel through Hyde Park. Suddenly a torch flashes, a policeman's hand descends upon his shoulder, and other figures, including a second policeman and another arrestee, emerge from the background. Our practitioner is marched off to a neighbouring police station, where he is told that he and the other man (who has already admitted his guilt) will be brought up before the magistrate next morning on a charge of committing acts of indecency with each other. He is also told that if he pleads guilty he will probably be fined 10s. and no more will be heard about it. He takes this advice; and the next that he hears about it is a summons to attend before the Disciplinary Committee. He there discovers to his horror that, having been convicted upon his own confession, he cannot now be heard to say that he never did anything wrong at all. It is a tenable view that the words "Never plead guilty" should be printed on the back of every registrable diploma.

Finding of Adultery

The other finding which a practitioner is not entitled to dispute is a finding of adultery made against him by the Divorce Court. This dates from the Medical Act, 1950, which transferred the disciplinary functions of the G.M.C. to the present Disciplinary Committee, and, in deference to the distaste felt by members of the Council for re-trying divorce cases, provided by S.18 (now S.33(2) of the Act of 1956) that "any finding of fact which is shown to have been made in any matrimonial proceedings in the United Kingdom or the Republic of Ireland, being proceedings in the High Court or the Court of Session or on appeal from a decision in such proceedings, shall be conclusive evidence of the fact found." To a practising lawyer this section is astonishing, since there is probably no proceeding in the High Court in which important issues of fact are decided on such flimsy evidence as in an undefended divorce case. At any rate, it is worth recalling as a medico-legal curiosity the immediate impact of this section.

Although the Act of 1950 received the Royal Assent on July 28 of that year, "the appointed day" did not dawn until April, 1951. At its session in November, 1950, the Council as a whole was therefore still in command of disciplinary cases and was not bound by S.18. A practitioner was charged with adultery with one of his patients. Her husband had taken divorce proceedings and cited him as the co-respondent. Since the wife and the practitioner were as anxious as the husband that the divorce should go through, they did not defend these proceedings. However, the learned Divorce Commissioner was unimpressed with the evidence of adultery offered by the husband, which was that of two inquiry agents who had kept a nocturnal watch on a lighted bedroom window at long range through a pair of binoculars, shared between them. To the consternation of all parties the Commissioner dismissed the petition. The husband appealed, and the Court of Appeal, after studying the transcript of the evidence and hearing argument, concluded that the Commissioner was wrong in refusing to infer adultery, inferred it themselves, and granted a decree. This inference was gladly accepted by the practitioner and the wife so far as the divorce proceedings were concerned; but it was a very different matter when the case came before the G.M.C. There was now no question of letting it go undefended. For the first time the case was fully tried out, in the sense that the wife and the practitioner both gave evidence and the inquiry agents were cross-examined. In the result, the Council had no doubt whatever that the Commissioner had been right and that adultery had not taken place. If S.18 of the Act had been in force the practitioner's name would probably have had to be erased.

In May, 1951, the newly formed Disciplinary Committee met for the first time. The first complaint brought before it was a charge of adultery. The accused practitioner had been in partnership with another doctor. The latter, alleging that his partner had committed adultery with a patient of the practice, served notice under the partnership deed of immediate dissolution. The allegation was denied, and the outcome was a witness action in the Chancery Division, where the whole matter was thrashed out over several days of examination and cross-examination before Mr. Justice Vaisey, who found the adultery proved. Before the Disciplinary Committee, however, the practitioner persisted in denying it; and, though S.18 of the Act of 1950 was now in force, it turned out not to be applicable, since the finding of the court had not been made "in any matrimonial proceedings." The Committee had therefore to reinvestigate the whole case *de novo*. It is satisfactory to be able to add that it arrived at the same conclusion as Mr. Justice Vaisey.

The duty of the Committee is to hold an "inquiry"—not a trial; and, though the one is very like the other, it is not exactly the same thing.