JURY COURT — FIRST DIVISION.

JOHN LIZARS, Esq., Surgeon,

AGAINST

JAMES SYME, Esq., Surgeon.

Monday, 26th July, 1852.

(*Before the Lord Justice-General and a Jury.*)

The Jury having been empannelled, Mr. Macfarlane opened for the pursuer in the following address:—

Gentlemen of the Jury — I have the honour to address you in this case in behalf of the pursuer, who, as may be known to you, has for many years practised as a surgeon in this city. He has been under the necessity of bringing the present action, in vindication of his character, against the defender, Mr. Syme; and I think you will be satisfied, when you have learned the nature of the case, that he had no alternative. A most unjustifiable libel was published by the defender against his professional character and position, which it was impossible for the pursuer, or any honourable man, to remain under, if he had any respect for himself, or wished to be respected by others. The circumstances are exceedingly simple, and can be laid before you without detaining you many minutes.

There appeared in the number of the *London Medical Gazette* of last year, for the 4th of July—a periodical which is published weekly—an article under the head of 'Correspondence,' and bearing to be a letter addressed to the conductor of that periodical, by the defender, in these terms:—'*Edinburgh, June* 26, 1851.—'Sir—I have only to-day happened to see your journal of May '16th, which contains some statements that certainly should not 'have remained so long unnoticed, if they had been known to 'me sooner,' &c., &c.

'You say, 'a fierce paper war has arisen between the two Edin-
'burgh professors—Syme and Lizars,' but you must, or at least
'ought to know, that I have not addressed a single word upon the
'subject in question to the so-called 'professor.'

'Within the last eight months I have performed this operation
'nine times in the Royal Infirmary of Edinburgh, in presence of
'the largest class of surgical clinical students in her Majesty's
'dominions. These gentlemen can testify, that in no instance
'has there been bleeding, extravasation of urine, or any other
'unpleasant consequence, and that all the patients speedily and
'completely obtained the relief which they desired. As you say,
'that 'something more than the guarantee of Mr. Syme's reputa-
''tion is wanting, to assure the surgeon that he would be justified
''in having recourse to the proposed operation,' I beg to inquire
'if you think the evidence thus afforded sufficient, and if not,
'what further proof you deem requisite to establish the safety and
'efficiency of my operation? I am, Sir, your obedient servant,

'James Syme.

'The Editor of the London Medical Gazette.'

Then there is added a statement in these terms, by the conductor of the Journal:—'Certain parts of this letter which would 'fall under the English law of libel, have been omitted.' Now, Gentlemen, in some respects, that letter of Mr. Syme's, to this periodical was, to say the least of it, somewhat offensive so far as Mr. Lizars is concerned, but probably he would not have thought it worth his while to notice it, if the matter had stopped there; and you might have supposed, that after the significant warning which the defender received, that the omitted portion of his letter addressed to this periodical would fall under the English law of libel, that he, or any candid man would not disregard this warning; but instead of this, after weeks of reflection and consideration, he deliberately proceeded to get the libellous passage of his letter, which had been rejected by this periodical, published in another periodical, in some measure under his own control. One can imagine, that a person under the irritation of the moment, whether there be sufficient ground of irritation or not, may do a thing that he would be sorry for immediately after, but it is not often that a gentleman in the position of the defender, a man of education, and occupying the status which he does occupy, would, after weeks of reflection, deliberately and wilfully proceed to libel his professional brother,

especially after the warning which he received from the Editor of the London periodical—but he did so, and he has his letter containing the libellous passage which had been rejected by the London Editor, published in another periodical, called the *Monthly Journal of Medical Science*, in the August number of 1851, one of the conductors of which, I see from the title page, is the defender, Mr. Syme. Here you have the whole letter set forth as it is in the Issue before you, and allow me to read it along with you.

It being admitted that there was printed and published in the 'Monthly Journal of Medical Science' for August, 1851, the following article or statement, viz. —

'*The London Medical Gazette.* — One of the conductors of this 'Journal lately felt it necessary to address a letter of remonstrance 'to the Editor of the 'London Medical Gazette,' who published 'it in an imperfect form, under the pretext that the matter ex- 'cluded would have been subject to the English law of libel. Two 'results have followed: in the first place, the letter is rendered 'meaningless; and secondly, the author is made to appear having 'used libellous language. In order that our readers may judge 'how far this conduct was warranted, we now place before them 'the letter in its original form—the omitted portion being en- 'closed within brackets.

'*Edinburgh, June* 26, 1851.

'Sir—I have only to-day happened to see your journal of May '16th, which contains some statements that certainly should not 'have remained so long unnoticed, if they had been known to me 'sooner.

'You say 'a fierce paper war has arisen between the two Edin- ''burgh professors — Syme and Lizars;' but you must, or at least 'ought to know, that I have not addressed a single word upon the 'subject in question to the so-called 'professor,' [regarding him as 'long placed beyond the pale of professional respect and courtesy.

'In estimating the value of my operation, you proceed upon the 'supposition that the allegations of Mr. Lizars and his assistant 'Dr. Müller are well founded; but in fairness to your readers, if 'not to myself, should have mentioned, that the statements of 'these persons, in so far as they attribute bad effects to the ope- 'rations which I have performed for the remedy of Stricture by 'division, have been declared by me to be all utterly devoid of 'truth.]

'Within the last eight months, I have performed this operation 'nine times in the Royal Infirmary of Edinburgh, in presence of 'the largest class of surgical clinical students in her Majesty's 'dominions. These gentlemen can testify, that in no instance 'has there been bleeding, extravasation of urine, or any other 'unpleasant consequence, and that all the patients speedily and 'completely obtained the relief which they desired. As you say, 'that 'something more than the guarantee of Mr. Syme's repu- '' tation is wanting to assure the surgeon that he would be justified '' in having recourse to the proposed operation,' I beg to inquire 'if you think the evidence thus afforded sufficient, and if not, 'what further proof you deem requisite to establish the safety and 'efficiency of my operation? I am, Sir, your obedient Servant,

(Signed) 'James Syme.

'To the Editor of the London Medical Gazette.'

Whether the whole or any part of the said article or statement is of and concerning the pursuer, and falsely, calumniously, and injuriously represents and holds out the pursuer as a person of disreputable character in his profession, and as neither respected nor entitled to respect in the medical profession, to the loss and damage of the pursuer?

Damages laid at £1000.

Now, gentlemen, such being the nature of the libel of which the pursuer complains, I put it to you, whether there is not, plainly, in the face of this statement, a direct unjustifiable attack and libel on the character and professional position of the pursuer, Mr. Lizars? Put the case to yourselves — and that is the true way of estimating the matter, whatever your position or business in life may be — if any one occupying the same position and profession or business as you do, were to publish in regard to you, what the defender, Mr. Syme, published in regard to the pursuer, 'that he 'regarded you as long placed beyond the pale of professional 'respect and courtesy,' does it not plainly and directly follow, that this, in your minds, must be considered a gross and unjustifiable libel? And can there be any doubt in your minds, in regard to your answer to the question put to you, 'whether the whole or 'any part of the said article, or statement, is of and concerning 'the pursuer, and falsely, calumniously, and injuriously repre- 'sents and holds out the pursuer as a person of disreputable 'character in his profession, and as neither respected nor entitled

' to respect in the medical profession, to the loss and damage of ' the pursuer?'

It is all the worse, that the libel is a condemnation of Mr. Lizars in general terms. If it had stated the reason why Mr. Syme considered Mr. Lizars as entitled to no respect, as being placed ' beyond ' the pale of professional respect and courtesy,' then the readers of such a statement would have been able to judge for themselves. But the statement might cover any act, the most aggravated and culpable. It is impossible for any man reading it, not to know, but that Mr. Lizars had been guilty of something most atrocious in his professional conduct. It is published to the world in an extensively circulated periodical, which I daresay most of the medical profession in this country, and beyond this country, take an opportunity of looking into, and must have seen and read this letter; and what would they, or any other portion of the public, whether professional or not, think of it? Can it be doubted, that it would suggest to every reader, that there was something very bad under it. I will not, however, indulge in any more observations, as you will be addressed afterwards on the subject. I ask you, can you doubt that such a libel as this was calculated to do Mr. Lizars great injury and damage? I say it is impossible to tell what injury it may have already done him, and it is impossible to foresee what injury it may do him to the end of his professional career. Think you, that a party who might otherwise be disposed to call on Mr. Lizars to have his professional aid, if he had heard of it or had seen it, without knowing that it had been cleared away, and the character of Mr. Lizars vindicated, would carry his intention into effect, and call Mr. Lizars into his family, or to any member of his family, in his professional capacity? Would any medical man, who knew little of Mr. Lizars, and reading the statement, that he had been ' long placed beyond the pale of professional respect and ' courtesy,' call him to his aid? Who is this Mr. Syme? He is the professor of Clinical Surgery in Edinburgh, and as he says, lectures to ' the largest class of surgical clinical students in her ' Majesty's dominions.' This fact aggravates materially the injurious effects of such a libel as this. I daresay, that every student under Mr. Syme's tuition, looks with interest to every publication of his; and his students in this country, and it may be throughout the world, have in consequence of the publication of the libel in

question, have not unlikely come to a conclusion, most prejudicial to Mr. Lizars.

Now, gentlemen, if I am right in saying that this is a libel—and we would not be before you if it was not—your answer to the question put to you in the Issue must be obvious. The law of libel in this country is much the same as it is in England. Mr. Syme was told that this statement in his letter would bring him under the law of libel there. He disregarded that warning given to him by a neutral party, and I repeat, that after weeks of reflection, he proceeded to publish it in his own journal. It is equally libellous here as it is in England, and it is for you to say what reparation Mr. Lizars is entitled to from Mr. Syme. Let me add, that down to this moment, this gentleman has made no retractation of his statement, and no apology; and you can well understand how painful it must have been to the feelings of the pursuer, to be subject to so injurious a statement until it is cleared away. It is not for me to say what reparation you are to give; that is a matter which must be left entirely to your own judgment.

Dr. Alfred Taylor—Examined by Mr. Deas.

You are Professor of Medical Jurisprudence in Guy's Hospital, London? I am.

How long have you been connected with that Hospital? About twenty-nine years.

Did you conduct the London Medical Gazette for some years? I did, from 1845 till 1851 inclusive.

(Shown the number of the Medical Gazette, dated 4th July, 1851.)

You see a letter there from Mr. Syme? I do, bearing date 26th June, 1851.

To whom is that addressed? To the Editor of the Medical Gazette.

Did you receive it in your capacity as Editor? I did.

Read with me the letter—'I have only to-day happened to 'see your Journal of May 16th, which contains some statements 'that certainly should not have remained so long unnoticed if they 'had been known to me sooner.' Does that letter lead you to know the particular article in your Journal of 16th May to which he alludes? It does.

You know Mr. Lizars of Edinburgh by name? I have known him long by name.

Was the artiele of May 16th alluded to in Mr. Syme's letter written by Mr. Lizars? It was not. He had no connection with it whatever.

Had he any knowledge of it? None.

Do you know the writer? I do, Mr. Kesteven.

The artiele in the journal of May 16th was a review? It was a review of a book.

Had you requested Mr. Kesteven to review that book? I had.

Of your own motive? Yes, entirely of my own motive.

Does the letter of Mr. Syme, as published in the Gazette, contain all that the letter itself contained? No.

When you received the original letter, what did you do? I sent it to Mr. Kesteven, who wrote the review, with a request that he would read it and return it to me with any comments he might have to make. He returned it to me, and made no comment. I read it over carefully, and struek out one or two passages which I thought very offensive.

Now, look at the 'Monthly Journal of Medieal Seienee' of August, 1851, and say if the passages of the letter within braekets are the omitted passages in the 'London Medical Gazette'? Yes, these are the passages struck out of the letter.

In what respect did you think them objectionable? I thought them highly objectionable, as reflecting on the character of a medical man, and that they would involve the publishers of the Medieal Gazette in an action for libel.

Did you think that these passages eonvey a meaning injurious to the character of a medieal man? I do.

By the Court — What is the injurious meaning to whieh you allude? It would prevent another medical man from consulting Mr. Lizars, or reeommending any patient to eonsult him.

By Mr. Deas — Would it lead you to think that his charaeter in the profession was reputable or disreputable? Certainly disreputable.

Were you personally acquainted with Mr. Syme or Mr. Lizars at that time? No.

You see an editorial note annexed to the letter in the Medical Gazette. Did you write that note? I did.

I understand you to say, that all you did in this matter was done

without communication with Mr. Lizars or any one else? Without communication with any one, with the exception of Mr. Kesteven.

Was your attention afterwards called to the letter in the Monthly Journal of Medical Science? Yes.

What was the impression made on you when you saw the whole letter there? That it would certainly be very injurious to the reputation of Mr. Lizars.

By the COURT — Was your attention called to it by any one? Yes, by a party. I only saw it yesterday morning, and had not seen it before to my recollection. Of course I saw the original letter, but did not see it as printed in the Monthly Journal of Medical Science till yesterday.

WILLIAM BEDFORD KESTEVEN — Examined by Mr. DEAS — You are a member of the College of Surgeons in London? Yes.

You were for some years Surgeon to the Dispensary at Holloway? Yes.

You are now practising in London? Yes. I have been a practitioner in London for about fourteen years.

Did you write reviews for the London Medical Gazette when it was under the charge of Dr. Taylor? Yes, I did.

Look at this number of the Medical Gazette — Do you see a letter there from Mr. Syme of Edinburgh? Yes.

And in the outset of it, it alludes to an article that appeared in the Journal of May 16th? Yes.

You know that article? Yes.

Who wrote it? I did.

You reviewed the book it referred to, at the request of Dr. Taylor? I did.

Had you any knowledge of Mr. Lizars personally at that time? None at all.

Do you remember Dr. Taylor showing you that letter after he received it? He sent it to me and I read it.

Is the whole letter there? Some passages are omitted.

Look at this number of the 'Journal of Medical Science' — Do you see the omitted passages there, within brackets? Yes.

What impression did the letter in its original state make upon you when you read it? That it was offensive towards Mr. Lizars.

In what respect? The expression 'regarding him as long 'placed beyond the pale of professional respect and courtesy.' And again, that his statements 'have been declared by me to have 'been all utterly devoid of truth:' these statements must have been offensive to Mr. Lizars.

Looking to these words 'regarding him as long placed beyond 'the pale of professional respect and courtesy' — What meaning did they convey to your mind? That he must have been in bad repute amongst his medical brethren in Edinburgh, if these words were true.

Did they lead you to think that his character in the profession was reputable or disreputable? Disreputable.

Did they lead you to think that he was respected in the profession, or the reverse? The reverse.

Did they lead you to think that he was entitled to respect, or the reverse? The reverse.

What impression did you form as to the effect of these words, on medical men in regard to leading them to consult, or not consult, Mr. Lizars? That, if they were true, medical men would not consult with him.

Did they lead you to think that medical men would or would not advise patients to employ Mr. Lizars? That they would advise patients not to consult him, and not to employ him in his profession.

Am I right in thinking, that when you read that letter, you considered these expressions to be very injurious to Mr. Lizars? Very much so indeed.

Did you think they ought to have been published, or not published in the Medical Gazette? They ought not to have been published.

Do you retain your opinion as to the injurious nature of these words? Yes, I do.

Is the London Medical Gazette in extensive circulation? It was; but it does not exist now.

Was it extensively read by medical men throughout the whole of Great Britain and Ireland? I believe so; and that it had an extensive circulation among medical men, both in this country and abroad.

Cross-examined by the SOLICITOR-GENERAL — When you received that letter, part of which you published in the Medical

Gazette, had you understood that 'a fierce paper war' had arisen between Mr. Syme and Mr. Lizars? I saw it from the documents placed in my hands.

What did you understand Mr. Syme to be professor of? I do not remember.

What did you understand Mr. Lizars to be professor of? Professor of Anatomy in Edinburgh.

In what establishment? I do not recollect.

You observe the expression in the letter, 'you must, or at least 'ought to know, that I have not addressed a single word upon the 'subject in question to the so-called 'professor' (regarding him as 'long placed beyond the pale of professional respect and courtesy')? I do.

What do you understand by that? That the professional talents and veracity of Mr. Lizars did not command the respect of his professional brethren in Edinburgh and elsewhere.

Do you think it refers to 'veracity'? I suppose it includes it.

Where is the impeachment of veracity in that passage? I take it with the other.

Suppose veracity out of the question, what else do you impeach there? Professional abilities and acquirements.

What is the word that you conceive impeaches his professional abilities and acquirements? His being 'long placed beyond the 'pale of professional respect and courtesy.'

Do you think that a man of no abilities would be entitled to courtesy? I do not say so. A man having no abilities may still be entitled to courtesy; but I think that a man having no abilities would not command the same courtesy as a man having abilities.

What has courtesy to do with abilities at all? I mean to say, that a man with great abilities, and other qualifications, would command courtesy.

Suppose a man of great abilities had insulted and defamed you, do you think he would be entitled to courtesy from you? No.

Suppose he had written a book that defamed you, would you look upon him with respect? No.

Re-examined by Mr. Deas — When you say that if a man had written a book to abuse you, you would not look upon him with respect, I presume you mean provided you did not deserve the abuse? Exactly.

When you say that a man holding a certain position, if he had

not abilities, he would not receive from you the same courtesy that he would if he had abilities, do you mean a position implying the necessity of abilities? Yes.

Might a man be placed beyond the pale of professional respect and courtesy in respect of his conduct, apart altogether from his abilities? He might be.

Is there any thing in these words, 'regarding him as long placed 'beyond the pale of professional respect and courtesy,' that leads you to know, whether they allude to conduct, or both to conduct and abilities, except conjecture? Nothing.

Then it would depend on the individual what inference he was to draw? Yes.

The words might mean a great deal worse than professional ability? Certainly.

Dr. James Renton — Examined by Mr. Macfarlane.

You are a Practitioner in Dalkeith? Yes.

Are you a member of the College of Surgeons in Edinburgh? I am a licentiate of the College of Surgeons.

You graduated in Edinburgh? Yes.

How long have you practised in Dalkeith? Upwards of twenty-five years.

Are you the oldest practitioner there? Dr. Graham and I are practitioners of about the same time.

Do you know Mr. Lizars, and also Mr. Syme? Yes.

Have you been frequently in consultation with Mr. Lizars? Frequently.

And have you also frequently sent patients to him? Frequently in surgical cases.

Do you know the periodical called the *Monthly Journal of Medical Science*? I do.

Do you get it regularly? Yes.

By the Court — And read it sometimes? Yes.

By Mr. Macfarlane — Do you recollect an article that appeared in it in August last year, in relation to Mr. Lizars? I do.

Did it come under your observation about the time? Yes.

Look at this article, is that the article you mean? Yes.

Were you a good deal struck by it? Yes, very much so at the time.

Look at the passage within brackets there, commencing with

'regarding him as long placed beyond the pale of professional re-'spect and courtesy,' what was the impression conveyed to your mind when you read it? That it tended very much to injure the professional character of Mr. Lizars.

In what respect was it calculated to injure him? It cast a stigma on his professional character, and that he was not to be trusted—that was my individual impression of its effects, supposing it was true.

Would you consider, from the words, that he was in good repute or the reverse? If I had not known the individual, I would have looked upon it as a serious charge against him; but knowing him as I did, and do, it did not convey such an impression to my mind.

Supposing you had not known him, would the words have conveyed to your mind, that he was in good or bad repute in his profession? In bad repute, and that he was the reverse of being respected in his profession; and that he was not entitled to respect in his profession.

Had the charge been true, that he was not entitled to respect in his profession, would you consult with him, or any medical man to whom that statement was applicable? I could not.

Would you recommend patients to go to such a man? I could not.

And you would not apply for the professional aid of such a man? I would not.

Would you allow any patient of yours to go to such a man, if you had the opportunity of preventing him? I would not allow any patient of mine to go to him.

By the COURT — By which you mean, that you would dissuade him from going? I would dissuade him.

By Mr. MACFARLANE — You said you know Mr. Lizars — had this statement any effect on your mind? I have had such experience of the kindness and unselfishness, and professional abilities of Mr. Lizars, that it neutralised the effect of the statement.

Do you know whether that article was talked of a good deal in the profession? Very much talked of.

Is that Journal read a good deal? A good deal.

Examined by the SOLICITOR-GENERAL — I think you said that you considered the passage read as casting a stigma on Mr. Lizars as a man not to be trusted—what do you mean by that? I mean that

a person against whom such a charge could be made, without retractation, could not be trusted to as a man of honour.

What is the charge which you understand the passage to contain? That he is not worthy of confidence.

What are the words that contain this charge? 'Regarding 'him as long placed beyond the pale of professional respect and 'courtesy.'

By the COURT—Considering that to mean, that he is not worthy to be consulted as a medical man? Yes.

By the SOLICITOR-GENERAL—'Regarding him as long placed 'beyond the pale of professional respect and courtesy;' what does that mean? That the writer so regarded him.

What is the previous part of the sentence? That the writer had not addressed a single word upon the subject in question to the so called Professor.

What does that refer to? To some dispute between them.

By the COURT—Is it your meaning that he had not addressed him on the subject, *because* he had regarded him 'as long placed 'beyond the pale of professional respect and courtesy?' I viewed it in no such light as '*because;*' I took the simple meaning of it which I have stated. I read the words as I found them, and I give my humble explanation of their meaning.

By the SOLICITOR-GENERAL—You do not take into view the connection between these words and the passage that precedes them? I take the whole passage.

Do you think you understand the passage? I think so.

Is the latter part of it—'regarding him as long placed beyond 'the pale of professional respect and courtesy,' given, as you think, as the writer's reason for not addressing a word upon the subject to Mr. Lizars? I can say nothing about that.

Mr. HENRY SANDERSON—Examined by Mr. DEAS.

You are a medical practitioner in Musselburgh? Yes.

How long have you been so? Since 1817.

Before that time you were in the navy? Surgeon in the navy.

Do you sometimes see the 'Monthly Journal of Medical Science'? Occasionally.

Do you remember the number for August, 1851, containing a letter from Mr. Syme? Yes.

You observe the words there, ‘ I have only to day happened to ‘ see your Journal of May 16th,’ &c., &c. ? Yes.

Looking at the words ‘ regarding him as long placed beyond the ‘ pale of professional respect and courtesy,’ what impression did these words make on you when you read them ? That they were very damaging to Mr. Lizars, and not exactly called for.

How not exactly called for ? That Mr. Lizars’ character did not warrant the imputation. I understood the words to mean, that he was not a respectable practitioner, and had in some way or other misbehaved himself, and misbehaved himself to the extent that he was not entitled to professional respect and courtesy.

You have been in the habit of meeting Mr. Lizars in consultation ? Yes.

And of sending cases to him when surgical operations were required ? I generally operate myself in my own cases, but I have frequently met Mr. Lizars in consultation.

If you had believed this statement to be true, would you have continued to consult with him ? Certainly not.

Was that letter much talked of in the medical profession at the time it was published ? Yes, I should say it was.

Examined by the Solicitor-General — Looking to the words ‘ regarding him as long placed,’ &c. &c., to whom do you understand them to refer ? I should suppose to this, that Mr. Syme did regard Mr. Lizars ‘ as long placed ’ &c.

By Mr. Deas — Did you understand, in reading this letter, that Mr. Syme did or did not hold him out to other people in the same light ? I understood by the passage that he did.

Dr. Sibbald — Examined by Mr. Macfarlane.

You are a medical practitioner in Edinburgh, and a member of the College of Surgeons ? I am.

How long have been in practice in Edinburgh ? Fully thirty years.

You know Mr. Lizars, and also Mr. Syme ? Yes.

Have you been in the practice of consulting with Mr. Lizars ? I have, in important cases.

Have you also sent patients to him ? I have.

Are you a subscriber to the *Monthly Journal of Medical Science* ? Not a subscriber, but I purchase it occasionally, and frequently see it.

Do you recollect an article in the August number of last year, relating to Mr. Lizars? Perfectly.

Is that the article? Yes.

Had you seen that article soon after publication? I cannot say how soon, but it was a good deal a matter of conversation in the profession.

You see the passage within brackets 'regarding him as long placed 'beyond the pale of professional respect and courtesy, &c., &c.'] What impression did that convey to your mind? I considered it as very strong language indeed.

If you saw that published of a medical man with whom you were not acquainted, what would you understand by it? It would depend very much on my knowledge of the party who wrote it. If the person who wrote it was a man of high mark, it would go far to extinguish any respect that I might have hitherto entertained for the person against whom it was written, if I had no other means of knowing about him. I mean the professional abilities of the party so spoken of.

Do you consider Mr. Syme in high position and repute? Assuredly I do. If the Court will allow me to explain, I beg to say, that I have a high respect for both parties.

If you believe this statement, applying to a professional man, that he was 'beyond the pale of professional respect and courtesy,' would you consult with such a man? I assuredly would not. I could have no confidence in him, and would not send any patients to him.

Do you consider that a passage of that kind would have an injurious tendency? I would consider that such a statement applied to me, would destroy me as a medical man.

Do you happen to know whether this periodical is read a good deal in the profession? Oh, yes.

Look on the title page of that number, and read the names of the gentlemen said to be the conductors of that journal? 'Conducted 'by Professor Christison, Professor Syme, Professor Simpson, Dr. 'Bennet, Dr. Maclagan, and Dr. Robertson.'

All of whom are men of standing? Yes.

Examined by the Solicitor-General — You say, that you considered the passage so often quoted, within brackets, reflected against the talents of Mr. Lizars? I think so, both morally and professionally.

In your opinion, does it reflect on his skill and abilities as a professional man? I have no hesitation, in saying that I read it in that sense, reflecting on his professional skill and ability.

Besides reflecting on him professionally, from what words do you infer that the passage reflects on him morally? Because he is a member of an honourable profession; and I hold, that a man would be a quack, an impostor, a dishonest man, in fact, who had placed himself 'beyond the pale of professional respect and 'courtesy.'

Professional courtesy — you would not attach much importance to that? Not much, in important cases; in cases of life and death, I would put it aside. We have all heard of the eminence of the late Dr. Liston; many thought him uncourteous, but in his life time, if I had had a case between life and death, in spite of uncourtesy, I would have called him to a person of the most refined feelings.

You think there is in this passage a reflection against the courtesy of Mr. Lizars? Yes.

But you do not attach so much consequence to it as to the other? Not so much.

Perhaps a reflection on Mr. Liston's courtesy would not do him much injury? No.

You have been a long time in Edinburgh; from the position of Mr. Syme as a medical man there, would you be surprised at a want of courtesy by Mr. Syme towards Mr. Lizars? I should not have been here to-day if there had not been a want of courtesy.

From what you know of the parties, you would not be surprised to be told before you read that letter, that there was a want of courtesy between them? Not surprised, I might have regretted it, but would not be surprised.

'Respect' you think a more serious matter than 'courtesy?' Yes, I consider it as a most serious matter.

Take the words, 'regarding him as long placed,' &c., what do you understand by that? That the writer of the letter had considered him as 'beyond the pale of professional respect and courtesy.'

'Regarding him,' (&c.,) has that any thing to do with what goes before? Is it assigned as a reason or not? He states it in connection with what goes before, some previous transaction between the parties. I understand that it arose out of some previous matters of dispute between the parties.

Re-examined by Mr. MACFARLANE—Assuming that you did not know any thing about these parties, but had read this statement 'regarding him,' (&c.,) would you consider that, as holding out the individual alluded to, as unworthy of courtesy as well as respect? Assuredly; I never would consult with such a man.

PROFESSOR MILLER—Examined by Mr. DEAS—You are Professor of Surgery in the University of Edinburgh, and a practitioner in Edinburgh? Yes.

Look at that letter in the *Monthly Journal of Medical Science* for August. Did you read it at the time of its publication? Yes.

Look at that part of it which says 'you must, or at least ought 'to know, that I have not addressed a single word upon the sub-'ject to the so-called 'professor,' [regarding him as long placed 'beyond the pale of professional respect and courtesy, &c., &c.'] What impression did these words make on your mind when you read them? That there was something decidedly disreputable in the professional character of Mr. Lizars.

Am I right in saying, that you thought it implied, that he was of disreputable character in his profession? Yes.

Did you think it implied that he was respected or not respected? Not respected.

Did you think it implied that he was entitled or not entitled to respect in his profession? Not entitled.

Did it appear to you at the time to be calculated to be deeply injurious to Mr. Lizars or not? Certainly injurious.

Mr. SAMUEL HIGHLEY—Examined by Mr. MACFARLANE—You are a publisher in London? Yes.

What is the designation of your firm in London? Highley & Son.

You are medical publishers there? Yes.

Are there any other houses in London properly medical publishers but yours? There are four, strictly medical publishers in London.

You are one of them? Yes.

Do you know the *Monthly Journal of Medical Science?* Yes.

Do you recollect an article that appeared in it in the course of last year, relating to Mr. Lizars? Yes.

Had you occasion to see that article? I am in the habit of

looking at the medical journals as they appear, and I noticed this article at the time.

You saw the passage which precedes the words 'regarding him,' (&c.)? Yes.

What impression did the passege altogether convey to your mind? That his conduct in some way or other had been such, as to place him beyond the pale of 'professional respect and courtesy,' and that he had been guilty of some unprofessional act.

Did it convey to your mind that he was in good or bad repute in the profession? That he was in bad repute in Edinburgh.

You know Mr. Lizars? Yes.

Supposing that you had read that passage as applicable to a medical man whom you did not know, would you be disposed to deal with him if he came to you? From an after passage, coupled with the one to which you have directed my attention, I certainly should not.

What is the after passage to which you refer? 'In estimating 'the value of my operation, you proceed upon the supposition, that 'the allegations of Mr. Lizars and his assistant Dr. Müllar are well 'founded; but in fairness to your readers, if not to myself, should 'have mentioned, that the statements of these persons, in so far 'as they attribute bad effects to the operations which I have 'performed for the remedy of Stricture by division, have been 'declared by me to be all utterly devoid of truth.'

You read the whole passage within the brackets together? Yes, and particularly I allude to the cases reported in Mr. Lizars' book 'to be devoid of truth.'

Were you struck a good deal by that article when you saw it first? Yes, I was surprised considerably.

Was it talked of in the profession? Several gentlemen I conversed with noticed it at the time.

Examined by the SOLICITOR-GENERAL—You know Mr. Lizars? Yes.

And you know about his book on Stricture? Yes.

Look at No. 27 of Process, Mr. Lizars' book. Is that the book that you published in London? Yes.

Did you ever read that book? I have skimmed it.

Then there appeared a second edition. When did that second edition appear? In March, 1851.

Read to me the following passage:—

Mr. DEAS — I object. (Witness withdrawn.) I want to know what my learned friend wishes to be read.

SOLICITOR-GENERAL — Some passages in the book.

By the COURT — What is your object in having these passages read?

SOLICITOR-GENERAL — To show the position of the parties at the time this letter was written. I beg to refer your Lordship to the second article in the Condescendence. 'The pursuer, early 'in the present year, 1851, published a Treatise, of which he was 'the author, entitled 'Practical Observations on the Treatment of '' Stricture of the Urethra and *Fistula in Perineo*, illustrated with '' Cases and Drawings of these Affections;' and a second edition 'of this Treatise has also been since published by and for the pur-'suer.'' I mean to give in both editions. I mean to instruct, that that book throws light on the meaning that I attach to the words in the letter, and also explains and gives rise to the letter that is now in dispute, showing an unprovoked attack by Mr. Lizars on Mr. Syme, and therefore mitigation.

Mr. DEAS — I want to know how the passages in that book are to throw light on the meaning which my learned friend attaches to the words in this letter. I want to know how any passages in this book, can show in what light Mr. Syme regarded the words in question.

SOLICITOR-GENERAL — I think it has been made out by the witnesses of the pursuer himself, that this letter, which is now said to be a libel, is to be taken in connection with what is contained in the whole letter. The letter begins, 'I have only to-day hap-'pened to see your Journal of May 16th.' Now, that word 'Journal' relates to this book, and the 'Medical Gazette' relates to this book. The letter goes on to say, 'you say 'a fierce paper '' war has arisen between the two Edinburgh Professors, Syme and '' 'Lizars,' but you must, or at least ought to know, that I have 'not addressed a single word upon the subject in question to the 'so-called 'professor.'' Now, in order to understand the mean-ing of this passage, 'the subject in question' must be understood, and that is the subject that is contained in this book by Mr. Lizars, and in another book by Mr. Syme, which I also propose to put in, in order to understand the passage in the letter before us, that they may explain the words that are in brackets, which, I say, have re-ference to the controversy between the parties, and to show that

they were stated as a reason why no direct word was addressed to Mr. Lizars on the subject. Then my learned friends have also introduced this next paragraph incidentally in the matter, 'in estimating the value of my operation, you proceed upon the supposition that the allegations of Mr. Lizars and his assistant Dr. Müller are well founded; but in fairness to your readers, if not to myself, should have mentioned, that the statements of these persons, in so far as they attribute bad effects to the operations which I have performed for the remedy of Stricture by division, have been declared by me to be all utterly devoid of truth.' The 'allegations' are the allegations in the book, and are the allegations of Mr. Lizars; and further, if you look at Article 31, in the Closed Record, you will find this statement, 'In March, 1851, the pursuer brought out a second edition of his work.'

The COURT — You have set forth in the Record some of the passages which you wish to read.

SOLICITOR-GENERAL — Articles 36 and 37 also are statements of the light in which I regard the passages in this letter.

The COURT — The question is not as to the value of this evidence, but as to its admissibility.

Mr. DEAS — I submit, that this is quite clearly out of the question. The issue is, 'Whether the whole or any part of the said article or statement is of and concerning the pursuer, and falsely, calumniously, and injuriously represents and holds out the pursuer as a person of disreputable character in his profession, and as neither respected nor entitled to respect in the medical profession, to the loss and damage of the pursuer?'—this is what we undertake to prove. It is of no consequence to that question, in what particular meaning the writer of the letter may define these words; the question is, Whether the words are calculated to represent and hold out the pursuer as a person of disreputable character in his profession, and so and so? How can it be truly said, that the object of reading passages from a book written by Mr. Lizars, is to show the meaning in which the words in question are to be understood? I submit that this is quite out of the question. I submit that it is impossible that any thing in the book can throw light on the meaning in which these words would be understood by the public. The more material thing is the next ground, which is, that the book contains an unprovoked attack in every respect on Mr. Syme, and gave rise to the attack made by him on Mr.

Lizars. That is a plea of provocation not very intelligible. It is a plea which, if maintained, ought to have been stated in the record, so as to put us in the position of fair notice, that *that* defence was to be maintained; and if you read that record from beginning to end, you will not see there one word of provocation. There is no statement whatever in regard to the effect produced by any thing in the book of Mr. Lizars, or to the effect that it gave rise to the attack by Mr. Syme on Mr. Lizars. There are plenty of statements in the record, down to page 23 of what occurred, without one word of mention that Mr. Lizars' book gave rise to this attack; and when you come to article 37, you find that it sums up every thing that is previously stated in the record. My learned friend says, that all this fully justified the defender in stating, that he regarded the pursuer 'as long placed beyond the pale of profes-'sional respect and courtesy.' I beg to refer your Lordship to the pleas in law for the defender, page 25. There is a complete foundation laid for an issue in justification, but no such issue is taken, and no such issue is asked for. The proposition now made is in mitigation of damages, to prove a thing not stated here at all, viz. — That certain attacks made by Mr. Lizars on Mr. Syme, gave rise to the attack made by Mr. Syme on Mr. Lizars. I submit that this is not competent under the record. Observe what it comes to — that one injury, one wrong done by one party, has provoked another wrong by another party. Is that not a very special kind of defence, and is it a plea of defence that ought to be admitted? A party says — 'I wrote the libel, but it was pro-'voked by an evil done to me.' Is that not to be stated in the record? How can my learned friend convert the matter into this. 'I will show that a particular injury inflicted by you on me gave 'rise to this'? I submit that that wont do. Look to the nature of the thing. Mr. Syme publishes to the world, that Mr. Lizars has been 'long placed beyond the pale of professional respect 'and courtesy.' If he had set forth in the record, that Mr. Syme published a book some years before, and that a book was published by Mr. Lizars, containing an attack on Mr. Syme, a second edition of which came forth in 1851, and that in consequence of this, he published an attack upon Mr. Lizars, the thing would be more intelligible. The attack is an attack deliberately published in regard to words spoken recently before—a libel deliberately published to the world in cool blood. I submit that

this is a matter that ought to have been set forth in the record if it was to be insisted in. What is proposed to be done, is this, to read *per saltum* passages from a book published we know not when, in order to show that these passages were the inductive cause of that attack. Instead of that being stated in the record, I read the record in the reverse way. Mr. Syme writes to the editor of the *London Medical Gazette* in these words:—'I have 'only to-day happened to see your Journal of May 16th, which 'contains some statements that certainly should not have remained 'so long unnoticed, if they had been known to me sooner.

'You say 'a fierce paper war has arisen between the two Edin-'burgh professors, Syme and Lizars;' but you must, or at least 'ought to know, that I have not addressed a single word to the 'so-called 'professor.'

'Within the last eight months I have performed this operation 'nine times in the Royal Infirmary of Edinburgh, in presence of 'the largest class of surgical clinical students in her Majesty's 'dominions,' &c. &c.

Then in the Edinburgh periodical, he quotes the words within brackets, which were omitted by the editor of the *London Medical Gazette*. Mr. Lizars had nothing to do with the review alluded to in that Journal. Admittedly, the second edition of Mr. Lizars' book is published months before this 16th day of May, and does not lead to this libel. Neither the one edition of the book nor the other leads to this libel. The thing that leads to it, is the article of the 16th May, therefore this record excludes any statement in the book published by Mr. Lizars as giving rise to the attack on him in this letter. If that be so, will you allow a party, under cover, and pretence of doing a thing set forth in the record, to show that that book was the cause of that attack. I am not willing to make any technical objection, nor to exclude any thing on technical grounds, but I submit, that we are not to go into any thing that is contrary to the good faith and justice of the case.

Solicitor-General—I maintain that I am entitled to have this book put in evidence. It is extraordinary that the pursuer should object to his own book being put in evidence. Look at his statement in the adjusted revised condescendence, 'the pursuer, 'early in the present year, 1851, published a treatise, &c.' Has that any thing to do with the present case or not? I submit that it plainly has. Come to article 3—'The pursuer's treatise

'now referred to was favourably noticed, &c.' I am perfectly willing to put in the first edition of Mr. Lizar's book. Then come to the fourth article, &c. (reads). In what respect does it allude to the pursuer, otherwise than in respect to the subject raised by his own book? Then article five—'Notwithstanding, &c. (reads). Such is the statement which he makes. Now, I say, that within the limits of this record, it is impossible to exclude me from bringing in the matter which the pursuer refers to as bearing on this.

Then comes the statement of the defender, in which he gives some earlier transactions, to which I shall afterwards refer. Then comes the publication of this book; and all this I mean to found upon, in reference to the attacks made by the pursuer on the defender. Then the statements contained in the first edition of this book I mean to give in also. It is said, that there is no plea, that there was provocation. Is it possible that the defender's letter can be intelligible without reference to the dispute between the parties? Observe, the defender says—'I have been long entitled to 'consider you, as far as I am concerned, beyond the pale of pro-'fessional respect and courtesy.' I suppose it can be shown, that the *animus* and meaning of the defender is totally different from what the pursuer alleges, and is that a circumstance that should not go to the jury? The question put to them is—'Whether the 'article falsely, calumniously, and injuriously, represents and holds 'out the pursuer as a person of disreputable character in his pro-'fession;' meaning that he had an *animus* against the pursuer. We deny the interpretations which the other party put upon it.

The Court—Your argument seems to come to this, that you mean to show, that the defender did regard the pursuer as beyond the pale of professional respect and courtesy—that he, *himself*, did so regard him. If the pursuer does not make out the libel, he does not gain his case. Observe, that you represent him as beyond the 'pale of professional respect and courtesy.' That necessarily implies that you so regarded him; and then you wish to go back to a much earlier period, I presume to 1840.

Solicitor-General—My position is this, that the pursuer's conduct towards me has been such as makes me regard him as not entitled to courtesy and respect. Suppose I can show that to the jury?

The Court—Supposing the words had run thus—'I have long

' regarded him as not an honest man,' and you offered to prove that you had good reasons for so regarding him, would that be allowed?

SOLICITOR-GENERAL — It does not go that length.

The COURT — Very nearly.

SOLICITOR-GENERAL — Look at my statement, article 24, page 18, Closed Record, &c. The whole part of the *res gestæ* is necessarily part of the discussion. I take the pursuer himself as commencing this matter, in publishing this book in 1851, that book being, as I allege, an attack on Mr. Syme, and a reason for inducing him not to treat Mr. Lizars with respect and courtesy as regards himself. That is part of the *res gestæ* that I am entitled to introduce; and next, I am entitled to introduce that as sufficiently recent to found on the matter of the feelings under which I wrote, when I did write that letter.

The COURT—You refer to this as showing that you were entitled to go back so far as 1840. Now, is that a recent thing?

SOLICITOR-GENERAL — I do not say that it is so. I refer to my statement, article 24.

Mr. DEAS — The object of this is, to lay the foundation to go back to 1840. He says explicitly, that his object is, first, to show that he (Mr. Syme) did regard Mr. Lizars as placed beyond the pale of professional respect and courtesy; and second, to show that he was warranted in so regarding him. Now it is plain, that nothing in the book can show that Mr. Syme did so regard him; but it may show the reasons. The argument on the other side is, that Syme held a certain opinion, and that that opinion was justifiable. Assuming that they are right, that the words simply refer to Mr. Syme's own opinion, they want to show that he was warranted in maintaining that opinion. It is quite clear, that that is proposing to prove the *veritas* of the whole libel as they construe it. If they meant to say that Mr. Syme regarded Mr. Lizars in this light, and was justified in regarding him in this light, is not that a plea of *veritas*. Under the shape of mitigating the damages, are you to allow him to go to that? You know the case of M'Neil and Ronaldson. There certain letters were referred to as justifying the slander. There was no issue in justification, and it was proposed to put in these letters as mitigating the damages. This was not allowed, and I refer your Lordship to the opinion of Lord Moncrieff, which was concurred in by all the other Judges. The question was the

admissibility of the letters to mitigate the damages which had not been used in justification. Can you desire a better proof, that the party considered this as justification, when he has told you so in the record? I submit that there is no foundation for their wishing to go into the whole contents of the book, to make out that Mr. Syme was entitled to regard Mr. Lizars in the light stated here, and to entitle my learned friends to go back twelve years in the history of these parties, in order to show the inductive cause of this attack upon Mr. Lizars.

The COURT — You say you propose to put in the review of 1851 to which this letter refers.

SOLICITOR-GENERAL — Yes, and I propose to put in both editions of the book.

The COURT — Is there any thing in that review of 16th May relative to those passages you mean to read?

SOLICITOR-GENERAL — Yes.

The COURT — Does the Review of 16th May review those papers to which you refer?

SOLICITOR-GENERAL — We say it is in reference to this, 'you 'must, or at least ought to know, that I have not addressed a 'single word upon the subject in question to the so-called 'pro- '' fessor,'' &c.

The COURT — At the time of the review this second edition was not published.

SOLICITOR-GENERAL — The second edition was published in March, 1851. I do not say that he is not entitled to respect and courtesy from the *profession*; but I say, that in so far as he has used me very ill, I regard him personally as beyond the pale of professional respect and courtesy.

Mr. DEAS — If such an inquiry is competent. Suppose the other party had taken an Issue in these terms, 'Whether the pursuer had 'for twelve years so conducted himself as to entitle the defender 'to regard him as placed beyond the pale of professional respect 'and courtesy,' is not that a thing they might have taken, and is not that the thing they are proposing to take without this Issue? It seems to me the most extravagant proposition ever maintained, that they are to be allowed, without a plea or issue, to go into a proof of all things which they may choose to say justified Mr. Syme.

The COURT — I disallow it.

Solicitor-General — Be pleased to take a note of this.

The Court — I do so.

Mr. Deas — I propose that your Lordship take down the names of the conductors of the journal, as read by Dr. Sibbald from the journal itself.

The Court — I do so.

Mr. Henry Bowie — Examined by Mr. Macfarlane.

You are Secretary to the Philosophical Institution in Queen Street, Edinburgh? Yes.

Is the 'Monthly Journal of Medical Science' taken in there? Yes, and it lies on the table.

Are the reading rooms often attended by great numbers of people? At certain seasons they are more numerously attended than at others, but they are generally well attended.

How many subscribers are there to the Institution? About 2000, both professional and unprofessional.

Mr. Deas — We now put in these two documents, the two publications.

The Court — For what purpose?

Mr. Deas — To prove the facts stated there. Then Article 5th of Condescendence and Answer; Article 9th and Answer; Defenders Statement 1st, and Answer; and the Record generally for reference.

Case for pursuer Closed.

Mr. Patton — I have now to address you a few words in explanation of the case of the defender, and I think I shall best discharge my task, in the first place, by asking your attention particularly to the terms of the Issue which you have to try, and also to the terms of the documents, out of which that Issue has been extracted. The charge is of this description of character, that Mr. Syme falsely, calumniously, and injuriously, held forth the pursuer as a person of disreputable character in his profession, 'and as 'neither respected, nor entitled to respect in the medical profes-'sion.' The pursuer has undertaken to establish this against Mr. Syme, he has undertaken to establish this calumnious injury, that is, to the effect of imputing a want of professional ability in Mr.

Lizars, a want of veracity, and at the same time, a disreputable character in the estimation of the whole medical profession. That is a grave charge to make, and you will not readily adopt it. What I have to ask you, and it is a duty which I know you will discharge, is to look to the whole of the documents before you, to see what is the true nature of the statements, and what is the position and the circumstances, and the views, which may be supposed to have influenced the party to make the statement complained of; and here on the part of Mr. Syme, I disclaim any disrespect to the pursuer. There was a controversy between them, and there were publications by each of them, and having especial exclusive reference to the position of the parties. I ask and invite your attention to see what is the statement that I make. We are told, that a certain London Editor would not insert the whole contents of the letter which was sent to him by Mr. Syme, and in order that the omitted matter should appear, he obtained its insertion in the 'Medical Journal of Edinburgh.' What is the libel? It arises from the publication of a review of a book, in reference to the details of a controversy, arising from a new mode of treatment of a severe and afflicting disease, which Mr. Syme believes, and I am warranted in so stating it, to be a discovery of great importance. In regard to this there are certain statements by Mr. Lizars. He writes a book, and an Editor in London makes allusions to it, and Mr. Syme's letter in reference to it says, 'I have only to-day happened 'to see your Journal of May 16th, which contains some statements 'that certainly should not have remained so long unnoticed, if they 'had been known to me sooner.

'You say 'a fierce paper war has arisen between the two Edin-'burgh professors—Syme and Lizars;' but you must, or at least 'ought to know, that I have not addressed a single word upon the 'subject in question to the so-called 'professor,' [regarding him as 'long placed beyond the pale of professional respect and courtesy.'] That is the statement contained in this letter, an assumption implying this, that these parties were active in their written controversy. The letter says, 'You must, or at least ought to know, that 'I have not addressed a single word upon the subject in question 'to the so called 'professor,'' &c.—(See above.) Now, what is it that is to be explained in the first place? It is to be explained that Mr. Syme was not a party to the controversy, and the reason and cause of his individual silence is explained by the party himself,

who gives his ground for it. He says, 'you ought to know, and 'you must have known, that I have not addressed a single word 'to Mr. Lizars on the subject,' 'because, in the position in which 'he stands with regard to me, I hold him to be a party with whom 'I cannot enter into a controversy,' and for what reason? 'Be-'cause he stands in the situation of a party who has not my respect 'and confidence.' Miller and friends say, that 'I am a party to a 'controversy, I say that I am not.'

Well, then, the statement goes on to say, 'in estimating the 'value of my operation, you proceed upon the supposition, that 'the allegations of Mr. Lizars and his assistant Dr. Müller are 'well founded; but in fairness to your readers, if not to myself, 'should have mentioned, that the statements of these persons, in 'so far as they attribute bad effects to the operations which I have 'performed for the remedy of Stricture by division, have been 'declared by me to be all utterly devoid of truth.' We have nothing here on the point of veracity. All the charge against us is, not that we stated the fact, that we had declared certain statements to be true, but that we had brought a charge of disreputable character against Mr. Lizars. You will see the true, natural, and fair meaning of the statement. The simple statement is to this effect — 'That I have not entered into a controversy with Mr. 'Lizars, because there stands between us circumstances which ex-'clude him from standing, in regard to me, in the position in 'which he may stand to others.' When it is considered that he is accounting for, and excusing, and explaining the cause of his silence in the controversy, he says, he has regarded the individual, for a considerable time, as beyond the pale of 'professional respect 'and courtesy,' it is in regard to himself individually. Therefore, I apprehend you cannot fail to come to the conclusion, that the Issue is not proved. The question is, Whether these expressions bear out and embody the charge of disreputable character as attributed in that Issue before you? If you hold that the meaning of the words was simply to excuse his not entering into a controversy with Mr. Lizars, you are bound to return a verdict for the defender. The pursuer is bound to make out his Issue to the full extent, and if he fail, your verdict must be for the defender, though there may be words there which might be, in some view of the case, injurious to the pursuer. The only question is, Whether there is, in that particular letter, a charge of disreputable character against Mr. Lizars,

and whether the allegations go to this, that the party is represented 'falsely, calumniously, and injuriously,' as a person of disreputable character in his profession? I humbly submit, that on the evidence that will be laid before you, that your verdict shall be for the defender.

Professor CHRISTISON—Examined by the SOLICITOR-GENERAL—You are professor of *Materia Medica* in the University of Edinburgh? Yes.

You are also one of the conductors of the Monthly Journal of Science? Yes.

You know the pursuer Mr. Lizars, and also the defender Mr. Syme? Yes.

Look at this letter in the Monthly Journal for August, 1851. You were acquainted with that letter, and you remember its appearing in the Journal? Yes.

It bears to be the complete copy of a letter of which a part only had been inserted in the Medical Gazette? Yes.

And this bears to give the full letter? Yes.

Have the goodness to read the first paragraph.

Explain what you mean by the meaning of these words. I understand by these words, that Mr. Syme regarded Mr. Lizars as placed in such circumstances towards him, that he, Mr. Syme, could not meet him in consultation or professional discussion, in consequence of the way in which he had been treated generally by Mr. Lizars on various occasions, and in particular in reference to the subject in the letter.

The subject in regard to which this letter related, was a discovery of Mr. Syme's as to an operation on Stricture in the Urethra? Yes.

Mr. Syme had published his discovery in a book? He had.

Do you know that Mr. Lizars had published a book on the subject also? Yes, subsequently.

What do you consider the object of these words, 'regarding him 'as long placed beyond the pale of professional respect and 'courtesy.' Do you think they were intended as an explanation of any thing? Certainly.

As a reason for what? As a reason for not entering into a controversy with Mr. Lizars.

Do you consider that the words in that paragraph were intended to represent the pursuer as a person of disreputable character in his profession? I do not think that they were meant to imply, that the pursuer was placed in such a situation in regard to the profession at large, but only implied that he was so placed as regards Mr. Syme individually.

Mr. Syme and Mr. Lizars are both well known in the profession? Yes.

And their mutual position towards each other is well known in the profession also? Yes.

Was this discovery of Mr. Syme's considered to be important? I believe it was generally so amongst surgeons, but I do not give any opinion, not being a surgeon.

In the sense in which you read this attack on Mr. Lizars by Mr. Syme, did the paragraph take you by surprise? No; knowing as I do the position in which the parties have stood to each other for the last fifteen or twenty years, and down to the present controversy.

You know that the disease of Stricture is a dreadful disease? Yes, in that form particularly which Mr. Syme's operation was intended to cure.

It is the most desperate form of the disease? Yes, it is.

You think it must have been a great object with Mr. Syme to have his success vindicated with the public? Undoubtedly.

And to satisfy the public of the utility of the operation? Yes.

You looked into Mr. Syme's book and Mr. Lizars' book at the time they were published? Yes.

Examined by Mr. Deas — Would you be willing to meet a man in professional consultation, who was beyond the pale of professional respect and courtesy? No; I would not hesitate in meeting with any medical gentleman in consultation, merely because he had placed himself in that position towards one individual.

My question is this, if you regarded a man as having placed himself beyond the 'pale of professional respect and courtesy,' would you meet him in consultation? No, if he had placed himself in that state.

Do you extend your answer towards a person who has placed himself in that position in regard to the profession at large — observe we are not talking of Mr. Lizars in particular. I under-

stand you to say, that you would not meet a man in consultation who had placed himself beyond the pale of professional respect and courtesy. Would you meet a man in consultation, who had so placed himself in regard to the profession generally? That being proved I would not. I cannot lay down rules to the profession; I must have the grounds on which rules are to be laid down.

If you believed that the party had been long placed beyond the pale of 'professional respect and courtesy,' either in regard to one individual or in regard to the profession generally, would you meet that party in consultation on these two grounds? I would not.

If the statements in that letter had not been limited to the position of Mr. Lizars and Mr. Syme, would you think it a curious thing if they were said of any body? So much so, that I would not have consented that such a statement should appear in the Journal of which I was one of the conductors.

Were you, in point of fact, consulted whether this letter should be inserted in the Journal or not? Yes.

By whom? I suppose we consulted one another; we frequently met, and the consultation may have been incidentally.

If I understand your answer, you cannot say that you were consulted about this particular matter? Yes, there was a consultation on this and every other matter of importance; we consulted with one another, but I do not recollect how this was brought before me. Tell me what took place about this particular article? That the approbation of the conductors was given to it.

Were you asked to read it? It was very likely that I would ask to read it myself, and I did read it before it was published.

Was that at a meeting of the conductors? I think it was, but I may have read it before.

Were the conductors all present at the meeting? I do not know, but a number of them were, certainly. I think it is next to a certainty that all the conductors saw it before publication.

Are they all in the habit of reading all the articles? Not all.

How is that managed? A great deal must be left to the discretion of the editor.

Did you read this article before it was published with any particular view? Not more than this, that I look over all the articles put before me, either incidentally or intentionally, on the part of the Editor.

Was your attention particularly drawn to these words that we have been speaking of, or to the letter generally? My own attention was directed to these words.

And you considered them as applied to the relative position of Mr. Syme and Mr. Lizars? Yes; I considered that they applied to Mr. Lizars *quoad* Mr. Syme. Mr. Lizars was not in that predicament with the profession, and Mr. Syme notoriously knew that he was not in that position, and he knew that I met with Mr. Lizars in consultation.

As a conductor of the Journal, I presume you know that you are responsible for what appears in it? I know I am.

Re-examined by the SOLICITOR-GENERAL — For the reasons you have mentioned, you considered this the only fair meaning that could be put upon the passage — I mean the reason you have given? It appears to me to be so. No doubt, persons unacquainted with the parties, might apply a different interpretation to the words; but those acquainted with the position of the parties, could not, I think, put a different interpretation on them.

By the COURT — You said you think it relates to the position of the parties towards each other, and not to the profession — that of course is a very important distinction? Yes.

Parties in the profession have been in that position? Yes.

That does not import a general want of respect in the profession towards an individual generally? Certainly not. Differences between professional men have been, unhappily, of two frequent occurrence.

SOLICITOR-GENERAL — I beg to put in the Minute in Process which you will find in the Interlocutor sheet, that the pursuer does not intend to insist in the action against any of the conductors of the Monthly Journal of Medical Science, except Mr. Syme?

Dr. SIMPSON — Examined by the SOLICITOR-GENERAL.

You are Professor of Midwifery in the University of Edinburgh? Yes.

And you are one of the conductors of the 'Monthly Journal of Medical Science?' Yes.

Look at the article in the Number of August, 1851? Yes.

Is that a complete copy of a letter which had been sent to the 'Medical Gazette,' part of which was omitted? Yes.

Had your attention been directed to that letter before it was published? Yes.

Read the passage in brackets, and tell me what meaning you attach to the paragraph, particularly to the last part of it? Simply, that Mr. Syme's moral and professional character had been grossly attacked by Mr. Lizars. He wished us to admit this letter, as a reason why he would not enter into any controversy with Mr. Lizars.

Did you consider it as importing that Mr. Lizars was a man of disreputable character in his profession? Not at all; I considered that it merely referred to the view which Mr. Syme took of Mr. Lizars. None of the conductors regarded it in any other light, than referring to the view that Mr. Syme took of Mr. Lizars; and we explained that in the Journal two months afterwards.

Do you know that this related to a controversy about Stricture of the Urethra? Yes.

As to which Mr. Syme published a book? Yes.

And, then, as to which Mr. Lizars published a book? Yes.

From what you know of the position of Mr. Syme and Mr. Lizars, in regard to each other for a long time previously, and of the controversy down to the time of this letter, were you surprised that Mr. Syme should decline to enter into controversy with Mr. Lizars? Not in the least degree.

Were you surprised at the reason he assigned? I was not.

Examined by Mr. Deas—

Did you see this article before it was published? Yes.

If you had considered it as applicable to the position in which Mr. Lizars stood in regard to the profession in general, would you have consented to its being published in the Journal? Certainly not.

Would it, then, have been in your opinion, a highly injurious and improper statement? Yes.

Do you find any thing within the four corners of that letter, about Mr. Syme's character, having been affected by Mr. Lizars? I do not see any thing of that kind in the letter. Yes, Mr. Syme, in the latter part of the paragraph, states the results of his operations in the Infirmary, 'in presence of the largest class of 'surgical clinical students in Her Majesty's dominions.'

Take these words, ‘ regarding him as long placed beyond the ‘ pale of professional respect and courtesy;’ is there any thing in these words that limit them to the relative position of Mr. Syme and Mr. Lizars? Yes, inasmuch as there is an ‘ I ’ before the words.

That shows that it is Mr. Syme's opinion? Yes, and the relation in which he stood towards Mr. Lizars.

You say that you find that the passage is limited to the relative position of these parties, because there is an ‘ I ’ before it? That is one of the reasons.

Suppose you were to say to me—‘ I regard you as long placed ‘ beyond the pale of professional respect and courtesy,’ how would I find out, from these words, that you were speaking of a quarrel between you and me? For this reason, that perhaps you knew that you had been quarrelling with me for a long time.

If you happened to know that, that would lead you to think, that one of the things you meant, was the state in which we stood to each other; but when you said to me, that I was ‘ long ‘ placed beyond the pale of professional respect and courtesy,’ how could that enable me to know that it referred to me, and not to the profession generally? You can torture the expression so as to convey a general impression of the professional character of Mr. Lizars; but I am not disposed to allow, that the words ‘ regarding him,’ &c., have that general application.

Are not the words *general?* They are general enough.

Are they not *quite* general? They are.

Are they not *entirely* general? No.

Are the words there not quite general? If Mr. Syme had meant that he would have put it otherwise — I mean that you may torture it into that meaning.

If you thought the words were correctly applied to the individual, that he so acted as to place himself beyond the ‘ pale of ‘ professional respect and courtesy,’ do you think that you would meet with such a man in consultation? No, if I could apply to him the general meaning of the words.

Do you think these general words would imply, that he was not a man of disreputable character? I could not but think that he had acted in some way disreputably.

Re-examined by Solicitor-General—

Could any body reading that paragraph, with the ordinary

knowledge of a man reading medical works, imagine that it meant any thing else than that he, Mr. Syme, regarding him individually in that character? I think that would be the general impression.

Do you see any thing in that letter reflecting on the abilities or skill of Mr. Lizars? No, and I believe Mr. Syme would never imagine such a thing.

Dr. Scott—Examined by the Solicitor-General.

You are both a physician and surgeon? Yes.

And Surgeon to the Infirmary of Dumfries? Yes.

For how long have you been there? For the last twelve years.

Do you know the pursuer? By his writings only.

And the defender? Personally.

You saw the letter in the *Monthly Journal of Medical Science*, signed by Mr. Syme, about the time it was published? Yes.

Do you take in that periodical regularly? Not regularly, but I saw the letter.

This was a letter addressed to the *Medical Gazette*, which had not been fully published in that print? Yes.

And which was in reference to a new mode of operation in Stricture of the Urethra? Yes.

Are you conversant with the operation? I never practised it.

Have you had patients operated upon by Mr. Syme, and do you consider it a valuable discovery? I do.

It is a cure more particularly applicable to serious cases? Yes.

You see that part of the letter 'regarding him,' &c., what do you understand that passage to mean? It applies to Professor Syme's individual opinion as regards Mr. Lizars.

Do you know that there had been a discussion between them of long standing? Yes.

Was that generally known? Yes, among the profession.

From what you know of the position in which the parties stood to each other, was it any surprise to you, that Mr. Syme should assign that want of courtesy as a reason for his not having a controversy with Mr. Lizars? No.

Do you consider the passage, in any respect, as referring to the general professional character of Mr. Lizars? Not at all.

Do you consider it as inferring that he was a person of disreputable character in the profession? Not by any means.

This, I understand, is the opinion you formed of the meaning and purport of the letter when you read it? Yes.

And you arrived at that conclusion of your own accord? Yes.

Did Mr. Syme operate on a patient of yours for this complaint in a very bad case? Yes.

Was it successful? It was.

Dr. JOHNSTON—Examined by Mr. PATTON.—You are a physician and surgeon at Berwick? Yes, I have been so for thirty-two years.

Had you occasion at the time of publication to read a letter inserted in the *Monthly Journal of Medical Science*, in August 1851, by Mr. Syme? Yes, shortly after publication.

You observe the expression in the beginning of the letter 'you 'must, or at least ought to know,' &c., what meaning did you attach at the time to this expression? That Mr. Lizars had, by his conduct to Mr. Syme, placed himself beyond the courtesy that Mr. Syme owed to the other members of the profession.

Did you understand it as exclusively referring to the position between Mr. Syme and Mr. Lizars? Clearly.

Were you surprised at the expression on the part of Mr. Syme towards Mr. Lizars? No.

How? Because I think Mr. Lizars' conduct to Mr. Syme previously to that, had been offensive to Mr. Syme.

You are aware that disputes have taken place between them? Yes.

You did not consider the passage as inferring any imputation against Mr. Lizars in his character or profession? Certainly not, but merely in regard to the position of Mr. Lizars with Mr. Syme.

By the COURT.—Putting that construction upon it, you were not surprised at it? No.

The controversy between them was not a novelty to you? No.

It was consistent with what you knew of their position? Yes.

Dr. JAMES COMBE—Examined by the SOLICITOR-GENERAL.

You are President of the College of Surgeons? Yes.

Do you know the pursuer Mr. Lizars, and the defender Mr. Syme? I do.

Look at this letter that appeared in the *London Medical*

Gazette, and which afterwards appeared in a more perfect form in the *Monthly Journal of Medical Science*. Did you notice that letter at the time it was published in the latter periodical, or shortly afterwards? Yes.

Looking at the second paragraph, where it says, 'regarding 'him,' &c., what do you consider these words to import? I consider them to import the relation in which Mr. Syme and Mr. Lizars stood towards each other.

Were the terms between the parties, according to your previous knowledge of them, such as to preclude any feeling of respect or courtesy from Mr. Syme to Mr. Lizars? I think so.

You knew of questions between them of long standing? Yes.

Were you also acquainted with this controversy on which Mr. Lizars had published a book? Yes; both Mr. Lizars and Mr. Syme published a book on the surgical question of Stricture.

Mr. Syme was the first person who recommended to the public a new mode of operation on Stricture? Yes.

Do you consider that an important discovery? In a limited number of bad cases it is important.

And as to which Mr. Syme might naturally feel great anxiety? Yes.

Do you consider the words 'regarding him as long placed,' &c., as reflecting on the general character of Mr. Lizars? No, I considered them as with reference to the standing between the parties; I considered that Mr. Syme was entitled to explain why there would be no controversy between him and Mr. Lizars.

Examined by Mr. Deas — Looking at these words, do you consider them as simply limited to that position. Yes, knowing how matters stood between them, I could not read them in any other light.

The words 'regarding him as long placed,' &c.; do you find any thing in these words to limit them to Mr. Syme and Mr. Lizars, apart from your previous knowledge? I was acquainted with the circumstances, and I thought in reading the words, that Mr. Lizars was in fault; and I could not read them without knowing the position between them.

Dr. Carpenter — Examined by Mr. Paton.

You are professor of Medical Jurisprudence in the University of London, and examiner of Physiology? Yes.

Had you occasion to study a discovery by Professor Syme in regard to Stricture in the Urethra? Yes.

Do you consider it an important operation in regard to cases to which it is applicable? I should think so; but not being in the practice of surgery, I would not feel myself justified in giving an opinion on the subject. I have seen patients who have been operated upon, and the result was satisfactory.

'You know that the discovery was communicated to the professional public in a treatise by Mr. Syme? Yes, and I read that treatise.

Had you occasion to know that a book was published by Mr. Lizars on the subject? Yes, and I also read that book.

Had you read a letter in the 'Edinburgh Journal of Medical Science,' in the Number for August, 1851, by Mr. Syme upon the subject? I had; I read it at the time.

Is that the letter? Yes.

Look at the second paragraph. 'Regarding him,' &c. In what way did you interpret the meaning of these expressions? Being acquainted with previous proceedings that had taken place between Mr. Syme and Mr. Lizars, and particularly having in my mind the tone and character of Mr. Lizars' work on Stricture, I considered that Mr. Syme intended to say, that Mr. Lizars' conduct to him had been such as had excluded him, by his previous acts, from that kind of professional respect which any one individual would exercise to another, whether a stranger to him or otherwise.

Did you read and understand these words as applicable to the peculiar circumstances in which they stood towards each other in regard to this controversy? Yes, which excluded Mr. Syme from taking any notice of Mr. Lizars in any controversy.

And you did not understand it as bearing reference to Mr. Lizars with other members of the profession? Certainly not.

Examined by Mr. Deas—Do I understand you to mean, that Mr. Lizars had excluded himself from 'professional respect and 'courtesy,' whether from the hands of a stranger or any other individual? That it excluded Mr. Syme from extending to Mr. Lizars that respect and courtesy that he would extend to any one else in the profession.

Supposing that Mr. Lizars thought Mr. Syme's discovery had not that value which Mr. Syme put upon it? I might expect

that Mr. Syme would take notice of statements made on the contrary side; but what I understand to have been the meaning of Mr. Syme was, that Mr. Lizars had excluded himself from this privilege, and that he had put himself out of Court as regarded Mr. Syme.

Do you see any thing there to confine it to that? It must be taken in connection with the previous portion of the sentence. I understood him to refer to previous occurrences.

Is there any thing there to limit it simply to the state of matters between Mr. Syme and Mr. Lizars? Does it not say that Mr. Lizars was long 'placed beyond the pale of professional 'respect and courtesy,'—is not that general? It does not say that he had excluded himself from the profession. It appears to me that it had simple reference to himself, connecting it with the previous part of the sentence, and previous occurrences which I knew very well.

You knew there was a misunderstanding between them? I knew that, and I had Mr. Lizars' statement of this misunderstanding in his own book.

Was there cause of offence on both sides, in your judgment, in regard to this previous misunderstanding?

Solicitor-General—What is this—are we to go into this? I will show you cause of offence if you will let me go into it.

By the Court—I understand you to read it in this sense—'regarding you as long placed beyond the pale of professional 'courtesy by me?' That is the sense in which I read it.

Solicitor-General—Would any one who had read Mr. Lizars' book on the subject put any other meaning upon it? No.

Dr. William Robertson—Examined by the Solicitor-General.

You are Editor of the *Monthly Journal of Medical Science?* I am.

You saw the letter that Mr. Syme wrote to the Editor of the *Monthly Gazette* about Mr. Lizars? Yes.

You knew about the controversy, and had read Mr. Syme's book and Mr. Lizars' book? Mr. Syme's book I had not read at that time, but Mr. Lizars' book I had.

You had your attention applied to what the Editor of the *London Gazette* had said about it Yes.

What did you understand to be the meaning of the second

paragraph, including the words within brackets? I regarded it as Mr. Syme's reason for his silence—not answering Mr. Lizars' misstatement.

As the Editor of a public Medical Journal, where there was a dispute on a surgical subject, would you expect an explanation? I would. It was natural that some explanation should be made in such a controversy. It was necessary that he should answer the statements, or explain the reasons of his silence.

What did you understand to be the meaning of the reason assigned by him? The meaning I attached to it was, that Mr. Syme, from his previous experience of Mr. Lizars, considered that Mr. Lizars had so grossly injured him, that he could not hold any professional intercourse with him, or engage in any controversy with him.

Did you understand him to reflect on the general professional character or standing of Mr. Lizars? No.

If you had supposed these words were meant to apply a disreputable character to Mr. Lizars, would you have allowed them to be inserted? I would not have sanctioned the insertion.

Examined by Mr. Deas.—You say that you consider these words to state Mr. Syme's individual opinion of Mr. Lizars? Yes, as founded on his previous misconduct towards Mr. Syme.

And that is what you mean, when you put the words in a special and not in a general sense? Yes.

Did you say that you knew there were previous quarrels between them? Yes.

The Solicitor-General then put in the Interlocutor of 28th May, 1852, Assoilzing the Conductors of the Journal from the Action.

Mr Deas.—Gentleman of the Jury—I have now to trouble you with a few observations on the part of the pursuer. He complains of this libel which you have heard read, more particularly to that part of it in which Mr. Syme states, that he regarded Mr. Lizars as 'long placed beyond the 'pale of professional respect and courtesy.' That is to say, professional respect and professional courtesy. It is said, that this was merely an expression of Mr. Syme's individual opinion. In so far as it was said to be merely an expression of his individual opinion, I do not think the remark carries with it much weight, or at all touches the substance of this case; because, assuming it to have been given as such, it is still a libel

that he publishes to the world. It is the opinion, as one of the witnesses observed, Dr. Sibbald, of Mr. Syme, and of all those whom his authority could influence. Taking it in this point of view, it is an opinion expressed in regard to one member of the medical profession by another member, a man of great abilities, great success, and known throughout this country, as one of the most eminent members of that same profession. It is therefore necessarily an opinion which carries with it the highest possible authority, and falls on any other member of that profession with the most crushing effect. That which Mr. Syme publishes to the world in regard to his own opinion of another, may be fairly assumed to be the opinion entertained by every body else, if every body else had the same knowledge of the grounds on which that opinion rests. When he gives it forth as his own opinion, you see in a moment it is the same as if he were asserting it as a matter of fact. He is just saying in plain English, to every man that reads it, 'that is my opinion, and I think also it ought 'to be yours.' It is no answer whatever, no alleviation of the offence that a man commits, that he says of me 'I think you are a person of 'disreputable or dishonest character;' that is just as much representing me as such, as if he had not said it was his opinion at all, but simply asserted the thing. In so far, therefore, as this is said to be Mr. Syme's opinion, you see that is neither a defence on his part nor an alleviation of the libel.

The next thing that is said is, that the words were only intended to represent the state of matters and feelings as between Mr. Lizars on the one hand and Mr. Syme on the other. Let us take it in the first place that it were so, and let us see if it would be a defence against the libel. Suppose the words were these, 'regarding him as long placed beyond 'the pale of professional respect and courtesy *so far as I am concerned*,' the question would at once arise, Had Syme a right to say and publish to the world any such thing? An action would have lain, although the words had been the words I have now stated; and it might be an answer to it if Mr. Syme had said, 'very true, I have stated it, but I am ready 'to justify the statement—I am ready to prove to the Court that Mr. 'Lizars had so placed himself beyond the pale of professional respect 'and courtesy so far as I am concerned.' He might have said that, and might have proved it. But I should be glad to know, on what ground of law or justice it is that a man is entitled to publish to the world, that a party has placed himself in any such position. This would be a very gross libel, unless I justified it to the satisfaction of the jury. Therefore, this miserable defence would not avail my learned friends, even if they could establish that this was the meaning of the libel. But there is no such case here, and if I am speaking to this as a matter on which your Lordship is to direct the jury, I am entitled to refer to the Court, and in that view I call your Lordship's attention to the article on

page 23 of the Closed Record, and reading it in connection with the whole preceding articles, I do not find this limited meaning attached to it any where. I say, that no man is entitled to represent another as having so conducted himself, or having so placed himself; he is not entitled to say any such thing as that, and which not being privileged is called in question. He would not get out of the case by any means, although he were to satisfy you that that was the construction of the words; but here you have a libel before you that will bear no such construction—a libel that you cannot limit to any such construction. It is the law, and it is common sense, and I think his Lordship will tell you, that no man is entitled to use words, still less to print and publish a statement to the world, containing words which may be read in a sense injurious to an individual. No man is entitled to justify himself in doing that, by saying that he meant the words in some more limited sense. A man deliberately writes a paragraph, and prints and publishes it to be read by all the world. What signifies it to the man who is injured to tell him, I meant it in a more limited sense than that which the world might attach to it. I can quite understand, that a statement of that kind might go some length, although a very small length, if made by the person who had used the words; but I cannot understand how that could affect the actual injury which these words were calculated to inflict.

Now, then, Mr. Syme must be supposed to know the meaning of words, and when he writes and publishes, *that* he regards Mr. Lizars as having long placed himself beyond the 'pale of professional respect and courtesy,' what right has he to suppose that people will understand them in a more limited meaning than they naturally bear, and which he was bound to make clear if he so meant it. There is no such limitation in the words themselves. Look at them and consider them, and tell me if you find any thing in these words to limit their general meaning. Can any thing be more distinct than these words, without any limitation. He was bound to have said, if he meant it, that he regarded Mr. Lizars, in such circumstances, as not to expect from Mr. Syme ordinary respect and courtesy. Was there any difficulty in this? Nothing was more easy than to limit them if he meant it, and nothing is more different than that which he said here. No man is entitled to publish words in reference to another that may be misunderstood; but poor and paltry as that defence is, it is not in this case. What takes place? These Edinburgh gentlemen tell you, that they knew what the state of feeling was between these two doctors, and that knowing that state of feeling, they thought that Mr. Syme merely meant to express the mode in which he himself would think himself called upon to treat Mr. Lizars. But recollect the thing done by Mr. Syme was not to express this opinion in an Edinburgh society, or even to propose to print this opinion in an Edinburgh paper; he sends that letter to a London journal, which has a large circulation

over the civilized world; he sends it to London, and to a journal which is circulated amongst thousands and thousands of individuals, many of whom, with all their knowledge of controversy and of medical books, never even heard of the names of Syme or Lizars before. He knew that that was what he was doing — that he is not publishing this paragraph to a limited circulation, but putting it into the hands of every body, whether professional or not professional, for many unprofessional men read such books, and might know nothing of the circumstances out of which it had arisen. The conclusive answer to such a plea is this — that the intelligent Editor of that journal, Dr. Taylor, when he read the paragraph in question, refused to publish the words in brackets, assigning as his reason, that they would come under the English law of libel. After striking out these passages, he publishes the letter in his Journal, and adds a note, that he had left out certain passages, because he considered them to come within the English law of libel. Mr. Syme reads this — he sees that that paragraph had been rejected by an Editor of great knowledge and experience, on the ground of its libellous character; and is he entitled to come now to a Court of Law and say, that he meant them to be understood in a way which is not libellous at all, and not in the sense which the words naturally bear. Was this rejection of the article by Dr. Taylor not a thing to make him carefully read over the letter, and to vary the paragraph that Dr. Taylor did not choose to insert? Could any proceeding be more reckless — and could any proceeding look more malicious — that after the interval of more than a month, he publishes it in his own journal, *verbatim et literatim*, as it stood at first? and he tells you that he so published it, because it had been refused insertion by the Editor of the *Medical Gazette*, on the ground that it would be subject to the English law of libel! Mr. Syme with that before his eyes, chooses to be so adventurous, and says, I am determined to take the risk of it; I will publish it in my own book as it originally stood; libel or no libel, it shall go forth to the world. There is not one word of modification — not a sentence to say that Dr. Taylor might have misunderstood his meaning; and are you to take the explanation from him now as to the meaning he intended to attach to it? that he meant to say this, 'that after what had taken place between 'Mr. Lizars and me, I do not find myself called on to enter into any 'controversy with him.' Could he not easily have said that? I cannot see the shadow of an excuse for his publishing this without a word of explanation, that that was his meaning. I do not believe that that was his meaning. I do not believe it is possible to imagine, that he could suppose the words were used in a sense which they do not bear, or that the world would so consider them. A more natural explanation is this, that his prejudice was so strong, that it blinded his better perception. Now, no doubt, the conductors of this Journal are men of the

highest eminence and respectability. They say the letter bears a more limited meaning than that which the words impart. We cannot tell the degree of attention which these gentlemen gave to this matter. I think it is impossible to acquit even them of some degree of carelessness in this matter. When they saw the letter, they ought to have been more careful of what they were about. It is a somewhat unusual course of proceedure in a Court of Law, that witnesses are brought to put their interpretation on the libel, or that the very gentlemen who are art and part in this injury are brought to put their own construction on the libel. They fell into that mistake, and I dare say they regret it, and they are very willing to persuade themselves of this. But it does not in the least follow, that that was the meaning which the words were calculated to convey. You could not fail to observe, that there was not a single witness brought forward for the defender, to prove that he would have understood the words in that limited sense, unless he had known of the previous controversy between the parties; and therefore they put that light on them. They could not put this meaning on the words without that knowledge. But then this goes no way at all in regard to the construction of a document, to be read by all the world, who chose to read it with or without this knowledge. The evidence therefore of these gentlemen, who may be, in law, responsible for this blunder, is of little importance; but it is of the greatest importance in this respect, that every one of these witnesses told you, that if it had occurred to them, that the words might have been misunderstood, they never would have allowed them to enter the Journal at all. You have the testimony of every one of them, that a more crushing libel never was written against any man than this, if it is to be read in the general sense. How is it that Dr. Christison did not read it in that sense? He said, that he knew that Mr. Lizars was not in that predicament in the profession; and that Mr. Syme himself notoriously knew that he was not so; and that he must have known that he occupied a very high position in the profession. Therefore, he says, 'it is impos-
'sible for me to imagine that Mr. Syme meant to say, that Mr. Lizars
'was beyond the pale of professional respect and courtesy' as regards the profession at large. No doubt he said, that parties who did not know the circumstances, might put a different construction upon it. There is no slander, however gross, if the circumstances were known to all who read it, that might not convey a different meaning. It might injure the feelings of the party, but might be no slander if it were only to reach those who knew all about him. Therefore you never, to my experience, had testimony from the defender himself more irresistable and strong, in regard to the atrocious nature of that libel, than you have here, if the words be capable of being read in the way in which I am applying them. Although these gentlemen tell you, that they put a

more limited meaning on the words than they bear, you can judge of the words as well as they can do. Dr. Simpson admitted, that the words were perfectly general in their terms, and he could give no reason that was intelligible, why the words that are intelligible in themselves could be applied in a more limited way. The statement here is this, that he, Mr. Syme 'has long regarded Mr. Lizars as placed beyond the 'pale of professional respect and courtesy,' and there is not one syllable added to limit them. He publishes this to the world after the warning he had got from Dr. Taylor; and therefore I submit, that it is totally absurd for him to ask you to take a more limited meaning of the words, with the view of mitigating the damages to which he is to be liable. Is that the light in which the words appeared to Dr. Taylor—a man accustomed to conduct a review, who knew the necessity of examining whether they tended to be injurious to a party or not? With all his knowledge, and all his intelligence in judging, he took the words in their natural sense; he saw no limitation in them; he saw the general statement, and he understood the words in that sense, and consequently rejected them as injurious, unauthorized, and improper. Then Mr. Kesteven, of equal understanding and intelligence, a practitioner of great experience, and in the habit of writing for the review, and he tells you, that the words struck him in their general sense. Then you have Dr. Renton, one of the most respectable practitioners in this neighbourhood, who had the light of all the controversy, and the knowledge of the individual parties; he read the letter, and he never doubted that the meaning was that which the words generally import, that Mr. Lizars had so conducted himself as to place himself in that position. Then you have Mr. Sanderson and Dr. Sibbald, who tell you the very same thing. These gentlemen knew the parties and circumstances, and yet with all that knowedge, they never doubted that the meaning was, that Mr. Syme said, that Mr. Lizars had placed himself 'beyond the pale of professional 'respect and courtesy,' as regarded the profession generally. Then you have Dr. Miller, and he had as good access to know the controversy and the position of the parties, and it never occurred to him to form any other opinion. It never occurred to the London witnesses to form any other opinion. Every one of them formed the same opinion as to the simple meaning of the words, and that nothing else was meant than the words import. Is a man entitled to come forward and tell you, that some latent meaning attaches to these words which other people do not know? Is he to tell me, that on that ground I am not entitled to damages? What right has he to subject me to misconstruction, and far less to publish words which can mean nothing but what is here stated? You will observe, that the Issue is, 'Whether the whole or any part of 'the said article' &c. Every one of the pursuer's witnesses told you, that these words implied, that Mr. Lizars was not entitled to respect in

the profession; and I think it is impossible that you can read them in any other sense. If there is any thing more severe than another to a professional brother, more unsupportable and hurtful to his feelings, it is to be held out, that he has so conducted himself as to 'be long placed be- 'yond the pale of professional respect and courtesy.' Take medical or legal practitioners, who are allowed to have high sentiments of honour, I do not know any thing that could be said more difficult to live under, than a statement that a party had so conducted himself as 'to be placed 'beyond professional respect and courtesy'; and next to that, I know no statement that could be more difficult to submit to, than even the more limited statement made by a man at the head of his profession, in regard to another, that he had placed himself as regards the party, beyond the pale of 'professional respect and cour- 'tesy'; therefore, in trying this Issue, where there is no Issue taken in justification, you will be told that it is not incumbent on the pursuer to presume the falsehood of the statement: the falsehood of the allegation is taken for granted by the law itself. The testimony to his character is your verdict. It was not incumbent to tell you, that he is a man of high character in his profession. If there were any necessity for that, it has been most satisfactorily proved by the witnesses, that he is notoriously known by the profession to be a man of high standing and character; and as Professor Christison said, that he could not by possibility think any thing else of Mr. Lizars. Although the great object of this trial is not pecuniary reparation, you are bound not to forget, that the amount of pecuniary reparation is that which marks your sense of the unjustifiable nature of the injury. I just say in conclusion, that entitle you to give the verdict I ask from you, it is not necessary to say that this was done with the intention to injure; but I say this, that what he did, he did in a rash and reckless manner, for which he must be equally responsible as if he had intended it.

The Solicitor-General—It is now my duty to make such observations as seem to me to be necessary on the part of the defender; and I shall endeavour to occupy your time as shortly as I can, and bring the case to as narrow a compass as possible. The forms of our proceedings, for the sake of really understanding what the parties are about, when they send a case to be tried by a jury, bring out the particular question which you are to consider. You are not to consider any thing in the case that should not be in it, but to consider the question put to you as the matter which the pursuer stands on. Have the kindness, then, to read with me the Issue upon which your answer is now sought by the pursuer. He puts this question—'Whether the whole or any part of 'the said article, or statement is of and concerning the pursuer, and 'falsely, calumniously, and injuriously represents and holds out the

'pursuer as a person of disreputable character in his profession, and 'as neither respected nor entitled to respect in the medical profession, 'to the loss and damage of the pursuer?'

There could be no justification in this case in the way that I put it. When a defender has to justify, he must see that the thing is true as the pursuer puts it. I have no intention of saying that the pursuer is a person of disreputable character in his profession; that is not my statement, and is not the thing that is put to you at all: therefore there would be no justification. Now, you will observe, that the pursuer endeavours to extract this meaning out of a passage in the letter prefixed to it, and he does so by putting into the Issue words that are not to be found in the letter. He wants you to affirm, that these words were calumniously said of him, when there are no words in this article that approach to the words that are in this Issue. Unless you believe he was accused of that, you cannot return a verdict under this Issue. It will not redound to the disadvantage of the pursuer's character, far from it; but no man is entitled to reparation for what is not done to his character. If it be not true that he was called a disreputable character, he cannot get damages for that. Now, the circumstances of the case, in so far as they are presented to you, and in so far as the pursuer would allow us to go into them, are, that Mr. Syme, an eminent surgeon, had announced to the public what he conceived, and other men conceived, a most important discovery in the cure of a most aggravated disease, in its worst form, and which is a source of misery to those who suffer under it, and it has been the anxious wish to discover some remedy for it. Mr. Syme announced this discovery, and surely Mr. Lizars was not offended at this discovery. He announced it as important not only to a surgeon but to patients suffering under it. Mr. Lizars published a book upon the subject, and reference has been made to the publication of that book, but he will not let us see it. It is for you to say how far you are to be guided as to the position of the parties, when the pursuer will not let you judge of it. This is taken up by a Medical Journal, and Mr. Syme addresses to the Editor of the 'London Medical Gazette, the letter which is here printed. I may observe in passing, that it is not the sending of that letter that you have to do with; it is the after printing of that letter in its full import. It is partially inserted in the 'Medical Gazette,' and I shall read the letter as it stands, and as it was originally sent. (Letter read.) The first observation I have to make is, that that is a letter written by a party naturally interested in that operation and discovery, for the legitimate purpose of being considered by the public and the medical world.

Then, that letter was not written with the object or intent of abusing any body; it was truly to recommend this important discovery to the medical world, and to ask of the Editor if the evidence of the operation

having been performed by him, nine times in the Royal Infirmary of Edinburgh, and that successfully, was not sufficient, what further proof he would deem requisite to establish the safety and efficieney of the operation. The editorial note recognizes the letter in that sense. The allegation made of its being attended with bad effects was not to be taken for granted, and he states, that he had performed it in the sight of the world, and with perfect suecess. You must therefore see the objeet for whieh this letter was written. It was to recommend and make known this important discovery. Upon that subject you ean have no doubt. The *London Journal*, from feelings that I do not think it necessary particularly to annalyze, does not insert the whole letter, as it might subject them to the English law of libel. One of the passages is not intended to be libellous—that second passage, in which Mr. Syme declared, that the allegations made against him, 'in so far as they attri-'bute bad effeets to the operations which I have performed for the 'remedy of Strieture by division,' were devoid of truth; and he was entitled to say so. And he says, 'do not run away with the allegations 'of Mr. Lizars, or take them as well founded, on the contrary, I have 'said that, in so far as they attribute bad effeets to my operations, they 'are devoid of truth.' The English Editor did not think it right to insert that, and the letter is limited to the first paragraph. What stronger or better proof can we have as to the good faith of Mr. Syme than this? The letter having been published in this mutilated manner, he lays it before the Editor and Conductors of this most respeetable Journal here, and they are satisfied that there is no libellous meaning attached to it. All that is founded on, on the other hand, is, that this should have been a warning to Mr. Syme at the time. I cannot think that a stronger proof could be produced of a man believing the letter not to be libellous, than by sending it for publication in its unmutilated state. It is as if he had said, I am perfectly satisfied that there is no libellous language in it; and in order to show that there *was* nothing libellous in it, he prints and publishes it. Observe, I am speaking of belief, that he meant to libel nobody, but merely to aceount for his not answering Mr. Lizars' book. And Dr. Robertson said, that in such a controversy, Mr. Syme's not answering that book was a matter that required explanation. Why?—that the eause he was maintaining might not suffer, and take away the inference that he could not answer the book. His answer is, 'I cannot answer Mr. Lizars, for he is 'entitled to no respect and courtesy from me.' You must look at it in this light. It is assigned, not as a reason why the Editor of the Medical Gazette might not review Mr. Lizars' book, but he says to the Editor, 'you know, or at least ought to know, that I have not ad-'dressed a single word upon the subject in question to the so-called '"professor."' And, gentlemen, I do not know whether any one among

you does not know, as a matter of perfect notoriety, that the position which Mr. Syme and Mr. Lizars has occupied in regard to each other is one in which every body would require to be told, that Mr. Syme has no feeling of courtesy in regard to Mr. Lizars, and would not be surprised, from the position which Mr. Syme occupies, that he is here merely going on promulgating his own book. Mr. Lizars writes a book which he will not let us see; but others, who know the book, and know the position that has existed between the parties, say they understand that Mr. Syme could not answer Mr. Lizars' book, not because he had the worst case, but because the controversy between them precluded him from treating Mr. Lizars with respect and courtesy. Is this not borne out by the feelings of the conductors of the journal that did insert it? Their attention had been called on the one hand to what the English Editor had done, and on the other hand they were responsible, both legally and morally, for what is inserted in this Journal. They have nothing to fear now from the consequences of the action, but they had every thing t fear then; and they tell you, that if they had considered that it was intended to call Mr. Lizars a disreputable man in his profession, they would not have allowed it to be inserted. They read it, with what light? With the light of the facts relative to the parties and to the controversy. You must consider it as being read, in the first place, by men who understood the language of the letter; and in the second place, as understanding the position of the parties. And is it natural to suppose, that any man would read the whole of it without knowing the 'Stricture' controversy between Mr. Lizars and Mr. Syme? We are to look first to the *animus* of Mr. Syme; did he, or did he not, mean to do what is here said? Can it be said that what these gentlemen, the conductors of this Journal, inserted calumniously represents that Mr. Lizars was a man of disreputable character? Does it not just come to this, that it is the reason for Mr. Syme's not doing a particular thing—that is, engaging in a controversy with Mr. Lizars, who had atttacked him? And why? Because Mr. Syme believed that Mr. Lizars was not entitled to respect and courtesy from him. And really it was a very innocent mistake, that Mr. Syme should think, that the people who would read it, and might be influenced by his name, must have known the previous history of the controversy between them. Mr. Syme is merely holding forth, that he does not enter into a controversy with Mr. Lizars, because he did not deserve respect and courtesy from him, Mr. Syme. Respect and courtesy have nothing to do with ability. A man may have powerful abilities, and not be entitled to courtesy from another; and a man may have no abilities, and yet be entitled to respect and courtesy from another. Courtesy or respect is a thing that I may be bound to give to every man who has not placed me in a position to force me to withdraw it from him. The Issue is not, Whether Mr. Syme was bound to respect

Mr. Lizars. Look at the Issue, and tell me by what torture it is got at, that the article in question 'calumniously and injuriously represents and 'holds out the pursuer as a person of disreputable character in his profession.' How do you torture the passage to put these words in the Issue, that are not in the passage complained of? The pursuer must prove every thing to your satisfaction before he can get a verdict from you. When I speak of respect and courtesy, these are not qualities, but feelings in one man in regard to another man. The meaning is this, that Mr. Lizars 'stands in such a position in regard to me, Mr. Syme, that 'the feelings of respect and courtesy that I might otherwise entertain 'for him, I must withdraw.' I do not say that others of the profession may not give him respect and courtesy. I do not know about the twist and torture that Dr. Simpson refers to, and it is of no consequence, for that is no question before you. The question is, What is the meaning of the words, in the minds of parties by whom the letter is read, and who bestow pains on it? It must be, that what is said of it is the fair meaning intended by the party using them. You have as good men who tell you, that the meaning attached to it in the Issue is not the meaning contained in the letter, men who were in a situation to judge of it fairly and impartially. I would have little regard for the judgment of any man who should read this letter, and not make some inquiry as to the meaning of the statement; and any man making the inquiry, would be told, that it was perfectly notorious, that Mr. Syme had been attacked by Mr. Lizars on various occasions, and that that was the reason assigned by Mr. Syme for not entering into controversy with him. The evidence which Mr Syme has adduced, goes to support the fact, and in my mind it is completely proved, that the meaning in which the passage was written, and inserted here, was to show that there was no libel in the passage, and to show that the modified meaning of it, was not the meaning in the Issue, but that Mr. Syme individually regarded Mr. Lizars as beyond the 'pale of professional respect and courtesy.' If my friend had put in Issue whether I did not regard Mr. Lizars with respect or courtesy, I would have said 'No.' I would have said that I did not, and I would have been entitled to show how. Now here it is that I think the evidence is conclusive. Nobody says that Mr. Lizars is in that position. Mr .Christison tells you, that it is notorious that Mr. Syme never could have meant that; and can you believe that Mr. Syme would insert a falsehood that would have been known to all the conductors of this Edinburgh Journal? Is there any human being here to-day, who says that because of this attack Mr. Lizars ever lost a patient? It is said that the Journal was read in the Philosophical Association. Is there any being brought here to-day to say, that he did not employ Mr. Lizars in consequence of it? It is impossible that any man in Edinburgh could hold up his face and say, 'That because of this attack, he

'considered Mr. Lizars to be a man of disreputable character, and that 'he was in a quarrel with every body.' This is really the case. Mr. Lizars' character is not at issue here, because Mr. Syme has disclaimed from the first any offensive meaning. Let me advert to the 37th article of the Closed Record. Your Lordship will see there how the case is put. Mr. Lizars is not impeached in his professional character. You have heard what was said in his favour, and I hope he will long enjoy the character that has been given to him. I consider that Mr. Syme was bound to explain why he does not put on the gloves with Mr. Lizars, and have a fight with him, and that is the reason of the statement complained of. He does not say that any body else may not have a row with him. In regard to vindication of character, nothing of the kind is needed, for his character was never intended to be assailed; this I disclaim, and those who conduct the journal disclaim it also. You have Mr. Syme earnestly engaged in his own duty, which was that of recommending to the public the important discovery he had made, and we have him here merely explaining why he has not answered Mr. Lizars book on the subject. The case is one of this description, that I conceive you are bound to take the milder meaning given to the terms, and not put words in Mr. Syme's mouth that he never intended to utter.

I submit to you, that this case is not well-founded, and that the words here set forth are not libellous.

The Lord-President—I have now to make some observations to you, with the view of aiding you in arriving at a conclusion in this question. The question put to you is in the third page of the paper which is in your hands. It is not disputed that the matter printed in the previous page was published, and it is not disputed that Mr. Syme is the author; that he admits. And the pursuer says, that the publication of the passage so often read, does hold him out as a person of disreputable character in his profession, and as neither respected nor entitled to respect in the medical profession. If the passage does hold him up in this respect, there cannot be the slightest doubt that that is a serious imputation, and entitles him to reparation. You must hold here, that the pursuer is not a person of a disreputable character in his profession. There is evidence before you, that he is not a person of that character, but quite the reverse. The question is, Does the passage so present him? If the defender had admitted that that was the meaning of the passage, and he intended to justify it, he would have set forth, that the pursuer was a person of that character, and not entitled to respect and courtesy. He has not done so; and it must be held that there is no ground for it. The question you have to try is, Whether the defender did so represent him? The defender says, 'I stated a totally different thing; and he recurs to the passage on page 2 so often read, and he tells you, that he meant by

that, the position in which he and the pursuer stood towards each other by reason of controversy, and discussions, and disagreement; that he, the defender, would not treat the pursuer with that professional respect and courtesy that would be due to persons not in such an antagonistic position. The words that are used on page 2 are not the same that are used on page 3. The words on page 2 are, 'You must, or at least ought 'to know, that I have not addressed a single word to the so-called 'pro-'fessor,' regarding him as long placed beyond the pale of professional 'respect and courtesy.' But on page 3, the words are that they held him out 'As a person of disreputable character in his profession, and 'as neither respected nor entitled to respect in the medical profes-'sion.' These are not the words in page 2; but the pursuer says, that this is really what is meant by the words on page 2; and he says 'I shall satisfy you, that that is the meaning of the words, though 'not the words themselves. I shall satisfy you, that the words there 'are used in the sense that I attach to them on page 3.' Had he complained of this merely, that the defender had said of him that he was in such a position, by reason of former quarrels and disputes, that he could not treat the pursuer with that professional respect and courtesy that he owed to the rest of his brethren—if that had been the ground of his complaint, the defender might have said 'I did say so—'I mean to adhere to it—and I mean to prove it.' But the defender did not say that, therefore you cannot hold in this case, that the pursuer is now entitled to fall back on the other and different construction of the words, and to say to the defender, 'although I have not proved 'what is alleged, I have proved something equally bad.' If that had been the case, the defender would have taken an issue in justification. But the pursuer says, that the defender's statement is, that he is a person of disreputable character in his profession, and is neither respected nor entitled to respect in the medical profession. The two meanings are directly the reverse of each other; but it is the meaning that is put on the words on page 3 that you have to deal with. Now is that the meaning of the words or not? You have it as a fact, that there were controversies between these parties—that they were in such a position to each other previously—that it was not believed that there were feelings of professional respect and courtesy in either of them towards each other. This was spoken to by various medical gentlemen, and further, that from the position in which they were in regard to each other, nobody could suppose that the defender could regard the pursuer with respect and courtesy. It also appears, that there had been a publication by the defender on the subject of this operation, and it appears, that there was a publication by the pursuer on the same subject, and which led to comments in the medical periodicals; and it was in consequence of one of these comments, that the defender wrote this letter of 26th June. It

was addressed to the Editor of the London Medical Gazette. It is stated to you, by evidence uncontradicted, that the observations made on the defender's discovery, or supposed discovery, to which some medical men attach importance, by the pursuer, were such as required notice. The defender was entitled to vindicate his own reputation and his own discovery, and to expose the erroneous nature of the attacks made upon him; and he was entitled to state it in the most favourable light. The matter had got into that position, that it was expected he would make some reply. In that position he comes forward with this letter, and he says to the Editor, 'you say a fierce paper war has arisen between the 'two Edinburgh Professors, Syme and Lizars.' The defender was entitled to say, 'that is not correct; I have not addressed a single word to 'Mr. Lizars on the subject;' and he was also entitled to give his reasons for not addressing him. On the last passage nothing is founded; but in regard to the first, he was entitled to state why he did not enter into controversy with the pursuer; but he was bound to state so in proper language; and if, while professing merely to explain why he did not notice his comments, he has gone beyond proper limits, and accused the pursuer of being disreputable; if he has done that, then he has committed himself, and made himself responsible; but that question always comes back to this, is that what is said? Some gentlemen put the pursuer's construction on the words, and others put upon them the construction of the defender, and they say they do so from their knowledge of the previous discussions between the parties. They knew the bad blood that existed between the parties, and that it was such that the words did not surprise them. It was proposed on the part of the defender, to give you an opportunity of seeing this, by showing you all that the pursuer himself was saying and doing in regard to Mr. Syme for the last ten or twelve years. We did not go into that. It is a fact in the case, which is proved, that they were in that antagonistic position towards each other; and that if the defender had confined himself to the mere expression of that which he says he intended to say, there was nothing wrong in it; but did he so confine himself. It is said that the language is ambiguous, and although he might have intended to explain himself in regard to that, he has not made it clear, and other people may not construe it in that way, and therefore that he is liable in damages, it is of consequence to get at the meaning if you can. A person is not entitled to use two-edged language in reference to another; that will not do; nor even if he did not mean it in a double sense, but was careless in the use of his language, and thereby injured the other party, he is liable in damages. When you consider the meaning that you would put upon these words, looking to their fair meaning, do they or do they not import, that the pursuer is a person of disreputable character in his profession, and neither entitled to respect nor courtesy. It was remarked by the counsel

for the defender, that respect is a thing which exists in the mind of others, and not in the character of the individual himself. That is quite true, with regard to the construction which the defender puts on the passage altogether; but the construction that the pursuer puts upon it is perfectly different, viz. — that he is a disreputable person, and not entitled to respect and courtesy. These are qualities in himself. It is for you to determine whether they were used in the one sense or the other. You will inquire, further, whether they are of such a double meaning; that they do carry the other imputation along with them— I mean the imputation which the pursuer puts upon the words; and if they do, I am afraid the defender is responsible. The witnesses who have spoken to the defender's reputation are from Edinburgh, Dumfries, and Berwick-on-Tweed. These gentlemen all knew the position of the parties towards each other. Dr. Carpenter, who read this letter, told you, that any party who read the pursuer's book must have been aware of the position in which the parties stood to each other. Then, on the other hand, the witnesses who were examined on part of the pursuer are not so far away — Dr. Renton from Dalkeith, Dr. Johnston from Musselburgh, and two gentlemen from Edinburgh, not out of the atmosphere of medical contention; and they put upon the passage the construction which the pursuer puts upon it. Others say that the construction is strained. It is not enough that a construction of that kind might be expected. You will consider whether it is a reasonable construction, and then you will consider whether the passage is injurious to the pursuer. It is important to look to the view taken by such men as Drs. Christison, Simpson, and Robertson, who considered the words in the knowledge that they had been rejected in England — because there is put in the letter that they had been rejected in England, and that it was impossible that these parties who knew Mr. Lizars could suppose that that could be their meaning. It was impossible for them to say, that Mr. Lizars was beyond the pale of professional respect and courtesy, any more than you could use them in the same way in regard to Mr. Syme. It is to be regretted, that such dissensions do arise. It is to be regretted, that these two eminent men should occupy so much of their valuable time in the way of controversy, but what we are to do is to judge between them; and it is your duty to say, whether the meaning put upon the words by the pursuer is the fair meaning belonging to them, or whether you think, that all they are meant to convey is, that the pursuer was not a person who could be regarded in this way, although on the part of Mr. Syme he might be placed beyond the pale of courtesy and respect, so far as he was individually concerned. It is for you to say what is the true meaning of these words.

As to the matter of damages, nothing has been said to you by either party, and I say nothing to you about the amount. You will deal with that matter as you think proper. If you think that the pursuer has made out his construction of the words, you will find for the pursuer, but if you do not think he has made out his construction of the words, you will find for the defender.

The Jury after being absent for about twenty minutes, returned the following verdict:—'The Jury are unanimously of opinion, that no 'dishonourable motive was intended by the defender in publishing the 'letter; that the libel is not proven, and find for the defender.'

Counsel for the Pursuer.

George Deas, Esq., and Robert Macfarlane, Esq., Advocates.
Ingles & Leslie, W.S., Agents.

Counsel for the Defender.

The Solicitor-General (Neaves) and George Patton, Esq., Advocate.
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