Proceedings in the great libel suit, Hills vs. Lorain : tried in the Court of Common Pleas of Clearfield County, December term, 1850.

Contributors

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PROCEEDINGS

IN THE

GREAT LIBEL SUIT,

HILLS vs. LORAIN,

TRIED IN THE COURT OF COMMOM PLEAS OF CLEARFIELD COUNTY, DECEMBER TERM, 1850.

CLEARFIELD, PA.

D. W. Moore, *Printer.*

1851.

COPY OF RECORD.

WILLIAM P. HILLS	}	In Common Pleas of Clearfield
vs.	}	County, No. 17, April Term,
HENRY LORAIN.	}	1849.

Summons Case, Sur Slander.

Writ returned served personally by copy. So answers James Wrigley, Deputy Sheriff.

Smith appears for Defendant,

And now, 25th September, 1849. Pltff. in this case, enters a Rule to take depositions; Exparte Rule on fifteen days notice

And now, 3d of October, 1849, Pltffs., *narr.*, filed. Same day Pltff. enters a rule on Defendant, to plead in six weeks, in this case, or Judgment will be entered for want of a plea.

And now, November 14th 1849, the defendant pleads not Guilty, with leave to add, alter or amend.

Now, 16th of October, Pltff. enters a Rule to take Depositions, Exparte Rule on ten days notice.

And, January 8, 1850, the Defendant enters a rule to take Depositions of witnesses on ten days notice.

And now, February 6th ,1850, leave granted by the Court to the Defendaht, to add a special plea in the above case--giving notice in writing, of the time of filing said special plea to the Plaintiff.

Now, May 2, 1850, Pltff. enters a rule for Commission, and interrogatories to Milo Wigant, of Almond, Allegheny county, New York, on 15 days notice.

June 24, 1850, Special plea filed.

July 15th 1850, Pltff. files his amended, *narr.*

July 16th 1850, Ptlff. enters a rule to take depositions &c.

October 28th 1850, Pltff enters a rule to take depositions.

July 22d 1850. Rule to arbitrate entered by defendant. Arbitrators chosen 29th of August, *viz :* John R. Reed, John Carlile and Roswell Luther, who are to meet on Tuespay, Sept. 24th, when agreement of parties to discharge the

rule, and put cause on trial list for December Term 1840, and Thursday fixed as day of trial.

And now, December 5th 1850, Cause reached—Jury called and sworn viz John Daugherty Joseph Milwood, Peter Gray, David Dressler, John S. Williams, James Gunsalus, James H. Fleming, John Hare, Edmund Williams, David Wise, jr. William Rishel and William Sloss, who upon their oaths and affirmations, respectively do say, they find for the Plaintiff, three hundred and seventy-five dollars damages.

I do hereby certify that the above is a true copy of the Docket entry given under my hand and seal of office, this 22d day of January 1851.

WILLIAM PORTER. Proth'y. { L. S. }

CLEARFIELD COUNTY, SS:

Henry Lorain, M. D., has been summoned to answer William P. Hills, of a plea of tresspass on the case, whereupon the said plaintiff, by Burnside and Curtin, his Attorneys, complain: For that, whereas, the said pltff. now is, a good, true, honest and faithful citizen of this Commonwealth, and from the time of his nativity, hitherto, hath always behaved and governed himself, and until the committing of the several grieviancies, by the said defendant, as herein after mentioned, was always respected, esteemed, and excepted by and amongst all of his neighbors, to whom he was known, as a person of good name, fame and worth to wit: At the county aforesaid—and whereas, the said Pltff., had studied the art, mystery, business and profession of a Physician, to, and with Physicians, who were eminent in their profession, and had himself practiced as such, and had always conducted himself, in his profession aforesaid, with skill, discretion and understanding, and has been, and still is expert and knowing in the art and mystery of his profession and business, and especially in the art and mystery of Midwifery, and whereas, the said pltff. was desirous of acquiring and still learning still more of his profession as a physician, and of receiving the degree which is conferred by Incorporate Schools, Colleges and Universities, on all those worthy to receive the same, he, the said pltff., did attend a course of Medical Lec-

tures in the City of Philadelphia, at Jefferson College, an institution Incorporated by an Act of Assembly of this State, and being carefully examined by the faculty of the said College, was proved to be well grounded in the principles and practice of his profession, and would have received the degree from the faculty aforesaid, all which were accomplished by great labor, and large expenses by the said pltff., by reason whereof, he, the said pltff. would have been known and recognized as a regular bred physician, and would have been enabled to add greatly to the wealth, profits, riches, which he had acquired in practising Medicine,and added to the very comfortable support of himself and family. Yet the said defendant, well knowing the premises, but greatly envying the happy state and condition of the pltff., and contriving and maliciously designing to injure the said pltff., in his good name fame, and reputation, credit and esteem, and also to induce the faculty of Jefferson College, not to grant the degree of M. D., and a diploma to the said Plaintiff and intending to degrade, injure and to bring him the said pltff., into great scandal and disgrace, and utterly ruin him, the said plaintiff. He the said defendant, on the 23d day of February A. D. 1849, at the county aforesaid, did falsely and maliciously, write and publish, and caused and procured to be written and published, a certain false, scandalous and malicious libel of and concerning the said plaintiff, in the form and manner of a letter, directed to Thomas D. Mutter, M. D., one of the professors of Jefferson Medical College, dated the 23d February, A. D., 1849, containing therein this false, scandalous, libelous, defamatory and opprocrious matter following, of and concbrning the said plaintiff:

"Clearfield, Feb. 23d, 1849.

"Thomas D. Mutter, M. D.—Dear Sir: You have a man attending your class, (meaning attending the Lectures at Jefferson College,) named William P. Hills, (meaning the said Piaintiff,) who I, (the said Defendant, meaning,) have heard is attempting to get an examination for a Diploma this Spring, either under the pretence that he (the said Plaintiff, meaning) has attended Lectures in New York, and that he, (the said Plaintiff, meaning,) has been recognized as a *regular* practiser of Medicine for years.

"As we, (meaning the said Defendant,) know he (the said

Plaintiff, meaning,) has no claims under either, I (meaning the said Defendant) have thought it my duty to write to you, (the said Thomas D. Mutter, M. D., meaning,) on the subject. The first trace of him,(the said Plaintiff, meaning,) that I (the said Defendant, meaning,) can hear of him in Pennsylvania, is keeping a Stud-Horse; next, a waggon maker; next, a school master for 3 or 6 months, and immediately after that a Quack Doctor. He, (the said Plaintiff, meaning,) has attended four cases of Midwifery in our town. The first child, he, (the said Plaintiff, meaning,) handed to the woman without tying the cord. I (the said Defendant, meaning,) find since, that eight miles in the country, he had let one blead to death from the same neglect, (meaning that the said Plaintiff had carelessly and unskilfully delivered a woman of a child —that the child had bled to death.) He (the said Plaintiff, meaning,) let a Mrs. Bates die undelivered, with a shoulder presentation; and let her Bladder burst for want of drawing off her urine. This was near Phillipsburg, 20 miles from our place. He (the said Plaintiff, meaning,) has performed the operation of Cephalotomy five times that I (the said Defendant, meaning) have heard of; and in four cases where I (the said Defendant, meaning,) know the women to be well formed--all of whom have living children--some born before, and some after the operation. All these in a very thinly settled country, from 6 to 10 miles from our town, and none of them more than six miles apart, and the other three scattered nearly between them.

"Since living in our place he (the said Plaintiff, meaning,) has been constantly advertising Quack preperations of his (the said Plaintiff's, meaning,) own make; and last Fall he (the said Plaintiff, meaning,) had two young men out peddling them; the enclosed hand-bill is one of last fall; before that time, his (the said Plaintiff meaning,) leading article was for the cure of Rheumatism.

"If you (the said Thomas D. Mutter, meaning,) wish to injure the standing of men who have a Diploma, you (meaning the said Thomas D. Mutter, M. D.) cannot do it more effectually, in Huntingdon, Mifflin, Centre, and Clearfield Counties, in all of which he (the said Plaintiff, meaning) has resided, than by giving a diploma to such a man, (the said Plaintiff meaning,) on his (the said Plaintiff,meaning,) attend-

ing one winter, particularly a diploma from Jefferson School. Dr. Charles R. Foster of Phillipsburg, with whom you (the said Thomas D. Mutter, M. D. meaning,) are acquainted ; M. E. Woods now attending at your school, and Hardman P. Thompson, at the University of Pennsylvania, all know Hills, (the said Plaintiff meaning,) and his character at home to them I (the said Defendant, meaning,) would refer you (the said Thomas D. Mutter, M. D., meaning,) if you (the said Thomas D. Mutter, M. D., meaning,) think any further information necessary. Yours very respectfully,

Signed, HENRY LORAIN."

And the said Defendant, on the same day and year aforesaid, at the County aforesaid, wrongfully, falsely, and maliciously, sent, and caused to be sent, the said libel in the form and manner aforesaid, unto the said Thomas D. Mutter, M. D., one of the Professors in Jefferson Medical College aforesaid, and the same was, by means of such sending thereof, received, opened, and read by the said Thomas D. Mutter, M. D.; and by the said Thomas D. Mutter, M. D., submitting to the faculty of Jefferson Medical College, was refused by reason thereof, to grant a Diploma and degree to the said Plaintiff, and the said Plaintiff by reason of the writing and publishing of which said false, scandalous, and malicious libel and libellous matter, was otherwise much hurt and prejudiced in his good name, fame, credit, and esteem, in his business and profession, and is fallen into great discredit among his patients and other worthy citizens, insomuch that his patients and other citizens have, on account of the said libel, altogether refused, and still do refuse, to employ him, the said Plaintiff, as a Physician and Mid wife :—to the damage of the said Plaintiff two thousand dollars, therefore he brings his suit, &c.

BURNSIDE & CURTIN,
Attys. for Pltff.

JNO. DOE, } Pledges, &c,
R. ROE, }

WILLIAM P. HILLS, } In the Common Please of Clear-
vs. } field County, No. 17, April Term,
HENRY LORAIN } 1849.

And the said Henry Lorain, defendant, by his Attorney, Josiah W. Smith, answers and defends, &c.—because he saith

that before and at the time of the said publication of his letter of 23d February, 1849, as stated in the plaintiff's declaration, were charges made by him to Dr. Mutter, as Professor of the Jefferson Medical College, at Philadelphia, in order that he the said Dr. Mutter, and the other Professors of the said College, might have an enquiry made of the said charges as contained in his said letter of 23d February, 1849, against the said Wm. P. Hills; that he the said Henry Lorain did it from a sense of duty as a medical man. He believes the charges in that letter as contained in the plaintiff's declaration, to be true, from the information he then had on the subject, and thinks he can prove that the said Wm. P. Hills, in his profession and attendance as a midwife, performed the operation of Cephalotomy where it was unnecessary, and that he neglected to tie the umbilical cord of the new born infant, in the cases as stated in his letter of 23 February, 1849, by reason whereof one of the infants died. And that also by reason of his unskillfulness suffered a Mrs. Bates to die undelivered as stated in his said letter contained in the Plaintiff's declaration, and he will also prove that the said William P. Hills sold Medicines called Quack Medicines, contrary to the rules of the medical profession, and of these matters, he, the said Doctor Henry Lorain is ready to verify.—Wherefore he prays Judgment, if the said William P. Hills ought to have or maintain his aforesaid action against him.

And as to the further statements made in his letter of 23d February 1849, against the said William P. Hills, to wit:—That he kept a Stud-Horse, was a wagon maker, and school master,—he the said Doctor Lorain made the statement from reports then made to him that were in circulation.

JOSIAH W. SMITH,
Atty. for Defendant.

Thomas D. Mutter, a witness produced on behalf of the plaintiff, deposeth as follows, having first been duly sworn:

I am about forty years of age. I am Doctor of Medicine and professor of Surgery in the Jefferson Medical College, located in the city of Philadelphia. I have been professor there nine years. I know William P. Hills, the plaintiff in this suit. He was a student in the Jefferson Medical College in the session of '48 & '49. He was a candidate for exam-

mation before the Medical Board of Jefferson College in the Spring of eighteen hundrsd and forty-nine. He did not receive a diploma ; a diploma was refused him in consequence of certain charges affecting his moral and professional character made against him by Doctor Lorain (Henry Lorain.) The charges were made in the shape of two letters addressed to me. I received them by mail. These are the lstters, to the best of my belief. They are identified by my endorsement, and are now marked A & B, for the purpose of being annexed hereto. No action was or can be taken in his case until the charges contained in these letters are removed.

Cross examined by H. P. Thompson, for defendant.

The printed document marked C, hereto annexed, contains all the qualifications requisite, to secure a diploma from the Jefferson Medical College.

THOS. D. MUTTER.

Sworn and subscribed to before me, Oct. 1849.
JOEL COOK, Alderman.

Robley Dunglison, produced on behalf of the plaintiff, deposeth as follows, having first been duly sworn :

I am fifty-one years of age ; I am Doctor of Medicine and Professor of the Institutes of Medicine in the Jefferson Medical College in the city of Philadelphia. I have been a professor since 1836 ; I know William P. Hills ; he was a student in the Jefferson Medical College during the session of '48 and '49 ; he was a candidate for diploma for the spring of eighteen hundred and forty-nine ; he did not receive his diploma. We have a law, or rather a rule, of our Faculty, that a respectable practitioner of four years standing, on attending one course of lectures, may be permitted to present himself as a candidate. Letters were written stating that he had not been a respectable practitioner. Being shown the letters hereto annexed marked A and B, he says these are some of the letters referred to. The whole affair was referred to a committee consisting of myself and Dr. Mutter, and the Faculty finally resolved, that he must satisfy them that he was a respectable practitioner. We did not ballot upon his medical qualifications ; this was a preliminary investivation ; (there was a letter from Dr. Lorain, written to Dr. Wood, on the same sabject of Mr. Hill's qualifications, laid

before the committee, and of the same tenor as those written to Dr. Mutter).

Cross examined by H. P. Thompson, Esq., on the part of the defendant.

The usual qualifications to secure a diploma from our Institution is that the candidate shall have attended two courses of lectures at a respectable institution, one of which shall have been at the Jefferson College—that he shall have studied medicine for three years—that he shall be twenty-one years of age—and shall have attended a course of clinical lectures in an institution approved of by the Faculty. We allow a respectable practitioner of four years standing to become a candidate for examination for a Degree. I do not consider Mr. Hills wished to obtain his diploma in an irregular manner by attending only one course under the circumstances. Our Institution did not and has never advertised that we will give a diploma upon one year's attendance with four years' previous practice. I do not think this practice to be irregular on the part of our college. We further require for qualification a good moral character in a practitioner.

ROBLEY DUNGLISON.

Sworn and subscribed to before me, October 29th, 1849, JOEL COOK, Ald'n.

[Exhibit C, referred to in the foregoing depositions.]

REGULATIONS, &c.

The commencement for conferring Degrees is held in the early part of March.

There is likewise an examination of candidates for graduation during the first week in July. The degrees are conferred on the candidates who are successful at this examination at the annual commencement following.

The candidate must be of good moral character, and at least twenty-one years of age.

He must have attended two full courses of lectures in some respectable Medical School, one of which shall have been in this College, and must exhibit his tickets, or other adequate evidence thereof, to the Dean of the Faculty.

He must have studied medicine for not less than three years, and have attended at least one course of clinical instructions in an Institution approved by the faculty.

He must present to the Dean of the Faculty a thesis of his own composition, correctly written, and in his own handwriting, on some medical subject; and exhibit to the Faculty, at his examination, satisfactory evidence of his professional attainments.

If, after an examination for a degree, the candidate, on ballot, shall be found to have received three negative votes, he shall be entitled to a fresh examination. Should he decline this, he may withdraw his thesis, and not be considered as rejected.

The degree will not be conferred on any candidate who absents himself from the public commencement, except by special permission of the Faculty.

[Exhibit A, referred to in the foregoing depositions.]

CLEARFIELD, 5th March, 1848.

DEAR SIR:—I have been informed that Col. Wm. Bigler has given Hills a certificate of character to enable him to avoid the attendance of two terms before he is examined for a diploma. Acting under that information, I have thought it a duty to myself to write you again, and refer you to Dr. Foster, or any other graduate of Centre or Clearfield counties, to see if you can find one who has ever called Hills in to consult, or acknowledged him as a physician. For his character for truth, I would refer you to Dr. Foster, M. E. Wood, and Hardman Thompson; and for his character for honesty, I would refer you to Josiah W. Smith, the leading lawyer of our place, a man well known to many of the citizens of your city. Col. Bigler may not be aware of many of the facts I have stated, owing to his absence from town attending to the Senate, his lumber on the river, his sawmills, and to political tours through the State, which have kept him from home nine-tenths of the time since Hills has resided in our place. The Col. is a political aspirant and never fails to make a friend when he can; and if he knows Hills well he knows him to be a man who would not stop at any falsehood to injure him in his political course if he refused to give him such a character as he wished; but I am certain the Col. does not know him as well as I do, who have been placed in situations that have opened his character to me. Whilst Hills has never been employed in Bigler's fam-

ily, or any of his relations, or those of his wife's, who are very numerous, or in the families of his partners, and as Hills neither gambles, drinks or swears, and makes pretentions of being religious, he might easily deceive the Colonel, who is so much from home. But if he thinks a respectable physician would perform the operation of cephelotomy on the child of a well formed woman, and tell the aunt of the woman that the child was living, and laugh, and say to her that these little things had no souls, as Mrs. Pearce, the aunt, told me Hills did at Mrs. Taylor's, where he performed the operation twice in her presence, and without a consultation, or any effort to get one, and on the children of a woman who has living children born both before and after he performed the operation.

Last Spring James Graham, a farmer, called on me to see if I could be prevailed on to go to his house eight miles from our town, when the proper time arrived, to attend his wife, who was pregnant, and nearly crazy, as Hills had attended her on her last confinement, and had told her she could never live to give birth so another child. I had frequently seen her and thought she was a well formed woman. I made every enquiry that I thought necessary and could not find she had had any bad symptoms, but a lingering labor. I told him that Hill was a reckless quack, who understood little or nothing about the matter, and that he should tell his wife so, and give every encouragement he could, and that although my health did not permit me to go so far generally, that I would attend her. I did so, and found her pelvis well formed, and all the parts healthy, and she had a speedy, natural labor; but was excessively frightened. I there found the cause of his acting in such a rascally manner towards her. He had not tied the cord in any way, nor made any attempt towards it. It had been laid on a chair, and when they went to wash it, it had bled to death, and the excuse was that she was so bad that he had to devote all his attention to her, and that she never could live over another confinement.

Yours, very respectfully,

HENRY LORAIN.

[Exhibit B, referred to in the forgoing deposition.]

CLEARFIELD, 23 Feb., 1849.

THOMAS D. MUTTER.—Dear Sir: You have a man attend-

ing your class named Wm. P. Hills, who I have heard is attempting to get an examination for a Diploma this Spring, either under the pretence that he has attended lectures in New York, or that he has been recognised as a *regular* practitioner of medicine for years. As we know he has no claims under either, I have thought it my duty to write to you on the subject. The first trace of him that I can hear of in Pennsylvania, is keeping a Stud-Horse; next, a waggon maker; next a scheol-master, for three or six months, and immediately after that a Quack Doctor. He has attended four cases of Midwifery in our town: the first case he handed to the woman without tying the cord—I find since, that eight miles in the country he let one bleed to death from the same neglect. He let a Mrs. Bates die undelivered with a shoulder presentation, and let her Bladder burst for want of drawing off her urine. This was near Philipsburg, 20 miles from our place. He has performed the operation of Cephalotomy five times that I have heard of, (and in four cases where I know the women to be well formed, all of whom have living children—some born before and some after the operation.) All these in a *very* thinly settled country—from 6 to 10 miles from our town, and none of them more than 6 miles apart, and the other three scattered nearly between them.

Since living in our place he has been constantly advertising Quack preparations of his own make, and last Fall he had two young men out peddling them; the enclosed handbill is one of last fall, before that time his leading article was for the cure of Rheumatism.

If you wish to injure the standing of men who have a Diploma, you cannot do it more effectually in Huntingdon, Mifflin, Centre, and Clearfield counties, (in all of which he has resided,) than by giving a Diploma to such a man on his attending one winter, particularly a Diploma from Jefferson School. Doctor Charles R. Foster of Philipsburg, with whom you are acquainted, M. E. Woods now attending at your school, and Hardman P. Thompson at the University of Pennsylvania, all know Hills, and his character at home to them I would refer you if you think any further information necessary.

Yours very respectfully,

HENRY LORAIN.

Deposition of Dr. Thos. D. Mutter, taken 29th of October 1849, with accompanying letters. Defendants Counsel object to the part in brackets, and the letter of Dr. Lorain to Dr. Mutter, dated 5th March, 1849, on the ground of irrelevancy, and that the letter is not counted on. Objections overruled, and the letter admitted, the part in brackets rejected. Defendants counsel excepts, and this bill is sealed.

GEORGE W. WOODWARD. { SEAL. }

VERDICT OF THE JURY.

We find for Plaintiff in the Charges of keeping Stud horse, Waggonmaking and five *Cases* of Cephalotamy Three hudred and seventy-five Dollars Damage.

EVIDENCE ON BEHALF OF THE DEFENCE.

MRS. BATES' CASE.

Mrs. Parker sworn.—I was called on Saturday to see my sister, Mrs. Bates. On Sunday morning she appeared poorly and wanted me to stay. I told her I thought she had better send for a Doctor ; Bates then said he would go for Dr. Hills ; Dr. Hills came in a short time after, and she appeared quite better when he got there ; I went down stairs soon after he came ; I had not been down but two or three minutes till he called me up ; he then gave me a cathartic and told me to put it in a cup 3 parts full of water ; this was all he done for her at that time. She was better in the evening and sat up; I talked of going home ; Hills told me I had better stay, as she would be better before morning ; I thought I could be spared as Mrs. Hudson and Mrs. Hancock were there ; about one o'clock I heard her moan and got up ; she appeared worse ; I then awoke the Doctor ; he said he must make an examination. I then went down stairs and in a few minutes I heard her distressing cries and moans.— I went up ; she was in the bed, and Mrs. Hudson holding her. Hills was operating. She begged him to let her be.— It distressed me so that I went to him and put my arms around him and begged him to desist. He pushed me away and said he knew his own business. I went down and told her

husband to go for Dr. Lorain or Dr. Smith, as I did not like the way Hills was proceeding with his wife. He went to the stable and got his horse. When he had got his horse Hills told him he might go for who he pleased as he had done all he could for her; I think he said to go for Iddings at Philipsburg. I think he then bled her and give her an emetic.—By this time Iddings had got there. The first thing that was done Hills gave Iddings some liquor, how much I do not know. Hills told me he gave it to him to brace his nerves, as he was not fit to do anything until he had some. They went into the room; Hills took me into another room and told me he had to leave; I told him he had better stay; he said he had some lumber at Clearfield Bridge that he had to attend to. I asked him if we had not better send for another Physician. He said that all the Doctors in the world could do nothing for her. I asked him if nothing more could be done; he said not. I said while there is life there is hope. I then said I suppose it is all over with her; he said there was one probability, that is, that the child might rot in 8 or 9 days and then with great care she might get better. Dr. Hills then left. Dr. Iddings said it was too late to do anything for her; he wished he had been called in sooner. Hills called the first medicine which he gave her Ergot. There was an arm outside of her body when Hills left. She had no passage from her bowels, nor had she passed any urine. Hills gave her no injections, nor made any effort to draw off her water; he had made no examination before he gave her the Ergot. She was sitting up and appeared well. I cannot say how long he was operating; she was lying on her back, with her legs stretched out, entirely on the bed; the Doctor was on the side, and Mrs. Hudson was holding her down.—I saw no greasing of his hands and arms; he operated first with one hand and then with the other. She had two children born before alive. Dr. Hills attended her with her first child. He was half an hour or an hour operating with his hands the evening before. He held up his hands, and turning them round, he said they were just calculated for a Doctor, they were so small. He said they were either twins, and had grown together, or that the child had grown fast to the womb. He said this before he had made any examination. The parts were so inflamed that she could not bear to have

them touched. Dr. Iddings said nothing to me about turning the child; all he said was as I have above stated. The arm of the child was in the world when Hills left, and had a ribbon tied to it. Hills tied the ribbon on it; I do not know why he done so; Dr. Iddings cut the arm off outside of the woman's body.

Cross Examination.—Dr. Hills first came about ten o'clock on Sunday morning; he made no examination on that day; we went to bed about 10 o'clock that night. I wakened about one o'clock and staid up the rest of the night; about the break of day I think he commenced making an examination. Bates started about 7 or 8 o'clock for an other Dr. This was on the first day of July. She took sick on the last day of June, and died on the first day of July. Dr. Iddings came in the forenoon. Hills pushed me away before Iddings came. I think Hills operated first with one hand and then the other. He did nothing at all but give the *Ergot.* I was in the room all day; he had no time to make an examination while I was out of the room; there was no working with the hands after Iddings came; I know what it was that Hills gave me, it was blasted rye; he directed me to put hot or boiling water on it. I left on Monday—sister dying. I was most needed at home. I did say that Dr. Hills did all that he knew how; that he did it for the best. I never said that I thought he had done right.—I told Wm. L Moore that I believed Dr. Hills did as well as he knew how, but that he did not know what he was doing. I told Wm. Merrell that I thought Hills did what he thought was for the best. Mrs. Hudson was the mid-wife. Dr. Iddings never attended in our family. I refused to have Hills sent for when I had a child afterwards. They wanted to send for him, but I declined. I did without a physician.

Mrs. Mary Ann Williamson, sw.—I was called on by Dr. Hills on Monday to go and see Mrs. Bates. He said to go and do what I could for her, as there was no prospect of her getting better. I got there about 12 o'clock as near as I can tell. I went up stairs; Mrs. Bates was on the floor and Dr. Iddings by her side; he had just laken the child's arm off and a few minutes after he got hold of one of the feet. He ordered me to wash her. Her bowels were hanging out. I could not wash her; she was so sore. He said that if he

had been called sooner, he could have saved her life. She died about one o'clock on Tuesday morning. I was with Mrs. Bates twice before when she had children. There was no difficulty then; it was awful to see her die in such suffering; it was an awful death. The parts was so much inflamed that she could not suffer me to lay a sponge on them.

Cross Examined.—Dr. Hills was her physician at her first confinement.

Dr. Lewis Iddings sworn.—I was called on to go and see Mrs. Bates at her lastconfinement. When I got there; the parts were so much inflamed that I could not make a satisfactory examination. I thought as the arm protruded that it was a shoulder presentation. I could do nothing for her. I endeavored to return the arm and bring down the feet, but could not, as the parts were so much inflamed and injured; there was no malformation of the parts. Dr. Hills said she had urinated, but I thought she had not. I was lying on a bed in an adjoining room, with the door open between the rooms; I heard a report, and said that I thought her bladder had bursted. She died almost immediately. I once turned a child. I was about twelve or fifteen minutes doing it.

Cross Examined.—I think she had a passage from her bowels after I got there. I do not know if Hills gave her Ergot, if he did it was malpractice. I never left a woman undelivered. Never had one die before delivered. I would not leave a patient as Hills did Mrs. Bates.

THE PLAINTIFF CALLS IN THIS CASE

Wm. Bates—I brought Dr. Iddings on Monday morning about 8 o'clock. Hills suggested to me, to go for another physician. Hills was attentive while he was there, so far as I know.

Cross Examined.—I do not consider myself capable of judging of what was right. I was out part of the time.—She slipped and fell about two weks before.

Dr. Iddings sworn.—I did not know what kind of a presentation it was until the arm protruded, the parts were so much inflamed. Dr. Hills did everything he was capable of doing

John Lytle sworn.—Mrs. Parker said Hills had done his best, as she thought. I do not recollect that she said she was satisfied; she was very unwilling to come to court.

William L. Moore sworn.—Mrs. Parker and I on two occasions, had some conversation about her sister's death.—She spoke of the Physician attending. She said she had no reflections; they done the best they could. This was in the Fall of 1848. Last Spring she told me she was subpœned, and said her testimony would be against Dr. Hills, for she was not satisfied.

Dr. Charles R. Foster sworn.—I am a practising Physician, a graduate of the Jefferson College; have practised about 5½ years. I have had experience in Midwifery. Dr. Hills' treatment of Mrs. Bates, as described by witnesses, was not skillful. Ergot is generally given after an examination, and after he knows the condition of the uterus; it is never proper to give ergot without ascertaining the position of the child, nor then, unless necessary to expel the fœtus.—I would deplete the woman first, and give ergot afterwards. This I presume was a shoulder presentation; this is remedied by turning the child; the urine is first drawn off—the bowels evacuated before turning the child—the hand should be greased; one hand kept to ascertain external conditions;—from 5 to 20 minutes to turn a child,—think this was a shoulder presentation and that the arm came out by unskilful manifestations.

Cross Examined.—Have delivered about 100 children.—never lost a mother, nor left a woman undelivered.

MRS. TAYLOR'S CASE.

Dr. Charles R. Foster, recalled.—Different modes of ascertaining whether the child is dead; one mode is by touching the cord, another the head; best mode by listening to the beat of the heart; use Stethescope; hard to tell whether the child is dead or living in some cases; child may be living and difficult to tell it. Cephalotomy allowed to be performed when it is ascertained that the child cannot be born unless perforating the head; very rarely done; should not be done without a consultation. My opinion is that no doctor should perform the operation without a consultation, if one could be

had ; should not be performed when there is no deformity of the pelvis. As soon as the child is delivered and cries, I tie the cord--tie it before cutting, in 2 places; done on the bed; cut between the ties ; child derives its life through the cord, from the mother ; general practice to tie it before cutting ; if the child has cried, be a bad practice to cut the cord before tying it. Some medical men of some repute, think it necessary to cut the cord and let it bleed awhile before tying it ; advised when the child has cried ; plenty of theories in medicine ; necessary to let the child bleed a few drops ; do not believe it is proper when a person has had a former child ; not proper to perform the operation without a consultation ; cannot tell whether the operation is necessary without seeing the patient ; the object of the operation is to save the mother ; a large proportion of the mothers are saved by the operation ; where it is necessary and not performed, the mother and child both die. If a consultation cannot be had, and the operation is necessary, I would perform it ; do not recollect cases of cord around the neck ; cords do not vary much ; usual length about 18 inches or 2 feet ; 4 kinds of Shoulder Presentations ; some of them more difficult to turn the child than in others ; never have used forceps.

CEPHALOTOMY CASES.

Mrs. Hannnh Pearce sworn.—I was present at the birth of the second child of Mrs. Taylor that Dr. Hills delivered ; he took the child from her by force. She was sick from Tuesday till Saturday ; he delivered the child with his hands; there was a hole in the childs head, but I do not know how it came there. I saw him go to the bed with instruments in his hand ; when the child was delivered it had a hole in its head ; I did not see the Doctor make it. He had an instrument with a hook on it ; he delivered her on his knees with his hands. I was in the room ; I did not see the first child ; he said these little things were no more than an arm or a leg, until they breathed ; he repeated this at the breakfast table.

Cross Examined.—She was taken sick on Tuesday ; Dr. Hill came on Friday night ; she was very bad. Taylor said to save his wife and never mind the child ; the mother was saved ; she is a hearty woman yet ; in two weeks from that

day she walked ¼ of a mile; her friends were alarmed after it was over; some of them began to make a fuss about it.—I am a mother. The child was a very large one. Mrs. Taylor had other children who were very small; she had one since that was born dead; her labor was very hard; no Doctor present; I do not know the size of the one that was born dead; the one that Dr. Hills operated on was a good deal larger than her other children; she begged the Doctor to deliver her dead or alive; she told me in the middle of the afternoon that she thought her baby was dead. She has had six children born alive; one of them died when it was several years old; she had two living children after the first operation. I think she would have died if Hills had not come to her relief. She had no convulsions.

William Taylor sworn.—I was not in the room all the time; he delivered her with instruments; she was in labor a long time and all thought the children were dead; he used an instrument with a hook on the end. I told him to deliver my wife, and save her; he got his instruments and he and I went out and ground the hook; he hooked it in the child's head and delivered her; he asked me to help him grind the hook; I was not in the house when the child was born; the midwife told me the child had died and that I had better go for a Doctor or the woman would die. There was no instrument used to ascertain if the child was allve or not; no stethescope used. The second child was delivered in the same way. He used the instruments then also. The second one had a hole in its head; he used no means to find out if this one was dead or not that I saw; she has had six living children, five of whom are still living. She had two since the first, and before the second operation, born alive. She had no fits at either time.

The Deposition of Mrs. Elizabeth Pearce read.—I was twice at Wm. Taylors when Dr. Hills was there. Wm. Taylor sent for me at the time his wife was confined; as I was going there I met Hills; he told me the child was alive; this was about 8 o'clock in the morning; in the afternoon his instruments came: he used them some time; he then took another instrument like a pair of shears and went to the woman; the first instrument was a large one. The child was born the next morning after I got there. Hills put it in an

old bucket, and buried it in the garden. This was the first time he was there; I did not see the child. Hills said these little things had no souls. He told me that he had one case of the same kind before. I was not in the house when the second child was born. When I came in the house it laid on the floor dead. I do not know if there was any marks on this child, for I did not see its head; the cap had been put on it. Mrs. Taylor had three children born alive before Dr. Hills performed these operations, and two born alive between the two operations. I did not see the first child, the second was a middling sized one.

Cross Examined.—Hills never told me he had performed the operation frequently; she was in labor a long time; she had as hard labour pains as I ever knew. I did not see the first child; the last one was a middle sized child.

Deposition of Mrs. Catharine Smeal read.—I am seventy years old, and sometimes act as midwife; in that capacity I was at Wm. Taylors two different times when Dr. Hills was there between 1842 and 1848, at which times it became necessary for him to perform the operation of Cephalotomy to save the life of Mrs. Taylor, and that in my opinion the children were dead before the operation was performed. I did not hear Dr. Hills say that these little things had no souls.

PLAINTIFF CALLS IN THIS CASE

Wm. Taylor.—My wife fell and hurt herself both times that the operation was performed; the first time she fell partway down the stairs with a dough-tray in her arms; the second time she fell off a chair on which she was standing; both these were about two weeks before she was delivered; she complained very much from that time until she was delivered. She was delivered two weeks before her time.

NOT TYING THE CORD AND LETTING THE CHILD BLEED TO DEATH.

James Graham sworn.—I went for Dr. Hills; he came about 8 o'clock and at 4 o'clock the next day he delivered my wife; he used instruments: I did not see him tying the

cord; I don't think it was done; the child bled about one-half pint and died; there was some trouble to get it to breathe; it laid on the floor about fifteen minutes; when it was taken up it had bled, and died about half an hour after it was born; I was in the room all the time; he did not draw off her urine or evacuate her bowels; he did all that he new how; whether he did right I know not. She made no urine nor did she have her bowels open.

Cross Examined.—The child should have been born five or six hours sooner; the cord was not tied; I was looking at the Dr. all the time; my wife was no worse than common after the deliverey; he need not have used instruments if he had delivered her in time; I know of no cause of delay but the want of a good physician. Dr. Hill did all he knew how. Dr. Lorain did not do as he did; my wife has had another child since; Lorain had no difficulty in delivering her.

Eve Graham Sworn.—I was present at the time Hills delivered Jas. Graham's wife; I can't say that I saw the cord tied; I was in the room all the time, and was with her a good deal; the child bled near half a pint; it bled at the navel; it lived half an hour or an hour. I think it was the bleeding caused the death of the child.

Cross Examined.—She was very bad; there was a good deal of flooding. I did not see the navel string tied. He attended to the woman; the Dr. seemed kind enough; he did not draw off her urine or evacuate her bowels.

Mrs. L. Winnery called.—Can't tell whether Dr. Hills tied the cord or not.

PLAINTIFF CALLED IN THIS CASE

Mary Graham.—I assisted Dr. Hills when Mrs. James Graham was delivered, I and Dr. Hills tied the cord after it was taken away from the mother; it was tied with woolen yarn, about 20 minutes after it was born; the child was laying on the chair all the time; it was dead when it was born; it began to breathe in about five minutes; it had bled some. It died in about half an hour after we had tied the cord. There was not much flooding. I think she made water the evening before.

CASE OF HANDING THE CHILD TO THE ASSISTANT WITHOUT TYING THE CORD.

Mrs. McLelland sworn.—Mrs. Jones and I was sent for to wait on Dr. Hills at Mrs. Adams; there was nothing extra took place until the child was born; he cut the cord and handed the child to me; I laid it on the floor; the after birth was then delivered. He then went out and washed his hands. When Mrs. Jones looked at the child she said "oh! my Lord, the child is bleeding;" by this Hills came to the door and he and Mrs. Jones tied the cord.

Mrs. Catharine Jones sworn.—I was at Mrs. Adams when Hills delivered her; after the child was delivered he cut the cord and left it without tying it; after he had delivered the after birth he left the room and washed his hands; we bandaged and fixed her in bed. I then went to the child; it was bleeding; I exclaimed on seeing it in that situation; by this Hills came in and we tied the cord. The child cried when it was born.

PLAINTIFF CALLED IN THIS CASE

Mrs. Adams.—Dr. Hills attended me in my second confinement and to the best of my knowledge he did as well as any one could. My child is living and hearty; he tied the cord after the child was laid on the floor; he asked me for a cord.

Cross Examined.—I can't say how many minutes it was; I am confident that he did not leave the child till he tied the cord; I am not willing to tell a lie about it; Mother McClelland and Mrs. Jones were there. I don't hear you; he did tie the cord. I won't answer any questions; I don't know anything about it.

QUACK MEDICINES.

D. W. Moore sworn.—I printed several advertisements for Dr. Hills. (The papers containing the advertisements were offered in evidence. Date of this paper, Dec. 26th 1846.) I also printed hand bills for him.

Franklin P. Butler sworn.—Dr. Hills had me employed

to haul medicines of his own make, and leave them at different places to sell on commission; he had John Southard employed after I quit. The medicines were, Hills' syrup of Squills and Tetter Ointment. The Syrup of Squills was composed of Squills, loaf sugar, winter green and tartar emetic. The Tetter ointment of lard, ceder oil and nitric acid.

Defendant offers to prove by the witness now on the stand, Dr. Foster, that he heard that Dr. Hills kept a stud horse, and that he communicated the fact to the Defendant before the letters in the case were written; and that he also heard he had been engaged in wagon-making, which he also told Dr. Lorain before the said letters were written. To which evidence Plaintiff objects, objection sustained, evidence rejected and Defendant excepts.

GEO. W. WOODWARD. {L. S.}

Deposition of Z. S. Jackson, M. D., produced, sworn and examined the 7th day of June, A. D., 1850, at Almond, in the County of Allegheny, and State of New-York; under and by virtue of a Commission issued out of the County Court of Common Pleas of the County of Clearfield, in the State of Pennsylvania, in a certain cause there indepenpending and at issue between William P. Hills, Plaintiff, and Henry Lorain, Defendant, as follows:

The said Z. S. Jackson of Almond aforesaid, Physician, aged about 60 years, being duly and publicly sworn, pursuant to the directions hereto annexed, doth depose and say as follows, being examined on the part of the Plaintiff:

1st. To the first interrogation he saith: Was acquainted with the Plaintiff, William P. Hills from some time about the year 1829 to about the year 1831, but was not acquainted with the Defendant.

2d. To the second interrogation he saith: That at the time he was acquainted with him, as set forth in the answer to the 1st interrogatory, he resided in the village of Prattsburg, in the County of Steuben, in the State of New-York.

3d. To the third interrogation he saith: That the Plaintiff commenced the study of medicine with him, at his office, on

the 26th day of June, 1829, and continued to prosecute that study under his directions, for about two, or two and a half years, as near as he can now recollect.

4th. To the fourth interrogation he saith: That the Plaintiff, while a student with him, was faithful in his attention thereto, and a young man of correct habits, and evinced, while practising, as he occasionally did under his supervision, much skill.

He knows of no other matter or things material to the parties in this action, except that he knows that the Plaintiff studied medicine regularly in the office of A. D. Vorhies, M. D., from 6 to 12 months, at Prattsburg, subsequent to this study with the witness.

Cross Interrogated.—

1st. To the first cross interrogation he saith: That William P. Hills did study medicine in his office regularly from day to day, for the time stated in his answer to the 3d direct interrogatory, except as hereinafter specified in the answer to the 2d cross interrogatory.

2d. To the second cross interrogatory he saith: That the Plaintiff, during the last year of his study with him, taught a school for the period of about six months, during which time he was absent from his office, but kept up his studies as far as reading was concerned.

3d. To the 3d cross interrogatory he saith: That the Plaintiff followed no other business or occupation from the time he entered his office as a student, except as stated in the answer to the 2d cross interrogatory above.

4th. In answer to the 4th cross interrogatory he saith: That the Plaintiff, previous to his commencing the study of medicine with him, pursued the occupation of farming.

5th. In answer to the fifth cross interrogatory he saith: That he does not now recollect whether he did, or did not give him a certificate.

Z. S. JACKSON.

Examination taken, reduced to writing, and by the witness subscribed, and sworn to this 7th day of June, 1850, before

M. H. WYGANT,
Commissioner.

William P. Hills
vs.
Henry Lorain.

No. 17, April Term, 1849. Sum's case for libel.

CHARGE OF THE COURT.

GENTLEMEN OF THE JURY :—I confess to a feeling of sincere and deep regret at seeing these parties in court in this present litigation. I have known them both as respectable citizens in the community. They both practice a profession that touches most intimately the dearest relations of life, and they come into court attended by the sympathies, the hopes and the prejudices of numerous and respectable friends. And the subject matter of their litigation is calculated to excite and irritate their respective admirers and friends. Under these circumstances I doubt not the jury join in the feeling of regret to which I have referred; but since they are here, in due form of law, we must measure out to them the justice that is their due, without regard to any circumstances, save such as are in proof, and utterly uninfluenced by the passions and prejudices which may prevail in the community. Proceeding in this spirit to the performance of our respective duties, mine will be discharged by developing and explaining the principles of law that seem to belong to this controversy, and yours will consist in ascertaining the facts in the case and applying to them the law as you receive it from the Court.

It is a civil action, at the suit of Dr. Hills, for the recovery of damages from Dr. Lorain, for an alleged libel. [Here the Court read the general definition of libel from Starkie on slander, pp. 140—126-7—133.]

The remedies for libel are twofold :—first, by indictment; and second, by civil action for damages. Written or printed slander implies so much more malice than mere words that are spoken in a gust of passion, or which die upon the ear to which they are addressed, and they tend so directly to excite violence and to break the peace of the Commonwealth, that they are considered not only a private injury,

like verbal slander, but a public offence, for which an indictment will lie. Hence the maxim that you sometimes hear—the greater the truth the greater the libel. But the civil action proceeds on no considerations of public policy, and is to be regarded as merely a remedy for a private injury. The Plaintiff asks for compensation in damages for an alleged injury to his reputation, and in such an action the truth is a defence; for every man should so live that the truth, whenever published, cannot injure him, because it cannot be derogatory. But if scandal is published, and is justified as true, and proved to be so, the object of it must not be permitted to recover damages, even though the publication was unnecessary and malicious; for it is to be presumed he is not injured. If the rule were not so, the most infamous characters, of whom the worst things could with truth be published, would be entitled to the largest damages.

In this action the Plaintiff, to entitle him to recover, must drove, 1st. The writing of the libel. 2d. The publication; and 3d, the malice.

1st. The writing of the letter of 23d February, 0849, on which the Plaintiff's declaration is founded, is admitted and avowed by Dr. Lorain, and I may add, it is highly libellous. 2d. As to publication: writing a libellous letter and sending it by post to a person who receives and reads it, is in law a publication; and this is very fully proved on the part of the Plaintiff, by the depositions of Drs. Mutter and Dungleson.—[Here the court referred to these depositions, and instructed the jury that if this evidence were believed, the publication of the libel was amply proved.]

3d. Malice in general must be proved. The two letters in evidence afford the strongest implication of malice, unless they were what the defendants' counsel insist they were, *privileged communications.*

There are many communications, which, when made *bona fide*, are priviledged:—that is, the party making them shall not be called on to substantiate their truth, or be mulct in damages. Giving character, as it is called, to servants, when applied for; representations to the executive power of the country in reference to applicants for, or incumbents of, public trusts; letters of friendly expostulation and advice; fair criticisms of published works; reports of the proceedings

of public bodies, like courts of justice, Congress, or Legislatures, and such like, are instances of privileged questions.—The best interests of society demand a freedom of communication in such instances; and the freedom of the press, which, notwithstanding its occasional abuses, is among the highest interests of civilized society, is concerned in the preservation of these distinctions.

But does the letter of Dr. Lorain to Dr. Mutter fall into any of these classes? Clearly not; and in my opinion it does not form itself a class of privileged communications. It is ruled that it was not a privileged communication. No law of the land, no regulation of our medical colleges, no usage of their alumni, has made it the duty of a graduated physician to give information of the malpractices of a candidate for the honors of these justly celebrated schools. If it is important that they should have such information, (and in my opinion they are much too careless as to the characters and qualifications of their students,) let them seek it from their graduates, or others. If the Jefferson School had applied to Dr. Lorain for information as to the practice and character of Dr. Hills, I am not prepared to say that a communication that should have limited itself to a bona fide statement of the matters sought, could have been libellous; but no such application was made, and not a circumstance has been proved that invited such a communication. The defendant must be regarded as a volunteer. He undertook, of his own mere motive, to write a libellous letter, and he must stand up to the responsibility he voluntarily assumed.

The two letters of Dr. Lorain, for though only one of them is declared on, both are in evidence as tending to prove malice, being inexcusable on the ground assumed for them that they were privileged communications, imply malice, and in connection with the facts of the case, cannot leave the jury in doubt as to this third requisite of the Plaintiff's action.

Let us now look at the defence. The pleas are, not guilty, with leave to justify; and the course of the trial has been to justify the letter declared on, on the ground of its truth.—There were two courses open to the defendant. He might have came in and pleaded not guilty, and given in evidence any circumstance that tended to mitigate the damages; or he might plead a justification, and entitle himself to prove the

truth of what he wrote. He chose the latter alternative, and thus in effect, reasserts on the record the imputations contained in his letter.

I regard the plea of justification as applicable to the whole letter of 23d February, 1849. The plaintiff's declaration contains but one count, and sets forth the whole letter as the libel of which he complains. The letter, with all its charges, is one libel, and it is so charged; and a general plea of justification cannot logically have any other application than to the whole letter. The defendant, then, stands here to justify all the matters charged in that letter, on the ground that they are true; and if he has satisfied the jury that they are true, it is not a case for damages, though the letter was libellous, and was not a privileged communication. But if the defendant has satisfied you that the more grave and important charges are true, and has failed to give any evidence concerning the others, or has failed to satisfy you of their truth, the plaintiff's damages should be apportioned accordingly.—While therefore, in view of the pleadings, we consider the letter of February as one libel, it becomes necessary for the jury to separate its parts, and to consider it in detail in view of the evidence and for purposes of damages.

The letter was addressed to Dr. Mutter, a gentleman of the highest standing in his profession and who is an accomplished professor of surgery in the Jefferson Medical College, in Philadelphia. Dr. Lorain tells him that the first trace he has been able to find of his student, Dr. Hills, in Pennsylvania, was as keeping a stud-horse; next, a wagon-maker; next, a school-master for three or six months, and immediately after that, a quack doctor.

When it is considered that one of the regulations of the Jefferson Scool is to confer a degree on respectable practitioners of medicine for four years, who attend one course of lectures and sustain the requisite examination, and that Dr. Hills was a student there, under this regulation, claiming to have been in the practice of medicine as a respectable physician for four years, the libellousness of this part of Dr. Lorain's letter will be apparent. It consists not in imputing employments that are derogatory in themselves; but in charging that his time and attention have been devoted to objects perfectly inconsistent with four years practice of medicine,

and thus changing his relation to the school whose lectures he was attending, and whose honors he was seeking. And it will be remembered, that among the definitions and distinctions read from Starkie, at the commencement of this charge, any writing that tends to change, for the worse, the relations of a man in society, is libellous. Dr. Hills claimed to have been a respectable practitioner of medicine for four years—as such he was admitted to take a course of lectures. Dr. Lorain strikes at the very foundation of his hopes and plans when he tells Dr. Mutter that he had been engaged in other avocations, and had attained only the reputation of a Quack Doctor. The material question now arises—has the defendant proved these things true? Of Dr. Hill's keeping a stud-horse, making wagons and teaching school in Pennsylvania, there is not a particle of proof; and since there is nothing derogatory in these things, and they were injurious only in the circumstances under which Dr. Hills was placed when they were alleged against him, it is of no consequence to the defendant that his plea of justification is applied here, instead of the plea of not guilty; for under any plea he must respond in damages for charges that were injurious in the then circumstances of the plaintiff, and concerning which he has given no evidence whatever. But how far these charges, in comparison with others in the letter, were injurious to Dr. Hills in depriving him of a diploma, is matter for the jury to consider in connection with the subject of damages. These charges are not justified in the evidence on the ground that they were true, for though on the cross-examination of one of plaintiff's witnesses in the State of New York, it came out that Dr. Hills had taught school in that State before he came to Pennsylvania, yet there is no evidence that he taught school here as Dr. Lorain charged. Here then in these charges, manifestly injurious, and unproved, is ground on which the jury may assess damages to the plaintiff. But what should be the measure of damages on account of this part of the letter?—If those charges were the means of losing Dr. Hills his diploma, or his degree, the damages should be commensurate; but if there are other things in the letter, which it is fair to presume were mainly instrumental in this result, a much lower rate of damages should be assessed on the ground of these charges.

As to the charge that Dr. Hills was a Quack Doctor, the jury will consider the evidence we have about his practice, and say whether it has been proved true or not. It is not quite easy to define a Quack Doctor. Dr. Lorain probably means by the expression, one who assumes to practice medicine without first attaining a degree; but it may be doubtful whether the Jefferson school so understands the term, for the object of the regulation before referred to, is to confer a degree on a respectable physician of four years standing; thus showing that in certain cases they recognize the practice of undub'd Doctors as "respectable." It is more likely that the Professors in the Jefferson school would understand from the expression, as it stood connected in this letter, a rash and ignorant pretender, who disgraced their profession by assuming to practice it without adequate reading or instruction.—If so, the epithet was highly opprobrious, and the jury will consider whether it is justified in the evidence. If it is, it should not be the subject of damages. If it is not, it should be.

The letter then proceeds to charge that in two cases of midwifery, Dr. Hills handed the children to the nurse without tying the cord, and that one of them bled to death from this cause. The defendat has given evidence of two cases, one of Mrs. James Graham, the other of Mrs. Adams, which, it is insisted, sustains this charge in the letter. There is some apparent contradiction in the proofs, but all the evidence in regard to the matter of tying the cords of the children of these two women is referred to the jury to say whether it justifies the letter in this particular or not, and damages will or will not be assessed on this ground as the jury shall find the evidence.

The letter next asserts that he let a Mrs. Bates die undelivered with a shoulder presentation, and let her bladder burst for want of drawing off her urine. I do not propose, gentlemen of the jury, to go into the schocking details of this case of Mrs. Bate's. The testimony of the witnesses is before you, and I am sure it will not readily fade from your minds; but there is one fact that is undisputed in the evidence that would seem to me perfectly condemnatory of Dr. Hills, and that is, that he abandoned that woman in the agonies of parturition, to go and look after lumber. He had been called to

her in good time—he had had a consulting physician called in at the time of his own choosing—and yet he went off and left her undelivered, and in the most pitiable condition of any human being of whom I ever read or heard! Dr. Iddings was there, and he gives it as his professional opinion, that she died of the bursting of her bladder; though other professional opinions have thrown some doubt over this opinion of Dr. I. If he was right, all that Dr. Lorain wrote about this case, and much more, if witnesses are believed, is true, but if Dr. Iddings be not correct as to the immediate cause of Mrs. Bates' death, the question is, does not the proof substantially sustain Dr. Lorain's statement? Did not Dr. Hills let Mrs. Bates die undelivered with a shoulder presentation?

It is said that a shoulder presentation is one of the most difficult that ever occurs, and that this case of Mrs. Bates was one of peculiar difficulty, but the books are full of repeated cases in which children have been safely delivered after a shoulder presentation, and in which the lives of mothers have been saved by dissecting the child and taking it away; but no book has been produced and no medical witness have told us of an Accoucher who left the mother alive and undelivered. According to my opinion the child should have been cut to pieces before the thought of abandoning the mother should have been indulged. Was Dr. Hills' conduct throughout this painful case that of a "respectable" physician? Why, gentlemen, if this case was as described, the question is forced upon us, is such a man fit to be compensated in damages? Be it that Dr. Lorain prevented his getting a diploma, does he deserve damages? Here we get into the depths of this cause. The question is whether this one transaction does not betray such ignorance of his profession and such reckless indiffierence to human life on the part of this Plaintiff, as unfit him to receive damages on account of professional character and prospects. This is for the jury to consider, but in no event will they assess damages against Dr. Lorain for his report of this case if they believe the evidence in regard to it.

The letter next charges Dr. Hills with performing Cephalotomy five times in a circle of 6 or 10 miles thinly settled. When we see how rarely this operation is resorted to on the part of Physicians, whose experience is recorded for our in-

structions—how careful they are to obtain the fullest consultations and to exhaust every expedient consistent with the safety of the mother, before employing it—and with what reluctance and delicacy they adopt it as the only alternative to save the mother, we can understand with what astonishment the learned Professors in the Jefferson School would be likely to receive such an announcement concerning a physician of 4 years practice in a sparsely populated district.—It was a grievous charge to be borne. The material question is, was it true? There has been no evidence offered as to more than three cases. It was not true therefore as to two and the Defendant stands without justification in regard to them. But three cases, two of them on the same woman, Mrs. Taylor, who has living children born both before and since the operation, seems to have been proved, and so far the Dr. has sustained his charge. It may be that these cases were necessary, but if it were material to inquire into that I should be disposed to insist on the evidence of a consulting physician if one was attainable, for I hold that no doctor has a right to perform Cephalotomy without a consultation where it can possibly be had; but the necessity and propriety of the operation is not material, because the letter does not charge that they were unnecessary. It merely states the fact, and adds, to be sure, some circumstances that would indicate that the operation was unnecessarily performed, but then these circumstances have been substantially proved. If the evidence is believed therefore the fact charged by Dr. Lorain would seem to be sustained by proof as to three of the five cases alleged. But where is the proof of the other two charges? There is none. The attrociousness of this imputation consists much in the number of cases mentioned, and if Dr. Lorain has failed to justify the number charged, it is a fair subject of consideration for damages.

As to the next charge in the letter, the sale of quack medicines, there does not seem to be much of importance attached to it on either side, and very little certainly is due to it.—There is evidence on the part of the Defendant that substantially proves what he alleged, and the Plaintiff's counsel have taken pains to reduce the enormity of this imputation by showing that Dr. Lorain sold patent medicines himself, and did not consider it inconsistant with his character as a "respec-

table" physician to do so. In what light the faculty of Jefferson College would look upon the matter, we are not informed. But this and the remaining observations in the letter, though not of much importance in themselves, are defamatory when taken in consideration with those that go before, and with the circumstances in which Dr. Hills was placed. How much they should weigh in the estimate of damages, if any weight whatever is due to them, the jury will judge.

On the whole then, Gentleman of the Jury, you have a case of clear libel before you--attempted to be justified on the ground of truth--and the attempt apparently successful in part—in part unsuccessful. Now is it a case for damages? In considering the subject of damages, the jury are to have no reference to the second letter in evidence, because the assertions of the Plaintiff in that letter have not been complained of as libellous and they form no part of the ground on which the Plaintiff sues for damages. This ground is to be found wholly and exclusively in the letter we have been considering. Looking at this letter, and considering the time and circumstances in which it was written, the injury and disappointment to which it subjected the Plaintiff, and the enormity of some of its charges and imputations, I would say, if the attempted justification had wholly failed, that it would be a case for heavy damages; but if the material charges have been proved true, this cannot be said of the case. And the question then arises, whether the Plaintiff, of whom these graver matters could with truth be said, and to whose hopes of graduating they must have proved fatal eveu if nothing else had been alleged, is entitled to recover damages at all, on the ground that he was prevented from obtaining his diploma.

If the jury, on a fair and candid review of the whole case, think he is, they must take up the charges and see what of them are justified in the evidence, and what are not, and apportion damages accordingly.

To which the counsel, both of Plaintiff and Defendant, excepted before verdict, and prayed that it be filed of record, which is done. GEORGE W. WOODWARD.

ASSIGNMENT OF ERRORS

1st, In the admission of the letter of Dr. Lorain to Doctor Mutter, dated, 5th of March 1849, the same not having been declared upon, and not in issue &c.

2d. In refusing to admit testimony of Dr. Foster, that he had heard that Doctor Hills had kept a stud horse, and was a waggon maker, and that he had communicated this fact to Dr. Lorain before he wrote the letter which the Plaintiff declared upon.

3d. In refusing all evidence offered in litigation of damages, either under the special plea or the plea of not guilty.

4th. There was no proof of express malice, and the Court erred in charging the jury that the letters in evidence, offered the strongest implication of malice, and that it was highly libellous.

5th. The Court erred in not charging the jury, that the letter of Dr. Lorain to the Jefferson College was a priviledged communication.

6th. The Court erred in charging the jury that both of the letters of Dr. Lorain prove malice, when it ought to have been left to the jury to find the fact what the motives of Dr. Lorain were.

7th. The Court erred in charging the jury, that the plea of justification was applicable to the whole letter, because it was set out in the decleration in one count,—the letter, says the Court, with all its charges is one libel, and cannot logically have any other application,—when the Court ought to have allowed the defendant to give in evidence, matters in mitigation of damages of such parts of the libel he did not prove to be true, and should have charged the jury accordingly.

8th. The Court erred in stating to the jury, that if they were satisfied that the more and grave and important charges were true, and having failed to give any evidence concering the others, the damages should be apportioned, and

that the jury were to seperate its parts, and to consider it inits details in view of the evidence, and for purpose of damages.

The Court should have charged the jury, if they were satisfied that the more grave and important charges were true, and proved, that then the plaintiff failed in making out that he was a respectable physician, especially in the art and mystery of midwifery, as laid in his declaration, he would be entitled to nominal damages, more especially if the jury were satisfied that the Jefferson College refused him an examination on acceunt of the above mentioned grave and important charges.

9th. The Court erred in their charge to the jury, that Doctor Lorain charged that he kept a school in Pennsylvania. The charge in his letter was generally without saying where, and the proof was that Dr. Hills had kept school in the State of New York.

10th. There is a substantial error in the whole charge, which lead the jury to believe that they might give full damages for that part of Dr. Lorains letter not proved to be true, without reference properly to the fact, that the graver portions were proved to be true.

11th. That the Court erred in charging the jury "that Dr. Lorains letter said, that Dr. Hills had obtained only the reputation of a Quack Doctor."

12th. The Court erred in laying down to the jury, that it was shewn that Dr. Lorain sold Patent medicines himself and did not consider it inconsistant with his character as a respectable physician to do so, when there was no such evidence offered on the trial of the cause.

13th. The Court having admitted the second letter of Dr. Lorains in evidence, should have allowed the defendant to prove the truth of its contents, on evidence in mitigation.

JOSIAH W. SMITH,
JAMES T. HALE,
Attorney's for Dr. Lorain, Plain,iff in error.