Report of the trial, Cooper versus Wakley, for libel / from the notes of W.B. Gurney, Esq. ; with remarks on the evidence by Bransby B. Cooper.

REPORT

OF

THE TRIAL,

COOPER *versus* WAKLEY,

FOR LIBEL.

FROM THE NOTES OF

W. B. GURNEY, ESQ.,

SHORT-HAND WRITER TO BOTH HOUSES OF PARLIAMENT.

WITH REMARKS ON THE EVIDENCE,

By BRANSBY B. COOPER,

SURGEON, AND LECTURER ON ANATOMY AT GUY'S HOSPITAL.

LONDON:

PRINTED FOR S. HIGHLEY, 174, FLEET STREET;

AND WEBB STREET, MAZE POND, BOROUGH,

D. LIZARS, EDINBURGH; AND HODGES AND SMITH, DUBLIN.

1829.

PRINTED BY GUNNELL AND CO., 13, SALISBURY SQUARE.

PREFATORY REMARKS.

The novel circumstance, in the trial of an action for libel, of the defendant commencing with his case, and thereby obtaining the advantage of a first impression, makes it necessary to request the attention of the reader to a short statement, before he enters upon a perusal of the following pages.

Mr. Bransby Cooper entertained, and had, without reserve, expressed opinions very unfavourable of the science, the candour, and the moral rectitude of the publication called the Lancet. He had reason to believe that an individual, who possessed the privilege of attending at Guy's Hospital, had used that privilege for the purpose of making communications to the author of that work. He was not however aware, before the fact was disclosed at the Trial, that such communications were made the subject of pecuniary traffic. Upon more than one occasion he had noticed the conduct of that individual in terms of marked disapprobation, and had thereby, as he was informed, given rise to very vindictive feelings, denoted by a declaration which it will be seen in the following pages, that the individual alluded to, would not deny upon his oath, that " he would watch some opportunity to make Mr. Cooper repent." That opportunity was supposed to present itself upon occasion of a very peculiar and difficult case of lithotomy, in which Mr. Cooper was called on to operate at Guy's Hospital. The design to publish the case was first

announced by an offensive notice in the Lancet. In the following number the promised report appeared, cast into something of a dramatic form, and combined with sundry touches of drollery and ridicule, very singular, considering the nature of the subject; but consistent enough with the motives of the reporter. The article in the Lancet, to invite the attention of the public, was announced on the day of its publication by two of the morning papers. The design of this report was, to insinuate that Mr. Cooper had failed to reach the bladder of the patient in his first attempt with the knife; that he consequently failed in his first attempt to reach it with the forceps; that he lost his presence of mind; that his second attempt with both knife and forceps, was equally unsuccessful; that he then used the cutting gorget without reaching the bladder; that the knife, the forceps, or the gorget, and probably all of them, had been thrust between the bladder and the rectum; and, finally, that the parts, upon examination after death, exhibited appearances which confirmed these insinuations. Had they been true, Mr. Cooper must indeed have been deficient in the most ordinary degree of skill and science in his profession; a degree of skill and science which no surgeon, educated at a considerable hospital, can fail to possess, unless there be some defect in his intellect, or his senses. But the insinuations were, one and all, entirely false and groundless. A contradiction of them was published, unknown to Mr. Cooper, by a considerable number of the pupils, who had been present at the operation, and were indignant at the misrepresentation. This gave occasion to a second publication in the Lancet, in which the death of the patient was, in distinct terms, ascribed to the want of skill in the operator. Moreover, he was declared to be generally incompetent in his profession, and unworthy of his station, as Surgeon at Guy's Hospital; his appointment to which, was charged to be owing to his connexion with

Sir Astley Cooper, and a corrupt influence exercised in his favour amongst the governors of that institution.

These libels form the ground of the action which Mr. Cooper thought it due to his reputation and his honour to bring against the editor of the Lancet. The Defendant, by his pleas, admitted the publication, and did not deny the motives alleged for it, but undertook to prove the truth of what he had asserted. His failure, and the verdict of the jury for the Plaintiff, are known. But the garbled manner in which the evidence has found its way to the public, and the impression which may possibly be made by the singular accident of the Defendant's case being first published, without the least intimation, much less explanation of the Plaintiff's, induces him to lay before the reader a full account of the trial, taken in short-hand by Mr. Gurney. This is the only method left, imperfect as it is, of imparting to the reader something of that full conviction and lively indignation which, with the exception of the Defendant, and a few of his adherents, animated the whole of a most intelligent audience, who heard the trial, and who confidently expected much larger damages than the jury, after the very proper exhortation of the judge to moderation and temperance, thought it right to give. Mr. Cooper was always indifferent to any amount of damages beyond what might be sufficient to mark the clear opinion of the jury. He is well satisfied with their verdict. They consisted of ten special and two common jurymen. He has nothing further to say upon that subject, except that he would have preferred a full special jury ; not because he imagined that any honest man, who heard the evidence, could entertain a doubt of the malice or the falsehood of the libels, but because he was aware that the character and system of the defendant's work made it less likely to find favourers and supporters in proportion to the science, the taste, and the refinement of those who might sit in judgment upon the

particular parts of it in question. To members of his own profession, or to persons of general science, he need not appeal: they well know how to estimate the skill and competency of the witnesses who were brought to speak against him, as well as their veracity and integrity. But he trusts, and believes, that every reader who bestows his candid attention upon the following pages, will be fully satisfied that every one of the insinuations and assertions to his prejudice, contained in these libels, has been fully, completely, and satisfactorily refuted, not only by the evidence adduced on his part, but, in a great measure, by the most credible witnesses for the Defendant.

Finally, he thinks it must also appear to those who will take the trouble to weigh the whole case, with attention to all its parts, that, to accomplish his ruin, was the object of a conspiracy, in which ignorance and malice took the lead, and were followed by fraud and falsehood. To the members of his own profession, who voluntarily and cheerfully came to his aid, he cannot adequately express his grateful sense of their conduct. He feels a conscious pride and security from injury, not only in the testimony of those distinguished and honourable persons who were called as witnesses on his behalf, but in the zeal and kindness of many others, well known and highly esteemed by the public, who did him the favour to attend, and who would have been requested to give their evidence, but for the lateness of the hour, and the opinion of his counsel that it was not expedient to fatigue the Court with further examinations. He can never forget what he owes to them, or that the best manner of discharging the obligation is to exert his efforts with theirs to elevate and adorn their common profession, not only by the improvement of art and the cultivation of science, but by the love of truth, and the practice of liberality and candour.

CONTENTS.

ERRATA.

Page 74, *line* 12, *for* Harwich, *read* Norwich.
79, *line* 27, *for* impudence, *read* imprudence.

In the King's Bench.

WESTMINSTER HALL,
December 12th, 1828.

COOPER *v.* WAKLEY.*

TRIED BEFORE LORD TENTERDEN AND A SPECIAL JURY.

THE following Special Jurymen answered to their names:—

THOMAS HENRY, Merchant.	EDWARD BURN, Merchant.
HENRY LAING, Merchant.	BURRAGE DAVENPORT, Merchant.
RICHARD PRANCE, Merchant.	JOHN OLIVER HANSON, Merchant.
G. MARCELLUS ROCHER, Mercht.	DUNCAN M'LACHLAN, Merchant.
HUNTLEY BACON, Merchant.	ISAAC WESTMORELAND, Merchant.

Talesmen.

JOSEPH THOMAS, JOHN WHEELER.

Counsel for the Plaintiff.

Sir JAMES SCARLETT, Mr. POLLOCK, Mr. SCARLETT.

Solicitors for the Plaintiff—Messrs. PATERSON and PEILE.

Solicitors for the Defendant—Messrs. FAIRTHORNE and LOFTY.

The Jury were sworn.

The Pleadings were opened by Mr. SCARLETT.

Sir James Scarlett.—Your Lordship will allow me to state, that in this case some of the affirmative issues are thrown upon the Plaintiff, who is to prove his own skill, although there is no general issue.

Lord Tenterden.—Which are those issues?

Sir James Scarlett.—I will state them to your Lordship.—"The Plaintiff then and there performed the said operation in an unskilful and unsurgeon-like manner, and did then and there," it is the fourth plea, "by such unskilfulness, cause the said patient a much greater degree of pain and suffering than he would otherwise, and but for that cause, have incurred."—My Lord, it is quite clear that the one is skill, and the other want of skill; and, independently of that, as the object of this case is to recover damages not liquidated, I apprehend the Plaintiff has a clear right to begin.—The third plea is this—

Lord Tenterden.—I wish the particular passage of the fourth plea to be pointed out?

Sir James Scarlett.—The third plea is, "That he was a much longer time

* The Libels, forming the subject of this Action, were read by Lord Tenterden, and will be found in his Lordship's Address to the Jury.

than was necessary or proper, or than a skilful surgeon would have occupied in that behalf, and that Plaintiff then and there performed the said operation in an unskilful and unsurgeon-like manner, and did then and there, by such unskilfulness, cause the said patient a much greater degree of pain than he would otherwise, and but for that cause, have incurred."

Lord Tenterden.—That is in the third plea?

Sir James Scarlett.—Yes, my Lord—" And but for that cause have incurred, and that it was and is doubtful and questionable whether the death of the said patient was caused by such unskilfulness as aforesaid."—No one of the pleas is a good plea.

Lord Tenterden.—" That the Plaintiff performed the operation of lithotomy, and therein occupied a longer space of time, to wit, fifty minutes." That is an affirmative allegation that he occupied a longer space of time than was necessary?

Sir James Scarlett.—That is either affirmative or negative.

Lord Tenterden.—" Or proper or than a skilful surgeon would have occupied in that behalf, and that the Plaintiff performed the operation in an unskilful and unsurgeon-like manner, and did then and there by such unskilfulness, cause the patient a much greater degree of pain and suffering than he would otherwise."—What does the Defendant say?

Sir James Scarlett.—I would add that this is peculiarly a case in which the damages are unliquidated.

Lord Tenterden.—I do not understand that you propose to offer any special evidence of damage; indeed till the issue is tried, the question of damages does not arise.

Sir James Scarlett.—If your Lordship casts your eye over the pleas, you will see no one is good.

Lord Tenterden.—That I cannot say, sitting here now. If they had been demurred to sitting where I do now, I might have had to give an opinion.

Mr. Pollock.—Will your Lordship allow me to say one word upon the discussion that took place at Guildhall the other day? It may be recollected it was held that whenever the question of damages is clear and certain, and where the Court would refer it to the Master, as upon a bill of exchange, then if the affirmative be upon the Defendant he would be entitled to begin, but where the damages are unliquidated and at large, and not depending upon the nature of the pleadings, but upon the evidence to be given, that the Plaintiff has a right to begin.

Mr. Wakley.—My Lord, I have three cases before me, that, I believe, will at once entitle me to open this Cause, and I am happy certainly in this case to have the opinion of Sir James Scarlett on my side; he was Advocate in this Cause in the book now before me.

Lord Tenterden.—Never mind that.

Mr. Wakley.—The first is in 3d Campbell, the case of Hodges v. Holder, page 366; " Declaration in the usual form, for breaking and entering Plaintiff's closes, and with horses and carriages treading down the grass, and subverting the soil, &c. The Defendant pleaded as to coming with force of arms, and whatever else was against the peace of our Lord the King, not guilty, and as to the residue of the trespasses, a right of way which was traversed by the replication, and thereupon issue was joined. The pleadings

being opened, a question arose which party should begin. The right was claimed for the Defendant, as he did not deny the trespasses, and was bound to make out his justification. For the Plaintiff it was contended, on the other hand, that not guilty having been pleaded to part of the declaration, the issue lay upon him." Judge Bayley held——

Lord Tenterden.—The Defendant was allowed to begin?

Mr. Wakley.—He was, my Lord.

Lord Tenterden.—Mention shortly the other cases.

Mr. Wakley.—The other is in 2d Starkie, Jackson *v.* Hesketh, " Trespass for breaking and entering the Plaintiff's closes. After the pleadings had been opened, it was insisted by the Counsel for the Defendant that he had a right to begin."

Lord Tenterden.—There were some other pleas.

Mr. Wakley.—" And for a further plea in this behalf as to the breaking and entering the said closes of the said Plaintiff, and with feet in walking, treading down, trampling upon, consuming and spoiling the grass and corn of the said Plaintiff there growing and being in the said close, &c., and then proceeded to justify the alleged trespass under a public right of way, upon which issues were joined."

Lord Tenterden.—That was a right of way?

Mr. Wakley.—Yes, my Lord. " After the pleadings had been opened, it was insisted by the Counsel for the Defendant that he had a right to begin, since the affirmative of the issue lay upon the Defendant to prove the right of way as alleged in the plea. The practice in ejectment was referred to as analogous to the present; there, if the Lessor of the Plaintiff claimed as heir at law, and the Defendant as devisee, and the Defendant admitted that the Lessor of the Plaintiff was the heir at law, the Defendant was entitled to begin. Mr. Serjeant Cross, Pell, and Starkie for the Plaintiff contended that he was entitled to begin, and to make the general reply according to the usual practice."

Lord Tenterden.—He was allowed to begin?

Mr. Wakley.—Yes, he was, my Lord. There is another case still more strong, where Judge Bayley remarked, that the question of damages did not arise till after the issue was tried, and although the learned gentleman states, in this case, that in those cases where the damages are certain, the affirmative issue rests with the Plaintiff, it does not appear to me that the damages are yet certain at all, but, on the contrary, that there will be no damages at all; and I hope the practice of the Court will not be reversed in this case. The other case is in 1st Ryan and Moody's Reports, page 293, Bedell *v.* Russell—Trespass. The declaration contained several counts for assaulting, beating, and shooting at the Plaintiff on divers occasions; pleas, (without the general issue) that Plaintiff was a mariner on board a certain ship of which the Defendant was commander, that the Plaintiff at the said times when, &c. was engaged in mutiny, to suppress which the Defendant committed the trespasses complained of; *replication, de injuria*, and generally to all the pleas and issues thereon. The pleadings having been opened, it was insisted by Wilde, Serjeant for the Defendant, that he had a right to begin, inasmuch as the affirmative of the issues lay upon him, namely, to prove the facts alleged; and he cited Hodges *v* Holder, 3 Campbell, 366. Jackson *v.* Hesketh, 2 Starkie, 518.

Lord Tenterden.—Those are the other cases?

Mr. Wakley.—Your Lordship will permit me to read the observation of Lord Chief Justice Best. "But for the authorities cited I should certainly have thought that the onus of proving the damages sustained gave the Plaintiff a right to begin; but it is of the utmost consequence that the practice should be uniform. I shall consider myself bound by those cases until the matter shall be settled in full Court." I am informed that this matter in full Court has not been decided otherwise, and I trust, in conformity with the practice of the Court, I shall have the opening of this cause.

Sir James Scarlett.—The question I proposed to your Lordship was, that upon these pleadings, the affirmative issue is not of necessity cast upon the Defendant; and to that he has made no answer. He has only cited cases to show that the party is to begin upon whom the affirmative issue is cast. If the issue is skill or no skill, if it is taken in the literal sense, he who alleges the skill is to prove the affirmative. Whether a man be dead or alive, upon whom does the affirmative issue lie? One man may prove he is alive, and the other dead. But, in all these cases, the Plaintiff cannot be deprived of his right to begin, if the issue be of such a nature that he may give evidence affirmatively upon it. Here is a case in which the Plaintiff complains of a wanton attack upon his character for want of general skill, not merely for want of skill in a particular case, but a general attack, and the defendant puts in issue whether or not he did exhibit a sufficient degree of skill in the operation, and generally whether he is a man of competent skill, and not only does he insinuate that he is not a person of competent skill, but that he holds his situation owing to corrupt influence; therefore the questions whether he is a person of competent skill, and whether he performed this operation with competent skill, are cast upon him who, by these pleadings, is compelled to give evidence in support of these allegations which the Defendant has called upon him to prove by denying his skill in the operation, and generally.

Lord Tenterden.—What part of the record do you rely upon as to the general want of skill?

Sir James Scarlett.—Almost the whole of the first and second pleas.

Lord Tenterden.—That is by inference. That is not a distinct allegation.

Sir James Scarlett.—To find out the issues you must run through the whole. He says, "The Plaintiff was not so appointed as last aforesaid, on account of the superior fitness of him, the Plaintiff, for the office, but by and through the personal and private influence of Sir Astley Cooper."

Lord Tenterden.—I think that is an affirmative that lies upon the Defendant.

Sir James Scarlett.—Yes, perhaps it may, which I shall give him. There is a long detail; but it is sufficient to give any one part.

Lord Tenterden.—If there be any one part it will do.

Sir James Scarlett.—In the second plea he says, "The said Plaintiff did not perform the operation with that degree of skill which the public has a right to expect from a Surgeon of Guy's Hospital; that the case did not present such difficulties as no degree of skill could have surmounted (that is a negative throughout,) in less time or with less disastrous consequences, and that the patient lost his life, not because his case was really one of extraordinary difficulty, but because the Plaintiff performed the operation upon him as

aforesaid." That is a direct allegation of negative propositions throughout in their nature. In the case before Lord Chief Justice Best, your Lordship observes, his opinion was in the case of damages, and more especially unliquidated damages he should have thought upon principle the Plaintiff should begin; but he imagined the cases were the other way; that where the affirmative was upon the Defendant, the Defendant should begin. It is highly expedient that general observations in reply should be made by the party who seeks redress, and not by the party who publishes a second time, and in the most solemn form, the original calumny.

Lord Tenterden—(To the Defendant).—You should direct your attention to the particular point that Sir James Scarlett suggests, as one of the grounds upon which he contends the Plaintiff should begin. He states that, looking at those pleas, there are certain parts in them of which it is incumbent upon him to prove the affirmative. I want you to direct your attention to these parts of the pleas; and, in order that you may do so with greater facility, I was going to direct your attention to the particular parts of the particular pleas that Sir James Scarlett has relied upon, considering that you might not be so well aware of them. First, turn to your second plea of justification; there you find you allege "that the operation was a melancholy exhibition, and was performed by the Plaintiff without proper and sufficient skill, dexterity, and self-possession, and that the Plaintiff did not perform the operation with that degree of skill that the public had a right to expect from a surgeon of Guy's Hospital; that the said case did not present such difficulties as no degree of skill could have surmounted in less time or with less disastrous consequences; and that the patient lost his life, not because his case was really one of extraordinary difficulty, but because the Plaintiff performed the operation upon him, as aforesaid." That is one. Now turn to the next plea, that is this: "The Plaintiff performed the operation of lithotomy, and therein occupied a long space of time, to wit, the space of fifty minutes; being a much longer time than was necessary or proper, or than a skilful surgeon would have occupied in that behalf; and that the Plaintiff performed the operation in an unskilful and unsurgeon-like manner, and did then and there, by such unskilfulness, cause the said patient a much greater degree of pain and suffering than he would otherwise and but for that cause have incurred; and that it was and is doubtful and questionable whether or not the death of the said patient was caused by such unskilfulness, as aforesaid. He points attention also to this passage in the fourth plea, "That the Plaintiff performed the operation in an unskilful and unsurgeon-like manner, and did there, by such unskilfulness, cause the said patient a much greater degree of pain and suffering than he would otherwise have done." Sir James Scarlett contends upon these issues the affirmative is with him to prove that he did perform the operation in a skilful manner, and not in an unskilful manner, as you call it.

Sir James Scarlett.—Yes, I say that the Plaintiff must prove his skill, which I am ready to do.

Lord Tenterden.—You must address yourself to these points.

Mr. Wakley.—In reply, I would say first, that the Plaintiff has not stated in his declaration that he is a scientific surgeon; and further, he has not stated it was scientifically performed. He charges me with having published

an account of a supposed operation. I shall prove it was a real operation. If in answer to his charge I had pleaded the general issue, then I admit the affirmative must have remained upon Sir James Scarlett; but in the present case it is entirely with me, unless language is altogether perverted. I charge the Plaintiff with unskilfulness, and I came here, I believe, prepared to prove it. If Sir James Scarlett is prepared to prove the reverse, there will be a different decision than I anticipate. I do not think there is a single question that can be tolerated for a moment, that the affirmative lies upon the Plaintiff. I charge unskilfulness, and I say the operation was not performed in a manner that the public had a right to expect. I plead no general issue; and it appears to me, that the affirmative of the whole of the issues lies with me. If it should be proved the operation was unskilfully performed, there will be no question of damages, and the Plaintiff has sustained no injury; or if he has, it is only what he ought to sustain for the unskilfulness he exhibited.

Lord Tenterden.—As the decision of this point may be hereafter quoted as a precedent, and as I have an opportunity of consulting two other of the learned judges, I wish to avail myself of it.

His Lordship left the Court, and returned in a short time.

Lord Tenterden.—I am of opinion that the Defendant in this case has a right to begin. The general rule has been established by many cases, that the party upon whom the affirmative lies is the party first to begin, and one at least of the cases in which the rule was established was a case in which the Plaintiff would have to get damages at the hands of the jury. I allude to the case particularly of Bedell *v.* Russell, a case of trespass and assault, in which the damages would be unliquidated, and entirely for the consideration of the jury, if the Defendant did not prove his justification. It has been contended that in this particular case there is an affirmative allegation, which it is incumbent upon the Plaintiff to prove; and, if that were clearly so, it might take the case out of the general rule, or rather bring it within the rule. The rule that the party who complains should begin, would give it to the Plaintiff, provided there was any thing upon these issues which the Plaintiff was bound to prove: but upon reading them, it appears to me there is nothing of that kind in them. The Plaintiff must be presumed, till the contrary is made out, to have acted, as every body is presumed to do, with proper skill and care in the profession he exercises. No man is to be presumed to have misconducted himself; and when the Defendant alleges, that the Plaintiff, in a particular operation, employed a much longer time than was proper, or than a skilful surgeon would have occupied, it appears to me that it is incumbent upon the Defendant to prove that the Plaintiff did employ a much longer time than a skilful surgeon would have occupied; and when the Defendant alleges that the Plaintiff performed the operation in an unskilful and unsurgeon-like manner, I think it is incumbent upon the Defendant to sustain his plea, and to prove that the operation was performed in an unskilful and unsurgeon-like manner. So when he alleges that much greater pain and suffering was occasioned to the sufferer, that is an affirmative upon him. I need not go through the other parts, they appear to me to be all to the same effect in the view I take of the pleadings. I take it that it is incumbent upon the Defendant to make out the truth of these allegations by evidence on his part; and until that is done, that

the Plaintiff is not called upon to give any evidence upon the subject. If the Defendant should fail in doing that, the Plaintiff will be entitled to a verdict.

Sir James Scarlett.—I acquiesce, as I always do, in your Lordship's judgment, but there is one consequence that may result, which it is my duty to state. Suppose it should happen, which I have no doubt will happen, that this gentleman's whole case, if he attempts to make it out, will fall to pieces. My Lord, I shall then take the liberty of insisting on behalf of the gentleman who has been calumniated, that his evidence may be heard, which will prove most satisfactorily, that the operation was performed with the utmost possible skill under the circumstances, and that I shall not be satisfied on behalf of a gentleman of high honour and unspotted reputation in his profession, and with the public, to have it said, that some particular part of a special plea was not proved, and that the case was not further inquired into, and that the Jury are only to ask themselves what damages they are to give. When a man publishes a libel, and justifies it, the Plaintiff ought to have an opportunity of proving in a Court of Justice, that the calumny is wholly unfounded, which will not be the case if the verdict is to pass merely because the Defendant fails to prove his plea. If the Defendant fails, I trust I shall not be told, " you must have your verdict, address yourself to the damages." I hope your Lordship will let me give my evidence, which is here to support a character hitherto unattacked.

Lord Tenterden.—It would not be proper for me to anticipate what may be fit to be done, or not to allow to be done in a future stage of the cause; all I have to do is to hear the point argued, and then give my opinion upon it. I intended to have added before, that both of my learned Brothers in the adjoining court, concur with me in the view I stated.

Mr. Wakley.—As this is a cause of immense importance to every party, and of a very peculiar nature, I am under the painful necessity of requesting that the witnesses on both sides should withdraw.

Sir James Scarlett.—The witnesses to facts, if the Defendant insists upon it, should withdraw, but many witnesses are here to give an opinion upon facts to be proved.

Lord Tenterden.—They must stay; they are to hear the evidence, and to give an opinion upon it.

Sir James Scarlett.—The witnesses to facts may withdraw.

Lord Tenterden.—The witnesses to give an opinion upon facts to be proved must remain.

Sir James Scarlett.—I have no objection to my witnesses withdrawing who are to prove specific facts.

Mr. Wakley.—All the facts alluded to are printed and written, they are in the declaration, and if witnesses are to be called to speak to any particular facts———

Lord Tenterden.—They will be to speak to the evidence.

Sir James Scarlett.—The Defendant assumes the libel to be true.

Lord Tenterden.—Persons to give an opinion upon the evidence, as matters of science and skill, must be allowed to stay and hear the evidence; all who are to speak to facts must withdraw.

Mr. Wakley.—It might be put in this way, as to particular passages, assuming it to be true, or assuming it to be false. What is your opinion?

Lord Tenterden.—No; that is not the way.

Mr. Wakley.—I hope all the witnesses to facts may withdraw.

Lord Tenterden.—I have said so; but the witnesses to give an opinion must remain, as they are to give an opinion upon the facts proved.

Sir James Scarlett.—Give me a list of yours, and I will give a list of mine; this does not apply to witnesses who are to speak to facts not connected with the libel; such as the education and competency of the Plaintiff.

Lord Tenterden.—No; not on either side.

Mr. Wakley.—I am incapable of drawing a distinction; I will allow them to remain.

Lord Tenterden.—You do not wish any to withdraw?

Mr. Wakley.—No, my Lord.

Lord Tenterden.—Very well.

Mr. Wakley.—May it please your Lordship; Gentlemen of the Jury:—You have already heard from the learned Gentleman who has opened the pleadings, that this is an action instituted against me, as the Editor and Proprietor of the "Lancet," for an alleged libel upon his client's professional character. It is stated, that I have published a Report of a supposed operation at Guy's Hospital, falsely and maliciously; and it is inferred from the declaration that no such operation was performed in that institution, and that what I have published is nothing more nor less than a gratuitous calumny.

Guy's Hospital, Gentlemen, as you must be aware, is an institution of very great importance, not only as an institution of charity, but one from which it is expected that there should emanate the first principles of our profession, as practised in the very first and best manner. It has attached to it an extensive medical school, and there is a very large assemblage of students; the practice which the students witness in that institution, is necessarily adopted by them in the most distant parts of the kingdom; hence it is of the utmost importance to the public welfare, that the practice there should be safe, and in every respect calculated to promote the interest of the public, and alleviate as far as possible the sufferings and miseries of mankind.

Guy's Hospital was founded solely by one individual, Thomas Guy, who died, I think, in the year 1722 or 1724, and who at the same period left to the institution a sum of money equivalent to £200,000, consequently the revenues of the institution at this period, from the increase of the value of money, must be really immense; of course it became of the utmost importance that its funds should be appropriated in a proper manner, that individuals of the greatest skill should be elected to perform the duties of the hospital, both medical and surgical, and that it is not fair that such an institution should be conducted on any other principles than those calculated to fulfil the intentions of the founder, and to be of the greatest benefit to the public.

Gentlemen, Mr. Cooper, the Plaintiff, is one of the persons elected in that institution, to fulfil the duties of surgeon; and in the performance and execution of those duties he performed the operation, an account of which is published in the 239th number of my journal. I should state to you that the "Lancet" was projected and first published by me in the year 1823; I consi-

dered that by publishing the lectures delivered in public institutions—lectures that I considered public property, because the individuals who published them were public servants, I considered it of immense importance to place in contrast the theories of the lecturers in the lecture room, and the practice of the same individuals in the wards of the hospital; by so doing the lecturers themselves were stimulated to the more active discharge of their duties, and their opinions were laid before the public, and the experienced portion of the public had an opportunity of seeing what the talents of the lecturers were, and whether the practice adopted in the wards was practice to be followed, or practice to be neglected.

The publication of lectures has given rise to a good deal of discussion in some other courts of law—the publication of Hospital Reports has always had a great number of advocates and opponents; the public, and the profession in general, are the advocates of the practice, and the hospital surgeons, who have not sufficient talent to endure the scrutiny of public opinion, are exceedingly opposed to it, because they find they cannot hack and hew their fellow creatures with impunity.

Gentlemen, in the conduct of this journal I am under the necessity of employing a great many gentlemen as reporters; they are distributed throughout the metropolis, in the various institutions, to take notes of the cases admitted, and carefully reporting their minutes, connected with the treatment such patients receive. The reporters I have employed, as far as I am capable of judging, and I have always sought after honourable men, have fulfilled their duty in an honourable and talented manner; the reports are sent to me, and relied upon by me, as I am compelled to do; for, like all other editors, it is impossible I can be at St. George's, Guy's, and St. Thomas's Hospitals at the same time. I employ many of those gentlemen, and they transmit to me regularly reports of those cases.

The report sent to me in this case, was sent to me by a gentleman of high character, whom I shall call ; he will avow himself to have written it, and will state that the report is in every respect correct; that gentleman will acknowledge it in open Court, and I challenge my opponents to the most strict and scrutinizing investigation of his character. I have heard indeed that attempts will be made to cast some imputation upon that young man, but I defy calamny, and I challenge scrutiny. However, Gentlemen, you will yourselves be the best judges whether this evidence is entitled to credit or not; but when this report was transmitted to me, as it was made regarding so extraordinary a character, and as it referred to an operation of a still more extraordinary character, I paused before I inserted it: I waited, I did not insert it in the first number after the operation occurred; I waited until the period had arrived for publishing a second number. When this report was brought to me, it certainly contained the same statements against the operator, rather more harsh than those which appeared; that gentleman considered it was his duty to characterize such an operation in the strongest terms of reproach: and, Gentlemen, as he assured me upon his honour, before I gave currency to the report, that it was in every respect correct, I had no other course to pursue in the discharge of my public duty, whatever the consequences might be, than to present it to the profession and the public in the manner I have presented it, having slightly altered a few of the expressions, and having introduced the

phrase, "nephew and surgeon, and surgeon because he is nephew;" I believe I introduced that line only.

Gentlemen, I shall not detain you longer at present, because I have no doubt I shall have another opportunity of addressing you, and that my case will not fall to pieces as my opponent supposes; I rather think he will have an ample opportunity afforded him of producing his witnesses, and he will have an ample scope to give all the evidence he can adduce as to the skill of this Mr. Bransby Cooper; therefore I may appease the learned Gentleman's fears at once, because I shall not flinch from that which I conceive to be my duty. If it should appear—if it should by possibility be proved that this report is untrue, there is nothing would give me greater regret than to have published any calumnious statement as to Mr. Bransby Cooper, or any other individual. It is not by exposing such operations as these we injure the profession, it is inflicting the deepest injury upon the profession, when men come forward, and boldly in the face of the public, sanction such proceedings as give a stain to the profession, which ages are scarcely able to remove; men who will come forward and swear that this operation was performed skilfully, I know not what they will swear, you must infer that they were sufficiently ignorant to have performed the operation in a similar manner themselves. With these observations I shall leave the case in your hands at present; I shall call a number of witnesses who will prove that this report is in every respect correct; and if it be so, I shall be entitled to your verdict.

EVIDENCE FOR THE DEFENDANT.

Mr. Alderman PARTRIDGE, *sworn.—Examined by Mr.* WAKLEY.

Where do you reside?—Colchester.

Are you a member of the College of Surgeons?—Yes.

You are in practice at Colchester?—Yes.

How many years have you been in practice?—Fourteen years.

Have you seen many operations for lithotomy?—Yes, I have.

Have you performed the operation yourself?—Yes, I have.

How many times?—I really cannot say, I suppose about eighteen or twenty times; I would not say to one or two.

Did you witness the operation of lithotomy performed by Mr. Bransby Cooper, at Guy's Hospital?—Yes.

In March last?—Yes.

Have you read the report of that operation in the "Lancet?"—Yes, I have.

Is that report correct?—It struck me at the time as being correct, and I have not had any particular cause that I am aware of to alter my mind about it; I did not examine it very thoroughly.

Can you point out any material inaccuracy in that report?—Why, the report now verbatim has gone from my mind; but in the general, I cannot.*

Did the patient appear to you a healthy man?—He certainly struck me when I went into the theatre as a very healthy man, and I made the remark at the time.

* The reader will judge whether this assertion, that the report was correct, was not at least a rash assertion, when the evidence is compared with itself.

Of his years he appeared a fine healthy countryman?—It struck me so.*

Did Mr. Cooper or Mr. Callaway introduce the staff?—I will be hanged if I can bear that in mind; I think Mr. Cooper did himself, but I would not be positive.

Was the staff, after the external incisions had been made, withdrawn?—All the instruments were withdrawn immediately.

Was a second attempted to be made into the bladder, without the re-introduction of the staff?—The first attempt was made without the staff.

Lord Tenterden.—Was the second cut attempted to be made, or was it made?—It was made. I speak of the first attempt, or the first effort, after all the instruments were withdrawn.

A model was produced.

Mr. Wakley.—Was that the position of the patient?—The head and body more elevated.

And the hands and feet were tied in this way?—Yes.

And the knees were tied to the neck in this way?—Yes.

And in this position the patient remained nearly one hour?

Lord Tenterden.—You are making him assert that.

Mr. Wakley.—How long did the patient remain in this position?—It must have been nearly an hour from the notice I took going in and coming out.

During that period was the sound repeatedly introduced?—Yes.

Lord Tenterden.—The sound is an instrument.

Mr. Wakley.—Yes. Several of these staves or one?—One several times I should say.

Were several cuts attempted to be made into the bladder with a knife of this description?—*(exhibiting one).*—Yes, certainly; I do not know whether with a knife of that description.

Was this instrument pushed into the wound that the operator had made; the cutting gorget?—

Sir James Scarlett.—These are leading questions from the beginning: but I will not object.

Mr. Wakley.—I will put them in any way.

Lord Tenterden.—The proper course is to ask what was done.

Mr. Wakley.—Was the cutting gorget introduced?—Yes.

Was the blunt gorget used also?—Yes.

Was the scoop introduced?—Yes.

Were several pairs of forceps introduced?—I noticed two pairs, the straight and curved.

Lord Tenterden.—You noticed the introduction of them?—Yes.

Sir James Scarlett.—You do not mean at the same time?—No.

Mr. Wakley.—One is enough for the occasion. Did the patient manifest great pain during the introduction of those instruments?—He called out during the operation several times to desist.

Did he request to be loosened?—He did to that effect: he desired that Mr. Cooper would leave off, and desist altogether.

Did the operator at the same time declare he could not explain the difficulty?—Yes.

* As to the patient's state of health, and his being a favourable subject for the operation, see the evidence of Mr. Callaway.

Lord Tenterden.—You must ask what he said.

Mr. Wakley.—What did the operator say during the operation?—He declared more than once I think, but once certainly he could not explain the difficulty—that he could not explain what the difficulty was, I think, was the expression.

Did the operator appear hurried and confused?

Lord Tenterden.—How did he appear? You appear to be a man of intelligence—you know how to put your questions.

Mr. Wakley.—How did the operator appear?—He appeared to me certainly perplexed, and vexed, and hurried, in consequence of the long delay.*

Did he appear to act with any regular purpose?

Lord Tenterden.—Answer the question.—Put it again.

Did he appear to act with any regular design?—Not with what I call a scientific design for extracting the stone.

Mr. Wakley.—Did he introduce his finger with great force?

Lord Tenterden.—Did he introduce his finger, and how did he introduce it? If you make it necessary for me to be constantly interrupting you, I must desire that all the questions shall be put through me.

Mr. Wakley.—I am sorry to be guilty of any irregularity.

Lord Tenterden.—I have told you more than once.

Mr. Wakley.—How did he introduce his finger?—He exercised some force, but I suppose there was force sufficient if it was not in the bladder to divide the integuments between the rectum and the bladder; it did not strike me to be very violent, but it was with considerable force. †

How did he use the instruments?—What instrument do you mean?

The whole of the instruments.—He used them in the ordinary way of introducing them into the bladder, to endeavour to find the stone; the forceps, first one pair and then another, which he thought most likely to find the stone, and he failed for a long time—of course he varied his instruments.

Was there any force used in the introduction of the forceps?—I do not consider he did introduce the forceps the first time, if you mean that.

What was his intention in introducing the forceps?—Extracting the stone I suppose, it is what every other man would intend.

Did it appear that the forceps entered the bladder?—Not the first time, certainly not.‡

From what cause?—The impression on my mind at the moment was that the opening was not large enough for the introduction of the forceps; that the opening in the bladder was not large enough to get the forceps in.

Was there any opening in the bladder at that time?—It struck me there was, because I saw an issue of watery matter mixed with blood; a small quantity, it was not large certainly.

* That Mr. Cooper evinced no want of self-possession, is distinctly proved by Mr. Callaway.

† To shew that no improper violence was used in the operation, see the evidence of Mr. Callaway, and also that of Mr. Key, who states, that if any such had been used, the effects would have been visible after death, but that none appeared. Mr. Partridge did not see the parts after death.

‡ Mr. Callaway states in his evidence, he has no doubt whatever that the forceps entered the bladder immediately after the first incision.

Lord Tenterden.—You thought there was an opening, because you saw an issue of watery matter mixed with blood?—Yes.

Mr. Wakley.—How did the fluid escape, with a gush, or in a gradual stream?—Not in a gush, a moderate stream; not with a large gush, as it often does.

Did he say he could feel the stone with the staff, when it was passed through the urethra?—Yes, he did.

Did he say he could feel the stone in the bladder, when he passed the sound through the wound in the perinæum?—Yes, he felt the stone both ways.

Did he state at the same time that he could not feel the stone with the forceps?—Yes, or immediately afterwards.

Why do you imagine he could feel the stone with the sound through the perinæum, and not with the forceps?—For this very reason that the stone laid very high in the bladder, and the forceps were straight or slightly curved, and consequently the forceps passed under the stone.

Did Mr. Cooper repeatedly endeavour to feel the stone with his finger?—Yes, he made many attempts.

Did he leave his seat and measure fingers with a gentleman present, to see if he had a long finger?—Yes, he either left his seat, or was standing, and turned round to that person.

Do you believe, taking all the circumstances into consideration, that Mr. Cooper performed the operation in a scientific manner?—No, I could not say I thought he did, certainly.*

Do you believe that the operation was performed in a manner that the public had a right to expect from a Surgeon of Guy's Hospital?

Lord Tenterden.—One does not know what is meant by being performed in a manner that the public had a right to expect. He should perform it with sufficient skill; it is very immaterial whether he puts it in that form.

Mr. Wakley.—Those are the very words charged.

Lord Tenterden.—Yes, they are.

Mr. Wakley.—Do you think that the operation was performed in a manner that the public had a right to expect from a Surgeon of Guy's Hospital?—That operation?

Yes.—No, I do not think it was.

What has been the average time occupied in those operations of lithotomy you have seen?—I suppose about five minutes, one with another; sometimes more, sometimes less; about four or five minutes, I think that is about the time.

How long a period did this operation occupy?—I thought it was nearly an hour, and I believe it was nearly an hour.

After the staff had been introduced, and the first incision made, Mr. Cooper withdrew the staff?—He did not use that sort of staff, he used a straight staff with a knife.

* That the operation was one of great difficulty, and was skilfully performed, is proved by Mr. Callaway; whose opinion is confirmed by the evidence of Mr. Key, Mr. Brodie, Mr. Travers, Mr. Green, Mr. Morgan, and Mr. Dalrymple. The reader is also referred to the evidence of Mr. Callaway, Mr. Key, and Sir Astley Cooper, which shews, that no one but the operator can form an adequate judgment of the difficulties of an operation of lithotomy.

When the operator found that he could not introduce the forceps on the first attempt, did he withdraw them and make another cut with his knife?—Yes, surely, and made another cut with the knife without the instruments.

The staff not being introduced?—Yes, certainly.

Did you ever see a thing of the sort done before by any operator?—I have seen a great many operations, but I never took any particular notice; but it is not usual—it is not customary to do it—to make the cut without the staff.*

For what purpose is this instrument used in the operation?

Lord Tenterden.—What is the name of it?

Mr. Wakley.—A scoop.

I have always understood it to be used to extract the fragments of the stone that might have crumbled off in the extraction from the bladder.†

Were there any fragments in this case?—No, there were not, that I ever saw.

Lord Tenterden.—You saw no fragments?—No.

Mr. Wakley.—What has been the longest time you have ever seen any other operation of lithotomy last?—I am not aware I ever saw a difficult case more than twenty minutes; or, to be within the mark, twenty-five minutes or half an hour; I would not say to a few minutes; I have no recollection of any case longer than that.

You have stated the average time of performing the operation is about five minutes?—Yes, I think so; that is about the average of the time.

You have also stated you have witnessed operations of lithotomy that lasted from twenty to twenty-five minutes?—Yes.‡

In those cases were there any evident causes why the operation should have lasted so long?—Yes, undoubtedly.

What were those causes?—The causes have been, where I have seen them, from the stone being large, and it would have been dangerous to have made the wound larger, for fear of wounding the rectum, and the time has been taken up in extracting the stone gradually, for fear of tearing the parts; more to dilate than to tear.

Was it a large or small stone in Mr. Cooper's case?—The recollection I have in my mind is, that it was flat, somewhat triangular, a little larger than a common Windsor bean, which might be considered perhaps a small stone; that is the impression on my mind now.

Lord Tenterden.—You considered it not a large stone?—No, it was a small stone compared with others.

Mr. Wakley.—About what weight should you suppose the stone?—They vary in their composition.

* A cutting instrument may be used to enlarge the opening, with perfect safety, without the re-introduction of the staff, the operator using his finger as a director for such instrument:—see the evidence of Mr. Callaway.

† This instrument may also be used with propriety and success in cases of lodgment of the stone:—see the evidence of Mr. Key and Mr. Callaway.

‡ The time occupied in the operation of lithotomy is no criterion of the skill of the surgeon, and operations performed by the most eminent surgeons, have frequently been more protracted than that in question:—see the evidence of Sir Astley Cooper, Mr. Callaway, Mr. Key, Mr. Brodie, Mr. Green, and Mr. Travers.

Lord Tenterden.—Did you see it weighed?—No, I should say from a drachm and a half to two drachms; not more than two drachms certainly.

Mr. Wakley.—Have stones weighing several ounces been successfully removed?—Yes.

You stated that the stone, you thought, was lodged high up?—Yes; I do not think about it, I am satisfied it did.

How can a stone be lodged above the pubes?—It was lodged above the pubes there in consequence of the bladder lodging upon the pubes; the bladder itself rises rather above it; the natural position of the bladder is up by the side of the pubes; I think it was lodged above the pubes, in consequence of the sound hitting the stone on withdrawing it.

Can any portion of the bladder be above the pubes if the bladder be in a fit state when it is emptied?—Yes, certainly, it can be quite as high, and higher; but really that is an anatomical question that I should be ashamed if I did not answer correctly—quite as high.

It is the upper portion of the bladder—the furthest part of it?—Yes, the furthest part of it.

If the opening made in the bladder was not sufficiently large to admit the forceps, could the stone be laid hold of by the forceps without at the same time grasping the coats of the bladder?—No, not without grasping the coats of the bladder; but I very much doubt if you could get hold of it at all, unless you got into the bladder.

Whether the stone was situated high or low?—If it was situated upon the rectum you would push on and get hold of the bladder and stone and all; but that is a piece of violence I never witnessed.

I wish this point to be clearly understood by his Lordship and the jury;—you state that the stone was lodged above the pubes?—Yes, that is the impression of my mind.

Will you be so obliging as to state what could retain it there if the bladder was empty and the stone was not fastened or was not attached to the bladder.—I cannot tell you exactly what detained it there, but I am perfectly satisfied it was above, on this particular account—that the sound always touched it on withdrawing it, and it was at last extracted by pressure above the pubes and depression of the handle of the instrument, the curve being turned upwards—by using a curved pair of forceps, and by external pressure above the pubes.

Had the operator, do you consider, from the manner in which he used the forceps, any idea of the situation of the stone?—Certainly not; if he had he would have exercised that precautionary measure before, after getting into the bladder.*

Cross-examined by SIR JAMES SCARLETT.

Did you make the report to the editor of the "Lancet?"—No.

Have you attended any meeting since of Mr. Wakley and his witnesses?—I saw the attorney last night for the first time at eight or nine o'clock.

Had your opinion ever been taken upon it before last night?—Never; do you mean had my opinion ever been given to Mr. Wakley?

* That Mr. Cooper conceived the stone to be in the anterior part of the bladder, and that external pressure above the pubes was applied in an early stage of the operation, is proved by the evidence of Mr. Callaway.

Yes.—No, I never saw Mr. Wakley, nor heard him till this occasion.

A great many persons were present at this operation?—Yes, pupils; there were others.

Who was the assistant surgeon?—Mr. Callaway.

Do you know Mr. Callaway?—Very well.

Is he a man of skill?—I always thought so, and I have no reason to think the contrary now.

Did you ever know, in the course of your practice before, any case where the stone was found to rest above the pubes?—I made use of that term because it laid very high; I have met with it three or four times myself where I have extracted the stone by pressure above the pubes and depressing the handle of the forceps.

The first operation is to introduce the staff?—Yes.

What you call the straight staff is an instrument that Mr. Key uses very much?—Yes.

He was the inventor of it?—It is called Mr. Key's staff.

Do you know Mr. Key?—No, I do not know him; I think I should not know him if I was to see him, though I knew him when I was a pupil.

You know him by reputation as a man of skill?—Yes.

He is a surgeon?—Yes.

The first operation is to introduce the staff, whether straight or crooked is not now material, through the urethra and through the prostate gland and into the bladder?—Yes, it passes through the whole canal into the bladder.

The urethra passes through the prostate gland?—Yes.

The staff has a groove in it?—Yes.

For the purpose of catching the point of the knife that is inserted?—Yes; the knife is made with a point purposely to go along the groove, in some knives, but I believe this knife was used without the point.

Not the first knife?—The first knife was used without the probe point.

The cut is made in the perinæum?—Yes.

With a knife?—Yes.

And the object is to get the point of the knife into the groove of the staff?—Certainly.

When the point of the knife is inserted in the groove of the staff, it has then penetrated the urethra in some portion of it?—Yes, of course.

And then the handle of the staff is brought forward between the legs of the patient, so as to come in a position more parallel to the knife?—Yes, so as to bring it more on a line with the bladder.

And then the knife is run along the groove, when it must necessarily make a larger incision through the urethra into the bladder?—No, not necessarily so; it should do so, but it depends entirely upon how you carry the knife along the groove, whether you make a large or small angle with your knife and staff.

The object is to make a larger incision into the bladder?—Yes.

When that is done, is not the next operation to insert the finger?—The next operation would be to withdraw your knife.

Thank you, to withdraw the knife and withdraw the staff?—No, not to

withdraw the staff, only the knife; you keep the staff in and introduce your finger to ascertain the wound you have made.

If you ascertain that the wound is sufficient, (I am not speaking of this operation,) and your finger is inserted into the bladder, you endeavour to feel the stone with your finger?—Yes, I believe many would be pleased if they could, but it is not always the case.

Lord Tenterden.—Do you endeavour to do it?—Yes.

Sir James Scarlett.—If you are so fortunate, then you may direct the forceps along the finger, and take hold of the stone at the end of the finger?—You must have made a very large wound, or have a very small pair of forceps, or you would not get the finger and forceps in at the same time.

If you have occasion to make a larger incision, and your finger is in the bladder, what is the course you take then?—The course I should take if I had got my staff in, would be to withdraw my finger and introduce the knife again, and carry the knife along the groove again, and make a larger angle, and consequently a larger wound with the knife and staff then I had done before.

If the staff is withdrawn, you know the urethra is cut with the knife?—Yes.

Could you introduce the staff again through the urethra with safety?—It is all laid open, it is one wound. I could introduce it through, that it must communicate with the wound.

Suppose the staff to be withdrawn after the urethra and the bladder are opened, could the staff with propriety be introduced again through the urethra with safety?—There is no necessity.

If there was a necessity, ought it to be so introduced?—You mean commencing at the end of the penis? You might, but it would be useless.

Would there not be a chance of the staff coming out of the wound and running below?—The curved one would not.

How could you be sure of that, that the curved one would not come out?—The man that passed it out could not be aware what he was about, that is all I know.

But you are of opinion there is no occasion to introduce the staff through the urethra?—Certainly not, not through the sound part of it.

After a cut is once made, the staff operates as a sound?—A straight staff will not do it with facility.

Do not they use the staff after a sufficient incision is made, merely by way of a sound?—No, certainly not.

What is the use of it?—To satisfy yourself you have made your wound large enough, if you can withdraw it, it is of no further use. You do not want three or four instruments in the bladder at one time.

Suppose you cannot find the stone with the forceps, and want to ascertain again where it is, where would you introduce it, through the perinæal opening or through the urethra?—Through the perinæal opening upon my finger.

Whereabout did you stand when the operation was performed?—I had a chair, and sat immediately behind Mr. Cooper.

Did you know him?—I never saw him before that day.

Now I will come to the particular operation. You stated that you had no

doubt that the first incision was made into the bladder?—I have no doubt now, that is my conviction.

Do you believe that any person of competent judgment who witnessed the operation could doubt it?—As I cannot doubt it myself, I do not know how any body else can.

That is sufficient. Do you believe that the point of the knife did find its way into the groove of the staff in the first incision?—I have before said, I am convinced that it did.

I desire to ask you this question; you say you have read this report in the "Lancet?"—Yes.

When did you read it last?—It is difficult for me to tell you that; I take them in weekly, and read them as they come.

Are you a correspondent of the "Lancet?"—I told you before I had never heard of, or saw Mr. Wakley before this occasion.

You might be a correspondent with him, as they are all men of talent?—No, I never did correspond with him.

"The first incision through the integuments appeared to be freely and fairly made?"—Yes it did.—*(reading.)*

Hear me out, "after a little dissection the point of the knife was fixed (apparently) in the groove of the staff, which was now taken hold of and the knife carried onwards some where." Now look at that sentence and tell me, upon your oath, whether you do not believe, as a surgical man, that it was intended to convey a doubt whether the point of the knife did go into the staff, and whether the knife had gone into the bladder at all; "somewhere" is printed in Italics, is it not intended to convey an insinuation that the knife did not reach the bladder at all, but went somewhere?—I am not aware what his intention was.

What is the meaning of it?—I should have drawn the inference from it that he meant to convey that it did not go into the bladder, or that it might or might not; that is better.

No—somewhere means any where. Now look at what follows: you are satisfied that the fluid that passed consisted partly of urine?—I was satisfied then, and I have not had cause to alter my opinion.

Look at the very following sentence.—"A small quantity of fluid followed the withdrawal of the knife." If in this report the person who wrote it, had stated that fluid to be urine, then the original doubt of where the knife passed would have been removed from your mind?—Yes, the only criterion, the first impression is, what rushes out of the bladder is very satisfactory to every one that it must have been water in the bladder.

You say that it was your opinion at the moment, that the forceps the first time did not reach the bladder?—No, they did not.*

That is your opinion. If they reached, they did not go in?—Yes.

Can anybody be so good a judge of that as the operator himself?—I do not know, that depends upon what sort of an operator it is.

I will suppose him to be as skilful a man as yourself, are you not of opinion that he would be the best judge, supposing the case was doubtful to the by-

* Positively contradicted by the evidence of Mr. Callaway.

standers of the real fact?—He ought to be, but I should suppose him to be very likely mistaken sometimes, if he got hurried.

He ought to be the best judge?—Yes, I should judge immediately by what issued from the bladder, the same as every bye-stander.

Are you prepared to swear that the forceps were applied the second time, and pushed with considerable force?—I have never stated in my evidence it was the second time.

Will you state it?—I should have no objection to swear the first.

When the forceps were applied the second time, were they applied with considerable force?—No, I do not think I will take upon me to swear that —they were the first time used with considerable force—not that they were used twice with considerable force, without going into the bladder.

Can you tell whether it got into the bladder the second time?—He got into the bladder in a short time, whether it was the first or second I do not know.

"The forceps were again used, but as unsuccessfully as before; they were pushed onwards to a considerable distance and with no small degree of force?"—They certainly were pushed on after a while to a very considerable distance, inasmuch as they were pushed in as far as the bladder would allow them to go.

You were of opinion they were pushed into the bladder?—Yes.

You have said this report is correct; do you not see that the object of this is to shew that the second time the forceps were introduced they were not introduced into the bladder, but pushed onwards with considerable force?—Let me look at it; my object is to be as correct as possible; this representation, immediately following "somewhere," appears to me to refer to the first attempt to get the forceps in.

Please to go on. "The forceps were again used, but as unsuccessfully as before; they were pushed onwards to a considerable distance, and with no small degree of force." We are agreed that the first meant to represent that they did not get into the bladder at all, the second must mean the same. "The forceps were again used, but as unsuccessfully as before; they were pushed onwards, and with no small degree of force."—That I am not prepared to swear to the truth of, and I am not prepared to contradict it.

You do not recollect?—No; that is a part I could not swear to, one way or another.

You did not take particular notice?—No.

To whom did you make a communication of your opinion of this operation; because, though you did not to Mr. Wakley or his attorney, you must have done it to somebody?—I spoke of it; it was a natural consequence; I could not help it.

To whom?—I could not say whom; we have several medical men who practise at Colchester and in our hospital; I dare say I told them both of it.

Re-examined by Mr. WAKLEY.

The staff was re-introduced through the urethra after the first incision had been made?—Certainly.

The second time?—Yes, certainly; that is my opinion.

Lord Tenterden.—That is matter of fact whether you saw it introduced, not matter of opinion?—I saw it introduced more than once.

Mr. Wakley.—Have you ever lost a patient in the operation of lithotomy?—No.

If an opening sufficiently large for the forceps to enter the bladder had been made by the knife, would a second incision have been necessary?—No.

Have you ever seen me before this day?—Never, that I am aware of.

Mr. JOHN CLAPHAM,* *sworn.—Examined by Mr.* WAKLEY.

Where do you reside?—At Thorney, near Peterborough.

Are you in practice?—I practise with my father.

Lord Tenterden.—As a surgeon?—Not as a surgeon exactly, my Lord.

Mr. Wakley.—You are a licentiate of the Apothecaries' Company?—I am.

Have you studied surgery in any of the London hospitals?—Yes, I have.

In what?—Saint George's Hospital.

During how long a period?—Two winters.

Lord Tenterden.—Two courses of lectures?—Yes.

Mr. Wakley.—Did you witness an operation of lithotomy performed at Guy's Hospital by Mr. Bransby Cooper?—I did.

Is the report in the "Lancet," as far as you recollect, correct?—It is.

Did the patient appear a healthy man?—He did.

A favourable subject for the operation?—Yes.

Lord Tenterden.—You are putting leading questions again, the only course will be for me not to take the answers.

Mr. Wakley.—Did he appear a favourable subject for the operation?—He appeared so.

What fluid escaped on the withdrawal of the knife the first time?—But a small quantity.

What fluid was it?—I cannot say what fluid it was; there was a small quantity of fluid.

Sir James Scarlett.—What fluid was it, wine or water?—I cannot say what it was.

Mr. Wakley.—Was it urine or blood?—I suppose it was urine.

Was there any gush of urine subsequently to that?—No; not that I saw.

Did Mr. Cooper use the knife to enlarge the opening before he could introduce the forceps?—He did.

Lord Tenterden.—He used the knife twice?—Yes.

Mr. Wakley.—Were the forceps introduced three or four times before he attempted to make the second cut with the knife?—They were introduced more than once.

Before the second cut?—Yes.

Had you ever seen that done in any previous operation of lithotomy?—In no operation I ever saw.

Were the forceps introduced with much force?—Certainly.

Did the operator appear in a state of self-possession?—He did not.

* This witness having, towards the close of his examination, sworn falsely on two distinct points, no credit seemed to be given to his general evidence, and no further comment is therefore necessary. See the concluding part of the gentleman's evidence, and also the evidence of Mr. Watson, called as a witness on the part of the Plaintiff.

If the operator could not get the forceps into the bladder, where could they go?—They went outside of it, I cannot tell where they went into.

Sir James Scarlett.—It is a very fit answer; if they could not get in, they went without it.

Mr. Wakley.—Did Mr. Cooper say he could not reach the bladder with his finger?—He did.

Was much force used by the hand?—There was great force.

Did Mr. Cooper use more than one gorget?—He did.

Did he introduce sounds and staves into the wound in the perinæum?—Yes, he did.

Have you on any former occasion witnessed the gorget used after the knife had been used to cut into the bladder?—No.

Did he employ the scoop?—Yes.

Why is that instrument usually employed?

Lord Tenterden.—You have had that already.

Mr. Wakley.—Not from this witness.

Lord Tenterden.—No; but by tne other witness, and they do not appear to controvert it. The use of the scoop is to take out the fragments of the stone that may have been broken off in the operation of withdrawing.

Sir James Scarlett.—I shall not bind myself, because I do not ask questions, because I am to make my own case in my own way, and by a different description of people.

Lord Tenterden.—What is the use of the scoop?—Your Lordship has stated it.

You must state it upon your oath?—To remove any fragments of stone that may have been broken off in the operation after the extraction by the forceps.

Mr. Wakley.—Were there any fragments in this case?—No.

Did the operator state in the presence of the patient that he could not understand the difficulty?—Yes, he did.

Did you on any former operation ever hear the operator speak of the difficulties of the case in the presence of his patient?—No.

Did the operator say he could feel the stone with his sound?—Yes.

Did he state he could not feel it with his forceps?—Yes, he did.

Did you hear the staff strike the stone when in the bladder?—I did.

Can you explain why the operator could feel the stone with the sound, and not with the forceps?—I cannot, unless the narrowness of the opening would not admit it.

What opening?—The opening in the bladder.

Admit what?—The forceps.

Lord Tenterden.—Do you explain it in that way?—That is the only explanation.

Is this what you mean you cannot explain the reason of feeling the stone with the sound, and not with the forceps, except by the narrowness of the opening not admitting the forceps?—Yes.

Mr. Wakley.—Did the operator ask Mr. Callaway if he had a long finger?—No; I did not hear him ask Mr. Callaway.

Did the operator measure fingers with Mr. Dodd?—He did.

Did you ever see an operator act in a similar manner while his patient was bound upon the table?—No; never.

Did the operator appear conscious of what he was doing?—He appeared confused.

Were his movements hurried?—They were.

Did he use the various instruments out of their accustomed order?—He did.

What length of time have the operations of lithotomy you have witnessed occupied upon an average?—From two to six or eight minutes.

Have you seen any that have lasted for a longer period than eight minutes?—Not until I saw the one at Guy's Hospital.

What length of time did that operation occupy?—An hour.

Did you ever witness an operation before in which so much violence was used?—Never.

Do you believe it possible that a patient could recover after such an operation?—No.

Are you aware of any circumstances in the anatomy of the parts that were calculated to render that operation so long and tedious?—No.

Did you see the stone?—I did.

Sir James Scarlett.—After it came out, you mean.

Mr. Wakley.—What size was it?—Not so large as a walnut.

Had blood ceased to flow from the external wound before the operation terminated?—I do not exactly recollect.

Did the parts appear bruised?—Yes.

Had the edges of the wound a darkened appearance?—I do not know.

Cross-examined by SIR JAMES SCARLETT.

What age are you?—Twenty-one.

When did you become twenty-one?—I do not know.

Lord Tenterden.—You do not know when you were twenty-one!—I am not turned twenty-one.

Sir James Scarlett.—You said you were. When were you twenty?—Last January.

That is a very good reason for not knowing when you were twenty-one? Have you quitted London to follow your profession in the country?—I have not finished studying.

You are a pupil?—Yes.

Of what hospital?—St. George's.

Have you been long in town before to-day?—No.

How long?—I came up from the country the night before last.

Have you had any explanation of this matter since you came to town?—No.

Had you not a string of written questions put to you?—I had not.

Have you examined any model since you came to town?—No.

How came you to be at this operation?—I heard there was to be an operation for lithotomy, and I walked down to see it.

You went from curiosity?—Yes.

Are you a reporter for the "Lancet?"—No.

You are not the gentleman that made the report?—No.

You never performed an operation?—I have not performed the operation of lithotomy.

You have seen it performed several times?—Yes.

Has the surgeon who performs it always a considerable number of instruments in his case?—He has always instruments near him.

There are a variety of instruments used for the operation?—Yes.

How many operations have you seen in your life?—About half a dozen.

Were you in town in the September following?—No, not this last September.

You have never seen any other operation for lithotomy at Guy's Hospital?—I have seen no other but the one in question at Guy's Hospital.

Whereabout did you stand or sit?—The third or fourth row from the operator.

In front of him?—Yes, a little to his left hand.

How many persons were there do you think?—I cannot say that; a great many, a great number.

Two hundred, do you think?—I should think there were. I understood you one hundred; there might be from one to two hundred.

Mr. Callaway was the surgeon who assisted?—He was there.

There are always two? You never saw it performed without two?—No, I never did see it performed without two.

Is he a competent judge, do you think?—I should think so.

Who handed the instruments to Mr. Cooper?—That I do not know.

When the first incision was made, are you of opinion the knife did not reach the bladder?—Not the first incision.

You think it did not?—No, it did not reach the bladder the first incision.

Consequently the fluid that followed could no part of it be urine. You had better correct yourself in that. I am afraid you thought it was urine?—The other question the gentleman put to me when he said the first incision I did not exactly understand. The first incision was only carried through the integuments.

I do not mean the first penetration of the skin, but the first time before the forceps were introduced?—There was a small quantity of fluid.

Was it urine?—I think most likely it was urine.

Lord Tenterden.—Before the forceps were used?—Yes.

Sir James Scarlett.—Did you see the fluid?—I did.

Then you have no doubt it was urine?—No.

You have no doubt the knife did reach the bladder?—There is no doubt of it.

If you had been representing this, you would never have said the knife went "somewhere;" you would have said it went into the bladder. Come, Mr. Clapham, as you say the knife went into the bladder, had you been representing it, how would you have stated it; you would not have stated it went somewhere?—No.

You say you are a licentiate of the Apothecaries' Company?—Yes.

And you are not twenty-one?—No.

When did you obtain your license?—In the spring.

Did you represent your age truly?—No.

Speak up, if you please.—No.

You represented it falsely?—It was represented falsely.

For you?—Yes.

Did you make no representation of it?—Yes, I made a representation of it.

And it was false?—It was not correct.

Do you mean by that it was false?—Yes.

Sir James Scarlett.—Well, Mr. Clapham, I will not trouble you any farther. I have as good an opinion of your judgment as I have of your veracity.

Re-examined by Mr. WAKLEY.

Is it customary for young men to obtain their licences before they are twenty-one?

Lord Tenterden.—Do you mean to say that it is the custom for people to tell untruths?—I cannot allow that question to be put.

Sir James Scarlett.—I have no doubt it is so. Do you take an oath?—No. You have a certificate of your age.*

Lord Tenterden.—Where do you get that? Who makes out the certificate? Where did you get yours?—It is generally written by the clergyman.

Is he in the habit of writing false certificates?—No.

Sir James Scarlett.—Will your Lordship ask him whether——

Lord Tenterden.—No. I think we must not go any further. I feel it my duty to say that any person who obtains his licence by a false certificate is liable to be indicted and punished, and therefore I cannot allow the witness to answer any other question.

Mr. JOACHIM GILBERT *sworn.—Examined by Mr.* WAKLEY.

Are you a Member of the College of Surgeons?—I am.

Were you at Guy's Hospital in March last?—I was.

Did you witness the operation of lithotomy performed there by Mr. Bransby Cooper?—I did.

Have you read the report of that operation in the "Lancet?" —I have.

Did you witness the whole of the operation?—No, I did not.

Lord Tenterden.—You only saw part?—Only part.

Mr. Wakley.—How long were you present?—I should think thirty-five minutes.

Why did not you remain longer?—Because I could not bear to see the horrid manner in which the operation was performed. I could not endure the feelings I felt at seeing the manner in which the operation was performed.

During the time you were there, did the operator use much violence?—He did.

Did he use unnecessary violence?—I should say he did so; he did use violence, unnecessary violence.

Did he use the instruments in the accustomed manner of other operators?—He did so.

Do other operators use great force and unnecessary violence?—No.

After the staff was introduced, an incision was made in the perinæum?—It was so.

Was the knife——

Sir James Scarlett.—Let him tell it; do not give a lecture here.

* The gentleman's own affidavit was afterwards produced. See Mr. Watson's evidence.

Mr. Wakley.—State what you saw of the operation.—I saw the staff introduced by Mr. Bransby Cooper, and then Mr. Callaway was desired to hold the staff on the left side of the patient; and then Mr. Bransby Cooper made what is called the external incision, a cut which he did very properly; but then, after going on with the second incision, he went, I cannot pretend to say where he went, being situated by the side, but he was a very long time doing it; and after finishing, as I considered, the second incision, he carried his knife forward, and I should say, he held his arm too high; and then he carried his knife forward, as I should consider, between the bladder and the rectum, the fundament; then there was a flow of blood followed; he then passed his finger into the wound, and then he carried in, on his finger, a pair of forceps, straight forceps, and he attempted to extract the stone; he failed in doing so; he then passed the forceps in four times following, and he did not succeed in extracting the stone; and he then passed in his finger again into the wound, and used great violence in so doing. I should say, in withdrawing those forceps, a squashing noise was heard; he then called for a crooked pair of forceps, which he passed in upon his finger into the wound, and poked them about in the wound, in which he used great violence in so doing; he then withdrew them and passed them in a second time, and he again withdrew them, and he passed them in a fourth time.

Lord Tenterden.—A fourth time?—Yes; a fourth time.

Lord Tenterden.—Go on.—And then he called for Sir Astley Cooper's knife—Sir Astley was mentioned—and he made a cut with this knife, and passed his finger into the wound again, and used violence in passing his finger; twisted the finger round several times in the wound, and he then did not succeed in extracting the stone; and he then began to appear to be very much confused; his hand shook a great deal, and he appeared very pale, and his lips shook very much; and that which I described, I should consider occupied thirty-five minutes; at the expiration of which time I quitted the theatre.

What was your impression relative to the manner in which the operation was performed?—I thought it was very badly performed; very badly performed, very improperly performed.

Have you witnessed many operations for lithotomy?—A great many.

How many?—At least twenty.

How long have they lasted generally?—I never saw one last longer than from seven to ten minutes.

How quickly have you seen the operation performed?—In less than a minute.

Cross-examined by Sir James Scarlett.

Where do you carry on your business as a surgeon?—At Beaminster, in Dorsetshire.

How long have you been there?—Four years; more than four years, four years and a half.

Are you assistant to any person there?—Mr. Phelps.

Has he any connexion with Mr. Wakley?—Yes.

What?—He married Mr. Wakley's sister.

Have you a considerable acquaintance with Mr. Wakley?—No; I have not.

You have known him some years?—No, I have not.

What brought you to town on this occasion?—I came to pass the college.

Did you go to Guy's Hospital from curiosity?—No. I went to be instructed.

Lord Tenterden.—You were a pupil?—Yes.

Sir James Scarlett.—Why did not you wait till the end of the operation to see if the stone was extracted?—My feelings would not permit me.

Did you see the report before it was printed?—No, Sir James, I did not.

Did you hear of it?—No.

You were in London at the time it was printed?—Yes; I saw it after it was in print, because I take in the "Lancet."

You had not seen Mr. Wakley in the mean time?—No, I had not.

Now you have given a very succinct account of this; you rather jump from the first to the second cut: "but I should consider he had altogether missed the bladder the first cut?"—He could not touch the bladder by the first incision.

I do not mean opening the integuments, but the first incision by the knife; are you of opinion that he reached the bladder or not?—He did not reach the bladder the first incision, and ought not.

Is the first incision cutting into the urethra?—No.

What then?—You have to avoid the urethra at the first cut.

What are you to do?—To lay open the integuments.

Then you cut the flesh?—The skin and fat.

Then what are you to do?—Then you are to put your finger in; you cut the muscle and pass the finger in to avoid a certain part of the urethra; then you feel for the groove of the staff that is in the penis.

You say the first incision was not intended to touch the urethra, or the bladder, but you say the second; and you say the second did not?—Yes; it did not.

And that was made with unnecessary force and violence?—Not the incision.

The incision that ought to have reached the bladder you are sure did not?—I am sure it did not. I cannot swear it did not. I was all in the dark. I was not in front of the patient to see where the incisions were made.

What makes you speak so confidently as you have; you have spoken with great confidence; why should you speak with so much confidence upon your oath?—For this reason, why did he not extract the stone when he passed so many instruments in?

Lord Tenterden.—The reason for your saying he did not cut the bladder was that he did not extract the stone?—Yes, and there was no flow of urine that I saw.

Sir James Scarlett.—If any body has sworn that he saw a flow of urine he must have said what is false?—I should think so.

If the first two of Mr. Wakley's witnesses have said there was a flow of urine, they must be perjured?—I did not hear them.*

* Two of this gentleman's fellow-witnesses, Mr. Partridge and Mr. Clapham, swore that the bladder was opened on the first incision, and that urine followed.

You are of opinion that the second cut did not reach the bladder?—Yes.

Where did it go?—I should consider it went between the rectum and the bladder.

You say he thrust in the forceps?—Yes.

With considerable and unnecessary force?—Yes, he did.

As if he meant to stab the man; that was the impression upon your mind?—Yes.

That he actually meant to stab the man with the blunt forceps; that you swear?—My impression is, that he forced them in with violence.

That he meant to stab the man?—I will not say stab.

Lord Tenterden.—You have said so.

Sir James Scarlett.—You think it could not get into the bladder unless it forced itself in?—Yes.

As there was no cut in the bladder?—Yes.

How near did you stand?—About a dozen feet from him.

Were you upon the rows of benches?—Yes, the first row of benches for the pupils.

On the side?—Yes.

I dare say, as you carry on your business at Beaminster, as assistant to Mr. Phelps, the "Lancet" is a work in much esteem there; you see it there?—Every where.

Are there any rows of seats before the pupils' seats?—Two rows, and then the pupils, and I was at the end of the first row for the pupils.

You were in a convenient situation, as soon as your feelings became agitated, to get away?—When I felt annoyed, I went away.

I wonder you did not feel sick?—I have witnessed too many operations to feel sick or faint.

The "Lancet" has a great circulation?—A very great, Sir James.

I am told five or six thousand in a week?—I do not know; it may be twelve.

He derives great profits from it?—I do not know any thing of that.

Do you report any thing for him?—No, I do not.

You are not one of the men of talent he employs?—No.

That is very unfortunate; he will add you to the list very soon. How many operations have you performed yourself?—I never did perform an operation for lithotomy.*

How long did you remain at Guy's Hospital after that time?—About three months.

You were not there in September?—No, not in September.

Was that the only operation for lithotomy you saw there?—I have seen at least fifteen there.

Did you see one in September afterwards there?—I was not there, Sir James. I was not in London in September.

Did you ever see an operation performed there by Mr. Bransby Cooper before?—Not in lithotomy.

Nor since?—No.

* Sir A. Cooper, having proved that no man can be a judge of an operation for the stone unless he has performed the same kind of operation himself, it seems altogether unnecessary to take further notice of Mr. Gilbert's evidence.

Lord Tenterden.—When you say other operations performed for lithotomy, they were not by Mr. Cooper?—No.

Sir James Scarlett.—When did you obtain your certificate?—I passed my examination in June?—You are twenty-one, I presume?—Nearly thirty. Old enough to be a man of good judgment.

Re-examined by Mr. WAKLEY.

Have you seen Mr. Cooper perform other operations?—Yes.

Do you consider him a good operator?—No, certainly.

Sir James Scarlett.—You have no doubt he is a very indifferent operator, from what you have seen, exercising your judgment?—I should say so certainly.

You have no doubt about it?—I have none in my mind.

And that it would be a great public benefit to drive him away from that situation?—I have no question about it, Sir James.

And preventing private families reposing confidence in him, as they may risk their lives?—I do not know any thing of his private character; I speak of his public.

His skill must be the same; you are of opinion that he is an unskilful surgeon, and ought not to be a Hospital Surgeon?—I should say so.

What is the operation you consider as the one that requires the completest and greatest skill in a surgeon; lithotomy is common enough?—That is very important to be performed.

What is the one that requires most skill?—I should consider that requires as much skill as any.

Lithotomy?—Yes.

Did you ever hear of a surgeon tying up the subclavian artery?—I might have read of it, but I do not recollect it. I saw Mr. Key perform it once.

You know what it means?—Yes.

I ask you whether that operation, or the operation for lithotomy, is that which requires the most consummate skill in a surgeon?—I should say that lithotomy was much more important than taking up that artery.

Lord Tenterden.—Importance is not the same as skill?—I should say more skill.

Sir James Scarlett.—You think an every day man might tie up the subclavian artery?—Not an every day man.

An ordinary country surgeon?—Certainly.*

Any commendation of a man for tying up the subclavian artery in a masterly style would be what would be given to a man in ordinary practice?—I should say, that a man required skill to perform that operation, but much more to perform lithotomy.

Have you attended any lectures or instruction since you came up to be a witness?—No.

Have you not been at a lecture of Mr. Wakley's?—No.

Nor any other person?—No.

* To enable the reader to judge of the difficulty of the operation of tying the subclavian artery, and of the great anatomical knowledge and surgical skill required to perform it successfully, he is referred to the evidence of Mr. Callaway, Mr. Green, Mr. Key, and other witnesses examined on the part of the Plaintiff.

I do not mean a regular lecture?—No, not even of counsel.

Have you had no conversation with Mr. Wakley since you came to town?—I sent my card to say I had arrived, and he called, but he never sat down; he did not stay two minutes.

When was that?—Wednesday morning.

Mr. Wakley.—Did I submit any written statement to you, or any questions?

Lord Tenterden.—He says no.

Mr. Wakley.—Do you consider that a very ignorant surgeon might accidentally tie the subclavian artery with success?—Yes, he may. Yes, he may.

Mr. JOHN THOMAS,* *sworn.—Examined by Mr.* WAKLEY.

Did you witness the operation of lithotomy performed by Mr. Cooper?—I did.

Have you read the report of that operation in the "Lancet?"—I have not; I have not seen the report. I have not read the report in the "Lancet."

Do you hold any office in Mr. Slee's theatre?—I am Demonstrator of Anatomy at Mr. Slee's School in the Borough.

Lord Tenterden.—Is Mr. Slee a surgeon also?—Yes.

Mr. Wakley.—Was the operation well performed?—Speaking from my impression, I think I never saw an operation performed so unscientifically, and in such a bungling manner, speaking merely from impression.

Have you ever spoken to me before this day?—I do not even know now what is your name.

Cross-examined by SIR JAMES SCARLETT.

You have not the least idea of the name of the author of the "Lancet?"—I know the name of the author of the "Lancet."

You never saw him before to-day?—I never saw him at all.

As to reading his works?—I am in the habit of doing that almost continually.

Where is this school of Mr. Slee's? I do not find that it is much known?—No. 1, Dean Street, Borough.

What do you mean by a school?—By a School of Anatomy, I mean where pupils are formed into a class, and receive regular instruction in anatomy and physiology, and have those as demonstrators who can point out the course they should proceed in in dissecting human subjects.

What is Mr. Slee?—The senior surgeon at the Western Hospital.

Where is that?—Ludford Street, Seymour Street, Bryanston Square.

How long has it been there?—About a year and a half.

Who established it?—Mr. Slee, himself.

He lives in Dean Street, in the Borough.—No, he lives at 25, Upper Seymour Street.

* Neither this witness, nor the following one, Mr. Jeffry Pearl, having ever performed this operation, it is unnecessary to pay any attention whatever to their evidence, the whole or the greater part of it being completely contradicted or disproved either by the Defendant's other witnesses, or those examined on the part of the Plaintiff.

His school is in Dean Street, in the Borough?—One of his schools.

He has several?—He has two.

Are you demonstrator at both?—No, only one.

You have plenty of pupils, I hope?—We have twenty.

How long have you been the demonstrator?—Since October last.

Supposing the gentleman who has examined you to be the author of the "Lancet," never having had the good fortune to have seen you before, can you tell how he came to hear you had stated your impressions?—It rather surprised me, I did not know of being subpœnaed here till half-past eight last evening.

It was not on account of your absence he put off the cause?—No.

By whose conversation did he happen to hear of you?—I was in conversation with a few pupils in the Borough, general conversation, when one of them mentioned that Cooper *v.* Wakley was postponed till October, the day I do not recollect; and in the course of the conversation I made a remark respecting the operation; I said I had witnessed it.

You made a remark upon that occasion, what is the name of the gentleman you made the remark to?—Mr. Braynsford.

A pupil of Mr. Slee's?—Yes.

And through him you suppose it went to Mr. Wakley?—He told me so to-day.

Do you make communications to the "Lancet?"—I do sometimes.

Though a man may not know the author, he may make communications to a work. Do you make many communications?—I have made four.

They have been published?—They have all been inserted except one.

Do you put your name to them?—No.

How recently have you made any?—I made one in October, and it was inserted the 13th.

Were they all recent, or a year or two ago?—No, at long intervals.

How long did you stay at the time this operation was performed? You say it was a most bungling and unscientific operation according to your impression?—I arrived at the theatre subsequently to the incision into the bladder.

But we understand from some witnesses the incision into the bladder was very late, and from others very early; we cannot tell when you arrived by that.—The outer external incision had been made, and I saw no urine gush, but I saw the scalpel used afterwards.

How long did you stay?—I think I must have been there above thirty-five minutes.

Lord Tenterden.—What is the scalpel?—The dissecting-knife.

Sir James Scarlett.—You came in after the operation had begun?—Yes.

Where did you stand?—Directly opposite: as he stood there I stood here—*(describing the situations).*

That does not give me an idea. How many rows of pupils were between you and the operator?—That I cannot say; but I was directly opposite to him in the uppermost row.

In the uppermost row of all?—Yes.

That is to say you were at about the greatest distance from him?—Yes.

Did you see the scalpel used?—Yes, I did.

That you are sure of?—Yes, perfectly.

But you came after the incision into the bladder?—After the incision into the bladder.

Just recollect yourself; because, if I am rightly informed, you are mistaken, and that no scalpel was used after the incision into the bladder?—I know nothing about the incision into the bladder; when it was first made I was not there, but I saw the scalpel used at a subsequent part when I was there.

By scalpel you do not mean Sir Astley Cooper's knife?—I do not know exactly.

Do you know what is called Sir Astley Cooper's knife?—No, I do not.

What instrument did you see used?—The scalpel.

What besides?—Forceps, several kinds of forceps.

How many kinds?—I do not know how many kinds.

It must have made an impression upon you; were there more than two kinds?—I apprehend there were.

What other instruments besides?—I saw the sound introduced.

What else?—Nothing more, to the best of my knowledge; I recollect no other instrument.

Any gorget?—No, I do not recollect seeing any gorget.

Neither blunt nor cutting?—No.

The only cutting instrument you saw used was the scalpel?—Yes.

But Sir Astley Cooper's knife you do not know?—No.

You have never heard of it before?—Yes I have, and seen a description of it; but I have not a recollection of it.

Did you ever perform an operation?—No.

How long have you been demonstrator?—Since the 1st of October.

What were you at the time you saw this operation?—I was a pupil of Mr. Green's, at St. Thomas's Hospital.

Did you ever attend any other operation at Guy's Hospital?—Yes, I have seen Mr. Key operate for lithotomy.

Have you seen Mr. Cooper operate at any other time?—No.

You are sure of that?—Yes, quite sure.

Re-examined by Mr. WAKLEY.

You were speaking of a conversation you had with some pupils, will you repeat the remainder?

Lord Tenterden.—No, he only states that that was the means by which you became acquainted with it.

Sir James Scarlett.—I stopped him.

Lord Tenterden.—It will not be evidence further than to explain the means by which you became acquainted with him.

Mr. Wakley.—I have no more questions to ask him.

Mr. JEFFRY PEARL, *sworn.—Examined by Mr.* WAKLEY.

Did you witness the operation of lithotomy performed at Guy's Hospital, noticed in No. 239 of the "Lancet?"—Yes, I did witness it.

Performed by Mr. Bransby Cooper?—Yes.

Is there any thing materially incorrect in that report?

Lord Tenterden.—He has not said whether he has read it.

Mr. Wakley.—Have you read that report?—I have.

Is there any thing materially incorrect in it?—I am not aware of any incorrectness, except that Mr. Cooper said "Sir Astley's knife," instead of "my uncle's knife."

Did the patient appear a healthy man?—He did, a very ruddy labouring man, a ruddy labourer from the county of Sussex; he had every appearance of a healthy man.

After the first incisions had been made, and when the knife and staff were carried forward into the bladder, did a gush of urine follow?—There was not a gush, as is usual in the performance of operations for lithotomy.

There was a trickling?—Yes.

How far were you from the operator?—About the middle row of the theatre, rather on the operator's right-hand.

Could you at that distance discover the difference between a small quantity of arterial blood, and a small portion of veinous blood and urine mixed?—Yes; I should conceive I could distinguish between arterial blood and veinous blood mixed with urine.

How could you distinguish the difference?—Arterial blood being very florid, and escaping by spouts, whereas veinous blood would trickle down.

Could you at that distance distinguish between a small portion of arterial blood, and a small portion of veinous blood and urine mixed?—I think I could.

Was it blood or urine that flowed after the knife and staff were forced forward with the intention of penetrating the bladder?—I believe it to be a small portion of both—both blood and urine.

Was there a gush of fluid at any subsequent period of the operation?—I did not observe any gush of fluid at any subsequent period.

Did Mr. Bransby Cooper use the knife a second time to enlarge the internal opening before he could introduce the forceps?—I rather think he attempted the introduction of the forceps after the first incision, but failing in that attempt, I believe he used Sir Astley's knife, and I think he also used another forceps.

Were various forceps used?—Yes; there were various forceps used, and the same forceps introduced repeatedly.

Was much force employed?—Very great force; the operator introduced the forceps as far as he could, and then opened them, and shut them, which produced that horrid squashing noise.

How did he open and shut them?—He opened and shut them with great violence.

Was this description of forceps used (exhibiting a pair of straight forceps)?—Yes.

And curved forceps also?—Yes.

Were they pushed far in?—They were pushed up a considerable distance.

Was much force used by the hand?—Very great force; in fact, I believe, three fingers of the hand were introduced entirely.

Have you witnessed many operations for lithotomy?—I have witnessed, I suppose, twenty.

Was either of those twenty performed in a similar manner to this?—Not one, certainly.

What time did they occupy on an average?—I should conceive they did not average more than five minutes.

Did you see any operation that lasted a longer period?—I have seen one by Mr. Green that lasted a considerable time.

How long did that operation occupy?—I should suppose nearly an hour.

Were there any difficulties to account for that protracted operation?—Yes; there were decided difficulties.

What were they?—The man had been twice operated upon before, and there was a considerable cicatrice to cut through, which was hard and unyielding; and there were two immense large stones extracted, which crumbled into an innumerable number of small pieces.

Where did they crumble into innumerable small pieces?—In the bladder, I believe. They were extracted from the bladder when the forceps were withdrawn.

Was the time occupied in removing the fragments?—It was.

Was there any force employed in removing those stones?—None whatever.

Was Mr. Green's manner of using the forceps and scoop similar to that of Mr. Bransby Cooper?—No; it was decidedly contrary.

What was the size of the stone in Mr. Cooper's case?—It was a small stone.

A very small stone was it?—It was a small stone.

What sized stone?—It was not larger than a Windsor bean.

Did Mr. Cooper state during the operation, and in the presence of the patient, that he could not explain the difficulty?—Yes; he turned round to the pupils and said, "I can conceive no earthly reason why I cannot extract the stone."

Did Mr. Cooper say he could feel the stone?

Sir James Scarlett.—You have been admonished an hundred times, do not put the words into his mouth.

Mr. Wakley.—Did he say any thing about feeling the stone?—He did, and you might hear the stone; he said, "hush! hush! you can hear the stone, but I cannot extract it when I apply the forceps, what is the reason I cannot conceive."

Can you explain why he could feel it with the sound, and not with the forceps?—I cannot explain the reason; if he had introduced the forceps in a scientific manner, I should think he might.

Will the forceps pass through an opening as small as that through which the sound passes?—No; the forceps will not pass through an opening that the sound would.

Did Mr. Cooper appear to be in a state of self-possession during the operation?—No; he did not appear to be in a state of self-possession.

Did it appear that he used the instruments without having any rational object in view?—It did appear to me that he used his instruments without having any rational object.

Mr. Wakley.—You need not repeat all the words of the question.

Lord Tenterden.—Do not tell the witness what to say.

Mr. Wakley.—It is only as to his manner. How long did the operation last?—Nearly an hour.

Did you witness the *post mortem* examination?—I witnessed the parts after they were removed from the body.

Lord Tenterden.—By witness you mean saw them?—Yes; I saw them.

Mr. Wakley.—Was there any thing in the state of the parts to account for the delay in the operation?—No; I did not see any thing.

Did you see the gorget introduced?—Yes; I did.

How was it introduced?—It was introduced along the staff.

Was it held obliquely or horizontally?—It was held in the manner that gorgets are usually held.

Describe how.—It was pushed along from the os coccygis towards the rectum.

In what direction was the cutting edge of the instrument held?—The cutting edge of the gorget is usually held horizontally.

To what part, when it was introduced, did it point?—It would point to the lateral side of the bladder.

To what part of the ischium did it point, can you describe that?—It would divide the entire lobe of the prostate gland, and divide a portion of the neck of the bladder in a horizontal direction.

Would that form of incision have passed through the prostate and the neck of the bladder?—I should say I saw two incisions in the bladder; there appeared to be a portion of the neck of the bladder included between two incisions.

Were those incisions oblique or horizontal?—They were obliquely downwards.

Did you observe any horizontal incision?—No, I did not.

Is there any other object for introducing the cutting gorget than that of making an opening into the bladder?—Not for introducing the cutting gorget.

Must it go in an improper direction if it does not go into the bladder?—If it was not to go into the bladder it could go in no other part, but between the bladder and the rectum.

Do you believe it possible that the patient could recover after that operation?—I did not believe it possible.

Are bruises or cuts of the bladder deemed the most dangerous?—Bruises much more so.

On the *post mortem* inspection, did the bladder appear much bruised?—The bladder was much thickened. I never saw a bladder so thickened; the coats of the bladder were immensely thickened.

What would produce thickening of the bladder?—Inflammation, violent inflammation.

What would bruises of the bladder be likely to produce?—Disorganization and great inflammation.

Have you seen Mr. Bransby Cooper perform many operations?—I have seen him perform several.

How does he operate generally?—I should not conceive him to be a good operator by any means.

How long have you been a pupil at Guy's Hospital?—More than a year.

Are you a member of the College of Surgeons?—I am not a member.

Do you intend going into the college?—Yes.

Must you produce a certificate from Mr. Bransby Cooper when you apply there?—I must produce the certificate of a surgeon of Guy's Hospital.

Lord Tenterden.—Are there more than one?—Three.

Cross-examined by SIR JAMES SCARLETT.

How long have you been attending the hospital?—A year.

Was that your first commencement?—My first commencement was October, 1827.

Where were you educated before that?—At Woodbridge, under an army surgeon.

You were apprentice to him?—Yes.

Did you ever perform the operation of lithotomy yourself?—No; I never did.

This operation was performed in March, 1828?—Yes.

Do you continue now at the hospital?—I do.

Have you seen all the operations performed there?—I have missed but few of them, I believe.

You read the "Lancet" regularly, no doubt?—Yes.

Do you make any reports to it?—No.

And never did?—No.

Did you see an operation performed by Mr. Cooper, in September?—I was not in town last September.

Did you ever see any other operation performed by him in lithotomy?—I am not exactly aware whether I ever did see him operate again.

You have made up your mind that he was not a skilful operator?—I never saw him perform but one operation that I thought skilful.

What was that?—Tying the subclavian artery.

That is an operation that a man of ordinary skill may perform?—I should conceive it to be a difficult operation.

Do you agree with the witness examined to-day, a regular surgeon, practising at Beaminster, that a man may accidentally do it with success without any skill at all?—I believe a man, in the constant habit of seeing anatomy, may do it without any skill.

You agree with the Beaminster gentleman that the doing that does not imply any skill?—I say it may be occasionally performed.

If you were, for example, called upon to do it, or had occasion for the operation to be performed upon yourself, you would not consider it of importance what surgeon you applied to?—Yes, I should consider it to be of importance.

You would not apply to a man whom you thought had done it right once by accident?—No, I would not.

Be so good as to tell me who was the person that handed the instruments to Mr. Cooper?—A Mr. Laundy.

Who stood nearest to the patient, and next to Mr. Cooper?—Mr. Callaway.

Who was the person that had the best opportunity of seeing what Mr. Cooper did, besides himself?—There were many that had an equal opportunity of seeing.

Do you think the persons nearest to him saw the best?—Yes, I should conceive they might have seen the best.

If they had chosen to open their eyes? you give an extremely cautious answer.—They might have seen the best.

When did you read this report in the "Lancet" first?—I think the day it came out; I generally get it the Friday afternoon.

Had you expected it to come out?—It was noticed before.

Did you expect it?—Yes.

You were aware it was intended to be inserted?—I was not aware it was intended decidedly, but I supposed it was; they were always noticed.

Can you tell us the gentleman who conveyed it to Mr. Wakley?—No, I cannot, I have no idea; I might form a suspicion with others.

It struck you immediately that he did not use the phrase "my uncle's knife," but "Sir Astley's knife?—Yes, that did strike me; but I have been round the wards when he has used the words "my uncle's guard," or "my uncle's mixture."

You are sure he used the words "Sir Astley's knife?"—Yes.

The report put that, "my uncle's knife," in to give it a more dramatic effect?—I do not know that, because he is just as likely to use the one phrase as the other.

Do you not know who gave him the phrase "my uncle's knife?"—No, I do not.

You have only a suspicion?—I have only a suspicion.

Does your suspicion fall on any body that has had a quarrel with Mr. Bransby Cooper?—No, certainly not, that I am aware of; I am not aware of any person who has had a quarrel with Mr. Bransby Cooper.

When you come to the details of it, you say that you could discern it was urine, and you are sure it was urine that flowed?—I should say, I thought there might be some portion of urine; I think there was.

If you think there was some portion of urine, you must think that the knife had reached the bladder?—I do not know that. If you had made an opening in the urethra, you would have a small portion of urine flow.

Especially if the staff was in at the same time?—Yes, it would be just as likely to flow as if the staff was out; the staff is grooved.

You think he did not reach the bladder the first attempt he made?—I cannot say that he did, or that he did not.

You are uncertain about it?—I am uncertain whether he made a free opening into the bladder.

You say you saw the parts afterwards?—Yes.

Who dissected the body?—I went in to hear the lecture of Dr. Hodgkin, who generally conducts the *post mortem* examination, and Mr. Key had the parts in his hands.

Did you not hear who it was?—Dr. Hodgkin, I believe.

It was his duty?—Yes, he generally conducts the examinations.

Have you been attending any lectures of Mr. Wakley?—No, I have not.

Have you ever been at his house?—I called at his house one morning, but I had not a lecture.

Was that the only time you called?—Never but once, and that was last Monday.

Did you know him before?—I did not know him till he had asked me my opinion of the operation.

Who introduced him to you that he might ask you that question?—It was very well known.

Who introduced him to you?—A gentleman of the name of Lambert introduced me.

Where did he introduce you?—I first saw Mr. Wakley at Mr. Lambert's house.

How often have you seen him there?—Not above once.

Did you make any stay there?—He merely asked me——

How long did you stay there?—Perhaps an hour or more.

I suppose the conversation turned on this subject?—It did.

Mr. Lambert was present?—He was.

Mr. Lambert of course agreed with you in opinion?—Yes.

Upon your oath did you not know from that conversation in Mr. Wakley's presence, that Lambert was the person that sent the report?—I did not know from that conversation that Lambert was the person; I did not know he was the reporter of that operation.

Not from that conversation?—No, nor any other conversation.

Did not Mr. Wakley mention the name of his contributor at the hospital?—Mr. Lambert was there.

Did not Mr. Wakley mention the name of his contributor from the hospital: I ask you upon your oath, again, if the whole tone of the conversation did not assume that Lambert was the reporter?—No, not that would convince me in my mind.

You might not believe them, or either of them, that is quite another thing;—upon your oath, do you mean to say that nothing passed upon that subject that induced you to suspect that he was the reporter?—I am not going to state whether I suspected him or not, but not from that conversation; certainly not.

What made you suspect it?—Because he was generally suspected; no other reason.

Why should he be generally suspected?—That I am not at all aware of.

Do you know him intimately?—Not intimately, I do not.

Have you been often at his house?—Not very often; I have not been often at his house.

How many times?—I dare say I have been there three or four times.

You never met Mr. Wakley there but once?—Not to my knowledge.

And you were once at Mr. Wakley's house?—Yes.

Was there any body at Mr. Lambert's but Mr. Wakley and Mr. Lambert? —Must I state that?

Lord Tenterden.—Yes, certainly.—Yes, there was one person.

Sir James Scarlett.—Was he also a pupil at the hospital?—Yes.

Was any explanation given of the operation?—Mr. Wakley asked me my opinion, and I gave no more than I have here.

Was there any detailed account given?—Not a minute detailed account.

Was not there an explanation?—Mr. Wakley asked me whether such facts did occur that were reported there, and I said they did.

Upon your oath, did he not ask you, and insinuate to you, that the forceps had passed between the bladder and the rectum?—I believe that was the opinion of a very great many.

You have chosen to give your opinion upon a gentleman of reputation. Answer as a man at once. Upon your oath, did not Mr. Wakley and Mr. Lambert try to persuade you to be of that opinion?—They believed that it had passed between the rectum and the bladder.

Did they not endeavour to persuade you to state that?—No: they did not endeavour to persuade me to state that.

Did they not endeavour to persuade you to believe it?—They pointed out that the stone, if the stone remained as Mr. Cooper stated——

Lord Tenterden.—You are going away from the point. Did they endeavour to persuade you to believe that the forceps had passed between the rectum and the bladder?—They did.

Sir James Scarlett.—Did they not give very learned reasons?—They certainly did give very good reasons.

Did they not give those reasons for the purpose of shewing that their opinion was right, and yours wrong?—I did not state my opinion.

Yes: you did.—They did not pretend to state that there opinion was right, and mine wrong.

Did they not give those learned and scientific reasons to bring you to their opinion, answer that question upon your oath as a man?—They gave very good reasons to make any man believe that the forceps went between the bladder and the rectum.

Who was present when they gave those reasons beside yourself, I will have their names?—Mr. Lambert, Mr. Wakley. Who again?—A Mr. Whittaker.

Who else?—None other.

None other?—Certainly not.

You were there an hour?—I believe I drank tea there.

You were there an hour?—Yes.

Was there a model produced?—No model.

No model of any parts?—He asked me——

I did not ask you that question, was there any model of any parts whatsoever?—No.

No parts of any subject produced to assist your reasoning?—No.

No plate or diagram?—No.

You afterwards went to his house?—I merely called there one morning; it was last Monday.

Did you go alone?—I did.

Did you find any body there?—Yes, Mr. Wakley himself.

Any body besides?—No.

How long did you stay?—A very little while.

That is no answer.—I did not stay more than ten minutes.

Was there any conversation on the scientific part of the subject?—No: it was when the trial was coming on, and I heard he was going to plead his own cause.

Upon your solemn oath do you believe that the forceps did pass between the bladder and the rectum?—I do not conceive myself competent to pass that opinion. I merely come here to state facts, and not opinions.

You have given your opinion on Mr. Cooper's skill, give me your opinion upon that, did the forceps pass between the bladder and rectum, from seeing the parts afterwards, and the operation at the time?—I saw the forceps violently opened.

That is no answer at all.—I did not form an opinion, whether it passed between the rectum and the bladder, or whether they passed into the bladder.

You are coming to give an opinion upon the skill of the operator, and are not able to give an opinion upon that subject?—I can state, that the operation was not scientifically performed.

You have stated, that Mr. Wakley and Mr. Lambert gave very good reasons to make a man believe that the forceps had passed between the bladder and the rectum, you do not appear to have believed it, but you are unwilling to say you believe the contrary.—I am not unwilling to state that I believe the forceps did pass between the rectum and the bladder at one time, and did afterwards go into the bladder.

Their reasons have satisfied you?—Not their reasons.

You can form an opinion without their reasons?—Yes.

At what time do you think it so passed?—I should think at the first incision.

You know that men of science, as well as yourself, saw these parts after death—I ask you, did they exhibit the appearance of the forceps having passed between the rectum and the bladder?—I saw Mr. Lambert pass his hand between the rectum and the bladder.

Did you not hear Dr. Hodgkin say, "friend, thou hast done it thyself?"—I heard Dr. Hodgkin say, he did not like persons coming there to spoil the preparations who had no connexion with the hospital.

Did you not see Mr. Lambert put his hand between the bladder and the rectum?—I saw him take it up to Dr. Hodgkin, and say, "sir, here is an opening between the bladder and the rectum."

And did you not hear Dr. Hodgkin say, "friend, thou hast done it thyself?"—I did not hear that, but I heard what I stated before, that he did not like persons meddling with preparations.

Did not Mr. Lambert do it when Dr. Hodgkin's back was turned?—I do not know whether his back was turned or not.

Had you seen it before he put his hand between the bladder and the rectum?—I saw it in his hand.

You saw the parts in Mr. Key's hands, and as you are a competent judge, was there any space between the bladder and the rectum, through which any instrument had passed?—I did not see the space between the bladder and the rectum in Mr. Key's hands, they were laid open.

Did you not see the cellular membrane between?—Not when I saw it in Mr. Key's hand.

Was the person who put his finger or hand in, the same person who took it up to Dr. Hodgkin?—Yes.

You did not see Mr. Lambert put his hand in?—I saw him with his hand in.

Lord Tenterden.—That is no answer to the question. I may see a man with his hat on, and yet not see him put it on.—I will not swear distinctly whether I saw him put his hand in, I saw him with his hand in.

Sir James Scarlett.—You did not hear any body say whether he had made that hole himself?—No; nor do I believe any person could do it.

Did you not hear Dr. Hodgkin say, "friend, thou hast done it thyself?"—No.

You do not believe that Lambert did it himself?—No; I do not.

You have a good opinion of him?—I never saw any thing dishonourable of him.

But it would be very dishonourable, if with a view to make a report to injure Mr. Cooper, he had thrust his hand in?—Perhaps it would.

Did he not mention, and Mr. Wakley also, the circumstance of his hand being there, as one of the good reasons to prove that the forceps had passed there before?—I should think the forceps had passed there before.

Sir James Scarlett.—That is not answering the question.

Lord Tenterden.—You are a man of education; answer the question; I will punish you if you do not. You are asked, whether among the reasons assigned for believing that the forceps passed between the bladder and the rectum, the fact that Mr. Lambert had put his hand there was one?—Yes; that was a reason.

Sir James Scarlett.—You knew that, and would not state it; and as I can extract these things from you with so much difficulty, I shall cease to pursue the operation any further, which I dare say is painful to both of us.—It is not painful to me; I shall be happy to remain under your cross-examination as long as you please.

Lord Tenterden.—It is very painful to me to see a gentleman of education not answering questions directly.

Re-examined by Mr. WAKLEY.

Do not be alarmed, answer every question fairly.

Sir James Scarlett.—Do not be afraid of the "Lancet."

Mr. Wakley.—There is no occasion. Did I persuade you to give any kind of evidence?—No; you only asked me what I knew.

What said I to you?—You asked me to read the report over again, that I might be satisfied of the truth of it, or whether I could find anything in it untrue.

Did I endeavour to persuade you to give any evidence here of any description?—No, you did not.

Did I use any persuasion to alter your belief upon any part of the circumstances you had seen?—You did not.

Did you come here with the intention of saying one word respecting this operation, but the truth?

Lord Tenterden.—We must presume that you cannot ask that question, whether he meant to come to perjure himself.

Mr. Wakley.—Did Lambert use any persuasion?—No; I endeavoured to get off being a witness.

Did I examine you as I have done here to-day?—No, you did not.

Did you state to me more than merely that the report was correct?—No, I did not.

Mr. JAMES LAMBERT,* *sworn.—Examined by Mr.* WAKLEY.

You witnessed this operation of lithotomy at Guy's Hospital, in March, in this year?—I did.

Did you furnish me with the report of that operation?—I did.

Is this the report you furnished to me, which is published in the "Lancet"?—It is substantially the same.

Did you assure me, upon your honour——

Lord Tenterden.—Ask him what he did say?

Mr. Wakley.—What did you say to me?—I stated to you, upon my word and honour, it was true. In fact, that it was rather an under-statement than an over-statement.

What do you say now, as regards that report?—I say that report is true.

Are you aware of any material circumstance in this report being incorrect?—I am not aware of it being necessary to state this one way or another; but I have since been informed, that instead of Mr. Callaway holding the stone up in the forceps, he held it in his hand.

How long did the operation last?—It lasted more than an hour.

You have inserted an hour in your report?—Yes.

Lord Tenterden.—What was stated in the written paper, must be proved by the written paper.

Mr. Wakley.—It was destroyed. Did the patient appear a healthy man?—He did.

Was he altogether a favourable subject for that operation?—I considered him so.

Will you describe the operation, as far as you can recollect it?—The operation was, as I believe, nearly indeed, it was in every respect what is

* This witness, being the avowed writer of the libel, and being, as it may be assumed from his evidence, actuated by feelings of personal hostility towards Mr. Cooper, his testimony will of course be received with great jealousy and suspicion by the reader, and it is not thought necessary to comment on particular parts of it.

written down: if I was to repeat it, I should merely give the statement that is there.

Was the first incision freely and fairly made?—It was.

At that time was the staff introduced?—The staff was then in.

When the knife and staff were carried forward to the bladder, was there a gush of fluid?—I saw no distinct gush.

In this report it is stated that the knife was carried on "somewhere," and the word "somewhere" in italics: where do you suppose the knife was carried?—The impression on my mind was, that the knife had not entered the bladder.

Why do you think the knife had not entered the bladder?—Because there was not the usual gush that ensues when the knife is carried forward, and the bladder is opened.

What did the operator do then?—He then asked for his uncle's knife, and said, I must enlarge the incision. I beg pardon: he first tried to introduce his forceps; and then, finding he could not, he then asked for his uncle's knife, to enlarge the opening, as he said.

Had the operator removed his finger from the wound at the time he introduced the knife?—He had done so before he introduced the knife; he re-introduced it upon his finger.

When the knife was introduced a second time, did he introduce the staff to guide the knife?—No, he did not.

Where were the forceps pushed?—They were pushed onwards into the wound.

Were they pushed far?—Not a great way then before Mr. Cooper made the second cut.

Did the operator at that time say any thing when he introduced the forceps a second time?—He said nothing then.

Did he say any thing about the bladder being deep, or the perinæum being deep?—Subsequently he did.

Did he say any thing about reaching the bladder?—He said he could not reach the bladder with his finger a short time afterwards.

Was the staff re-introduced?—It was at a subsequent part of the operation more than once.

What instrument was introduced next?—The gorget was used next.

The cutting or the blunt gorget?—I cannot state distinctly which; but the impression on my mind is that the cutting gorget was introduced first.

What forceps were employed?—Various kinds.

Was the scoop used?—Yes, the scoop was used.

Lord Tenterden.—After the stone was extracted?—No, before the stone was extracted.

Mr. Wakley.—Were sounds introduced into the opening in the perinæum? Yes.

And staves?—Yes.

Did the operator say any thing respecting the delay?—He said he could not explain the difficulty, or could not conceive the difficulty, I cannot say which.

Was that said in the presence of the patient?—It was said audibly to all the pupils.

In the hearing of the patient?—Yes.

Did the operator say any thing to Mr. Dodd?—He asked Mr. Dodd if he had got a long finger.

Did the operator say any thing respecting touching the stone with the sound?—He said he could feel the stone when he passed the sound through the wound in the perinæum: but he could not feel it with the forceps.

Did the patient make any complaint?—The patient repeatedly begged to be released.

Was the stone extracted at last?—Yes, it was.

When seized with the forceps at last, did it come out without difficulty or with difficulty?—It came out without any extraordinary difficulties, only those difficulties that are usual in passing the stone through the wound.

Was it a large or a small stone?—A moderate size.

Did you see the parts afterwards?—I saw and examined the parts after they were removed from the body.

Will you state what you saw, and who was present at the time?—When I went into the demonstrating-room several pupils followed me. I saw the body of the patient lying on the floor.

Lord Tenterden.—You saw the dissection?—No, I did not see the dissection, I looked at the perinæum.

Mr. Wakley,—Was the body then dissected?—The morbid parts had been removed; the bladder and the prostate had been removed from the body.

Before you went in?—Yes. I then asked to see the morbid parts, and they were shewn to me. I attentively examined them in the presence of several pupils. My attention was, of course, principally directed to the examination as to any difficulties, or any morbid appearance that might have given rise to any difficulties in the operation. I found the prostate gland itself slightly larger than a natural one—slightly larger than ordinary. I found on the left side of the gland a small oblique cut; the parts appeared to be what we call ecchymose; they seemed to have been bruised a good deal, and darkened the cellular membrane.

What parts?—The neck of the bladder and the gland. On the under surface of the neck of the bladder, or I should say on the floor of the neck of the bladder, there was a very singular appearance; there was a little projection about the size of the tip of my little finger; this I took to be, as Dr. Hodgkin described it, an enlargement of what is called the third lobe of the prostate gland. I continued my examination, and I found, on turning over the preparation and passing my finger on the under part of the bladder, that my finger passed up with the greatest facility between the bladder and the rectum.

Let me entreat your attention to this point. I ask you upon your solemn oath, did you make use of the slightest force in passing your finger up between the bladder and the rectum?—Upon my oath I did not.

Did you break down any structure in passing your finger up?—I did not.

Do you swear most positively that you left the parts in the state you found them in?—I must be allowed to explain here: I was going on with my examination when Dr. Hodgkin, the demonstrator or curator to the Museum, came to me very angrily, and pointed this out to the pupils, my finger being

between the bladder and the rectum, and said, "I wish people would not come here who have no business to pull things about;" and he said that somebody had broken down that little fungus growth I have described as an enlargement of the lobe. I was conscious I had never touched it, but merely looked at it; accordingly I followed him, and told him that I had been many years about the hospital, and had never had any complaints made of meddling with things; and I assured him upon my word that I had simply examined the preparation, and used no violence whatever with it.*

Who was present when you examined the preparation?—I do not remember any one else except Mr. Purl. I do not remember the name of any other pupil but Mr. Purl: there were several present.

How many do you suppose?—Five or six.

Do you know Mr. Braynsford?—Yes, I know him.

Do you know whether he was present?—I cannot say that he was; he has told me that he was present.

Did Dr. Hodgkin say any thing with regard to the perinæum of the patient?—He said it was not a deep perinæum.

Who was present when Dr. Hodgkin made that statement?—The same pupils; I think his expression was, there is nothing remarkable about it; that is, as regards the perinæum.

Did Mr. Key make any statement respecting the perinæum?—Mr. Key said, in the square of the hospital, in the presence of fourteen or fifteen pupils, that the patient had not a deep perinæum.

Did Mr. Key say any thing respecting the abilities of those persons who had stated that the patient had a deep perinæum?—I said to him, this straight staff you have invented will never do where there is a deep perinæum, and I have never seen it fairly tried before in the case of a deep perinæum, assuming it was a deep perinæum according to what the operator had said; Mr. Key told me it was not a deep perinæum, and if I said so I knew nothing about it.

Did you see any thing in any part of the preparation to account for the delay in the extraction of the stone?—I certainly did not.

Did Dr. Hodgkin state that the bladder could be reached easily with the finger?—No.

Did you ever examine a perinæum in which you were unable to reach the bladder with your finger?—Never.

What do you suppose to be the usual distance from the tuberosity of the os ischium to the base of the prostate?—I have measured it, and I find the medium distance to be about two inches; I mean to the base of the prostate.

It is stated here, that the bladder could be easily reached, when the man was dead, from the perinæum, with the finger; how do you know that fact?—I looked at the man and saw what kind of perinæum he had, and I saw a slight enlargement of the prostate, and that was my impression; I did not actually ascertain the fact when the bladder was in.

* As to the time when, the manner in which, and the person by whom the opening between the bladder and rectum above alluded to by Mr. Lambert was made, the reader is referred to the evidence of Mr. Callaway, Mr. Key, and Dr. Hodgkin. The object of the individual in forming that opening is too obvious from the whole tenor of the libel, of which he was the author, to require further elucidation.

Did you discover any thing from the *post mortem* examination to account for the delay in the operation?—I did not.

Was the cutting gorget introduced?—Yes.

In what position was the instrument held when it was introduced?—It was held, as regards its blade, nearly horizontally.

Did you see in the neck of the bladder and the prostate gland an incision similar to the form of the gorget?—I did not.

If the gorget did not pass into the bladder where was it likely to pass when it was introduced?—Between the bladder and the rectum; I have seen it repeatedly pass there.

By whom have you seen it repeatedly passed between the bladder and the rectum?—I do not know whether I have a right to say that, as it conveys a censure upon the operator.

Lord Tenterden.—In operations of this kind have you seen it?—Yes.

Mr. Wakley.—Have you ever seen the gorget passed between the bladder and the rectum by a skilful operator?—No, never.

Or by a person having any pretensions to skill?—No, certainly not.

Was the gorget used subsequent to the knife?—Subsequent to the use of both knives.

How many times had the two knives been introduced?—I do not recollect their having been introduced more than twice.

Do you mean twice each, or once each?—Once each.

How many times was the cutting gorget introduced?—I cannot speak to it being introduced more than once.

Was the blunt gorget used?—It was.

Did you ever see the operation performed in a similar manner to this?—Never.

Did the operator appear in a state of self-possession?—Certainly not.

Do you believe the patient could recover after such an operation?—No.

Have you seen Mr. Cooper operate upon other occasions?—I have.

Is he a good operator?—I should say not.

Have you seen him perform any operations in what you would call a superior manner?—Yes; I saw him, on one occasion, tie up the subclavian artery very quickly and well.

Is that an operation difficult to a man who has any nerve?—Certainly not.

Do you consider that Mr. Bransby Cooper's surgical abilities are adequate to the duties of surgeon of Guy's Hospital?—Certainly not.

Cross-examined by SIR JAMES SCARLETT.

Are you a surgeon?—Yes.

How long have you been so?—I have been in the profession about thirteen years.

No doubt you consider yourself much more competent than Mr. Cooper, do you not?—I do consider myself more competent than Mr. Bransby Cooper, certainly.

You consider him totally incompetent, do you not?—I have already said I consider him incompetent.

Totally?—Yes.

A disgrace to his situation?—I have not said that.

He must be if he is an incompetent man. You say you have been in the profession thirteen years; I do not understand that to mean you have been practising thirteen years?—No; it is thirteen years since I was apprenticed.

How old are you?—Twenty-eight.

How long is it since you began to attend the hospitals?—About six years ago.

When were you admitted a surgeon?—About three years since.

Are you practising now on your own account?—I am.

This is not the first communication you have made to the "Lancet?"—No.

By a great many?—I have made contributions to the "Lancet."

Very largely?—I have been a constant contributor for some time.

Do you derive any emolument from it?—I did.

You do not now?—No.

Did you derive any emolument during the period of your contributions?—I did.

Considerable?—I was paid handsomely.

Probably better than in the practice of surgery? Did you not derive a larger income from that than you have ever done in your practice as a surgeon?—No.

You have been intimate with Mr. Wakley?—I have.

Were you paid by the job, or so much a year for your contributions?—I had a distinct engagement to furnish a certain quantity of matter, and any thing extra I was paid for.

May I beg to know what it was you received annually for a certain quantity?—Am I bound to answer that, my Lord.

Lord Tenterden.—I think so.

Sir James Scarlett.—I am about to probe your motives to the bottom, and try your credit.—I received eight guineas a month for a certain quantity.

And all you exceeded that quantity, you were paid for in proportion?—Yes.

Was the proportion of remuneration measured by the quantity of matter?—No.

How was it measured?—It was an agreement, that I should give an article, it did not matter whether it was long or short, upon a given subject weekly.

If you contributed anything more you received for the excess?—Yes.

How was the excess paid for, by the line or in what way?—That would depend a good deal upon Mr. Wakley, there was nothing distinctly understood, it depended upon the length of it.

If it was high seasoned?—It depended upon the length and the difficulty of it.

If you gave anything beyond your weekly contributions, the payment depended upon the length of it?—If it was a matter that there was a great deal of trouble in noticing, and the article was long, I got paid more than if it was an article of a few lines.

It was left to his discretion?—Yes.

When did you first begin to contribute, when the work was first set up?—No.

How soon afterwards?—I cannot say exactly.

Was it a month, or six weeks, or a year?—I think it must have been established two or three years.

The work has been as celebrated for its severity, I do not say unjustly, as for being a clever work?—It is said to be so.

There is a good deal of pointed satire, and personal attack in it?—No personal attack.

No attack upon anybody by name, that is what you mean?—Not by name—public functionaries.

When it attacks a public functionary, it is personal.

Lord Tenterden.—I want to know what is meant by a public functionary?

Sir James Scarlett.—A watchman is a public functionary. These attacks upon public functionaries give it a good circulation?—It has a good circulation.

Do you not believe that that is the cause of its circulation?—I cannot say that; it is a work of science.

Do you not believe that persons are gratified with a little personal attack, if they are not the subjects of it?—I cannot say that.

You have not experienced enough of the world to say that?—No.

Is it a work very profitable to Mr. Wakley?—I presume it is.

Five or £6,000 a year?—I cannot say.

He maintains a handsome establishment?—Yes.

Does he practise as a Surgeon?—Occasionally.

His income is derived from this work?—His principal income.

Now attend to my question. Did Mr. Cooper ever threaten to turn you out of a room once?—I do not remember his threatening to do it.

I will give you a little time to recollect. Did he never threaten to turn you out of a room?—Yes, I remember an occasion at Guy's dinner, upon which Mr. Bransby Cooper addressed me angrily. I cannot say, whether he said he would do that or not, there was a great deal of noise.

My question is general, did he never threaten to turn you out of a room, I do not mention time or place?—There was some angry altercation ensued between us once.

What was it about?—It occurred at a public dinner.

What was it about?—I objected to a toast being drunk, and that was considered out of order; and Mr. Cooper came from his chair with several others, and some angry language ensued, and I left the room.

You were not turned out?—No.

What did you leave the room for?—Because I saw there was a strong feeling against the measure I had adopted.

When was this?—I cannot say the time, it is two years ago.

You have mentioned that circumstance, and I will now come to another. Had you never any difference with Mr. Cooper before that; before you answer it, I will give you time to recollect it?—I do not remember any quarrel with Mr. Cooper.

I do not mean that you came to blows. Do you never remember Mr. Cooper saying, "Sir, either you or I must leave the room, unless you make me an apology?"—No, I do not remember that.

The proper name by which you call an hospital surgeon in this work, is a "bat?"—Yes.

That is a nick-name among the wit and liveliness of this work. Now attend to me, I have brought that word to your recollection; do you never remember any angry words between Mr. Cooper and you, as to your use of that word, as applied to him, or hospital surgeons?—Yes, I do recollect that.

Where was it; was it in the lecture-room?—I think it was over at Sain t Thomas's Hospital, one day.

In the lecture-room?—I think not.

When you have recollected a little more, you will recollect the place?—I cannot say the place.

Was not it upon that occasion he said, "you must make me an apology, or you or I must leave the room?"—I do not recollect his saying that.

Did you make an apology?—I remember after a trial had taken place, in the warmth of conversation, using the word "bat," and Mr. Cooper considered it applied to him, and I had no difficulty in assuring him that I had no intention of personally offending him.

Did you apologize?—When I saw he took it up so warmly, I said I did not mean it as personally offensive to him.

Did you not say afterwards you would watch your opportunity and make him repent it, and have a caution what you say?—I do not recollect saying so.

Will you swear that?—To the best of my recollection I will.

Will you swear you did not say, "I will watch my opportunity and make him repent it," or any words to that effect?—To the best of my recollection I will swear I do not recollect it.

You could not have forgotten it?—I am a man of warm feelings, and I may have said many things in the course of my life that I may not recollect; but I do not recollect saying any thing of the kind.

As you are a man of warm feeling, do you think it possible you might have said "you would watch your opportunity, and make him repent it?"—I do not think it is possible.

Can you swear you did not?—I have no such impression upon my mind.

I desire to know whether you will say, upon your oath, that you never said "I will watch my opportunity and make him repent it," or words to that effect?—Upon my oath I do not recollect ever having said such words.

All you will swear is, you do not recollect it?—Yes.

When was it this affair happened about the bats?—I cannot speak to the time.

Whenever you said it, it was about a trial that took place here, probably it was not twelve months ago; it was before March last?—I cannot say to the time.

Was not it before March last?—Yes, it was.

Was the dinner you speak of two years from this time?—I believe this is about the time of the anniversary of Guy's dinner.

Was not it at the last anniversary?—No, it was not; it is two years ago.

Is not January the month in which the anniversary is held?—Sometime about Christmas.

Perhaps you were not at the last?—I have never been but at that one.

There you went away, but you were not turned out. You carried this report to your friend, Mr. Wakley; was this one of the weekly contributions, or one of the excesses?—One of the weekly contributions.

This fell within the eight guineas a month?—Yes.

Is it true that the report was rather more severe in your manuscript than in this publication?—There were one or two expressions which I consider were rather more severe.

More severe than he thought it quite right to publish?—Yes.

Did you indemnify him; you assured him they were true and were justified?—Yes.

Was the report much longer as you made it in manuscript than in its present form?—No.

I should like to know what the expressions were, we may as well have the whole of a good thing; what were the expressions he left out?—The principal alteration was as to the time I stated; it was rather more than an hour; and Mr. Wakley said, "I would rather be under the mark."

What was the other?—I do not recollect any thing else.

Was it simply an alteration in the time; I thought you said just now there were some expressions more severe?—It was an observation as to the time; there was some observation coupled with the length of time.

The time we may not think so material; but were there no other observations of a severe nature?—I do not recollect any.

When did you last see the manuscript?—I have not seen it since the time it was printed.

Did you read the next attack upon Mr. Cooper in the following number?—I did not.

Nor any part of it?—No.

If I understand you right, you give as a reason for doubting at least whether the knife had reached the bladder, the first time that you saw no gush of urine?—Yes.

You think that a very fair reason for judging that the knife had not reached the bladder?—Yes.

Did you see any gush of urine afterwards?—No.

As a man of skill, you say it did reach the bladder finally, and yet you saw no gush of urine at all; explain to me that inconsistency?—I can only explain that the impression upon my mind is, that the knife was carried onwards, and as I did not see the gush of urine, my impression was, that the knife had not entered the bladder.

Therefore whenever the knife had entered the bladder there would be a gush of urine. When did you see the gush of urine?—I did not see any gush of urine.

How did it get out?—There might be a small opening made, through which the urine oozed.

Then he said, "Give me my uncle's knife?"—I have some doubt about that, whether he said, "Sir Astley's knife," or "my uncle's." Other people have said that——

You have been examining the witnesses?—I have asked——

Have you not been examining the witnesses, and taking their evidence in writing?—Yes, under the direction of Mr. Wakley.

Then it is from what you learned among your own witnesses that you were led to doubt whether it was "my uncle's knife" or "Sir Astley's knife?"—I forget now when I first had a doubt in my mind.

You made the report. Will not you swear it was "my uncle's knife?"—No, I will not swear whether it was "Sir Astley's," or "my uncle's."

If it was "Sir Astley's," why did you put "my uncle's?"—Because Mr. Bransby Cooper is so much in the habit of using the word.

You thought it more characteristic?—Yes.

Did you throw it into this dramatic form of the first and second act?—I did.

Did you supply Mr. Wakley, for I consider you as learned as he is upon the subject, with the quotation from Bell?—It was appended to the report.

Did you supply him with it?—Yes.

You are sure you understood the meaning of it?—Yes, I think I did.

Lord Tenterden.—Where is that?—

Sir James Scarlett.—It is about the murderous operation. As you gave this report as a man of honour, you intended to convey an impression that Mr. Cooper had murdered the man?—I did not say he had murdered the man.

Lord Tenterden.—That is not the question; but whether you intended to convey that impression?—I intended to convey the impression that the patient had lost his life through want of skill.

Sir James Scarlett.—I have no doubt you thought it a good opportunity to attack a man whom you thought incompetent to his situation, besides getting the eight guineas?—No, I lamented over it.

You lamented over it, and thought it a very melancholy thing, that ought not to be treated with ridicule at all?—I did not think it a subject for ridicule.

Did you put that note which is added at the bottom, that the man said he had come "to be operated upon by the nevey of the great Sir A(r)stley?"—Yes.

That is your note?—Yes.

That you meant as a part of the tragedy?—It was added after the report was written.

You heard the man say so, no doubt?—Yes.

You saw him before the operation?—Yes.

Do you happen to know whether Mr. Cooper wished the operation to be postponed?—I do not recollect that.

Do not you know who sent the man to the hospital?—Yes, Mr. Hodson, of Lewes. I believe it was the overseers of the parish.

Do you not know that Mr. Hodson had refused to perform the operation?—No, he did not refuse to perform the operation.

Were you there?—I have seen him since.

Have you examined him?—No; but I was down there to see my brother, who lives in the same town.

Do you know what happened to Mr. Clapham, the licentiate of the Apothecaries' Company?—I know Mr. Clapham.

Do you know him as a licentiate?—He has passed his examination.

Is he a relation of your's?—Yes.

What?—A cousin.

Did you assist him in procuring his licence?—No.

Are you sure about that?—Yes.*

Did you know when he was about it?—No, his passing surprised me. He came and told me, one morning, he had passed. I did not know he was preparing.

You knew he was not of age?—I did not know that.

How many bets have you laid upon the issue of this cause?—Not one.

You swear that?—Yes.

Have you offered any?—I have spoke of it, but I have never offered any thing of the kind seriously.

Have you ever offered any bets upon the issue of this cause?—I never made any bets. I may have said that the odds were so and so, and so and so, but I never made any bets.

Do you mean that you have said so?—Yes.

You have said so?—Yes.

You knew what the odds were?—I knew that we had a great number of good witnesses.

There were bets?—No.

You thought that *we* therefore would win, as *we* had a great number of witnesses?—I thought the cause would go for us.

How much did you say the odds were? I should like to know?—I really do not recollect.

It is not many days since, surely, is it?—I do not recollect.

You will not say how much you said it was, two or three to one?—I cannot say I made use of the remark; I may have done so.

Lord Tenterden.—You said you had said so.

Sir James Scarlett.—You said you had; now you come back to *mays* and *mights*. Did you or not? have you or not said the odds were in favour of your winning the cause, meaning you and your friends?—I cannot distinctly swear about it; I think I have.

Have you any doubt that you have?—Yes; I have some doubt whether I have.

As you treated the cause something like a horse that was to win the race, you took great pains to train it and get it up?—I have taken pains to collect evidence.

You have examined a great many?—I have examined several.

Have you had them at your house?—Two or three have called at my house.

Only two or three?—I do not remember that more than three of the witnesses have called at my house.

* See the evidence of Mr. Watson, the secretary of the Apothecary's Company, who afterwards produced a certificate of the moral character of Mr. Clapham, as required by the Company, and which certificate was given by Mr. James Lambert.

What other place have you seen them in?—I have seen them at the Anatomical Theatre.

Where is that?—In Webb-street, in the Borough.

Who keeps it?—Mr. Grainger.

Mr. Grainger has a cheap theatre, has not he?—I do not know that he has a cheap theatre.

It is not cheap?—I do not know.

How many at a time have you had there?—I have been talking to different witnesses in that room, certainly, about the case.

How many have been there when you have been discussing the subject, and training the horse, in other words?—Several of our witnesses were there.

A dozen?—No; I think not.

Was Mr. Wakley there?—He has been there.

Had you a model there?—Yes.

Was there a lecture given upon it?—No.

Attend to me—has no lecture, or nothing in the shape of a lecture, been given with a model present upon the specific operation, to prove Mr. Cooper's want of skill to the witnesses?—I do not know that there has been; I have never heard that there has been.

What were you doing with a model?—It was there.

For what purpose?—It was taken there one day, and removed to Mr. Wakley's the next day.

Have you not been present when a lecture has been given to persons expected to be witnesses in this cause, to prove that the forceps did not get into the bladder, but went between the bladder and the rectum?—I have been present when the parts of the perinæum have been demonstrated, both by Mr. Grainger and Mr. Pilchard, in the room.

With a view to this cause?—I believe that Mr. Grainger knew of the trial.

I will not confine myself to a model; you had a dead subject there?—Yes.

I ask you, upon your solemn oath, if a lecture was not given with a view to this cause?—I assure you I do not know; I heard of Mr. Grainger having given a lecture on the parts connected with the operation of lithotomy; I was not present at it; I have heard of Mr. Grainger and Mr. Pilchard speaking of the parts as the different subjects were exposed; I was not present at a set lecture.

Have you been present at any time when certain demonstrations have been made, and explanations given, with a view to the evidence in this cause?—I have been present when the parts were demonstrated.

With a view to this cause?—*I believe it was with a view to this cause.*

Do you doubt it?—No; I do not.

Have you not done it yourself?—I have explained the parts.

To persons who were to be witnesses in the cause?—I have shewn them in the room to any one about.

Have you not demonstrated the parts, and given explanations to persons to be witnesses in the cause, with a view to their evidence?—No; I have not; I have gone down to that room and examined the parts repeatedly.

Lord Tenterden.—You say you have explained the parts to persons in the

room who were to be witnesses, was not that with a view to their evidence, you are asked?—It was knowing they would give evidence in the cause.

Sir James Scarlett.—Was not it with a view to their evidence in the cause to assist them in their scientific knowledge?—It was with a view of refreshing my own memory.

Was not it with a view of giving them more knowledge?—No; I did not go down for that purpose.

But you explained it, knowing they would give evidence?

Lord Tenterden.—Was not it done with a view to their evidence, that is the question, and you must answer it yes or no?—I certainly give trouble, but as I understand the question——

Sir James Scarlett.—Were not your observations and explanations with a view to their evidence in the cause?—I cannot admit it was with a view to their evidence, I can say no; I have already said I went down to the theatre for the purpose of examining the parts myself, and in the course of examining them, I have explained to different pupils that have been about the different parts.

That were to be witnesses?—Some of them were about on both sides.

I give you warning, that all did not believe in your science, and therefore have a care what you say—did not you explain to them the particular incidents of this operation, knowing they were to be witnesses in the cause?—I explained to the pupils generally the parts.

Did you not know they were to be witnesses in the cause?—I did, some of them, certainly.

Did you go to learn yourself any thing to give evidence?—I went with a view of refreshing my own memory.

Was Mr. Wakley present?—I met him there on two occasions.

Was he present on any occasion when you were making these exhibitions?—No.

Do you mean to swear that?—I do not recollect whether, when he was there, there was a perinæum dissected.

Was he never there when you were explaining to the witnesses the operation in question?—I do not think he was.

Did you ever hear him explaining it?—Yes.

To the persons who were to be witnesses?—To the pupils generally.

Why do you give me that answer—were they persons he knew were to be witnesses?—The persons present were to be witnesses.

Was it your expression, or did you hear him say that Mr. Cooper murdered the man, as much as if he had cut his throat with a knife—mark the expression?—I do not remember the words.

Will you swear they were not used?—I cannot swear one way or another.

Could they have escaped you?—I do not recollect them.

Lord Tenterden.—Were they used is the question—this is fencing in a way most unbecoming—you do not answer any one question directly?—I will swear I did not hear him say so.

Sir James Scarlett.—Or any words to that effect?—Yes.

Will you swear you did not use words to that effect?—*I cannot swear I did not.*

How many days ago was it you used words to that effect?—*No answer.*

How many days ago was it?—I may have expressed myself in the dissecting room, that the patient lost his life in consequence of the operation, and that was about ten days ago.

Did Mr. Grainger lend his lecture room for this purpose?—I am a pupil in that school.

I thought you were a surgeon?—I am a perpetual pupil; I laid down a certain sum, and am entitled to go at any time I please.

How many times have you heard lectures and explanations to persons who were to be witnesses in this cause?—I have heard explanations given several times.

How many?—Four or five.

Within a month?—Within the last six weeks.

Have you heard it at Mr. Wakley's house also?—No.

At your house?—No.

Only at Mr. Grainger's?—At the theatre.

Was Mr. Purl there?—He was there on some occasions.

Was Mr. Clapham, your cousin, there?—No.

Was Mr. Gilbert?—No.

For the purposes of justice, you have displayed a good deal of zeal in the cause?

Lord Tenterden.—He cannot answer that.

Sir James Scarlett.—Did you feel a good deal of zeal in the cause?—Having been the author of the report, I felt an interest in making the evidence as perfect as possible.

Whereabouts did you sit or stand at the operation?—I stood very close to the operator.

At which side of him?—The left hand side.

You were not among the pupils?—I stood down.

In the arena?—No, just outside the bar.

There was a bar between you?—Yes.

Now, if you please, we will come to the *post mortem* examination; you say that you went up to Mr. Key, and said to him, your straight staff will not do in a deep perinæum?—Yes.

Tell me, did not Mr. Key say, in answer, "You know nothing about it, I have operated upon a perinæum twice as deep with a straight staff?"—I believe Mr. Key did tell me I knew nothing about it; but I do not recollect his telling me he had operated upon one twice as deep.

Do you know enough to know whether a straight staff has any thing to do with the perinæum?—Yes, I do.

You are of opinion that the depth of the perinæum has something in it either for or against the use of the straight staff?—Yes, I believed it had, as I never saw it used, except in children.

You said you had never seen it used?—Yes I have, repeatedly, by Mr. Key.

Did not Mr. Key tell you you knew nothing about it, that it had nothing to do with the perinæum?—I do not recollect that about the perinæum.

You first stated that Dr. Hodgkin had said it was not a deep perinæum, but

you afterwards qualified it; what was it Dr. Hodgkin said instead of those precise words?—I think, in a subsequent conversation with him, and I have conversed with him a good deal about the appearance of the parts, he said, he should say there was nothing remarkable about the perinæum; I think those were his words.

He did not use the words "it was not a deep perinæum?"—He had said that previously.

Lord Tenterden.—I have both phrases down.

Sir James Scarlett.—Did you furnish that happy epigram about Sir Astley Cooper and his *nevey*, that came out in a subsequent number?—No.

That is not one of your stipendiary contributions?—No.

That is a piece of Mr. Wakley's own wit?—I do not know whose it is.

Re-examined by Mr. WAKLEY.

I am sorry you should display any hesitation; there is nothing in Sir James Scarlett's manner to annoy you; there is nothing to conceal either here or any where else.

Sir James Scarlett.—There is one question I forgot; did you attend the operations afterwards in lithotomy in Guy's Hospital?—No.

Have you never seen one since there?—No.

Have you been allowed to attend?—No.

Lord Tenterden.—You were refused?—Yes.

Sir James Scarlett.—Were you ever turned out of any other hospital?—I left the Middlesex Hospital.

Were not you turned out?—Yes.

How long ago?—Four years ago.

And St. Thomas's also?—I am not allowed to go to St. Thomas's in consequence of this report.

Before this report?—No, not before.

Mr. Wakley.—Were you the apothecary at the Middlesex Hospital?—Yes.

Were complaints made against you that you were the Reporter to the "Lancet" for that hospital?—Yes.

Was any other charge made against you than that you were Reporter to the "Lancet?"—No other charge.

Were you ejected from that institution on the ground solely that you had sent communications to the "Lancet?"—Yes.

I will ask you, upon your oath, did you ever send a single report from that hospital before you were ejected from it?—No.

Or afterwards?—No.

Was the accusation false entirely?—It was.

When you spoke of the odds respecting this cause, what did you mean by it?—I meant, that, in consequence of our having what I conceive to be a good deal of good evidence, that the chances might be in our favour.

When you spoke of the odds, did you know of a single bet made respecting this cause?—Certainly not.

Have you heard me offer any bet?—No.

Have you offered any bet?—No.

Is Mr. Grainger's School of Anatomy of high repute?—Very high.

Sir James Scarlett.—To be sure it is, he attends it.

Mr. Wakley.—Is it cheaper than the school at Guy's Hospital?—I believe it is.

Do you believe the information given there to be inferior or superior?

Lord Tenterden.—You must not ask him such questions as that; how can he know?

Mr. Wakley.—An attack has been made upon Mr. Grainger's institution.

Sir James Scarlett.—An attack has been made upon him because he has allowed his lecture room to be made a lecture room for your witnesses.

Mr. Wakley.—Do you know of any request made by me that he should lecture my witnesses unless Mr. Cooper's witnesses were there also?—No; he lectures to the class generally.

Do you consider——

Lord Tenterden.—You must not ask what he considers.

Mr. Wakley.—Do you believe if you had to give evidence upon any piece of machinery, you would endeavour to ascertain all the information upon it you could, before you went into Court?—I certainly should.

Was the information proffered to the whole of the pupils; Mr. Cooper's witnesses as well as mine?—The whole of the class.

Sir James Scarlett.—How does he know they were Mr. Cooper's witnesses?

Mr. Wakley.—Were the doors closed against any gentleman, or any set of gentlemen?—Certainly not.

Did you hear Mr. Grainger say, that he was anxious his pupils should not exhibit a want of anatomical skill here, and that he wished them to be aware of the parts?—I did not hear him say so.

Were several of Mr. Grainger's pupils subpœnaed on each side?—Yes, I know they were.

You were asked respecting a model in the dissecting room; where was the model made?—Publicly in the yard of the theatre.

Was the cast in fact taken from a child in that dissecting room?—It was.

Did you see it there after it was made?—I did not.

Do you know that I saw it there?—I do not know that you did.

Mr. ALEXANDER LEE, *sworn.—Examined by Mr.* WAKLEY.

Where do you reside?—14, Bridge Street, in the Borough.

Are you a friend of Mr. Bransby Cooper?—I am not intimately acquainted with him; I never spoke to him.

Are you a surgeon?—Yes.

How many years have you been in practice?—Five years.

Did you witness the operation of lithotomy performed at Guy's Hospital by Mr. Cooper, that is under dispute?—I did.

How was the operation performed?—In the usual manner. It was a tedious operation; a long, tedious operation.

When you say in the usual manner, do you mean in Mr. Cooper's usual

manner, or the usual manner of other persons?—It was the first time I ever saw Mr. Cooper operate for lithotomy.

How many times have you seen the operation for lithotomy performed?—I do not know.

Can you guess, can you form any opinion of the number?—From fifty to one hundred.

How long have they generally lasted?—Five or ten minutes, or a quarter of an hour; it is impossible to say the average.

Have you ever seen one last a quarter of an hour?—Yes.

What were the circumstances in that case that produced the delay?—The difficulty of extracting the stone.

From what cause?—I do not know; there might have been a contraction of the bladder on the introduction of the forceps into the bladder; that might contract it, and that might have been the cause.

Does not the bladder always contract when the urine escapes, or does it remain in a state of relaxation?—I should think it does.

Does what?—Does contract.

Are you aware of the circumstances that produced the delay in this case?—I am not.

There were no circumstances?—No.

Did you see the whole of the operation?—I saw the whole of the operation; I did not examine the stone.

You saw it extracted?—Yes.

Were the different instruments introduced that are mentioned in the report in the "Lancet?"—Yes, I think they were.

Was the operator cool and collected during the performance of the operation?—I could not see any material difference; I was not at the operating table, I was at some distance.

Did the operator carry the knife and staff towards the bladder?—Not in the first instance.

What did he do?—The first incision was made in the usual manner; but perhaps the incision into the bladder was not sufficiently large.

Would the opening made into the bladder the first time the knife was introduced, admit the passage of the forceps?—That is a matter of opinion; and at the distance I was from the operator I could not say.

Were the forceps introduced into the bladder at the first attempt?—I am not sure.

Did the operator, after attempting to introduce the forceps, re-introduce his knife and make another incision?—Yes.

Had he at that time laid hold of the stone with the forceps?—I think not.

In point of fact, before he had made the second incision with the knife, was the staff re-introduced?—I will not undertake to say the staff was re-introduced before he made the second incision; I am not prepared to say.

Did Mr. Cooper use the cutting gorget?—Yes, at the latter part of the operation.

Did you upon any other operation of lithotomy you have ever witnessed, see the gorget introduced after the knife had been applied three times?

Sir James Scarlett.—Nobody has said the knife was applied three times.

Most of the operations I have seen have been in Paris; I have seen more operations for lithotomy in Paris than in London, and there they use different instruments.

Mr. Wakley.—After the knife has been used twice, have you, either in England or Paris, seen the gorget used to cut into the bladder?—No, I have not.

Is the gorget ever used with any other view than cutting into the bladder?—No, not that I am aware of.

How long did the operation occupy?—I suppose more than half an hour.

Did it last an hour?—I cannot tell exactly, but I believe it lasted more than half an hour.

Will you swear——

Lord Tenterden.—He is your own witness.

Mr. Wakley.—I know it. Did it last less than an hour?—I think not an hour.

Will you swear that the operation lasted less than fifty-five minutes?—I did not mark the time, but from recollection I have no hesitation in saying it lasted more than half an hour.

Will you take upon yourself to swear it lasted a less time than fifty-five minutes?—I really did not mark the time; and therefore it might be from the report in the "Lancet"——

Lord Tenterden.—You must not take the report of the "Lancet."

I have no hesitation in saying it lasted from half an hour to forty minutes; it might be a little more.

Mr. Wakley.—Will you swear it did not last an hour?

Sir James Scarlett.—You have no right to cross-examine your own witness.

Mr. Wakley.—Was the operation scientifically performed?—I am not prepared to give an opinion of that importance.

Which of the two do you consider the best surgeon, Mr. Callaway or Mr. Bransby Cooper?—Mr. Callaway; but it is a very invidious question.

I am compelled to put it; it is an invidious proceeding altogether.

Lord Tenterden.—Comparisons between two particular individuals should be avoided if they can.

Mr. Wakley.—Do you consider Mr. Bransby Cooper is qualified for the office of surgeon at Guy's Hospital?—That is a question which I think I ought not to answer; I submit I should not answer such a question.

Will you answer it?—I submit I ought not to draw such a comparison; I am not a sufficient judge.

You have stated that the report in the "Lancet" is correct?

Sir James Scarlett.—I object to that. Ask him whether he will swear it.

Mr. Wakley.—Is it correct or incorrect?—Generally speaking, it is.

Sir James Scarlett.—It is what?

Lord Tenterden.—You say, generally speaking, it is correct?—Yes, the form of the report is objectionable.

Mr. Wakley.—Will you point out any incorrect statement in that report?

can you do so?—There are some expressions that I did not hear made use of by the operator, that are reported in the "Lancet."

How near were you to the operator?—Not so far as I am from you.

He might have used the expressions mentioned, without your hearing them?—He might.

Will you point out a single fact or statement in the report that is inaccurate, as far as your observation goes?—If I was to go over the report, I might point out some statements that do not appear to me to be correct.

Will you take it if you please and go over it? (handing the "Lancet" containing the report, to the witness), when did you read it last?—A few days ago.

Sir James Scarlett.—I will not object to what is passing now; but this is a most summary mode of proceeding.

Lord Tenterden.—There never was such a proceeding; he ought to come prepared to give his opinion.

Mr. Wakley.—I will ask him another question. Did you state before you came into court——

Lord Tenterden.—You cannot ask that question; he is upon his oath, and called by you; if you were cross-examining him you might ask it.

Mr. Wakley.—Was it a large or small stone?—A small stone.

Did you see the preparation, and the *post mortem* examination?—No.

Did you see the parts after they were removed from the body?—I did not.

Do you know of any circumstances that would render the operation difficult?—None.

Cross-examined by SIR JAMES SCARLETT.

I understood you to say you had been five years practising as a surgeon; are you a member of the College of Surgeons?—I am not.

Were you bred as a surgeon?—Yes.

Have you been in any other occupation?—Yes.

What other occupation have you followed?—I have been a clerk.

And a merchant?—Yes.

Was that before you began to practise as a surgeon?—No.

During the time?—No, it was between the time after I served part of my apprenticeship.

Did you ever deal in any particular article?—Yes.

What was the nature of the merchandise? Potatoes?—Yes.

You were a potatoe merchant. I do not mean it as any reflection upon you, I assure you,—how long ago was it? you have given your evidence much better than a pupil.—Ten or twelve years ago.

You say you have seen from 50 to a 100 cases of lithotomy?—Yes.

Have you performed any yourself?—On the dead subject I have.

I desire to ask you this question, and have the goodness to attend to me. When an operation is in hand, is there any body that can possibly explain so well the difficulties that occur as the operator himself?—None.

May it not often happen that what appears ambiguous or doubtful to a bystander, if the operator was asked, he might be able to explain satisfactorily?—Certainly.

Is not that more particularly true where the operation is performed without any sight of the eye, but by the feeling of the finger and instruments within the body?—By feeling.

You say that circumstances that appear ambiguous to the bystanders might be explained by the operator; is not that peculiarly the case where the operation is within the body, and performed by instruments, and by feeling only?—Yes.

Can any body judge so well how far the instrument has reached, and what it has touched, as the operator who has it in his hand?—Certainly, no one.

Then I desire to ask you, as a surgeon, whether it is not rash to give an opinion upon an operation of that sort without asking the operator to explain what appeared to another person to be doubtful?—Certainly it is; there is no one, in my opinion, can judge of the difficulties of an operation but the operator himself.

Then I ask you, as a surgeon of some experience, you are not a pupil, whether any surgeon experienced would venture to give an opinion without at least knowing what the operator had to say about it?—Certainly not.

Should you not think it most presumptuous and rash in a man, particularly a young man, a pupil, to give such an opinion without having spoken to the operator himself?—Certainly I should.

Next to the operator himself, in the case of lithotomy, who is the person that can next best judge, is it not the assistant surgeon?—Yes; the assistant surgeon who holds the staff.

When did you first read this publication in the "Lancet?"—On the day of publication.

You say that if it was stript of the expressions, and the phrases you object to, most of the facts stated, you would say, were correct?—Had it been confined to a plain matter of fact statement, I believe it might not have been objectionable.

I ask you then, as a medical man, acquainted with medical subjects and studies, in your honest judgment, is it a fair report, or is it intended to calumniate?—It is a very unprofessional report.

Whether all those instruments were used, or any of them were used, or whether, if used, they were all necessary; you say the operator must be the best judge?—Certainly.

Has not every operator for the stone a number of instruments at his command, to use them in case they should be necessary?—The mode of operating for the stone is not yet settled in any country, and every surgeon uses his own instruments.

But still a man must have a number of instruments *pro re nata*, in order to use those that may be necessary?—Certainly.

Did you see the flow of urine from the first incision in the bladder?—A small discharge of urine from the first incision, it might be urine, I will not say it was urine.

Did you not believe it was at the time?—It might have been blood and urine together.

Lord Tenterden—There was some urine?—I am not certain; it is impossible where I sat to say whether it was urine mixed with blood, or blood.

Sir James Scarlett.—Did you at any time afterwards see any flow of urine?—I am not sure.

You did not examine the stone yourself?—No.

You admit that you cannot form any judgment of the difficulty, although you saw it a difficult case?—I might form an opinion of it, but it must be a matter of opinion only.

Sometimes does not it occur that the stone is folded in the folds of the bladder?—It is the bladder contracts on the approach of the instrument.

Are you aware whether, where you have reason to suppose that is the case, that the letting the instrument remain a little time in the bladder is advantageous?—Yes; because the spasmodic action of the bladder ceases.

You say you have not seen many operations performed in this country?—I have seen many here; but more in Paris.

Re-examined by Mr. WAKLEY.

You have stated the operator himself must be the best judge of the difficulties of the case?—Yes.

Do you think he could have much knowledge of those difficulties when he stated in the presence of the patient, bound upon the table, that he could not explain those difficulties?—I think the operator in such a case owed an explanation to the class, as it was a tedious operation; he owed it to himself and the class, to make some explanation of the unusual difficulties.

Had there been any unusual difficulties, do you think a skilful operator would have failed to discover them?—It is possible he might.

Sir James Scarlett.—But he must be the best judge?—Certainly.

Mr. THOMAS BOLTON,* *sworn.—Examined by Mr.* WAKLEY.

Did you witness the operation of lithotomy, reported in 239 of the "Lancet?"—Yes, I did.

Is that report correct?—Generally correct.

Did the operation last nearly an hour?—Yes.

How long did it last?—It might be an hour, or a little more or a little less; I cannot speak to a few minutes.

Were there many instruments employed?—There were.

Did you ever see so many instruments employed in any operation of lithotomy?—Never.

Did the operator appear to be in a state of self-possession?—He did not appear to be so at first; he regained his self-possession afterwards in some degree; he appeared to me so.

How many times were the knives introduced?—Twice.

Did he use the cutting and blunt gorgets?—Yes.

Both?—Yes.

When was the cutting gorget introduced?—Before the blunt gorget.

After or before the knives?—After the knives.

* This gentleman, at the time of the operation, was a pupil of six months standing; his progress, therefore, in the science must have been very rapid, or his opinions could not have been very edifying to the Jury.

Have you ever seen many operations of lithotomy?—I have seen not more than six or eight; I am not certain exactly.

How long did those operations last?—Some of them lasted five minutes, and some of them ten, or more perhaps.

Were there any unusual circumstances attending those that lasted ten minutes?—No, not very unusual, except that the stone was not grasped with the forceps.

Were any of those operations performed by Mr. Bransby Cooper?—Not any of them.

Was there much violence used in this operation?—Yes; there certainly was considerable violence used.

Were the forceps thrust a great way back?—They were thrust a considerable way back after the first introduction, though not till after the second incision had been made by the knife.

Did there appear to be an obstruction to their introduction?—Yes; after the first incision, on the first introduction of the forceps.

Upon any other operations did you see the cutting gorget used after the knives?—No; I have seen cutting gorgets used in the operation of lithotomy, and never any other instrument as a cutting instrument in that operation.

How was the cutting gorget held on this occasion; horizontally or obliquely?—Horizontally, and rather inclined a little obliquely.

Did you remain until after the operation was over?—Yes.

You saw the stone?—Yes, I did.

Was it a large or small stone?—Small, compared to what they often find there.

Did the operator offer any explanation of the causes of the delay in the operation?—No; he turned round to the class and said, he really could not explain the cause of the difficulty.

When did he say that?—During the time the patient was lying on the table, and before he had extracted the stone.

What did he say after he had extracted the stone?—He used some expression of that kind after he had extracted the stone; I do not recollect the words.

How soon after the stone was extracted?—Immediately; not half a minute had elapsed.

Was the patient bound at that time?—I really cannot say whether he was or not.

How soon was the explanation given?—Immediately.*

Lord Tenterden.—None was made.

Mr. Wakley.—Attempted explanation?

Lord Tenterden.—He said he could not.

Mr. Wakley.—What were the words?—I do not recollect exactly; they were to that effect, that he could not give any explanation.

How soon was this after the stone was extracted?—In a very short time; almost immediately.

* See the evidence of Mr. Callaway, who states that the patient was unbound the very moment the operation was over.

Do you consider that the operation was scientifically performed?—No; I could not consider that.

Cross-examined by Mr. POLLOCK.

Were you a pupil at that time?—Yes.

How long had you been so?—From the 1st of October, 1827, till that time.

About six months?—Yes.

Where had you been before that?—I had been only a short time before out of my apprenticeship; I served my time to a surgeon.

Where?—At Daventry, in Gloucestershire.

Did you ever see any body cut for the stone in the country?—No.

How many have you seen cut in town?—Six or eight.

Was that the first you ever saw?—The fifth or sixth, I should think.

You have not seen one since, or but one?—I do not recollect at present whether I have or not.

Were you present at Mr. Grainger's?—I was a pupil of Mr. Grainger's.

Were you present when any lecture was given, or when there was any reading upon the subject of this sort of operation?—No; I have not attended at Grainger's or Guy's Hospital since last May.

BENJAMIN HARRISON, *Esq., sworn.—Examined by Mr.* WAKLEY.

Are you treasurer of Guy's Hospital?—Yes.

How many years have you held that office?—Thirty-one years, I think.

Have you brought the papers which you were requested to bring in your subpœna?—I have the minute-book mentioned in the letter from your solicitor.

Have you got them with you?—I had no opportunity of keeping them in my hand. They are in the lobby.

In that minute book are the names of the governors entered who voted for the election of Mr. Bransby Cooper?—Yes.

Have you brought with you the preparation taken from the body of Stephen Pollard?—Yes.

Was Mr. Bransby Cooper one of the apprentices at Guy's Hospital?—Yes.

To whom was he apprenticed?—To Sir Astley Cooper.

When did his indentures expire. In what year?—I do not exactly recollect. I should think about a year and a half before his election as surgeon.

Did not his indentures expire in 1825?

Lord Tenterden.—If you go minutely into this you must have the indentures.

I cannot speak to that without my book.

Mr. Wakley.—For how long a time were the indentures drawn?—The term of apprenticeship, I believe, is six years. I am not quite sure whether it is six or seven. I believe the custom is now six years.

You are not certain the indentures expired in 1825?—No.

In what year was Mr. Bransby Cooper elected?—He was elected the 4th of May, 1825.

When did Mr. Cooper become a member of the College of Surgeons?—I have no knowledge of that.

You are not aware of the year?—No.

When did Sir Astley Cooper vacate his office in Guy's Hospital?—He vacated on the 3d of May. He was appointed consulting surgeon the 4th of May, 1825.

Had Sir Astley Cooper previously held the office of surgeon?—Yes.

On what day was Mr. Bransby Cooper elected?—Upon the 4th of May, 1825.

Sir Astley Cooper was elected consulting surgeon, and Mr. Bransby Cooper surgeon, on the same day?—Yes; and Mr. Callaway assistant surgeon on the same day.

Was there any public announcement that the office of surgeon would be given up by Sir Astley Cooper?—A notice was given by a committee held the 13th of April previous. The committee proposed to the general court that Sir Astley Cooper should be appointed consulting surgeon, and that a surgeon should be appointed in his room, and an assistant surgeon also; but the minutes of the court are here, and it may save time to read them from the book.

Did the court give any public intimation that Sir Astley Cooper was about to vacate his office?—The court gave notice, as they do on all other occasions. The committee in this case, which is not at all necessary to be done, did meet and appoint a day for a general court to be held, to fill up the vacancies that would thus be occasioned.

Did the general court insert in the public newspapers any advertisement, either that such office was vacant, or was about to be vacant?—Most assuredly not. They never do. It never was the custom of that institution. They never advertise upon the vacancy of any office.

Were any testimonials of Mr. Bransby Cooper's surgical abilities produced at his election?—Mr. Bransby Cooper had been an apprentice at the hospital, and constantly under the observation of the governors, and those connected with the regulation of the hospital.

That was not exactly an answer to the question. I ask you if any testimonials of Mr. Bransby Cooper's abilities were produced?—We never have occasion to apply for any testimonials, as we have sufficient opportunity of knowing their abilities, without applying any where else. If they had been absent from the hospital any time between the termination of the apprenticeship and their election, it would have been necessary they should produce certificates how they had employed their time when they were no longer under our observation.

Did you consider testimonials of ability were unnecessary?—I considered we were in possession of every information we could have upon the subject, and that he was perfectly competent to the situation.

Are you a surgeon?—No, I am not.

Are any of the governors surgeons?—No, I believe not. Certainly not.

Do you suppose that persons not educated——

Sir James Scarlett.—Do not ask him what he supposes.

Mr. Wakley.—Do you believe that persons not educated to the medical profession are the best judges of medical skill?—I do not attempt to judge

myself, nor the governors individually. They judge from representations. They have opportunities of judging from the proceedings of every day. Mr. Bransby Cooper and his cotemporaries were constantly before them.

Who were his cotemporaries at that time?—Out of two or three hundred pupils it is impossible for me to tell who those people are. I could tell you who were the candidates for the situation. There were several persons who were attending at that period at the hospital. Mr. Brewer, Mr. Callaway, Mr. Key, Mr. South, Mr. Tyrrell, Mr. Morgan, and Mr. Cox. They were all fellow-apprentices.

Lord Tenterden.—Were they all candidates?—No.

Lord Tenterden.—I thought you said they were candidates?—No. They were fellow-pupils and apprentices.

Mr. Wakley.—Is there a bye-law in your institution which renders it imperative that you should elect the surgeons of the hospital from the apprentices?—No, none whatever. We should be quite at liberty to go elsewhere if we stood in need, and had not sufficient talent in our own hospital.

Has any person been elected to the office of surgeon in Guy's Hospital during the period you have held the office of treasurer, who was not an apprentice to the hospital?—No, there have been so few till the very recent appointments: Sir Astley Cooper was the only instance of any one in my time, and his pretensions were as well known to us as Mr. Bransby Cooper's were under the same circumstances; and just under the same circumstances, Sir Astley Cooper had been under our eye, and so had Mr. Bransby Cooper.

Lord Tenterden.—Sir Astley Cooper was the only one you have in your recollection?—No, there was Mr. Key and Mr. Morgan.

Mr. Wakley.—When was Mr. Key elected?

Lord Tenterden.—I do not see the effect of all this.

In September, 1821; it was deemed expedient by the governors to appoint an assistant surgeon, and a general court was held the 19th of September, 1821, for the election of an assistant surgeon, that was to take place on the 26th of the same month; on the 26th of that month, Messrs. Brewer, Callaway, Key, South, and Morgan, presented a petition, and Mr. Key was unanimously elected.

Is Mr. Key the nephew of Sir Astley Cooper?—Yes, he married his niece.

Is Mr. Morgan one of the surgeons of the hospital?—Yes.

Whose apprentice was he?—An apprentice of Sir Astley Cooper's, I believe.

Was Mr. Key an apprentice of Sir Astley Cooper?—Yes, I believe so.

Whose apprentice was Mr. Callaway?—He was apprenticed to Mr. White.

Was Mr. Callaway the senior of Mr. Bransby Cooper?—Yes, he was.

Had you a consulting surgeon at Guy's Hospital before the 4th of May, 1825?—No, we had not.

Had you any assistant surgeon at that time?—We had an assistant surgeon, as I said before, on the 26th of September, 1821, when Mr. Key was elected; it was thought quite unnecessary then to have any assistant surgeon, and he was discontinued: but it was necessary when we had Mr. Forster, who was

of advanced age, and Mr. Lucas of impaired health, and Sir Astley in very extended practice at the west end of the town.

When you appointed Mr. Bransby Cooper surgeon, on the 4th of May, 1825, did you think it necessary to appoint a consulting surgeon and assistant surgeon?—Yes.

Were the other surgeons at that period old men?—I have stated the circumstances of Mr. Forster's advanced age, Mr. Lucas's impaired health, and Sir Astley Cooper being in extensive practice at the west end of the town; it became expedient to have an assistant surgeon, and he continued till Mr. Forster and Mr. Lucas resigned their situations: and when there were two efficient and effective young men appointed, it was considered unnecessary to appoint an assistant surgeon; but on the 20th of April, 1825, an anatomical theatre was built, and, in connexion with this arrangement, it was considered necessary to have an acquisition of strength, inasmuch as the attention of part of the surgeons would be taken off by the establishment of the school, that it was the more necessary to have more assistance, inasmuch as part of the establishment would be occupied in teaching which had not before been the case.

When Mr. Bransby Cooper was elected to the office of surgeon, did you elect him in preference to Mr. Callaway solely in consequence of his superior surgical abilities?—He was elected in consequence of his being peculiarly adapted as a person we then required in that situation. We were to elect a person connected with the schools, and likewise with the hospital: we considered him perfectly qualified for the situation of surgeon, and likewise qualified to become a teacher in our school.

On your oath, I ask you whether you would have elected Mr. Bransby Cooper to the office of surgeon in preference to Mr. Callaway, if Mr. Bransby Cooper had not been the nephew of Sir Astley?—Most assuredly I should, as being at that moment the person best fitted for the vacancy that had occurred.

To what peculiar circumstances do you allude?

Lord Tenterden.—He says in his opinion, and in the opinion of the governors, the Plaintiff was particularly qualified for the situation of surgeon and teacher in the school.

Under the circumstances of the case, it was considered by me and the governors that he was the proper person to fill that situation.

Mr. Wakley.—Would you have elected Mr. Bransby Cooper to the office of surgeon only to the institution, leaving the anatomical school quite out of the question, in preference to Mr. Callaway, if he had not been the nephew of Sir Astley?

Lord Tenterden.—He says, I cannot tell what I should have done in other circumstances.

It is quite sufficient for me to attend to the duties of my situation.

Mr. Wakley.—Do you believe that Mr. Bransby Cooper's surgical skill is superior to Mr. Callaway's?—I think he was a person peculiarly calculated for the office.

Lord Tenterden.—You are not bound to draw comparisons, it is the most invidious thing, suppose they are both of equal skill.

Mr. Wakley.—Do you believe they are of equal skill, as surgeons?—I only say that that man was particularly calculated for the person we required; he was the person I meant to give my support to upon that occasion, and the governors generally did the same. I did not find myself called upon to invalidate the professional talent of one, because I elect the other.

Is there an anatomical school mentioned in the will of Guy?—No.

Nor in the act?—No, nor any allusion to it whatever.

When was the last act passed?—It was incorporated under the will of Guy, and no subsequent incorporation has taken place.

A medical school is not contemplated?—No, nothing is mentioned of it at that time of day.

Was Mr. Bransby Cooper elected chiefly for conducting the medical school, or as surgeon to the hospital?—He was elected by the governors to fill the vacancy that then occurred; but really as to the motives of the governors, I do not know that they are called upon to state them.

Were the medical schools of St. Thomas and Guy's one, before 1825?—Is it necessary we should go into such a field of enquiry as that?

Were they one?—Am I to go into that explanation, it will be a very long one; there was a medical school at Guy's, and a surgical school at St. Thomas's, and the pupils, entered at one, had the advantage of attending at the other, and so they have at the present moment.

What led to the suppression of them?

Lord Tenterden.—No, you cannot ask that.

Mr. Wakley.—Do you believe it is the best way to obtain surgeons of ability, by selecting them from your apprentices?—I can only answer that by the result, we elected Sir Astley Cooper from the apprentices without any advertisement, and the result told us our plan was right, and we are not likely to deviate from it.

Was Guy's Hospital celebrated for skilful surgeons before 1823?—Upon my word I cannot say, it has always had its celebrity; I can only say that we have been particularly fortunate in having men of great integrity, and great experience in their profession, generally speaking.

Before Mr. Bransby Cooper was elected to the office of surgeon, did you ever see him operate?—I never saw anybody operate on any occasion.

From whom did you receive your evidence of his skill?—It was acknowledged by the acclamation of the house, by every day's experience, and from the communication with those immediately around, by his having during his apprenticeship officiated as a dresser in the house, and under the inspection of the governors more immediately than under my own inspection.

Do the governors attend frequently in the wards of the hospital?—No, the establishment is not of that nature to require the attendance of the governors in the wards. I attend very frequently in the wards, it is not my duty to go there, there are stewards and proper persons appointed; it is not the duty of the governors to attend in the wards, except on stated occasions to see that things are right.

Cross-examined by SIR JAMES SCARLETT.

Without asking any impertinent questions about your reason for establishing a surgical and medical school at St. Thomas's, as well as at Guy's, did the governors think fit to do so?—Yes, in 1825, when they determined to have a school erected, and museum, and dissecting room; at that moment they inspected the state of the surgical school, they found they wanted more assistance, we thought it expedient to have a consulting surgeon and assistant surgeon.

Mr. Bransby Cooper had been there for some years under your own eye, as his uncle's apprentice, and a pupil at the hospital?—Yes.

Had he not been the demonstrator for his uncle?—Mr. Bransby Cooper exactly held the situation that his uncle held. Sir Astley Cooper, at the time he was elected, was the teacher in the school at St. Thomas's, and Mr. Key was the demonstrator; Mr. Morgan had been teaching the summer lectures in conjunction with Mr. Key, and of course he was known to him, but that was the situation Mr. Bransby Cooper filled at the time of his election, exactly the situation that Mr. Key had done before him; he certainly came from the anatomical school; it has so happened that when the governors have selected surgeons, that they have been very recently in the anatomical school.

Had Mr. Bransby Cooper been a teacher and demonstrator under his uncle for some time?—Yes, and he was giving great satisfaction in that situation.

Was that the general reputation at the time?—Most decidedly it was.

And therefore, as you wished to have an anatomical lecturer as well as a surgeon, you thought he was a fit person to be elected?—Yes, I considered him well qualified for the situation, and that was an additional recommendation, his being qualified to act as a teacher.

Was not he recommended by all the surgeons of the hospital?—Most assuredly he was.

You have stated, as one of your reasons, that Sir Astley Cooper having a very extensive practice at the west-end of the town, you did not wish him any longer to be surgeon to the hospital? Did Sir Astley Cooper know that you intended, or had a view to elect his nephew, before you made the communication to him yourself?—He did not, it was not known to him till I submitted it to him. I considered, that after the high situation he held it would have been a most ungracious thing to make the alteration without submitting it to him. I mentioned to him, that it was the intention of the committee to propose to the court to appoint him to the situation of consulting surgeon, and that it would be expedient to elect a surgeon, and have an assistant surgeon also.

The change did not originate in Sir Astley Cooper's suggestion?—Not at all.

Was not it rather against his inclination at the first?—I do not know that he ever made any decisive objection; he did state in a note I received from him——

Have you a cotemporaneous letter of his, explaining his sentiments?—Yes,

upon my mentioning the circumstance to Sir Astley Cooper, he made a communication to me, in which he told me——

As there is his written testimony, the gentleman who wishes to prove his case may have it if he thinks fit. Was it directly or indirectly by any corrupt influence of Sir Astley Cooper, that his nephew was appointed to the situation?—Sir Astley Cooper had nothing to do with the arrangement of the matter whatever, he never interfered in any regulations of the hospital.

Did he suggest the arrangement, or his nephew?—No, neither of them.

Did you happen to know, that besides Mr. Bransby Cooper's practice at your hospital, that he had been at the Norwich Hospital, and also serving in the campaigns in Spain under the Duke of Wellington as an army surgeon, attached to the artillery?—I did.

And that he afterwards went with his regiment to Canada?—Yes, and I believe he had spent some intermediate time in improving himself in Edinburgh?

He was first a pupil at the Norwich Hospital for two years?—I do not recollect the time, but the circumstances are in my recollection.

Did he not come to Guy's Hospital before he went to Spain, for about a year and a half?—He entered there, and went to Spain, and I understand commenced his apprenticeship after his return from Spain.

How long he had been pupil before he went to Spain you do not know?—No: I suppose he was there some years before he entered upon his apprenticeship.

After his return from Spain did he not go to Canada, while the little American war was winding up?—Yes, so I understood.

When he returned from thence, did he not go to Edinburgh, and remain there nearly two years?—I understand he filled some chair there as President of the Medical Society; he held some distinguished situation among the pupils.

And then he came finally, and became apprenticed to his uncle?—Yes.

You know, that in order to be admitted a surgeon at the College of Surgeons, a person must have served an apprenticeship?—Yes.

I hardly need ask you whether Sir Astley Cooper is a surgeon of the first eminence among the first and most eminent men in practice in this metropolis, and has been so for many years?—Yes.

Do you know whether his nephew resided with him, and had an opportunity of witnessing his practice during that time?—I always understood he resided with him.

Do you happen to know that the Norwich Hospital is particularly celebrated for operations in lithotomy?—I have always understood so.

When Mr. Bransby Cooper commenced his lectures in your hospital at Guy's, was not the school very numerously attended?—The school has been very well attended.

Has he not maintained that reputation throughout which induced you to choose him?—Perfectly.

Re-examined by Mr. WAKLEY.

Are you certain, that before a person can be admitted a member of the

College of Surgeons, he must have served an apprenticeship at all?—I have understood it so. Not as a member of the College of Surgeons, but before he could be admitted an hospital surgeon he must be entered as an apprentice at Surgeon's Hall; by the regulations of the public institutions it has been the custom to elect apprentices.

Is it necessary a person should be an apprentice for six years before he can be admitted at the College of Surgeons?—I do not know the rules and regulations of that college. I believe that it is only requisite they should attend certain courses of lectures.

Did Mr. Bransby Cooper serve with the army in Spain, go with his regiment to Canada, and act as president of this society in Edinburgh, before he had served his apprenticeship?—Yes.

Lord Tenterden.—It stands so.

Mr. Wakley.—Have you the preparation here?—The messenger has it at the door.

The preparation was sent for.

Lord Tenterden.—When it is here you may call any witness you please.

Sir James Scarlett.—The preparation is not for you to see, it is for the Jury to see; if you have not a good case without it, you cannot have with it.

The preparation was produced.

Lord Tenterden.—Now the preparation is here, do you call any body?

Mr. Wakley.—The medical examination cannot take place while the preparation is in the glass.

Lord Tenterden.—Call any witness you please, and if he tells me so, I shall know what to do.

Mr. Alderman PARTRIDGE *called again.—Examined by Mr.* WAKLEY.

Have you examined that preparation?—I have looked at it.

Can you discover the incisions in the neck of the bladder?—I cannot; I can see a large opening made into the bladder there.

Can you discover any reason why the operation should have lasted near an hour?—I am not prepared to give an opinion upon that, unless I had the preparation out, and examined it minutely; it is in a glass with turbid fluid, and I cannot give an opinion upon it as it is.

Mr. Wakley.—May it be taken out?

Lord Tenterden.—That depends upon whether the governors of the hospital will permit it. Is it possible after this length of time to form any judgment from the appearance of that preparation?—Before I ventured to give an opinion, I should like to have it by myself, and examine it minutely, as I am on my oath, and I think any surgeon in the world would be put to a stand-still by a preparation in this state.

Mr. Wakley.—If you had the preparation in your hand, should you have any difficulty in deciding whether the cut was horizontal or oblique?—If I could get the exact situation of the parts, I could decide that.

Mr. Wakley.—I have no other questions to ask, and I have closed my case.

Lord Tenterden.—That preparation should be taken care of. Now, Sir James Scarlett.

Sir James Scarlett.—As I am not likely to finish my case to-day, perhaps your Lordship would not call upon me to begin.

Lord Tenterden.—Perhaps it would be better for you to open it.

Sir James Scarlett.—I must call some witnesses, but they will be of a very different description to those that have been called.

Lord Tenterden.—Would it not be better to open your case to-night?

Sir James Scarlett.—When a party comes into a court of justice, complaining of an injury, I think he ought to have an opportunity of addressing a fresh Jury, rather than a fatigued one.

Lord Tenterden.—If you think, Sir James Scarlett, that it is better to address the Jury in the morning, I have no objection.

Sir James Scarlett.—I would prefer personally to address them now, there are many reasons why I should wish it, the circumstances are fresh in my mind, but I think my client's interests require I should not address the Jury to-night.

Lord Tenterden.—It is quite impracticable to finish to-night.

Sir James Scarlett.—I have witnesses to call, some of the most eminent surgeons in London.

Lord Tenterden.—It must stand over till to-morrow.

Sir James Scarlett.—After what has passed, I shall not have occasion to call many, but some I must call.

Lord Tenterden.—You will take care, gentlemen, to hold no communication with any one upon the subject of this cause, except with each other.

Foreman of the Jury.—What time shall we attend, my Lord.

Lord Tenterden.—At half-past nine, if you please, gentlemen.

Adjourned till to-morrow morning, half-past 9 o'clock.

SECOND DAY.

The Jury were called over, and answered to their names.

A Juryman.—Will your Lordship let me put a few questions to the witness Lambert, before the learned Gentleman addresses the Court; it is contrary to the usual practice I believe?

Lord Tenterden.—Is the witness here?

Mr. Wakley.—Yes, my Lord.

Mr. James Lambert called again.

Lord Tenterden.—You had better mention your questions to me.

Juryman.—He stated an opinion, that the cause that rendered the first attempt at the introduction of the forceps impossible was, that the first incision in the bladder was not sufficient?—I stated, I could account for it only in two ways, that a very small incision had been made, or that the knife had not entered the bladder at all.

Juryman.—He stated he made a *post mortem* examination of the morbid parts.

Lord Tenterden.—I will refer to my notes, and read over that part.—(*Here his Lordship read the whole evidence of the witness.*)

Juryman.—I wanted to know whether that *post mortem* examination was made before, or after furnishing the Defendant with the report of the operation?—After.

Lord Tenterden.—It must have been after.

Juryman.—In the part your Lordship has just now come to, he states there was a very unusual appearance on the under part of the neck of the bladder.

Lord Tenterden.—I have not come to that yet, I am coming to it. "I found the prostate gland itself slightly larger than a natural one—slightly larger than ordinary. I found on the left side of the gland a small oblique cut; the parts appeared to be what we call *ecchymose*, and seemed to have been bruised a good deal, and darkened the cellular membrane; on the under surface of the neck of the bladder there was a very singular appearance; there was a little projection about the size of the tip of my little finger. I took this to be an enlargement of the third lobe of the prostate gland."

Juryman.—As I am not an anatomist, I beg to ask, is he of opinion that this projection and enlargement could not have caused the obstruction in the first part of the operation in introducing the forceps?—If I am asked my opinion I should say not, if I may be allowed to explain——

Sir James Scarlett.—You will not have the trouble, gentlemen, of considering that subject, I assure you.

Lord Tenterden.—You think that that little projection did not cause the obstruction in the first part of the operation in introducing the forceps?—Yes, provided the cut was made in the usual and proper manner.

Juryman.—I beg also to ask whether this projection might not have occasioned the trickling rather than the gushing out of the liquid contents of the bladder?—I think not.

Sir James Scarlett.—As Mr. Lambert is there, I should wish to put a few questions which I omitted yesterday.

Lord Tenterden.—You must put them through me, for regularity.

Sir James Scarlett.—Whether he communicated to the Morning Herald and the Times Newspapers any particulars of this report on or before the 29th day of March, the day when it was first published in the "Lancet," or any body connected with him?—Certainly not, neither do I know how it came there.

You do not know how the notices came into those papers?—No, I do not.

Are you aware that notices did come out in the Times and Morning Herald respecting this operation?—I saw it in the Times. I did not see it in the Herald.

Mr. Wakley.—I wish merely to ask if he has the slightest reason to believe that those notices were transmitted by me?

Lord Tenterden.—He cannot know that.

Mr. Wakley.—Whether he has any reason to believe it?

Lord Tenterden.—I cannot enquire into his belief.

Sir James Scarlett.—He may know it, and believe it too.

Lord Tenterden.—Do you know whether those notices were transmitted by Mr. Wakley to the newspapers?—No, I do not.

Lord Tenterden.—He cannot know it.

Sir James Scarlett.—May it please your Lordship; Gentlemen of the Jury.—The time is at length arrived when the Plaintiff is entitled, according to the forms of proceeding in this place, to lay before you the grounds on which he seeks redress for one of the most injurious attacks upon his fame and his fortune that ever appeared in a court of justice, invented by falsehood and by malice.

Hitherto he has been put upon his defence, though he is the party that complains, and though he asks redress at your hands. Such is the fate of human affairs, that during an entire day he has been placed upon his defence as if he had been indicted upon a criminal charge; and up to this hour you have no reason, that I am aware of, to know of what it is he complains, unless perchance you have read it published in the evening papers of yesterday, with a curious exactitude, furnished no doubt by the good-nature of the Defendant or his Attorney, giving to that proceeding, of which the Plaintiff complains, the widest possible circulation, without any antidote, without any explanation on his part, to protect him from the consequences, and striking still deeper into his bosom the injury he has hitherto received.

Gentlemen, look at the state of the proceedings of this day and yesterday. I will venture to say, that they furnish to every reasonable man grounds for grave and serious reflection. It is not my business to complain of the forms of law, or of the practice in courts of justice. I submit, as every subject does, to the rule by which we are all bound. But in a particular case I may be at liberty to suggest how unfortunate it is for an individual, who is attacked by a gross, and scandalous, and malicious libel, to have all the zeal, all the interest of the public excited, to hear an accusation against him; and when that interest has subsided, to be put upon making his charge. For I have no doubt you all feel that you are now sitting in judgment, not upon what reparation shall be made to an injured man for one of the basest and most malignant calumnies that any man can complain of, but whether Mr. Cooper is not a person unworthy of his station, who has contributed to shorten the life of a man placed under his care, and who wants that skill, and wants that knowledge of his profession which no man has hitherto dared to question or to doubt, who had either skill or competent knowledge himself.

Gentlemen, I have some reason to complain of the fate which has attended my Client; that, when he seeks refuge and protection in the sanctuary of justice, he meets again upon the threshold the sword of the assassin. That before he has had time to utter a cry to invoke the sacred aid of the law, or the sympathy of his fellow-creatures, the weapon is plunged deeper and deeper into his side; he is tortured, lacerated, dissected; and now you come with minds no doubt the better prepared, to hear what it is he complains of, and what it is you are called upon to enquire into.

Gentlemen, I am no enemy to the periodical press, far from it, though I

have never flattered it, and I will never court it; but this I will say, that the example of this proceeding has given it a triumph and an influence which it never had before.

Allow me now to enter upon my case, and suspend, if possible, the doubts you entertain, for they can be but doubts, whether Mr. Cooper is the object for which he was exhibited to you yesterday. He is a gentleman, who has the honour, that he has reason to be proud of, of a connexion with Sir Astley Cooper, my highly honoured and excellent friend. I should think it one of my greatest privileges if I could claim that connexion with him that Mr. Cooper has.

Gentlemen, in early life, as soon as his profession was finally chosen, he became a pupil at the hospital in Harwich, the most distinguished of all the hospitals in this country, with the exception of those in London, for this very operation of lithotomy. He served in that hospital with diligence and application for nearly two years. He then came to London, he was admitted a pupil at Guy's Hospital, where he continued for one year and a half, nearly two years, and where, as I hope I may be allowed to say, and I hope I may offend nobody by saying it, his merit, as well as his manners, recommended him to that notice, in consequence of which he was appointed assistant-surgeon to a regiment of artillery, and accompanied that regiment to Portugal in the earliest part of the year 1813, where he joined the army under the Duke of Wellington. He served in every subsequent campaign, and was present at every battle, including the battle of Toulouse, which crowned all those victories that led to the peace of 1814. His first exhibition of coolness was, in operating in the field of battle, amidst the roar of cannon, and exposed to personal danger. His experience as a surgeon was in that extensive field, where a man acquires both confidence and courage, and he had an opportunity of shewing that talent, which justified his honourable relation in wishing him to pursue that line of his profession, for which his talent seemed destined; and to the greatest eminence in which, if he pursued it with ardour, he was likely to arrive.

He then went with his regiment to Canada, and was nearly a year serving in that unhappy war, the last in which we have had the misfortune to be engaged with our former friends in America; when that war terminated, upon his return to England he was sent to the University of Edinburgh. He was admitted there as a medical student, and you hear from the evidence of the Defendant's witness, that he received all the distinction that a man could receive as a pupil in that place, by being placed in the situation of president of the Royal Medical Society; which honour he enjoyed till he quitted Edinburgh. He had it open to him at that time, to make choice of which line in the profession he thought fit; he might have taken his degree, and have endeavoured to establish himself in practice as a physician.—He had the illustrious example of his uncle before him, one of the most distinguished, as well as one of the most fortunate men, in a highly honourable profession; and he gave of course the preference to that.

Gentlemen, Sir Astley Cooper was the surgeon of Guy's and St. Thomas's hospitals; he had been a pupil of Mr. Cline, a man equally distinguished in

his day, and educated in the same school.—Mr. Cooper became bound apprentice to his uncle in 1817, and during the period of his apprenticeship his assiduity was unremitting. I have a right to say so, from the evidence of that excellent and honourable man, Mr. Harrison, examined by the Defendant yesterday, and intended to be insulted by him; who states, that the universal theme of praise, by all the persons in the hospital, was Mr. Cooper's assiduity and intelligence. Sir Astley Cooper made him his demonstrator in anatomy; Sir Astley Cooper, who gave most distinguished lectures at that period, found in his nephew an able and effective assistant.—He appointed him to that situation, which led him to obtain a more intimate knowledge of the most abstruse parts of his profession, and fitted him, in the course of time, when experience had given him advantages, which without experience no man possesses, to become, by and by, an example of the same eminence, the same fame, and the same success in fortune, that his honourable relation had exhibited. He did more than that: Sir Astley Cooper, whose practice has probably been more extensive for a number of years together, than that of any other surgeon in the world, called in by persons of every rank in life, to perform the most difficult and scientific operations, and who never, as those who know him, well know, allowed the call of the poor to go unregarded; who bestowed as much from humanity as he did from any regard to his own profits, upon the wants and wishes of his fellow creatures—Sir Astley Cooper being in a state of constant daily and nightly requisition, was obliged to have, what every eminent surgeon must have, who has any thing like the same practice—a person he could rely upon, in a case of emergency, when he himself was called to attend a patient, whom he could not quit, in order that his other patients might not go unattended. He found in his relation a person most fitted to assist him; having received instruction in his own school, and assisted and witnessed him in his practice, he was able to discharge the most important duties, when Sir Astley himself, from the impossibility of being in two or three places at the same time, was forced to employ an assistant.

Gentlemen, do not suppose such an employment can be the result of favour—a surgeon who employs an assistant in cases of that sort, for his own honour, and for his own interest, is obliged to employ a competent man; he cannot do otherwise. Consider for a moment, in what a situation Sir Astley Cooper would have been placed, if, on your sending to him for a difficult operation, and finding him otherwise engaged, at a moment when you had not time to wait, he had sent you, as his substitute, a person that he himself thought incompetent, or that you found to be so; Sir Astley would have been ruined in his own practice, as well as in his honour and reputation. I have, therefore, a right to say, that not by his education only, but by that best testimony, which Sir Astley Cooper bore to his nephew's fitness and capacity, that fitness and capacity were established beyond all doubt or question, upon the most solid and substantial ground.

Gentlemen, his apprenticeship expired in 1823. He had had at that time considerable experience, and great practice. He became admitted a surgeon upon his own account, still continuing however to render assistance

when his uncle required it. What happened at Guy's Hospital? That establishment, about which for the present I say nothing, highly useful, and of the greatest advantage to the poor—that establishment, conducted by governors, upon whose honour and character no impeachment ever was made until this scandalous and infamous publication thought it expedient, for the interests of the hospital and the advantage of their charity, to establish a school of anatomy, as well as that which existed before at St. Thomas's, the medical and surgical department of each having been before combined. They had a right to do so, and doing so, who is it that dares, unless he defied all decency and common sense, to complain of their conduct, because they sought in their own resources, amongst the numerous pupils furnished by the experience of their own hospital, and that illustrious race of surgeons that had distinguished them, and their country. Who is it, except one that defies both decency and sense, that dares to complain that they did not advertise in the newspapers, and seek some information from the "Lancet," forsooth, where they were to get a surgeon of talent? The Lamberts and the Wakleys of the day were to be called forth by advertisement, to come forward from their dark recesses, and to become candidates for the office of surgeon, and the public was injured by the want of advertisements to call them forth! It is not the skill of a Cline—it is not the skill of Sir Astley Cooper, nor the skill of any eminent man practising at Guy's or St. Thomas's, not even Mr. Green, or Mr. Callaway himself, though some compliment is paid to him, which he disdains from the quarter from whence it comes, that can give you a judgment upon the fitness of a surgeon! No, you must seek it in the newspapers, and from the Editor of the "Lancet!" The patronage of the "Lancet" is very important to a young surgeon, and that is the source from which Mr. Wakley thinks the treasurer and governors of Guy's ought to take their information to obtain a competent surgeon for their hospital! They have neglected that duty, and this is their offence—this is the wound that has sunk deep into his bosom, his dignity has been neglected—his information has been slighted—his knowledge of the profession has not been attended to—his own eminence, his practice, the number of cases he has experienced; all these have vanished before the unhappy prejudices of the treasurer and governors of Guy's Hospital, who seek among their own surgeons for competent information, as well as competent candidates. I hope *you* will think that this was not an unpardonable offence. I hope that you and my Lord will agree with me in opinion, that the governors of Guy's Hospital do not deserve to be tried and executed, because they looked into the school of Cline and Cooper for a surgeon to supply their hospital.

But, Gentlemen, Mr. Cooper was the nephew of Sir Astley Cooper; you will see by and by what the libeller says upon that subject; you do not know that yet, unless you have read the newspapers; he has attempted by his evidence to prove what he had the audacity to insinuate, that it was merely because this gentleman was the nephew of Sir Astley Cooper, without the least merit or pretensions of his own, that he was placed in that situation. Has he proved that to your satisfaction? he has proved by his own witness

the very reverse; you will recollect Mr. Harrison's testimony, on which at present I say nothing, for my time is not yet come to comment upon the Defendant's evidence.

Gentlemen, I have stated the history of Mr. Bransby Cooper; I have stated to you the progress he has made to that eminence in Guy's Hospital, which he now holds, which has made him the object, no doubt, of envy and jealousy to some, but to none of that highly honourable and useful profession who stand at the top of it; they disregard all pitiful sentiments of competition and rivalry; they have come forward—they have crowded in this Court to bear their testimony to the skill of their competitor, and to endeavour to save him from that ruin into which the malice of this man, and the enmity of another, have attempted to plunge him.

Gentlemen, it is time now you should hear who the Defendant is; because when a Plaintiff seeks redress for a libel, it is fitting you should know the parties; upon that I shall be very short. I should not have known, but from the exhibitions of yesterday, of the Defendant's extreme ignorance in the art he once professed; but I am entitled to say, from the surprise he exhibited at the expressions of some of his witnesses yesterday, that he never witnessed an instance of the operation being performed, and is as ignorant upon that subject as he is of the rules of good taste, or the principles of social order, as exhibited in his writings.

Gentlemen, he is known to the public, for aught I know, *exclusively* by having established a periodical work called the "Lancet;" he tells you himself he established that work for the purpose of reporting the lectures given at the hospitals; avowing at once that he has established the work for the purpose of committing plunder upon the property of other men, as well as exposing their reputations according to his own discretion, as to the use he chose to make of reporting their lectures. But are we to hear it tolerated in a court of justice, that if Mr. Cline or Sir Astley Cooper, or any other eminent surgeon, should compile a course of lectures with great care and much labour, and much scientific application, and should deliver that course of lectures to the pupils of his own class at the hospital, who pay him for their attendance, and remunerate him for those labours, that a periodical paper shall rob him of all these advantages, and without his leave or licence make them public to the world, so as to give to every person in the kingdom who desires to study these things, all the advantages which the lecturer thought he had acquired for himself? That he shall establish himself by reporting the lectures of other men in a periodical work, upon which he shall get ten times as much as is gained by the lecturer, and make it useless to him to print them? And if any one can be found so base and so ungentleman-like, as to make use of the privilege he obtains, by paying a trifling sum to attend the lecture, for the purpose of making it public, he becomes a contributor to the "Lancet," he swells the revenues of the Defendant, and gives him his five or six thousand a-year, and adds to his reputation, such as it is, as a popular writer. This is what the gentleman has avowed himself. He has avowed that the "Lancet" is a work founded upon the principles of robbery and plunder, and that he obtains contributions from pupils at the

different hospitals, whom he chooses to call *men of talent*, because they contribute to his work, though they betray their duty, and surrender their honour, by making communications that ought not in the shape of written communications to come out of those walls, unless published by the professor himself.

But, gentlemen, it is not that only; he does not profess to rob them of their property only, he goes a step further. I am glad I address myself to gentlemen of education; I only wish gentlemen of high and honourable feeling to judge upon a question of this sort. Suppose any of you had taken great pains to prepare lectures and deliver them to a class, which by and by you might have intended to publish yourself, would you have endured that a pupil, an unfledged six months' pupil, should take imperfect notes of these lectures, and communicate them to a gentleman who thought fit to publish them in the public press, without those corrections and explanations, and those qualifications which a man who commits his writings to the press, of necessity takes care to introduce into them, to prevent conclusions that are improper, and interpretations that may be wrong, and to guard himself against criticism that may be very unjust? Can any writer endure that such use shall be made of his works? Suppose you had a written composition you intended for publication, what would you think of a person to whom you entrusted the key of your cabinet, if he had made extracts from it, or made an abridgment of it, and sent it to the "Lancet" to publish? would you not think him one of the basest of mankind? that ought not only to lose your confidence, but the privilege of entering your doors again. And yet these are the persons the gentleman has as contributors, by whom his work flourishes, whilst he rolls in his carriage, and laughs at the persons whom he has first robbed and then slandered. I have, upon his own statement, a right to say, that the author of this publication is a sort of literary ruffian, who lives by plunder, fearless of shame himself, and careless of the injuries he inflicts upon others.

Now, gentlemen, what is it he has done to Mr. Cooper? In order to explain which I must by and by, gentlemen, I am bound to do it, go through a process, certainly new to me, and not very agreeable, that of explaining the nature of this operation. But do not believe that you have had from Mr. Lambert, whatever he may think of his own powers in competition with Mr. Cooper, or from the pupil of six months, or the demonstrator in Mr. Slee's school, or any of those pupils, who, it seems, are no longer scholars but critics, whom Lambert has trained for the day; do not believe, if you yourselves are not acquainted with the subject beforehand, that you have had from them any knowledge or information whatever upon it. The Defendant has called but two witnesses whose testimony deserves the least credit. One of them is Alderman Partridge, as he is called, a surgeon, and the other is a surgeon and also a dealer in potatoes; and I should have thought, as you will find when I come to observe upon Mr. Partridge's evidence, which I shall do with or without his permission, I should have thought somewhat better of him if I had not observed, when I cross-examined him, an apparent intention to make me think he knew nothing of the Defendant, or his proceedings, and that he was

subpœnaed by accident; and so he would have induced me to think, if I had not afterwards observed, in the course of yesterday, that the Defendant had the benefit of that gentleman's science and assistance to instruct him in his case, and restrain him probably when he was about to exhibit his own ignorance. Certainly, for new acquaintance, they have improved upon each other very rapidly, for they sat together immediately after the evidence of Partridge, and held a friendly sort of intercourse and scientific communication. No doubt the acquaintance will be improved further, and whatever praise or advantage may be derived to Mr. Partridge from the celebrations of the "Lancet," he will have them to a certainty. But allow me to take this opportunity of telling you of the infinite danger to which the honour of any profession must be exposed by the existence of such a publication. The moment a critical work of this sort, that mixes a great deal of personal ribaldry with affected reports of cases, the moment such a work gets into popularity, the writer finds, from the very use of that sort of vulgar ribaldry, by some people called wit, that makes this work the more acceptable to persons whose tastes are not very refined, that he has in his own hands the fortune and reputation of persons who are members of that profession. That is what he grasps at, and that is what, in some degree, he possesses. Every man who contributes to the work is celebrated in it, and every man who despises it is abused; so that, if that work becomes the criterion of fame or fortune, no eminence, however great, no skill, however perfect, will hereafter entitle a man to the praise of the public, or the successful progress of his fortune. No! He will be cut up by the "Lancet," the contributors to the "Lancet," the Lamberts, and the Lees, and the Partridges; and the young pupils will be celebrated and lifted up in the places of the Coopers, the Brodies, and the Greens, whom especial care is taken not to praise unless they commit the impudence, never to be redeemed, of sending a communication to the "Lancet."

Gentlemen, there is a certain sentiment of honour that belongs to a liberal profession, something better felt than explained; the man who does not feel it will not be sensible of the argument I address to you. In the ordinary traffic of life, called commerce, where men live by the profits of exchange and barter, or buying and selling, there is a course of plain dealing and simple integrity, that marks the line between honesty and the want of it, which every man can understand; but in the practice of a liberal profession there is a certain feeling of honour that becomes the gentleman, and which the gentleman only can feel, that distinguishes it, that elevates it, that prevents it from becoming sordid, and gives it the true character that really belongs to such a profession, a certain dignity, a certain pride, which makes a man feel that the profit is a secondary object to him; that fame and reputation, and the means of utility are his true reward, in comparison with which every thing else is secondary, and to be disregarded. If once the press acquires a power either in the profession of the law, or the profession equally honourable and useful, perhaps more useful, the medical profession, that principle is debased, that principle is destroyed. If a man finds that his fame depends upon concessions to the editor of the "Lancet," if he finds it depends upon his useful contributions that he must court the author to acquire that fame that before was obtained

by honourable competition and fair means, there is introduced into the profession a source, a means of degradation, that destroys its liberality, and finally its utility. What would you say of the situation of a surgeon if, at this moment, any one of the honourable persons in that rank who hear me, should feel that all the reputation acquired by practice, all the esteem of the public, may be trampled down in a moment, if he has the misfortune to offend either Mr. Wakley, the editor, or some contributor to the "Lancet?" Is that a right feeling? Is that a right and fit sentiment for a man to feel in an honourable profession? Suppose, in the law, that in every assize town persons were employed to publish the cause in which their particular favourite is engaged, and, instead of allowing a fair competition in the courts of justice to determine who is the advocate that the public should employ, to give out fame beforehand, by suppression and false representations. Would not that destroy the honour of the bar? And would it not tend to degrade its honour still more, if among its own members were to be found those capable of making favourable reports of their own exhibitions to advance their own interests, and by suppressions or mis-statements to injure their competitors? Such a thing cannot happen in the profession to which I belong, but you have an example that it does happen in the profession of which we are treating to-day. For you have Mr. Lambert, who says he is a surgeon, getting his eight guineas a month to make contributions to the "Lancet." And rely upon it, that Mr. Lambert's fame will depend much more upon the praises he acquires in this celebrated publication, than from any reputation he obtains amongst the honourable members of his own profession, or amongst his patients. Such a circumstance it is that degrades a liberal profession. Such a circumstance it is that I deprecate, and that, from my heart and soul, I sincerely wish never could taint or affect any profession whatever.

Gentlemen, I return to the immediate subject of this day. Mr. Cooper has performed, for his time of life—he is now at the age of 34 or 35—a great many operations for the stone. He has performed many at Guy's Hospital. The successful ones have not been reported. He has performed many in his private practice. I do not speak of him in comparison with surgeons of greater age, nor in comparison with Sir Astley Cooper, who has performed three hundred operations; above that number he is not able to recollect precisely, but he is the greatest operator. I speak of Mr. Bransby Cooper as a person who, from his skill, has performed with success many operations the most difficult.

This operation for the stone, in particular, you have been invited by the Defendant's course to consider. Now I propose to state to you what I hope may be enough to make intelligible the evidence I shall introduce. But do not imagine I have the vanity to suppose I am giving a perfect lecture upon anatomy, or that I understand more of the subject than is forced upon my understanding, in order to be master of this proceeding.

Gentlemen, there was a time when the operation for this unhappy disorder was attended, almost constantly, with loss of life. The improved art of surgery in modern times has diminished very much the disasters attending the operation; so that the number, in the general, are now so small that die, in comparison with those that are saved, as to make the operation what you

may call a safe operation, in the general. I believe it is understood, taking the whole average, that the numbers that die are about two in fifteen, or one in seven and a half—formerly, before the improved mode of operation, they very rarely escaped. At one time the numbers were about equal, it then came to be one in four or five, and now it is one in seven and a half. But that average includes all ages and conditions. It is a disorder to which even infants are liable, and at that time it is the most easily dealt with; when the patients are of that tender age, the stone may be extracted, almost to a certainty, without hazard. In proportion as the patient advances in life, in proportion as the disorder becomes complicated and combined with others, the danger increases. But, I may say of Mr. Cooper, that I believe he has performed the operation upon, perhaps, one of the oldest men that ever suffered it, a man of the age of 87, with complete success. The operation is never performed upon an adult until he himself feels that the pain and irritation which he suffers from the complaint, or the apprehension of the loss of life, is greater than the very risk of the operation itself. Every man will judge of that by his own feelings. There is something in the apparatus itself more horrible to the imagination than painful in the reality—something that affects the mind of every man with a species of horror—in the fear that he shall become the subject of such an operation. What is the consequence? That, the moment a man can judge for himself, when it is not the surgeon, or physician, or parent, that is to judge for him, he never will submit till he is reduced to the necessity of choice between extreme agony and instant danger of the loss of life, or the relief this operation may afford. You may suppose therefore, that no surgeon was ever called upon to operate upon any adult, unless under an imperious command. No doubt there are many cases where skilful surgeons would have said "postpone it for a time; wait till your constitution has become a little altered." The patient says, "I cannot live a day under it, the agony is so great; I call for instant relief—all judgment is at an end—you must perform the operation, or I must die!" What then is done? Now, upon some points, I understand, that the particular practice of different surgeons, in some slight degree, varies. They all aim at the same end, but there are different schools of surgery, in which some prefer one instrument and some another; it is not our province to decide upon their merits;—but you heard yesterday that the French, who perform the operation very successfully, do not use our instruments. We consider ours to be most perfect, and use our own accordingly. The patient is bound: the first operation is to ascertain the existence of the stone; that is done by introducing, through th urethra, what is called a sound, a small rod of steel, which is carefully introduced through that tender passage, finds its way into the bladder, and then, by a little turning of it about, if it encounters a hard substance, which the hand of the operator can ascertain by touching it, and then striking it gently, if he can hear the sound, he ascertains the existence of the stone; and, that being done, the disorder is ascertained. Then comes the operation: and for the purpose of this occasion, when I state to you the practice, you will understand me as stating it subject to any errors I may commit in the detail, that may be corrected by and by in the evidence; but yet I hope to state it sufficiently

clear to make you understand it. In the case of an infant, the operation is very often performed in the simplest manner, by making an incision in the perinæum, the space between the scrotum and the anus, that will reach the bladder. The finger is then inserted in the bladder, and it very often happens, by inserting another finger into the rectum, that the stone, by the mere finger, is thrown out without any other instrument. That is attended with great facility, and is disposed of in a moment. In children the parts do not lie far removed from the surface, and they are easily reached. In proportion as the patient becomes older, they swell out, are deeper seated, and more indurated. Consequently in adults, and particularly if above the middle size, it is necessary to use instruments, and no man ever performed the operation without having a number of instruments at hand; and he would be a most presumptuous operator if he had not. Because the use of the sound does not tell the operator where the stone is fixed. Sounding is all darkness—it is his ear and feeling only that tell him the existence of the stone. Consequently a variety of operations and a variety of instruments may be necessary. The man who attends a surgeon with instruments is bound to have all those which in that school of surgery are ever employed, in order to answer any immediate occasion that may arise.

The first operation is to introduce again into the urethra, the sound, or what you may call the staff. Mr. Key, a most eminent surgeon of Guy's Hospital, has himself been the inventor of what he calls his staff; he considers it highly useful; many surgeons have used it, and many do not use it, it is a matter of indifference—they succeed equally, it is a matter of opinion, upon which I call upon you to form no judgment. His staff is not so curved as others that are used, which are more curved to introduce them into the part which you know from its form is curved. The urethra is a long canal which passes through what is called the prostate gland before it enters the bladder. In the prostate gland it has a communication with other functions of animal life that I need not advert to. But for the use of the bladder, a passage is open through the prostate gland. The staff is passed through the prostate gland and is inserted into the bladder. The staff has a groove in it which is presented in front and between the legs of the patient: the use of that groove is that the operator, when he introduces his knife, may insert the point of the knife into the groove: when the point of the knife thus inserted touches the staff, he then knows he is in the true direction of the urethra; he then can cut the prostate gland by bringing the staff forward, and carrying the knife along it in this way in the groove, and passing it a little further he cuts into the bladder: now mark—the quantity of urine that may flow from the bladder is always uncertain; it may happen that the bladder has been exhausted of urine; it may happen that a portion is left. If the instrument that the operator is obliged to use originally is what is called a gorget, which is a hollow instrument that makes a sort of canal, and leaves the wound open as it passes, a gush of urine takes place. But if he uses his knife, which merely makes a cut in the bladder, the moment that cut is made the wound of the bladder closes, the water oozes out, but will not come in a rapid stream; but as the bladder collapses it comes out with gentleness.

The next operation is to introduce his finger. If he can get his finger into the bladder, and then can touch the stone by good luck, which sometimes happens, if the stone be in the natural place at the bottom, where it would fall by its gravity, the work is finished immediately: he has only to introduce the forceps along his finger; or he withdraws his finger and inserts the forceps, puts it down upon the stone he has touched, and draws it out. In the same way if he can touch the stone with the sound, he can introduce the forceps, for there is something to guide it. But it happens in many cases that where the patient is an adult, a man of a certain size, the perinæum, the fleshy and sinewy parts, are too deep to admit the finger to pass both through that and through the prostate gland, in order to reach the cut made in the bladder. In those cases the operation is somewhat more uncertain; because, as you work in the dark at all times, you are here deprived of the opportunity of touch by the finger; you can only touch by the instrument, you cannot be absolutely certain, unless you can get your finger into the bladder, whether the cut is wide enough for all purposes that may be necessary; there is some little uncertainty about it. However, it is sufficient to direct the operator, if he can get his finger in the prostate gland; the prostate gland is a gristly substance, harder than the finger; so that the finger can ascertain it, and the prostate gland operates as a fulcrum, upon which the forceps turns; the operator introduces the forceps, taking the finger as a guide, introducing it gently, as you will find Mr. Cooper did; so that though he cannot touch the bladder by his finger he can ascertain whether there is any resistance made to the forceps. If no resistance is made, the forceps enters the bladder; the forceps is like a pair of scissars, not so clumsy as that produced yesterday; at least at Guy's Hospital it is not. It opens in the bladder without enlarging the wound made by the incision, and therefore without any injury to the patient. If the surgeon cannot find the stone where the force of gravity will carry it, what is the conclusion? The conclusion is, that the stone is probably, as is often the case, enfolded in some portions of the bladder, either placed there originally, or by accident, and contracted and grasped probably with increasing force, by the introduction of the instrument. He is obliged to pause upon that for a moment—he feels a little time is necessary to allow the bladder to relax, that he may try again whether the stone may be loosened from its hold; if he finds it is not, he must conclude that the stone is in some unusual situation he has not been able to reach with the forceps. What is he to do? He has not been able to ascertain the length of the wound by his finger—his finger has not reached it—he then must make another incision, because perhaps the wound is not large enough to enable the forceps to have a sufficient range, because as the prostate gland operates as a fulcrum, if the fulcrum be too high, and the passage too close, it cannot allow the forceps to range about sufficiently: that is a case where a second incision may be necessary—he works in the dark, he is obliged from his own feeling and judgment at the moment to proceed.

Now, Gentlemen, comes an instrument which one of the learned and scientific persons who contributes for Mr. Wakley, had never heard of, which he, Wakley, humourously and wittily calls "my uncle's knife." That learn-

ed Gentleman was to give you information—he is the demonstrator at a school, commenced in October last, at No. 1, Dean Street, in the Borough. He had never heard of it. The first incision is made with the scalpel, with a sharp point and edge. The operator cuts according to his information and judgment. A man may be deceived as to the depth of the wound, which he cannot ascertain by his finger. Sir Astley Cooper's knife is combined with a small rod at the extremity, about the size of a large pin with the head outwards, which cannot penetrate without some resistance. Sir Astley's knife being inserted along the finger of the operator, by means of the blunt head that precedes it, is sure to let the operator feel if he does not hit the exact wound made in the bladder, by a little resistance; if it were a sharp point it would penetrate as it went along; but the point being blunt, and the edge sharp, he inserts it along his finger, and his finger not being able to reach the bladder, he prudently takes that knife that cannot do any injury, that can feel its way. If he finds the first place he touches is not the exact course, by a little variation of the blunt head he can feel where it is. If a man has his finger in the bladder he can tell whether the wound is large enough; no matter what knife he uses, he can carry it along his finger, and enlarge it in the original direction. But if not, when the bladder is once cut, and the urine has flowed out of it, the bladder collapses a little, and he can never be sure of cutting in the original wound. So that it is quite impossible, without the caution of having a blunt pointed knife to ascertain whether he hits the part or not. This knife, with a feeler before it, enables the operator to ascertain not only whether the bladder is penetrated, though that is proved by the urine being discharged, but whether the knife enters the wound. If it enters without resistance he can press it on, and then, as well as his own judgment will enable him, he pursues the course of the original knife in order to enlarge the wound. It is not within human possibility that he should in all possible cases do it with the utmost possible accuracy, from the nature of the collapsed bladder, and working in the dark; it is always possible he may make a little slip, and cut a little piece not exactly in the same direction, make a sliver as it were, but you will learn from scientific men that this is of no importance; if he does not cut a piece of the bladder out, for it is lined with a thick mucous membrane, which is not liable to sudden inflammation. Having made this additional incision he tries his forceps again, to ascertain whether he has made the wound large enough in the prostate gland and in the bladder, to give the forceps room to play: now what happens? the forceps do not touch the stone. Cases have happened to the most skilful operators where after an hour's attempt the stone was not extracted at all. The celebrated John Hunter was in that predicament where he operated an hour and a half, and did not find the stone. However, if the forceps does not find the stone—he introduces the sound, not where it was originally placed, for there it was a guide for the knife, and there it is now useless. Its only use was to be a guide, and, when once withdrawn, it is absurd to re-introduce it through the urethra, because, instead of following the course of the urethra, you may pass it at he wound you have made, and therefore every skiful surgeon introduces the sound through the opening in the perinæum. It may be necessary to introduce

sounds of various forms: it is still possible that the stone may be enfolded in some way in the folds of the bladder; it may be in some manner suspended that you cannot get at it; and you may be obliged to use the scoop, which is like a narrow tea-spoon, not so large as the forceps; it serves the purpose of a sound also, and by touching the stone upon any part of it, if close to the sides of the bladder, you can make it fall into that instrument. Then what must you do? there are cases, and such cases have happened to the most skilful operators, where they have been baffled, and where it was not ascertained till after death, that its position was such that no human art could have extracted it. But it is possible that a man may be convinced that the stone is lodged somewhere, and he may ascertain the position of it by the sound—the sound may tell him, but it may tell him it is in a position he cannot attain by ordinary means: he must have recourse then to other means; it may be necessary to enlarge the wound still more, or ascertain by other means, whether he has enlarged the wound sufficiently.

Gentlemen, I have stated the course of the operation, I now proceed to the case of Mr. Bransby Cooper. The unfortunate man that was the subject of this operation, was a poor man that came from a parish near Lewes, in the county of Sussex; there is an exceedingly good operator at Lewes, and several at Brighton, men of humanity, and very skilful. You may conclude, that the case was of such a nature, that the overseers of the parish would not have sent him to the hospital if they could have got a surgeon near at hand. I presume they must have thought it a case of some difficulty, notwithstanding the account that has been given of the healthy appearance of the patient. He was sent to the hospital; Mr. Cooper saw him; and although the man was stout, he had a hectic complexion. Mr. Cooper ascertained from communications with him, that his kidnies were probably in a disordered state, and he thought it better that he should wait and postpone the operation, until some application should be made to endeavour to remove a complaint which, combined with the other, made the operation more dangerous. The poor man was in agony, and in the state I have represented. He said I must die unless you perform the operation. The existence of the stone had been ascertained before the staff was introduced. Being a straighter staff than the ordinary one, I will give you a reason why the staff did not touch the stone. Mr. Cooper made the incision, there was a flow of urine manifesting to the bystanders, who knew what they were about, that the bladder was cut; a gush never takes place, but under the circumstances I have stated. Mr. Cooper inserted his finger, and reached the prostate gland. He felt the wound he had made, but could not reach the bladder; the perinæum was too deep for him to insert his finger into the bladder. He spoke of it at the moment—it was known to his pupils, but it was not the time fully to explain the nature of the difficulties in the operation. Mr. Cooper, feeling his finger was in the prostate gland, and knowing he had made a wound in the proper direction, took the next course of applying the forceps along his finger, as a director, to try if he could insert the forceps into the bladder, and feel the stone; and by directing it to the proper place where the stone is usually found, he would have succeeded, if there, in taking it out; the forceps did go into the bladder, no man could judge of this

fact but the operator, or his assistant: he could judge by the expansion of the forceps without resistance; that, therefore, was a clear proof that it was in the bladder, where it could be allowed to open, which it could not if he had inserted it into a solid substance, where it could not be expanded without force or violence. But he could not find the stone—he had no idea where precisely the stone was; the first thing to ascertain was, as the staff had not touched the stone or the forceps, whether, as might be the case, the plainest original indications had not been fallacious. He felt of course for a moment or so, anxious upon that subject, because every man, even Sir Astley Cooper, would feel great anxiety, if he had operated for the stone under a mistaken supposition that a stone was in the bladder. He thought it right, then, as the forceps had not a sufficient range to go all round the sides of the bladder, without using a great deal too much force and violence to make another incision. He made a second incision with the knife of Sir Astley Cooper, invented for the purpose I have stated. As he could not insert his finger in the wounded bladder, he wished for an instrument, so contrived, as that it would get into the right place, that his finger could not feel. He made that further incision to make more room. What does he do then? We may try the forceps—he tried the forceps, and there was no success: it was very extraordinary. He then thought he would ascertain by sounds introduced through the permeal opening, whether there was a stone or not, and he tried one or two sounds. Upon withdrawing the sounds, he found that the concave part of the sound, on withdrawing it, not upon its entering or upon its searching the bladder round in this way (*describing it*), but upon withdrawing it, the curved part of the sound touched the stone: he became satisfied immediately that the stone was situated upon the pubes in the upper part of the bladder—a position not common; it was upon a sort of shelf there which you see Mr. Partridge, the only man hitherto examined who has any just pretensions to science upon the subject, understands, and in his experience has found, though Mr. Wakley never heard of it before. You will recollect he cross-examined his witness to shew he was mistaken. Mr. Cooper ascertained that: he found that the sound touched the stone: he said, "give me the bent forceps;" and that shews what was passing in his mind. It is bent upwards in this way (*describing it*), so that in case the stone should be folded in the upper part of the bladder, the curve may reach it. He applied the bent forceps—no surgeon can tell the form of the curvature of any man's bladder without seeing it—no man can, beforehand, accommodate an instrument to any form that the viscera, or the animal functions may assume. He tried the bent forceps—he was satisfied the stone was there—he had felt it; the bent forceps would not touch it, because the curved form would throw the point of the forceps above the shelf. Suppose the stone rested here (*describing it*), the bent end of the forceps would only touch the bladder upon that point above the stone, and withdrawing it in this way the point of the forceps would recede, and leave the stone free. He was frustrated—he was satisfied of the existence of the stone—he was satisfied the indications were correct as to its position; but he found from its position the bent forceps could not extract it. Then this occurred to him. The only mode of doing this, is to make the wound in the

prostate sufficiently large to enable the straight forceps, without lacerating and tearing the parts, to be thrown upwards, so as to make the straight forceps press the side of the bladder, and pressing the abdomen on the outside at the same time to meet it, take the chance of catching the stone. He then used the gorget—it is not true he used the blunt gorget, that is a fiction of Mr. Lambert's, he used the cutting gorget. The cutting gorget is an instrument like a prolonged groove, with a sharp edge, so as to cut as it proceeds, if you think fit. It is considered by some surgeons, I will not say by all; it is considered by Mr. Cooper, that the gorget will always make the wound large enough for any purpose, and you have heard it is sometimes used, but it has one advantage, it cannot make a wound above a certain size; if you conduct the gorget into the incision, where you are sure you have already made an entrance, the gorget will make the wound large enough, if it is not already large enough; and if it be large enough, it cannot increase it; because, as there is no lateral movement to guide it one way or the other, as in the case of a knife, where to cut, you must use the motion of the hand, the gorget being pushed straight forward, being directed by the hand, the concave surface upon the finger, there is space enough to turn it round, and then to press it forward. When you have done this, you are quite sure of two things: first, if the wound is not large enough, you have an instrument that will make it so; if it is large enough, it will not enlarge it.

Now, having got the wound sufficiently large to use the straight forceps, if I can do it dexterously, I may press the forceps down, so as to throw the point up. Accordingly he introduced a straight forceps; and when the abdomen was pressed to force the bladder forward, by turning the forceps, he had the good fortune to take hold of the stone. The stone was brought out. The operation lasted about fifty minutes. It was an unfortunate operation; by and by you will hear more about it. The patient was unbound instantly. Some of the pupils are ready, not being so overpowered by sensibility as to be overcome, like that ostler-like looking surgeon from Beaminster, to attend instantly. He was unbound. Mr. Cooper did say, "I cannot imagine the difficulty." When he had discovered it, he took the most prompt and skilful means of obviating it. The form of the stone was peculiar, and accounted for some of the difficulties which he had met with. The stone was not a large one. If it had been large, it would have been more easily laid hold of. It was a flat stone, and laid upon a shelf in the bladder, in the same manner as if a shilling were to stand upright upon its edge in this way upon the inkstand: so that you see there was no protruding edge beyond it for the forceps to catch. It laid in that form, with its edge so placed; and, therefore, unless the forceps could have been got close to it, it could not have been extracted, because the bent forceps went over it. The form of the stone accounted, in combination with its position, for the difficulty of catching it. If the stone had been round, and projected over the shelf, the bent forceps would have got it; but it was flat, and did not project.

What passed afterwards? Whenever an operation is performed at the hospital of this nature, if the patient dies, it is due to science, as well as to the feelings of the persons who have witnessed it, that the body should be opened

so far as to examine the parts. The patient died in the space of a day or two afterwards; and I now present to you a part of the case, to which I crave your attention. Upon examining the parts, the demonstrator of Mr. Cooper, an exceedingly clever and ingenious young man, examined the perinæum. Though I should first mention, that, in the course of the operation, Mr. Callaway, who is admitted by the Defendant to be a man of competent skill, the assistant surgeon, and admitted by Mr. Lee, the potato-merchant, to be a man who must understand, the next best to the operator, the course of proceeding, Mr. Callaway had himself, in the course of the operation, thrust his finger in to see if it could reach the bladder. He ascertained that it could not, and that Mr. Cooper was right. I should tell you, it is an utter calumny, an utter falsehood, to say that any force or violence was used. Mr. Callaway, who held the staff, will tell you, and tell you distinctly, that to apply the term violence to it, in any sense, is a gross and calumnious exaggeration; that he had no doubt from the very beginning that the forceps had entered the bladder, and that the operation was proceeding with the utmost skill. The body was opened, and the demonstrator went from curiosity, nobody then expecting there would be an edition of this kind, and applied his finger in the wound of the dead body, to ascertain whether he could reach the bladder. He ascertained that he could not—that the perinæum was deep. He could not put it through the prostate gland into the bladder. Doctor Hodgkin, the anatomist, did not think it was a deep perinæum, in proportion to the size of the man; but it is an utter falsehood to say that it was not so deep but that a man's finger might reach the bladder; if he has given any opinion upon the subject, it is that the perinæum was not deep for a man of his size, which was rather large. The wounds in the bladder were found precisely to correspond with the history I have given you, and with what the operator had intended to effect, with the exception that possibly a very small slip in the second incision with Sir Astley Cooper's knife had been made, because it had not exactly hit the very line of the original wound, but a matter not of the slightest importance to the operation, or to the safety of the patient, and which was natural, and which every surgeon would expect to take place.

In the next place, there is between the bladder and the rectum a cellular membrane, which, in cases of diseased kidnies, or any inflammation connected with these parts, becomes, after death, easily lacerable, so that you may easily insert the finger. But you will have it from those who saw it, that the parts were united—that there had been no separation whatever—that the union was perfectly sound; and it is impossible for any man, who pretends to the slightest knowledge of surgery, who saw it, to entertain a doubt of that fact. Well, the man's kidnies were diseased, and in a considerable state of disease. It was plain that that had contributed, combined with the operation, to put an end to his life. It might have put an end to his life without the operation; the pain of body might have done it.

When Mr. Lambert was in the room, Dr. Hodgkin made an observation, which when made, nobody suspected any thing wrong. Dr. Hodgkin found that the cellular membrane was lacerable. The parts were taken up by Mr. Lambert. Dr. Hodgkin turned his back; and then Mr. Lambert says to him,

"Oh! I find there is an opening between the bladder and the rectum."—"Then, friend," says Dr. Hodgkin, (who is a Quaker,) "thou hast made it thyself; there was none there before." *And he had made it!*—the infamous man—*he had made it!*—and I will shew you why I say so. Here was his finger inserted, where, these gentlemen will prove to you—Mr. Key will prove it, and Dr. Hodgkin will prove it—no opening was before. But, now mark! His intention was to insinuate that the forceps had not passed into the bladder, but had been forced between the bladder and the rectum. I will prove to you, by the plainest argument, the utter stupidity and ignorance of the insinuation. I can find no word to express the degree of contempt which every man must feel when he hears it. If that wound had been made by the forceps, during the life of the patient, and within forty-eight hours of his death, it must have been discoverable to the eye of a surgeon of the commonest experience, by the marks of extravasated blood that would have been left. But they will tell you there was not the least appearance of it. Was that a calumny of Mr. Lambert's, or his ignorance? It was both. I am not disposed to rescue him or his editor from the charge of ignorance, to fasten upon them an exclusive charge of calumny.

This account, gentlemen, brings us to the close of the true history at Guy's Hospital. Now comes the function of the "Lancet." Mr. Lambert, the contributor to the "Lancet," at eight guineas a month—a surgeon who understands his art much better than Bransby Cooper; and who, in his own opinion, is a better surgeon—Mr. Lambert makes his communication, and it first appears in this form of notice. I will read it to you, because Mr. Wakley, I assure you, is a wit, and his wit is very refined. Mr. Lambert likewise partakes a little of that entertaining accomplishment. You know "my uncle's knife," was Mr. Lambert's wit; he has come to swear to the truth of his report; but he admits, upon his oath, that the words were, "Sir Astley's," and not "my uncle's." This is the notice, "A curious case of lithotomy," &c. "On Tuesday last, Mr. Bransby Cooper operated for stone on a stout countryman, fifty-three years of age; the instruments employed in this operation, which lasted near an hour, were Mr. Key's knife, (so called) and straight staff, 'my uncle's knife,' a cutting gorget, a blunt gorget, &c. &c. &c. The patient, as indeed might be expected, died on Wednesday evening. We shall give further particulars of this remarkable operation." That is the first notice that I can see. Now come the further particulars. I beg your attention to that—you have not heard it yet—what do you think of the feeling, what do you think of the taste, what of the humanity, of a man who could have witnessed this operation, even if it were such as he has represented it, and yet could have turned it into the form I shall now read to you, and presented it, accompanied with ridiculous circumstances, and in a dramatic appearance, for the purpose of amusing the public? I know not which of the two I would choose if I were forced to the direful necessity of owning myself the inventor of a gross falsehood to calumniate my neighbour, or of owning that I made use even of the truth, in a doleful tragedy, with such a total want of feeling, as would shew me unworthy the name of man.

It is introduced thus, "Guy's Hospital. The operation of lithotomy, by Mr. Bransby Cooper, which lasted nearly one hour;" then there is a note. "The following passage occurs in John Bell's great work on surgery, 'long and murderous operations, where the surgeon labours for an hour in extracting the stone, to the inevitable destruction of the patient.'" Now I believe that Mr. Bell, who is a scientific, honourable, and respectable man, would be as much astonished at seeing this use made of this quotation, as I recollect to have heard was expressed in a country church by a congregation, where the clergyman, being desirous of preaching a sermon against top-knots, found a text to his purpose in the New Testament, "Let him who is on the house-top, not come down." He took as his text, from such a chapter, and such a verse, these words "Top-not, come down." Mr. Bell, in his book, is observing upon the work of Celsus, who is well known as a learned writer in the Latin language. Mr. Bell is enforcing the necessity of making the incision large enough in the neck of the bladder to extract the stone, so as not to expose the patient to the danger of laceration, by bringing out a large stone through a small opening. For if you do not make the incision large enough, the endeavouring to force a large stone down by the instrument, which cannot be done immediately, but must be done gradually, not only is a work of difficulty and length of time, but has a tendency to lacerate the parts, and a wound produced by laceration by the stone, is more dangerous than a wound produced by an incision. Therefore, Celsus says, "Multo autem patentiorem fistulam habiturus, rupta cervice, quam incisa;" and Mr. Bell, in pursuance of the same idea, observes, "I hope that my reminding the profession of this old and well proved maxim, will prevent in future those long and murderous operations." Mr. Lambert, beginning the sentence here, "Long and murderous," takes it up in the middle, for the purpose of giving it a new application, altogether different from that of the author, and wholly foreign from his intention. This is the first use the gentleman makes of his learning.

Now we come to this: "We should be guilty of injustice towards this singularly-gifted operator, as well as to our numerous readers, if we were to omit a 'full, true, and particular' account of this case to the country-draff, to learn how things are managed by one of the privileged order." This gentleman affects to write for the use of country surgeons, and to take them under his patronage—the surgeons of Colchester for example; those of Norwich have not yet found their way to his protection. He insinuates that the London surgeons treat them as "draff," and *he* calls them the "country draff;" that is a phrase which he has fastened upon them, for I believe that none of the respectable surgeons in London ever applied that term to any man, much less to surgeons in the great provincial towns, many of whom have as much experience as those in London. "A hospital surgeon—nephew and surgeon, and surgeon, because he is nephew." There he kills two birds with one stone; he has a hit at the uncle and nephew. How happy he would be if he could destroy the family—persons so popular, who have so many friends, and have done so many kind acts by their money, as well as their skill; what felicity, if Mr. Lambert, by a stroke of the pen, could destroy them both—how useful to the public—how delighted you would all be! "The

performance of this tragedy was nearly as follows:—Act I. The patient;" then there is a note, "The poor fellow, who has left a wife and six children, said that he came to town to be operated upon by the *nevey* of the great Sir Arstley." What a happy effusion of wit and fancy! Such a degree of elegance does honour to literature; and it astonishes me, that a gentleman, with only the education of a very humble surgeon, should have so much wit and fancy. "The patient (a labouring man, from the county of Sussex, thick set, ruddy and healthy in appearance, and fifty-three years of age,) was placed on the operating table at a few minutes past one o'clock, on Tuesday the 18th. The only one of the surgical staff present, besides the operator, was Mr. Callaway. The ceremony of binding the patient we need not detail—the straight staff was introduced, and was held by Mr. Callaway. The first incision through the integuments appeared to be freely and fairly made, and after a little dissection:"—the word "little," is put in italics. There is an insinuation there, that he did not cut right in the first instance. "The point of the knife was fixed (apparently) in the groove of the staff;" the word "apparently," is put in a parenthesis, to lead to the inference, that it was not really and exactly so, although apparently. "Which was now taken hold of, and the knife carried onwards, *somewhere*." "Somewhere," is put in italics, to insinuate that the knife was not carried to the bladder. No body can doubt, any more than Alderman Partridge, who was obliged to admit it on his oath, although he first stated the report to be accurate, *upon his oath*, that that insinuation was a falsehood. "A small quantity of fluid followed the withdrawal of the knife;" he admitted, if it had been stated to have contained any urine, it would not have been ambiguous—fluid means nothing; but the calling it fluid, leaves it doubtful whether it did get into the bladder. "The forceps were now handed over, and for some time *attempted to be introduced*, but without effect." The gentleman asks his witnesses, "did he not attempt to introduce the forceps?" He gives them the phrase, and they, of course, answer, "Yes, he attempted it." I will prove he *did* it—that he did not attempt it, but accomplished it. "I must enlarge the opening," said the operator, "give me my uncle's knife;" this instrument was given, "and a cut was made with it, without the staff being re-introduced." It would be absurd to re-introduce the staff—he had his finger in the wound, and was conducting the knife of Sir Astley Cooper upon his finger. "The forceps were again used, but as unsuccessfully as before—they were pushed onwards to a considerable distance, and with no small degree of force." That is false. "It is a very deep perinæum," exclaimed the operator, "I cannot reach the bladder with my finger."—"Act the Second." Now, mark this: "The staff re-introduced." When you say a thing is introduced, and re-introduced; it means, that it was introduced in the same manner, which would be a reproach to the operator; because it could not be introduced in the same way; "and a cutting gorget passed along it —various forceps employed—a blunt gorget." That is false. "A scoop, sounds, and staves introduced at the opening into the perinæum. 'I really cannot conceive the difficulty. Hush, hush! do not you hear the stone? Dodd (turning to the demonstrator,) have you a long finger? Give me ano-

ther instrument.—Now I have it—Good God! I can hear the stone when I pass the sound from the opening; but the forceps won't touch it—Oh dear! oh dear!'"—he is made to say—that is to characterise the manner of the man—to make it dramatic. "Such were the hurried exclamations of the operator; every now and then there was a cry of 'hush,' which was succeeded by the stillness of death, broken only by the horrible squash, squash of the forceps in the perinæum. 'Oh let it go—pray let it keep in,' was the constant cry of the poor man. This act lasted upwards of half an hour, the former upwards of twenty minutes—the stone was eventually laid hold of, and never shall we forget the triumphant manner in which the assistant-surgeon raised his arm, and flourished the forceps over his head, with the stone in their grasp." That is Mr. Lambert's composition—who swore to you, yesterday, that Mr. Callaway had the stone in his hand, and did not raise the forceps over his head, either in a triumphant or any other manner. "The operator turned to the students, and said, 'I really cannot conceive the cause of the difficulty;' the patient being upon the table, bound, whilst the operator was explaining;" the word "explaining," put in italics. So that there was an explanation, according to him, at the time; but that, whilst the operator was waiting to explain, he had the inhumanity to leave the patient bound upon the table—that is what is meant to be insinuated—that is a tragedy indeed. I need not tell you, that it is utterly false—that the instant the stone was extracted, the man was unbound, with all the celerity and dispatch usually employed. "The man was put to bed, quite exhausted, but rallied a few hours afterwards, and leeches were applied in consequence of the tenderness of the abdomen. He passed a restless night, was in great pain, and was bled from the arm on the following morning; leeches were applied in the afternoon; and, at about seven o'clock in the evening, death ended the poor fellow's sufferings, about twenty-nine hours after the operation. Examination of the body:—There was a very large and sloughy wound observable in the perinæum, and the scrotum was exceedingly dark-coloured, from ecchymosis"—bloody froth, which is a very immaterial circumstance. "The finger could be passed to the prostate without difficulty, which was not deeply situated; indeed, it was the declared opinion of Dr. Hodgkin and Mr. Key, that the man had not a deep perinæum." Now, this is a perversion of the words made use of by both these gentlemen, for the purpose of introducing a remark you will see by and by. He went to Mr. Key at the time; thinking that the man had a deep perinæum, he says, "Sir, your straight staff will not do with a deep perinæum," Mr. Key replied, "You know nothing about it. I have operated upon one twice as deep as that." In fact, Mr. Key's staff has no more to do with a shallow or deep perinæum, than it has to do with Mr. Lambert's brain. "The whole of the cellular tissue, throughout the pelvis, was easily lacerable, and this was especially the case with the portion between the bladder and rectum; admitting of the passage of the finger with great facility, and to a considerable distance:" you see, he does not venture to state it was open, but "admitted the passage of the finger;" he leaves it *in ambiguo*. "There was a tolerably fair lateral section of the prostate and neck of the bladder. The gland itself was larger than

natural, and the portion which is designated the third lobe, presented a singular appearance,"—I believe he is totally mistaken in his anatomy; but that is no reflection upon Mr. Cooper—"being of the size of the tip of the little finger, and forming a kind of valve at the neck of the bladder. Part of this third lobe had a dark-coloured appearance, and it seemed as if some substance had been resting upon it;" which was probably the very stone itself, which I told you of before. "The bladder itself presented nothing remarkable. The peritoneum, lining the abdominal parietes, was highly vascular, and there was a slight quantity of turbid serum in the cavity of the abdomen. The kidnies had a mottled appearance throughout their cortical substance. There are two or three points in this case to which we beg particular attention: first, the statement of Mr. Bransby Cooper, at the time of the operation, that he could not reach the bladder with his finger, as contrasted with the fact, of the bladder being very readily reached in the *post mortem* examination." Now, you will see, the fact was directly the reverse—the bladder could not be reached upon the *post mortem* examination, till it was taken out of the body—then, indeed, it could be reached no doubt, for Mr. Lambert thrust his finger between that and the rectum. "Secondly, the circumstance of the finger passing with facility between the bladder and rectum, to a great depth, as considered in connexion with another declaration of Mr. Cooper, that he could not feel the stone with the forceps, until the time of the extraction, although a sound passed into the bladder, downwards from the penis, struck upon the stone, as was the case also, on one or two occasions, when a staff was passed at the perinæal opening. The surface of the calculus was rather larger than the disc of a shilling—flat, oval-shaped, and apparently consisting of lithic acid."

Now what is that intended to convey? It is intended to convey this: first, that Mr. Cooper, from the want of skill in the operation, had made an incision that did not reach the bladder at all: secondly, that he thrust the forceps in somewhere, but that the forceps did not reach the bladder, because, he seems to think, that if the stone did not come out immediately, the forceps could not be in the bladder: thirdly, that Mr. Cooper had made a subsequent cut that did not reach the bladder; that he had thrust in the forceps several times, and used the blunt and cutting gorget, but did not reach the bladder, and that he at length extracted the stone after a very long and protracted operation.

Then the *post mortem* examination is to shew that the bladder was easily reached by the finger, and that there was a separation between the bladder and the rectum, which was occasioned by the knife, the forceps, and the gorget of Mr. Cooper, and not by the industrious finger of Mr. Lambert.

What was the effect of this? It produced consternation among the persons who read it, as will appear by what I shall next allude to, because it became the subject of the next libel, which you have not yet heard of. In the following number comes out this libel, which is upon the record. "Our report of lithotomy at Guy's Hospital, in which Mr. Bransby Cooper, after employing a variety of different instruments, extracted the stone at the end of fifty-five minutes; the *average maximum* of time in which this operation is per-

formed by skilful surgeons, being about six minutes." Now I know I am going to commit an unpardonable offence. An author who is vain of his works, never forgives a criticism. I shall be scarified in the "Lancet" to a positive certainty. He professes criticism himself, and to be a judge of style. But this is a new composition to me. I never happen to have heard of an average maximum before; the word maximum in the Latin means *the greatest*, as minimum is the least; and the mean is the average: but I never heard of the *mean greatest;*—the combination is such an abuse of his vernacular, as well as of the learned language, as I never met with before. "We have frequently seen the operation performed by the senior surgeon of Guy's Hospital in less than one minute, has, as might have been expected, excited no ordinary sensation in the minds of the public, as well as among the operator's professional brethren. An attempt has been made to call in question the accuracy of our report, in a letter signed by a number of the dressers and pupils of the Borough hospitals, which letter has been inserted as an advertisement in the Times, and also in the Morning Herald." Allow me to state that on the very day when the "Lancet" professes to be published, came out in the Times the statement that there is in the "Lancet," a horrible account of an operation for the stone, at Guy's Hospital, too shocking for their pages; clearly shewing that the person who sent it to them, meant them to insert the whole, but they did not; the Morning Herald inserted the whole without the dramatic form of it. So that Mr. Bransby Cooper had some enemy somewhere; I will only take that as a postulate for the present. The circulation of the "Lancet" being chiefly among medical men, and the Plaintiff not being likely to find his honour so much affected among them without enquiry, the minds of the public were called upon, in these journals, to consider whether he was not an incompetent surgeon. Mr. Lambert says, "I did not do it." Mr. Wakley says, "you do not know that I did it." A copy of the "Lancet" was doubtless sent to each of these newspapers. I do not know any more than Mr. Lambert why it was sent; I only say perhaps it was, to give it a greater circulation; but Mr. Wakley will have to clear himself from that imputation which Lambert renounces. "Some of the young gentlemen who have affixed their signatures to this letter, were present at the operation, others who were not present at the operation, have, nevertheless, with a generosity more characteristic of their age than of their discretion, added the weight of their testimony to that of the eye witnesses of the melancholy exhibition, and volunteered their approbation of Mr. Bransby Cooper's performance." This you see alludes to some letter written by the pupils, of which I know nothing, nor Mr. Cooper, having no part in it. "Upon the value of this species of testimony we shall make no comment, nor do we think it material that the document to which we allude, is signed, we believe, by not more than one third of the number of young gentlemen present; had they all signed it, their united opinion of the skill, dexterity, and self-possession exhibited by Mr. Bransby Cooper on this occasion, is not likely to influence the judgment of the profession, whatever it may effect with the public." So that if every one of the pupils had signed the declaration that Mr. Lambert's statement was false, and that the operation was performed with the accustomed

skill, the judgment of the pupils is worth nothing—it is of no value at all when in favour of the operator. But if Mr. Wakley calls one or two of them into Court, he converts them into critics. If they are contributors to the "Lancet," and have had but six months experience, they are the best witnesses to give testimony upon the subject—he can teach them—Lambert and he can get them into a private room, and teach them so as to be able to give the best and most scientific evidence. It is a very happy mode of making quick progress in science. "The question to which the manner in which the late operation was performed, is calculated to give rise, is not a question between Mr. Bransby Cooper and his pupils, but it is a question between a surgeon holding a high and responsible situation in Guy's Hospital, and the public; of Mr. Bransby Cooper's amenity of manners and kindness of disposition." This is not Mr. Lambert, he would not say that of the man who turned him out of the room—this is Mr. Wakley:—"We entertain no doubt; and the letter in question may be regarded as a testimonial of the estimation in which a good natured lecturer is held by the young gentlemen who attend his class. But the question is, not whether Mr. Bransby Cooper is popular among his pupils, but whether he performed the late operation with that degree of skill which the public has a right to expect from a surgeon of Guy's Hospital; whether, in short, the case presented such difficulties as no degree of skill could have surmounted in less time, or with less disastrous consequences; or whether the unfortunate patient lost his life, not because his case was really one of extraordinary difficulty, but because it was the turn of a surgeon to operate, who is indebted for his elevation to the influence of a corrupt system, and who, whatever may be his private virtues, would never have been placed in a situation of such deep responsibility as that which he now occupies, had he not been the nephew of Sir Astley Cooper." It is most extraordinary to me, allow me to say in passing, that, being a nephew of Sir Astley Cooper's, should be a reproach; if that were the only reason of his promotion, it is not a competent reason. But if he was the nephew of Sir Astley Cooper, combined with just titles, it might surely swell the recommendation, that a man who had been brought up with Sir Astley Cooper, received his instruction, and witnessed his practice, could not be the less a surgeon, because he happened to be his nephew. "This is the question, the only question in which the public is interested; and if Mr. Bransby Cooper is desirous of bringing this question to an issue in a court of justice, it will be for Mr. Harrison, the treasurer of Guy's Hospital, to enlighten the minds of the Jury as to the circumstances under which the nephew of Sir Astley Cooper was elevated to his present situation. In the event of an action, we shall, most unquestionably, call upon Mr. Harrison to disclose these circumstances to the Jury. In the mean time, we do not anticipate the decision of this question, by positively impugning Mr. Bransby Cooper's skill, but we contend, as we have repeatedly contended on former occasions, that the inevitable tendency of making the patronage of hospital surgeoncies an affair of family influence, jobbing, and intrigue, is to occasion a cruel and wanton augmentation of human suffering, and to render frequent such heart-rending spectacles as that which was lately exhibited at Guy's Hospital." So

that you see he denounces Guy's Hospital as the scene of heart-rending spectacles of human suffering; frequent in exhibition, because Mr. Bransby Cooper is the surgeon there, and the nephew of Sir Astley Cooper.

Gentlemen, this article is of some length; it goes on to state: "we repeat that there may, by possibility, have been difficulties in this case, which no degree of surgical skill could have surmounted in less time, or with greater ability," he does not say so to-day, "than Mr. Bransby Cooper exhibited; and it remains to be seen, whether such difficulties can be shewn to have existed. At present, not a single material fact in our report is denied." Was Mr. Bransby Cooper to publish in the "Lancet" a denial? Does the gentleman think he has a right to hold the scales in his own hands? That when he calls persons into his court, he is entitled to insist that every gentleman is bound to write to him, and state his case, because he chuses to libel him? This is a degree of tyranny in England that we do not own at present. It is sufficient to answer in a court of justice, as we have been doing, the charges against us. "Suppose it had been stated, that instead of employing fifty-five minutes in extracting the stone, Mr. Bransby Cooper had performed the operation in the usual time, say four or five minutes; suppose it had been stated that instead of manifesting great perplexity and embarrassment, Mr. Bransby Cooper had exhibited the utmost coolness and self-possession; that the patient appeared to suffer very slightly during the operation, and was removed from the theatre with every prospect of a favourable issue to the case. Let us suppose these, and similar false representations to have been made in this journal, and we will ask, whether any of these young gentlemen, friendly as their feelings are towards a teacher, whose good nature is matter of greater notoriety than his science, and interested as they are in obtaining his good will, and his certificates to enable them to pass their examinations at the college, before 'his uncle,' who is the president of that benighted body," that is, the College of Surgeons;—"we will ask, whether any of these young gentlemen, some of whom did, and more than one third of whom did not see the operation, would have come forward to contradict a favourable, though a false report. We repeat we do not, as the case stands at present, directly and positively impugn Mr. Bransby Cooper's surgical skill; but as none of the material facts detailed in our report have been, or, we believe, can be contradicted, we do not hesitate to say, that, looking to the circumstances attending this and other operations performed by this gentleman, in connexion with the circumstances, we believe that we were justified, and that Mr. Harrison, the treasurer of Guy's Hospital, knows we are justified in saying the extraordinary circumstances attending his elevation to his present situation, justice, humanity, the interests of the medical profession, and the safety of the public at large, call alike for investigation; whether this investigation be of a judicial character or not, we are indifferent; we are prepared to meet Mr. Bransby Cooper, if he think fit, in a court of justice—we will meet him in our own person;" all editors are dignified; they speak the language of kings. It is impossible that a gentleman of his dignity can say, "I," "for this will not be a case to entrust to a lawyer, however eminent, or highly gifted; and we shall see whether Mr. Bransby Cooper will be equally prepared to meet

us, the public, the relatives of the unfortunate patient, and Mr. Harrison, the governor of Guy's Hospital."

Gentlemen, this is the indictment you have been trying all yesterday, for Mr. Cooper is in the same situation, as if this gentleman had obtained leave of the court to file a criminal information against him, for his malpractices at Guy's Hospital. Now, I shall trouble you with one more effusion of his wit, an epigram, which Mr. Lambert swore he did not write. First, I should say, that in a former number, it is reported, that a man who came to be operated upon in Guy's Hospital, in consequence of recent occurrences absconded. That lays the foundation for the epigram.

"EPIGRAM

On the patient who suddenly decamped from Guy's Hospital.

When Cooper's nevey cut for stone,
His toils were long and heavy;
His patient quicker parts has shewn,
He soon cut Cooper's nevey."

That is just a little witty effusion, in order to keep the wound open. The man who puts on a blister knows very well, that in order to make it more operative, he must, after he takes the blister away, apply a little irritating dressing to keep the serum for a considerable time flowing. It may be of service to keep the patient in a state of irritation.

Now, Gentlemen, I have stated what I complain of. I have stated the proof I shall give. I shall prove the operation to have been performed well by this very person that the Defendant's witnesses admit to be the next best judge to the operator, by Mr. Callaway. I shall prove the falsehood of this statement of the *post mortem* examination. I shall prove to you that it could not but have originated in slander and in malice. We charge this against him upon the record. We bring him into Court, and he meets us thus. First, he repeats the whole in terms in his pleas. I did publish it, and it is all true. Next he selects the sum and substance of the charges, and says, I do affirm, that Mr. Cooper performed the operation in an unskilful manner; that he is not a skilful operator, nor a fit man for his situation in Guy's Hospital. His last defence is this, one of the most extraordinary I ever knew. He says, he is the editor of a paper called the Lancet, in which he publishes the reports of cases that occur at the public hospitals. What he means by "the public hospitals" I know not—a hospital is not a place for public contribubution or admission, such persons are admitted only, as the governors please; they never shut the door against those who go for science, but I hope they will always exclude those who go for calumny. He says, the reporters brought him this report of this case, and the critical remarks upon the case; and that he, believing the report to be true, and the remarks to be candid and fair, and knowing nothing to the contrary, as his duty bound him, published it accordingly, and that he is ready to prove it. So that you see what a state we are reduced to. If the gentleman who edits the Lancet gets from the gentleman at eight guineas a month, a paper, however false, he will think it his duty to publish it, and justify himself, no matter what effect it produces,

Now, I come to take the only opportunity I shall have to reply upon his case. He has not called a single witness that does not entitle me to ask for a verdict; he has not called a single witness who does not falsify every one of his pleas, because the pleas that set forth the libel in terms, are the only pleas upon which he can stand or fall. Moreover, he has not called any two witnesses who do not contradict each other. I will shew you contradictions in their testimony, which, if we were upon a question of mere credit, would destroy the credit of both.

Finally, he has called the author of the libel, the man who has the deepest interest, though he has laid no bets upon it, to prove it true; and who has avowed, as far as you could expect a man reluctantly upon his oath to avow, the secret motives that determined him in that conduct. I shall deal with that witness first.

It is supposed that Mr. Lambert is a material witness, to prove the truth of the libel. He says, I had upon two occasions a difference with Mr. Cooper. It is admitted that Mr. Lambert was suspected of furnishing contributions to the Lancet. It is now proved, by Mr. Lambert's oath, that that suspicion was well founded. It appears, he furnished, at the rate of eight guineas a month, a certain amount of contribution; all beyond the stipulated amount was paid by the quantum in the discretion of Mr. Wakley; that is the admission. Mr. Lambert, upon the occasion of a dinner at Guy's Hospital, had made some remark that gave offence to the company, and Mr. Cooper and several other persons proceeded down to where he sat, and insisted upon his quitting the room; they did not turn him out, they only insisted upon his quitting the room; and after some efforts to brush up his recollection, which you will remember upon other points, as well as this, he does recollect that finding his company exceedingly disagreeable to all present, he left the room. A man who leaves a room voluntarily, is not turned out; but if he is told he will be kicked out, he had better decamp voluntarily.

Upon another occasion, a short time before the report, he is in the lecture-room at Guy's Hospital, where he is suspected, but not proved to be a spy, watching for opportunities of furnishing materials to the editor of the Lancet, and he makes use of the word "bat," a term the Lancet has invented to represent a hospital surgeon. It is worthy the wit of the present Defendant, and those who admire him, to give names of that sort in order to make the parties they wish to injure, ridiculous. Having made use of the word, Mr. Cooper took offence at it, and he admitted when I put it to him, "Did not Mr. Cooper insist upon your leaving the room unless you made an apology?"—"I certainly recollect telling him I meant no offence, and that I was sorry for it."—"Did you not state, upon your solemn oath, you would watch your opportunity, and make him repent—recollect yourself?"—"I do not recollect it, Sir."—"Will you swear you did not say it?"—"I am a warm man—it is possible I may have said it." "You will not swear you did not say so?"—"No: I should not like to swear I did not say so." You have a man all but kicked out of one room, and threatened to be turned out of another, unless he made an apology. You have a man, who will not swear he did not say he would watch an opportunity, and make Mr. Cooper repent—you have this man making a report, and throwing it into a dramatic form, who almost

avows that he will be the destroyer of Mr. Cooper—you have him going to the hand that feeds him, that gives him eight guineas a month, a pittance for dirty work, that a surgeon of respectability would not receive for any work, from any public writer, and telling him, upon his honour, such as it is, that the report is true. Even Mr. Wakley, the holder of the Lancet, even he thinks it is too bad to publish the whole of the reporter's spleen. He leaves out, in his moderation, some part of it. Before all this, Lambert had put his finger into the parts, when the back of the dissector was turned; and he represents his pretended discovery in such a way, that unless he is ignorant to a degree hardly supposeable, he is guilty of another distinct and wicked fabrication, for destroying the reputation of Mr. Cooper. In the whole course of my professional experience I never knew a case, where the malice of the libeller was so distinctly proved.

Gentlemen, Mr. Wakley is the person to answer for all this to-day. He is the man that profits by the publication; he has avowed Lambert, as only the instrument that communicated it to him; he has thrown his shield over him, and means to protect the man that panders to his own appetite, for calumny and slander, and he must pay for the consequences. Do not suppose, that the argument he threw out, that he should have great regret if his reporter had deceived him, is an argument for mitigation of damages. If a man has done his best from the very first to the last moment, not only to destroy your fame, but to ruin your family, and blight all your prospects in life; and then, in a court of justice, whilst pointing the sword at your bosom, and aiming it at your vitals, should say, if I have been deceived by my reporter, I should much regret it. Do not let it be supposed, that such a declaration can excuse him from the consequences. No, Sir, you are bound up in common cause with your reporter. You must fall with your reporter. If he is malicious, base, false, and infamous, you are at least as much so, or more, because you were not actuated by that resentment, which might be some, but very faint palliation, for a man wounded in his feelings; but you, without provocation or passion, are making a deliberate traffic of slander, to get your three or four thousand a year. You have not in law, you have not in morals or in reason, the slightest apology for your conduct. Yours was the base, cruel, venal act, of attacking a man, who had never offended you, and attempting to destroy his peace, and ruin his family, for no other advantage of your own, than putting the profits in your pocket. The more popular the man, the more likely to have extensive connexions, the more public his character, the better for you. The newspapers are the precursors of your calumny. Some body has taken the pains to advertise, not to medical men alone, that they will find something in the pages of the Lancet, too shocking for ordinary publication; but the pupils, it seems, had published a letter, feeling the indignation natural to generous minds, at falsehood, and at the abuse made by somebody who has introduced himself among them to witness the operation, and defame the operator.

Then what happens? Mr. Lambert is not upon the stage now, Mr. Wakley publishes the next libel himself; he takes the sole merit of it. To repeat his dramatic metaphor, the first act by Lambert, was of a tragedy so horrible, as to affect the feelings of every man; the second is by Wakley,

who avows the object of both was, to depreciate the skill of Mr. Cooper, and treat him, as a man unworthy of the station he fills; therefore, you have Mr. Wakley, taking that line for himself. Now, Gentlemen, you are to judge whether he has proved his allegation. The only witness, as it appears to me, who, from his science, and from his education, seems entitled to any credit at all, is the first, Mr. Alderman Partridge, upon whose testimony I would wish to make one observation; and if that gentleman possesses, as I really hope he does, for neither myself nor my client can have any feeling of enmity towards him, that sense of honour, that ought to guide men in the profession he exercises, I hope I may not be deceived in expecting him to profit by this observation; that in all cases whatever, where a surgeon is called upon to operate upon the human body, it is, in the language of one of Mr. Wakley's witnesses, an act of rashness and presumption in another person to pretend to pass a judgment upon the skill of the operator, without some explanation from the operator himself, of the difficulties he met with, or of appearances that were ambiguous. What would Mr. Partridge say, if some pupil, nay I will not say that; but what would he say if Sir Astley Cooper himself, were to witness an operation of lithotomy, by Mr. Partridge, that might last an hour, (for such might be his fate, it has happened to greater men than Mr. Partridge,) and perceiving some matter he thought doubtful, or even wrong, something that he thought he would not have done himself, should think fit to turn round and publish either to the world or in a court of justice, that he thought him an an unskilful operator, without having said to Mr. Partridge there was this or that proceeding; pray tell me, what induced you to pursue that course, as you alone could judge by your finger, or the instrument in your hand, of the obstructions or the difficulties? You may be deceived in appearances, and it is not candid, it is not honourable, it is not reasonable that one professional man in surgery should pass a judgment upon the operation of another, unless he gives him, first, an opportunity of explaining ambiguous circumstances. But if you did not chuse to apply to him, why not ask the assistant-surgeon, before you formed your judgment? "Can you conceive why the operation lasted so long? can you explain why the bent forceps were used, and the straight forceps used again?" But even that was not done; and Mr. Partridge, however respectable he may be, and however scientific, must allow me to undervalue his testimony, by finding it wants that basis of candour, and professional decency and decorum, which every man ought to exhibit in a court of justice, when he comes to pass a judgment upon a delicate operation, performed by a competitor in his own profession.

But let us look at his evidence, gentlemen. He says, and in that he gives a contradiction to one statement in the libel, first, that he has no doubt that the knife reached the bladder; whereas, the libel insinuates a doubt all the way through. He has no doubt it reached the bladder upon the first incision. You remember my asking him, when I had pinned him to that admission, although he said the report was correct, "Tell me what is meant by the word 'somewhere,' and the term fluid being stated generally?" He was obliged to admit, that it was intended to represent that the knife did not pass into the bladder. So that this gentleman first swears the report is true; but the moment you come to particulars, the very first fact he proves, shews it to be false.

Mr. Wakley asked him the cause of the difficulty of the operation, and he says, the stone was lodged upon the pubes—on the pubes? That astonished Mr. Wakley, and he says, "Pray consider that again. Is it possible?" "I do not wish to give an opinion," says the witness, "I think it may." "Are you sure of it?" "I have met with two or three instances myself where the stone was so lodged." Mr. Wakley never heard of that before; and I will venture to say, though I will not take an oath of it, that his friend, Mr. Wakley, never performed the operation of lithotomy in his life. His instruments are of another kind. He cuts the mind, and not the body. "How do you know it was?" "I am sure it was detained in the pubes, because it was extracted by pressure upon the abdomen and depressing the forceps." He is perfectly right; but he only became sure of it upon the final conclusion. The operator suspected it at the first, and ascertained it long before the conclusion. Now if he had only had the common candour to go to Mr. Cooper, and say, Though I am a stranger to you, there was something in this operation that struck me, as remarkable; I perceived the stone was lodged upon the pubes by your mode of extraction. I believe, if he had done that, instead of giving the evidence he did, he would have reported favourably to Mr. Cooper's skill. What made him, then, not bring it out sooner? Because, he says, he had no idea of the position of the stone, or he would have extracted it before. Look at the judgment of a professional man. He thinks, from his mode of doing it finally, that he knew how to do it; but he thinks he did not know of the position of the stone before. How does he know? Did he ask him? Did he consider that the sounds he employed, and the bent forceps, were no indications? He seems not to have considered that, nor asked anybody at all about it. Such is the value of Mr. Partridge's testimony.

The next gentleman is Mr. Clapham. I am sure neither Mr. Clapham nor Mr. Lambert would forgive me if I passed him by without notice. He is a licentiate of the Apothecaries' Company, and he is the witness of truth, and of truth only, but has no objection to carry a false certificate with him about his age. He has some sense. I asked him his age; you recollect that. I thought him rather a young man to give a judgment upon this subject. "Twenty-one." "When were you twenty-one?" "I do not know." A very safe answer, because he was not twenty-one. "Do not know!" says my Lord, "You are not so old as to have forgotten when you were of age." "My Lord, I am not twenty-one. I was twenty last January." He was introduced, in order to give weight to his testimony, as a licentiate of the Apothecaries' Company, and practising in the country. "I am not exactly a surgeon. I am with my father." "How did you become a licentiate if you are not twenty-one? Must you not be twenty-one?" "Yes." "Did not you know that?" "Yes." "How did you get it?" "By the certificate of a clergyman." "Do you believe the clergyman has forged the certificate?" Here my Lord very properly said, and I submitted to the decision, "You cannot follow these questions, because a man is not bound to criminate himself." But I will venture to say, the clergyman is not the person by whom the Apothecaries' Company have been imposed upon by a false certificate, but that young man who comes into Court to give his judgment. Who is he?

He is only first cousin to Mr. Lambert. Mr. Lambert disclaims all knowledge of the certificate, as Mr. Clapham does of the libel. He is not twenty-one, but a man of perfect science. He said, "Mr. Cooper applied the knife twice to enlarge the opening, that is, the scalpel, in contradistinction to Sir Astley Cooper's knife." That is perfectly false. He applied the knife twice; but the knife he applied the second time was Sir Astley Cooper's, and not the scalpel. "I saw the urine. I should not have reported that the knife did not go into the bladder." There is a second contradiction; and as Mr. Partridge, too, admits that the knife did go into the bladder, this young man also admits it, though the libel asserts it did not.

The next witness is Mr. Gilbert. I admired Mr. Gilbert's nerves.—When he came into the box I was surprised to hear he was a surgeon; I thought he was more likely to be an ostler at a country inn, from the hardness of his features, or that he kept the Lancet's horses, or drove the carriage. Whether he assists in carrying out the medicine, I do not know; but he is the assistant of Mr. Wakley's brother-in-law. We have one of the family, therefore, and he makes no bones of it. He swears up to the mark—the moment you get into the family, all is safe. He says, "great and unnecessary violence and force were used—the instrument was not used in the accustomed manner of other operations, but used with great and unnecessary force and violence—after the incision, he carried the knife forward between the bladder and the rectum." They have got a man to swear that at last—they have picked up a man to swear that, and he does not mince the matter; he swears it, as if he saw it with his eyes—he did not see it at the time, nor on the *post mortem* examination; he has had good reasons since, and been lectured, no doubt; so that he now believes it. "I could bear it no longer—I staid thirty-five minutes—my sensibility was overcome, and I was obliged to turn my back." Here is a witness for you. He poked the forceps about in a way that affected this poor man's feelings; he was afraid of becoming faint, and retired. I said to him, it is impossible any urine should have flowed? "No, none flowed; I swear that."—Then if any witnesses have sworn to it they are perjured? "They are." Here, Mr. Wakley, one of your witnesses accuses two others of perjury! So that the result must be this—you call two witnesses who swear to facts that belie your report; and you call another, who swears that they are perjured. The same man says, "the forceps never got into the bladder at all." He stated, he supposes the Lancet may bring from five to six thousand a-year. I said, I suppose he thrust the forceps in as if he meant to stab the man? "Yes, he said; as if he meant to stab him." I like a witness of that sort; he does not mince the matter; he gives Mr. Wakley no trouble. He meant to murder the man, as Mr. Wakley has insinuated; and he has, of course, done right in calling this man to say he meant to murder him: that is the representation of the witness. Then, having him here, I thought I might as well ask him—Mr. Cooper is a very unskilful surgeon, and a very bad operator?—"Yes; he never did an operation well but once." What was that?—"Tying up the subclavian artery." Gentlemen, I did, myself, in my younger days, before I was so much confined within the precincts of this Court as I am now, disport myself, with looking into medical books; and I ever considered that that

operation required the very summit of medical skill. But he says, "that is nothing at all;" and Mr. Wakley says, it may be done by accident. Lithotomy is a thing that can only be done by a man of great skill; but tying up the subclavian artery! an ostler at an inn might do that.

Then we come to Mr. John Thomas;* and his evidence is exceedingly neat. He is the demonstrator at a school set up on the first of October last, at No. 1, Dean-street, in the Borough, by Mr. Sleigh, who has also set up a private hospital in Seymour-street, Portman-square. I do not mean to say it is not a better school than Guy's; but it has not produced any great surgeons, yet. No Astley Coopers nor Clines we have yet had from this rival school. "What is your opinion of the operation?" "I had been in Guy's a few months; I saw the operation; I give no details; my impression is, that it was done in an unskilful and bungling manner." As Mr. Wakley did not press for details, I ventured to ask the gentleman what connexion he had with the "Lancet." He is one of the gentlemen that contributes to the "Lancet." He has made it four communications, and one so late as October last. I only say I put it to you, whether a contributor to the "Lancet" is, upon this occasion, the very best person you would rely upon for judgment, or skill, or veracity either. "Well, what happened? I arrived subsequent to the incision into the bladder.—Did you; how long did you stay? Till the stone was extracted; half an hour I staid; I saw nothing but the scalpel used.—Did you not see Sir Astley Cooper's knife? I never heard of it." He is a demonstrator who never heard of an instrument used at one of the greatest hospitals by one of the greatest surgeons of the age. "I never heard of it, nor heard it called for—he used nothing but the scalpel."—"No gorget?" "No."—"Neither blunt nor sharp?" "No."—"Neither?" "I cannot tell the details; it was a bungling operation; my impression is so." So that without knowing the detail of all the facts, and mistaking those he pretends to a recollection of, he says—"my impression is all I can give you"—they are the impressions of a man of profound science; they are of great value; and their authority is enforced by his communications to the editor of the Lancet.

The next witness is Mr. Pearl, whom they reckon an invaluable jewel of a witness. What says Mr. Pearl? He gives us a new fact that the editor did not give us; he says, he put three fingers into the wound, and turned them round; if he did that, it must have been with the intention of murdering the man. He could have no design but murder, and if you believe that gentleman, I desire you to convict him, and my Lord will send him to be hanged undoubtedly. That is Mr. Pearl's evidence; he says also, "I think the report is correct, all but 'Sir Astley's knife;' he did not say 'my uncle's knife;'" but we have my uncle's knife put into the index and advertisement, that is done by way of facetiousness. "I cannot conceive why he should not feel the stone with the forceps, if introduced in a scientific manner. I saw a gorget introduced with the staff;" that happens to be entirely false, it

* This witness began his career with a tinman, at Kingston-on-Thames, for the purpose of learning that trade; therefore much weight cannot be given to the "*impressions*" of this person.

was introduced along the finger of the operator. "*Post mortem*, the bladder was thickened." This gentleman had commenced his attendance at the hospital in the month of October before; as this operation took place in March, he had never seen an operation in his life till he commenced in October, and he has come to give a judgment upon the skill of the operator. I thought it right to examine him, because he was a little shy about the *post mortem* examination, and it appeared to me he might have been tutored in his evidence. I appeal to your recollection: "I have been an hour at Mr. Lambert's house, and had a conversation of an hour upon the subject; Mr. Wakley was there; what was the subject of the conversation? This cause.—Had you any exhibition made of the parts to inform you? No.—You do not swear that the knife went between the bladder and the rectum; did they not endeavour to persuade you so?" You recollect how he faltered. I pressed him—"they used very good arguments to make any one believe; they did not persuade me.—Did they not endeavour to satisfy you it was so? I will not swear that; but they used very good arguments." What do you think of a man who has published a libel upon another, and justifies it, getting hold of a witness and the author of the libel at the house of the author, and trying to make that witness believe a fact which they think important to prove in their own case, which the witness could not prove from his own judgment? What think you of the credit due to the parties? can language furnish a term sufficiently expressive of the indignation that you, a Jury, ought to feel when you find you are attempted to be imposed upon in this way? that the parties concerned are to take hold of witnesses and endeavour to make them believe facts, that they may swear them in a court of justice? He says, "I formed no opinion whether the forceps passed between the bladder and the rectum; I do believe it did pass there." He is finally brought to that upon my pressing him very hard, at last he gives them credit.

There is one fact I must observe upon in Mr. Lambert's evidence; as a man of science he is decidedly of opinion, that the knife did not reach the bladder. "Why?—Because I saw no gush of urine; when the knife reaches the bladder there is always a gush of urine." I said to him, "Mr. Lambert, did you see any gush of urine at any time? No; I did not.—Then nothing had ever reached the bladder? It must have reached the bladder, because the stone was extracted." But look at his ignorance; because he did not see the gush which sometimes takes place, particularly when the gorget is used; if the man is consistent the bladder was never touched, and therefore you see his own account shews he is a man who has not a "reason for the faith that is in him;" he has not a solid reason to give for the opinion he has formed—he is inconsistent and ignorant. But, gentlemen, he is the man, the author of the libel, who has disciplined the witnesses, and trained them up to give evidence before you; he has laboured with all his zeal to serve himself and his friend, because he acts under an awful responsibility—he has not the means I dare say of indemnifying Mr. Wakley, but Mr. Wakley has the means of taking from him that pittance he receives for his contributions; and if in his evidence he should

fall back from asserting as true, upon his oath, those falsehoods he has communicated in the libel, will he have any hopes to return to Mr. Wakley? will Mr. Wakley spread his protection over him? will he praise him in the next number of the Lancet? will not he cast him off? Such is the man brought before you, upon whose testimony you are called upon to rely.

Lastly, Gentlemen, comes in the doctor of science, Alexander Lee; and, as he was asked his opinion upon the skill of a professional gentleman, I was induced to put a question to him, which I did put upon his occupation. From the candour of the man's answer, and the fairness of what he said, I am not disposed to disparage him at all. That he is a regular surgeon is out of the question; for it is hardly possible that a man who is a surgeon, and then a potato-dealer, can become a surgeon again, without forgetting much of his craft. But I will take it that he was at least as competent a judge, and saw as much of the operation, as those before called. Observe the manner in which the Defendant introduced him. "You are a friend of Mr. Cooper's? I am not intimately acquainted with him.—Are you not acquainted with him? I never spoke to him in my life." It seems that Mr. Wakley thought it not right to let the case rest upon pupils, or upon the author of the libel; and this gentleman is called for the chance of what he may say. I have it out of his own mouth. He first said the operation was performed in the usual manner. "Was it a long operation? Yes, it was; it was a difficult operation.—Can you account for the difficulties? No, the operator is the best person to judge of these.—Have you known operations so long? I cannot say I have; they are generally from ten minutes to a quarter of an hour: but operations may be difficult, and occupy a longer time.—Was there any thing that struck you? No, there was not." Upon which I asked him whether, as a professional man, he conceived it was competent to a man to give an opinion upon the subject without consulting the operator; and he said, certainly not; that ambiguous circumstances could only be explained by the operator: and he said that which, put in a very few words, what I hardly expected to get from a witness for the Defendant. That it was most rash and most presumptuous in a pupil to come and give an opinion upon the scientific skill of an operator without asking his teacher for an explanation. But he says, the teacher owed an explanation to his pupils; and how does he know he has not given it? He lectures every day almost; I believe he is not bound to give his explanation at the moment. He said there were difficulties; and I believe I can shew you a case where Mr. Cline was an hour and a half in the operation: and, after he had extracted the stone, said, "Gentlemen, there is not one of you who could not as well tell the difficulties of this case as myself." There are secrets in nature which the philosophy of no man can explain. John Hunter was an hour and a half in an operation, and the man died; and there were two stones found in his bladder unextracted. But no man dared to question his skill. No doubt, the Lancet would; because the Lancet dares every thing.

Gentlemen, I come last to Mr. Harrison's testimony, a full and direct refutation of the charges in the latter libel, which attempts to shew that Mr. Cooper was placed in his situation by corrupt influence, and not by reason of any merit of his own; and that the governors of the hospital, as well as Sir Astley Cooper, are liable to the charge of corrupt influence. He has had the auda-

city to say he shall meet Mr. Harrison and Mr. Cooper in court; and to accomplish his prediction he has called him. I have not the honour of knowing Mr. Harrison, except by reputation. I have always understood him to be one of the best of men. His evidence yesterday does him great honour. He has proved that when he made the application to Sir Astley Cooper, to resign his situation of surgeon, and accept that of consulting surgeon, it was entirely owing to his extensive practice; and that he felt a delicacy in doing so, from the apprehension it might give offence. That Sir Astley was not at first reconciled to it, though he afterwards acceded to it; that the governors were resolved to place Mr. Bransby Cooper in the situation before Sir Astley knew of their intention, from their long experience of his ability, and their knowledge, that he had the approbation of every man connected with the hospital; and that the scholars would derive benefit from his instruction. They agitated no invidious comparison between him and any other man; they intended that the new surgeon, then to be appointed, should also be the lecturer in anatomy; without disparaging the talents of any man, they chose Mr. Cooper, for no other reason than that he was a proper person to place in that situation, wishing to combine the anatomical school with the office of surgeon.

Gentlemen, Mr. Harrison has disproved the libel, and I am entitled to your verdict upon the evidence of the Defendant. But I seek to give evidence for this reason:—It is not enough for me to let this trial go abroad as the case now stands. Mr. Cooper's character is attacked as a surgeon and as a man. The issue combines not only what is dear to him as a man, but to his family, and those connected with him. I cannot suffer it to be said, that it was because a witness did not prove an immaterial part of the case, that it was because the Defendant's plea was not fully proved, that the Plaintiff had a verdict. Mr. Cooper is the complainant in this case, and he is to lay his complaint before you; he is to prove the malice of the party, as well as the falsehood of the charge. I cannot let this case go out of court without giving an opportunity to his friends, the most eminent men in the profession, to bear their testimony in contradiction of that atrocious attack made upon him, that he generally wants skill. These gentlemen were not present at the operation; but they can speak to their opinions upon a true representation of it, and to the general character which this man has attempted to defame. I shall call not only the surgeons of the different hospitals, who have known him as a competitor; for with honourable men, all sordid feelings of jealousy are allowed to vanish. I shall call those before you, who, upon this occasion, if they could ever have, which they never had, any unfriendly feelings towards a man of his amiable manners, would let these feelings subside and be extinguished. They will bear honourable testimony to his character, and will tell you, that, for his age and experience, there does not exist a man of greater skill or greater promise. I shall likewise call to you one of the oldest and ablest physicians, himself originally bred a surgeon, and practising as a surgeon. I mean Dr. Babington, who will give that testimony to Mr. Cooper which, I should apprehend, will best support his case. He has witnessed his practice; he knows him, and knows the school he was brought up in—and, meaning to bring up his own son a surgeon, has selected Mr. Cooper to place him with. I shall call a

younger man, who has seen Mr. Cooper not so frequently as Dr. Babington: I call him not as the friend of Mr. Cooper—not as a person having any private intercourse with him—a distinguished professional man, who is acquainted with all the secrets of anatomy. I speak of Dr. Roget, a nephew of an illustrious and never enough to be lamented friend of mine, Sir Samuel Romilly, who, in early life, had made anatomy the subject of his study, and delivered distinguished lectures in physiology. I shall venture to ask him, being persuaded that, as far as he has known him, he must have formed a high opinion of Mr. Cooper's skill.

Gentlemen, when the case is closed, Mr. Wakley will have the singular advantage in the case of libel, perfectly new, of replying upon the whole evidence. Your verdict must be for the Plaintiff. If I were to sit down without calling a witness, your verdict must be for the Plaintiff. And when you have heard the evidence on both sides, and his reply, the question will be what damage you shall give—that is a grave consideration, and allow me for a few moments to occupy your attention upon it. I am happy to see in that place, gentlemen of your education and station in life. It is not that I disparage the ordinary tribunals by which causes are decided. No man can respect them more than I do; but there is a certain class of causes, in which it requires the feelings of honour, and the feelings of highly-educated gentlemen, to enter into the sufferings of a man situated like this Plaintiff; and though these feelings exist in all classes of life in well-regulated minds, we know that they are most certainly to be found amongst gentlemen uninfluenced by sordid views or vulgar motives; that persons of your rank furnish the surest materials for bringing into a jury-box that species of feeling applicable to such a case as this. I will beg you to consider this. Every man in England is at liberty to publish what he pleases, God forbid that that liberty should be abridged; but that liberty would be a source of the most bitter tyranny that ever an unhappy country laboured under, unless in those instances in which a man is abused by a libeller, some constitutional tribunal existed for correction and reparation; that tribunal you are—you will please to recollect how much in modern times the circulation of the press has enlarged the sphere of the reputation of individuals for good and for evil. Consider, that to a feeling and honourable mind, fame and honour are of greater price than fortune. Consider, if you please, that, when these are affected, in proportion to the extent of the calumny, in proportion to the circulation that the press obtains, unless there be some reparation to the feelings of an injured man, unless society furnish the means of redress and compensation, to what course is the man driven who writhes under calumnies for which he can have no redress:—Lord Bacon says, that "revenge is a kind of wild justice;" the same Being that made us reasonable, made us also resentful; and if a man's resentment, bottomed upon the generous feelings which induce him to look at his fame, as his brightest possession, if that resentment is justly kindled, and he finds in the tribunals of his country no means of having it appeased by some public vindication, by some verdict that shall stamp the opinion of honourable men of the conduct of which he complains, to what course is a man driven in this civilized society of ours? Who can blame him, if his revenge assumes the form of justice itself,

and he takes into his own hand the remedy the jury of his country will not give him. Away from the consideration of a cause like this any cold notions of temperance; I say, gentlemen, that indignation, where it is justified by the facts, is a feeling that goes along with justice. What is the attack made upon this gentleman? An attack made by a secret and bitter enemy, an attack made upon his fame as a professional man, not only affecting his character and his honour, but seeking to take the bread away from his family, to blight his prospects, and to hold him up to public scorn and ridicule. Nay, do not call it indignation, you are called upon to give him reparation. I remember, when a gentleman in the lower walk of my profession, a man of high honour and consequence in the City of London, was-charged by a libeller with only some unprofessional conduct in the management of a cause, when the case was clearly proved to have originated in malice, a Jury of the City of London thought it right to mark it with £1,000. I recollect when a writer of much greater talent than Mr. Wakley, but who, like him, mixed up personal ribaldry with his writings, and whose works were not the less circulated on that account, defended himself with much more ability, that a Jury in this Court thought a private individual whom he had slandered, ought to receive a compensation of equal amount. I point out no rule—you are to judge for yourselves. It is not what one jury has done that you are to take for your guide; but your verdict is to mark what distinction you think exists between honour, purity, and integrity, on the one side; on the other calumny, and that sort of feeling that induces a man to attack his neighbour's reputation and peace of mind, for the gratification of his own malice. You are to mark what you think is due to society, whose interest is now placed in your hands in the person of Mr. Cooper, against a calumniator, who circulates his libels for profit and for revenge. You are to determine, whether by the verdict you give to-day, you will give him a new triumph; whether, by damages said to be temperate, you will give him an opportunity of declaiming against the man he has already wounded, and treating your verdict as a victory. The public look upon your conduct, and I declare before Heaven, if I could inspire you with my feelings upon the subject, I should say there is no damage to the whole amount of that laid in the declaration, that I should not think you bound in duty, virtue, and honour, to give to Mr. Cooper. Not that Mr. Cooper wishes to make a sordid traffic out of this cause; but look at what he complains of: after sustaining an attack which few men would have had courage to come into a court of justice to resent, and no small pains have been taken in certain quarters to prevent him, instead of meeting with any thing like reparation, or any thing to soothe him, the man has carried his malice still further, has plunged his instrument still deeper; he has probed, and lacerated, and tortured him, for one entire day, by that which is now spread over the kingdom, and in a few weeks will be spread over the civilized world, the evidence of his witnesses unexplained, without any statement on the part of the counsel, or a witness heard to explain or refute it. The final part of the piece is yours. You are to say whether you think men's characters are so to be dealt with, whether you can estimate the reparation to be given for base, infamous calumnies, and falsehoods; or whether you think a

malicious libel, an offence only because the law prohibits it; one of those *mala prohibita*, which you could at the instant expiate by a small penalty like the getting over your neighbour's hedge, and shooting his partridge. But there are surely distinctions in the offences of men, and in the injuries inflicted by them. I beg to ask any honourable man amongst you, what would he take to have his skill, his honour, and his humanity, assailed in the way that Mr. Cooper's have been? what would he take for it? more than that, if he be a man with a rising family looking up to him for support and maintenance, what would he take to have all their hopes put to hazard, all their prospects in life blasted by the breath of the slanderer? and how would he feel, if dismissed in a court of justice, by being told the jury thought him intitled to a verdict, but that they thought moderate damages sufficient to mark the conduct of the man who had injured him. I shall leave Mr. Cooper in your hands; I shall call the witnesses; I am sorry I have detained you so long, but feeling it was the case of an individual in whose hands I would willingly place my own life, from my confidence in his skill, I have felt it my duty to him, and to the public, to make the statement I have made, and to appeal to those feelings which I know you possess.

Gentlemen, I have just been favoured with a piece of evidence I ought to open to you. You remember the evidence of Mr. Clapham, whose infamy ought to be exposed; I have a right to give this in evidence: Mr. Clapham swore he did not take any oath respecting his age; here is the certificate, and here is his oath; I will prove it to you. Mr. Lambert swore he knew nothing of Mr. Clapham getting his licence or certificate; here is Mr. Lambert's certificate of his moral character—the certificate of moral character he produced was by Mr. Lambert; he may have forged that certificate, too, I cannot call Mr. Lambert back to ask him that. It lies, however, and here it lies between them.

EVIDENCE FOR THE PLAINTIFF.

A paper was handed in.

The following passage was read from No. 242 of the Lancet, published on the 19th of April, 1828:—

"EPIGRAM

*On the patient who suddenly decamped from Guy's Hospital.**

When Cooper's nevey cut for stone,
His toils were long and heavy;
His patient quicker parts has shewn,
He soon cut Cooper's nevey."

Sir James Scarlett.—Now refer back to that number.

The following passage was read from No. 241 of the Lancet, p. 49:—"There has been no operation performed at this Hospital during the last fortnight: notice was given of an operation last Tuesday week, but the pa-

* See the Lancet of last week, page 49.

tient, it was understood, had become so alarmed at recent occurrences, that he had decamped, and by way of mending matters had gone over to St. Thomas's Hospital, under the care of Mr. Travers."

THOMAS CALLAWAY, *Esq., sworn.—Examined by Mr.* POLLOCK.

Are you a surgeon?—I am.

Where do you reside?—In the Borough.

Are you the assistant surgeon at Guy's Hospital?—I am.

How long have you been in the profession?—Seventeen years.

Lord Tenterden.—From your first entrance into it?—From my apprenticeship.

Mr. Pollock.—Were you one of the pupils at Guy's Hospital?—I was.

Have you seen most of the operations of importance that have taken place there?—Nearly all.

Have you been present when both Sir Astley Cooper and Mr. Bransby Cooper have operated for cases of stone?—I have.

Have you ever yourself operated in such cases?—I have.

How often?—Six times.

Lord Tenterden.—For lithotomy?—Yes, for lithotomy.

Mr. Pollock.—How often have you seen Mr. Bransby Cooper operate in cases of lithotomy?—Several times. I do not know the precise number.

You were present on the occasion in question?—I was.

In what character were you there?—As the assistant surgeon.

Was it your duty to assist personally in the operation?—It is the duty of one of the surgeons of the Hospital to assist, and on this occasion I did.

How long did the operation last?—I think about fifty minutes.

You, I believe, held the staff?—I did.

After the integuments had been cut through, do you remember Mr. Bransby Cooper making the first incision?—From the position in which I stood holding the staff, I could not see the first incision, standing on the left side of the patient, and behind him rather.

Were you able to judge whether it reached the bladder or not?—I very distinctly felt Mr. Cooper cut into the groove of the staff.

Which you had in your hand?—Yes.

Is that a point about which you entertain any doubt?—None whatever.

Then the knife passing in the direction in which you felt, holding the staff, it would go, must it cut the bladder or would it go any where else?—Feeling Mr. Cooper cut into the staff, it is one of the preliminary duties of the assistant to hand the staff to the operator, and it then acts as a guide to him in pursuing the operation.

Have you any doubt it did pass into the bladder?—None at all.

Were you present at the examination of the body after death?—I was.

Did you find any reason to doubt the opinion you had formed with respect to the knife having gone into the bladder?—None.

Did you, on the other hand, find any reason to confirm you in that opinion?—Upon the *post mortem* examination I found nothing that induced me to have a contrary opinion.

I would generally ask you whether any person can so well judge of the difficulties of the operation as the person actually performing?—No one can form an adequate opinion of the difficulties of the operation but the operator.

Next to the operator himself do you think that you would possess, being his assistant, the best means of explaining what might occur?—I think not.

Your situation as assistant, would not have made you better acquainted with what other persons around might see?—Not more than a common spectator.

Were you able to judge from the whole operation whether this was an ordinary case, or one of difficulty?—It was evident there was considerable difficulty in feeling the situation of the stone.

After the opening into the bladder we understand the forceps were used?—They were.

Could you form any opinion whether they went into the bladder or not?—I cannot, from personal experience of that operation, but I should say no man would feel himself justified in introducing the forceps upon his finger unless he felt convinced, by his finger, that an incision had been made into the bladder.

Have you any doubt that the forceps went into the bladder?—None.

I mean after the first incision?—None.

What was the position of the stone in this case?—It appeared to be in the anterior part of the bladder, behind the pubes.

Was it high up or low?—High up.

Does that situation account to your mind for the forceps not finding it?—Very satisfactorily.

Whether the straight or crooked forceps?—Yes.

From the weight of a stone, where do you generally expect to find it?—In the inferior part of the bladder.

In the bottom of the bladder?—Yes, in the hollow of the pelvis.

Is that the place where it is found in a large majority of cases?—In a majority of cases.

What was the appearance of this stone?—An oval flat stone.

Does that shape serve to explain to you how it came to be in the position you have mentioned?—No, it does not.

Does it explain how the forceps happened not to find it?—It readily accounts to me why it eluded the forceps.

Finding that the forceps did not get hold of the stone, what did Mr. Cooper do next in the course of the operation?—He tried to vary his forceps, he tried several forceps, and other instruments that are generally resorted to in difficult cases; the scoop is very often used in such cases.

Were you present at any experiment by the sound to see whether there was a stone?—I sounded the patient on the table before he was cut.

Had you any difficulty in ascertaining the existence of the stone by the sound?—It was not felt in the usual manner, it was felt much more readily upon withdrawing the instrument, and that gave us the impression that the stone was in the anterior part of the bladder; it was detected not in the con-

vexity of the instrument, but in the concavity; by withdrawing it, you readily touched the anterior part of the bladder.

If the stone was in the situation you have described, would it be perceptible in that way to the sound, and yet elude the forceps?—Certainly.

Lord Tenterden.—Does that instrument, called a sound, inform you by the sound?—Yes, when it touches the stone, by a sort of chink.

Lord Tenterden.—It derives its name from the intimation it gives you upon touching the stone?—Yes.

Mr. Pollock.—What sort of a person was the patient, was he a large man or a small man?—A stout man.

Though he might not have a deep perinæum for him, did you try to reach the bladder with your finger?—During the operation Mr. Cooper asked me to introduce my finger, which I did, and I could not reach the bladder with my finger.

Did you reach the prostate gland?—I think I did, but I am not certain.

You are quite certain you did not reach the bladder?—Quite certain.

You think you did reach the prostate gland?—Yes, but I am not confident.

In this state of things was it necessary to enlarge the opening?—I think it was.

What was done for the purpose of enlarging the opening?—A beak knife, a knife with a crow-pointed beak was used.

Lord Tenterden.—Is that the knife called "Sir Astley's?"—Yes, Sir Astley's.

Mr. Pollock.—Was that used?—It was.

Did that increasing the opening of the bladder require time for the purpose of doing it with care and caution?—Yes.

Was the opening made with the knife, or was any other instrument introduced?—The cutting gorget was afterwards used.

Lord Tenterden.—For the same purpose?—For the same purpose, to enlarge the opening.

Mr. Pollock.—Was the blunt gorget used at all?—I do not recollect, but I think not.

What is the advantage of the gorget?—It acts as a director in the introduction of the forceps.

Lord Tenterden.—Would the cutting gorget do that?—Yes.

Mr. Pollock.—Does it also limit the opening?—Yes, it can only make an opening of a certain extent, and that extent is of the cutting edge.

Is that opening generally sufficient?—Yes, generally it is.

If the opening had been large enough before, would the cutting gorget do anything?—It would do no injury, because it was introduced upon the operator's finger, as was the knife, and directed by the finger of the operator.

If it was not large enough, it would make it larger?—Yes, it would make it larger.

In the result Mr. Bransby Cooper extracted the stone?—Yes.

Did Mr. Bransby Cooper use the proper means to get the stone, being in the position in which it turned out to be?—I think he did.

Was any great and unnecessary violence used?—I think none.

Were any instruments used except those that were necessary to meet the apparent difficulties of the case?—I think none.

In your opinion, was the operation performed properly and scientifically, or in a bungling and clumsy manner?—I think it was performed, under circumstances of very considerable difficulty, with as much care as the case could possibly have received.

Lord Tenterden.—I think your words were "with as much care as the case could be?"—Could have required.

Mr. Pollock.—Your words were "could have received?"—Yes, could have received.

Was the delay owing to the difficulties attending the case, or Mr. Cooper's want of skill?—I think entirely from the situation of the stone, and the difficulty with which it was detected.

You have witnessed many operations performed by Mr. Bransby Cooper, you say?—Yes, many.

Is he a skilful surgeon generally?—Yes, certainly.

How many years have you known him?—I believe very nearly twenty, I think it is now twenty years.

Do you know of his having been abroad with the army in the Peninsula?—I had the pleasure of his intimacy from that period.

Did you correspond with him?—Yes, I did.

You knew he was in the army as an army surgeon?—Yes, both in the Peninsula and in America, as an army surgeon.

Do you know of his having been at Norwich?—I do.

For what purpose?—He was then attending the Norwich Hospital.

Is that a hospital much celebrated for lithotomy?—Very much so, indeed.

More than any other county hospital in the kingdom?—Yes, more so than any I am acquainted with.

Do you know of his having been at Edinburgh?—Yes, I do.

How long?—Certainly one year, I believe two; I really forget which.

Was he there studying medicine?—He was.

Generally, is he a person of skill in his profession?—I think so, certainly.

Do you think he is fit to be one of the surgeons of Guy's Hospital?—Certainly.

Is he there the lecturer upon anatomy?—He is.

Did you attend the *post mortem* examination?—I did.

Who actually conducted the dissection?—Dr. Hodgkin.

Was the bladder examined?—Yes.

And the rectum?—Yes.

In your presence?—Yes, in my presence.

There is a cellular substance between them, round the bladder?—There is.

Lord Tenterden.—Between the bladder and the rectum?—Yes.

Mr. Pollock.—Was your examination such as to enable you to say, whether the forceps had ever been thrust with violence into the cellular tissue, not going into the bladder?—I saw nothing whatever in the *post mortem*

examination, that could lead me to think that the forceps had not gone into the bladder.

If any such injury had been done by violence, should you have discovered it upon the *post mortem* examination?—I must have observed it.

Would there have been any extravasation of blood?—Yes, there would have been extravasation of blood in the cellular tissue.

Was there any such extravasation?—None.

Was there any laceration of the cellular tissue?—I saw none.

Did you find that the patient laboured under any disease of the kidnies?—He was an unhealthy man.

Have you seen other operations of difficulty performed?—I have seen many cases of operations of difficulty.

In cases of the stone?—Yes.

Have you known a long time employed in other operations?—I have.

Is the length of time alone any criterion of the skill of the operator?—None whatever.

Have you known Mr. Cooper perform the operation in a short time?—I have seen Mr. Cooper perform the operation of lithotomy in about fifty-eight seconds, or about that, and since the operation we are now speaking of; it was done in rather more than a minute—about a minute.

Was that an operation attended with success?—Yes.

Do you read the "Lancet" from time to time?—I do.

Was any notice taken of that operation, performed in a minute, with success?—I think not, I did not see it.

You have not seen that reported?—No, I have not.

Were you present when Mr. Cooper tied the subclavian artery?—I was.

Do you agree with the witnesses who have spoken of that operation as one that a man can do by accident?—I cannot suppose that a man could tie the subclavian artery by accident.

Is it an operation of ease and facility, or one requiring great anatomical skill?—It is an operation of very great difficulty, and one requiring the most perfect anatomical knowledge.

Which of the two operations require the most skill and science, cutting for the stone, or tying the subclavian artery?—I think, tying the subclavian artery.

I would ask you, who have been present at a great many operations; can any bystander, or any other, than the operator himself, appreciate the difficulties, or fairly estimate what belongs to the operation, except the operator himself, or somebody to whom he explains it?—Certainly not; no bystander can appreciate the difficulties of the operation; I could not myself; I was obliged to enquire.

Would you, as a surgeon of science and experience, form a judgment upon an operation of another operator, without communicating with him, upon the difficulties he had met with?—Certainly not.

Mr. Wakley.—I wish the anatomical preparation to be brought in again.

Lord Tenterden.—In order to cross-examine this gentleman?

Mr. Wakley.—If your Lordship pleases.

Lord Tenterden.—Let it be brought in.

The preparations were produced.

Mr. Wakley.—It is quite impossible to examine that preparation so as to know the state of the parts unless it is removed from the glass.

Lord Tenterden.—If it is removed, can any information be obtained?—I do not know.

Lord Tenterden.—It shall be taken out in order to see.—Until it is taken out Mr. Callaway says he does not know whether any observation can be made upon it; it must be taken out in order to see whether any can be made —I have seen the preparation before it was put in, and I have no wish it should be taken out.

Mr. Wakley.—The spirit is so foul I cannot see it.—It has been shaken in coming here, it was clear when it left the hospital.

Sir James Scarlett.—Is it necessarily in a different state to what it was when it was removed?—No, there is no reason why it should be.

Mr. Wakley.—Was it removed in spirits?—No.

Sir James Scarlett.—There is a difference in the colour?—Yes, it is macerated by lying in the spirits.

Cross-examined by Mr. WAKLEY.

You have stated that the stone lodged upon a sort of shelf, did you ascertain the sort of shelf?

Lord Tenterden.—Mr. Partridge said yesterday, unless he saw the bladder in its position in the body, he could form no opinion how the stone rested.

Mr. Wakley.—If a shelf had been formed by the bone, that would have produced it.

Lord Tenterden.—If you wish to have the preparation removed I have no objection.

Mr. Wakley.—I certainly wish it—I will do it.

Lord Tenterden.—Let the curator do it.

The preparation was taken out of the glass and spread upon a board.

The stone that had been extracted from the bladder of the patient was likewise produced, contained in a small glass, and handed to his Lordship and the Jury.

Lord Tenterden.—This appears to be the stone, was the other side convex like this?—Yes.

Lord Tenterden.—It is larger than a Windsor bean. Now, Mr. Wakley, put some questions.

Mr. Wakley.—Did the *post mortem* examination in this case take place in public?—Yes.

Was any notice given?—I do not know that any notice was given, but the place and time were perfectly well known—one o'clock is the time.

How many persons were present?—I cannot say.

Can you form no opinion of the number present?—Perhaps thirty, as many as usually attend examinations.

Did you pass your finger through the wound in the perinæum upon the *post mortem* examination?—I did not.

You state, that the stone was lodged under the pubes?—Behind the pubes, I said, in the anterior part of the bladder.

Was it attached to the bladder?—That I cannot say.

If it had been attached to the bladder, would not the state of the bladder have shewn it after it was removed?—No, I think not.

Not if it had been attached so firmly, as that the striking of the sound did not detach it?—If it had been embedded in the mucous membrane there might have been a cavity that would have shewn, where it had resided, and there was an appearance at the spot. I have alluded to the anterior part of the bladder, that gave me the idea that that was the spot where it had been, and from which it was removed; it was a discoloured spot.

The preparation was handed to the witness.

Did the operator state, during the operation, he could not explain the cause of the difficulty?—He said so.

Do you suppose that the operator had any knowledge of the situation of the stone?—I think he had not, or he would have removed it; the way in which he removed it, seemed to explain the difficulty.

Although he struck it repeatedly, he had no knowledge of its situation?—Not its precise situation, he could not have; it was evidently in the anterior part of the bladder, from the concavity of the staff striking it on drawing it out.

Lord Tenterden.—Is the staff and the sound the same thing?—Yes, except that the staff has a groove.

Mr. Wakley.—What is situated between the bladder and the pubes?—The cellular membrane.

Nothing else?—What part do you mean?

The upper part.—The loose cellular membrane.

Is there nothing else?—What part are you alluding to?

The anterior part of the bladder from the rectum to the pubes—is there not a ligament attaching the bladder to the pubes?—Yes.

When the bladder is empty, is not it in a state generally of contraction, unless there is a state of paralysis?—Contracted, when there is no urine in the bladder.

When the bladder is contracted, where would you expect to find the stone?—It might embrace it.

If the anterior part of the bladder be attached by a ligament to the pubes, and the bladder contracts, in what direction would it contract?—If there was any urine in it, it would contract upon it, and propel it towards the orifice of the urethra.

In point of fact, the bladder would contract immediately towards the pubes, and carry any thing with it, it contained?—A regular contraction would.

Has the bladder any other fixed point, beside the one I speak of?—Several.

Fixed?—Several.

How can it contract?—By its muscular coat; it is connected in part with the peritoneum; but it still contracts, and becomes smaller or larger.

The bladder is not fixed to any part by any unyielding substance except the pubes?—No.

Has it any fixed points beside the one at the pubes?—No, it has certain attachments; it is connected with the surrounding parts.

As the bladder, when emptied of its fluid, contracts usually towards the pubes, immediately behind the pubes, where would you expect to find the stone but in that situation?—It would fall into the hollow by its own gravity, unless it was entangled, as it often is, in the folds of the mucous membrane.

What extent of cavity do you suppose there is in the bladder, when it is emptied of its fluid?—Not very considerable.

Are not the sides in general in contact?—No, they are congregated and contracted in the body.

Do you believe there is a space usually equal to three square inches?—No.

You state you have no doubt the forceps entered the bladder; but did they enter the bladder the first time they were tried?—I think they did; I was not in a situation to see that, but I think they did.

If the bladder could not be reached by the finger, how could the finger act as a director to the gorget?—I was speaking of my finger, and my finger would not reach the bladder.

What do you mean by the shape of the stone, accounting for it not being seized by the forceps?—Because a flat stone is more difficult to get hold of than a round one, and a small stone much more difficult to obtain than a large one.

Do you mean that it is difficult to grasp it either by its long or its short axis?—It is difficult in either case.

You stated that the enlargement of the opening required time to do it with care?—Certainly.

How long are you cutting with the knife under such circumstances?—That depends upon the extent of the opening, and the circumstances attending it.

Would it take ten seconds?—It might.

How many times was the cutting gorget used?—It was only used once.

Are you positive it was only introduced once?—I will not be positive, but I think not.

Did you desire the operator to explain as he proceeded?—No; after it was over, I did.

Did he offer any explanation?—I do not think he did; my attention was then directed to remove the patient from the table.

Did you speak immediately?—I believe I did.

How long does it take to bind a patient for the operation?—One minute; and perhaps to unbind him half a minute, or perhaps a shorter time.

Then, in fact, if the operator spoke to the pupils immediately he had removed the stone, the patient was bound while he was explaining?—He was unbinding.

Unbinding! he could not be unbinding if he was bound?—He was removed instantly.

Did you assist in the removing?—No, I directed it.

Lord Tenterden.—As soon as you had spoken to Mr. Cooper to explain the difficulty, he was unbound?—He was being unbound at the time.

Was he kept bound longer than was necessary?—Not at all—not a second.

Mr. Wakley.—Then the unbinding and the explanation were simultaneous?

Lord Tenterden.—He as yet has not said there was any; he did not hear it.

Mr. Wakley.—He said he spoke.

Lord Tenterden.—That would depend upon what he said.

Mr. Wakley.—You state, that you consider Mr. Bransby Cooper a very skilful surgeon?—Yes, I do.

Have you always been of that opinion?—Yes, always.

Have you not at different times expressed a different opinion?—Mr. Cooper and myself, with other surgeons, may differ on minute points of surgery, as we all do differ: but upon all important points, I should say, I should very cordially agree in any opinion he gave.

Have you not stated it was an infamous job, placing Mr. Bransby Cooper over your head in Guy's Hospital?—No, I have no recollection of saying so.

Will you swear to never having said so, or used words to that effect?—I believe I never could say so. I, like all other disappointed candidates, felt I ought to be elected.

Have you not threatened at different times to publish documents, which would expose the corrupt system of the mode of election in Guy's Hospital?—No, I never have.

You never stated so to me?—I am sure I never did.

On your oath?—I am upon my oath; and every thing I say is upon oath, and I tell you I never did say so.

Were you recently at a dinner called the Kent medical dinner?—I often dine there.

Lord Tenterden.—That may be, and yet you may not have been there recently.—Within the last two or three months I was there.

Mr. Wakley.—Did you not state to a gentleman at that dinner, who was speaking to you respecting what you had formerly said of Mr. Cooper, that you never stated that he was an idiot, but that he was much better fitted to spend a large fortune than be a member of our profession?—Your friend Haslam asked me, if I had ever said, that I wished Mr. Bransby Cooper had a very large fortune, and that I wished he had never been made a surgeon. I told him I never had said so; that I had said, I wished he had had a large fortune, and I wish so now.

If he be so skilful a surgeon, why do you wish he never had been a surgeon?—I wished him to have a large fortune, because then he would not have been a surgeon.

Then you did state that you thought Mr. Bransby Cooper was better fitted to spend a large fortune?—I have not said better fitted.

Do you deny having said so?—I deny it.

You say you did not state, he was better fitted to spend a large fortune than be a surgeon?—No.

Nor used words to that effect?—I said I wished he was not a surgeon, that is very likely: but I recollect the conversation, and I was quite on my guard at that conversation.

You state that this operation lasted about fifty minutes?—About that.

Will you swear it did not last an hour?—No, really I will not; I do not believe it did. I had not my watch in my hand. I heard from every body that it was fifty minutes, and I believe it was fifty minutes.

Did you on any former occasion see the cutting gorget introduced after the two knives had been introduced?—I do not know that I have.

Will you be kind enough to tell me whether there is an incision made by the cutting gorget in that preparation?

The witness examined the preparation.

I do not know that I can distinguish between the two incisions, that made by the knife and that made by the gorget.—*(The witness again examined the preparation.)*—No, I cannot distinguish them, I can distinguish the incision in the bladder, that made through the external opening; but I cannot distinguish any cut made by the gorget, from that made by the knife. I cannot say which is made by the one, and which by the other.

Is the prostate enlarged?—It is a large prostate, but not enlarged.

How many incisions are there?—One: it is in a very different state now from that in which it was on the *post mortem* examination; it is much harder in some parts, and others much macerated, and others much softer.

Lord Tenterden.—Is it possible to form any judgment from that?—No.

Mr. Wakley.—After the parts were removed from the body, did you endeavour to introduce your finger into the perinæum?—The whole of the cellular membrane was very easily lacerated, as is usually the case where the operation is fatal.

Was your attention particularly directed to the state of the cellular membrane between the rectum and the bladder?—It was.

What are the most likely circumstances to produce that easily lacerable state?—I suspect it to be a sub-acute inflammatory process. I have observed it, in patients who have died under other great operations.

Would not bruises be more likely to produce such a state of the cellular membrane than sub-acute inflammation?—I have seen that state produced by the introduction of the forceps in those cases; but it is a different appearance. It is an ecchymosed appearance, having the blood mixed with the mucous secretion; it is the effect of bruise; that is not so here.

Would not very violent bruises prevent the very small vessels of the cellular membrane from bleeding?—Yes; but then there would be the appearance of bleeding, the vessels would retain their coagula.

What colour is the cellular membrane in its healthy state?—White, or a cream colour rather.

What then could give it a darkened appearance if those vessels contained no red blood?—The cellular membrane.

Lord Tenterden.—He has not said it had a darkened appearance?—I have not said so.

Mr. Wakley.—I am asking what gave it that appearance?

Lord Tenterden.—Ask him the state of it.

Mr. Wakley.—You say it was easily lacerable?—Yes; it broke down readily.

There was no extravasated blood?—None.

Was the cellular membrane dark or red?—Of a dark colour.

What could give it that dark-coloured appearance, if there was not extravasated blood?—The sub-acute state of inflammation to which I have before alluded.

As the cutting gorget was introduced, and you say there is no incision made into the neck of the bladder by the cutting gorget, where do you conceive it went?

Lord Tenterden.—He has not said no incision was made by the cutting gorget, he said he could not tell which was which.

Mr. Wakley.—That was in the prostate?—I cannot tell in the other parts.

What form are those incisions?—By the knife do you mean?

Yes; are they oblique?—Yes, they are; there is one in the external part of the neck, and the other in the internal; one made by the knife in withdrawing it, and the other made transversely in withdrawing it with the finger to dilate the other one, that is more transverse than the other; there is very little difference.

Were not all the first steps of the operation performed after the manner directed by Mr. Key?—They were, at least I believe so, as you are aware; standing in the position I did, holding the staff, I could not see the first part of the operation, but I have no doubt that was the way in which it was performed.

Does Mr. Key direct two forms of incision to be made into the bladder?—No; he does not.

Is that rectum wounded?—No; it is not.

Will you be kind enough to look at it?—It was not wounded when I saw it cut out; it had no wound in it then.

Did you hear Mr. Cooper state that he did not believe that stones were ever encysted?—No; I did not.

Did you hear him say he did not believe they were ever attached to the bladder?—I do not recollect him saying any thing upon the subject.

You were an apprentice to the hospital?—Yes.

To Sir Astley Cooper?—Yes.

Re-examined by SIR JAMES SCARLETT.

Do you make any difference between attaching and adhering?—There might be a little attachment.

Is there any attachment in living bodies to dead substances?—There are frequently asperities in the stones, by which they sometimes adhere to the mucous membrane.

If I understand you right, the cutting gorget, if the wound was originally large enough to admit it, would not increase it?—Certainly not.

If not large enough, it would make it the proper size?—It would make it of that size.

If the wound was large enough, you would not expect to see a new incision with the gorget?—No.

You have been asked whether, as you perceived the concave part of the sound touched the stone, as withdrawn from the bladder, it was in the anterior part of the bladder; and you have also been asked whether the operator knew that. You could not tell what was passing in his mind?—No.

Did you observe he used the bent forceps?—Yes.

Could that be used except to get at the anterior part of the bladder?—If it was turned down.

Were they not bent up?—They were.

He used the bent forceps?—Yes; and I pressed above the pubes at the same time—the bent forceps did not touch it.

By his using the bent forceps at the same time you were pressing the pubes, did you not conclude that he had formed the same judgment you had, that the stone was in the anterior part of the bladder?—Yes.

Although the precise form or situation of it he could not determine any more than you?—Certainly.

From what you saw of the appearance of the stone afterwards, when it was taken out, do you not conceive it very possible that the bent forceps would have lapped over it, and never got hold of it at all?—Yes.

So that, finally, it could only be done by a dexterous use of the straight forceps?—And depressing the hands very much.

Supposing the finger of the operator to be upon the prostate gland within the incision in the prostate gland, might not he conduct the gorget with perfect safety, so as to enter it?—With perfect safety.

Without making any fresh incision?—Yes; supposing the opening to be large enough to admit it.

You have been asked whether it would take more than ten seconds to make the second cut, is the simple operation of cutting the difficulty?—No.

Is that what occasions the delay?—Certainly not.

Who was the gentleman, the friend of the Defendant, that happened to ask you these questions you have been asked about at the dinner?—Doctor Haslam.

You say you were upon your guard?—Yes; he asked me the questions.

In your judgment, from all that you saw of Mr. Cooper's operation, was there any want of sufficient self-possession to know exactly what he was about, and to know all his duty?—No; certainly not.

A Juryman.—You stated, that previously to the operation on the patient you employed certain means to ascertain the existence of the stone?—I did.

Did the means you employed enable you to ascertain the situation of the stone?—Not distinctly.

Did you, previous to the operation, anticipate any difficulty?—It is always more difficult when the stone is in the anterior of the bladder, it only falls upon the concavity of the instrument, and not its convexity.

Did you anticipate any extraordinary difficulty in the case?—No.

Are you of opinion, there was a possibility by the introduction of the

sounds, of removing the stone from the common situation to that part of the bladder where it was afterwards found?—No.

You have stated that the patient was an unhealthy man?—Yes.

Are you of opinion that the nature of the operation would have occasioned death in a healthy patient?—That is doubtful; he was not a healthy man; he was a man of weak powers, and from what I saw, most likely to sink under any great operation, and he had that feeling himself.

Lord Tenterden.—In your opinion, is it possible or probable that the application of the sound, and other instruments introduced into the bladder, might bring the stone into a place where it might be more easily extracted?—No; I think it would not change its position.

Neither render it more difficult nor more easy to extract?—No.

CHARLES ASTON KEY, *Esq., sworn.—Examined by Mr.* R. SCARLETT.

You are senior surgeon at Guy's Hospital?—I am.

How long have you been in the profession?—Since the year 1812; when I first attended patients.

Have you had considerable experience in lithotomy?—I have performed between fifty and sixty operations.

Yourself?—Yes.

Have you ever seen Mr. Cooper operate?—I have.

How many operations do you know of Mr. Cooper performing?—I cannot tell the exact number, but I have seen several performed by him.

Do you think he has performed as many as twenty?—I have not seen so many as twenty performed by him.

Have you any reason to know that he has not lost more than the average number of patients?—I think that I can say he has not lost more than the usual number.

Have you witnessed many cases of lithotomy that he has performed?—Yes.

In what way was the operation performed by Mr. Cooper?—I have always seen it performed exceedingly well.

Have you heard the evidence of Mr. Callaway as to the manner in which this operation was performed?—I have.

If it had fallen to your turn to perform this operation, does it occur to you there is any thing in which you would have changed the mode adopted by Mr. Cooper?—I think from what I have heard, I should have been most likely to have adopted the very same course, or nearly the same course.

Have you heard any thing in the evidence that induces you to think that the patient lost his life by any fault of Mr. Cooper?—In what evidence.

Mr. Callaway's evidence?—In Mr. Callaway's evidence, certainly not.

In your judgment is the length of time any impeachment of the skill of the operator?—None whatever; it depends entirely upon the difficulties of the case.

Can any body be a competent judge of the difficulties of the operation but the operator himself?—In the operation of lithotomy no one can possibly tell the difficulties of the operation but the operator himself.

Do you happen to know of cases where it may have been difficult to extract the stone, although it may have been touched by the finger?—I have met with cases of that kind myself.

Do you know the cause of the difficulty in that case?—In consequence of the bladder grasping the stone—I may observe that here is a preparation upon the table which I have been in the habit of using for some years past, for the instruction of the pupils on this subject, and you will observe that, in that case the stone was held by the bladder, and no doubt in that case the stone would have been difficult to get out.

Lord Tenterden.—That stone never was extracted?—The patient died without the operation being effected.

Mr. R. Scarlett.—Is the bladder a muscular substance?—Yes; of great power.

It has the power of contraction?—Yes, it has.

Great power of contraction?—Yes.

May there be a case in which the stone, though not, properly speaking, encysted, or even attached to the bladder, may be so entangled in the folds of the bladder that the forceps will not reach it?—Unquestionably it is a very common cause of difficulty in the operation.

Is that as likely to take place in the case of a small stone as a large one?—Equally.

In such a case might the forceps be employed in sounding for the stone for a considerable time without effect?—For a great length of time frequently.

They would not in fact touch the stone?—I should imagine not, in some cases.

You were not present at the operation?—No.

But you examined the body after death?—I did.

In your judgment from the examination *post mortem* of the body, had the operation been performed scientifically or otherwise?—I saw no evidence of it having been performed otherwise than scientifically.

If it had been true that any violence whatever (I do not speak of great or unnecessary violence) but other than great gentleness—if any violence had been used, is it probable you would have discovered the effects of it afterwards?—I certainly think so.

For example, if the forceps had been introduced between the bladder and the rectum?—I should certainly have discovered that after death.

In that case what would have been the state of the cellular membrane?—Most likely a passage would have been found, through which the forceps had been passed; it would have been torn, and the cellular membrane highly ecchymosed, or filled with blood.

Do you speak of extravasated blood?—Yes, extravasated blood, and likewise in a state of slough.

Did it present those appearances, or was it sound?—Entirely sound. I examined the parts particularly after they were taken from the body. I can distinctly state that the whole of the cellular membrane on the outside of the bladder, and between the bladder and the rectum, was perfectly entire.

If the forceps had been attempted to be introduced into the prostate gland

and bladder with any considerable degree of force, through an opening that was not sufficiently large, would traces of that violence have remained?—If much force had been used in pushing the forceps in the bladder against the prostate gland, the parts on the outside of the prostate gland would have been torn, and it must have been discovered after death.

Did the parts present any such appearance?—They did not.

What was the nature of the section into the prostate and the bladder?—It appeared to me, a free and fair section into the neck of the bladder, and likewise through the prostate gland.

I ask for information; considering the necessity in this case, of depressing the forceps which turned upon the prostate gland as a fulcrum, was it the more particularly necessary, or otherwise, to have a free and sufficient section in the prostate gland and bladder?—More necessary than in the other case.

Is it a part of the duty, in such a case, of a careful, cautious, and skilful operator, to make sure he has such a sufficient opening?—I regard that, as the most important part of the operation.

Does it appear to you that, in such a case, the use of the cutting gorget is an instrument peculiarly applicable?—It would answer the purpose equally well with the knife.

For the purpose of insuring a sufficiently large opening?—It would answer the purpose perfectly well of insuring a large opening.

As well as the knife?—Yes.

Is this the property of the cutting gorget, to make an opening equal in breadth only to itself?—That is the advantage of the cutting gorget.

The cut must be of that breadth?—Yes, it can neither cut more nor less.

Does it often happen that, in cases of this nature, you cannot reach the bladder with your finger through the external wound?—My experience proves to me, that in very few cases of adults can you feel the bladder with your finger. It can only be done in children, or in very spare persons.

I apprehend it is desirable to do so, if possible?—Most undoubtedly.

And the operator is justified in making use of some endeavours to do so?—Certainly.

Does it usually happen that you do reach the prostate gland?—I have never met with a case in which I could not reach the prostate gland.

The prostate gland is a gristly substance?—A hard substance.

Into which you introduce the finger in a case of this nature?—Yes.

The finger then acts the part of the staff, or sound for the instrument?—It acts as a director; and it is the best director a man can use in the operation. I mean for the forceps.

Did you examine the state of the perinæum after the death of the patient?—I had no opportunity. The parts were taken from the body before I saw them.

Whether it was deep or not you could not tell?—No.

Had you any conversation with Mr. Lambert on this subject?—I had.

Be so good as to state what passed?—On the day of the inspection of the body, Mr. Lambert met me in the square of the hospital, where I was talking with some four or five of the pupils, and he said to me, "Sir, your straight

staff will never answer in a deep perinæum." I answered to him, knowing that a deep perinæum had nothing at all to do with the staff, that a straight staff would answer equally as well in a deep as a shallow perinæum, "Sir, you know nothing at all about it," knowing he had never performed the operation himself.

Lord Tenterden —The perinæum was not deep in this instance?—I cannot say. I continued, "Sir, besides, if you call this a deep perinæum, I can only tell you I have operated upon one twice as deep," alluding to an extraordinary case I had had about a fortnight before, but making no observation on the perinæum in this case, having never seen the perinæum during life, neither having seen the operation nor inspected the parts when the body was entire. After death, I could give no opinion of the depth of the perinæum.

Mr. R. Scarlett.—At this time you are not aware of the actual state of the case?—No.

In what spaces of time have you seen Mr. Bransby Cooper operate for the stone?—Certainly not more than the average time. A minute and a half, or two minutes, or three or four; according to the difficulties of the case.

Is that rather below the average?—I should say it was about the average.

In cases of an ordinary kind?—Yes.

Did you ever tie the subclavian artery?—Yes, I have twice.

Is that a common and easy, or an uncommon and difficult operation?—I consider that where it is tied for aneurism, or disease, it is by far the most difficult operation in surgery I have ever performed. I say, for disease, because the operation, where the parts are sound, as in the dead subject, is easy enough. There is a great difference between a sound and unsound limb, where this artery is tied.

Could such an operation be performed by any one, except by a surgeon of considerable practice, and experience, and skill, and a good anatomist?—I consider that it requires a very good knowledge of anatomy, great skill, and great presence of mind.

Do you know of Mr. Bransby Cooper having performed this operation?—I do. I assisted him in it, so far as holding the parts back.

You saw him do it?—Yes, I did.

Did he do it well?—I never saw an operation better performed in my life.

Was that for aneurism?—Yes, for aneurism.

Do you recollect in how many minutes?

Lord Tenterden.—He has said length of time is not a criterion; he never saw one better performed.

Mr. R. Scarlett.—It does happen it was performed in a very unusually short time. What in your judgment are Mr. Bransby Cooper's qualifications as to his presence of mind and self-possession?—I never recollect having seen him lose his presence of mind on any occasion.

Have you seen him perform a great many operations?—I have.

Of all kinds?—Yes, of all kinds.

I need hardly ask your general opinion of his skill?—I consider him to be a good surgeon.

Cross-examined by Mr. WAKLEY.

Did you see the report of the operation of tying the subclavian artery in the "Lancet?"—I did.

How was Mr. Cooper spoken of in that report?

Lord Tenterden.—We must have the report itself.

Sir James Scarlett.—What is the date of it, was it before or in some following number? There was before this dispute with Mr. Lambert, a very handsome report of Mr. Cooper in the "Lancet" in consequence of this operation.

Lord Tenterden.—Do you recollect the date of it?

Mr. Wakley.—I have not it here. Do you recollect the date of it, Mr. Key?—I do not.

Do you recollect whether that report was published antecedent or subsequent to the dinner at which there was a quarrel with Mr. Cooper and Mr. Lambert?—Certainly subsequent to the dinner, two years ago.

You have stated that the gorget is the best instrument for making an opening into the bladder?—I have not stated that: I said in the way in which it was used by Mr. Cooper it was as good as a knife—I think that was my observation.

Did you see Mr. Cooper use it?—I did not.

How do you know the way in which he used it?

Lord Tenterden.—From what has been stated here.

Mr. Wakley.—Are you the author of a book on lithotomy?—I am.

Is that the book, (*exhibiting a book to the witness*)?—Yes, it is.

Do you recollect this passage in the book? "To the gorget exclusively belongs the merit of first employing the staff in the modern light of a director?"—I can explain that.

Lord Tenterden.—We cannot have that.—It certainly bears upon this case, that Mr. Cooper did not use the gorget before he had made the opening with his knife into the bladder. I object to the gorget in the first instance, because considerable force is used to force its way into the bladder, but where a previous opening is made that objection does not apply.

Mr. Wakley.—An opening having been made by the knife in a proper direction through the prostate and neck of the bladder as directed by you in your work, that is, obliquely towards the tuberosity of the ischium, would a gorget, introduced horizontally, pass in the same direction as that incision?—Of course not entirely. I never saw an operation in which it did, if the incision had been properly made. What do you mean?

According to the direction you give in your work, obliquely?—If the first cut had been made obliquely through the prostate gland, and the gorget carried directly horizontally, it would not have gone in the same track, that is quite clear.

You have operated between fifty and sixty times?—Yes, I have.

How many patients have you lost?—I have only kept an accurate list of those I have performed in Guy's Hospital. I have performed forty operations

there, and lost three; but then I should say, in justice to Mr. Cooper, that the major part of these were young persons.

On how many occasions has Mr. Cooper performed the operation in Guy's Hospital?—I cannot say, but it may be from twelve to fifteen times; it may be more or less.

How many of his patients died?—I really did not keep an account of his cases, it is quite enough to keep my own.

You stated that he had not lost more than the usual number, how do you know that?—If there had been an unusual mortality I should have known it, because he employs the instruments I commonly use.

How many instruments do you use?—The knife, in an ordinary case, the staff, and a pair of forceps; and, if I want more in difficult cases, I should use straight forceps, or crooked forceps, or scoop, or any instrument I thought I could extract the stone from the bladder with.

In what cases have you used more than three instruments?—I do not know that I have employed in Guy's Hospital often more than three instruments, but I cannot tell exactly. I do not doubt, that Mr. Laundy, who is here, will tell you he has handed to me several pairs of forceps.

Did you ever employ a scoop, unless the stone was broken?—Yes, I have.

On what occasion?—On the occasion of a round stone, that was lodged in the fundus of the bladder, that I could not dislodge by the forceps. I used the scoop to draw the stone to the neck of the bladder, in which I succeeded.

You have stated, that the bladder is as likely to grasp a small as a large stone. Do you consider that the sides of the bladder are in actual contact when the urine escapes?—That depends upon whether the bladder contracts or collapses; if it contracts, and there is nothing in it, it must come in contact; if it collapses, it may not be so entirely in contact.

You stated just now that Mr. Lambert knew nothing of the operation of lithotomy, because he never performed it.

Lord Tenterden.—He said he knew nothing about the use of the straight staff, not about the operation of lithotomy.

Mr. Wakley.—How many cases of lithotomy had you performed when you wrote this work?—I think I had performed three operations before it was published; I had satisfied my mind as to the principle of the operation, without more experience, and subsequent experience has proved I was not mistaken.

How many operations had you performed before it was written?

Lord Tenterden.—I do not see how this applies to this case.

Mr. Wakley.—This is very important; there has been a very severe attack made upon Mr. Lambert.

Lord Tenterden.—This is so very minute.

Mr. Wakley.—There is this passage in your work; "I had for a considerable time past been in the habit of operating on the dead subject with the instruments I have described; but, until very lately, I had no opportunity of trying them on the living subject. To Sir Astley Cooper's kindness I am

indebted for the opportunity, who allowed me to operate on a boy, that had been sent from the country into Guy's Hospital, for the purpose of submitting to the operation." Will you be kind enough to explain that passage?

Sir James Scarlett.—Why should he explain it?

Mr Wakley.—It refers to the system in Guy's Hospital.

Lord Tenterden.—Our enquiry here regards the conduct of the Plaintiff, not the system in Guy's Hospital. I must confine this cause to what belongs to the cause, as I do in other cases.

Mr. Wakley.—Very well, my Lord.—You stated that you were not aware of the exact depth of the perinæum in the case of Mr. Bransby Cooper?—I was not.

How could you state you had operated on a perinæum twice as deep?—I could.

How?—Because it stands to reason, that a man, with an enlarged prostate, a man weighing sixteen or seventeen stone, must have a much deeper perinæum than the man Mr. Cooper performed the operation upon; the perinæum in that case was so deep, I could hardly reach the stone with the longest pair of forceps I had.

You stated that you consider the operation of tying the subclavian artery to be the most difficult operation you can have to perform?—I do.

Was the operation of tying the subclavian artery in Mr. Cooper's case, successful?—No; the man did not ultimately recover; but I believe he died of the disease, more than he did of the operation.

Did not the man die from hæmorrhage at the part where the vessel was tied?—In consequence of the suppuration of the aneurismal sac below, where the artery was tied.

Was the vessel tied above or below the clavicle?—Above.

What circumstances rendered that a difficult one?—The elevation of the clavicle above the aneurismal sac.

Are there not surgeons in London at the present time, who have performed that operation, that have no reputation as operative surgeons?—There is no surgeon in London who has performed that operation so well as Mr. Cooper did on that occasion.

Lord Tenterden.—As far as your experience goes?—I think I may say that, without any qualification at all.

Mr. Wakley.—Did you witness all the other operations?—I witnessed one or two by Mr. Travers, and one, if not two, by Mr. Green; I have heard of one by Mr. Brodie, and I have performed the operation myself; and neither in those I have seen or heard of, has the operation been performed so well as that performed by Mr. Cooper.

It has been performed also by Sir William Blizard?—I think not.

By Mr. Wardrop?—What for?

For aneurism of the innominata?—I do not know.

Do you consider that Mr. Cooper is a scientific surgeon?—I do; a man cannot be a good surgeon without being scientific.

How do you define science as applied to surgery?

Lord Tenterden.—He says a man cannot be a good surgeon unless he is a scientific surgeon; why are we to go into definitions?

If a man has good reasons for what he does, I conceive him to be a scientific surgeon.

Did you have any conversation with the Plaintiff respecting this operation in lithotomy, before the report was published?—I never saw the Plaintiff; I never heard of the patient being about to be operated upon, and was not present at the operation.

The question was, whether you had any conversation with Mr. Cooper before the report was published in the "Lancet" about the operation?—I do not recollect having had any conversation at all with Mr. Cooper upon the subject.

Are you certain you had no conversation with him on the subject before the report appeared?—I am certain that I had no conversation with him respecting the operation before the report in the "Lancet."

Have you had any conversation with the Plaintiff on the subject, since the report appeared?—I have had very little conversation with him upon the subject, and really, the points upon which he has touched, I cannot recollect, they are of no importance at all, he never explained to me the difficulties of the operation, nor did I ever seek for an explanation.

As it was a difficult operation, and you have so high an opinion of Mr. Cooper's skill, were not you anxious for an explanation of the difficulties in this case?—It appears by my not asking, I was not anxious.

Did he not state to you that he had had a troublesome operation?—I do not think I saw Mr. Cooper between the time of the operation and the report.

Subsequent to the report?—No; I have never had the particulars explained to me at all, and I can give you a reason, because I heard that Mr. Cooper was about to bring it into a court of justice, and I did not wish to give any opinion upon hearsay evidence.

As the contributors to the "Lancet" have been so highly spoken of, have you ever contributed to the "Lancet?"—On one occasion I brought to you a communication for insertion in the "Lancet," and I will explain the reason; during the separation between St. Thomas's and Guy's, a memorial was presented to the committee at St. Thomas's, and in answer to that, Mr. Green sent a reply, and that reply appeared in your paper, and on that account I desired you would put in the rejoinder as well: that was the only time upon which I had ever any communication at all with the "Lancet" as a publication.

Do you recollect, subsequently to that, the appearance of an article which you stated was very well written, in explanation of Mr. Cooper's conduct, and in vindication of his character?—I have not the most distant recollection or idea of what you allude to.

In explanation of the affair respecting St. Thomas's museum?—I have not the least recollection of having had any communication with you upon the subject.

Do you not recollect an article of my own, a sort of leading article?—I

may have expressed my opinion favourable to that article; I cannot say I have not.

Was not that an article strongly in favour of Mr. Bransby Cooper's character?—To the best of my belief it was.

You did not witness this operation of lithotomy?—No.

You are a nephew of Sir Astley Cooper's?—I married his niece.

Re-examined by SIR JAMES SCARLETT.

Did he do justice to Mr. Cooper's character, as a surgeon, in that publication he alludes to?—I believe it was more in allusion to his having been a teacher of anatomy at St. Thomas's Hospital.

Did he impeach his skill there, at all?—Not at all.

Mr. JOSEPH LAUNDY, *sworn.—Examined by Mr.* POLLOCK.

Did you hold the instruments, and furnish them to Mr. Cooper at this operation?—I did.

Have you attended many operations for the stone?—Many.

By different surgeons?—By different surgeons.

How many in the course of your life do you think you have witnessed?—I have been in the habit of attending the operations at St. Thomas's and Guy's Hospitals upwards of thirty years.

You have probably seen some hundreds in your time?—Yes.

You have seen operations by Sir Astley Cooper?—I have been present many times.

And by Mr. Cline?—Yes.

And other surgeons of those hospitals?—Yes.

At the time you attended Mr. Cooper, upon this occasion, in November last, have you a distinct recollection of all the instruments you handed to him?—Probably not.

Was there any thing peculiar that struck you in the use of a variety of instruments on that occasion, which you had never witnessed before?—I do not profess to be a lithotomist.

You have handed a good many instruments to different surgeons?—I have.

Have you witnessed operations that lasted as long in point of time?—I have.

Of lithotomy?—Yes.

By what surgeons?—By Mr. Travers, by Mr. Green, and Mr. Cline, senior.

How long have you known Mr. Cline be engaged in an operation under his hands?—The most tedious operation I was ever present at was by Mr. Cline, senior.

What length of time did that last?—It was stated by many of the students then that it occupied two hours, but I believe it was an hour and forty minutes.

Did Mr. Cline extract the stone?—He did.

Have you known other instances of the operation lasting an hour?—I think have.

I do not mean frequent instances, but now and then?—I have.

How long have you known Sir Astley Cooper? though he is here we may have it from you.—He has known me from my youth.

I do not mean how long have you known him personally, but how long has he been employed in the operation?—Once, I believe, above an hour.

Was that in the hospital?—Yes, it was.

You say you are not sure you can remember the instruments in their order, you first recollect the knife?—No, the first thing is Mr. Key's staff.

What was the second thing?—Mr. Key's knife.

What was the third instrument?—The instrument next called for was Sir Astley Cooper's knife.

Was not the forceps used first?—Yes, the forceps.

The straight forceps?—Yes.

Then he called for Sir Astley Cooper's knife?—Yes.

After he had used that knife, did he try the forceps again?—They were still retained.

Did he try the bent forceps?—They were handed forward.

Was the staff put into the wound?—I did not see the operation.

You did not hand a fresh staff?—I handed it over, but, from my situation, I could not see the operation.

The staff was for a sound?—Yes.

Did you hand the gorget?—I did.

What gorget was it?—The cutting gorget.

Was there any other gorget but that?—There was no other gorget but that, that I delivered.

Was there any other instrument there that you know of but what you were to deliver?—Not that I know of.

You delivered none but the cutting gorget?—At that time.

At that operation?—I mean after Sir Astley's knife, then I handed the cutting gorget.

Did you, at any time, hand the blunt gorget?—The blunt gorget was handed over because some person called for it.

Was it Mr. Cooper that called for it?—I believe not.

You say some person called for it, which you believe was not Mr. Cooper, can you tell whether he used it?—I cannot.

He did not call for it?—No.

Cross-examined by Mr. WAKLEY.

Were you present during the whole of the operation?—I was called out for a few moments.

In those cases that lasted so long a period, were you aware of the reasons of delay?—No, I am not.

You are not aware of the difficulties?—No.

You were not educated a surgeon?—No, I am a surgical instrument maker.

Dr. HODGKIN, *having made his solemn affirmation.—Examined by* SIR JAMES SCARLETT.

I believe you are the professor of morbid anatomy at Guy's Hospital?—I recently had the honour of having the task assigned me of performing that duty.

It belonged to you to look at this body after death?—It did so.

Did you make any examination of the body in particular before the parts were separated?—I do not recollect that I did, further than to observe that it was that of a good sized stout man.

Did you make any examination whatsoever of the depth of the perinæum? I do not recollect that I put my finger in; I looked at the wound as I generally do to any external appearances.

He was a stout formed man?—Quite so.

Was it that sort of subject in which the perinæum is generally deep? I do not mean from malconformation, but the size of the subject.—It must have been a full size.

When the parts were separated, did you examine them so as to be able to ascertain their state and condition?—I examined the parts after their removal, and the interior of the pelvis before the removal.

Could you say, from the appearances, whether there was any wound or bruise in any parts excepting that of the prostate gland and the bladder?—There was a wound from the external surface into the bladder; I was aware of no other.

Was there any appearance of wound or bruise between the bladder and the rectum?—None.

In what state were the kidnies?—The kidnies were mottled by a white deposit, which is not very unfrequent in subjects of that kind.

Subjects affected with the stone?—With or without the stone, such kidnies are not very unfrequent.

If there had been any bruise or any wound made within forty-eight hours of the man's death, between the rectum and the bladder, must it have exhibited appearances?—I think I should certainly have seen them.

You saw none such?—None.

Did it appear to you, from that examination, that either the forceps or the knife had passed any where but from the wound direct into the bladder?—I cannot say that it did.

You saw no appearance of it having been so?—I saw nothing that induced me to suppose that was the case.

Do you recollect when you had these parts, and had shewn them, when you had turned your back, hearing any expression from Mr. Lambert?—After I had removed the parts, I was necessarily occupied for an hour, in which time the parts were put away; in that interval they were seen by Charles Aston Key, and when James Lambert desired to see them, I either took them down myself or one of my assistants, and he saw them first in my presence. I afterwards left the apartment in which the preparation was, to wash my hands, and was informed by James Lambert, that he had found a passage; he showed me the passage, and it struck me that I had not seen it before, and

and that it must have been made by him; I cannot say I saw him make it, and have never said so.

What did you say to him on that occasion?—I taxed him with having done so.

Do you feel satisfied that there was no such passage before he had it in his hand, from your previous examination?—I am confident I had not seen it before.

If it had been there, do you think you should have seen it?—I can hardly conceive it could have escaped me; I removed the parts, intending to examine them more minutely afterwards, and they were so minutely examined in the interval of my being engaged.

Had he his finger or hand in the passage when he called your attention to it?—He had.

Supposing that that passage had existed in the life of the patient, recently made before his death, and had been done by force, in your opinion would it have exhibited appearances of extravasated blood?—It would have contained, in my opinion, coagula, of which I saw none.

Judging from your own knowledge and belief, is it your opinion it was made after death?—It is my firm conviction it was made after death.

How long have you been in your present situation in the hospital—how many years?—Very nearly three years.

Did you know Mr. Cooper before?—I was a pupil at the hospital during his apprenticeship.

Do you consider yourself competent to form a judgment of Mr. Cooper's knowledge and skill, as a surgeon?—I suppose I am competent to form an opinion.

What is your opinion upon it?—I always considered him to be a very fair surgeon.

A good anatomist?—Decidedly, a good anatomist.

Cross-examined by Mr. WAKLEY.

Are there not very many good anatomists who are very wretched surgeons?—I do not know of any one who is; but I can conceive it possible.

Do you not know that there are in this town persons very celebrated for their knowledge of anatomy, but it is quite ridiculous to speak of their knowledge of surgery?—I do not know to whom such allusion is made.

Have you read the report of the *post mortem* examination of Stephen Pollard's body?—If I have not read it, I have heard it read.

Have you not read it?—I am not sure that I have.

Will you be kind enough to read it?—I have heard it read.

Was there any inaccurate statement in it?—There is an inaccurate statement with regard to the third lobe; it is stated there, what I believed to have been the fact at the time; but which subsequent examination proved not to be the case.

Is not that part of the report taken from your own words at the time of the examination?—I believe it is; it is similar to what exists in my own note book.

Does it state in that report that there was an opening found between the bladder and the rectum ?—Not in my report.

Is there such a thing in the report in the " Lancet."

Lord Tenterden.—That will speak for itself.

Mr. Wakley.—" The whole of the cellular tissue throughout the pelvis was easily lacerable, and this was especially the case with the portion between the bladder and rectum, admitting of the passage of the finger with great facility, and to a considerable distance ?"—That is not the case.

What is not the case ? state what was the case.—The cellular membrane was highly lacerable in the pelvis ; but not particularly so between the bladder and the rectum ; on the contrary, it was less so there than in other situations.

Did you endeavour to force your finger there before you exhibited the preparation to Mr. Lambert ?—I do not know that I did.

You examined it particularly ?—I examined it.

Should you understand the passage I have mentioned to mean a wound ?—I should.

It is said that the finger passed easily ; does not that imply some resistance ? should you not understand it to imply some resistance ?—I understood from the way in which that report was read to me, that there was a forced passage between the bladder and the rectum, which I do not believe to be the case ; which I am certain did not exist.

Are you certain that opening did not exist at the time you shewed it to Mr. Lambert ?—I have stated I did not see it till he shewed it me.

Have you seen much of Mr. Lambert's conduct at the hospital ?—I have seen him repeatedly.

Did you ever see any thing mean or ungentlemanly in his character ?—I was never intimate with him.

Do you know any thing derogatory to his character ?—I cannot say I have seen any thing myself, that was so.

Re-examined by Sir James Scarlett.

You had very little personal knowledge of him ?—Very little.

You have not been an eye-witness to any excesses he may have committed, and therefore you cannot speak against him ?—No.

You only know by hearsay of his communications with the " Lancet ?"—I knew him by eye-sight, long before I knew he was so connected.

Benjamin Brodie, *Esq., sworn.—Examined by Mr.* Pollock.

You are a surgeon, a member of the college, and one of the council ?—I am.

How long have you been a surgeon ?—I have been a member of the college since 1805.

Are you acquainted with the Plaintiff, Mr. Cooper ?—Yes, I am.

Have you seen any of his practice ?—I have seen none of his hospital practice ; I have met him occasionally in private practice.

Have you seen enough to be able to form an opinion of his merits as a surgeon ?—I have conversed with him several times on surgical subjects, and

from those conversations and what I have seen of his practice, I should believe him to be a very intelligent surgeon.

You have heard Mr. Callaway's account of the operation?—I have.

Does it appear to you to have been an operation of facility or difficulty?—An operation of considerable difficulty.

Exercising your own judgment upon the account given by Mr. Callaway, did Mr. Bransby Cooper appear to you to have conducted it in a skilful manner, or otherwise?—I should believe, in a skilful manner.

Have you frequently performed the operation?—A great number of times.

Does the operation vary much, in point of circumstance and difficulty, in one case from another?—Very much indeed: more than any in surgery.

Does the length of the operation or the application of a variety of instruments indicate, to a person of eminence as a surgeon, any criterion of the merit or demerit of the operation?—No; I should say it indicates the difficulty of the operation.

To what hospital do you belong?—St. George's.

Not Guy's?—No.

Cross-examined by Mr. WAKLEY.

What operations have you seen Mr. Bransby Cooper perform?—I have never seen him perform any operation.

Not any?—No.

Do you recollect attending a meeting at the Freemasons' Tavern in December, 1825, with Mr. Travers, Mr. Green, and Mr. Stanley?—I suppose I recollect the meeting to which you allude. I suppose I do. I recollect attending several meetings at the Freemasons' Tavern.

What was the object of the first meeting you attended there, when Mr. Abernethy was in the chair?

Sir James Scarlett.—I must object to that. What signifies the object of a meeting at the Freemasons' Tavern?

Lord Tenterden.—I do not at present see the object of it.

The only meeting I can understand you to refer to was a meeting that was held when the lectures were published in the "Lancet;" and the lecturers considered themselves aggrieved, and met to consider the subject of protecting themselves and preventing it. I am not aware that Mr. Travers was at the meeting: I rather think not.

Mr. Wakley.—Did you not at that meeting enter into an engagement to pay the expenses, if Mr. Abernethy would move for an injunction against my work?—It was considered as a common cause, and either there or elsewhere there was some engagement of that kind, it being considered that it was a question that related to every one of the lecturers.

Did you pay any portion of the expenses incurred in prosecuting the injunction in Chancery?—Yes, I did of the second application, not the first.

Are you not at this time contributing pecuniary means towards the support of an opposition journal to me?—No, I am not. When the journal was instituted, I did contribute, with some others, to enable the editor to set it on foot, and I know nothing of it since.

Re-examined by Mr. POLLOCK.

Who were the lecturers present at that meeting?—Mr. Abernethy, Mr. Stanley, Mr. Blundell, I believe Mr. Green, and some others; Mr. Bell, I believe—I will not be quite certain.

I ask you, did it appear to you to be a grievance to have your lectures published as they had been?—Very great; because they were not only published, and taken from the lecturers, but in an incorrect manner; and, therefore, did discredit to those whose lectures were published.

You made common cause to put down what you conceived to be a grievance?—Yes, I did.

Mr. Wakley.—I have only one question to put.

Lord Tenterden.—Whether one or twenty you have no right to put them.

Mr. Wakley.—It is only one question as to the lectures being incorrect; that is very important for me.

Lord Tenterden.—He says they were incorrect.

Mr. Wakley.—Did not Mr. Abernethy make an affidavit of the accuracy with which his lectures were taken?

Lord Tenterden.—No, that will not do; the affidavit must speak for itself.

BENJAMIN TRAVERS, *Esq., sworn.—Examined by Mr.* R. SCARLETT.

How long have you been in the profession?—Since the year 1800.

Twenty-eight years?—Yes; I commenced my apprenticeship then.

How long have you practised?—Twenty years.

Are you a surgeon at Guy's or St. Thomas's?—At St. Thomas's.

Have you heard the evidence given by Mr. Callaway and Mr. Key, respecting Mr. Cooper and the operation in question?—I have.

Lord Tenterden.—He was not present at the operation.

Mr. R. Scarlett.—No, my Lord; but Mr. Key has stated some general facts. Taking their evidence first, what is your opinion with regard to the skill with which this operation was conducted?—I have not heard of any circumstance that would, in my mind, tend to impeach the skill of the operator.

Do you agree with Mr. Key, that the operator is the best judge of what instruments to use?—Decidedly.

Do you agree that the length of time occupied during the operation is not alone a criterion of the surgeon's skill?—Certainly.

Are you acquainted with Mr. Cooper?—I am.

What is your opinion of him as a surgeon?—I consider Mr. Cooper, whom I have had an opportunity of knowing for many years since he entered the profession, as an ingenious and intelligent surgeon.

Do you consider him fit for the situation he holds as surgeon of Guy's Hospital?—I do.

Do difficulties occur sometimes in the operation for the stone which baffle the most skilful operator?—Undoubtedly.

Do you consider this operation to have been one of that number?—I do.

You have heard it stated yesterday that the distance between the tuberosity of the os ischium and the prostate gland was two inches or two inches and a half, is that your opinion?—I should imagine it would vary according to the size of the trunk; speaking generally, it would be more rather than less.

What should you average it at?—Three inches.

Half an inch would make the difference whether you reached the bladder or not?—It would make a considerable difference.

Lord Tenterden.—Do you mean the prostate gland or the neck of the bladder?—The prostate gland invests the neck of the bladder; it is the base of the prostate gland; it is of a heart-shape, and the base is placed most posterior.

Mr. R. Scarlett.—I wish the question to apply to that?—I say therefore the base.

If there had been any unnecessary violence used in the introduction of the forceps, so as to be injurious to the patient, would it have been discoverable on the *post mortem* examination of the parts?—Any considerable degree of violence would.

Would the cellular membrane have been lacerated probably?—Provided that the prostate had been freely divided, I apprehend there would have been some sign of any extraordinary violence used by the forceps.

Had you any consultation at St. Thomas's Hospital on the subject of the "Lancet?"—Yes, we had.

Was there a meeting upon that subject?—The surgeons met together upon the subject.

Were you present at any difference between Mr. Cooper and Mr. Lambert?—No; I was not.

Have you read this statement in the "Lancet?"—I have.

Is it such as a professional man would publish?—Certainly not.

Do you consider it to be a full, fair, and correct account of what took place?—I do not.

Cross-examined by Mr. WAKLEY.

Was the Plaintiff present at the consultation at St. Thomas's?—I do not think he was; it was of the surgeons of St. Thomas's Hospital.

You say you consider this was not a fair account of what passed at the operation?—No.

Did you witness the operation?—No.

Nor the *post mortem* examination?—No; I judge only from the evidence that has transpired in this Court.

Have you performed the operation repeatedly yourself?—I have.

Have you met with any difficult cases?—I have.

Did you in those cases use all those instruments stated in the report?—I have called for different instruments to assist me; the scoop, and the straight and bent forceps.

Have you operated for the stone where no stone has been found?—Yes; in two cases; but in those cases I am convinced there were stones, though

none were found; and I did not stand alone in that opinion; I was confirmed by my colleagues that the patient had the symptoms not only before the operation, but just after the operation; and the patient did well. An able surgeon met with the same unfortunate circumstance three times, and certainly if not the most, he is one of the most, skilful of lithotomists this country possesses; but in the third case a small stone escaped, which I had brought to the Steward's office in the sheet that enveloped the patient, and had it analyzed, and found it to consist of the lightest of human calculi, and one which, from the smallness of it, would escape with the gush of urine.

In those cases where you found no stone, did the fistulous opening remain?—I believe it did; I am not clear upon that point.

What operations have you seen Mr. Cooper perform?—Three or four.

In Guy's Hospital?—Yes; and one in private. I have seen him tie the subclavian artery exceedingly well.

Re-examined by SIR JAMES SCARLETT.

Have you seen that in private?—Yes.

He did it well?—Yes.

Do you think that one of the most difficult and scientific operations?—Yes.

You differ in opinion from the gentleman from Beaminster?—I do.

You have performed many operations of all sorts in surgery?—I have.

Does a surgeon ever perform the operation of lithotomy until some other surgeon, as well as himself, has sounded and discovered the stone?—I imagine never; I never knew it.

In the cases the gentleman has alluded to was that precaution taken?—Decidedly it was.

It was not your opinion only, but that of others?—Several others, who entertained no doubt.

You have, I dare say, been long in some of the operations?—I have.

Do you think that any body can judge of the propriety of the length of time occupied, but the operator?—I think not.

Would you venture to give an opinion upon the science of another man, without consulting him on the difficulties of the case?—Certainly not.

The gentleman has asked you whether you saw this report; if you had never heard of it, supposing you had read it now for the first time, would you suppose it had been written by a surgeon?—I should have *blushed* for any professional man who could have written such an account.

Lord Tenterden.—You consider the treating an operation in a public hospital as a tragedy, is not a fair mode of treating it?—*I am afraid I must not designate it by the terms I should consider applicable.*

JOSEPH HENRY GREEN, *Esq., sworn.—Examined by* SIR JAMES SCARLETT.

You are one of the surgeons at St. Thomas's Hospital?—I am.

Have you been so for some years?—Between seven and eight years.

I believe you are a nephew of the late Mr. Cline?—I am.

That is not yet declared to be criminal, and I do not refrain from asking

the question, have you performed many operations for the stone?—Yes; I have performed it many times.

I believe I may say you have been very fortunate?—I believe I have been.

Your cases have generally been successful?—Yes.

Have you known Mr. Cooper long?—Yes; many years.

Have you known operations performed by him?—I have not been witness, to the best of my recollection, to more than one capital operation of surgery performed by him, and that was the tying the external iliac artery, the main trunk that supplies the lower limb; it is much similar to that of putting a ligature on the subclavian, and I must say that the operation I witnessed, was most admirably performed.

You conceive that to be, like tying up the subclavian, one of the most difficult operations in surgery?—Yes.

From that circumstance, and your general knowledge of Mr. Cooper, what is your opinion, since his reputation and skill are put into issue, of his fitness for the situation he holds?—I consider him perfectly competent to the duties of that situation.

You have heard Mr. Callaway's account of the operation itself?—I have paid strict attention to it.

From his account, would you, as a man of science, form any inference whatever to the prejudice of the operator's skill?—None.

From the situation of the stone that has been described, do you conceive it to have been necessarily an operation of difficulty?—I do, I consider it was a case of difficulty.

Supposing the stone to have been situated as the first witness yesterday, and Mr. Callaway, to-day, have described, in your judgment were the instruments employed such as a skilful operator might find it necessary to employ?—Yes.

Does the length of time consumed in the operation present any objection to the operator's skill?—I conceive none, of itself.

From what you have heard of the statement by the assistant-surgeon, do you conceive that a most skilful operator might probably have occupied the same time, and the result have been equally fatal?—Yes, I do.

Cross-examined by Mr. WAKLEY.

What was there to render difficult the tying the external iliac artery?—There are parts of great importance, which it is necessary to avoid, and it is necessary, therefore, to have a considerable anatomical knowledge, and have not only that particular knowledge with respect to that operation itself, but anatomical knowledge generally.

How high was the vessel tied above the ligament?—I do not recollect; but to the best of my recollection, there was nothing very unusual in the case.

What other operations have you seen Mr. Bransby Cooper perform?—I do not recollect any other capital operation.

You attended the meeting alluded to by Mr. Brodie, at the Freemasons' Tavern?—Yes.

Had any of your lectures been published at that time?—Yes.

What lectures were they?—Some lectures I delivered in Sir Astley Cooper's course upon the diseases of the eye.

Did you contribute towards the chancery expenses when Mr. Abernethy obtained an injunction?—I did.

Of the second application?—That I do not recollect, I suppose it was from what Mr. Brodie has said, but I have no accurate recollection of what the money was paid for.

Re-examined by SIR JAMES SCARLETT.

Were they published faithfully?—No.

Were they published so as to do justice to you, the composer?—On the contrary, the opinions I delivered at the theatre of St. Thomas's Hospital were, I considered, grossly perverted.

Mr. Wakley.—Were any of them published accurately?—I think the first was tolerably accurate.

Dr. WILLIAM BABINGTON, *sworn.—Examined by Mr.* POLLOCK.

You are now a physician in London, I believe?—Yes.

Were you formerly brought up as a surgeon?—Yes.

At what hospital?—Guy's Hospital.

Do you know Mr. Bransby Cooper, the Plaintiff?—Yes.

Have you had any opportunity of knowing his skill, and competence, and knowledge, as a surgeon?—I have had constant opportunities of knowing, by my attendance at the establishment, being in perpetual communication with the gentlemen under education there; but it did not form any part of my duty to attend to the operations at the hospital, and I do not recollect that I had ever an opportunity of seeing him operate, but the general course of his education I am perfectly acquainted with.

Do you know him personally?—Perfectly, for many years.

Have you had communication with him upon anatomical and surgical subjects?—Many.

Lord Tenterden.—In conversation?—Yes; and more than that; I could state, that when my son, Dr. Benjamin Babington, was preparing himself for the department of the profession he now holds, he was at that time a student at Guy's, and it was a great object to him to be assisted in his anatomical pursuits; and on that occasion Mr. Cooper had the kindness to shew him marked attention, by not only giving him his attendance at the hospital, but by coming to my house; and on those occasions I have been present myself, and had full opportunity of being satisfied of his anatomical knowledge.

Mr. Pollock.—In your opinion, is he fit to fill the situation he does, of surgeon to Guy's Hospital?—As a best proof of my conviction on that subject, I placed my own son under him as an apprentice, and he is there now.

Lord Tenterden.—Have you more than one son?—Yes; that is my younger son, and I may take occasion to add, that from my long and intimate acquaintance with the Borough hospitals, both establishments, and knowing well the surgeons of both establishments, I considered myself quite free to make my application to either one of the gentlemen of the one house

or the other, my son has been placed under the instruction of Mr. Cooper, and I remain to the present moment satisfied with the arrangement I made.

Cross-examined by Mr. WAKLEY.

Does your son reside in Mr. Cooper's house?—No.

Have not all the apprentices at the hospital all the advantages in common?—I believe so.

Does it make any difference whether your son is apprenticed to Mr. Cooper, Mr. Key, or any body else, as to the instruction he receives?—Not that I know of.

Dr. P. M. ROGET, *sworn.—Examined by Mr.* R. SCARLETT.

You are a physician?—I am.

Have you been some years in London, practising as a physician?—I have for twenty years.

Allow me to ask, whether you have at all times in the course of your professional pursuits, paid particular attention to subjects of anatomy?—I have.

In early life you gave lectures upon comparative anatomy?—I have.

Have you had, in the course of your practice, opportunities of seeing Mr. Cooper?—I have had frequent opportunities of seeing Mr. Cooper professionally.

In cases where the presence of a surgeon, as well as physician, was necessary?—In mixed cases where surgical and medical attendance was necessary.

What is the opinion you have formed of Mr. Cooper's skill and science?—As far as these opportunities go, I have formed a high opinion of his skill and judgment.

Have you seen this report in the "Lancet?"—Not before yesterday, when I heard it in this Court.

I ask you, as a medical man, whether that is a report that you should have thought would have come from any surgeon or professional man whatever?—Certainly not.

Cross-examined by Mr. WAKLEY.

What cases have you attended with Mr. Cooper?—Cases of a mixed nature in which surgical operations were required.

Will you be kind enough to state any operations?—Not capital operations, operations of minor importance.

What were the medical cases?—Inflammatory cases, for instance.

Did Mr. Cooper prescribe medically?—He did not.

Can you describe any operation you saw him perform?—I do not recollect that he prescribed, we consulted together as to medicine, and the propriety of operations?—I do not recollect his having written any prescription.

Do you recollect any operation he performed?—I do.

Do you believe you can form an accurate opinion of the manner in which the report should be written, unless you saw the operation?—I think I can.

How should you have written the report?—Not having seen the operation, I cannot say what I should have decided on.

Re-examined by SIR JAMES SCARLETT.

Should you have put it in the form of the acts of a tragedy, and accompanied it with jokes?—Certainly not.

Is the author a man of candour and science?—Certainly not, in my opinion.

JOHN MORGAN, *Esq., sworn.—Examined by Mr.* POLLOCK.

Are you one of the surgeons at Guy's Hospital?—I am.

Have you ever seen Mr. Bransby Cooper operate?—Very frequently.

How long have you known him as connected with that institution?—I think about nine years.

During that time have you seen much of his practice as a surgeon?—Occasionally I have in the hospital.

Have you ever seen him operate?—Very frequently.

What is your opinion of his skill and competence as a surgeon?—I have the highest opinion of Mr. Bransby Cooper as an operator, and as a surgeon generally.

In the account given by Mr. Callaway of the operation, do you discover any indication of want of skill?—I do not.

Mr. Wakley.—I have no questions to ask him.

Mr. JOHN HILTON, *sworn.—Examined by Mr.* R. SCARLETT.

Are you one of the pupils at Guy's Hospital?—I have been. I am now assistant demonstrator.

Lord Tenterden.—At that place?—Yes.

Mr. R. Scarlett.—Were you present at the *post mortem* examination of the body of this patient?—I was.

Did you observe the fact, whether he had a deep perinæum?—I did.

What was the fact?—While Doctor Hodgkin was preparing to examine the body, I passed my finger from the external wound into the perinæum.

Could you reach the bladder?—I could not.

Could you reach the prostate?—I believe I could, but I am not positive.

Sir James Scarlett.—Did you see the parts after they were separated?—I cannot say I examined them particularly, I saw them.

Cross-examined by Mr. WAKLEY.

Could the stone be very peculiarly situated if it could be extracted by the straight forceps?—I imagine the stone might at one part of the operation be peculiarly situated, and to have dropped from that situation, and then to have been very easily extracted by the straight forceps.

Did you witness the operation?—I did not.

SIR ASTLEY COOPER, *Bart., sworn.—Examined by* SIR JAMES SCARLETT.

Though I have the honour of examining you, you were supœnaed by the Defendant, Mr. Wakley?—I was.

Mr. Bransby Cooper is your nephew?—He is.

You have heard the account given of him by Mr. Harrison yesterday, and of his education?—I did.

It is only to prevent a further occupation of time, I ask you generally whether that account be correct?—Perfectly correct.

We understand he was apprenticed to you, Sir Astley, whilst you were a surgeon of Guy's Hospital?—He was.

Had he an opportunity of living in your house, and witnessing a great deal of your practice?—Constantly.

Before he came into that situation had he opportunities of becoming informed generally of the nature of the profession he now follows?—He had been previously at the Norfolk and Norwich Hospitals, where he remained about two years; he then came to London, and studied at Guy's and St. Thomas's Hospitals; then a situation in the artillery was obtained for him; he went to the Peninsula, and there he had an opportunity of witnessing all the more important actions in that country, as for example, the battle of Salamanca,* of Vittoria, the battles of the Pyrenees, and lastly, the battle of Toulouse, so that he had great opportunities of seeing that species of practice, gun-shot wounds. Then he went to America, where he remained a little more than a year, and upon his return to England he visited Edinburgh, where he remained for near two years; but still not thinking that education was fitting him at all for the situation of surgeon to a hospital, I bound him an apprentice to myself, and he continued for six years my apprentice, after having thus previously studied his profession.

I know it is a delicate subject to ask so near a connexion, but the circumstances in which we are placed oblige me to do it—from the information you have derived from your nephew's whole practice that you have witnessed, do you believe him competent to his situation?—If I had not believed him competent to the situation, you may rest assured, if it had been in my power to prevent it, although the plans were not at all my own, he never should have been surgeon of Guy's Hospital.

Did you exercise any influence of any sort to place him in that situation?—The plan was entirely that of the treasurer and governors, but as it was a circumstance in which my interest was exceedingly involved, they thought it necessary to mention it to me before they carried it into effect, because I was to make very great pecuniary sacrifices, and, if I may state it to this Court, though it may be egotism, I wish to say, that I wrote, stating that I should have no objection to the plan being carried into effect, whatever sacrifices I might make, because I thought it would be conducive to the interests of the school and of Guy's Hospital.

In the course of your very extensive practice, you must have been often under the necessity of sending a substitute; have you found your nephew a competent substitute?—Certainly, or I would not have sent him.

In your solemn judgment, which we know is the very best upon the subject, is there the slightest ground for imputing to him a want of skill, or science, in his profession?—I think him a good anatomist, that he is a very, very, very good surgeon; but let me say this, that a man, when he first

* Sir Astley Cooper was mistaken, when he stated that the Plaintiff was present at the battle of Salamanca, as Mr. Cooper did not join the Duke of Wellington's army until after that action.

enters an hospital, however clever he may suppose himself, he must necessarily have yet experience to acquire; you cannot say that a man is, therefore, perfectly accomplished, at the time he first enters the hospital; but give him time, do not crush him in his commencement, and you will see, that the abilities he has, the anatomy he has acquired, and the foundation he has laid, will make him one of the best surgeons in this town.

I believe you have probably performed as many operations for the stone, as any living surgeon of the day, probably more than you can recollect?—A great number.

How many hundred can you speak to?—I really should be very sorry upon my oath, to say further than this: that I performed eighteen operations for the stone, in one year; and I have now been engaged in the practice of my profession, in the active duties of my profession as an operator, twenty-five years.

You have heard the account given by Mr. Callaway?—Yes.

Which for the present I beg to assume is the correct account. Do you perceive anything in that account, in the length of time, and the number of instruments used, that would justify any surgeon in imputing a want of skill to the operator?—May I say one word as to time; nothing is a greater deception upon the public, than a man saying, I did an operation in so short a time; that is only two or three minutes. The fact is, that time is not a criterion at all, of the excellence of the operation; and I may now mention here, that I have had an opportunity of operating upon two of the first lawyers of this country; because it is very applicable to this case. One of them was Serjeant Lens. I was I believe about two minutes in that operation. The other was the Master of the Rolls, and I was half an hour in that operation; and if you ask me, as I am standing here, knowing I am upon my oath, whether the one operation was not quite as well done as the other, I would say, I was tried in the one operation, but the other a child might have performed. The difficulties that presented themselves in the one case, were the difficulties my nephew experienced; but instead of the stone being locked up in the upper part of the bladder, between the mere folds of the bladder, it was nothing more than that the bladder, when it is contracting, after what little urine, for it did not appear that it contained much, after the little was evacuated, the stone had got between the folds of the bladder, behind the pubes, and when he passed the forceps into the bladder, he passed it beyond. Owing to the delay, the man became considerably exhausted, and the stone did at length lose its hold: when it did, it fell very naturally to its natural position, and the straight forceps reached it; but in the case of the Master of the Rolls, the stone was lodged below, in a well behind the prostate. As soon as it was seized, it broke into fragments, and the forceps were under the necessity of being dipped into this well to remove those fragments, which took up, necessarily, a considerable time; but I was assured that was the cause: therefore, with respect to time, it is not to be considered a criterion of the perfection of the operation.

Has it happened to you to have been sometimes an hour in the operation?—It has happened to me to be an hour, and a curious thing it was to see; I

well recollect it; it was mentioned by one of the witnesses to-day, that it was an extremely small stone: it is right it should be known, that it is the small stone that produces the difficulty; it is not the large stone, the small stone is locked between the folds of the bladder, and is difficult of access; but the large stone, the moment you put the forceps in, you strike it, and readily seize it.

I do not mean to put your judgment in competition with young men of six months standing at the hospital, or even with Mr. Lambert; but from the accounts they give, do you conceive them competent to give an opinion upon the subject?—*No man can be a judge of an operation for the stone, except a person who has performed it; and no man can be a judge of the individual case, but the man who is performing it.*

With all your experience and science, if you had witnessed an operation upon a patient, that had lasted an hour, where you had seen the various events take place that the witnesses have described on both sides, would you have ventured to have formed a judgment upon it, or published it, without speaking to the operator?—I should have thought myself, in the first place, very unkind, and in the second place, very unwise; unkind because I would not wish to injure the character of another; and unwise because it was absolutely impossible I could form a judgment upon the subject.

Cross-examined by Mr. WAKLEY.

You state, Sir Astley, that you should not form an opinion, unless you were the operator, upon any particular case; but I beg to ask you, if you have not, in your lectures, given a great number of operations of a similar description to the one we are now considering?—I do not think I have given a description, in my lectures, of any operation exactly similar to this.

But you have given descriptions of bungling operations?—Yes. I have always thought it was the duty of a lecturer. I know that our profession is not a bed of roses; that, do as well as we can, we very often fail in our best endeavours, and, wishing to point out to the pupils what they would certainly meet with in life, I have always thought it right not to conceal the adverse events of our profession, but to speak of them in common with those that were successful, or else I thought it was not honest

Have you stated, that a man, to become a great surgeon, must, like a great general, wade up to his neck in blood?—I do not know. I may have made use of strong expressions. I always like to be understood.

And you consider, Sir Astley, if we give your nephew time, and do not crush him in the outset, he will be a very good surgeon?—I think him already a very good surgeon, but I do not believe a perfectly good surgeon. Not a complete surgeon can be made at once; therefore I think it the greatest evil that can happen to society, that a man should be attacked at an early period of his life, and I think it not a power that should be given to the press, that it should be able to crush an individual for a misfortune, supposing he had had a misfortune, but this appears not to be so; but it was necessary a court of justice should determine whether it was or not.

Do you not consider that the public interests would be best promoted by

placing in the hospitals experienced men, and not allowing men to work their way through blood?—My own opinion is, though I think it foreign to the object of the record, that, in every hospital, there should be an assistant surgeon, so that he should be prepared, in some degree, for the situation he is to hold.

Mr. Cooper is surgeon there?—Yes.

He was not assistant surgeon formerly?—No; but I think it would be a good regulation in all hospitals.

You have stated that this stone was lodged between the folds of the bladder, immediately under, or behind the pubes?—Yes.

If a man, when in an erect position, had urine in his bladder, and was taken from his ward to the operating table, the urine still remaining there, do you not believe that the stone would have been at the bottom of the bladder, and not in the situation described, unless it had been attached to the substance of the bladder?—No. I will explain this. The man must have made water very recently before the operation, because it appears, upon the operation, his bladder contained very little urine. The effect of a person's watering just before the operation is, that the bladder falls into folds. If he had been put upon the table with his bladder full, the stone would have been struck; but in consequence of his having made water just previously, it got between the folds.

What is the great danger, cutting the bladder or bruising it?—I should say that the great danger is in violence.

Supposing this stone to have been felt, and there was a difficulty in the extraction, would it not have been the more prudent course, after trying, for eight or ten minutes, to extract it, to place the patient in his bed again?—I think no surgeon would do that if he could feel the stone. I have seen surgeons perform the operation for the stone, again and again, and not be able to find the stone, when they have previously thought they have felt the stone; but I never knew a person put to bed after the wound had been made, and the bladder opened, if the stone could still be felt, till the operation was completed.

Are you acquainted with the writings of Celsus?—I have dipped into him, but I do not think him a good surgical authority. I think him an excellent classical authority.

Are you not aware that it is the practice of surgeons, in Paris and Edinburgh, after they have tried to extract the stone in vain for five or six minutes, to send the patient to bed?—I do not know of that practice. I have studied at Edinburgh, and been at Paris repeatedly, and seen operations there, and never saw the circumstance occur, nor did I ever hear of it.

Can the contraction of the bladder last for any great length of time?—Yes, when the irritation is going on, the spasmodic attraction of the bladder might last for an hour. Now I will give an example: I once went into the theatre of St. Thomas's, where an operation for the stone was performing by a gentleman in this Court at this moment, and great difficulty occurred in the removal of the stone. I examined, and I said, that bladder is contracted around the stone, so that just the point of it only can be felt. The surgeon then passed the instrument close on the surface of the stone, between the surface of the stone

and the bladder, instead of opening the forceps, and although a very considerable time had elapsed, the bladder had not given way in its spasmodic contraction.

If the patient was removed from the table after five minutes had elapsed, and placed in his bed, and the stone was allowed to fall from its situation where it was grasped, what inconvenience would arise?—What you would not like; two operations instead of one.

Would it be any more than introducing the forceps a second time?—Oh! God bless me, yes. I assure you it is no light matter to have the urethra opened by a knife, and the bladder opened. Besides, how do you know the same difficulties will not occur again. If I felt the stone I should certainly persevere.

You state that the only difficulty is the contraction of the bladder; you admit that time must remove that, and then the difficulty is at an end?—An hour perhaps might remove it, but it was impossible to ascertain that; you talk about the bladder as if it was a bladder out of the living body. *If you had ever put your finger into the bladder of a living body* you *would* have known—I do assure you, you know no more of what is going on in a man's interior, than you do of what is going on at present in the moon.

If I could not have known when I was present and had my finger in the bladder, how can you know when you were not at the theatre?—You could not put your finger in the bladder.

You said, suppose I put my finger in?—No, I said no such thing.

Mr. Wakley.—I beg your pardon.

Re-examined by SIR JAMES SCARLETT.

You spoke of assistant surgeon; your nephew had been an army surgeon before he came there?—He had been an assistant surgeon in the army.

Had he been your demonstrator of anatomy?—Yes, he had.

To your satisfaction?—So much to my satisfaction that it was the reason why I was pleased at his being elected surgeon at Guy's Hospital; for I found that the students had, all of them, been so gratified with the clearness of his demonstrations, that they were extremely anxious indeed, that a man who could communicate knowledge so easily, should have the means of conveying it.

WILLIAM DALRYMPLE, *Esq., sworn.—Examined by Mr.* POLLOCK.

Are you surgeon of the hospital at Norwich?—I am senior surgeon there.

How long have you been surgeon there?—I have been assistant surgeon and surgeon of that hospital rather more than sixteen years.

Have you had much practice in lithotomy in that hospital?—We have had, from the first institution to the present day, a large experience in that particular operation. We were established in 1771, and we have a cabinet which contains specimens of the products of 659 operations for the stone.

Was Mr. Bransby Cooper a pupil there?—I remember Mr. Bransby Cooper coming to Norwich to serve his apprenticeship with one of the surgeons or one of the assistant surgeons of the Norfolk and Norwich Hospital; and I

remember him perfectly well as a pupil of the Norfolk and Norwich Hospital previously to my connexion with the house.

Was Mr. Cooper attentive to his studies there?—I was not at that time connected with the house; I was a visiter frequently; I had the entrée of the house by the kindness of the professional men, and I thought Mr. Bransby Cooper a remarkably clear, quick, and intelligent boy—and I wished very much he had been my pupil.

Have you yourself frequently performed the operation of lithotomy?—I have performed the operation very near fourscore times—seventy-six times—and I have been present at not fewer than very nearly three hundred operations for lithotomy, as I believe; certainly I have performed the operation seventy-six times.

Did you attend to the statement of Mr. Callaway of the operation in question?—Most closely.

Did you find in that account any indications of want of skill or attention on the part of Mr. Bransby Cooper?—Quite the contrary.

Supposing that the stone was a flat stone, situated in the anterior of the bladder, above the pubes, does that circumstance satisfactorily explain to you all the difficulties, or do you require any other?—It *perfectly explains* the whole of it to me; the same difficulty has occurred to me, essentially the same in nature, though different in degree; it has assailed me in five or six of my operations, and has made those operations double, treble, and perhaps more than that, slower than they would otherwise be, though I am not ambitious of being a quick operator.

On such an occasion, have you found it necessary to resort to various instruments?—I never begin an operation at our hospital or in private practice without having a *larger* assortment of instruments than was *named* yesterday in this case. I never go unprepared with fewer than four different pairs of forceps.

If occasion required, should you hesitate to introduce one after another, the four?—I have been tried to the utmost in that way. I have been so unfortunate as to perform an operation for the stone, in which, from the magnitude of the stone, it was impossible to remove it; and the man was removed from the table of the operation to his bed, to die in three hours.

Have you had any means of knowing what is Mr. Bransby Cooper's present fitness for the situation he fills?—In the course of a year and a half it has been my good fortune to see Mr. Cooper operate for strangulated hernia, and there was an anomaly in that case.

Have you had the means of knowing what degree of skill Mr. Cooper possesses, as to his fitness as a surgeon, or hospital surgeon?—I feel no difficulty in saying, I believe him to be a most efficient hospital surgeon; he performed the operation very well.

Cross-examined by Mr. WAKLEY.

Have you a son at Guy's Hospital?—No.

In the case you spoke of, where the patient died in three hours, was the

stone very large?—It weighed very nearly fourteen ounces, the case is before the public.

The weight of the stone in Mr. Cooper's case was two drachms?—I am not quite aware of that.

Is there an anatomical school in Norwich?—There is not, there never was, as I believe; I have heard that some young men attempted to get up one, but I do not believe that it is now in existence; I do not know that it is now in existence; I was applied to on the subject, and I discouraged the thing in a gentle way. I did not think it was likely to be beneficial, and I, to a certain extent, gently discouraged it.

You mean you would not allow the pupils to attend your hospital?—I beg your pardon, any young professional man offering to become dresser there, as a matter of course is admitted.

What do they pay for a dressership?—Fifty guineas, perpetual pupils, and twenty-five guineas for dressing during a single year.

You would not admit pupils from the other school gratuitously?—Certainly not.

Lord Tenterden.—No persons are admitted gratuitously?—Not as a dresser.

Re-examined by Mr. POLLOCK.

You discouraged the attempt?—In a very gentle manner.

Did you think it would be advantageous if it was established, or that it was better to study anatomy in the larger schools?—I think the more efficient schools will be the metropolitan schools, but there were local circumstances in Norwich that made the establishment of a school for disection likely to be extremely inconvenient.

Mr. JOHN WATSON, *sworn.—Examined by Mr.* R. SCARLETT.

You are secretary to the court of examiners of the Apothecaries' Company?—I am.

What is your department with respect to the licensing; do you keep a register of the licences?—It is my duty to see that the testimonials required by the act of court, are such as are required.

A paper was handed to the witness.

You see a paper pinned to that book?—I do.

Do you remember the young man Clapham coming for his licence?—There are so many persons come, that I do not remember the person of each; but on reference to my book, I find a person of the name of John Clapham, did come to be examined on the 24th of April last.

Upon whose recommendation, as to his moral character?—Upon reference to my notes, I find it was the *recommendation of James Lambert*, of the Walworth Road.

Have you got the certificate of John Clapham's birth?—I have not a certificate of his birth, but what purports to be an affidavit of his age.

Is that the original?—It is, with my mark upon it.

Upon which he obtained his license?—Upon which he obtained his admittance to be examined.

Put it in.

The same was handed in and read, as follows:—

"MIDDLESEX TO WIT.—John Clapham, of 21, Oxenden Street, Haymarket, "Medical Student, maketh oath, and saith, that to the best of his knowledge "and belief, he is of the age of twenty-one years.

(Signed.) "JOHN CLAPHAM.

"*Sworn at Hatton Garden, 21st of April,* 1828."

Has he described his place of residence?—As having been apprentice to William Clapham, of Ely, in Cambridgeshire.

Is there any description of him as of Thorney?—I will refer to another book *(the witness referred to another book).* On the 24th of April, in another book, which candidates are obliged to sign, and which has a form of declaration that the papers they have sent are correct, I find "John Clapham, Thorney."

As the place of his then residence?—Yes, as the place of his residence.

A Juryman.—Do you know James Lambert, the person who recommended him?—No.

Did you make any enquiry as to him?—I only know there was such a person in existence as James Lambert, that is all I know.

Cross-examined by Mr. WAKLEY.

Read the certificate of Mr. Lambert?—The student may have that, I have it not.

Did the certificate state that Mr. Lambert knew he was applying to you for his examination?—Seeing so many hundreds in the course of a year, I cannot recollect, but it stated he was a person of moral character.

Did it appear that Mr. Lambert knew what he had obtained the certificate from him for?—I do not recollect what the words were, my duty was to see that the certificate was given of his moral character. I am not aware that Mr. Lambert said anything about age.

Sir James Scarlett.—That is my case.

DEFENDANT'S REPLY.

Mr. Wakley.—May it please your Lordship; Gentlemen of the Jury.—At the commencement of this cause yesterday morning, you heard it hinted by the learned gentleman to whom I am opposed, that in all probability my case would break down, from some plea not being substantiated, and that there would then be a difficulty, probably, in the learned gentleman bringing forward his witnesses to prove the high and exalted character, and the extraordinary skill of Mr. Bransby Cooper. At that time I took the opportu-

nity of suggesting to the learned gentleman that he need be under no apprehension on that head, because I felt fully assured that I should be enabled to complete the case we had set out, and to answer every charge that had been made against me in the declaration. From the course which the learned gentleman has pursued to-day, I fear I shall be under the necessity of occupying a much larger proportion of your time than will be agreeable to me or to you, but it seems that this attack, first made on Mr. Cooper, is now converted into an attack on me; and really this morning, from the description which the learned gentleman gave of myself, and of my work, you must have regarded the one as a most infamous production, and have regarded me as an individual too detestable to be tolerated in any society. I was charged as a plunderer—I was denounced as a literary pirate; in fact, there was scarcely any epithet that the learned gentleman could employ that he did not apply to my character.

Gentlemen, it was stated to you again, and again, and again, that I had entered the lecture-rooms and plundered the lecturers of their property—that I was employing a set of young men, almost the outcasts of the profession, to use means which could not be recognised in any country where any principles of honour existed, with a view to emolument on my part, that I might live in luxury, and in the splendour of a carriage, roll through the streets, laughing at those I had so plundered. Gentlemen, if I have acted thus, I hope you will shew by your verdict this day, that you as much disapprove of this conduct as Sir James Scarlett; but, on the other hand, if I shew you, first, that all these accusations are unfounded, and if I shew you, secondly, that Mr. Cooper has not answered any one of the charges I have brought against him, then, Gentlemen, I shall lay claim to your verdict; and, in fact, I do not see how it is possible with the evidence before you, that you can return a verdict for the Plaintiff.

It is impossible for me to say whether Sir James Scarlett has made these accusations against me from report, or from instructions he has received from his client. If from report, I must consider that the learned gentleman has acted most indiscreetly; and if from instructions, I think the learned gentleman's client must have shewn a still greater want of discretion, because his client, at all events, knows that nearly every accusation he has made on the subject of the lectures, is utterly and totally without foundation. From the commencement of my journal I have advocated the right of publishing the lectures of public teachers, but I never advocated the right of publishing the lectures of private teachers, or going to any private institutions with a view of converting to my use the literary labour of others.

Now, Gentlemen, what lectures have I published? Those that have been delivered in St. Thomas's Hospital, which is a public institution—those that have been delivered in St. Bartholomew's, a public institution also. In the one case I had the permission of Sir Astley Cooper to publish his lectures; in the other case, it is true, I had not the permission of Mr. Abernethy to publish his lectures, but a court of equity conceded to me that right; I maintained my right in the Court of Chancery, day after day, and week after week, not upon any legal technicality—not upon any paltry subterfuge, but upon

the ground of public expediency; upon the ground of public utility; and upon the ground that public servants, wherever they were situated, were public property, and we had a right to be acquainted with their actions. Mr. Abernethy resisted the claim—he resisted the attempt that I made to lay his lectures before the public, and was stimulated to that resistance by the individuals who have come into the box to-day, to swear to the talents of Mr. Bransby Cooper; those individuals who subscribed to crush me and my work, when the work was in its infancy; how the attempt succeeded is best known to themselves and the profession; at all events, they have only been bye words with the greater part of the profession; from that hour I have, it is true, published the lectures of other teachers, but in every instance that I have done so, of private teachers, I have had their permission. Six lectures on the diseases of the eye were delivered by Mr. Green, and I believe Mr. Green has been accurate in saying, that *five were very incorrect*, and one was very accurate, but the others were from an accident. The lectures taken from Bartholomew's were so accurately published, that Mr. Abernethy made an affidavit, and presented it to the Court of Chancery, swearing that they were taken word for word, and syllable by syllable, as he delivered them. What is Bartholomew's Hospital? have not the public a right to know what is passing in that institution? or had they a right to shut the door, and tell us nothing but only the general proceedings? that was a practice I was determined to resist, and I have resisted it with success, which has been as beneficial to the profession as it has been to the public. The other lecturers, who are Dr. Armstrong, Mr. Lawrence, Dr. Clutterbuck, and several others, I stated in the first number of the volume of the present year, that the public might know what I was about. It is fortunately evident, that as Sir James Scarlett is entirely deceived upon the subject, there must have been some gross misrepresentation made to him; you have had no evidence furnished to you that these lectures have been stolen, though in every one step of this case, it has been attempted to blast my character, and to shew that nothing would give me more pleasure than to destroy the reputation of some professional gentleman, for nothing is more calculated to lessen the professional character than accounts in point of doctrines unsound, or of language incorrect. I shall now come more particularly to this case; and it appears to me that the proceedings of this day are the most curious, under all the circumstances, that ever took place in a court of justice; in fact, they are so extraordinary, that I cannot find words to express the astonishment I feel at the course of conduct that has been pursued, after the boastings and vauntings of yesterday morning, and also the boastings and vauntings of this morning; why, Gentlemen, it was to be proved, that this case was a fabrication from the beginning to the end; that it originated in nothing but malice; that it had its foundation in a quarrel with Mr. Bransby Cooper; and in fact that the operation reported in the Lancet, as performed at Guy's Hospital, was a supposed operation.

Now, Gentlemen, what are the facts of the case? one of the Plaintiff's own witnesses has told you that there were present at the operation, nearly 200 individuals, I believe more—how many gentlemen have come forward? how

many spectators of that operation have come forward to speak to the inaccuracy of the report? how many, I say, out of 200 spectators? One—a solitary one. Why that speaks more, that one fact carries with it more than I could communicate to you in a month. What! not with all Mr. Bransby Cooper's influence, with all his power at Guy's Hospital, not to produce but one witness! and who have you had to come forward and speak to the inaccuracy of the report, a gentleman from St. George's Hospital, Sir Astley Cooper from Conduit-street, and Dr. Babington from Aldermanbury; I wonder they have not brought the emperor of China, and the Great Mogul. It is the greatest insult offered to a jury, that ever was exhibited, either in this or in any other court. Are you to be so blinded, so deceived, so duped, as to be made to believe that this operation is a supposed operation, and that the report I have published is an inaccurate report, when only one witness out of 200 comes forward to attest its inaccuracy? Why I never heard of a proceeding so extraordinary. I never saw a proceeding which at all could be characterised as one coming within the bounds of probability, when compared with this. I knew, Gentlemen, when I made my election to conduct my own cause, that I should lose the support of two most able and eloquent advocates, from the rule of the court, and from the etiquette of the bar. I also knew, in making my election, I should be opposed to a gentleman of unrivalled legal learning, and of unrivalled ingenuity; but I must confess, that after having heard so much of that gentleman's talents, I did not, I could not, expect that he would have made such declarations as he did this morning, at the same time that he knew it was not in his power to come forward and substantiate scarcely a thing he had said. The man was represented as coming from Lewes, in Sussex, and it was a difficult case; that the surgeons of Lewes could not operate upon him, and consequently he was sent to London to be under the skilful treatment of Mr. Bransby Cooper, at Guy's Hospital. Have the surgeons of Lewes come forward to make any such statement? have they stated there was any thing extraordinary in the case before the operation occurred? Nothing of the kind, no such evidence has been adduced; consesequently that declaration, like many others, has in point of fact no ground whatever. Sir James Scarlett spoke of the taste with which the work was conducted, and spoke of the utter want of feeling which must have characterised my conduct in giving currency to such a report. Sir James Scarlett also spoke of the hireling, Mr. Lambert, employed, at eight guineas a month, to send me communications; but Sir James Scarlett forgot that he himself was acting from hire. Gentlemen, we all act from hire, we are all hired servants, we all work for lucre, and Sir James Scarlett has worked for lucre as well as I have, or Mr. Lambert.

You have heard, Gentlemen, the name of "bat" mentioned, and that has been stated that there must have been a great want of taste, and a great want of propriety in my conduct in using such a term; but if Sir James Scarlett had studied Zoology, he would have known that that term was exceedingly applicable to the description of beings to whom it has been applied. No doubt, in a few years, they will consider it an honourable term. If we have whigs in politics, at least in the politics of the state, why should we not have

"bats" in medical politics. I am sure the hospital surgeons are much more like "bats," than Sir James Scarlett is like sour milk, which is what I understood by whig. The conduct of the hospital surgeons warrants the application of the term "bats;" they belong to the class Mammalia, they suckle their young, they live in the crevices of old corporations, and are constantly around the hospitals, feeding on fat, and fattening upon the miseries of their fellow-creatures; so, I fear too frequently do hospital surgeons live on the same food.

Gentlemen, when I opened my case yesterday morning, I told you I had every reason to believe, before I published the report which you have heard read, and which is incorporated in the declaration, that it was true you heard me state further, that I had every reason then to believe it to be true; and I believe now, Gentlemen, that you have every reason to believe it is true also. The witnesses I have placed in the box, who were spectators of that horrid scene, have given evidence which remains untouched and uncontradicted. I do not know of a single fact represented in that report that has been repudiated. I do not know that a single statement made in that report has been proved to be false. The evidence of Mr. Partridge, Bolton, Thomas, Pearl, Gilbert, and Lambert, remains uncontradicted. Clapham's evidence I do not name, in consequence of the circumstances which you know have transpired in this case, and the exhibition that has taken place just now. Of Mr. Clapham I had no knowledge until yesterday; I never saw him until yesterday, nor spoke to him till that day; and although these attacks have been made upon the character of my witnesses, and upon the proceedings out of Court, respecting lectures and demonstrations; yet, Gentlemen, out of the nine witnesses you have had placed in the box, I never saw five of them, and never spoke to five of them, until yesterday. If there be discrepancies in their evidence with regard to the manner in which the instruments were used, who can be surprised at the circumstance, when you have heard from the witnesses the state of confusion in which the operator was while operating. How is it possible that the witnesses could remember what was passing, when it was proved to you that the operator himself did not know what he was doing. Mr. Bolton, Mr. Partridge, Mr. Thomas, Mr. Pearl, and Mr. Gilbert, all speak to the confused state of mind in which he was. Mr. Callaway, indeed, has opposed them, and has stated that the operator was not so much confused. When Mr. Callaway was asked if the operator had used force, his expression, I believe, was, "I think not much," or "I think not more than was necessary;" but what part of the report has Mr. Callaway proved to be false? even taking his evidence as having weight against the evidence of five, or at least of four, disinterested spectators, leaving Mr. Lambert out of the question; the writer of the report, who of course would be glad to see that what he had stated would be supported by others. Is there a single fact which you can call to your recollection that Mr. Callaway contradicted?* Is there one circumstance in the report. I asked him generally, if the report was correct or incorrect, and he could not point out either the one or the other: he thought much force was not used, and he thought no more instru-

* *Vide* Mr. Callaway's evidence.

ments were used than were necessary, yet this was a case that was to break down; and the learned gentleman would not have an opportunity of producing his witnesses to prove the high character of the Plaintiff.

There is one part of my case that appeared somewhat weak until very late this evening, which was, the influence of Sir Astley Cooper in the affairs of Guy's Hospital. Sir Astley Cooper stated in the box, that, knowing how much his interests were concerned, that the governors were anxious to place Mr. Bransby Cooper in the office of surgeon; and further than that, said Sir Astley Cooper, "give him time, let him work his way, and I have no doubt he will be a most excellent and a most thriving surgeon, and a most brilliant operator." But, Gentlemen, is that the way in which the elections of our hospitals should be conducted? Is that the mode in which the poor patients in those institutions are to be treated?—That young men, inexperienced, are to be placed there to learn their profession—not to know it before they get there, but to go to learn their profession; and to learn it upon whom? Upon individuals who are as much entitled to the scientific practice of surgery as any nobleman in this land; for, to whom does Guy's Hospital belong? Not to the governors of Guy's Hospital, but to the poor who are in need of the benefits it is in the power and means of Guy's Hospital to confer. Has any man, or have any set of men, a right to convert that institution into a mere medical school, to overrun the wards with pupils, by laws excluding pupils from country hospitals, and converting the rooms in that institution into mere nuisances to the patients, instead of making them comfortable asylums. Who will contend they have a right to do any thing of the kind? I cannot believe there is a single person in the Court, possessing common sense; I cannot believe that either of you, even for a moment, will consider that such a practice should be tolerated in this or any other country—yet you have heard it is done, and you know it is done, for you have the evidence before you from Sir Astley Cooper himself.

Gentlemen, I expected from the onset that this was a case of so much consequence, and that so many considerations of public importance were involved in it, independently of the parties immediately concerned, that I trusted Sir James Scarlett would not throw legal technicalities in my way; in that expectation I have not been deceived. Sir James Scarlett, with the exception of the heated attack this morning, has conducted himself towards me with the greatest urbanity; and, considering that I am altogether inexperienced in courts of law, I have received from him the greatest possible kindness, because I fear I have given him very great trouble.

When Mr. Harrison was requested to produce the testimonials of Mr. Cooper, he stated they were not in existence to produce; because, he stated, they had always had him under their eye, and that the governors were entreated by the whole house to elect him to the office of surgeon. What Mr. Harrison meant by the whole house I do not know; whether he meant the bricks and mortar, or the nurses, or any other persons as destitute of intelligence, it is impossible for me to say, but, it is a very curious fact, that when the election of Mr. Cooper took place to the office of surgeon, that Sir Astley Cooper should at the same time be appointed consulting surgeon, and that

Mr. Callaway should be appointed assistant surgeon. John Hunter used to say that bad surgeons were like bad clerks, they made work one for another; and that good surgeons in fact would starve, if it was not for unskilful ones. It seems that John Hunter's axiom had found its way into Guy's Hospital; for, presuming upon what the operations of Mr. Bransby Cooper would be, it was thought to be necessary to elect a consulting surgeon and an assistant surgeon at the same time, to do the additional work. I can give no other explanation of the three appointments on the same day, because the contemporaries of Mr. Bransby Cooper were young men. When there were two old men and one young man there was no assistant surgeon and no consulting surgeon.

Therefore, Gentlemen, taking all the circumstances into consideration, and viewing it simply as a matter between Mr. Cooper and the governors of Guy's Hospital, and not as a matter between the public and Guy's Hospital; you must perceive and believe you can come to no other conclusion than that it was entirely owing to the relationship in which Mr. Cooper stood to Guy's Hospital that he was elected to the office of surgeon there. In the absence of testimonials, would he ever have been in that office, had he not been related to Sir Astley Cooper? It is a question which I wish you all to ask yourselves, and, having asked yourselves, I am certain I shall be perfectly well satisfied with the answer that you will give.

Something has been said relative to advertisements, that they could not satisfy me or please me, unless advertisements were inserted, unless advertisements sent to the Lancet, or some other medical journal or newspaper. Gentlemen, it is considered, I have always heard so, that you have a greater chance of getting men of talent from a large number of individuals, than from a small number, and I think that the offices in Guy's Hospital would be much better filled, if the profession generally knew when those offices became vacant, and that men of talent, ability, and industry, had an opportunity of coming forward to offer themselves to fill those offices. Men of experience, men of learning, men who have not to learn their profession, and learn it upon the misfortunes of their fellow creatures, but men who have acquired it by a regular course of study, and go there in all the plenitude of information, and in the fullest enjoyment of the greatest intellectual powers. We all know that individuals are stimulated to become more industrious and more anxious to qualify themselves for the duties of their profession, in the hope of attaining the highest possible station, and the greatest quantity of emolument, and the largest portion of honour; but, how can such things be done, if the practices now tolerated in Guy's Hospital, and the system of elections is to be continued; it is impossible—such a thing can never happen at any institution, much less an institution so extensive as that; it should have officers of as much ability as if those officers were elected from the great body of the medical profession.

I wish now, Gentlemen, to direct your attention more particularly to the facts of the case, because if these facts remain uncontradicted, then, I believe, the conclusion which I arrived at will be arrived at by every one.

Mr. WAKLEY *here withdrew, and, after a short time had elapsed, returned, and resumed his address.*

I apologize to your Lordship and the Jury, but I am so exceedingly exhausted from the heat, that I am hardly capable of speaking, after two days of great anxiety under which I have laboured.

I believe, my Lord and Gentlemen, when I left the Court I was speaking of the absence of persons who had witnessed this operation, and I believe, if Sir James Scarlett had conducted his cause as he wished yesterday morning, that I should not have called a single witness, for I believe I could fully substantiate my case from his witnesses, and from them only. As to the technicalities of pleas, I hope, in a case of this kind, they will be entirely out of the question. Mr. Bransby Cooper charges me with having falsely and maliciously injured him, from the publication of a report of an operation which is altogether unfounded. His injury must have arisen, if any, from that report. We must confine ourselves strictly to the report, and if the balance of testimony be in my favour, beyond all question I am entitled to your verdict. Now, Gentlemen, ask yourselves, deliberately ask yourselves, if it can be possible that the report is incorrect, when only one individual, out of two hundred spectators of the operation, comes forward to deny its accuracy? I beg of you to remember the manner in which its accuracy was denied even by that witness—at first denied, for, subsequently, he did not deny its accuracy in any material part. Mr. Callaway admitted that the knives had been used, that the gorget had been used, and, I believe, even the blunt gorget was admitted—that I am not certain of.

Sir James Scarlett.—He said it was not used.

Lord Tenterden.—He said he thought it was not—he did not say absolutely it was not.

Mr. Wakley.—All the staves, and sounds, and forceps mentioned in the report. He would not swear that the operation did not last an hour, but he believed about fifty minutes. The preparation, Gentlemen, of the parts taken from the unfortunate man's body has been produced in Court. I had not, certainly, a very fair opportunity of inspecting them, but, as far as I could judge, there was not, in any part of that preparation, either of the bladder, or of the passage leading to it, the slightest reason why any delay should have taken place in the extraction of the stone. It is true that Sir Astley Cooper has come forward, and very properly come forward, to speak in behalf of his nephew. Sir Astley Cooper has told you that the stone was lodged within the folds of the bladder, which is a common thing, and that, in that situation, his nephew was incapable of extracting it. Sir Astley Cooper, at the same time, considers, and all the other hospital surgeons consider, for it is an interesting question with them all, that Mr. Bransby Cooper is himself a skilful man; yet while performing the operation, while he had his finger on the prostate, his forceps in the bladder, and his sound in the bladder, and his gorget in the bladder, yet this skilful operator was incapable of describing why he could not extract the stone, and made that statement in the presence of the miserable patient. Do you believe, Gentlemen, that the operator could have been in a state of self-possession, to have declared, in the presence and in the hearing of

him into whose body he was plunging his instruments, that he could not describe the cause of the difficulty—that he could not ascertain the cause of the difficulty—the patient himself, at the same time, imploring to be loosened, and yet, in opposition to the patient's cries, and to his repeated entreaties to be unbound, still the operator kept him upon the table, and pertinaciously persisted in his attempt to extract the stone, although, from his own statement, he had no probability or chance of extracting it, even in a week or in a month, not knowing where the difficulty existed—not knowing what part was mal-formed, because he said he could not feel it with the forceps, although he could feel it with the sound through the urethra, and even through the wound in the perinæum.

This, Gentlemen, brings me, for a moment, to speak of the patient. You have heard much to-day of what my conduct must have been, to have published a report of this description, when I entertained no animosity towards the man, and no attempt, whatever, has been made to shew that I do entertain any malice against Mr. Cooper, and God knows I do not, for I believe a more worthy man and better man, in all the social relations of life, does not exist; but I am not dealing with him as an individual, but as a public functionary, as a public servant, and it is in that capacity alone I attack him, and I do attack his professional capacity as a surgeon, and as a surgeon at Guy's Hospital.

Well, Gentlemen, we have heard much of the reputation of Mr. Bransby Cooper, but I think the learned Counsel, when he was using the word as applied to that gentlemen, had entirely forgotten the satire of Iago: "Reputation is an idle and most false imposition, oft got without merit, and lost without deserving." I knew not that Mr. Bransby Cooper had ever acquired reputation as a surgeon. I never heard of his reputation as a surgeon; and it has been my painful duty in the Lancet, again and again, to complain of Mr. Cooper's conduct as a surgeon in Guy's Hospital, although, on one occasion, it was stated, at least the fact was stated, that he had performed the operation of tying the subclavian artery in a masterly manner, and it gave me the greatest possible pleasure to communicate that fact to the public. But, as so much has been said of the reputation of Mr. Bransby Cooper, let me ask you what you have heard respecting the miseries of the individual on whom the operation was performed? Not one word has escaped the lips of the Counsel on that subject, not one word has escaped the lips of any of Mr. Cooper's witnesses on that subject. No, Gentlemen, they are, for the greater part, hospital surgeons. They know too well what the patients of our hospitals are in the habit of enduring at their hands to feel for this man, or any other man placed in a similar situation. Gentlemen, I should like to know upon what principle it was that the man was kept bound upon the table when he implored to be loosened. Was not he a free agent? He knew what the sufferings arising from the stone were, and he had but a too horrid experience of what the sufferings arising from the operation were. He chose. He was anxious to choose the lesser evil; he said, "For God's sake let me go;" imploring to go, "I pray you let me go, let it keep in." "No," says the operator, "I will not let it keep in. I must remove the stone. My re-

putation is concerned in the removal of the stone. You were brought here to have the stone extracted, and extracted it must be, and shall be, if you die upon the table." Gentlemen, will you sanction, will you, by your verdict, sanction such things as those? Will you, by your verdict, this day, approve of the conduct that was adopted in this case. In fact, lay your hands upon your hearts, and ask yourselves, after the evidence that you have heard in that witness-box from my witnesses, the uncontradicted testimony from my witnesses, put your hands upon your hearts, and ask yourselves, if you were afflicted with the stone, whether you would apply to Mr. Bransby Cooper to cut you? If you would not, upon what principle can you send this man back to Guy's Hospital to mutilate your fellow-creatures. Ask yourselves that question, and if you would not have Mr. Cooper as an operator, if you were afflicted with the disease, after the evidence you have heard, you are bound, on every Christian principle, to return such a verdict, not only as shall acquit me of the charge of having published this report falsely and maliciously, but, at the same time, shall have the effect of preventing Mr. Cooper from committing similar injuries upon any of his suffering fellow-creatures in that Institution.

Gentlemen, how can you return a verdict against me that I published this report falsely, when you have heard from uncontradicted testimony that I was assured that the report was true from the writer of the report, before I would insert it. I was not assured of it from that individual alone; I was assured of it from other parties, though they have not been placed in the witness-box. You can only regard that as a declaration from me, not as evidence; but the reporter that came forward has stated, clearly and boldly, and hazards all the consequences that his report is true.

Certain attacks have been made upon the reporter, and why? because it seems he is a reporter—he works for hire. I am sure the gentleman, at the moment that he made that charge, had forgotten himself—he must have been beside himself; but I will not say any more of that now. That individual stated, that the report was true to me, before I published it; and he has stated to you, that he stated to me that it was true. Gentlemen, have any other persons come forward to substantiate that report? Yes. And who are those individuals? Mr. Partridge, of Colchester, a surgeon of the greatest reputation in the neighbourhood where he lives—that gentleman was one witness; and what was the testimony that witness gave? that the greatest violence was used in the operation—that he considers the operator a most unskilful surgeon. Mr. Callaway has come forward on the other side, who is connected with the hospital—who was an apprentice of Sir Astley Cooper, and is an assistant surgeon of the institution, and looks higher. Gentlemen, he looks to the office of surgeon. I merely heard, that Mr. Partridge was an honourable man; and I heard that he was present at the operation—and I put that gentlemen into the box, without asking him a single question—not one question did I put to him. And there is another witness I will speak of here, Mr. Lee, the potatoe merchant. I heard, Gentlemen, that that man was also present at the operation; and that he was an honest man, and a friend of Mr. Bransby Cooper,* and under the highest obligations to the Cooper family

* To the Plaintiff Mr. Lee is unknown.

—and that he had a son attending gratuitously in Guy's Hospital at the present moment. I put him in the box, without asking him a question. I had nothing to fear—I was most anxious that the inquiry should be full and complete, and that you should hear all the evidence that could be adduced, and adduced from unsuspected and untainted quarters. That I should meet witnesses with a view to persuade them to this or that opinion, I reject the insinuation with contumely! Gentlemen, no such thing has been done by me! I have acted openly from the commencement—I have not acted covertly in any one respect regarding this case; and if a justification of my conduct is to be found in any single respect, look at the absence of all the spectators—save the assistant surgeon of Guy's Hospital. Why, Gentlemen, if you are to be so blinded—so deceived—and so duped—as to imagine that this operation was performed in a skilful manner, when only one out of two hundred spectators comes forward to attest that the report is untrue, I know not how to characterize your blindness or the obliquity of your judgment.

Gentlemen, when I published this report, I published it advisedly. I thought before I did it—I deliberated while I was doing it—I was certain, and I told he reporter so, that Mr. Bransby Cooper must either leave Guy's Hospital at once, or institute an action against me. Gentlemen, in either case I was satisfied that the public would be the gainers from the publicity which the proceedings of yesterday and this day will receive—persons who subscribe to our eleemosynary institutions will have an opportunity of knowing the manner in which the funds which they give for the benefit of their distressed fellow-creatures, are applied—and to what purposes they are appropriated. I know, Gentlemen, that all must be gainers; I have never feared the truth—I was satisfied, that if Mr. Bransby Cooper could prove that the report was false, he would benefit by the publication. I knew that I could not be injured, because I was satisfied that what I was doing was correct; and I do not believe that any man ultimately experiences injury from doing that which he conceives to be right. If I had not believed the report to be true, nothing on earth could have induced me to publish it, and no consideration in the world could have induced me to publish a statement that might be an injury to Mr. Cooper, or any other plaintiff, unless I had the most substantial reasons in the world for believing that that which I was communicating to the public was founded in truth.

Gentlemen, the evidence that has been adduced before you, shews that I was justified; and that I had good grounds for believing that the report was true. The absence of one hundred and ninety-nine out of two hundred spectators, I should suppose, must be conclusive to you upon the same thing. Who is Mr. Cooper's witness to prove the report is false? and yet that individual fails to prove it; so he felt inclined to give his testimony in an honourable manner; but seeing that his situation was unpleasant, said all that he could for Mr. Cooper; but that little was nothing. Who, Gentlemen, were my witnesses; not men whom I had trained and lectured upon models, and sketches, and drawings. Has it been shewn to you, Gentlemen, that I was closeted with any person or persons. Mr. Pearl, indeed, stated I had shewn good reasons for believing that an opening had been made between the bladder and the rectum; but what passed at that time was merely in the

course of conversation. It could not be with a view, Gentlemen, to this cause; and why not? because, in my report, there is said nothing on the opening between the bladder and the rectum: he says, the cellular membrane, he believes, is easily lacerable—easily lacerable; does not that imply, that it yields before the finger; and is not an opening, a vacuity, a void space. Why, Gentlemen, should I use the word easily? why should I use the term cellular membrane, when there was nothing? If this had been merely a cavity—I should have said a hole—I should have said there was a hole between the bladder and the rectum. But you have been told, that the gorget was introduced, after the knife was introduced twice: that although the gorget was introduced, there was no cut of the gorget to be detected. You heard from all the witnesses, the gorget was introduced horizontally: and you heard, that the cut was made obliquely; one incision must have intersected the other, had the two instruments penetrated the bladder—that the knife penetrated the bladder there can be no doubt, first or last—when, I do not know. But what evidence have you that the gorget penetrated the bladder; if it did not, where did it go? Remember this, the gorget is not as wide as the finger; and it is not an unfrequent thing with unskilful operators, to drive their gorget between the bladder and the rectum. Mr. Key, himself, states it in his book as a common thing; and you saw how Mr. Key spoke upon the subject—how irritated he was, by the twitching of his facial nerves at the moment. He says—certainly; if the incision with the knife had been properly made, and the gorget was introduced horizontally, the gorget must have intersected the wound formed by the knife. But you find nothing of that sort in the preparation, although this stone was upon a shelf in a curved situation—though it had taken a serpentine course, and had walked off from the operator; and who could wonder at it, poked as it was—yet it was extracted by the straight forceps. And here remember, because I beg you to consider this question well—you are attending, and I am appealing to you—as a Jury of Surgeons!—This is a surgical question; and, for God's sake, do not decide against Mr. Cooper, or me, without being fully satisfied you are right. I implore you not to do so—I care not for the consequences of publishing the truth, and I never will. I would rather die in a dungeon, and rot in a ditch, than not publish the truth; and knowing the truth, I will publish it, let it come when it may. Mr. Callaway could not tell at first in what situation the bladder contracted. No doubt of it, the bladder has but one fixed point; it is fastened by an unyielding ligament to the pubes—that is the position *(producing a pelvis)* of the patient when the operation is performed. You have heard, during the progress of the cause, of the tuberosity of the ischium, and when the operation is performed, a slit is made from here *(pointing to the part)* immediately below the scrotum, from half an inch to an inch down to this point, mid-way between this point and the tuberosity of the ischium. You are told that the stone was shelfed above the pubes and behind the pubes; but, Gentlemen, that is the position of the patient, and the stone cannot be lodged above the pubes, because the pubes happens to be above the bladder and the stone; and from this part of the pubes a tendon proceeds, an unyielding muscular substance, which bears all the weight or the

force of the body; when pressed forward, all the strength of the body. Had there been a shelf or a crooked passage, or any spot, or any place for the deposition of this stone, do you suppose that that shelf would not have been produced? Had there been anything peculiar in the formation of the pubes, would they not have cut out the man's bone, as well as his bladder?—No, Gentlemen, the bone is not produced, but the bladder is produced in a bottle of turbid spirits. I tried last evening to see it, and I could not; I never saw it until to-day. I tried this morning, there was still a difficulty; they did not like to expose that bladder—why not? because, to a surgeon, it contains, there is in it indisputable proof that Mr. Bransby Cooper did not perform the operation as he ought; Mr. Callaway knew that, Mr. Key knew it, and Mr. Key admitted, if the gorget was introduced in a horizontal position, it must have intersected the first. You heard the witnesses yesterday state that they never saw, after the first incision was made, an attempt to introduce the forceps; that the cutting knife was introduced, and yet I blush, I am ashamed when I think of it; and I confess, Gentlemen, I have no language to express what I feel relative to these gentlemen, these hospital surgeons, who have come forward to state that this operation was performed in a scientific manner. It is impossible, it is utterly impossible that I, or any other man who knows how the operation should be performed, that I or any other individual should speak what we must feel, relative to those surgeons. But, Gentlemen, they are all interested parties; they have come here in a gang to swear down those spectators of the operation, who have dared to enter that witness box; they have come here to outweigh and overpower by the influence of their names, and not by their talents, because names are not always accompanied with talents, and talents are not always accompanied by great names; they have come here to put down the testimony of persons uninterested in the result of this case; and, unconnected with Mr. Cooper and me, they care not one straw for me, or for Mr. Cooper either; but they have nothing to expect from me, and I know nothing of them: they have gone into the box and stated honestly what they witnessed, and one out of two hundred, has come forward, but not denied the accuracy of the report, while the host, the gang of hospital surgeons, who are daily committing the same mistakes, and performing the same bungling operations as Mr. Cooper, state it was scientifically performed.

Gentlemen, this cause you may perceive, from the avenues of this Court, has excited the most intense interest in the public mind. I implore you to consider what you are about to do this night, and weigh well the consequences of your verdict. I care not for the consequences. If you are satisfied the operation was scientifically performed, if you would submit to the operation being performed by Mr. Cooper, give him a verdict. Me and my family would go any where—I would go into a dungeon, or expire on the spot. But if you are satisfied I have only done my duty, and that Mr. Cooper did not perform it as he ought, and that the operation was performed in an unscientific manner, and that if it had been performed in a scientific manner the man might have been living, and a blessing to his wife and children; give such a verdict as shall satisfy the poor that they are not to go into the hospital to be hacked and hewed, and shall tell young surgeons elected to

situations in hospitals, that they have no pretensions to fill, that they shall not wade through blood, like great generals, to eminence—return that verdict that shall satisfy the poor, and cast for ever degradation and disgrace upon those hospital surgeons who have had the hardihood to come forward and swear that the operation of Mr. Cooper was performed in a scientific manner, and that they themselves, under similar circumstances, would have acted in a similar way. I have done, Gentlemen.

SUMMING UP.

Lord Tenterden.—Gentlemen of the Jury, this is an action brought by the Plaintiff, Mr. Bransby Cooper, against the Defendant, Mr. Wakley, for the publication of what Mr. Cooper alleges to be a false and malicious libel upon himself, and his character and conduct as a professional man, a surgeon generally, and particularly as a surgeon at Guy's Hospital, with respect to an operation he has been stated to have performed. The publications of which Mr. Cooper complains, I think I ought to read to you, as I think they have not yet been very distinctly brought to your attention.

The first was published in March, in the present year, and the next, a week, or a little more, afterwards; the first is in these words, "Guy's Hospital.—The operation of lithotomy by Mr. Bransby Cooper, which lasted nearly one hour," then there is a note. "The following passage occurs in John Bell's great work on surgery—'long and murderous operations where the surgeon labours for an hour in extracting the stone, to the inevitable destruction of the patient. We should be guilty of injustice towards the singularly gifted operator as well as to our numerous readers, if we were to omit 'a full, true, and particular' account of this case. It will doubtless be useful to the country 'draff' to learn how things are managed by one of the privileged order—a hospital surgeon—nephew and surgeon, and surgeon because he is 'nephew.' The performance of this tragedy was nearly as follows:—Act 1. The patient"—to that there is this note, "the poor fellow has left a wife and six children, said he came to town to be operated upon by the 'nevy' of the great Sir Astley, (a labouring man from the county of Sussex, thick set, ruddy and healthy in appearance, and 53 years of age,)—was placed on the operating table at a few minutes past one o'clock on Tuesday the 18th. The only one of the surgical staff present, besides the operator, was Mr. Callaway. The ceremony of binding the patient we need not detail, the straight staff was introduced, and was held by Mr. Callaway. The first incision through the integuments appeared to be freely and fairly made, and after a little dissection the point of the knife was fixed (apparently) in the groove of the staff which was now taken hold of, and the knife carried onwards, somewhere—a small quantity of fluid followed the withdrawal of the knife."—It is impossible to read this without seeing, and such appears to have been the opinion of Mr. Partridge, the first witness called for the Defendant, that this was intended to convey to the mind of the reader that the point of the knife

was not actually fixed in the groove of the staff, and that it was carried onwards, not to the bladder, but somewhere else. "A small quantity of fluid followed the withdrawal of the knife;" Mr. Partridge says, if it had been stated to be urine, it must have shewn to any body that it had gone into the bladder. "The forceps were now handed over, and for some time attempted to be introduced, but without effect. I must enlarge the opening," said the operator, "give me my uncle's knife;" this instrument was given, and a cut was made with it, without the staff being re-introduced. The forceps were again used, but as unsuccessfully as before, they were pushed onwards to a considerable distance, and with no small degree of force. "It's a very deep perinæum," exclaimed the operator, "I can't reach the bladder with my finger." "Act 2. The staff re-introduced, and a cutting gorget passed along it. Various forceps employed—a blunt gorget—a scoop—sounds and staves introduced at the opening in the perinæum. 'I really can't conceive the difficulty. Hush, hush! don't you hear the stone? Dodd, (turning to the demonstrator,) have you a long finger—give me another instrument—now I have it—good God, I can hear the stone when I pass the sound from the opening, but the forceps won't touch it—O, dear! O, dear!' Such were the hurried exclamations of the operator—every now and then there was a cry of hush, which was succeeded by the stillness of death, broken only by the horrible squash, squash of the forceps in the perinæum. 'Oh, let it go—pray let it keep in,' was the constant cry of the poor man." Gentlemen, a great deal has been said as to the sufferings of this unfortunate patient, and that he ought to have been, as he desired, released very early in the progress of the operation. Gentlemen, I believe it very frequently happens that when a patient has to undergo any protracted operation, unless he is a person of very strong nerve, he will desire to be released; but it is the duty of the operator not to yield to that, so long as there is any reasonable hope that by continuing the operation he may produce the effect that the operation is intended to produce; the operator must not yield to those wishes, expressed in a moment of agony, but ought to persist so long as he thinks he can persist with advantage and benefit: he must judge for himself. "This act lasted upwards of half an hour, the former upwards of twenty minutes. The stone was eventually laid hold of, and never shall we forget the triumphant manner in which the assistant-surgeon raised his arm, and flourished the forceps over his head with the stone in their grasp. The operator turned to the students and said, 'I really can't conceive the cause of the difficulty,' the patient being upon the table bound whilst the operator was explaining. The man was put to bed quite exhausted, but rallied a few hours afterwards, and leeches were applied in consequence of tenderness of the abdomen. He passed a restless night, was in great pain, and was bled from the arm on the following morning. Leeches were applied in the afternoon, and at about seven o'clock in the evening death ended the poor fellow's sufferings, about twenty-nine hours after the operation." No person has proved that the patient was kept bound while the operator was explaining: on the contrary, Mr. Callaway says the patient was immediately unbound and removed. Then follows the examination of the body. "There was a very large and sloughy wound observable in the perinæum, and the scrotum was

exceedingly dark-coloured from ecchymosis. The finger could be passed to the prostate without difficulty, which was not deeply situated—indeed, it was the declared opinion of Dr. Hodgkin and Mr. Key, that the man had not a deep perinæum. The whole of this cellular tissue throughout the pelvis was easily lacerable, and this was especially the case with the portion between the bladder and rectum admitting of the passage of the finger with great facility, and to a considerable distance. There was a tolerably fair lateral section of the prostate and neck of the bladder. The gland itself was larger than natural, and the portion which is designated the third lobe, presented a singular appearance, being of the size of the tip of the little finger, and forming a kind of valve at the neck of the bladder; part of this third lobe had a dark-coloured appearance, and it seemed as if some substance had been resting upon it. The bladder itself presented nothing remarkable. The peritoneum lining the abdominal parietes was highly vascular, and there was a slight quantity of turbid serum in the cavity of the abdomen. The kidnies had a mottled appearance throughout their cortical substance. There are two or three points in this case to which we beg particular attention: first, the statement of Mr. B. Cooper at the time of the operation, that he could not reach the bladder with his finger, as contrasted with the fact of the bladder being very readily reached in the *post mortem* examination;" that is denied by the witnesses called by the Defendant, "the man not having a deep perinæum. Secondly, the circumstance of the finger passing with facility between the bladder and rectum to a great depth, as considered in connexion with another declaration of Mr. Cooper, that he could not feel the stone with the forceps until the time of its extraction, although a sound passed into the bladder downwards from the penis, struck upon the stone, as was the case also on one or two occasions, when a staff was passed at the perineal opening. The surface of the calculus was rather larger than the disc of a shilling, flat oval shape, and apparently consisting of lithic acid."

Gentlemen, it is impossible to read this without feeling as one of the Defendant's witnesses, Mr. Alexander Lee, has expressed t that this is drawn up in a very unprofessional style. To represent the different parts of this as the acts of a tragedy, is what no person could have done who acted under a just feeling and sense of propriety of what was due to the person who was the object of his animadversion.

The next publication which the Plaintiff complains of was contained in the Lancet, published the week following.—"Our report of the operation of lithotomy at Guy's Hospital, in which Mr. Bransby Cooper, after employing a variety of different instruments, extracted the stone at the end of fifty-five minutes, the average maximum of time in which this operation is performed, by skilful surgeons, being about six minutes, has, as might have been expected, excited no ordinary sensation in the minds of the public, as well as among the operator's professional brethren. An attempt has been made to call in question the accuracy of our report, in a letter signed by a number of the dressers and pupils of the Borough Hospitals, which letter has been inserted as an advertisement in the Times, and also in the Morning Herald." Then he goes on to speak of a number of young gentlemen, who had pub-

lished something in contradiction to his statement. Then he goes on—" Of Mr. Bransby Cooper's amenity of manners and kindness of disposition we entertain no doubt; and the letter in question may be regarded as a testimonial of the estimation in which a good-natured lecturer is held by the young gentlemen who attend his class. But the question is, not whether Mr. Bransby Cooper is popular among his pupils, but whether he performed the late operation with that degree of skill which the public has a right to expect from a surgeon at Guy's Hospital—whether, in short, the case presented such difficulties as no degree of skill could have surmounted in less time, or with less disastrous consequences—or whether the unfortunate patient lost his life, not because his case was really one of extraordinary difficulty, but because it was the turn of a surgeon to operate, who is indebted for his elevation to the influence of a corrupt system, and who, whatever may be his private virtues, would never have been placed in a situation of such deep responsibility as that which he now occupies, had he not been the nephew of Sir Astley Cooper." The libel here states that, in truth, this is a question between Mr. Cooper and the public. It appears to me that the material question is, whether this operation was performed in such a manner as the Defendant alleges it was, in a very unskilful and very improper manner, and in such a manner as shews Mr. Cooper, the Plaintiff, is unfit to fill the situation he fills at present? that seems to me the real question in issue upon which your verdict must turn. Then he goes on to say—" This is the question, the only question, in which the public is interested; and if Mr. Bransby Cooper is desirous of bringing this question to an issue in a court of justice, it will be for Mr. Harrison, the treasurer of Guy's Hospital, to enlighten the minds of the jury as to the circumstances under which the nephew of Sir Astley Cooper was elevated to his present situation. In the event of an action, we shall, most unquestionably, call upon Mr. Harrison to disclose these circumstances to the jury. In the mean time, we do not anticipate the decision of this question by positively impugning Mr. Bransby Cooper's skill; but we contend, as we have repeatedly contended on former occasions, that the inevitable tendency of making the patronage of hospital surgeoncies an affair of family influence, jobbing, and intrigue, is to occasion a cruel and wanton augmentation of human suffering, and to render frequent such heart-rending spectacles as that which was lately exhibited at Guy's Hospital." Gentlemen, I believe I have now read all that is set forth in the declaration: I am not sure whether I have or no.

Now, as to what is said relative to the appointment of Mr. Cooper, that it was a matter of corrupt influence, it is no otherwise material in this action, in which Mr. Cooper complains of a libel upon himself, the conduct of the hospital is not material, except as it may shew one way or another, or lead to the conclusion, one way or another, with regard to the professional skill and ability of Mr. Cooper to fill that situation:—for, supposing that the governors of the hospital, instead of electing, as Mr. Harrison says they have always been in the habit of doing, from among the persons that have been brought up there, ought to make those offices matter of public canvass, and public examination, and public inquiry, the Plaintiff is not at all answerable for that; he is not answerable for any fault, if there be any, that they have committed.

I am far from insinuating that I am of opinion that a public canvassing and polling for these situations, which I know sometimes takes place, because I have been canvassed upon them, is likely to obtain a person better qualified than a mere private election made by the managers of the hospital. I do not apprehend that has any connexion with this cause. However, as to the manner in which Mr. Cooper was elected, you have it from Mr. Harrison himself, that the committee of the hospital, thinking it expedient to establish a school of surgery or anatomy at the hospital, which they had not before, they thought it right to make an alteration in the situation of the officers. Sir Astley Cooper being at that time the surgeon of the hospital, it was proposed he should be made consulting surgeon, that Mr. Cooper should be appointed surgeon, and Mr. Callaway assistant. The plan proceeded not from Sir Astley, and so he tells you himself; it was the voluntary act of Mr. Harrison and the committee of governors of the hospital, acting according to their judgment from what they thought best for the interests of the hospital, to have a school there in addition to the opportunity of improvement and instruction afforded by seeing the operations performed. As to any insinuation that this was obtained by any intervention of Sir Astley Cooper, or his contrivance, that is negatived by Mr. Harrison, who is called to prove it, as well as by Sir Astley Cooper himself.

Gentlemen, we come now to dispose of the question in the case, and I will strip the case, as the Defendant desires you to do, of all technicality, and come to the issue presented to you by two or three of these pleas, in which the Defendant takes upon him to affirm, and consequently ought to prove, "that the Plaintiff performed the operation therein mentioned, and occupied a longer space of time than was necessary or proper, or than a skilful surgeon would have occupied in that behalf; and that the Plaintiff then and there performed the said operation in an unskilful and unsurgeon-like manner, and did then and there by such unskilfulness cause the said patient a much greater degree of pain and suffering than he would otherwise, and but for that cause have incurred; and that it was, and is doubtful and questionable, whether or not the death of the said patient was caused by such unskilfulness as aforesaid, and whether, if due and proper skill had been used in the said operation, the life of the said patient would not have been saved." That is, was this operation performed by Mr. Cooper in a proper and skilful manner, or in an unskilful and improper manner? the Defendant is to prove that it was; and notwithstanding the form and manner in which the first publication is couched and sent into the world, upon which I have already made some observations, and although it appears that that first publication was delivered to the Defendant by a person who had received, according to his own account, some reasons of dissatisfaction—I will not carry it higher—from Mr. Cooper, some reasons of dissatisfaction from him who will not say that he did not declare, that he would watch an opportunity, to have what might be considered a revenge upon him; but, although it comes from such a person, and is in such a form, yet, if the Defendant has in substance made out to your satisfaction that this operation was performed in an unskilful and unsurgeon-like manner, you ought to find for the Defendant, if otherwise, your verdict ought to be for the Plaintiff.

Now, the course of proceeding has called upon the Defendant to begin to make good his propositions, namely, that this operation was performed in an unskilful and unsurgeon-like manner. The operation itself, is agreed on all hands, to be one of the most difficult known in surgery, and Mr. Lee said that the surgeons were hardly yet agreed as to the best mode of proceeding; its difficulty is admitted on all hands, and according to the testimony given by the witnesses called for the Plaintiff, who are some of the persons of the first name in their profession, who may have been hospital surgeons, or may be so now, that I do not know; but according to the testimony of all those persons, the length of time that an operation may take, furnishes no criterion as to the skill, or want of skill on the part of the operator, that there may be many circumstances which the operator cannot foresee, that he cannot even at the time explain, that may cause great delay. If the rapidity with which an operation of this kind can be performed, is to be considered generally as a criterion of skill; it is in evidence, that Mr. Cooper performed this operation in less than two minutes, but they are agreed that the length of time furnishes no criterion, and they agree moreover, that difficulties may arise which it is hardly possible to foresee or to provide for.

In this case, Mr. Partridge, one of the witnesses called for the Defendant, has said this, "the impression on my mind is, that the stone was lodged upon the pubes. I cannot say exactly what detained it there, but I am perfectly satisfied it was there, because the sound always touched it on withdrawing, and it was at last extracted by the use of the curved forceps;" he is mistaken in that, but it is not at all of importance, "and by pressure above the pubes, and depressing the hand, if the operator had been aware of the situation of the stone, he would have exercised precautionary measures before and after getting into the bladder." Mr. Callaway's testimony, as to the particular situation of the stone, is very much to the same effect; he apprehended it was above the pubes, and so Mr. Partridge tells you, though the Defendant says that cannot be—so says Mr. Callaway, that it was lodged above the pubes. Nobody can say positively how it was, but it does sometimes happen, and may happen in the present case, that when the bladder is nearly devoid of urine, the parts of the bladder will contract, and by their contraction will, for a certain length of time, hold the stone in the particular position in which it may happen to be, so that you may be able to touch it with some instrument, a sound or staff, and yet that you should not be able to lay hold of it to withdraw it until after the patient has been so far exhausted, as that the contraction of the bladder shall in some degree cease, and leave the stone more accessible to the forceps than it was before.

Now, the witnesses called on behalf of the Defendant to prove his case, are, first, Mr. Partridge, a surgeon, practising in Colchester, and probably with success; a person of some degree of skill, but in his evidence he negatives absolutely that which is alleged in the plea, namely, that on the first incision, the knife did not enter the groove of the staff. He says, "I have no doubt the first incision went into the bladder.—I cannot tell how any other person can doubt it—I am convinced that the point of the knife did find its way to the groove of the staff." Then he says, "I do not know whether any person

can judge so well as the operator, whether the forceps reached the bladder, or whether they went in, he ought to be the best judge, although he is very likely to be mistaken if he gets hurried. I should judge by what issued from the bladder—I will not swear that the forceps were used twice with considerable force." He said, in his examination in chief, "that he introduced his finger with some force, but it did not strike him as being very violent." He says, "I thought there was an opening, because I saw an issue of watery matter mixed with blood." I think two other witnesses examined, say, "that urine did issue, and if urine did issue, it seems to be agreed that the knife must, in some way, have entered the bladder." Then this gentleman goes on to give a detailed account, in which he represents several instruments were used, and that a great length of time was occupied; and the conclusion he draws from the whole is, that the operation was not performed with that skill that might be expected from a person who filled the situation of surgeon to Guy's Hospital. Whether he drew a right conclusion or no is another question. Other persons have said it is exceedingly difficult to draw any conclusion from an operation seen in this way, without talking to the operator about it, and suffering him to explain. It is mentioned by several of the witnesses examined on behalf of the Plaintiff, that it does often happen it is a very long operation. There have been some much longer than the present; the operation has been continued often for a great length of time by reason of the difficulty of catching the stone, if I may use the phrase, by it being detained by the contracting force of the bladder.

Then the next witness was Mr. Clapham, upon whom the Defendant thinks he ought not to place any reliance; and perhaps I should do him no injustice, by not noticing it further.

The next witness is Mr. Joachim Gilbert, who says he is a member of the College of Surgeons, and saw this operation; he is assistant to Phelps, who married the Defendant's sister. He represents, that after witnessing a part of the operation, he could bear it no longer, that very great violence having been used. He is the person who says, that after having staid thirty-five minutes, he thought necessary to withdraw, his feelings could bear it no longer, and went away: he says, "the operator used much violence, I should say, unnecessary violence—he used the instruments in the customary manner of other operators;" although he says, they do not use violence—he represents that the Plaintiff did use that violence—he says, "after the second incision, I cannot say where the knife went, being situated by the side; but he was a long time doing it, and after finishing, as I considered, the second incision, he carried the knife forward, and, I should say, held his arm too high, and then he carried his knife forward, as I should consider, between the bladder and the rectum, the fundament:" he says, "there was a flow of blood;" then he speaks of the Plaintiff's calling for a crooked pair of forceps, having tried the straight forceps unsuccessfully; then he says, "he passed his finger again into the wound, and used great violence in so doing; and upon withdrawing the forceps, a squashing noise was heard; he passed the forceps upon his finger into the wound four times, and used considerable violence in so doing. He then called for Sir Astley Cooper's knife, and

made a cut with it, and passed his finger into the wound again, and twisted it round several times in the wound; then he did not succeed in extracting it. He appeared much confused; his hand shook a great deal, and he appeared very pale, and his lips shook very much; he then retired from the theatre." He says the operation was very badly performed. He represents himself to be, on his cross-examination, as carrying on business at Beaminster as an assistant. He says "he thinks" he did not reach the bladder upon the first incision; and he ought not; the first cutting is merely cutting the integuments. There is some confusion between the first and second cutting and the first incision; he says, "I think the first incision that ought to have reached the bladder, did not." His reason for thinking the bladder was not cut is, because the stone was not extracted, and because there was no flow of urine that he saw. The other witnesses say there was. "The forceps were used with unnecessary violence. I think he did not get into the bladder the first time. I stood about a dozen feet from the operator, on the first row of benches. I never performed the operation of lithotomy. I remained about three months at Guy's Hospital." You are to judge whether this is not a representation much too highly coloured, he himself never having performed in a case of lithotomy. He says, the Plaintiff performed a good many other operations, and he does not think him a good operator; and he goes on to say, that, as to tying up the subclavian artery, an ignorant surgeon may accidentally do it with success. What the value of the opinion of a person is, who says that an ignorant man may perform a difficult operation with success, it is for you to judge.

The next witness is John Thomas, who witnessed this operation; he is demonstrator at Mr. Sleigh's school of anatomy; he was a pupil, and never saw the Plaintiff perform any other operation. He says, "to speak from impression, I think, I never saw an operation performed so unscientifically and so bunglingly." He gives us some account of Mr. Sleigh's school, which it is not necessary to trouble you with. He says, he mentioned to a person, of the name of Braynsford, that he had been present at this operation. He does not know what the Plaintiff meant by calling for Sir Astley's knife.

The next witness is Mr. Jeffry Pearl, who was present at Mr. Grainger's, and had some conversation at Lambert's with the Defendant, where certainly some pains were taken to represent the case to him in a way that might make him suppose there had been a want of skill on the part of the Plaintiff, and that the instruments had at some time or another passed between the bladder and the rectum. He gives a long account of it; he says, after the incision, there was not a gush of water, but a trickling of urine; now there was at no time a gush of water—at any time, therefore, this must have been the case where there was not a quantity of water in the bladder to occasion a gush. He says, "I sat about the middle row of the theatre, rather on the operator's right-hand. I conceive I could at that distance distinguish between arterial blood, and veinous blood mixed with urine; arterial blood would spout, whereas veinous blood would trickle down. After the knife and staff were forced forward with the intention of penetrating the bladder, I believe a small portion both of blood and urine followed, there was no gush of fluid at any

subsequent period. I rather think he attempted to introduce the forceps after the first incision, but failing in that, he used Sir Astley's knife—various forceps were used, and the same forceps introduced repeatedly—very great force was used, the forceps after being introduced were opened and shut with great violence, which caused the squashing noise—the forceps were pushed a considerable distance, and I believe three fingers of the hand were introduced entirely. I have witnessed twenty operations, but none were performed in a manner like this, they did not average more than five minutes. I have seen one performed by Mr. Green, that lasted a considerable time, I suppose nearly an hour, in that case there were decided difficulties, the man had been twice operated upon before, and there was a considerable cicatrix to cut through, and two very large stones were extracted; they crumbled into innumerable small pieces, which were extracted from the bladder after the forceps were withdrawn. The time was occupied in removing those fragments, and no force was employed, the forceps and scoop were used by Mr. Green in a manner decidedly contrary to the Plaintiff's use of them." Now, I think it appears by the testimony of some of those called by the Plaintiff, that the scoop is sometimes introduced, if the forceps should fail of getting at the stone, either bringing it out by the scoop or of moving it, so that the forceps can lay hold of it—in this case, he thinks that the stone was a small one, it appears not a large one, but some of the witnesses say the larger it is, the easier it is to lay hold of by the forceps, but perhaps not the easier to draw through the opening. He says, the Plaintiff said, "I can conceive no earthly reason why I cannot extract the stone; I think he might have felt the stone if he had introduced the forceps in a scientific manner"—that is his opinion. "The sound will pass through an opening too small to admit the forceps."—He says, "the Plaintiff did not appear to me to be in a state of self-possession during the operation; he appeared to use the instruments without any rational object—the operation lasted nearly an hour." He says, "I saw the parts after they were removed from the body; there was nothing in the state of the parts to account for the delay in the operation. I saw the gorget introduced along the staff;—it was held in the manner that gorgets are usually held, which is horizontally. I saw two incisions in the neck of the bladder; a portion of the neck of the bladder was included between two incisions. I did not observe any horizontal incision." Now, Gentlemen, the witnesses called on behalf of the Plaintiff, say, where the gorget is introduced, that that is an instrument so peculiarly constructed, that if, before its introduction, there is an opening of a certain definite size, the gorget cannot enlarge it; the gorget must make a hole of a particular definite size; therefore, though the gorget might have been introduced after the knife, if the knife had made an aperture of the size the gorget was calculated to make, it would probably make no alteration. He says, "I did not think it possible that the patient could recover—bruises in the bladder are more dangerous than cuts." He says, also, "the bladder was very much thickened, which would be produced by violent inflammation. I have seen the Plaintiff perform several operations—I should not conceive him to be a good operator, by any means." He himself commenced in October, 1827—he was apprenticed at Wood-

bridge, to an army surgeon, and never performed this operation himself. According to his own account of himself, he was a very young and inexperienced man. He again says, "I think there was urine;" then he says, "I am not competent to state, whether the forceps did pass between the bladder and the rectum, or no—I did not form an opinion; but I do believe that they did pass between the bladder and the rectum." He says, "I will not distinctly swear whether I saw him put his hand between the bladder and the rectum;" that is, speaking of Mr. Lambert having his hand in the parts after they had been separated—the putting his hand in was mentioned by Dr. Hodgkin—this witness says, that Mr. Lambert pointed out to Dr. Hodgkin that there was a space between the bladder and rectum. I will mention to you, by and by, what the medical men who took these parts out of the body, say upon that subject.

Then Mr. Lambert was examined—he is the author of this paper, and he must come into this place with a strong inclination to support the truth of what he says; more especially, as he says he pledged his word and honour to the Defendant, that this report was perfectly correct. Some reliance has been placed by the Defendant upon the circumstance that this report was handed to him under these circumstances, with an assurance that it was true, and Mr. Lambert says it was—but if the Defendant has been led himself inadvertently to give publication to that which is untrue, relying upon the assurance of another, that other being actuated by improper motives, he must answer in his own person for the errors which he has been guilty of through the means of another. The only material part upon which I need dwell, is the part where he says, with regard to the examination after death, that he did not thrust his finger between the bladder and the rectum with any degree of force; but that it passed up with the greatest facility, that he broke down no part of the structure. So that he would lead you to infer, that the instruments must have passed there.

The next witness on behalf of the Defendant is Alexander Lee, who is a person somewhat advanced in life, and a gentleman whose professional life does not appear to have been the most regular; who, nevertheless, may have been a man of competent skill; he has seen a great many operations performed; in general, the time has been five or ten minutes; he has seen one last a quarter of an hour; he thinks the bladder contracts when the urine escapes, and that may have caused the difficulty. "I am not aware of the circumstances that produced the delay in this case." He did not examine the stone. He says the gorget was used at the latter part of the operation. He says most of the operations he has seen, have been in Paris, and there they use different instruments. "I suppose the operation lasted more than half an hour: I think not an hour; I did not mark the time exactly; I am not prepared to give an opinion of that importance, whether the operation was scientifically performed." Speaking of the comparative skill of the two surgeons, Mr. Callaway and Mr. Cooper, he thinks Mr. Callaway the better surgeon; he says he would rather not give an opinion, whether the Plaintiff is properly qualified for the office of surgeon for Guy's Hospital; because he is not a sufficient judge. He says the report is generally correct, though the form is

objectionable; " there are expressions I did not hear used :" then he says it was a small stone: he is not aware of any circumstances that should have rendered this operation difficult; that may be true, and yet there may have been such circumstances.—Then he gives an account of himself, which I need not read. He says nobody can explain so well the difficulties of an operation, but the operator himself; that he may be able to explain what appears doubtful to a bystander, and it is peculiarly so where the operation is within the body; for nobody can judge so well, how far the instrument has reached. He says, " I think it rash, to give an opinion upon such an operation, without asking the operator to explain what appeared doubtful to another; no person can form an opinion so well as he can, or know the difficulties of the operation; I should think it most presumptuous and rash, to give an opinion, without having spoken to the operator himself; the assistant surgeon, who holds the staff, would be the next best judge." Then he says, " I read the Lancet, the day of its publication; had it been confined to a plain matter of fact statement, it might not have been objectionable; but it is a very unprofessional report."—The mode of operation, he says, is not yet settled in any country; every surgeon uses his own instruments; a man must have a variety of instruments to use those that are necessary. A small discharge followed the first incision in the bladder; it might have been urine, or blood and urine together; he says, sometimes the stone is folded in the folds of the bladder, owing to the bladder contracting upon the approach of the instruments; he is of opinion that the Plaintiff owed it to himself, as well as to his class, to explain the unusual difficulties of the case; there might be unusual difficulties, and it is possible that the operator might not be able to discover them.

The next witness called on behalf of the Defendant, was Thomas Bolton, who says the report is generally correct; that he should say, the operation lasted an hour; there were many instruments employed; he never saw so many employed in the operation before; the operator did not appear to him, to be in self-possession at first; but he afterwards seemed to regain it in some degree; the knife was twice introduced; he used the cutting and blunt gorgets; the cutting gorget was used after the knives; he has seen six or eight operations for lithotomy, some of them lasted five or ten minutes, or more; that the stone was not grasped by the forceps, which caused the delay; in this operation, there was considerable violence used by the Plaintiff; the forceps were thrust a considerable way back, after he had used the knife; there appeared to me considerable obstructions, on the first introduction of the forceps; I never saw any other cutting instrument than the gorget, used upon such operations, on this occasion it was held horizontally. He says, " I saw the stone; it was small, compared to what is often found in the bladder; the Plaintiff turned round to the class and said, he could not explain the cause of the difficulty; this was before the stone was extracted; and while the patient was lying on the table, and after it was extracted, he used some expression of the same kind; that he could not give any explanation. I could not say it was scientifically performed." He was at the time a pupil, and had been so from the first of October; that he had served his apprenticeship at Daventry,

in Gloucestershire; that was the fifth or sixth operation he had seen; he does not recollect whether he has seen any since.

The next witness was Mr. Harrison, who was called to prove that this appointment was a job; which he has most distinctly negatived.

That being then, the evidence on behalf of the Defendant, we come to the evidence on behalf of the Plaintiff. It is not my province to go into that so much in detail, as I have done the other; because, being given to day, it may be more fresh in your recollection.

Mr. Callaway is called, who was present at the operation, and as the person who had the instruments, does not profess to be a man of skill, though great complaint is made that other persons were not called; I do not know who could be called, except the Plaintiff's own pupils; you will say whether the opinions of persons so young, and so unexperienced, would have been desirable to have been offered to you. Mr. Callaway gives you an account of the operation; he represents the Plaintiff to be a person of skill, though he was his rival, and successful rival in obtaining the appointment of surgeon at this hospital; Mr. Callaway holding only the office of assistant. The enlargement of the opening was necessary; he was of opinion from the first, that the stone was above, and behind the pubes; that is the same opinion as Mr. Partridge held; and he was confirmed in that, by pressing upon that part, to press the stone down, and it was at length extracted; a flat stone is more difficul to get hold of than if it were round. He represents the operation to have been performed, upon this occasion, by Mr. Cooper, with as much skill as could be expected, from a person engaged to perform such an operation; and he speaks of him, generally, as a man of great skill and accuracy of judgment. At present, he thinks no judgment can be formed upon the inspection of the parts in the state in which they now are; he did see them afterwards. Afterwards, he says, the whole of the cellular membrane was easily lacerated, as is usually the case where the operation has been fatal. My attention was particularly directed to the state of the cellular membrane between the rectum and the bladder; the circumstances that produce that easily lacerable state, I suspect to be a sub-acute inflammatory process; I have observed it in patients who have died under other great operations; I have seen the appearance produced by the introduction of the forceps in those cases, but not the same appearance as in this case; that in those cases there was extravasated blood mixed with the mucous secretion;—it is the effect of bruise, that is not so here; violent bruises would prevent the small vessels from bleeding, but then there would be the appearance of bleeding; though they might not bleed, they would retain their coagula; in this case, the cellular membrane was dark, the sub-acute inflammation would have produced that, it would have caused red blood to be found in it, where it was not before. The incisions are made with a knife; one made by the knife upon withdrawing it, and the other made transversely; upon withdrawing the finger, one is in the external, and the other in the internal part of the neck of the bladder; all the first parts of the operation were performed after the manner directed by Mr. Key. He does not recollect, whether Mr. Cooper stated he did not believe that stones were ever attached to the bladder; there might have been a little

attachment. He is of opinion that the bent forceps passed over the stone, and that it could only be reached by the use of the straight forceps, and considerable pressing down. If the finger was on the prostate gland, the gorget might be inserted with perfect safety, without making any fresh incision, supposing the opening to be large enough to admit it. He says, the means used before the operation, did not enable us to ascertain the exact position of the stone. The use of the sound could not have placed the stone in that part; the difficulty arose from the stone being in the anterior part of the bladder, as it was only felt upon the concavity of the instrument, and not its convexity. He represents this person as not a man of great powers, he seemed likely to sink under the operation, and he had that impression himself.

Then Mr. Key, the senior surgeon, was examined; he did not see the operation, but he has heard nothing that induces him to believe the patient lost his life by any fault of Mr. Cooper. He says, difficulties often occur, and it is rash to attempt to form a judgment, without communication with the operator. He speaks of the stone being often held by the contraction of the bladder, and he mentions it as a very common cause of difficulty, the stone being held back, and that is as likely to be so in the case of a small stone, as a large stone. He says, frequently, the forceps are used in sounding for the stone, for a considerable time, without effect. "I examined the body afterwards; I saw no evidence of the operation having been performed otherwise than scientifically; if any violence had been used;"—some of the defendant's witnesses speak of great violence having been used—"I think the effect of that would be discovered afterwards. If the forceps had passed between the bladder and the rectum, in that case, most likely, a passage would have been found, through which the forceps had been passed; it would have been torn, and it would have had extravasated blood, and been in a state of slough; but it was not so, it was entirely sound. I examined carefully the parts outside. I can distinctly state, that the whole of the cellular membrane on the outside of the bladder, and between the bladder and the rectum, was perfectly entire: if much force had been used in pushing the forceps in the bladder, against the prostate gland, the parts on the outside of the prostate gland would have been torn, and that would have appeared after death; but there was no such appearance; there appeared a free and fair section into the neck of the bladder, and likewise through the prostate gland; such a section was more necesssary in this than in a common case. I regard the assurance of such an opening, as the most important part of the operation. The gorget would answer the purpose equally well with the knife; the advantage is, that it must make an opening of a certain length and breadth; it can neither cut more nor less. My experience proves to me, that there are but few cases of adults, where you can feel the bladder with your finger, it can only be done in children, or in very spare persons; it is desirable to do so if possible, and the operator is justified in using some endeavours. I have never met with a case in which I did not reach the prostate gland. The prostate gland is a hard substance into which you introduce the finger; the finger is the best director for the forceps that a man can use. I had no opportunity of examining the perinæum; the parts were taken from the body before I saw them. On

the day of inspection, Mr. Lambert met me in the square of the hospital, where I was talking with four or five of the pupils; and he said to me, "Sir, your straight staff," it appears he had been the inventor of that instrument, "will never answer in a deep perinæum." I answered, knowing that a deep perinæum had nothing at all to do with the staff, that a straight staff would answer equally as well in a deep, as in a shallow perinæum; "you know nothing at all about it." I was convinced he had never performed the operation himself. I said, "if you call this a deep perinæum, I can only tell you, I have operated upon one twice as deep," alluding to an extraordinary case I had about a fortnight before; not having inspected the parts when the body was entire, after death, I could form no opinion of the perinæum in this case." He is asked, if he did not know what the depth of this perinæum was; how he could venture to say he could operate on one twice as deep. He says, he could form that opinion from the appearance of the habit of body of this man, compared with one of sixteen stone, that he had performed the operation upon. He says, I consider Mr. Bransby Cooper to be a good surgeon. On cross-examination, he says, if the incision had been properly made, obliquely through the prostate gland and neck of the bladder, and the gorget carried directly horizontally, it would not have gone in the same track, that is quite clear. I have operated between fifty and sixty times; I have performed forty operations at Guy's Hospital, but then I should say, in justice to Mr. Cooper, the major part of them were on young persons. If there had been unusual mortality in the Plaintiff's patients, I should have known it, because he employs the same instruments that I do. I do not know that I have employed in Guy's Hospital more than three instruments. I employed a scoop on the occasion of a round stone, that was lodged in the fundus of the bladder, that I could not dislodge by the forceps. I used the scoop to draw the stone to the neck of the bladder; that accounts for the use of the scoop. If the bladder contracts, and there is nothing in it, it must come in contact. If it collapses, it may not be so entirely in contact; that stands to reason. He says, that a patient with an enlarged prostate, a man weighing sixteen or seventeen stone, must have a much deeper perinæum than the man Mr. Cooper performed the operation upon; the perinæum in that case was so deep, I could hardly reach the stone with the longest pair of forceps I had. In the operation of tying the subclavian artery, which has been represented by more than one person as having been performed with great skill, the patient did not ultimately recover, but I believe he died of the disease, more than he did of the operation, because there was secondary hæmorrhage produced in the aneurismal sac, below where the artery was tied. I consider the Plaintiff to be a scientific surgeon; a man cannot be a good surgeon without being scientific; if a man has good reasons for what he does, I conceive him to be a scientific surgeon. Then he says, on one occasion, he thinks there was an article favourable to the Plaintiff, inserted in the "Lancet." On re-examination, he says, I believe it was more as to his having established a school of anatomy at Guy's, where there had been none before.

The next witness was Mr. Laundy, who handed the instruments. I do not think any thing material turns upon his testimony. According to the testi-

mony of the witnesses for the Plaintiff, it must be left to the operator what instruments he will use, and if he is unsuccessful with one, he may have occasion to resort to another.

Then Dr. Hodgkin, the professor of morbid anatomy at Guy's Hospital, is called. He says, "I looked at the body after death; he was a stout formed man; from the size of the subject, the perinæum must have been of a full size. After the removal I did examine the parts and the interior of the pelvis. Before the removal, there was a wound from the external surface into the bladder, I was aware of no other; there was no appearance of wound or bruise between the bladder and the rectum;" and he says, positively, there was none. He says, "the kidnies were mottled by a white deposit, which is not very unfrequent in subjects of that kind; if there had been any bruise, or a wound made within forty-eight hours of the man's death, between the rectum and the bladder, I certainly should have seen it, and I saw none; it did not appear that any instrument had passed anywhere except into the bladder. After I had removed the parts, I was necessarily occupied for an hour, in which time the parts were put away, and I was called away for some purpose; Mr. Key saw them while I was absent, and after that Mr. Lambert desired to see them; I either took them down myself, or one of my assistants, and he saw them first in my presence; I left the apartment to wash my hands, and then Mr. Lambert informed me he had found a passage; he shewed me the passage, and it struck me that I had not seen it before, and I taxed him with having made it, for I am confident I had not seen it before; I can hardly conceive it could have escaped me if it had been there; he said he had his finger in the passage when he shewed it me; if made before death I think it would have contained coagula, of which I saw none; and it is my firm conviction it was made after death." He says, "I have been in my present situation in the hospital very nearly three years; I was a pupil at the hospital during Mr. Cooper's apprenticeship; I believe him to be a very fair surgeon, and decidedly a good anatomist." He says, "I should understand a passage to mean a forced passage between the rectum and the bladder."

Then the next witness is Mr. Brodie, a surgeon of eminence; he says, having heard the account Mr. Callaway has given, he considers that it was an operation of considerable difficulty, and he should believe it was performed in a skilful manner; he has performed the operation many times. He says it varies very much in point of circumstance and difficulty, more than any in surgery; the length of time occupied, or the use of many instruments, indicate the difficulty, but it is not any criterion of the merit or demerit of the operation; he belongs to St. George's Hospital, not to Guy's. Upon cross-examination, he says, he has not seen Mr. Bransby Cooper perform any operation. He attended some meetings. It seems some of the gentlemen, the lecturers at some of the institutions, thought themselves injured and aggrieved by the publication of their lectures in the "Lancet," and made common cause, and endeavoured to prevent it; and the Defendant says, the result was, that he was allowed to go on; that is not material to this

cause; whether he has been right or wrong upon that subject, or any other, is not material, we are here to enquire as to his conduct upon the present occasion, as to the accuracy of his representation, that this operation was performed in an unskilful and unsurgeon-like manner.

The next witness is Mr. Benjamin Travers. He says, he is a surgeon at St. Thomas's, and has practised for twenty years; he has heard the evidence given by Mr. Callaway and Mr. Key, respecting Mr. Cooper and the operation in question; and he has heard of no circumstance that would in his mind tend to impeach the skill of the operator; he thinks the operator is the best judge of what instruments to use; he agrees that the length of time is not alone a criterion of the surgeon's skill. He says he has known the Plaintiff for many years, since he entered the profession, and he considers him an ingenious and intelligent surgeon, and fit for the situation of surgeon of Guy's Hospital; difficulties sometimes occur, that baffle the most skilful operator; I consider this operation to have been one of those. I imagine the distance between the tuberosity of the os-ischium and base of the prostate to be three inches." I do not feel the materiality of that, "if any considerable violence had been used in the introduction of the forceps, so as to be injurious to the patient, it would have been discoverable afterwards;" then he says, "I have performed the operation often in difficult cases, and I have called for different instruments to assist me, the scoop, and the straight and bent forceps, and I have operated for the stone in two cases where no stone was found, though I am convinced there were stones, and an able surgeon met with the same unfortunate circumstance three times, but upon the third operation a small stone escaped, which was found to be the lightest of human calculi, and one which, from the smallness of it, would escape with the gush of urine." He says, he has seen the Plaintiff perform three or four operations; and he has seen him operate for subclavian aneurism, and do it exceedingly well; the tying up that artery, he thinks, is a most difficult operation. He says, I have been engaged in similar operations, and I think no one can judge of the propriety of the time but the operator.

Mr. Green, the next witness, says, he is one of the surgeons at St. Thomas's Hospital, and has been so between six and eight years; he has performed operations for the stone many times, and has generally succeeded; he has known the Plaintiff many years. "I saw him perform one capital operation, that was, the tying the external iliac artery; it is much similar to putting on the ligature for the subclavian, and I must say that the operation I witnessed was most admirably performed; it is one of the most difficult operations in surgery. From my general knowledge of Mr. Cooper, and his fitness for the situation he holds, I consider him perfectly competent; from Mr. Callaway's account I could draw no inference whatever to the prejudice of the operator's skill; from the situation of the stone I consider it to be a case of difficulty, and in my judgment the instruments employed were such as a skilful operator might find it necessary to employ. The length of time consumed in the operation, does not present any objection to the operator's skill; I think the most skilful operator might probably have occupied

the same time, and the result might have been the same. He says, considerable general anatomical knowledge is requisite in the tying the external iliac artery.

Then Dr. William Babington is called, who says, he knows the Plaintiff, Mr. Bransby Cooper, and has had constant opportunities of knowing him by his attendance at the hospitals, being in perpetual communication with him, and he knows the general course of his education; he has known him many years, and has had communication with him upon anatomical and surgical subjects. He says, when my son, Dr. Benjamin Babington, was preparing himself for his profession, he was at that time a student at Guy's, and on that occasion Mr. Cooper paid great attention to him; he came to my house, and I have had full opportunity of being satisfied as to his anatomical knowledge; I think him fit to fill the situation he does of surgeon to Guy's Hospital.

The next witness is Dr. Roget, a physician in London; he says he has paid particular attention to subjects of anatomy; in early life he gave lectures upon comparative anatomy; he has often seen the Plaintiff professionally, in cases where surgical and medical attendance was necessary; and, as far as those opportunities went, he had formed a high opinion of his skill and judgment; he did not read the report till yesterday, and it is not such as he should have expected to come from any surgeon.

Then Mr. Morgan, a surgeon at Guy's Hospital says, he has often seen Mr. Bransby Cooper operate; he has the highest opinion of him as an operator and as a surgeon.

Then Mr. John Hilton, a pupil at Guy's, and assistant demonstrator, is called; he says, he was present at the *post mortem* examination of the patient. "I observed he had a deep perinæum. While Dr. Hodgkin was preparing to examine the body, I passed my finger from the external wound into the perinæum. I could not reach the bladder; I imagine the stone might have dropped from its situation, and then be easily reached and extracted by the straight forceps;" but that is his opinion only, and the opinion of a very young man.

Then Sir Astley Cooper is examined, and he gives you an account of the course of education of the Plaintiff. He says, that before he was appointed to this situation he had been in his house a great deal; he had been to the Norwich Hospital and studied there two years, and also at Guy's; then he went to the Peninsula, and was present at many of the last battles, and had an opportunity of seeing many instances of persons who had been severely wounded; he then went to America, and staid there two years, and was then bound to himself for six years; and he says, if I had not believed him competent be should not have been surgeon to Guy's Hospital, if it had been in my power to prevent it, although the plan was not at all my own; the plan was entirely that of the treasurer and governors. His opinion is, that he is a good anatomist and a very good surgeon. You cannot expect a man should be all at once a good surgeon, it must require time. You have persons generally introduced at no very advanced period of life, and who improve as they go on; if no person is to be employed who has not seen a great deal of

practice, you would employ nobody at all, he must have an opportunity of acquiring experience. Sir Astley Cooper then says—nothing is a greater deception upon the public than a man saying, I did an operation in so short a time; the fact is, that time is not a criterion at all of the excellence of the operation. In one case he performed the operation in about four minutes, and he has been an hour performing the operation. He says a small stone is more difficult than a large stone; the moment you put the forceps in, you strike the large stone and readily seize it. No man can judge of operations for the stone who has not performed it, and no man can be a judge of the individual case but the operator;—" If I had witnessed an operation that had lasted an hour, and had seen the various events take place that the witnesses have described, on both sides, I should have thought myself unkind and unwise if I had formed an opinion to the prejudice of another, without speaking to him upon the subject; because, it was utterly impossible I could form a judgment upon the subject without."

Upon cross-examination he says:—" I do not think I have given a description in my lectures of any operation exactly similar to this. I have thought it my duty to mention the unsuccessful, as well as successful, operations. I think there should be, in every hospital, an assistant surgeon, so that he should be prepared in some degree for the situation he is to hold; I do not think the stone could have been at the bottom of the bladder; the man must have made water very recently before the operation, because there was so very little discharged; he thinks no surgeon would return a patient to his bed after feeling the stone, but go on, if he had felt it, and was sure it was there, and endeavour to extract it; he never heard or knew of a person being returned to his bed, after being in vain cut for the stone. He says, he found the pupils were all very anxious that a person who could communicate knowledge so easily should have the means of conveying it; they were anxious, therefore, for his election.

The next witness is Mr. William Dalrymple, the senior surgeon of the hospital at Norwich; he says he has been assistant surgeon and surgeon there rather more than sixteen years; that they had large practice there in lithotomy; I think I have heard, upon some former occasions unconnected with this cause, that at the hospitals in London, and at the hospitals at Norwich, there were the greatest number of cases of lithotomy performed. He says, " I remember Mr. Bransby Cooper coming to Norwich, to serve his apprenticeship, with one of the surgeons of the Norfolk and Norwich Hospitals; I was not at that time connected with the house; I was a frequent visitor there, and I thought the Plaintiff a remarkable clear, quick, and intelligent boy; I have performed the operation seventy-six times; I have been present at little less than three hundred operations for lithotomy; I do not find, in the account I have heard, any indications of want of skill; the situation of the stone, as mentioned, explains all the difficulties; the same difficulty has occurred to me, and occasioned twice or thrice the length of time that would otherwise have occurred; I have never attended at our hospital, or in private practice, without having a larger assortment of instruments than was mentioned yesterday, that I may use whatever I thought necessary; I

have been tried to the utmost in that way; I have been so unfortunate as to perform an operation for the stone, in which, from the magnitude of the stone, it was impossible to remove it, and the man was removed from the table of the operation to his bed, and died in three hours; I believe the Plaintiff to be a most skilful hospital surgeon."

Upon cross-examination, he says, there has been no anatomical school at Norwich. He knew that some young men attempted to get up one, but he does not know that it is now in existence; that he was applied to on the subject, and discouraged it.

Then the last witness, Mr. John Watson, the Secretary to the Apothecaries' Company, is called to prove that Mr. Clapham, whose evidence the Defendant very properly gave up, had, unfortunately for himself, made a very great misrepresentation of his age to the Apothecaries' Company, upon which he obtained his admission as a licentiate.

Gentlemen, this is the substance, and, in part, the detail of the evidence on the one side and the other. The question is certainly one of very great importance as it respects the Plaintiff—an issue as to the skill of a medical man, and his fitness to fill the situation he holds, must necessarily be a question to him of very great importance. The Defendant has represented the case to be of no importance to himself. I cannot so consider it. I think it is of importance to a Defendant, in a case like this, that a jury should well weigh and consider the matter, and for what amount of damages their verdict ought to be.

I do not think I can, by any further observations, assist you more than I have already done. I have mentioned to you that the operation is one of very great delicacy—one in which failures have occurred to the most skilful persons, and one in which, according to the testimony of the witnesses called on behalf of the Plaintiff, the length of time employed presents no criterion at all of the skill of the operator. You will take the whole of the case into your consideration. If you are of opinion that the Defendant has made out what it was incumbent upon him to do, that this operation was performed in an unskilful and unsurgeon-like manner, in a manner that makes the person who so performed it unfit to fill the office he holds—if that is your opinion, whatever may be your opinion of the form of the report, or the motive of Mr. Lambert, the Defendant is entitled to your verdict. If you are of opinion the Defendant has not made out that proposition—that he has not satisfied you that this was performed in an un-scientific and unsurgeon-like manner —if that be your opinion, your verdict ought to be for the Plaintiff. If you find for the Plaintiff, you will then have to consider what damage you ought to give. I have already mentioned, that an imputation upon the character of a professional man, made as this has been, and widely circulated as this has been, is one calculated to do him a very serious injury, and one upon which, if you think the Defendant is in the wrong, you will think the Plaintiff is entitled to that degree of compensation that shall shew that the Defendant has done wrong. But I cannot agree with one observation made by the learned Counsel for the Plaintiff, that the verdict of the jury should mark indignation —it should mark cool, temperate consideration and justice. I do not think

that angry and vindictive feelings should be exhibited by them. Gentlemen, you will consider of your verdict.

The jury withdrew, at a quarter before nine, in the charge of an officer.

Mr. Pollock.—This is the Plaintiff's special jury. I trust your Lordship will have no objection to certify.

Lord Tenterden.—Whatever is the result, it can do no harm.

Mr. Pollock.—By the consent of both parties, I have to state that they have no wish that your Lordship should stay.

Lord Tenterden.—I am much obliged to both of you. I will wait a little while—the jury may wish to ask me some questions.

At half-past nine, the jury sent into Court for a copy of the libels.

Lord Tenterden.—Here are the two numbers. *(The same were handed to the officer.)*

Officer.—The Defendant wishes to see them, my Lord, before they go to the jury.

Lord Tenterden.—By all means. They are the two that were handed to me.

Mr. Wakley.—I am quite satisfied, my Lord.

Sir James Scarlett.—There was the epigram, which was read in evidence.

Lord Tenterden.—I have sent that also.

Mr. Wakley.—It is not in the declaration.

Lord Tenterden.—It was part of the evidence, and the jury have a right to see it.

The jury returned into Court at a quarter before eleven, and upon being asked whether they found for the Plaintiff or the Defendant, the foreman replied that they found a verdict for the Plaintiff.—Damages, £100.

THE END.

PRINTED BY GUNNELL AND CO., 13, SALISBURY-SQUARE.