

Report of the jury trial, the North British Insurance Company against the executors of the late Mrs Ralston of Warwickhill, in Ayrshire. Tried at Edinburgh, on Friday, 21st July 1837.

Contributors

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REPORT

OF THE

JURY TRIAL,

THE NORTH BRITISH INSURANCE COMPANY

AGAINST

THE EXECUTORS OF THE LATE MRS RALSTON

OF WARWICKHILL, IN AYRSHIRE.

TRIED AT EDINBURGH,

ON

FRIDAY, 21ST JULY 1837.

EDINBURGH:

PRINTED BY JAMES WALKER,

6. JAMES'S COURT, LAWNMARKET.

MDCCCXXXVII.

REPORT

JURY TRIAL

THE NORTH BRITISH INDIAN COMPANY

AND

THE FACTORY OF THE EAST INDIA COMPANY

OF BARRACON IN INDIA

TRIAL AT BARRACON

REPORT FOR THE YEAR

1857

PRINTED BY JAMES WATSON

AT THE PRESS OF THE EAST INDIA COMPANY

BARRACON

R35477

JURY COURT.

EDINBURGH, JULY 21. 1837.

REPORT

OF THE

TRIAL OF THE ISSUES,

IN THE CAUSE IN WHICH

JAMES BORTHWICK, MANAGER of THE NORTH BRITISH INSURANCE COMPANY, incorporated by Royal Charter, is Pursuer,

AND

ALEXANDER LANGMUIR, Tenant in Warwickmains, the surviving Trustee and Executor of the deceased MRS AGNES RALSTON, Relict of William Henry Ralston of *Warwickhill*, and JAMES BOSWELL MILLER, Ironmonger in Kilmarnock, and Others, the accepting Trustees nominated by James Ralston of Towerhill, now deceased, who was the other Disponee and Executor of the said Mrs Agnes Ralston, are held as Defenders.

JAMES NAIRNE, W. S. Pursuer's Agent.

GEORGE M'CLELLAND, W. S. Defenders' Agent.

Counsel for the Pursuer.

Counsel for the Defenders.

DUNCAN M'NIEL, Esq. and
ROBERT WHIGHAM, Esq.

The SOLICITOR-GENERAL and
JOHN COWAN, Esq.

The LORD PRESIDENT entered the Court at 10 A. M., and took the Chair as Presiding Judge.

The JURY were then called over, and sworn by the Clerk to try the issues.

Jury.

1. John Hill, Merchant, Merchant Street.
2. George Ewing of National Bank, Broughton Point.
3. Alexander Orrock, Bookbinder, Salisbury Street.
4. John Trotter, Farmer, Oatridge, Linlithgow.
5. Francis Umpherston, Millwright, Loanhead, Lasswade.
6. John Barrowman, Farmer, Muirhouse, Libberton.
7. George Begrie, Farmer, Southhouse, Libberton.
8. James Porteous, Saddler, Gifford, Gifford.
9. Joseph Brown, Farmer, Blackshiells, Westmains, Humbie.
10. Thomas Millar, Farmer, Gourlaw, Lasswade.
11. Andrew Black, Land-Steward, East Park, Dalkeith.
12. William Elgin, Stationer, North St David Street.

The Clerk then read the issues as follows :

“ Whether the policy of insurance, No. 23. of process, bearing to be an insurance by the pursuers, of the sum of L.2500, on the life of the late Mrs Agnes Ralston of Warwickhill, for a year from the 10th December 1833, was obtained from the pursuers, by the misrepresentation, or by the undue concealment of material facts by Mrs Ralston, or by any one acting on her behalf ?

“ Or,

“ Whether, under the said policy, the pursuers are indebted and resting owing to the defenders in the said sum of L.2500, or any part thereof, with interest thereon.

“ 21st June 1837. (Signed) H. COCKBURN.”

MR WHIGHAM.—My Lord President, and Gentlemen of the Jury, I have the honour to attend you on the part of Mr Borthwick, the Manager of the North British Insurance Company, incorporated by royal charter, pursuer in the issues ; and I am now to detail to you the circumstances out of which this question has originated. You will observe, that the question is put to you in an alternative form, “ Whether the policy of insurance by the pursuers, of the sum of L.2500, on the life of the late Mrs Agnes Ralston of Warwickhill, for a year from the 10th of December 1833, was obtained from the pursuers *by the misrepresentation, or by the undue concealment of material facts by Mrs Ralston, or by any one acting on her behalf?* Or, Whether, under the said policy, the pursuers are indebted and resting

owing to the defenders in the said sum of L.2500, or any part thereof, with interest thereon?" If it shall be proved to your satisfaction that there *was* misrepresentation, or concealment, or rather non-statement of material facts, then the defenders are not entitled to recover from the pursuers the sum of L.2500 insured by this policy. On the other hand, if there was no misrepresentation, or concealment, or non-statement of material facts, the defenders are entitled to obtain payment of the sum insured.

The circumstances of the case are these: The late Mrs Ralston, the widow of William Henry Ralston of Warwickhill, proposed to The North British Insurance Company, in the month of December 1833, to effect an insurance on her own life for the sum of L.2500. The proposal stated that she was then in good health, that she was of a good constitution, and that there was nothing in her situation or circumstances or habits of life to render an insurance upon it more than usually hazardous. You are aware, Gentlemen, that it is the custom of insurance companies to put certain questions on these points to the party insuring, in order to enable the insurers to judge of the expediency of undertaking the risk. In this case, Mrs Ralston proposed to make the insurance on her life *as an ordinary risk*; and in doing so she had to answer the usual questions. She referred to her usual medical attendant for information as to the state of her health, and as possessing the best cause of knowledge. Certain questions were likewise put to and answered by that gentleman. Mrs Ralston referred likewise to another party, a private friend; and he also had to answer similar questions. I shall refer more particularly, bye and bye, to the questions put to Mrs Ralston, to her medical attendant, and to her private friend on this occasion. To all of them most satisfactory answers were given. You will find, that, on 3d December 1833, they all stated that Mrs Ralston was in *perfect health*, and that there was nothing in her habits of life or circumstances to render an insurance on her life more than usually hazardous. In answer to one of the questions put to Mrs Ralston, she stated that she was sixty years of age; and accordingly, on the ordinary calculation for a good life, the premium of insurance would amount to the sum of L.150 : 18 : 9. She accordingly paid that sum, as the premium of insurance on a life of that age, for the sum of L.2500, for a year thereafter, as appears on the face of the policy.

Now, Gentlemen, all things being thus arranged with apparent correctness, the North British Insurance Company delivered the policy on the 10th of December 1833.

Mrs Ralston died on the 2d of September 1834, (within nine months from the date of the insurance,) while residing with a friend at Troon in Ayrshire. She left a trust-settlement, whereby she appointed the defenders her executors. As such, they transmitted to the Insurance Office a certificate of her death, in order that they might obtain payment of the sum insured, after the lapse of three months from the day of her death, which was the condition of the policy. The Insurance Office still believed that all was correct and proper; but it happened that information was shortly afterwards communicated to them, which led them to believe, that so far from every thing being correct on the part of Mrs Ralston, and on the part of her medical friend, there had been misrepresentation and concealment of material facts,—so material, that, as Managers of the affairs of the Company, they would not be justified in paying the sum stipulated by the policy. In short, if the facts had been fully and fairly disclosed, neither the North British Insurance Company, nor, it is believed, any other insurance company, would have undertaken the risk at the ordinary rate of insurance. The pursuers therefore declined to pay the amount insured.

The defenders thereupon brought an action for payment, and the Company resisted it. The defenders did not, however, go on with their action, neither would they abandon it; and therefore the Insurance Company, in order to prevent the loss of evidence, by the death or absence of material witnesses, were obliged to bring an action of reduction of the policy. These actions having been conjoined, the result of them depends on the question now put to you in the issues before you.

Gentlemen, I have now, in the *first* place, to request your attention, and that of his Lordship, to the terms of the policy of insurance. The terms of it are these: “Whereas Mrs Agnes Ralston, relict of the late William Henry Ralston, Esquire of Warwickhill, in the parish of Dreghorn, and county of Ayr, the person assured by this policy, is desirous, and hath proposed to effect an assurance with the North British Insurance Company, (incorporated by royal charter,) in the sum of L.2500 upon her own life, for the remainder thereof, and hath subscribed, or caused to be subscribed, and delivered into the office of the said corporation, a declaration or statement in writing, bearing date the 3d day of December 1833, whereby it was declared, (amongst other things,) that the age of the said Agnes Ralston did not then exceed sixty years; that she has had the small-pox or cow-pox; that she has not had the gout; and that she has not had asthma, any fit or convulsion since infancy, habitual cough, spitting of blood, rupture, or insanity; and that

she was then in good health, and did ordinarily enjoy good health ; and that she was not aware of any disorder or circumstance tending to shorten her life, or to render an assurance on her life *more than usually hazardous.*" Observe here, Gentlemen, that that is the *condition* of the policy. Then it goes on : " And whereby she agreed that such declaration or statement should be the basis of the contract between herself and the said corporation. And the said assured hath paid to the said corporation the sum of L.150 : 18 : 9, as the premium or consideration for the assurance of the said sum of L.2500 upon her own life, for the space of one year, commencing on the 10th day of December 1833, and terminating on the 9th day of December 1834, both inclusive, the receipt whereof is hereby acknowledged." Then comes the obligation on the Office : " Now, therefore, this policy witnesseth, that it is hereby declared, on behalf of the said corporation, that in case the said assured shall happen to die at any time within the term of one year, as above set forth, the stock, funds, securities and property of the said corporation shall be subject and liable, according to the provisions of the contract or contracts of copartnery of the said corporation, and the royal charter incorporating the same, to satisfy and make good to the executors, administrators, or assigns of the said assured, within three calendar months next after proof shall have been given, to the satisfaction of the said corporation, of the death of the said assured, the full sum of L.2500 of like lawful money, together with such further sum or sums, if any, as shall have been assigned to or in respect of this policy, pursuant to the rules and regulations, for the time being, of the said corporation, as or by way of bonus or addition to the sum hereby assured. And it is hereby further agreed, that this policy may be continued in force from year to year, by annual payments, until the expiration of the term first above mentioned, provided the said assured shall duly pay, or cause to be paid, unto the said corporation, on or before the 10th day of December next ensuing, the sum of L.150 : 18 : 9, and the like sum on or before the expiry of every twelve months thereafter ; which annual payments shall be accepted at every such period, as a full consideration for such assurance." The rest of the policy is in the usual form of such instruments. You will observe that the basis of the contract was *good health*, and that there was nothing in the condition or circumstances or habits of life of Mrs Ralston to render an insurance on her life more than usually hazardous. On these conditions, the Insurance Company engaged to pay to her executors, on her death, the sum of L.2500 sterling.

You will now, Gentlemen, attend to the proceedings which took place in the outset of this agreement, to the questions put to Mrs Ralston, and the answers returned to them. Your Lordship will be so good as to take a note, that the proposal for the insurance is dated 3d December 1833, and subscribed at Mrs Ralston's residence of Warwickhill, and that her signature is witnessed by her ordinary medical attendant, Mr John Sloan.

The first question put to Mrs Ralston was,

1. "Where were you born, and when?" Her answer is, "In the parish of Dreghorn."

2. "What is your age next birth-day?" Ans. "Sixty."

3. "Are you married or single?" Ans. "A widow."

4. "Have you resided abroad, and if so, where, and for what period?" Ans. "Never was out of Scotland."

5. This question—"Are you employed in military or naval service?"—is not answered, not being applicable to a female.

6. "Have you had the small-pox or the cow-pox?" Ans. "Had the small-pox."

7. "Have you had the gout?" Ans. "Never."

8. The 8th question is, "Are you, or have you been at any time since your childhood, afflicted with rupture, fits, convulsions, asthma, insanity, or spitting of blood; and if so, which?" Ans. "Never."

9. The 9th question is, "Are you afflicted with an habitual cough, or with any disease of the lungs, or any other disease or disorder tending to the shortening of life?" The answer is, "I am not."

10. "What is the name and residence of your medical attendant, to be referred to for information as to your present and general state of health; and how long has he known you?" Ans. "John Sloan, surgeon in Kilmaurs, has known me *eight* years."

11. "What is the name of an intimate friend, to be referred to for similar information; and how long has he known you?" The answer is, "James Ralston, Esq. of Towerhill. He has known me *twenty-five* years."

This Mr James Ralston was one of her trustees. He died after this action was raised, and is now represented by his trustees. Then she is asked,

12. "Is there any other circumstance or information, touching your past or present state of health or habits of life, which the Managers ought to be made acquainted with?" Her answer is, "None that I know of." And she then subscribes this declara-

tion, in reference to the answers given: "I, the above named, do hereby declare, that *I am now in good health; and that I do ordinarily enjoy a good state of health; and that I am not aware of any circumstance tending to shorten my days, or to render an assurance on my life more than usually hazardous.*"

Gentlemen, these are the answers, and this is the declaration made and transmitted by Mrs Ralston to the North British Insurance Company.

The formal proposal made to the Insurance Company is expressed in these terms:

"I, Agnes Ralston, relict of William Henry Ralston, Esq. of Warwickhill, in the county of Ayr, the person described on the other side, being desirous of effecting an insurance with the North British Life Insurance Company, in the sum of L.2500, upon my own life, during the whole continuance thereof, do hereby declare, that my age does not exceed sixty years; that I have had the small-pox or the cow-pox; that I have not had the gout; that I have not had asthma, any fit or convulsions since my infancy, habitual cough, spitting of blood, rupture, or insanity; and that I am now in good health, and do ordinarily enjoy good health; *and that I am not aware of any disorder or circumstance tending to shorten my life, or to render an assurance on my life more than usually hazardous: And I do declare, that I have not withheld any material circumstance or information touching my past or present state of health or habits of life, with which the Managers of this Company ought to be made acquainted; and that John Sloan, surgeon in Kilmaurs, my medical referee, and James Ralston, Esq. of Towerhill, in the parish of Kilmaurs, my private referee, are, in my belief, fully competent to give information as to my present and general state of health: And I declare, that the said John Sloan and James Ralston are well acquainted with, and fully competent to give information as to my habits of life: And I hereby agree, that this declaration shall be the basis of the contract between myself and the said Company; and that, if any fraudulent or untrue allegation is contained in this declaration, all monies which shall have been paid to the Company on account of such assurance shall be forfeited to the said Company, and the policy void.* Dated at Warwickhill, this third day of December, in the year of our Lord 1833.

(Signed) "AGNES RALSTON."

Observe, Gentlemen, that this declaration brings into form the answers made by Mrs Ralston to the questions put to her by the Insurance Company; and if in that declaration there be any thing *fraudulent or untrue*, or if any information material to

have been communicated to the Insurance Office has been withheld, it is a condition of the contract that the policy becomes void.

So much for the declaration, the answers, and the proposal of Mrs Ralston. Let us now attend to the report of Dr Sloan, which is dated Kilmaurs, 30th November 1833. He is asked,

1. "How long have you known Mrs Ralston?" He answers, "About ten years."

2. "Are you in the habit of seeing her frequently?" He answers, "Yes."

3. "Do you attend her professionally?" His answer is, "Yes."

4. "When did you see her last?" He answers, "On the 25th November last."

Gentlemen, be pleased to mark the answer and the date there referred to.

He is next asked,

5. "When was she last ill?" He answers, "In the month of September last," (*i. e.* two months before the date of this report.)

He is next asked,

6. "What was her indisposition?" He answers, "*Acidity of stomach.*"

7. "Has she, to your knowledge, been affected with any illness of such a nature as to influence her general health; or has she experienced any wound, hurt, or other accident?" Mark the nature of this question, and the terms of the answer. The answer is, "*Not to my knowledge.*" Then he is asked,

8. "Is she now in perfect health?" He answers, "Yes," in the most decided terms, and without any qualification. He is then asked,

9. "Is she, or has she been, afflicted with spitting of blood, asthma, *fits*, insanity, gout, or rupture?" His answer is, "Not to my knowledge."

10. "Is she subject to any affection of the head, lungs, heart, or other viscera?" He answers, "*Occasionally slight headach, from acidity of stomach, but no organic affection of any organ.*" He had said before, that her illness in September was occasioned by *acidity of stomach*: he now says, "She was subject *occasionally to slight headach from acidity of stomach, but no organic affection of any organ.*" He is asked,

11. "Is she temperate in her habits of life?" His answer is, "In the highest degree."

Then, observe his answer to the last question put to him.

12. "Do you know of any circumstance in her business, or habits of living, which may be considered as tending to impair her

health, or shorten her life?" His answer is, "*I know of no circumstance.*"

Gentlemen, these are the questions which were put by the Company to Dr Sloan, and these are the answers he made to them.

Now, when you consider them in connexion with Mrs Ralston's declaration, you will, I think, be of opinion, that there was nothing in her habits of life, or constitution, as represented, to make the Insurance Company think there was any thing more than usually hazardous in insuring her life. Her medical attendant said she was not subject to any organic affection, but had only occasional slight headach from acidity of stomach; and that she was temperate in her habits in the highest degree, and, at the date of his report, "*in perfect health.*"

Be pleased also to attend to the questions put to Mr James Ralston, the "private friend" of Mrs Ralston, and his answers.

The answers are dated 6th December 1833. He is asked,

1. "Have you seen her lately, and how long since?" Ans. "To-day."

2. "Was she then *in good health*?" Ans. "Yes."

3. "Do you believe she is now in good health?" Ans. "I do."

4. "What is the general state of her health?" Ans. "Generally good."

5. "How long have you known her?" Ans. "Twenty-five years."

6. "Has she at any time been afflicted with gout, cancer, asthma, liver, consumption, or spitting of blood, or been subject to fits, hernia, or any other serious malady?" Ans. "Never to my knowledge."

7. "Has she any other disorder which has a tendency to shorten life?" Ans. "*Not that I am aware of.*"

8. "Can you give any, and what information, respecting her habits?" Ans. "Perfectly regular."

9. "Whether active or sedentary?" Ans. "Active habits."

10. "Temperate or free?" Ans. "Remarkably temperate."

11. "Do you know any reason why an assurance on her life would be more than usually hazardous?" Ans. "*None that I am aware of.*"

These answers were likewise quite satisfactory to the Company, and the policy was prepared as an ordinary risk, and delivered on the 10th of December 1833.

Gentlemen, I now request your attention, and the attention of the Court, to the true state of this lady's health and habits at the time of the insurance and for years previously; and when

you see what these were, I have no doubt you will be of opinion that the facts should have been communicated to the Insurance Company; and that they were so material, that I believe, if fairly communicated, no insurance company in the kingdom would have insured her life *as an ordinary risk*.

Mrs Ralston died at Troon, on 2d September 1834. Dr Sloan soon thereafter rendered his account for medicines and attendance; and in the month of December, he brought an action for payment of it, in the Court of Session, against Mrs Ralston's trustees, claiming a balance of L.162 : 17 : 5, as due to him for medicines and attendance upon her from 15th September 1833 to 4th June 1834.

He produced with his summons an account, containing charges for bleeding, blistering, shaving her head, leeching, and medicines and attendance, to be afterwards noticed more particularly. The action proceeded a certain length in Court,—defences were lodged for the executors, and what is technically termed a Record was made up, consisting of the summons and defences, condescendence of facts and answers, or counter statement, and pleas in law for both parties. I request your attention to the judicial statement of Dr Sloan in his revised condescendence. It is as follows :

“ The pursuer was medical attendant in the family of the deceased William Henry Ralston, Esq. of Warwickhill, at the period of that gentleman's death in 1833, and for many years previously. Mr Ralston was possessed of very considerable moveable and heritable property, and was a Justice of the Peace and Deputy-Lieutenant for the county of Ayr, in which his landed estate was situated.

“ After Mr Ralston's death, the pursuer continued to attend and furnish medicines to his widow, the now deceased Mrs Agnes or Nancy Ralston of Warwickhill. *The pursuer's attendance on Mrs Ralston, after her husband's death, was constant, from 15th September 1833 till 4th June 1834, when it ceased, in consequence of a misunderstanding between the pursuer and the defender, James Ralston, in whose house Mrs Ralston then resided.* The account libelled, (which is No. 2. of process,) contains a detail of the attendance and medicines, &c.; and reference is here made to that document. Mrs Ralston was, after her husband's death, in possession of an income, derived principally from land, of upwards of L.500 a-year, and she has left considerable moveable and heritable property.

“ *For the last ten years of Mrs Ralston's life she was occasionally afflicted with headach and melancholy. These headachs were generally removed by means of bleeding or emetics, and sub-*

sequent milder treatment and medicines. But Mrs Ralston *required the frequent attendance of her medical adviser in the application of these remedies.* *The first attack, after her husband's death, was in September 1833, on which occasion she was confined to the house for three weeks ; and on her convalescing, she, for the sake of exercise, took some interest in looking after the dairy, her favourite occupation.* MRS RALSTON'S MIND WAS MUCH WEAKENED BY THIS ATTACK ; and it was considered necessary, *even after the removal of the complaint itself,* for Mrs Ralston to continue to have medical advice and attendance. *Mrs Ralston frequently requested medical attendance from the pursuer, when no serious complaint affected her,* BEING VERY SENSITIVE WHEN ANY SYMPTOM OF HER DISEASE MANIFESTED ITSELF.

“ Mrs Ralston's health, however, *continued to improve under the pursuer's treatment.* There appeared to the pursuer to be no organic affection, and nothing in her habits of living tending to shorten life. Accordingly, when the pursuer was applied to, to give the certificate referred to in the 2d article of the answers, and which, besides, *he understood was a mere matter of form,* he had no hesitation in ‘granting it,’ to that effect, at the same time certifying that Mrs Ralston was exposed to headach.

“ In December 1833, Mrs Ralston effected an insurance on her life, and executed a settlement of her affairs ; *and these circumstances seem to have so much affected her mind,* NATURALLY SENSITIVE, AND WEAKENED BY THE LAST ATTACK ABOVE MENTIONED, *as to produce bodily disease and mental imbecility, from which she never recovered.* The latter part of the account was incurred to the pursuer in attendances upon Mrs Ralston when in that situation.”

This is the judicial statement of Dr Sloan, while suing Mrs Ralston's trustees for payment of the balance of his account for professional attendance, from 15th September 1833 to 4th June 1834 ; and you see what he says of her state of health and habits generally at that time, and for years previously. She was subject to violent headachs, from which she was only relieved by frequent bleedings and violent medicine ; and as she died in consequence of the rupture of a blood-vessel in the head, in little more than nine months after the serious attack of illness in September 1833, this statement of Dr Sloan in his judicial condescendence, if made to the Insurance Office, would undoubtedly have led them at once to reject her proposal.

Gentlemen, after the record was thus made up and closed, the Lord Ordinary in the cause, Lord Moncreiff, intimated, by a note, that the case should go to a Jury to try the facts ; but

the parties, to save that expense, entered into a reference, by a formal deed of submission, to two eminent individuals, Dr Young and Dr Corkindale of Glasgow, as arbiters. The submission runs thus: "The parties following, viz. John Sloan, surgeon in Kilmaurs, on the one part, and James Ralston of Towerhill, and Alexander Langmuir, farmer in Warwickmains, executors of the late Mrs Ralston of Warwickhill, on the other part, have submitted and referred, and do hereby submit and refer to the amicable decision, final sentence and decree-arbitral to be given and pronounced by James Corkindale and William Young, Esqrs. physicians in Glasgow, arbiters mutually chosen by the said parties, and in case of variance, to the decree-arbitral to be given and pronounced by an oversman, to be chosen by the said arbiters, *the reasonableness of the charges for attendance, operations and consultations, as contained in an account, amounting to L.162 : 17 : 5 sterling, against the late Mrs Agnes Ralston of Warwickhill, the number of visits, operations, time waiting on the deceased, consultations and charges for medicine, being hereby admitted to be correct, as stated in said account.*"

Thus, the time charged, the number of the visits, the operations, consultations and charges for medicine are all admitted to be correct, while the defenders did not admit, that, in their opinion, the number of visits and time charged were necessary. The decree-arbitral was as follows: "1st, We hereby find the said Alexander Langmuir, as the surviving executor of the said Mrs Ralston, liable to the said John Sloan for fifty-two visits to Mrs Ralston at Warwickhill, at one guinea each, in the sum of L.54, 12s. sterling, and in the sum of L.1 : 11 : 6 sterling for medicines, leeches and operations. 2d, We find the said Alexander Langmuir, as surviving executor foresaid, liable to the said John Sloan for 179 *extra* hours of attendance there, at 3s. 6d. each hour, in the sum of L.31 : 6 : 6. 3d, We find, as aforesaid, for fifty-six visits to Mrs Ralston at Kilmarnock, at half a-guinea each visit, in the sum of L.29, 8s., and in 10s. 6d. for medicines. 4th, We find, as aforesaid, for 132 *extra* hours of attendance there, at 3s. 6d. each hour, in the sum of L.23, 2s. 5th, We find, as aforesaid, for the four visits to Mrs Ralston at Warwickhill, prior to her husband's death, at one guinea each, in the sum of L.4, 4s., and in one guinea for medicines and operations: These sums, when added, making the cumulo sum of L.145 : 15 : 6 sterling: for which sum we hereby decern against the said Alexander Langmuir, surviving executor foresaid, to the said John Sloan, accordingly."

Now, gentlemen, you will remark that these eminent physicians awarded to Dr Sloan the sum of L.145 : 15 : 6 for his at-

tendance, medicines and operations on Mrs Ralston during the above period, and that there was no question as to *the number of the visits, or the duration of the attendance.*

Attend now to the terms of Dr Sloan's diary. He was the medical attendant of the family previously, on an annual salary; but after the death of Mr Ralston he kept a diary, which commences on the 15th of September 1833, when there is the following entry: "*To visit to Mrs Ralston. Blooded; sinapism to breast; nine leeches applied to temples. Detained seven hours.*" This, gentlemen, is the commencement of his attendance on Mrs Ralston, on the occasion of her attack of illness in September 1833, and it certainly does not look well. She is blooded, a sinapism (blister) is applied to her breast, nine leeches are applied to her temples, and he is detained for *seven* hours. He goes back next day, the 16th, and administers five grains of calomel, and eight grains of powder of jalap, and is detained four hours. Then, on the 18th of September, *her head is shaved*, and on that day he is detained six hours. On the 19th he pays her two visits, one in the morning, the other in the evening; and in the afternoon, Mrs Sloan, the doctor's wife, goes to attend on Mrs Ralston, and stays several days. On the 20th he visits Mrs Ralston, *applies a blister to her head*, and gives her five grains of calomel. On the 21st he is detained four hours, and prescribes $\frac{3}{4}$ grains of senna. On the 22d he pays her another visit. On the 23d he visits her again, and is detained five hours. On the 24th he is detained six hours, and Mrs Ralston *is again blooded*. On the 25th *she is again blooded*. The doctor visits her again on the 26th; again on the 27th, when he is detained seven hours. He visits her on the 28th, and on the 29th, and on the 30th, when *she is again blooded*. He visits her *twice* on the 30th, *and bleeds her*, when he is detained four hours. Then, on the 1st of October he visits her; again on the 3d, when he is detained five hours. He visits her again on the 6th; and again on the 8th, when he is detained all day; and he goes again on the 12th, when he is detained six hours, and Mrs Sloan then returns home. On the 15th of October he again visits her, and prescribes largely of senna, cream of tartar, tartar-emetic, and sulphur of magnesia, and is detained five hours. On the 18th he visits her, and again on the 21st, when he is detained three hours. On the 25th he visits her, and again prescribes large doses of sulphur of magnesia, senna, cream of tartar, and tartar-emetic, and is detained two hours, on which occasion Mrs Sloan went back to attend on Mrs Ralston. On the 1st of November he visits her, and prescribes salts, senna, cream of tartar and tartar-emetic, *as formerly*, and

is detained three hours. On the 7th he visits her, and prescribes more sulphur and cream of tartar, divided into eighteen powders. On the 12th he again visits her, and prescribes more cream of tartar, *as on the 7th*. On the 17th he visits her again; and again on the 25th November, and then prescribes very largely of sulphur of magnesia, senna, cream of tartar and tartar-emetic, and is detained seven hours. You will be pleased, gentlemen, to attend particularly to this visit on the 25th of November, which Dr Sloan stated, in his answers to the questions put to him by the Insurance Office, was the last time he saw Mrs Ralston; on which day he states in his diary, "To visit to Mrs Ralston. Sulph. mag. ℥ iv.; senna, ℥ iv.; cream tart. ℥ i.; tart. emetic, gr. iii. *Detained seven hours.*" Now, gentlemen, on 30th November, (which is the date of Dr Sloan's report,) there is this entry in his account: "To visit to Mrs Ralston. Sulphur, ℥ ii.; cream of tartar, ℥ ii.; divided into eighteen powders. *Detained all day.*" His certificate is dated Kilmaurs, 30th November, and may have been given before that visit was made; but he witnessed her subscription to the proposal, and her answers on 3d December, and there is this entry in his account on that occasion: "To visit to Mrs Ralston. Pill. rhu. comp. No. 12; carbonas sodæ, ℥ i.; elixir of vitriol, ℥ i.; mustard, ℔ ½. *Detained four hours;*" the very day on which she subscribed the answers to the questions, wherein she states that she was in good health, which is attested by the doctor, while he was that day in attendance upon her for four hours. Then he visits her on the 4th of December, and again on the 5th, when he is detained six hours, and prescribes; and on 10th December, (being the day on which the contract of insurance was completed,) Dr Sloan visits her, is *detained all day*, and *bleeds her*. Next day he visits her, and is detained five hours. On the 13th he visits her again; and again on the 14th, when he is *detained the most of the day*. On the 15th he visits her, and again on the 17th, when he prescribes tincture of henbane, and mustard, and is *detained all day*. On the 18th he visits her, prescribes tincture of henbane, and is *detained four hours*. On the 22d he visits her and her niece, little Nancy Ralston; prescribes calomel to Nancy, and is *detained four hours*. On the 26th he visits Mrs Ralston, and again on the 28th, when Mrs Sloan returns home, and is *detained seven hours*; that is, on 28th December. Then on the 29th he visits her, and again on the 31st, when he is *detained six hours*. He visits her on 2d January 1834, and again on the 11th, when he is detained seven hours. Here there is a pause in the doctor's journal. Mrs Ralston left Towerhill, where she resided, and went to live at Kilmarnock; but prior

to this date, and betwixt and the 15th of September, Dr Sloan had paid her thirty-five visits of long duration. She had been blistered, had had her head shaved, and violent bleedings and other remedies had been prescribed. After she went to Kilmarnock, and betwixt the 20th of January and the 4th of June, Dr Sloan pays her fifty-six visits; and on eleven occasions he met with Dr Hood in consultation upon her case. Now, gentlemen, observe, I pray you, the progress of Mrs Ralston's disease, and its termination, which are both of importance in this case, and which it falls to you to consider. You have fifty-six visits paid to Mrs Ralston during this period; and when Dr Hood's account is examined, it will be seen that she had, at least, two fits of epilepsy, and ultimately died at Troon, of rupture of a blood-vessel in the head. Any one may do so; but, in the situation of this lady, that was just the natural termination of her disease.

Before I refer you to Dr Hood's evidence, allow me to call your attention to some further pieces of evidence produced in Dr Sloan's action, shewing what were Mrs Ralston's own feelings as to her situation and state of health. She writes thus to Dr Sloan: "Mrs Ralston's compliments to Dr Sloan. As she has been complaining of headach for these two days past, she will be glad to see the doctor early in the afternoon, *with his best lancet*. If Mrs Sloan would accompany him, Mrs Ralston would be happy to see her. *Warwickhill, Sunday forenoon.*" Miss Ralston, (Mrs Ralston's niece,) writes, on another occasion, in these terms: "Dear Sir, My aunt has been *very ill with headach and sickness yesterday and to-day*. She will take it kind if you would come over as soon as possible, and *take a little blood from her*. I am, Dear Sir, yours sincerely, A. RALSTON." And again she writes to the doctor: "If Dr Sloan would call at Warwickmains this forenoon, and bring *his best lancet with him*, it would oblige Mrs Ralston. *Warwickhill, Sunday morning.*" These notes were written to Dr Sloan by Mrs Ralston's directions, while she was evidently labouring under a determination of blood to the head, and required bleeding, or some other violent remedy, to relieve her.

Now, gentlemen, from the entries in Dr Hood's account, from the month of January 1834 to the time of her death, he appears to have visited her 146 times—that is to say, on 146 *days*; for on many days he visited her *twice*, and sometimes oftener. On the 20th of January he visits her for two hours, and again at midnight. On the 22d there is a midnight visit, two hours, and a day visit; and the account goes on from the 10th of January to the 6th of February, with daily visits, occasionally twice

a-day; and on that day, 6th February, he appears to have made out a draft of her will, the entry being, "Made a draft of a will for Mrs Ralston of Warwickhill." On the 7th he paid her a visit, and on the 8th there is the following entry: "Saw Mrs Ralston, Warwickhill, in the Fleshmarket, purchasing a leg of mutton and some beef. Paid twentypence for the mutton, but do not know how much for the beef. Signed her will this forenoon, as I was informed by her man of business." There are regular visits, almost daily, down to the 21st of January; and on that day she "*had a fit of falling sickness.*" On the 22d he paid her two visits, when there is this entry, "*Talks incoherently.*" On the 23d, he again visits her twice; and the entry is, "*incoherent.*" On the 24th he also pays her two visits, when she is in much the same state, "*still incoherent.*" He continues to visit her daily, down to the 17th of March, when there is a visit at "*midnight;*" and so on it goes, down to the month of September, when this lady was carried off by death.

On the 3d of September 1834, Dr Hood made a *post mortem* examination of her body, on which occasion he certifies the fact on soul and conscience, by a formal certificate, dated the 4th of September, as follows: "I hereby certify, on soul and conscience, That on the 3d instant I went to Troon, where Mrs Agnes Ralston of Warwickhill had been residing for a few weeks with a friend; and on inspecting her body about thirty hours after death, two or three ounces of effused, coagulated blood was discovered in the lower and posterior parts of the right hemisphere of the brain, extending even to the centre of the right lobe of the cerebellum. I can therefore have no hesitation in stating, that her death was occasioned by the rupture of a blood-vessel in the head.

ALEX^R HOOD, *Surgeon.*"

Gentlemen, this is the general statement of the medical evidence, and you shall have the medical gentlemen themselves examined; and I believe his Lordship will bear me out in the remark, that this case will very much depend on the statement of the medical gentlemen.

Now, without going back on the questions and answers prior to the policy being completed, if the case I have thus stated to you be made out in evidence, can you believe, gentlemen, that Mrs Ralston was *in perfect health* on the 15th of September 1833? when she was blooded, had sinapism applied to her breast, nine leeches applied to her temples, and when Dr Sloan was detained in attendance upon her for no less a period than *seven hours?* when, in a few days afterwards, she had her *head shaved and blistered*, was *frequently blooded*, and had strong doses

of medicine prescribed? Gentlemen, her attack of illness in September, and the remedies, were most material to be known by the Insurance Office, but which were not communicated; and whether they were withheld from ignorance or not is of no consequence. The non-communication of them is a good ground for preventing the party from recovering under this policy.

Gentlemen, the evidence of Dr Sloan will so far be supported by the evidence afforded by the books of the late Dr Mackenzie, who visited Mrs Ralston from Irvine, and who was long the medical attendant of the family before Dr Sloan was employed. Dr Mackenzie is since dead; but the entries in his books will be satisfactorily proved to you.

Then, Mrs Ralston's niece, Miss Nancy Ralston, and some of the servants of the family, will be examined before you, as to the illness, in particular, under which Mrs Ralston laboured in September; and you will have, moreover, the benefit of the best medical evidence that Edinburgh can afford. Dr Maclagan, Dr Mackintosh, Dr Robertson and Dr Craigie will be examined. Dr Christison would also have been examined, but he is unfortunately unable to attend, from indisposition. The medical gentlemen will state their opinions on the facts, as appearing from the answers made to the questions put by the Insurance Office, by Mrs Ralston herself, by Dr Sloan, and by her private friend, Mr James Ralston; and they will state, that, in their opinions, there was nothing in the answers to direct or suggest further inquiry on the part of the Insurance Office; and that, as represented, Mrs Ralston's was a fair, insurable life. Then they will tell you, that the true state of her health was not consistent with the representations of it; and that there was misrepresentation and concealment of material facts which should have been made known to the Insurance Office. *Lastly*, That if the facts had been communicated, they never could have advised any insurance office to insure Mrs Ralston's life as an ordinary risk, at the ordinary rate of premium.

Gentlemen, I have, in conclusion, only a single remark to make on the law of the case. The observation falls to be addressed to his Lordship, from whom alone you will take the law. His Lordship will be pleased, and so will you, gentlemen, to observe, that there is nothing said in the issues as to wilful *fraud*, or that the alleged misrepresentation or undue concealment of material facts was *fraudulent*. If there was *concealment*, or any *misrepresentation* of material facts—facts which ought to have been communicated to the office, but which were suppressed—that voids the policy. It is not necessary that any thing should have been done, or left undone, *with a view to de-*

ceive; the fact of misrepresentation, or of concealment, is all that is necessary to void the policy. This branch of the law underwent a full and deliberate investigation, in the recent case, in relation to policies of insurance, on the life of the late Lord Mar; *Sir W. Forbes and Company v. The Edinburgh Life Assurance Company*, 9th March 1832, *Shaw's Reports*, x. 451. It was held, in that case, to be a fundamental principle of the contract of life insurance, that there shall be a full communication to the insurers of every fact material to the risk of the proposed life, or which the insurers may reasonably think material. Even the innocent non-communication of a material fact voids the policy as completely as wilful concealment or misrepresentation; because, in all these cases equally, the risk, as tendered to the assurer, and accepted by him, is not the actual and existing risk. And his Lordship would recollect, that in the course of the discussions in Lord Mar's case, reference was made to a variety of authorities and cases in England; and that, in particular, there was printed, for the use of the Court, the charge by Lord Lyndhurst to the jury, in the case of *Ducat v. Williams*, and which has been printed in the report of the case of *Forbes* by Mr Shaw, at page 456 of the Reports to which I have referred. And as Lord Lyndhurst's charge is short, and has been acknowledged to contain a sound and clear exposition of the law, in regard to misrepresentation or concealment of material facts by the party proposing to insure either his own life or the life of another, I shall take the liberty of reading it. "The two questions," (said his Lordship to the jury,) "for your consideration, are these: 1. Whether, at the time when this policy was affected, the gentleman, Mr Stephenson, was labouring under any disease tending to shorten life? If you are of opinion that he was labouring under a disease tending to shorten life, in that case the plaintiffs are not entitled to recover. But there is another question, and a material question for our consideration, which is this, Whether, at the time when this policy was effected, there were any facts material to be communicated to the persons taking this insurance that were not communicated? If, in your judgment, considering the evidence that has been offered on both sides, you should be of opinion that there were facts material to be communicated, tending to influence this insurance, or to lead to inquiry that might influence this insurance, if it had not been withheld, in that case the plaintiff cannot be entitled to your verdict. These are the two points to which your attention must be directed in the course of the inquiry." Again, in concluding, his Lordship stated the following very perspicuous direction: "It is a case important

in point of amount, and in point of principle too. It will be for you to direct your attention to the two points to which I have repeatedly requested your attention, and that you would apply the evidence. *First*, Are you of opinion that this gentleman, at the time when the policy was effected, on the 16th of June in the year 1827, laboured under a disease tending to shorten life? If you are of that opinion, the plaintiff cannot be entitled to your verdict, because that is one of the exceptions in the policy. *Another* point for your consideration is, whether *any material facts*, with respect to the *state of his health*, were *withheld*, and *not communicated* at the time of the examination? If you are of opinion that any facts which were material were not communicated, that is, *facts material to enable the parties to form their opinion as to whether or not they would take the life—facts material, in order to enable them to make further inquiry, to direct the course of that inquiry*;—if you are of opinion any material facts were withheld and not communicated, although there may be no intentional fraud in the case—if you are of opinion any material facts were withheld, in that case the plaintiff cannot be entitled to your verdict, because, every party insuring has a right to know the correct state of the facts on which that insurance is founded. Those are the two points for your consideration, connected with the evidence on the one side and on the other; and from the shape the case has taken, it is entirely immaterial for me to tell you which is one side and which the other. The whole of the evidence is before you, and you will say what is your conclusion from that evidence.”

The report of this case further bears, that after the Jury had remained in deliberation about ten minutes, ONE OF THE JURY said, “ My Lord, we want to know, with your Lordship’s permission, whether the fact of concealment does not,—whether, in fact, the policy is not void *in consequence of the fact of concealment* ?

“ LORD LYNTHURST.—If you are of opinion that the facts,—that there are any facts *material to be communicated that were not communicated*, that renders the policy void. It is for you to decide, whether, in your opinion on the evidence, the facts were material.

ANOTHER JURYMAN.—“ We mean, my Lord, as to any bodily infirmity.

“ LORD LYNTHURST.—I have stated the proposition according to my view of it.

“ A JURYMAN.—I am perfectly satisfied, my Lord.

“ LORD LYNTHURST.—You made use of that word ‘ *concealment*,’ ‘ *non-communication*.’ I do not choose to use the word ‘ *concealment*.’ That may import more than that. The NON-COMMU-

NICATION of a material fact, WHETHER FRAUDULENT OR NOT,—the NON-COMMUNICATION of a material fact will affect the policy. Then you must be satisfied the fact was material to be communicated.

“The Jury having again deliberated for a short time, returned a verdict for the defendants, thus declaring the policy to be void.”

Your Lordship is aware that there were a variety of other cases much referred to, but these I do not trouble the Court and Jury with. The conclusion I come to is this,—I submit to you, gentlemen of the Jury, that you must find that Mrs Ralston was not, as she was represented to be, in perfect health,—and that she did not usually enjoy that good health which it was said she enjoyed. She was subject to violent attacks of illness, which only gave way to violent remedies, all of which should have been communicated to the Insurance Company, to enable them to judge if the risk should be taken at the ordinary rate of premium. She was sixty years of age at the time the insurance was effected: and the premium paid was the ordinary premium for an insurance of a good life of that age. She was stated to have been at the time in perfect health; and that there were no circumstances in her situation or habits of life rendering an insurance on her life more than usually hazardous. But in that, and in other statements, you will, I am sure, on the evidence, be satisfied that material facts were both misrepresented and concealed, and therefore that you will have no hesitation in finding a verdict for the pursuers on both issues.

(The medical gentlemen who were to be examined on the facts as disclosed were then introduced.)

Mr M'NIEL then put in the following

DOCUMENTARY EVIDENCE.

1. The policy of insurance for L.2500 on the life of Mrs Ralston.

2. The proposal and declaration of Mrs Ralston, 3d December 1833, along with the letter of the defenders' agents, Messrs Douglas and Hamilton, writers in Kilmarnock, transmitting the proposal.

3. Dr Sloan's report.

4. Mr James Ralston's report,—the private friend to whom Mrs Ralston referred.

PAROLE EVIDENCE.

Mr JOHN SLOAN, surgeon, Kilmaurs, sworn.
Examined by Mr M'NIEL.

Mr Sloan, you are a surgeon at Kilmaurs, in Ayrshire? Yes, I am.

And you have been so for a good many years? About twenty years.

Were you acquainted with the late Mr Henry Ralston of Warwickhill, and with Mrs Ralston? I was, with both.

Did you attend Mrs Ralston before her husband's death? I did.

He died in 1833? I am pretty certain he did.

(Shewn his diary.)

Mr Ralston died fourteen or fifteen months prior to Mrs Ralston? About fourteen months before Mrs Ralston.

He died in July 1833? Yes.

You attended his family before that? Yes, I did.

You were then paid by an annual salary? I was paid annually.

And had no regular account in consequence? I kept no regular account.

After his death you continued to attend Mr Ralston? I did.

What is that you now have in your hand? It is an account of my attendances on the family at Warwickhill.

SOLICITOR-GENERAL.—Were the entries in that account all made at the time you paid the visits? They were all made when I came home.

Mr M'NIEL.—That account runs from 15th September 1833 to 4th June 1834? Yes.

Since Mrs Ralston's death, you brought an action against her representatives, for recovery of that account, or the balance of it? Yes.

And the matter was afterwards referred to the decision of Dr Young and Dr Corkindale of Glasgow, as joint arbiters? Yes.

And they pronounced a decree-arbitral? They did.

I observe you stated in that action, (in your revised condescendence,) "that for the last ten years of Mrs Ralston's life she was occasionally afflicted with *headachs* and *melancholy*. These headachs were generally removed by means of bleeding or emetics, and subsequent milder treatment and medicines; but Mrs Ralston required the frequent attendance of her medical adviser in the application of these remedies." That is a true statement, is it not? That is not my statement; it is my agent's statement.

Can you tell from your diary if it be a correct statement or

not? You mentioned *melancholy*. That is not in my diary.

Was she afflicted with headach? Yes, with headach.

And she required your constant attendance? I attended the house. Some of my visits were not exclusively to her, but to others of the family; and she requested them to be placed to her account, and I did so, by her desire.

And you entered these as visits to her, by her desire? I did, by her desire.

When you stated the visit as paid to Mrs Ralston, was it truly paid to her? It was to her or to some of the family, or servants about the house.

You visited her frequently? Yes.

Will you read the entry in your diary, dated 15th Sept. 1833?

(Reads from his Diary.)

“1833, Sept. 15. To visit to Mrs Ralston. *Blooded*. Sina-
pism to breast. 9 leeches applied to temples. Detained 7 hours.”

Was that visit made to Mrs Ralston? Yes it was. (Reads.)

“16th Sept. To visit to Mrs Ralston. Calomel, gr. v.
Pulv. jalap. 8 x. Detained 4 hours.”

Was that to Mrs Ralston? Yes. (Reads.)

“18th Sept. To visit to Mrs Ralston. Head shaved.
Detained 6 hours.”

Was that to Mrs Ralston? Yes. (Reads.)

“19. Sept. To visit to Mrs Ralston, *mane*. To visit to
Mrs Ralston, *vespera*. Mrs Sloan went to take the charge.
Detained 3 hours.”

Was that to Mrs Ralston? Yes. (Reads.)

“20th Sept. To visit to Mrs Ralston. Blister to head.
Calomel, gr. v.

Was that to Mrs Ralston? It was. (Reads.) “21st Sept.
To visit to Mrs Ralston. Senna, $\frac{3}{4}$ gr. Detained four hours.”

Was that to Mrs Ralston? It was. (Reads.) “22d Sep-
tember. To visit to Mrs Ralston.” I do not see where the
other cases come in. I see nothing about that visit. I cannot
say if the entry on the 22d be to her.

You are sure you were at her house on that day? Yes.

There were some other persons then residing there? Yes.
Her two nieces, and the servants.

Had she two nieces with her, and were any of them com-
plaining? Yes. One of them, Agnes, had an ulcer on her
hand; but I cannot recollect if that visit was to her.

You cannot say if there was any other person in the house
then complaining? Mrs Ralston was ill on the 21st, and must
have been complaining on the 23d, for I see a visit to her that
day,—detained five hours. I cannot say if the visit on 22d was
to her.

How came you to state the periods of detention? I cannot say. I was detained to dinner sometimes, and I charged for time. It was a whim of hers that I should stay.

Was it friendly invitation to stay to dinner, or a mere whim of Mrs Ralston? It was a friendly invitation; but for my own time, being detained at her desire, I thought I should be paid, and I charged for it.

Look now to the entries on 24th and 25th. (Witness reads.)

“ 24th. To visit to Mrs Ralston. Blooded. Detained six hours.

“ 25th. To visit to Mrs Ralston. Blooded. Colocyn. comp. No. xxxvi.”

Have you any doubt that the visit on 24th was paid to her? I think it was.

LORD PRESIDENT.—If any other person than Mrs Ralston had been bled by you on that occasion, would you not have stated *whom*? I cannot say who it was. She knew the circumstances, and I marked these entries for my own conveniency.

Mr M'NIEL.—He says he occasionally put down when the visits were made to Mrs Ralston.

WITNESS.—Yes, generally. The visit on 24th was to Mrs Ralston. I recollect bleeding her that day.

The visit on 25th, was it to Mrs Ralston? Yes. I am perfectly certain of that.

Then go to the next entry. Was it to Mrs Ralston, the visit on the 26th? Yes, it was.

You think that visit must have been to her, because you bled her the day before? Yes, most probably.

The visit on 27th, detained seven hours,—was that a visit to her? Yes, most likely.

On the 29th, what is the entry? “ To visit to Mrs Ralston.”

Was that a visit to her? I can't be positive.

LORD PRESIDENT.—Was there no prescription then? None. (Reads.) “ 30th. To visit to Mrs Ralston,—*mane*. Detained two hours.”

Is that all? (Witness reads.) “ To visit to Mrs Ralston,—*vespera*. Blooded. Detained four hours.”

Is that a visit to Mrs Ralston? Very likely it was.

You have no doubt that it was? It is very likely.

“ 21st October. To visit to Mrs Ralston,”—was that a visit to Mrs Ralston? It is very likely. The great body of my visits were to her. I cannot say to whom that visit was made.

The visits to the other members of the family were on rare occasions? Yes, they were.

The visit on 3d October, "Detained five hours,"—was that to her? Yes, it was.

The visit on the 8th, "Detained all day,"—was that to her? Yes.

How came you to be detained all day? I can't tell; but I was detained all day.

The visit on the 12th, "Detained six hours. Mrs Sloan returned." When did Mrs Sloan return? She returned on 12th October.

What was your reason for sending her to Warwickhill? Mrs Ralston was complaining.

And she had got well then? She may have been well before that.

If she went on a friendly visit to Mrs Ralston, remained for some days and then returned, did you enter that in your diary? I do not know. She made very frequent visits to Warwickhill after Mr Ralston's death.

What was your object in entering these visits? Because she went then to take charge. I don't know that she was taking the charge all the time she staid there.

Then on the 15th of October there is, "To visit to Mrs Ralston. Senna, ζ iv. Cream of tartar, ζ iv. Tart. emetic, gr. ζ . Sulph. mag. ζ iv. Detained five hours." Was that a visit to Mrs Ralston? Yes.

Then there is on the 18th, "To visit to Mrs Ralston." And again on the 21st, "To visit to Mrs Ralston. Detained three hours." Were these visits to herself? Yes.

On the 25th there is, "To visit to Mrs Ralston. Sulph. mag. ζ iv. Senna, ζ iv. Cream of tartar, ζ i. Tart. emet. gr. iii. Detained two hours. *Mrs Sloan went.*" Was Mrs Ralston then unwell? No, I think she was well then.

How came Mrs Sloan to go then? I can't tell; she might have been sent for.

Then why did you enter it in your diary? I did so for my own satisfaction, to see what was going on about the house.

The visit on 21st, was that to her? (Witness reads.) "To visit to Mrs Ralston. Salts, senna, cream of tartar and tart. emetic, as formerly. Detained three hours." That must have been for her.

Then, 7th November? (Witness reads.) "To visit to Mrs Ralston. Sulphur, ζ ii. Cream of tartar, ζ ii. Divided into eighteen powders." That medicine was for her, but it was not required; and it was sent back, and it is now in my own house.

You say that these powders came back? Yes.

Look at that note. (Shewn, No. 71. of process. See Appendix.) Is that the note returning these powders? There is no date here. Very probably it is the same; but I am not sure.

That is a note which you got from the house,—is it not? It appears to be so.

Then, 12th November. (Witness reads.) “To visit to Mrs Ralston. Sulphur and cream of tartar, (as on 7th’’) Was that to Mrs Ralston? Yes. That visit was to Mrs Ralston decidedly.

The visit on the 17th, was that also to her? Yes.

The visit on 25th. (Witness reads.) “To visit to Mrs Ralston. Sulph. mag. ξ iv. Senna, ξ iv. Cream tart. ξ i. Tart. emet. gr. iii. Detained seven hours.” Is that a visit to Mrs Ralston? The *medicine* is to her decidedly.

Did you then visit and prescribe for her? I made the visit and the prescription. The prescription was for her, and partly the visit.

30th. (Reads.) “To visit to Mrs Ralston. Sulph. ξ ii. Cream of tartar, ξ ii. Divided into eighteen powders. Detained all day.” Was that visit or that prescription to Mrs Ralston? I cannot say whether it was or not.

LORD PRESIDENT.—Have you any recollection of any other person being in the house at that time requiring to be prescribed for? Yes, I have.

Mr M'NIEL.—Is it the same kind and course of medicine you were then prescribing to Mrs Ralston? It is like it.

I ask you, is it *the same*? Look back to the other entries in your diary. My meaning is, not that it is the same one; but is it the same sort of medicine and prescription? I think this was for Mrs Ralston.

LORD PRESIDENT.—Were the *medicines* of the *same kind*? Yes, they are.

Mr M'NIEL.—The visit on 3d December, was it and the prescription for Mrs Ralston? (Witness reads.) “To visit to Mrs Ralston. Pill. rheum. comp. No. 12. Carbonas sodæ, ξ i. Elixir of vitriol, ξ i. Mustard, lb. $\frac{1}{2}$. Detained *four* hours.” I know the whole of that was hers. The *mustard* was for the family use. She came to my house on the 3d of December, and gave the order, and I was that day in hers.

Then that entry regards her? Yes.

How far is Kilmaurs from her house? About four miles by the carriage road, but it is a mile and a-half nearer by a short road.

LORD PRESIDENT.—Did she walk to your house? She kept a gig, and I think she was in it.

Mr M'NIEL.—On the 4th of December there is a visit stated, and another on the 5th, when you prescribed, and were detained six hours, was that visit to Mrs Ralston? Very likely it was. I cannot be positive.

Then on the 8th there is a visit, and a similar prescription, Was that to her? (Witness reads.) “8th. To visit to Mrs Ralston. Pill. opii, No. iv. Detained five hours.” Probably it was. I cannot say. Were it not for the book I could have no recollection at all of the matter.

Read the entry on the 10th. (Witness reads.) “To visit to Mrs Ralston. Blooded. Pill. opii, No. iv. Detained all day.” Was that to her? I have no recollection of it; only this book puts me in mind of it.

On the 11th there is a visit to Mrs Ralston, when you were detained five hours. On the 13th you visit her again; and on the 14th you again visit her, when it appears you were detained most of the day. Were these visits to Mrs Ralston herself? It is quite out of the question for me to say whether they were or not.

On the 17th, what is the entry? (Witness reads.) “To visit to Mrs Ralston. Tinct. henbane, ℥ i. Mustard, ℥ iv. Detained all day.” Tincture of henbane! That was for her certainly.

Then on the 18th? (Witness reads.) “To visit to Mrs Ralston. Tinct. henbane, ℥ i. Detained four hours.” That is hers too.

Then the 22d? (Witness reads.) “To visit to Mrs Ralston, and little Nancy Ralston. Calomel to Nancy. Detained four hours.” You enter that for a member of the family specially. How came you to do so? It was for her niece, who was a different person from the servants in the kitchen.

In what lay the difference? I can't tell you precisely. It struck my fancy at the time to enter it in that way.

Is that the first entry to Nancy? It is. There was medicine sent for her, and that was a reason for entering her name. At this time I might wish Mrs Ralston not to take the calomel, and I made the entry in that way. I visited them both on that day.

LORD PRESIDENT.—If you had labelled the medicine that might have prevented any mistake.

WITNESS.—My Lord, they both had the name of *Nancy*, and Mrs Ralston was very proud of the name. I never thought of this book—(laying his hand emphatically upon it)—being brought here.

Mr M'NIEL.—I dare say not. On the 26th of December there is, “To visit to Mrs Ralston. Calomel, gr. iii. No. iii.”

Can you say if that was a visit to Mrs Ralston? I can't tell. I put these entries down for myself, and I can't tell now for whom the visit was.

What is the entry on the 28th? (Witness reads.) "To visit to Mrs Ralston. *Mrs Sloan returned*. Detained seven hours." Is that a correct entry? I can't say. She returned on the 28th.

Mrs Ralston removed to Kilmarnock on the 20th of January? Yes. The medicines and attendances there were all for her, and none else. Before that, when she resided at Warwickhill, I cannot say positively for whom they were; but now I can.

Are all the entries there correct? They are all correct.

You got a judgment from the arbiters to whom your account was referred? I got a *judgment*, but *no money* as yet.

You have said that your visits to Warwickhill may have been to some other person in the house, and not to Mrs Ralston? Yes.

You cannot say to whom? I cannot point them out. The most of them were to Mrs Ralston, but they were also to others of the family.

Might they have been to both at the same time? Yes; but I cannot tell.

From the 15th of September 1833 to the 20th of January 1834, when Mrs Ralston went to Kilmarnock, was there never any of the servants dangerously ill? Not that I recollect.

You have told us of your visits to Mrs Ralston from the 15th to the 30th of September, and of your frequent bleeding and blistering her, did you consider that as proper treatment for her case? I would not go the length that she urged. She was fond of something doing. I would not have gone that length if I had been left to myself.

What do you mean by saying you would not have gone that length had you been left to yourself? I would not have blistered, or bled her, or shaved her head. She needed no more *shaving* than any one in this house. (Laughter.) I have blooded her hundreds of times, when there was no occasion for it, to please her own whim.

Did she think herself the better of this frequent bleeding? At all times she imagined herself the better of it, and did so for twelve years before.

You did not consider that the frequent bleeding did her any harm? Not the small quantity I took. The first-mentioned bleeding here was absolutely necessary, that on the 15th of September, and perhaps the two or three afterwards.

LORD PRESIDENT.—Did you consider the blister on her head

to be necessary? I did not think it. It was her own wish, not mine.

Mr M'NIEL.—I think you said that the bleeding on the 15th of September was necessary, Was it so? Yes, it was.

And the blistering on the 20th, was it necessary? Yes. All that was done for three or four days after the 15th was necessary. After that she got better, and then they were not necessary. If it was not what was done on the first two or three days, no more was necessary.

Were none of the after bleedings necessary? None at all.

Do you remember what was the quantity of blood that you took from her on the 15th? I think I intended to bleed her freely; but the blood did not run freely, and I then put the leeches on her head.

You were sent for on that occasion? I was.

At what time of the day was it? In the after part of the day.

You intended that she should bleed freely on that occasion? I did. I got a cupful, but I wished for more.

Why so? Because I thought her complaint required it.

What were the symptoms? When I went, I found her lying on the sofa, sick, and vomiting. She vomited a quantity of acid fluid, which made me afraid of tendency of blood to the head. The smell of what she vomited was exceedingly sour.

You remained a considerable time there then? I did. I considered it absolutely necessary to remain a considerable time then.

Why so? That I might watch any bad symptoms.

Did she continue unwell for some days? Yes. She was rather complaining for some time.

Was she in her bed-room when you bled her? She was not: she was on a sofa in the parlour.

You visited her again on the 16th of September? Yes.

Was she then in bed? She was not. She was going about from the kitchen to the parlour; but ailing, and complaining of giddiness.

Did she complain frequently of giddiness? Sometimes; but she was always able to go about her affairs next day.

Did she complain of headach occasionally? Yes, when her stomach was wrong.

Was it then that she asked to be bled? It was generally on these occasions.

LORD PRESIDENT.—Then she was not so very whimsical.

Mr M'NIEL.—You thought that the blister on the 18th was not necessary? Yes.

Did that lay her up? It did not.

She attended to her affairs as usual? Yes, along with Mrs Sloan.

These prescriptions of medicine you gave her were intended to operate upon her bowels? Yes.

You gave her sulphur of magnesia and tartar-emetic? Yes.

Are you used to prescribe such medicines for the bowels? Decidedly I am. The state of the bowels is always an important object.

Was this practice successful? Either that or nature relieved her.

And she got well *in consequence*, or *in spite of it*? Yes, either in consequence or in spite of it. It did her no harm at any rate.

LORD PRESIDENT.—It was said, I think, of Dean Swift, that he was cured, at the moment, of his disease, but died next day of his physician. (Laughter.)

WITNESS.—She was an excellent subject for me. I wish I had a few more like her. (Renewed laughter.)

MR M'NIEL.—You attended her to the time of her death? I did not. She went to another, and died in two months after she got out of my hands.

What was her state on the 15th of September 1833, when you visited her; did she speak freely to you? She did not.

Did she complain often? I think she complained often on account of quarrelling with her husband. She then complained, and got herself blooded; and he, being a soft man, then exclaimed, "Oh Nancy, my dear!" and yielded. (Laughter.) And she did the same after his death.

You considered her to be really ill on the 15th of September? I considered her dangerously ill that day.

You were applied professionally to to give a certificate of her health and habits of life? I was.

That is your report? (Shewn report.) It is.

You also witnessed her signature to the declaration she then made at the time of proposing an insurance on her life? Look at that. (Shewn Mrs Ralston's declaration.) I do not recollect; but that is my signature.

Now, Sir, there is here stated, that when you last saw her, which was on the 25th of November 1833, that she was then in perfect health; that she had been last ill in *the month of September last*, and that you were in the habit of seeing her frequently; and I observe that you made her many visits betwixt that time, and also before the date of your certificate: Did you make these visits for no cause whatever? Many of them were for her own whims. At first she was ill, but not afterwards.

What made you conclude that she was ill on the 15th of

September? She was then lying on the sofa, and could not speak. I asked her what was the matter with her. She did not answer, but laid her hand on her stomach, which was large, and complained of her head. I thought her stomach was wrong, and that there was danger of a tendency of blood to the head; and that made me think her dangerously ill.

Betwixt that period, and during the months of October and November, were all these attendances and prescriptions given for *no* cause whatever? She *might* be ailing,—perhaps from acidity of stomach.

Was that her only complaint? From any thing I saw, and the only one I saw till she was ill in Kilmarnock.

And the prescriptions you gave her were intended to remove acidity of stomach? Yes, they were.

Were these the usual ones you used? Yes, they were; but there are several others.

I see, on 3d December, elixir of vitriol, 1 oz. and other articles entered in her account? That was not an order of mine. She called for these at the shop, and got them. I knew not what she was to make of them.

You said you prescribed for her that day? I did; but I did not prescribe the elixir of vitriol. I did prescribe the rhubarb pills on 3d December.

LORD PRESIDENT.—Who was the vitriol got for? I know not. She asked for it.

Mr M'NIEL.—What did you prescribe for her that day? I prescribed “Pill. rheu. comp. No. 12; carbonas sodæ, $\frac{3}{4}$ i.”—and a great deal was prescribed which she never took.

You *intended*, however, that she should take them? No, indeed, I did not. (Laughter.) *Not the whole*. I meant to keep her bowels in order.

You did not intend she should take the whole? I certainly did not.

But when you did prescribe particularly, you wished them to be taken? Yes, certainly.

You were asked, on 30th November 1833, if she was then in perfect health, and had been so on the 25th, being the day when you last saw her, and you answer—“Yes.” Now, I see you prescribed for her on that day. Yes, I did; to keep her bowels in order. Any person in good health might have taken these powders with perfect safety. But then, my good Sir, these were to be put into a bottle of water, and a glassful taken every morning or so.

You attended her all day on 30th November? Yes.

What were you doing? Talking about insuring her life, and

getting dinner, tea and supper, which occupied all the day.
(Laughter.)

You answered, that she had had "occasionally slight headach from acidity of stomach, but no organic affection of any organ,"—was that her complaint on the 15th of September? It was *not* a slight attack that she had on the 15th of September; but it went off, and she was well next day.

You considered her seriously ill at that time? Yes, before vomiting.

You were questioned, "Do you know of any circumstance in her business or habits of living which may be considered as tending to impair her health or shorten her life?" and you answered—"I know of no circumstance." You thought nothing then of that illness and bleeding on the 15th of September, and the frequent bleedings afterwards? None; she had been accustomed to be bled for more than twelve years before.

LORD PRESIDENT.—Did you leave any blood in her body after that? I did not take much at a time, my Lord.

Mr M'NIEL.—Did you not think of any other prescription; did you not give her any antacids? When there is acid in the stomach it requires antacids; but cream of tartar and similar medicines operate on the bowels, and I do not then prescribe antacids.

Then you did not prescribe it? I prescribed nothing but what is in *there*, (placing his hand on his diary.)

Look at that, (the note, No. 76. of process, addressed to Dr Sloan from Warwickhill, desiring his attendance with his best lancet, shewn to witness,) was that note from Mrs Ralston; and did you receive it? That was before the death of Mr Ralston: it was received by me.

There is another, (the note, No. 75. of process, without date, from Mrs Ralston's niece, asking him to come and bleed her, shewn to witness,) you received that? Yes, I did.

There is another, dated Sunday forenoon, desiring you to bring your best lancet, (shewn to witness,) was that received by you before or after Mr Ralston's death? I don't recollect.

Were you in the habit of receiving such notes from Warwickhill? Whenever the whim took her, I did.

And you went always? Decidedly so.

And you were always humouring her as much as you could? Certainly. No medical man ever practised in the house so much as I did.

Cross-examined by the SOLICITOR-GENERAL.

Mr Sloan, you knew the late Mrs Ralston and her husband for a period of twelve years? Yes, from 1821 to 1832.

And you were in attendance upon them during all that time? Nearly so.

What sort of a person was she? Was she tall or short? She was tall; not corpulent.

You considered that she was of active habits? Very much.

Did she take any charge of her household affairs? More than any lady betwixt that and this, both in and out, both in the house and in the dairy.

Did her constant complaints not interfere with this charge? When sickness prevented her, for a day; but next day she was at her usual employment.

She had her whims in some respects, had she not? Both he and she had them.

And she had the female quality of liking her own way? She had.

And the lancet desire, certainly? Yes.

You said you thought it was not so much on account of illness, but to work upon the feelings of her husband, that she always, after having a disturbance with her husband, insisted on being bled? Her husband was moved on seeing the blood, and then let her have her own way. She always won the battle.

Did she always complain of her husband's usage, and how much blood did you take from her on these occasions? Three or four oz. A small cupful or two at most.

Leaving out of view, for the present, her illness on the 15th of September, you say all the other illnesses proceeded from acidity of stomach? I do not recollect of any thing else.

LORD PRESIDENT.—He said so before.

The SOLICITOR-GENERAL.—Was she always well next morning? She complained sometimes of giddiness, but was never confined two days.

On the 15th of September, when your attendance was required, you found her lying on the sofa? Yes.

Was her stomach enlarged? Yes.

And you found her in a fit of vomiting? Not when I went in. I ordered warm water to be brought; but she vomited before it came, and did not take the water. She vomited much, and what came up had a very sour smell.

You thought all her sickness proceeded from acidity of the stomach? I was perfectly satisfied that it was so.

Headach arises from acidity of stomach frequently, does it not? I think always.

Then you saw no symptom that was not perfectly explained by the state of her stomach? All was perfectly explained.

And next day, how was she? She complained of giddiness, but was going about again.

She complained of her stomach? She did.

And was it satisfactory to you? Yes. She said she had been for seven or eight days eating much of oatmeal cake, of which she was rather fond, and that had occasioned the acidity.

Did you see any symptom, in the course of your attendance on Mrs Ralston, of any organic affection? Never. I considered her the most healthy woman I ever saw.

These headachs were merely occasional? They generally happened after quarrels with her husband.

Did you think she had always headach when she complained of it? I did not.

They quarrelled oftener than once a-day? They fought like two game-cocks. (Laughter.)

You always found, when she *had* headach, that it proceeded from acidity of the stomach? Yes.

Did you ever think that there ever was an affection of the brain? Never.

None before she left Warwickhill? None. No organic affection of the kind.

On that occasion of 15th September, did you see any appearance of apoplexy? None. When the stomach was emptied, she was then entirely relieved.

Do you think, *now*, that that was not an attack of an apoplectic nature? I do not. The determination of blood to the head was a *secondary* symptom, and therefore I bled her.

You thought that the blister to her head was not requisite? She was not requiring it next day more than that, (slapping his diary.)

There are many prescriptions entered in your diary, thirty-six pills at one time; you did not surely intend she should take all that medicine at once? Certainly not. It was merely a supply of medicines, to be taken occasionally and at intervals, to secure proper attention to the bowels and the surface of the skin.

You considered Mrs Ralston as a person in good health while she resided at Warwickhill? I considered that she was then in the enjoyment of full health.

Your medical skill did not shew you that she had any habits

tending to the shortening of life? I did not. I considered her a most excellent life.

You thought that the frequent bleeding was not necessary? Not always. It was generally done at her own desire, when I would not have done it otherwise.

But you did not do so when it would have been dangerous to bleed her? Never.

And all the time she resided at Warwickhill you considered her to be in good health? Yes. With those exceptions that I have stated, all resolved into acidity of stomach. I never saw any thing else but acidity of stomach.

I observe you prescribed opium to Mrs Ralston on 5th, 8th, and 10th December, was that for an affection of the head? No, not for an affection of the head.

I understand you to say, that if these prescriptions of opium were given to her, that would not be for any affection of the head? Certainly not.

When your attendance upon her was continued for a whole day, was that attendance not necessary? Certainly not. It was to stay dinner.

Just as if a nobleman were asking his professional adviser or man of busines to stay dinner? Certainly.

Or, as the professional men here—we lawyers—sometimes take a whole day to settle what might easily be settled in a few minutes? Yes, exactly so.

On the 15th September, were there no apoplectic symptoms?

LORD PRESIDENT.—He has said so already.

WITNESS.—She only did not speak at first. I saw no appearance of apoplexy.

The SOLICITOR-GENERAL.—Did she wear false hair?

LORD PRESIDENT.—She was shaved. (Laughter.)

LORD PRESIDENT.—On occasions of the altercations betwixt her and her husband, was she violent? She was sometimes pretty violent.

LORD PRESIDENT.—Was she much excited? Not so much as he was. She was always the calmest of the two; and he had ten whims for her one.

The SOLICITOR-GENERAL.—When she was so much excited, might not that have given rise to an uneasy feeling in her, and to a wish to be bled, in order to allay it? It might.

Mr M'NIEL.—Did you say, that before the 15th of September, Mrs Ralston said she had been eating oat-cake to excess? She told me so, not to *excess*, but a *great deal*; and that she had been inattentive to her stomach and bowels.

LORD PRESIDENT.—Oat-cakes produce heartburn sometimes;—that I know, and acidity of stomach also.

A JURYMEN.—Is the doctor in the habit of entering visits to his other patients in his book? Yes,—to those who do not pay me an annual allowance.

The SOLICITOR-GENERAL.—You have a decree-arbitral for payment of your account, have you got payment of it? The action I raised was taken out of Court by a submission; but I have not yet got payment of the sum awarded to me by the arbiters.

Dr MACLAGAN.—Did you ever observe any imbecility of mind in Mrs Ralston? Never; and with the exception of some whims, I thought her one of the strongest-minded women I ever knew, before she went to Kilmarnock.

Dr MACLAGAN.—Was it before or after the insurance was effected that you observed any weakness of mind in her? After she went to Kilmarnock, on the 20th of January, she was struck with epilepsy. I then saw her in a fit of epilepsy on the 20th January.

Dr MACKINTOSH.—Were you surprised at her having had a fit of epilepsy on the 20th of January, seeing she had been long before subject to headach? I took it as I found it. I did not think that headach was *the cause* of that fit of epilepsy. I took the case as I found it. I did not connect the fit with the headach.

Dr MACKINTOSH.—Do not giddiness and headach frequently precede attacks of apoplexy or epilepsy? I have not been much in the practice of observing fits of epilepsy. I should presume giddiness and headach would be the forerunners of epilepsy or apoplexy. I never was alarmed for epilepsy in Mrs Ralston's case, till the 15th of September.

LORD PRESIDENT.—Did she describe her headachs as severe? She complained of a little headach. I do not recollect of her using the word "severe."

LORD PRESIDENT.—Did she say, "I have got a slight headach to day?" Yes, that was generally her mode of expression.

Mr M'NIEL. Did she ever go to bed in consequence of headach? In 1823 or 1824 I have seen her do so; but not latterly.

Mr M'NIEL then put in the following

DOCUMENTARY EVIDENCE.

1. Dr Sloan's diary.
2. His medical report on Mrs Ralston's life.
3. Three notes received by him from Warwickhill. Also,

4. The summons and account libelled on, and the defences and revised condescendence in his action against Mrs Ralston's representatives : And,

5. The submission and decree-arbitral of Drs Young and Corkindale.

Mr ALEXANDER HOOD, surgeon, Kilmarnock, sworn.
Examined by Mr M'NIEL.

Dr Hood, you were acquainted with the late Mr Ralston of Warwickhill, and with Mrs Ralston? Yes.

Dr Sloan was then the confidential medical attendant of Mrs Ralston? Yes.

She removed to Kilmarnock in January 1834? Yes.

And after that you attended her? Yes, after the 10th of January.

And you met Dr Sloan sometimes in consultation on her case? Yes, I did.

Look at this excerpt from your day-book. (Excerpt shewn to the witness.) Is that correct? Yes.

I see the letter V. then VV. then VVV. what does that mean? One visit, two visits, three visits.

This account commences with a visit on the 25th of June 1833, Was that a visit to Mrs Ralston? That was not, correctly speaking, a visit to her, but to Mr Ralston. I was then on a visit to him, and she requested to be bled.

And you bled her on that occasion? I did.

LORD PRESIDENT.—Did you see any occasion for that bleeding, Dr Hood? No particular occasion, my Lord.

Mr M'NIEL.—Was she complaining? I thought she said she had a headach.

Was that in the month of June 1833? On the 25th of June.

On the 4th of October 1833 you paid her a visit,—was she then recovering from illness? I put no professional questions, but she said she was then getting better.

You visited her once at Troon? Yes.

And she died there? Yes, on the 2d of September 1834.

Did you observe any thing particular in her situation on the 20th of January? I was sent for. I observed her lying in bed in a state of insensibility. I opened a vein, thinking it might be apoplexy. In a short time she became convulsed and foamed at the mouth, which led me to infer that her complaint was not apoplexy, but epilepsy. As Dr Sloan had been her medical attendant, her friends requested that he might be sent for. He came betwixt 11 and 12, and remained all night. I believe no-

thing more was done. I mentioned to Dr Sloan the circumstances that had fallen under my observation ; and she remained under his charge during the night.

LORD PRESIDENT.—Did the blood come when you opened the vein ? Yes, it did.

MR M'NIEL.—On the 6th of February, you made a will for her ? More properly jottings of her will, for the direction of her man of business.

On the 21st she had a fit ? Yes.

On the 22d you have “ VV,” and “ talks incoherently ?” Yes.

On the 23d “ VV, incoherent ?” Yes.

She had another fit in March ? Yes. It is not mentioned ; but I recollect she had.

She had none in April ? No.

Nor in May ? No.

On April 1. 2. 3. and 4. you have “ VV” each day ? And on *two* of these days, “ VVV” each day ? Yes. She had been worse ; a little worse.

You attended her from the 10th of January frequently ? Yes, almost every day ; sometimes twice a-day.

Was she affected with lowness of spirits ? Yes, she was.

In the month of August 1834,—the 29th of August,—you went to visit her at Troon ? Yes.

In what state did you then find her ? She was sensible, but lying in bed, and paralytic on one side.

What did you do on that occasion ? I bled her, shaved her head, and applied leeches to it.

She died on the 2d of September at Troon, and you made a *post mortem* examination of her body ? Yes, I did.

Read it, if you please. (Witness read as follows :)

“ I hereby certify, on soul and conscience, That on the 3d instant, I went to Troon, where Mrs Agnes Ralston of Warwickhill had been residing for a few weeks, with a friend ; and on inspecting her body, about thirty hours after her death, two or three ounces of effused, coagulated blood was discovered in the lower and posterior parts of the right hemisphere of the brain, extending even to the centre of the right lobe of the cerebellum. I can, therefore, have no hesitation in stating, that her death was occasioned by the rupture of a blood-vessel in the head.

ALEX. HOOD, Surgeon.

“ *Kilmarnock, 12th September 1834.*”

What was the disease she died of ? Apoplexy.

The LORD PRESIDENT.—MR Solicitor-General, according

to my view of the case, as it stands at present on the evidence, I may here cut this trial short. *In point of law*, I shall tell the Jury, that the illness of Mrs Ralston on the 15th of September ought to have been explicitly explained to the Insurance Office by Mr Sloan, when he gave his certificate; and he then thought her most dangerously ill. That was a most decided concealment of a material fact; and the office was entitled to know and to judge of that fact.

The SOLICITOR-GENERAL.—My Lord, we are only now in the course of examining *the pursuers'* evidence, and a great deal of argument may be raised upon that evidence.

The LORD PRESIDENT.—Mr Solicitor, no argument you can state will convince me that the Insurance Office was not entitled to know of that attack of illness Mrs Ralston had on the 15th of September; and unquestionably I shall so tell the Jury.

The SOLICITOR-GENERAL.—Independently of the decided opinion of the Court that has now been expressed, I stand here to argue, that there was no undue concealment on the part of Mr Sloan, or of the insured, in respect of that illness of the 15th of September. There can be no question, if Mr Sloan's opinion had remained the same as it was on the 15th, there would have been concealment,—concealment of a material fact. As your Lordship has mentioned your opinion in the hearing of the Jury, and of the medical witnesses, who are yet to be examined, I now mention, *generally*, the argument I will use in addressing the Jury; and I hope to be able to satisfy the Jury, that no importance can be attached to that attack of illness on the 15th of September. Mr Sloan having soon seen how matters stood, came to view it in the same light as all the other attacks of illness this lady had. It passed off, and was quite immaterial in his mind.

The witness was then cross-examined by the SOLICITOR-GENERAL.

Mr Hood, you were acquainted with Mrs Ralston, late of Warwickhill? Yes.

She was not a corpulent person? She was not.

She was a woman of active habits? Yes, she was.

She took an active charge of her family? Yes.

You only at first visited her late husband at Warwickhill? Yes.

She asked to be bled on one occasion? Yes.

And you did so? Yes.

You were not called regularly till she came to reside at Kilmarnock? I was not.

On the 20th of January 1834 you saw her there? Yes.

You then opened a vein? Yes.

You then found her disorder was epilepsy, not apoplexy? Yes.

Now, Dr Hood, from all you saw of Mrs Ralston, and from your *post mortem* examination of her body, are you inclined to think that the tendency to apoplexy was of long duration? I don't think it was.

Now, Dr Hood, with your knowledge and experience, would you think there were good grounds for the opinion, that an apoplectic tendency had long existed, if you knew that Mrs Ralston had been subject to frequent headaches, and that these uniformly gave way to medicine? I should say, in that case, that there was no such tendency; but, after the 20th of January, the epileptic fit she then had might have thrown a great quantity of blood into the head, and given a tendency to apoplexy.

Did those fits of epilepsy tend to that of apoplexy; did you ever see any tendency to apoplexy? No, never.

Then, do you think that these headaches give you occasion to think that there was a tendency to apoplexy in her case of long standing? I don't think so.

Might that fit of epilepsy which she had on the 20th of January have been the *first* fit of the kind? I believe so.

Might it not have occurred on the 20th of January, without any previous disease having been formed on the 1st of December preceding? There may have been a pre-existing tendency.

May it not have occurred previously? Yes.

May it have been of long standing? I do not think it was of long standing. It *may* have been; but fits of melancholy and epilepsy may have created a tendency to apoplexy. It is not necessary to suppose that a tendency pre-existed to apoplexy.

Dr MACLAGAN.—Did the effusion of blood appear to be recent? Yes.

Was it soft? Yes.

Was there any appearance of ossification? There was an appearance of bony matter on the surface of the *dura mater*, about half the size of a herring skin.

Was the ossification on the left side? I think it was.

Mr M^cNIEL then put in, as DOCUMENTARY EVIDENCE,

1. Dr Hood's account for medicines and attendance.
2. His certificate of his *post mortem* examination of Mrs Ralston's body.

MR JOHN WHITEFORD MACKENZIE, W. S. SWORN.
Examined by Mr M'NIEL.

Mr Mackenzie, your father was the late Dr Mackenzie of Irvine? Yes.

You know that he attended in the family of the late Mr Ralston of Warwickhill as their medical attendant? Yes.

Your father kept an exact book of his attendances? Yes.

(Shewn No. 42. of process.)

Is that an account relative to his attendances on Mr Ralston of Warwickhill's family? Yes.

ANN RICHMOND OF COCKBURN SWORN.
Examined by Mr M'NIEL.

Ann, you were in the service of the late Mrs Ralston of Warwickhill? Yes.

At the time of her husband's death? Yes.

Do you remember any thing particular happening before Martinmas 1833 in the cellar? Yes, Sir.

What were you doing? Weighing wheat.

What time of the day was it? After breakfast.

LORD PRESIDENT.—In what month? I don't remember: it was in autumn.

Mrs Ralston was there? Yes.

Did she put on the weights? Yes, Sir.

Did she say any thing to you then? Yes.

What was it? She bade me stand back, as she could not see.

Were you betwixt her and the light at the time? No, I was behind her.

After that, what happened? She fell back.

On the floor of the cellar? No. I kept her up in my arms.

Was there any body with you at the time? A little girl, Nancy Ralston.

Did you send her for assistance? Yes.

Did you hold her (Mrs Ralston) in your arms till assistance came? Yes.

Was that long? About five or ten minutes.

Did you assist in carrying her into the house? Yes. She was carried in to the sofa.

Was she sensible then? I don't know.

Was she able to speak? She was not speaking any.

Did she moan? She moved her arms, her shoulders, and her head.

Was the doctor sent for? Yes.

Did he come? Yes.

What did he do? I left the room after she was taken to the sofa.

Did she remain in the parlour all night? Yes.

On the sofa? Yes.

Her bed-room was up stairs? Yes.

Was she in use to complain of headachs? She was.

Was she in use to lie down when she had headach? Very seldom. She went about. Sometimes she went to bed.

Was she frequently blooded? Yes.

Was she long ill after that? Yes; but she was in the kitchen the same afternoon.

She did not go to bed? She went back to the sofa.

Did any body sit up with her that night? Yes, Sir.

Cross-examined by Mr COWAN.

Do you remember of any thing having happened before Mrs Ralston went to weigh the grain? A cow was ill, and Mrs Ralston went to the byre to see her.

What was the matter? She had a sore udder.

Did Mrs Ralston come back from the byre, and where did she go? Yes. She came and sat down by the kitchen fire, and appeared sick.

Who came in? James Jack.

He had been operating upon the cow? Yes, Sir.

What happened then? I gave Mrs Ralston a drink of water.

Did she say any thing to Jack? I don't remember.

Was it after this that she went to weigh the wheat? Yes.

Nancy Ralston was in the byre then? Yes.

Dr MACLAGAN.—Did Mrs Ralston foam at the mouth when she was removed from the cellar? I don't remember.

Miss NANCY RALSTON SWORN.

Examined by Mr M'NIEL.

Miss Ralston, your father is Mr Gavin Ralston, a nephew of the late Mrs Ralston of Warwickhill? Yes, Sir.

She was your grand-aunt? Yes.

You staid with her some years before her death? Yes.

For some years? Yes.

Was she frequently complaining? Yes.

Of headach? Yes.

Did she say that they were painful? Yes.

Did she sometimes go to bed on account of them? Yes.

Do you remember of any thing particular happening in the cellar, at the weighing of wheat? Yes.

What happened on that occasion? My aunt was weighing some grain.

Did she complain of any thing? She complained of want of light.

What happened? Did she fall? Yes.

Did she fall backwards? Yes.

Was she caught in falling? Yes; Ann Richmond caught her.

Was she carried into the house and laid on a sofa? Yes.

Was she insensible for some time? Yes.

Was Dr Sloan sent for? Yes.

He came and attended her? Yes.

Was she unwell for any length of time? Yes; but not long.

When was she going about again? In two or three days.

Did she go about then as lively as she did before? Not so lively.

Did you go with her to the neighbourhood of Kilmarnock, on a visit to the late Mr James Ralston? Yes.

When was that—after new-year's day? About the new year.

Did she give any reason for staying there? I do not recollect.

Had she any illness there? Yes, she had.

Was she attacked in the garden? Yes.

Was she affected in the same way then as at Warwickhill? I don't remember.

She was confined to bed on that occasion? Yes.

When she was taken ill in the cellar at Warwickhill, did she vomit? Not in the cellar.

You went for assistance to carry her into the house? Yes.

Cross-examined by the SOLICITOR-GENERAL.

Dr Sloan came soon after? Yes.

Did she vomit after he came? I do not remember.

Was this about the beginning of September? I don't recollect.

MR M'NIEL.—Did Dr Sloan bleed her? He tried it.

THE SOLICITOR-GENERAL.—Had she leeches applied to her head? Yes.

A JURYMEN.—Did you see your aunt in the kitchen that evening? Not on the day she took ill.

The medical gentlemen, who had remained in Court during the time the preceding witnesses were under examination, were then called, and examined as follows:

DR MACLAGAN SWORN.
Examined by Mr M'NIEL.

Dr Maclagan, you have heard the evidence in this case? Yes.

Look at that declaration of Mrs Ralston's, and her answers to the questions put by the Insurance Office. (The declaration, questions and answers handed to witness.)

You see that Mrs Ralston, in answer to Question 8, "Are you, or have you been at any time since your childhood, afflicted with rupture, fits, convulsions, asthma, insanity, or spitting of blood; and if so, which?" answers, "Never." That in answer to the next question, the 9th, "Are you afflicted with an habitual cough, or with any disease of the lungs, or any other disease or disorder tending to the shortening of life?" she answers, "I am not." And that, in answer to the 12th question, "Is there any other circumstance or information touching your past or present state of health or habits of life which the managers ought to be made acquainted with?" she says, "None that I know of." And finally, (towards the bottom of the paper,) that she makes this general declaration, "I, the above named, do hereby declare, that I am now in good health; and that I do ordinarily enjoy a good state of health; and that I am not aware of any circumstance tending to shorten my days, or to render an assurance on my life more than usually hazardous." You will also observe Dr Sloan's answer to the 4th question put to him by the Office. (Dr Sloan's report handed to witness.) "When did you see her last?" He answers, "On the 25th November last." To Query 5, "When was she last ill?" He answers, "In the month of September last." To Query 6, "What was her indisposition?" He answers, "Acidity of stomach." To Query 7, "Has she, to your knowledge, been affected with any illness of such a nature as still to influence her general health; or has she experienced any wound, hurt or other accident?" He answers, "Not to my knowledge." To Query 8, "Is she now in perfect health?" He answers, "Yes." To Query 9, "Is she, or has she been afflicted with spitting of blood, asthma, fits, insanity, gout or rupture?" He answers, "Not to my knowledge." To Query 10, "Is she subject to any affection of the head, lungs, heart or other viscera?" He answers, "Occasionally slight headach, from acidity of stomach, but no organic affection of any organ." To Query 11, "Is she temperate in her habits of life?" He answers, "In the highest degree." To Query 12, "Do you know of any circumstance in her business or habits of living, which may be considered as

tending to impair her health or shorten her life?" He answers, "I know of no circumstance." Now, Dr Maclagan, do you see any thing there to induce you to believe that Mrs Ralston was at that date (30th Nov. 1833) in a bad state of health; or to lead you to think that the Insurance Office should not have accepted that proposal without further inquiry? Certainly not. There is nothing there stated which should have prevented the Insurance Office from accepting the proposal without further inquiry.

Is there any thing there stated to lead you to suppose that Mrs Ralston had such an attack on the 15th of September 1833, as that which you have heard described by Dr Sloan? Certainly not.

Or any thing to lead you to suppose, that, from that date, 15th September 1833, down to 30th November 1833, the date of Dr Sloan's certificate, she had been under the course of medical treatment described in Dr Sloan's diary? Certainly not.

Do you consider the illness of Mrs Ralston on 15th September, as described by Dr Sloan, to have been such as the Insurance Office ought to have known in effecting the insurance on her life? Certainly.

Do you consider that the continued medical treatment of Mrs Ralston, and the course of medicine there prescribed, were important circumstances for the Insurance Office to know? Certainly.

Would you have considered it incumbent upon you, in making a medical report to an Insurance Office, on a case such as Mrs Ralston's, to have disclosed that illness and that course of treatment? I certainly should.

Under the circumstances of her case that have been disclosed to-day, would you have considered Mrs Ralston as a woman in perfect health? Assuredly not.

Do you consider, on the facts of her case, as disclosed by Dr Sloan in his evidence, that there were any circumstances in her life tending to render an insurance upon it unusually hazardous? I do.

Be so good as state your opinion of the state of her health from the 15th of September 1833 to the date of the insurance? It is not easy to do so; but it appears that she had severe headaches, requiring frequent bleeding as well as medicine; and certainly she could not be said to have been in perfect health, or in such a state of health as not to demand further inquiry on the part of the Insurance Office before insuring her life.

You have heard that she very frequently asked to be bled, and that she thought herself better after the bleeding, do you

think that that was a matter of importance for the Office to have known? Certainly; and if from mere whim she was bled more than a *hundred* times, as stated by Dr Sloan, and if she required to be bled *four* times in the short period of a fortnight, as it appears she was after the attack in September, certainly she was not in such a state of health of mind or body as to entitle any one to say hers was a good life.

Are you of opinion that there was a connexion between the attacks Mrs Ralston experienced in September and the fits she afterwards had, or the disease of which she died? I cannot affirm positively that there was; but her frequent attacks of headach and giddiness, and the relief she experienced from bleeding, seem almost to warrant the inference that Mrs Ralston had a constitutional predisposition to fulness of blood *in*, or determination of blood *to* the head, which led to the disease of which she died.

Cross-examined by the SOLICITOR-GENERAL.

Was there any thing in Mrs Ralston's situation and disorder, or in Dr Sloan's treatment of her case, tending to shew that there was any thing else than merely an affection of the stomach? It appears to me that the medical treatment generally was more applicable to affection of the head than of the stomach; and at her time of life, (sixty years of age,) if the facts this day disclosed had been stated to the Insurance Office, they would have been led to decline the insurance, or at least to have made farther inquiry.

Dr MACKINTOSH sworn.
Examined by Mr M'NIEL.

Dr Mackintosh, be so good as look at that declaration of Mrs Ralston, (handed to witness,) and the answers made by her to the questions put by the Insurance Office, particularly the 8th, 9th, 10th, 11th and 12th, and the general declaration at the bottom of the page, "I, the above named, do hereby declare, that I am now in good health; and that I do ordinarily enjoy a good state of health; and that I am not aware of any circumstance tending to shorten my days, or to render an assurance on my life more than usually hazardous." Then look at Dr Sloan's medical report to the Office of the state of Mrs Ralston's health on 30th November 1833. (Handed to witness.) The questions put to him, and his answers were, (Mr M'Niel here read the report; *vide antea*.)

Do you see any thing on the face of these documents to induce the Insurance Office to reject the risk, or to make farther inquiry? I do not.

Referring to the illness of Mrs Ralston in September 1833, as you have heard it described in the evidence of Dr Sloan and other witnesses, do you think it was of importance to have been communicated to the Insurance Office? Of the highest degree of importance.

You have heard the particulars of the treatment of Mrs Ralston's case by Dr Sloan, from the 15th of September 1833 to the date of the insurance, was it, in your opinion, necessary to have been communicated to the Insurance Office? Absolutely necessary.

Do you consider these circumstances such as to have rendered an insurance on her life more than usually hazardous? Ten times more;—that is, very hazardous.

With the knowledge of these circumstances, would you have thought her to be a person in perfect health? Certainly not. Even though she had been blooded merely *for fun*.

Dr ROBERTSON sworn.
Examined by Mr M'NIEL.

Dr Robertson, you have heard the evidence of the witnesses, of Dr Sloan in particular, as to the state of Mrs Ralston on the 15th of September 1833, do you consider that it was important for the Insurance Office to have had that made known to them before effecting the insurance? Certainly.

Her state down to the date of the insurance? Certainly.

You considered the circumstances to be of such a nature as to render the risk unusually hazardous? Certainly.

Do you consider that Mrs Ralston, during that period, was in good health? I do not.

Mr M'NIEL here stated, that he thought it unnecessary to call Dr Craigie, who was also in attendance; and he declared the pursuers' case closed.

The SOLICITOR-GENERAL.—Gentlemen of the Jury, I shall trouble you with only a single remark. If the case of the pursuers had stood solely on the fact of the illness of Mrs Ralston on the 15th of September, not having been communicated to the Insurance Office, previous to their undertaking the risk, I should not have been satisfied that it had been made out; but as the case now stands, your verdict must be for the pursuers; and I shall not kick against the pricks, but leave the case with you, with only one reflection,—That in so far as Mrs Ralston was

concerned in effecting this policy of insurance, she went about it fairly and honestly. When she was applied to by the Office, and required to name her referees, she did not refer them to a stranger for an account of the state of her health and habits of life, but to her ordinary medical adviser, Mr Sloan, and put her case into his hands. His inconsistent evidence, and the very different and decided evidence of the medical gentlemen of this city, who were examined here to-day, have lost the cause. The case of that lady,—particularly in regard to the constant bleeding she underwent,—I think, was of such a nature, that the Insurance Office had a right to be informed of it, before they insured her life and delivered the policy.

LORD PRESIDENT.—Gentlemen of the Jury, then you have nothing to do but to return a verdict for the pursuers. When an insurance office is required to pay down such a sum as L.2500, they have certainly good reason to know *why* they ought to do so. Gentlemen, you will return a verdict for the pursuers.

The Jury, without retiring, returned a verdict for the pursuers, on both issues, in these terms :

At Edinburgh, the 21st day of July 1837 years, before the Right Honourable Charles Hope, Lord President of the Court of Session ; compeared the said pursuers and the said defenders, by their respective counsel and agents, and a jury having been empannelled and sworn to try the said issues, between the said parties, say upon their oath, that in respect of the matters proven before them, and of consent of parties, they find for the pursuers on both issues.

J. OSBURN BROWN, C. J. C.

The foregoing Trial has been faithfully reported by me, from Notes taken by me at the Trial,—the opening speech of the pursuers' counsel, and the evidence of the Edinburgh Physicians having been severally revised by them.

WILL. BENNET, W. S.

Edinburgh, 2d August 1837.

APPENDIX.

No. I.

PROPOSAL OF INSURANCE.

Life Proposal.

NORTH BRITISH
LIFE AND FIRE ASSURANCE COMPANY'S OFFICE.

PROPOSED 2d December 1833.

COMPLETED 10th December 1833.

POLICY No. 837.

- | | |
|--|---|
| 1. What is the name, residence and profession, business, or occupation, of the person on whose behalf the assurance is proposed? | Mrs Agnes Ralston, residing at Warwick-hill, in the parish of Dreghorn. |
| 2. What is the name, residence and profession, business, or occupation, of the person whose life is proposed to be assured? | " |

Questions to be answered by the Person whose Life is proposed to be Assured.

- | | | |
|--|--|------------------------------|
| Approve.
T. R.
J. N.
P. R.
R. W.
<hr/> 60
L.6 0 9
5 | 1. Where were you born, and when? | { In the parish of Dreghorn. |
| L.30 3 9
5 | 2. What is your age next birth-day? | Sixty. |
| L.150 18 9
3 | 3. Are you married or single? | A widow. |
| | 4. Have you resided abroad, and if so, where, and for what period? | Never was out of Scotland. |
| | 5. Are you employed in military or naval service? | " |
| | 6. Have you had the small-pox or the cow-pox? | } Had the small-pox. |
| | 7. Have you had the gout? | Never. |

8. Are you, or have you been at any time since your childhood, afflicted with rupture, fits, convulsions, asthma, insanity, or spitting of blood; and if so, which? } Never.
9. Are you afflicted with an habitual cough, or with any disease of the lungs, or any other disease or disorder tending to the shortening of life? } I am not.
10. What is the name and residence of your medical attendant, to be referred to for information as to your present and general state of health; and how long has he known you? } John Sloan, surgeon in Kilmaurs. Has known me eight years.
11. What is the name of an intimate friend, to be referred to for similar information; and how long has he known you? } James Ralston, Esq. of Towerhill. Has known me twenty-five years.
12. *Is there any other circumstance or information, touching your past or present state of health or habits of life, which the managers ought to be made acquainted with?* } None that I know of.
13. What is the sum to be assured? } £.2500.
14. Whether with participation of surplus or not? } Without participation of profits.
15. For what term is the assurance required? } For life.
16. Will you attend personally at the office? } It would be inconvenient for me to attend any where but at Kilmarnock, which is distant five miles from my residence.

I, the above named, do hereby declare, that I am now in good health; and that I do ordinarily enjoy a good state of health; and that I am not aware of any circumstance tending to shorten my days, or to render an assurance on my life more than usually hazardous.

Dated at Warwickhill, this 3d day of December 1833.

Witness, *John Sloan.*

AGNES RALSTON.

NORTH BRITISH INSURANCE COMPANY.

OWN LIFE.

Declaration to be made and signed by a Person proposing to make an Assurance on his or her own Life.

I, Agnes Ralston, relict of William Henry Ralston, Esq. of Warwickhill, in the county of Ayr, the person described on the other side, being desirous of effecting an assurance with the North British Life Insurance Company, in the sum of Two thousand five hundred pounds, upon my whole life, during the whole continuance thereof, DO HEREBY DECLARE, That my age does not exceed sixty years: That I have had the small-pox or the cow-pox: That I have not had the gout: That I have not had asthma, any fit or convulsions since my infancy, habitual cough, spitting of blood, rupture or insanity; *and that I am now in good health, and do ordinarily enjoy good health, and that I am not aware of any disorder or circumstance tending to shorten my life, or to render an assurance on my life more than usually hazardous: And I do declare, that I have not withheld any material circumstance or information, touching my past or present state of health or habits of life, with which the Managers of this Company ought to be made acquainted: And that John Sloan, surgeon in Kilmaurs, my medical referee, and James Ralston, Esq. of Towerhill, in the parish of Kilmaurs, my private referee, are, in my belief, fully competent to give information as to my present and general state of health: And I declare, that the said John Sloan and James Ralston are well acquainted with, and fully competent to give information as to my habits of life: And I hereby agree, that this declaration shall be the basis of the contract between myself and the said Company: And that if any fraudulent or untrue allegation is contained in this declaration, all monies which shall have been paid to the Company on account of such assurance shall be forfeited to the said Company, and the policy void.*

Dated at Warwickhill, this third day of December, in the year of our Lord One thousand eight hundred and thirty-three years.

AGNES RALSTON.

No. II.

MEDICAL REPORT.

Questions submitted by the Directors of the North British Life Assurance Company to Mr Sloan, Surgeon, regarding the Health of Mrs Ralston of Warwickhill, in the Parish of Dreghorn.

Questions.

Answers.

- | | | |
|---|---|------------------|
| 1. How long have you known Mrs Ralston? | } | About ten years. |
|---|---|------------------|

Questions.

Answers.

- | | | |
|--|---|---|
| 2. Are you in the habit of seeing her frequently? | } | Yes. |
| 3. Do you attend her professionally? | | Yes. |
| 4. When did you see her last? | } | On the 25th of November last. |
| 5. When was she last ill? | | In the month of September last. |
| 6. What was her indisposition? | } | Acidity of stomach. |
| 7. Has she to your knowledge been affected with any illness of such a nature as still to influence her general health; or has she experienced any wound, hurt or other accident? | | Not to my knowledge. |
| 8. Is she now in perfect health? | } | Yes. |
| 9. Is she or has she been afflicted with spitting of blood, asthma, fits, insanity, gout or rupture? | | Not to my knowledge. |
| 10. Is she subject to any affection of the head, lungs, heart or other viscera? | } | Occasionally slight headach from acidity of stomach, but no organic affection of any organ. |
| 11. Is she temperate in her habits of life? | | In the highest degree. |
| 12. Do you know of any circumstance in her business or habits of living, which may be considered as tending to impair her health or shorten her life? | } | I know of no circumstance. |

Dated at Kilmaurs, this 30th day of November 1833.

JOHN SLOAN, Surgeon.

No. III.

PRIVATE FRIEND'S REPORT.

Questions submitted by the Directors of the North British Life Assurance Company to James Ralston, Esq. of Towerhill, regarding the Health of Mrs Agnes Ralston of Warwickhill.

Questions.

Answers.

- | | | |
|--|---|--------------------|
| 1. Have you seen her lately, and how long since? | } | To-day. |
| 2. Was she then in good health? | | Yes. |
| 3. Do you believe she is now in good health? | } | I do. |
| 4. What is the general state of her health? | | Generally good. |
| 5. How long have you known her? | } | Twenty-five years. |

- | | | |
|---|---|--------------------------|
| 6. Has she at any time been afflicted with
gout, cancer, asthma, liver, consump-
tion or spitting of blood; or been sub-
ject to fits, hernia, or any other serious
malady? | } | Never to my knowledge. |
| 7. Has she any disorder which has a ten-
dency to shorten life? | } | Not that I am aware of. |
| 8. Can you give any, and what informa-
tion, respecting her habits? | } | Perfectly regular. |
| 9. Whether active or sedentary? | } | Active habits. |
| 10. Temperate or free? | } | Remarkably temperate. |
| 11. Do you know any reason why an as-
surance on her life would be more than
usually hazardous? | } | None that I am aware of. |

Dated at Kilmarnock, this 6th day of December 1833.

JAMES RALSTON.

No. IV.

*Diary of Dr Sloan's Attendance on Mrs Ralston, recovered from
him under a Diligence in the Jury Court Process.*

1833.

-
- Sept. 15. To visit to Mrs Ralston. Blooded; sinapism to breast;
9 leeches applied to temples. Detained seven hours.
16. To visit to Mrs Ralston. Calomel, gr. v.; pulv. jalap. 8 x.
Detained four hours.
18. To visit to Mrs Ralston. Head shaved. Detained six
hours.
19. To visit to Mrs Ralston, *mane*.
To visit to Mrs Ralston, *vespere*. Mrs Sloan went to take
the charge. Detained three hours.
20. To visit to Mrs Ralston. Blister to head. Calomel, grain v.
21. To visit to Mrs Ralston. Senna, $\frac{z}{3}$ gr. Detained four hours.
22. To visit to Mrs Ralston.
23. To visit to Mrs Ralston. Detained five hours.
24. To visit to Mrs Ralston. Blooded. Detained six hours.
25. To visit to Mrs Ralston. Blooded. Pill. colocy. comp.
No. xxxvi.
26. To visit to Mrs Ralston.
27. To visit to Mrs Ralston. Detained seven hours.
28. To visit to Mrs Ralston.
29. To visit to Mrs Ralston.
30. To visit to Mrs Ralston, *mane*. Detained two hours.
To visit to Mrs Ralston, *vespere*. Blooded. Detained four
hours.
- Oct. 1. To visit to Mrs Ralston.

1833.

- Oct. 3. To visit to Mrs Ralston. Detained five hours.
 5. To visit to Mrs Ralston.
 6. To visit to Mrs Ralston.
 8. To visit to Mrs Ralston. Detained all day.
 10. To visit to Mrs Ralston. Detained four hours.
 12. To visit to Mrs Ralston. Detained six hours. Mrs Sloan returned.
 15. To visit to Mrs Ralston. Senna, \mathfrak{z} iv.; cream of tartar, \mathfrak{z} iv.; tart. emetic, gr. iii.; sulph. mag. \mathfrak{z} iv. Detained five hours.
 18. To visit to Mrs Ralston.
 21. To visit to Mrs Ralston. Detained three hours.
 25. To visit to Mrs Ralston. Sulph. mag. \mathfrak{z} iv.; senna, \mathfrak{z} vi.; cream of tartar, \mathfrak{z} i.; tart. emet. gr. iii. Detained two hours. Mrs Sloan went.
- Nov. 1. To visit to Mrs Ralston. Salts, senna, cream of tartar and tart. emetic, as formerly. Detained three hours.
 7. To visit to Mrs Ralston. Sulphur, \mathfrak{z} ii.; cream of tartar, \mathfrak{z} ii.; divided into eighteen powders.
 12. To visit to Mrs Ralston. Sulphur and cream of tartar, (as on 7th.)
 17. To visit to Mrs Ralston.
 25. To visit to Mrs Ralston. Sulph. mag. \mathfrak{z} iv.; senna, \mathfrak{z} iv.; cream tart. \mathfrak{z} i.; tart. emetic, gr. iii. Detained seven hours.
 30. To visit to Mrs Ralston. Sulphur, \mathfrak{z} ii.; cream of tartar, \mathfrak{z} ii. Divide into eighteen powders. Detained all day.
- Dec. 3. To visit to Mrs Ralston. Pill. rhei comp. No. xii.; carbonas sodæ, \mathfrak{z} i.; elix. of vitriol, \mathfrak{z} i.; mustard, $1\frac{1}{2}$. Detained four hours.
 4. To visit to Mrs Ralston.
 5. To visit to Mrs Ralston. Pill. opii, No. iv. Detained six hours.
 8. To visit to Mrs Ralston. Pill. opii, No. iv. Detained five hours.
 10. To visit to Mrs Ralston. Blooded. Pill. opii, No. iv. Detained all day.
 11. To visit to Mrs Ralston. Detained five hours.
 13. To visit to Mrs Ralston.
 14. To visit to Mrs Ralston. Detained most of day.
 15. To visit to Mrs Ralston.
 17. To visit to Mrs Ralston. Tinct. henbane, \mathfrak{z} i.; mustard, \mathfrak{z} iv. Detained all day.
 18. To visit to Mrs Ralston. Tinct. henbane, \mathfrak{z} i. Detained four hours.
 22. To visit to Mrs Ralston and little Nancy Ralston. Calomel to Nancy. Detained four hours.
 26. To visit to Mrs Ralston. Calomel, gr. iii. No. iii.

1833.
 Dec. 28. To visit to Mrs Ralston. Mrs Sloan returned. Detained seven hours.
 29. To visit to Mrs Ralston.
 31. To visits to Mrs Ralston. Detained six hours.
 1834.
 Jan. 2. To visit to Mrs Ralston.
 11. To visit to Mrs Ralston. Detained seven hours.

AT KILMARNOCK.

1834.
 Jan. 20. To visit to Mrs Ralston. Detained all night.
 21. To visit to Mrs Ralston. Consultation with Dr Hood.
 22. To visit to Mrs Ralston. Consultation with Dr Hood. Detained three hours.
 23. To visit to Mrs Ralston, *mane*. Consultation with Dr Hood.
 To visit to Mrs Ralston, *vespere*. Calom. gr. iii.; pulv. rhu. gr. x.; zing. gr. v. Detained three hours.
 24. To visit to Mrs Ralston. Consultation with Dr Hood.
 25. To visit to Mrs Ralston. Calom. gr. iii.; pulv. rhu. gr. x.; zingite, gr. x. Detained two hours.
 26. To visit to Mrs Ralston. Tinct. opii et safron, $\frac{z}{3}$ ii. et vial.
 27. To visit to Mrs Ralston. Detained three hours.
 28. To visit to Mrs Ralston. Detained one hour.
 29. To visit to Mrs Ralston. Detained one hour.
 31. To visit to Mrs Ralston. Detained three hours.
 Feb. 2. To visit to Mrs Ralston. Detained one hour.
 4. To visit to Mrs Ralston. Detained two hours.
 6. To visit to Mrs Ralston. Detained one hour.
 9. To visit to Mrs Ralston. Detained three hours.
 12. To visit to Mrs Ralston. Detained one hour.
 14. To visit to Mrs Ralston. Detained three hours.
 19. To visit to Mrs Ralston. Detained two hours.
 23. To visit to Mrs Ralston. Detained one hour.
 26. To visit to Mrs Ralston. Detained three hours.
 28. To visit to Mrs Ralston. Detained one hour.
 Mar. 2. To visit to Mrs Ralston. Detained one hour.
 7. To visit to Mrs Ralston. Detained two hours.
 9. To visit to Mrs Ralston. Detained two hours.
 12. To visit to Mrs Ralston. Detained one hour.
 14. To visit to Mrs Ralston. Detained two hours.
 16. To visit to Mrs Ralston. Detained one hour.
 21. To visit to Mrs Ralston. Detained one hour.
 28. To visit to Mrs Ralston. Detained one hour.
 April 3. To visit to Mrs Ralston. Detained one hour.
 4. To visit to Mrs Ralston. Detained one hour.
 6. To visit to Mrs Ralston. Detained two hours.
 9. To visit to Mrs Ralston. Detained three hours.

- 1834.
- April 12. To visit to Mrs Ralston. Detained four hours.
 16. To visit to Mrs Ralston. Detained one hour.
 22. To visit to Mrs Ralston. Detained two hours.
 23. To visit to Mrs Ralston. Consultation with Dr Hood.
 Detained all night.
 24. To visit to Mrs Ralston, *mane*. Consultation with Dr Hood.
 Detained two hours.
 24. To visit to Mrs Ralston, *vespere*. Consultation with Dr
 Hood. Detained three hours.
 26. To visit to Mrs Ralston. Detained one hour.
 27. To visit to Mrs Ralston. Consultation with Dr Hood.
 Detained one hour.
 28. To visit to Mrs Ralston. Consultation with Dr Hood.
 Detained three hours.
 30. To visit to Mrs Ralston. Consultation with Dr Hood.
 Detained one hour.
- May 2. To visit to Mrs Ralston. Detained one hour.
 4. To visit to Mrs Ralston. Detained three hours.
 8. To visit to Mrs Ralston. Detained two hours.
 11. To visit to Mrs Ralston. Detained two hours.
 13. To visit to Mrs Ralston. Detained one hour.
 15. To visit to Mrs Ralston. Detained one hour.
 18. To visit to Mrs Ralston. Detained one hour.
 22. To visit to Mrs Ralston. Detained one hour.
 25. To visit to Mrs Ralston. Detained one hour.
 29. To visit to Mrs Ralston. Detained two hours.
- June 4. To visit to Mrs Ralston. Detained half an hour.

No. V.

*Excerpt from Dr Sloan's Revised Condescendence, in his action
 against Mrs Ralston's Executors.*

1. The pursuer was medical attendant on the family of the deceased William Henry Ralston, Esq. of Warwickhill, at the period of that gentleman's death in 1833, and for many years previously. Mr Ralston was possessed of very considerable moveable and heritable property, and was a Justice of the Peace and Deputy-Lieutenant for the county of Ayr, in which his landed estate was situated.

2. After Mr Ralston's death, the pursuer continued to attend and furnish medicines to his widow, the now deceased Mrs Agnes or Nancy Ralston of Warwickhill. The pursuer's attendance on Mrs Ralston, after her husband's death, was constant, from 15th September 1833 till 4th June 1834, when it ceased, in consequence of a misunderstanding between the pursuer and the defender, James Ralston, in whose house Mrs Ralston then resided. The account libelled, which is No. 2. of process, contains a detail of the attendance and medicine, &c. and reference is here made to that document. Mrs Ralston was, after her hus-

band's death, in possession of an income, derived principally from land, of upwards of L.500 a-year; and she has left considerable moveable and heritable property.

3. For the last ten years of Mrs Ralston's life, she was occasionally afflicted with headach and melancholy. These headachs were generally removed by means of bleeding or emetics, and subsequent milder treatment and medicines. But Mrs Ralston required the frequent attendance of her medical adviser in the application of these remedies. The first attack, after her husband's death, was in September 1833; on which occasion she was confined to the house for three weeks; and on her convalescing, she, for the sake of exercise, took some interest in looking after the dairy, her favourite occupation. Mrs Ralston's mind was much weakened by this attack; and it was considered necessary, even after the removal of the complaint itself, for Mrs Ralston to continue to have medical advice and attendance. Mrs Ralston frequently requested medical attendance from the pursuer, when no serious complaint affected her, being very sensitive when any symptom of her disease manifested itself.

4. Mrs Ralston's health, however, continued to improve under the pursuer's treatment. There appeared to the pursuer to be no organic affection, and nothing in her habits of living tending to shorten life. Accordingly, when the pursuer was applied to, to give the certificate referred to in the 2d article of the answers, and which, besides, he understood was a mere matter of form, he had no hesitation in granting it to that effect, at the same time certifying that Mrs Ralston was exposed to headach.

5. In December 1833, Mrs Ralston effected an insurance on her life, and executed a settlement of her affairs; and these circumstances seem to have so much affected her mind, naturally sensitive, and weakened by the last attack above mentioned, as to produce bodily disease and mental imbecility, from which she never recovered. The latter part of the account was incurred to the pursuer in attendances, &c. on Mrs Ralston when in that situation.

No. VI.

Account, Mrs Ralston to Dr Mackenzie.

1824.			
Aug. 13.	Ad. et pill. anodyn. No. xx. to do.	-	L.0 7 6
26.	Visit, cum venesect. cum pill. aloe c. as No. 18,		1 1 0
	Haust. alterans, $\frac{3}{j}$. to do. — Sept. 7. Ad. en		
	passant,	-	0 10 6
28.	Ad. to do. at my house. — 29. Visit to do. et		
	venesect.	-	1 7 6
Oct. 9.	Visit to do.—Nov. 1. Visit to do. en passant,		1 7 6
Dec. 11.	Visit to do. et venesect. cum haust. febr.		1 7 6
1825.			
Jan. 4.	By cash received,	-	L.6 1 6

1825.				
Jan.	4.	Extracting the stump of an old tooth to do.	L.0	7 6
	9.	Ad. en passant to Mrs Ralston, - -	0	10 6
Mar.	22.	Visit to Mrs Ralston, et prescrip. C. P. S. No. 11.	1	1 0
	29.	Visit to do. et venesect. C. P. diaphoret. -	1	7 6
	31.	Visit et ad. en passant, - - -	0	10 6
Apr.	14.	Visit to do. cum pulv. antim. No. vj. et haus. an.	1	2 0
June	15.	Visit en passant, et ad. to do. - -	0	10 6
Aug.	18.	Visit et venesect. cum pulv. diaph. No. vj.	1	1 0
		Pill. aloe c. hyd. No. 12, in pyxide et haust. vol.	0	1 0
	29.	Pill. hyd. c. aloe, No. 18, in pyxide, -	0	1 6
Sept.	17.	Visit to do.—24. Ad. to do. en passant, -	1	0 0
1826.				
Feb.	3.	Visit et haust. alterans to do. - -		
	21.	Visit to Mrs Ralston, et ad. to Mrs R. -	1	1 0
		Extirpating a small excrescence, et dress. -	0	16 0
		Haust. amon. al. aromat. No. ij. to Mrs R. et min. M. - - -	2	2 0
	23.	Visit en passant to do.—28. Do. rept. et dressing h. arm, - - -	1	14 6
Mar.	27.	Visit et ad. to Mr and Mrs Ralston, -	0	15 0
Apr.	29.	Ad. en passant to Mrs R.—May 7. Do. repr. c. H. arm, - - -	0	15 0
May	22.	Visit et venesect. cum H. volat. et P. S. M. hyd.	1	1 0
	25.	Ad. en passant, - - -		
Dec.	26.	By cash, - - -	L.15	18 6

No. VII.

Excerpts from Dr Hood's Day Book, shewing his Attendances on Mrs Ralston.

1833.		1834.	
June 25.	V. S.	Jan. 24.	V.
Oct. 4.	Visit.	25.	V.
1834.		26.	V.
Jan. 10.	Visit (Witch road.)	27.	V.
13.	Visit.	28.	V. V.
14.	V.	29.	V.
17.	V.	30.	V.
19.	V.	31.	V.
20.	V. two hours, and V. midnight.	Feb. 1.	V.
21.	V. V.	2.	V.
22.	Midnight visit, two hours. Day visit.	3.	Visit.
23.	Visit.	4.	V.
		5.	V.
		6.	V.

1834.		1834.	
Feb.	6.	Made a draft of a will for Mrs Ralston, Warwickhill.	Mar. 17. V. midnight.
	7.	V.	18. V.
	8.	Saw Mrs Ralston, Warwickhill, in the Flesh-market, purchasing a leg of mutton and some beef. Paid 20d. for the mutton, but do not know how much for the beef. Signed her will this forenoon, as I was informed by her man of business.	20. V.
	10.	V.	21. V.
	12.	V.	22. V.
	13.	V.	24. V.
	15.	V.	27. V.
	16.	V.	28. Visit.
	17.	Visit.	29. V. V. 3 hours, midnight.
	18.	V.	30. Visit.
	19.	V.	31. V. V.
	20.	V.	Apr. 1. V. V. V.
	21.	V. Had a fit of falling sickness.	2. V. V.
	22.	V.V. Talks incoherently.	3. V. V. V.
	23.	V.V. Incoherent.	4. V. V. V.
	24.	V.V. Still incoherent.	5. V.
	25.	V.	6. Visit.
	26.	Visit.	7. V.
	27.	V.	8. V.
	28.	Visit.	9. V.
	29.	V.	10. V.
Mar.	1.	V.	11. V. V.
	2.	V.	12. Visit.
	3.	V.	13. V. V.
	4.	V.	14. V.
	5.	V.	15. V.
	6.	V.	16. V.
	7.	V.	17. V.
	8.	V.	18. V.
	9.	V.	19. V.
	10.	V.	20. V.
	11.	V.	21. V.
	12.	V.	22. V.
	13.	V.	23. V.
	14.	V.	24. V.
	15.	V.	25. V.
	16.	V.	26. V.
			27. V. V.
			28. V.
			29. V.
			30. V.
			May 1. V.
			2. V.
			3. V.
			4. V.
			5. V.
			6. V.
			7. V.
			9. Visit.

1834.		1834.	
May 10.	V.	June 10.	V.
11.	V.	18.	V.
12.	Visit.	20.	V. fit.
13.	V.	21.	V.
15.	V.	23.	V.
16.	V.	27.	V.
18.	V.	28.	V. Omitted V.
20.	V.	July 1.	V.
21.	V.	2.	V.
24.	V.	4.	V.
25.	V. V.	9.	V.
26.	V.	11.	V.
28.	V.	21.	V.
29.	V.	24.	V.
31.	V.	29.	V.
June 1.	V.	Aug. 29.	Visit. Troon.
2.	V.	Sept. 3.	Mrs Ralston, War-
5.	V.		wickhill, <i>post mor-</i>
6.	Settled her account, L.13, 16s.		<i>tem</i> examination, L.1, 1s.

Kilmarnock, 1st July 1837.— What is written on this and the four preceding pages is a true excerpt from my books, and referred to in my oath in the process, *The North British Insurance Company v. The Executors of Mrs Ralston*, emitted before William Eaton, Esq. Sh-Sub. of Ayrshire, as Commissioner in said process, and which excerpt has been compared by the Commissioner.

ALEX. HOOD.

WILL. EATON, *Comr.*

JOHN GRAY, *Clerk.*

No. VIII.

Dr Hood's Certificate of his post mortem Examination of Mrs Ralston's Body.

I hereby certify, on soul and conscience, That on the third instant I went to Troon, where Mrs Agnes Ralston of Warwickhill had been residing for a few weeks with a friend; and on inspecting her body, about thirty hours after death, two or three ounces of effused coagulated blood was discovered in the lower and posterior parts of the right hemisphere of the brain, extending even to the centre of the right lobe of the cerebellum. I can therefore have no hesitation in stating, that her death was occasioned by the rupture of a blood-vessel in the head.

ALEX. HOOD, *Surgeon.*

Kilmarnock, }
12th Sept. 1834. }

Edinburgh, 8th August 1837.—I hereby certify, that I have compared the foregoing eight documents with the originals, and that the copies are correct.

JAMES NAIRNE, W. S.

James Walker, Printer,
6. James's Court, Lawnmarket,
Edinburgh.