Illustrations of medical evidence and trial by jury in Scotland.

ILLUSTRATIONS

OF

MEDICAL EVIDENCE

AND

TRIAL BY JURY IN SCOTLAND.

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Mr Fergusson, of King's College, London, having, in the *Lancet* of 8th November, held up Mr Syme to the odium of the Profession as "*a Libeller*," the enclosed Document is transmitted, in order to show how far he was justified in doing so.

Edinburgh, 13*th November* 1856.

CONTENTS.

ILLUSTRATIONS

OF

MEDICAL EVIDENCE IN SCOTLAND.

In the *Edinburgh Medical Journal* for April 1853, Mr Syme published the following statement:—

THE POWERS OF THE PROCURATOR-FISCAL WITH REGARD TO THE MEDICAL PROFESSION IN SCOTLAND.

The prosecution of crimes in Scotland is carried on—not as in England—really or nominally by the individuals who have sustained injury, but at the public expense, by a staff of officials, of whom the superiors have their head-quarters in the capital, and the subordinates are ramified into every part of the country. Each county has its "Procurator-Fiscal," whose business is to trace out reported transgressions, and place alleged culprits within reach of the law. In the discharge of this duty he frequently requires the assistance of medical information, and generally obtains it from some member of the profession whom he is led to select by private friendship. So far there seems nothing objectionable, and much to admire in the existing arrangement. But as the subject of investigation is often under treatment before the authorities take cognizance of it, great inconvenience is apt to result from the displacement to which the original attendant is thus rendered liable. The feelings of patients and friends are hurt by the intrusion of a stranger armed with the sheriff's warrant; professional jealousy is excited or increased; inferior persons are led to ingratiate themselves with the man in power, and make work for themselves by aggravating the aspect of

cases under consideration; while, worst of all, the ends of justice are thwarted by ignoring the primary evidence. It is, therefore, not surprising that the most bitter heart-burnings have sprung from this source, or that numerous complaints on the subject have been addressed to the authorities. Neither is it surprising that single-handed practitioners have found it in vain to contend with a Lord-Advocate or the Secretary of State for the Home Department. But as the College of Surgeons lately appointed a committee to communicate with the authorities, in order to get the rights of regularly-qualified members of the profession protected from unnecessary interference, there now seems to be a reasonable prospect of relief.

INSTANCE OF IMPERFECT MEDICAL EVIDENCE NEARLY LEADING TO A FATAL ERROR.

To the Right Honourable Viscount Palmerston, Her Majesty's Secretary of State for the Home Department,—

The petition of James Syme, humbly sheweth—

1. That your Lordship's petitioner is Professor of Clinical Surgery in the University of Edinburgh, and senior acting surgeon of the Royal Infirmary of Edinburgh.

2. That your petitioner, on the 9th of May, admitted into the Royal Infirmary, under his care, a woman named Agnes Collison, on account of personal injuries, alleged to have been sustained in a drunken squabble with her husband.

3. That this patient was seized with what is called *delirium tremens*, and died on the 12th of May.

4. That on the 11th of July, George Collison, the husband of the deceased, was tried before the Court of Justiciary for murder, and capitally convicted.

5. That at the trial neither the petitioner nor any of the gentlemen connected with his department of the hospital were examined as to the cause of death.

6. That the medical men who were examined as to the morbid appearances found on dissection of the body, and as to the cause of death, had not seen the deceased during life.

7. That there was, therefore, a want of evidence as to the cause of death, in a case affording room for diversity of opinion as to

whether it should be ascribed chiefly to the injury or to *delirium tremens*.

8. That a sentence of death pronounced under these very peculiar circumstances should not be carried into effect. And your Lordship's petitioner will ever pray, etc.,

JAMES SYME.

The following reply was received to the above :—

Whitehall, 28th July 1853.

SIR,—Viscount Palmerston having received from the Lord Justice Clerk a report on the case of George Collison, a convict under sentence of death in the gaol at Edinburgh, in whose behalf you have interested yourself, I am directed to acquaint you, that, under all the circumstances, his Lordship will feel himself warranted in advising her Majesty to grant the prisoner a pardon on condition of transportation for life.

I am, Sir, your obedient servant,

(Signed) W. WADDINGTON.

James Syme, Esq., etc., etc., Edinburgh.

RESOLUTIONS OF THE ROYAL COLLEGE OF SURGEONS.

Excerpt from Minutes of Meeting of the Royal College of Surgeons of Edinburgh, held August 2d, 1853.

Mr Syme, in reference to the subject, remitted to a committee at his suggestion on the 24th of March last, brought under the notice of the meeting several recent cases, in which the primary medical evidence had been passed over by the Procurator-Fiscal in judicial inquiries, notwithstanding that the Lord-Advocate had, at an interview with a committee of this College, admitted the justice of his representation, and now moved the following resolutions :—

1. That the rejection of primary medical evidence by the criminal prosecutor in cases of judicial inquiry is calculated to oppose the ends of justice.

2. That the selection of medical evidence, without regard to pri-

ority of attendance by regularly qualified practitioners, is hurtful to the feelings and injurious to the character of the medical profession.

3. That the Lord-Advocate be respectfully requested to investigate the system pursued in selecting medical evidence by the Procurator-Fiscal of Mid-Lothian, more especially in the cases of John Collison, tried for the murder of his wife, and John M'Callum with William Corner, tried for the murder of Patrick O'Donaghue.

The resolutions having been seconded by Dr Andrew Wood, were unanimously approved of, and the President was requested to forward the same to the Lord-Advocate.

In reply to this communication, the Lord-Advocate promised to institute an investigation; but, so far as is known to the public, his Lordship has not yet done so.

MR SYME TO THE LORD-ADVOCATE OF SCOTLAND.

Edinburgh, April 5, 1853.

My Lord,—With reference to the subject which, as one of a Deputation from the Royal College of Surgeons I lately had the honour of submitting to your Lordship, I beg to state that, a few days ago, Mr George Glover gave a certificate, on soul and conscience, relative to the condition of a patient at present under my charge in the Royal Infirmary. As this patient had suffered a compound fracture of the leg, and as Mr Glover had no opportunity of inspecting the limb, it is plain that this certificate did not rest upon his personal knowledge.

In these circumstances, I leave your Lordship to determine whether or no the Procurator-Fiscal was guided solely by a desire to attain the ends of justice in preferring so questionable a document to the authentic information which he might have procured from myself, or my clerk, Dr Dobie, who is resident in the Hospital.—I have the honour to be, my Lord, your Lordship's most obedient servant,

James Syme.

The Right Honourable Lord Advocate of Scotland.

MR SYME TO THE COMMISSIONERS OF POLICE.

Edinburgh, April 9, 1853.

GENTLEMEN,—There is at present a boy under my charge in the Royal Infirmary, on account of a very severe and complicated injury of the leg. A few days ago the Surgeon of Police, Mr Glover, went to the ward where this patient lies, and attempted to turn down the bed-clothes in order to examine the limb, but was prevented from doing so. He then gave a certificate, "on soul and conscience," describing the particulars of an injury which he had not seen, and expressing an opinion as to what he had no means of knowing any thing. How far the Procurator-Fiscal, Mr Lothian, was justified in preferring a document so questionable to the authentic information which might have been procured from myself or the House Surgeon, is a matter that belongs to the Lord-Advocate,—and to his Lordship has accordingly been submitted. But being informed by Mr Lothian that, in giving the certificate, Mr Glover acted in the discharge of his duty as Police Surgeon, I beg to ascertain from the Commissioners—who, of course, determine the duties of their officers—if they really have authorized a proceeding which I may safely say has no precedent in any hospital within her Majesty's dominions.—I have the honour to be, Gentlemen, your obedient servant,

JAMES SYME.

The Commissioners of Police.

Copy of Mr Glover's Certificate.

Edinburgh, March 21, 1853.

I hereby certify, on soul and conscience, that I this day examined Patrick Clark, aged about eleven years, lying at the Royal Infirmary, and find he has a large lacerated wound of the soft parts on the outer side of the left leg, and a fracture of the bone a little above the ankle; that his life is in danger, and that he is in a fit state to emit a declaration.

(Signed) GEO. GLOVER, *Surgeon.*

THE SAME TO THE SAME.

Edinburgh, June 11, 1853.

GENTLEMEN,—From the statement of duties assigned by the Commissioners to the Surgeon of Police, it appears that, in visiting my patient in the Royal Infirmary, Mr Glover acted strictly in accordance with the rule of conduct laid down for his guidance, which requires him "to visit, from time to time, all injured parties whose cases are undergoing investigation, in order that he may be enabled to give full and complete medical evidence in the trials of the accused parties." I do not presume to suggest the rescinding of this regulation, which has placed the officer of the Commissioners in so false a position, but beg to intimate that the officials of my department of the Royal Infirmary have been strictly charged to prevent Mr Glover from disturbing in any way the patients under my care; that if he produces the authority of a warrant for doing so, I shall claim the protection of the managers; and that if they do not prevent such an intolerable violation of propriety, I shall deem it my duty to withdraw from the Hospital. Indeed, unless able to prove that Mr Glover did not examine the patient whom he has declared "on soul and conscience" that he did carefully examine, I should ere now have tendered my resignation, until assured against a repetition of the alleged outrage.

In making this communication to the Commissioners, I beg it may be understood that I am not actuated by any motive of a personal kind, and that my object is simply to resist a system which seems no less hurtful to the character of my profession than opposed to the ends of justice. It has always hitherto been supposed, and hardly admits of denial, that the medical man who has the responsible charge of a patient is the proper authority for establishing the facts of his case. Therefore the interference of a stranger for this purpose, while in the highest degree injurious to the feelings of a liberal profession, cannot be justified on the ground of expediency. —I have the honour to be, Gentlemen, your most obedient servant,

JAMES SYME.

The Commissioners of Police.

MR GLOVER TO THE LORD PROVOST.

Edinburgh, April 22, 1853.

My Lord,—I have learned from Mr Lothian (the Procurator-Fiscal) that Mr Syme has written to him with reference to the case of a boy, named Patrick Clark, and having been informed that a letter on the same subject has been addressed by him to the Commissioners of Police, I deem it proper to send your Lordship, as Chairman of the Board, the following particulars of the case:—

Patrick Clark, aged 11 years, had his leg fractured by the wheel of a cart, on the 17th March, and was conveyed to the Infirmary. On inquiry being made by a sergeant of police, on the morning of the 21st March, he was informed that the boy was considered dangerously ill, and that amputation of the limb would probably be necessary.

I was called upon by the Superintendent to visit the boy without delay, to enable him to take such steps as might be necessary; and I was requested especially to ascertain if the boy's life was in danger in consequence of the injury of his leg, and if he was in a fit state to admit of a declaration being taken by the Sheriff.

For this purpose I immediately visited the boy. On going into the ward where he was lying, I asked the nurse to go and state that the Surgeon of Police wished to see Mr Syme's clerk. After waiting a short time I turned down the bed-clothes, and examined the boy, so far as to satisfy my mind that his life was in danger, in consequence of the injury of his leg, and that he was in a fit state to emit a declaration. As I was leaving the ward I met Mr Syme's clerk and the nurse. I returned with them to the bedside of the boy. The clerk frankly answered all my inquiries regarding the nature of the injury, and the history of the boy's illness from the date of his admission. He stated that amputation of the limb would probably be necessary, and concurred with me in the opinion that the boy's life was in danger, and that he was then in a fit state to emit a declaration. The bed-clothes were again turned down for an instant, on my putting a question regarding the position of the fracture,—but I had no intention of removing the splints and bandages, or doing any thing in my examination which would, in the least degree endanger, or even retard, the boy's recovery. I did not

observe the least opposition made to any part of my examination. In fact, Mr Syme's clerk was very communicative and courteous, and the nurse was civil and attentive. Having obtained all the information required, I returned to the office and reported the state of the boy to the Superintendent, and, at the request of Mr Lothian, granted the usual certificate.

On referring to the minute of the Board of 8th Nov. 1847, defining the duties of Police Surgeon, your Lordship will observe that, in examining and reporting on the injured party, I acted in the discharge of a duty imposed upon me by the second regulation, viz., "*To visit all persons reported to have been assaulted or otherwise injured, whose cases become the subject of judicial investigation, and to report whether the injuries sustained are of such a dangerous nature as to render it necessary for a magistrate being called to take his or her deposition,* or whether, from the injuries being of a less serious nature, the accused party, if in custody, may be admitted to bail."

NOTE.—"It will be the duty of the surgeon, in all cases in which it appears to him necessary *that the deposition of the injured party should be taken, to give immediate notice* to the Superintendent, or superior officer on duty at the time."

I need not trouble your Lordship or the Board with any remarks relative to that part of Mr Syme's letter, which has been submitted to the Lord-Advocate, further than to mention that I have the authority of the Procurator-Fiscal (Mr Lothian) and the Superintendent (Mr Linton) to state that the steps taken in this case were not only in conformity to the usual practice, but absolutely necessary for the ends of public justice.—I have the honour to be, my Lord, your most obedient servant,

(Signed) GEO. GLOVER.

Your Lordship will observe that the statements in Mr Syme's letters are quite contrary to the facts of the case; and that he has not only been misled by erroneous or partial information, but labours under an entire misapprehension of the object of my visit, and of the certificate complained of. That object was, as stated in the preceding letter, simply to ascertain whether life was in danger in consequence of the injury; and, if so, whether the boy was in a fit state to emit a declaration. The personal examination I made, and the certificate granted, were all that could be required for such a purpose. Had proceedings followed, requiring a detailed report

and description of the exact nature and extent of the injuries, no doubt, Mr Lothian, in accordance with his usual practice, would have availed himself of Mr Syme's evidence.

As regards the general remarks in the Journal, preceding the letters, and headed, "The Powers of the Procurator-Fiscal with regard to the Medical Profession in Scotland," I submit that, in so far as the case is to be held as affording, in Mr Syme's words, "an illustration of the system at present pursued," his objections to that system are altogether without foundation. Instead of this patient being under treatment before the authorities took cognizance of the case, they were the parties who sent the boy to the Infirmary. There was no intrusion whereby the feelings of the patient or friends could be hurt, nor any room for professional jealousy being excited; nor can any selection by the Procurator-Fiscal, from private motives, be alleged, it being in my official capacity as Police Surgeon, that I was called to visit the boy.

In reference to Mr Syme's statement as to primary evidence being ignored, and the ends of public justice thereby thwarted, by the Procurator-Fiscal making use of the medical evidence of the Police Surgeon, I have to remark that, so far from this being the case, in most instances, the primary evidence, and the evidence most conducive to the ends of public justice, are only possessed by myself. I receive the earliest intelligence in criminal cases, and not only personally examine the injured party, but also the locality, and, on the spot, investigate the circumstances, and collect collateral evidence. In this way I obtain a large amount of primary evidence, which would otherwise be lost; and by notes taken from time to time, and records kept, I am prepared to give evidence as to dates and circumstances, not otherwise obtainable. Also, from being cognizant of the case from its commencement to its close, unity in the evidence is preserved which would otherwise be broken.—I have the honour to be, etc.

(Signed) GEO. GLOVER.

MR SYME TO THE LORD PROVOST.

Edinburgh, July 1, 1853.

MY LORD,—Having lately learned that the Surgeon of Police had given a certificate on "soul and conscience," relative to a case

of compound fracture under my care in the Royal Infirmary, without having seen or examined the injured parts, I called the attention of the Lord-Advocate to the inexpediency of accepting such a worthless document, instead of the authentic information which might have been obtained from myself, or the resident medical officer of my department in the hospital. From a letter published to-day in the "Edinburgh Monthly Medical Journal" for July (the same that was inserted in the "Scotsman" of Wednesday last), it appears that Mr Glover has attempted to justify his conduct to your Lordship and the Lord-Advocate, by alleging that he took an opportunity of privately and surreptitiously examining the limb while the nurse and clerk were absent from the ward. I express no opinion as to the extreme impropriety of such a proceeding, since it never took place. If the case had terminated fatally, as it threatened to do, or if all the inmates of the ward, which is a small one, had undergone a change, it would have been difficult to disprove the statement in question, however inconsistent with fact. But the patient has recovered with a perfectly sound limb; and an intelligent young man still occupies the bed which afforded the best opportunity of seeing all that passed during Mr Glover's visit, to which his attention was closely directed. By the evidence of these two witnesses, I am prepared to prove that Mr Glover did not examine the limb, or make any attempt to do so, until the arrival of my clerk, when he put his hand on the bed-clothes, apparently with the view of turning them down, but was instantly restrained.

In these circumstances, I cannot doubt that your Lordship will deem it desirable that the truth should be established, and therefore beg very respectfully to request that an opportunity of producing my proof may be afforded through the managers of the Royal Infirmary, the Commissioners of Police, or the Criminal Court.—I have the honour to be, my Lord, your Lordship's most obedient servant,

JAMES SYME.

TRIAL BY JURY.

Mr Glover having then raised an action of damages for the allegation that he had given a certificate without examination, it was maintained in defence that he had done so, and the trial took place

on the 10th January 1855, before the Lord Justice-Clerk (Hope) and a jury.

EVIDENCE.

Mr Duncan Miller was examined, and stated that he was a lieutenant of police, and had been so for ten years. Remembered the case of the boy, Patrick Clark, in the year 1853. Was reported to him as lieutenant. Gave instructions to Serjeant M'Bain and other officers to make inquiries about the matter. Received their report that evening. Does not think anything more was done till the morning of the 21st. This is the note which he addressed to Mr Glover on the morning of the 21st of March :—

Police Office, 21st March 1853.

MR GLOVER, DEAR SIR,—The boy sent to the Infirmary on Thursday, who was injured by a cart in the Canongate, is reported to be very ill. A report is to be sent to the P. F., and therefore it will be necessary to know whether he is at present in a fit state to be examined. Please see him without delay, as an operation is to be performed upon him, perhaps this forenoon.

I am, dear Sir, your most obedient servant,

(Signed) D. MILLER.

Learned that the boy was in danger on the morning of the 21st. At first did not consider it a case of imminent danger ; subsequently heard that there was danger, and in consequence instructed the surgeon to go and examine him.

By the Lord Justice-Clerk.—Was not aware Mr Glover had not seen him before that.

By the Dean.—Am acquainted generally with the regulations regarding the duties of the police-surgeon, and I think they were in force when Mr Glover was surgeon of police, but cannot say so positively. The sole object of Mr Glover's examination, as directed by me at that time, was to ascertain whether the boy's life was in danger, and also whether he was in a condition to make a declaration.

Robert Kempster examined.—Am a sheriff's officer. Recollect being sent by Mr Lothian, in the spring of 1853, to inquire about

a boy of the name of Clark in the Infirmary. Cannot say what day it was. Saw four or five medical gentlemen, but did not know their names. Did not understand that one of them was Professor Syme's assistant or clerk. Had a medical certificate with me, which had been made out by Mr Glover. Had never read the document. (The witness read the certificate, and found it to relate to the boy Clark.) Received that certificate from Mr Lothian, the Procurator-Fiscal. Received it for the purpose of inquiring into the state of the boy's health, and it was given to direct me as to the boy I was to inquire about. Did not read it then, because it was merely a matter of inquiry. Mr Lothian told me to go and inquire into the state of the boy Clark's health—the boy who had got his leg broken in consequence of an injury by a cart. Had the certificate merely as a memorandum, to let me bear the case in mind. Showed the certificate to the medical gentlemen in the Infirmary. Did not know any of them by name; did not see any of them here to-day. One of them took it from me, and made some pencil-markings. They went aside, and they took some pencil-markings from it, and returned the document to me, and said they would send a proper certificate to the fiscal. Told Mr Lothian I had shown them the certificate, and he found fault with me. I understood afterwards that it was irregular for me to do so; at the time I did not think so.

By the Lord Justice-Clerk.—Do not know the date at which I went to the Infirmary. Did not make notes of what he did, as it was merely an inquiry—no regular business. The visit was made not exceeding three days after the date of the certificate. I am not aware that the boy had been examined before that.

The Lord Justice-Clerk.—I cannot believe that Mr Lothian would delay for three days when the boy was in that state. This is the result of your not making notes, as you ought to do, of everything you are engaged in.

The Dean.—Look at this gentleman (Dr Dobie.) Is that one of the gentlemen you saw in the Infirmary?—I cannot say.

Patrick Clark examined.—Am about thirteen years of age. Recollect getting hurt down at the gas works nearly two years ago, and being taken to the Infirmary. Recollect Mr Glover, the police-surgeon, coming to see me. There was a ticket hanging over the bed, and after he had looked at the ticket he told me to put out my tongue. Then he felt my pulse and looked at his watch. Then he lifted up the bed-clothes a little and put down his hand about as far

as my waist, and then he brought it up again, and put down the clothes. My leg was bound up with dressings, and was lying bent on one side. When he lifted up the blankets he could see there were dressings on the leg, which was very sore at the time. I was afraid he was going to do something to it, but he did not touch the leg. He asked me how I was, and I said I was much about the same. I had been in the Infirmary some days before that time. When Mr Glover first came, and this passed between us, there was nobody with him. He went away and came back again in a few minutes, and then Dr Dobie came with him. Dr Dobie was the gentleman who was taking charge of me before. Had seen Mr Syme, I think, before that. When Mr Glover and Dr Dobie came back together, Mr Glover came up to the bedside and was going to lift the blankets, but Dr Dobie looked as if he did not want him to do it, and he did not do it then. They then went to the foot of the bed, and spoke to one another there. Did not attend to what they were saying.

By Mr Patton.—My left leg was the one hurt, and the wound was just here. The fracture was in the inside of the leg, and the wound on the outside. The bandage was tied round the knee, and round below the foot, and the dressing was on the wound. The whole of the leg was covered up to the knee. It was covered up with the bandage, with lint, and with gutta percha. It had been done up a short time before Mr Glover came. I don't think it was done that morning; I think it was done before that; but I am not sure it was not dressed that morning. The splint was on the inside of the leg, not the outside. When Mr Glover was there with Dr Dobie, the nurse was at the door; but when Mr Glover came first, there was no nurse with him. There was a boy, named Anderson, in the ward with me on the opposite side of the ward. He could see what was going on. Was quite sure Mr Glover did not touch part of his leg at all. Don't think he ever saw me before that time, or afterwards in the Infirmary.

By the Dean.—Did not tell Mr Glover at that time what was the matter with his leg; don't remember anything about that.

Mr Glover, examined by the Dean.—I am pursuer in this action, and was surgeon of the Edinburgh police from March 15th, 1847, till last year. When I entered upon my duties as surgeon of police in 1847, I was furnished with certain rules and regulations for my guidance. This is a copy of them :—

"1. To attend all prisoners in the police-office requiring medical aid.

"2. To visit all persons reported to him to have been assaulted or otherwise injured, whose cases become the subject of judicial investigation, and to report whether the injuries sustained are of such a dangerous nature as to render it necessary for a magistrate being called to take his or her deposition; or whether, from the injuries being of a less serious nature, the accused party, if in custody, may be admitted to bail.

"NOTE.—It will be the duty of the surgeon, in all cases in which it appears to him necessary that the deposition of the injured party should be taken, to give immediate notice to the superintendent, or superior officer on duty at the time.

"3. To visit from time to time all injured parties whose cases are undergoing investigation, in order that he may be enabled to give full and complete medical evidence on the trials of the accused parties.

"10. To grant written certificates or reports in all cases where such may be required by the superintendent of police or other judicial authority."

The above rules were then in force, and continued so up to the time I ceased to be surgeon of police. I know two regulations, the second and the third. The one regards a sort of preliminary inquiry to be made in certain cases, and the other an examination for the purpose of giving full and complete medical evidence on trial. I was in the habit of acting on both of these, and in the course of my duties as police-surgeon had occasion to make many certificates and reports under both of these heads, and have granted two or three in the course of one day. In the first of these cases, under the second head of the regulations, the object I understand seems to be to ascertain whether the life of the party visited is in danger, and also whether he is in a condition to make a declaration before a magistrate; and I did not understand in giving a certificate under that second head, that I was desired to communicate any information beyond what was necessary to enable the public authorities to judge of these two cases. I remember being sent to see a boy named Patrick Clark in March 1853. I received a written note, or card, from Mr Miller, the lieutenant of police, to go. I went accordingly. It was in the morning I received the note, and

I went immediately to the office on my way to the Infirmary, put a few questions to the lieutenant on duty, and then went to the Infirmary. I saw first when I went to the Infirmary the porter at the gate, and I inquired of him where I would find the boy, Patrick Clark. He directed me to the ward; it was then between ten and eleven o'clock. I cannot say whether that is a time of day when there are a number of people about the Infirmary; but they begin to come then. The hour of visiting is twelve, and the students come between ten and eleven. Upon the porter's directions I went to the ward. I went into the nurse's room, and asked the name of the house-surgeon who had charge of Patrick Clark, and requested the nurse to say that I had been sent from the police to make inquiries regarding the boy, and to say that I would be glad to see the house-surgeon regarding him. She left me, as I understood, to go for the house-surgeon. In the meantime I went into the ward, and waited for some short time for the surgeon, and then, despairing of his coming, or supposing he had not been able to get away, I went to the bedside and examined the boy. I have found occasionally that it is not always possible to get a house-surgeon to come when you were looking at patients. I went up to the bedside, and spoke to the child regarding the nature of the injury. I examined into the general constitutional disturbance produced by the injury, such as feeling the pulse, examining the tongue, observing the expression of the countenance, and the state of the breathing. I also paid particular attention to the replies the boy gave; to observe if his mind was sufficiently acute and composed to emit a declaration, and that the constitutional fever produced by the injury had caused no delirium, or disturbed his mind. I have a series of questions which I put to patients under these circumstances, and which I put to Patrick Clark.

By the Lord Justice-Clerk.—I cannot swear to the exact words that I employed; but I inquired if he felt the bones rubbing or grating after receiving the injury; if the limb was bent, and how he felt generally.

By the Dean.—I then put a question or two to him regarding the position of the injury, and I gently raised the bed-clothes so as to observe that the leg was covered with dressings near the ankle, and that the injury was at the outer side of the left ankle. I observed bloody matter oozing through the dressings. That was my reason for concluding that the seat of the injury was in the soft parts. On

my touching the bed-clothes, the boy's countenance showed symptoms of fear. I immediately said to him, "Don't be afraid, my little fellow, I don't require to interfere with or touch your limb," or "I don't intend to touch your limb." The expression was either the one or the other, and immediately to re-assure him I put up the bed-clothes. The boy was in a very weak state, and I was unwilling to do anything that would create alarm upon his mind, or that would retard his recovery. Having made this examination, I was leaving the ward, when I met Dr Dobie and the nurse. I returned to the bedside with Dr Dobie for the purpose of ascertaining if he concurred in the opinion that the boy's life was in danger, and that it was safe for the sheriff to take his declaration—safe for the boy. I put this question to Dr Dobie—if he considered the boy's life in danger, and if he thought it was safe for the boy that the sheriff should come then to examine him? He agreed with me in both opinions. I then asked him if there was any intention of amputating the limb, and I understood from him that the subject was under consideration—that there were thoughts of amputation. I asked him if the limb was fractured, and if it was a compound fracture, and in putting a question regarding the position of the injury, I gently raised the bed-clothes and dropped them. Dr Dobie informed me that it was a compound fracture. He mentioned the situation of the fracture, and the injury of the soft parts involved in the nature of a compound fracture. Dr Dobie was quite frank and communicative, and obliging and civil. I cannot recall anything more that passed. I then left the Infirmary, and drew up my report, which I sent to the Procurator-Fiscal. This is the certificate, written by myself:—

Edinburgh, 21st March 1853.

I hereby certify, on soul and conscience, that I this day examined Patrick Clark, aged about eleven years, lying at the Royal Infirmary, and find he has a large lacerated wound of the soft parts, on outside of his left leg, and a fracture of the bone a little above the ankle; that his life is in danger, and that he is in a fit state to emit a declaration.

(Signed) GEO. GLOVER, *Surgeon.*

From what I have told you of my visit to the Infirmary, and my seeing the boy, I considered I was quite in a condition of informa-

tion to give that certificate for the use of the Fiscal. I considered that I had exhausted all the sources of information which I had access to, to enable me to give it. I did not consider it all necessary, with a view to the object for which this certificate was granted, to have the dressings removed to examine the wound myself. In such cases I am not in the habit of doing this, except where I have the surgeon's attendance. In this case it was not necessary. In no case would I have done anything that would have interfered with the treatment of the medical attendant in the case.

By Mr Patton.—I may have waited for the surgeon before I began to speak to the boy, five or ten minutes, sufficient time to allow him to come from any part of the hospital. I saw the nurse before going into the ward. I think it was the same nurse that came back with Dr Dobie; but I could not swear to it. I cannot swear that I derived my information from the ticket on the bed of the boy; but I am in the habit of reading the ticket, and observing what is noted upon it.

By the Lord Justice-Clerk.—The ticket contains the nature of the injury; and I was in the habit of reading it. The ticket is a pretty large placard, partly printed and partly written, with the name of the boy, and the nature of the disease or injury. It mentions the injury—compound fracture in this instance—that a medical man could understand it.

By Mr Patton.—The bandages extended a very short distance upon the limb; but above the ankle—a very short distance at the outer side of the ankle. I did not see what was below and upon the other side. I did not see the inner side; and I did not see below. It makes a great difference in reference to danger of life, whether the fracture is simple or compound. Previous to my seeing Dr Dobie, I had been informed that the bone was fractured above the ankle, and that there was a large wound. I put the question to Dr Dobie if it was a compound fracture.

Mr Patton.—The question which I put to you was, whether, previous to the question you put to Dr Dobie, you knew whether it was a simple or compound fracture?—Well, if the wound has not penetrated to the fractured bone, it is then a wound of the soft parts, with a fracture of the bone, as stated in my certificate. If it penetrates to the bone, it is a compound fracture.

The Lord Justice-Clerk.—That was not the question. The question was, whether before you spoke to Dr Dobie, you knew that

it was a compound fracture?—I might have inferred from my own examination that it was a wound of the soft parts, and a fractured bone. I was not, therefore, prepared to say that it was a compound fracture.

By the Lord Justice-Clerk.—I was not prepared to say that it was a compound fracture before I saw Dr Dobie. I don't recollect whether it was compound or not.

By Mr Patton.—So far as my own personal examination or observation went, there was nothing that connected the wound of the soft part with the fracture of the bone. There was nothing to show the connection of the one and the other, so far as my observation went. I understand the tibia was the bone fractured. I thought both bones were fractured; and I particularly asked if the bone, meaning the tibia, was fractured. I don't remember putting the question with reference to the fibula, which is the small bone; and in talking of the bone of the leg, I meant the tibia. I cannot tell you whether, in point of fact, the fibula was broken or not. It may have been or it may not have been. From the questions I put to Dr Dobie, I understood that it was fractured; not from personal examination. When I made this report I did so under the belief that that bone was fractured. There is the greater danger certainly when both bones are broken in such circumstances. When one bone remains unbroken it prevents the displacement of the parts.

By the Lord Justice-Clerk.—We have nothing to do with the treatment. All that we have to do with is the danger to life.

By Mr Patton.—A compound fracture, under any circumstance, is always dangerous.

By the Lord Justice-Clerk.—By compound fracture it is right the jury should know that you don't mean a fracture of both bones?

Mr Glover.—No, it is a wound of the soft parts penetrating to the bone, and fracturing the bone.

By Mr Patton.—Of my own knowledge I could not ascertain the existence of a compound fracture without undoing the dressings, the bandage, and the splint, and probing the wound. Could not ascertain the existence of any fracture, without the same process, from personal examination. I formed a general opinion of the extent of laceration of the soft parts from the stain on the dressings, and from the blood that was penetrating the dressings. I really could not go into particulars, but the stain appeared to be some inches in extent. I thought the stain might be larger than the wound; but I made

no careful examination, as it formed no part of my duty at that time. I merely went to ascertain if his life was in danger, and if it was safe to take his declaration. I did not examine the wound or the fracture. I exhausted every source of information open to me. I had satisfied myself of the whole matter before Dr Dobie came, to enable me to grant the certificate. I don't remember stating anything to Dr Dobie, but putting the questions which I intended. I went with him to the bedside of the patient. I don't remember making any examination, except lifting for an instant, in putting one question to Dr Dobie, the edge of the bed-clothes, the question being as to the position of the injury. My object in going back was principally to ascertain if Dr Dobie concurred in my opinion. I was not sensible of anything being done or said by Dr Dobie in opposition to me. I could not swear to more than what I have now stated. I lifted the bed-clothes, as far as I remember, on asking if the injury was a little above the left ankle. I had already seen all that I expected or intended to see on this preliminary inquiry.

By the Lord Justice-Clerk.—It was a sort of demonstrative act to Dr Dobie. I lifted the edge of the clothes near me, and said, "Is the injury close to the left ankle?"

By Mr Patton.—I refer to the injury of the soft parts and the fracture. The wound was on the outer side, and the fracture close above the ankle. I did not examine the dressings minutely. I saw something white stained with blood; it might be linen, or calico, or lint. I did not examine the splints, or remove the dressings. I inferred that the limb was properly put up by so careful a surgeon as Mr Syme. I could have ascertained the position of the splints by feeling the limb without taking off the bandages.

The Lord Justice-Clerk.—That was no part of his object, he says.

Mr Glover.—I expected the limb to be amputated that day, from the information which I had got, and of course I did not wish to subject the boy to any unnecessary suffering, or any apprehension. I sympathised with the child; he seemed in a very extreme state of suffering, and there was no one with him but myself.

By the Dean.—I was paid by a salary for all police duties. This was one of my ordinary duties.

By the Lord Justice-Clerk.—In granting this certificate I did not consider myself giving a medical report on the case, either for the information of the public or any one. My object was solely to

ascertain if the boy was in danger, and if he was in a fit state to be examined. I was of opinion that his life was in danger, and that his mind at that time was in a fit state to enable him to undergo an examination. The expression in my certificate, "I this day examined Patrick Clark," has reference to the object which alone I had in view; and if I had been making a medical report upon the case, with a particular account of the injury, the manner in which the fracture was supposed to be occasioned, and the treatment, I would then have made a very different inquiry into the case. In such a case, and for the purpose of granting this certificate for the examination of Patrick Clark, if Dr Dobie had been present at the first, and given me all the information that was necessary, I should have considered that I had sufficiently examined Clark for the purpose of that certificate, unless his appearance seemed to contradict the doctor altogether. I should have been a little more particular in the constitutional disturbance; I should have observed the breathing, etc. Generally speaking, I should have considered the statement of an intelligent surgeon perfectly sufficient for my object, along with the personal examination I took, the statements of the patient himself, and of the medical attendant. I understood before I went there that it was under consideration to amputate the limb. In granting the certificate that he was in danger, and fit to be examined, I had in view all the risks arising from amputation, and I apprehended that the judicial examination might be lost if not taken before amputation. I heard some time afterwards, but I don't remember the time, that the limb was not to be amputated. I learned afterwards, not of my own knowledge, that he was examined by the Sheriff. Upon this certificate that his life was in danger, and that he was in a state to undergo this examination, nothing whatever was to follow, except simply that the Sheriff, if he chose, might take the boy's declaration. I gave that certificate to the Superintendent of Police, and he forwarded it to the Fiscal.

Dr Dobie, examined by the Dean of Faculty.—I am now resident at Chester. I was at one time in the Royal Infirmary here. Part of that time I was assistant to Professor Syme; that was from February 1852 to September 1853. I remember, in the spring of 1853, a boy named Clark being brought to the Infirmary. He had sustained a fracture of the tibia of the left leg, with a large lacerated wound. The fibula was not broken; it was a compound fracture. He was brought to the Infirmary on Thursday the 17th

March. I am not certain whether Professor Syme saw him on the Saturday or Sunday following. I applied dressings to the wound. At first the leg was dressed with lint and gutta percha. He was not in a considerable state of fever at the time he was brought in, but was so a day or two subsequent to the accident. I remember Mr Glover coming to see him on the Monday forenoon, the 21st. At that time the patient was in a state of considerable fever. I consider he was in some danger, not in great danger. I suggested amputation to Professor Syme. I thought amputation was necessary. I thought so because the injury was so severe that nature would not be of itself sufficient to restore the boy, and that it would not have made a useful limb if his life had been saved. His life was in some danger then. I thought his life was in such danger from the state in which he was, that it was necessary to resort to amputation with a view to save him, or to have a better limb than he would have otherwise. I made some notes of what passed about this. It may have been a day or two after. I met Mr Glover in the nurse's room. When I came in he made some inquiries about the boy. I cannot precisely recollect his words, but I think he said he had been sent by the Procurator-Fiscal to know whether the boy's life was in danger, and whether he was in such a state as to allow of his making a declaration. I knew he was the police-surgeon. He put some questions to me about the boy's condition. I told him he had received a fracture above the ankle, and a lacerated wound of the soft parts. I think I did not mention whether it was a compound fracture. I went to the patient's bedside with him. Mr Glover was nearer the head of the bed than I was, and he spoke to the patient. He looked at his tongue, felt his pulse, and said to me, "I suppose there is not much to be seen," at the same time raising the bed-clothes with one of his hands. I said, "the limb is dressed," or "the leg is dressed," and upon that Mr Glover desisted, and we walked out of the ward together. I had met Mr Glover once before at a meeting of the Medical Society, but I had not met with him in his capacity of police-surgeon. I was aware, however, that he was in the habit of visiting the Infirmary in his character of police-surgeon. I believe there was some little jealousy about it. I remember an officer coming, but I don't know who from. I saw a certificate in his hands. I was standing in the waiting-room at the time, attending a patient, and I saw a paper in his hand. I looked at it as it was in his hand. He made

no resistance; and then I asked him to allow me to take a copy of it. The copy was made by one of the dressers at my request. I gave it to Professor Syme. I told Professor Syme then, I suppose, that I had seen such a certificate, and got a copy of it. I told him the first opportunity afterwards—the next day. And when I told him that, he asked me to give him a copy, and I gave it to him. And after that I did not get it back again. I saw it afterwards in print in the *Monthly Medical Journal*. The *Monthly Medical Journal* is very much read by members of the profession; it has a large circulation. Professor Syme was one of the conductors of the *Journal* at that time.

The Lord Justice-Clerk.—You have not related yet what passed in the ward—whether you gave Mr Glover your opinion.

The Dean.—I think he said so.

The Lord Justice-Clerk.—No; not whether he told Mr Glover that he thought the boy's life in danger.

Dr Dobie.—I believe I told him that I thought he was in danger.

The Lord Justice-Clerk.—And about the amputation?

Dr Dobie.—I believe I told him that amputation might be required.

By Mr Patton.—All the surgical cases in the Infirmary were under Mr Syme at that time, when I was house-surgeon. I called his attention to this boy's case. Mr Syme thought more favourably of the wound than I did. It was after Mr Syme's examination that I saw Mr Glover.

The Lord Justice-Clerk.—Did you tell Mr Glover Mr Syme's opinion?—I told him my own.

By Mr Patton.—I was sent for to see Mr Glover. I came immediately after being sent for; without a moment's delay. Mr Glover said nothing to me as to having previously examined the boy. I supposed he had not examined him. There was a flush on the face of the boy. That is quite usual under such circumstances. If I had not known the nature of this injury particularly, I could not have said, from anything in the boy's face, or pulse, or tongue, that there was danger to life. There was only one bone broken. It was connected with the wound at one point. I could put my finger in the wound and feel the bone. The fracture was of the inner bone of the leg; the wound extended nearly round the leg. Danger is increased when both of the bones of the leg are broken. There was

a double splint in the inner side of the leg. The splints were fixed by bandages, immediately below the knee, and on the ankle. The bandages were looped. The large wound was dressed with wet lint, and covered over by a sheet of gutta percha, extending half way up the leg. The bandage on the foot may not have been a loop. It may have surrounded the foot. The wound had been dressed that morning. Mr Glover did raise the bed-clothes. I made a restraining motion with my left hand, and said--"the limb is dressed." I put my hand on the bed-clothes. I was determined that he should not examine it. He was not able from the raising of the blankets to see anything of the position and nature of the wound at all. I thought that the bone was so seriously injured, that the fracture was so extensive, and that there might not have been enough of bone to have restored the limb,—the tibia might not have been restored properly,—that he might be in danger of suffering from deformity in the limb; and I also had a fear of mortification, because the soft parts had suffered so much. I saw the certificate; and on the Thursday following, the 24th, I took a copy, because I considered the certificate not correct—not true, as I considered Mr Glover had not examined the limb. I knew he had not. [A certificate was here shown to the witness.] The words are the same; but I am not sure that this is the identical document of which I took a copy. (Mr Patton then proceeded to read the certificate, but was interrupted by the Dean, and after a short argument in which the Lord Justice-Clerk took part, the examination was continued.)

By Mr Patton.—I considered it not correct, because I considered that Mr Glover could not find that there was a lacerated wound of the soft parts without an examination of the wound itself. I took the simple meaning of the certificate as I thought. I communicated a copy of it to Mr Syme. I was surprised at the terms of the certificate.

Mr Patton.—Did you consider there had been such an examination as entitled Mr Glover to grant that certificate?

The Lord Justice-Clerk.—That is not a question for the witness; it is a question for the jury.

Mr Patton.—Then I should wish the question noted, if you please.

The Lord Justice-Clerk.—To note such a question as that! However I will do it if you wish me. Give me the question?

Mr Patton.—The question which I desire to put is,—Did you

consider Mr Glover entitled to grant such a certificate from the inspection which he made in your presence?

[Examination interrupted, and Court adjourned by the Lord Justice-Clerk, in consequence of his having received intelligence of the death of Lord Robertson.]

Thursday, January 11, 1855.

Dr Dobie (examination resumed by Mr Patton).—I did furnish a copy of the certificate to Professor Syme. He requested me to do so. I had previously stated to him the facts. I made a few notes in a jotting-book, as I intended to write a letter to Professor Syme on the subject; but I did not carry out my intention, because I had an opportunity of speaking to him on the subject, as an interference with his patient. There is a ticket generally put over the bed in which the patients are laid, and there was one over the bed in which this boy was lying. The nature of the wound is inserted in this ticket at the time the patient is dismissed. [The ticket was here produced.] That is the ticket.

The Lord Justice Clerk.—Is the nature of the injury not inserted on the ticket when it is hung up?—No.

By Mr Patton.—In this case it was inserted on the dismissal of the boy, which was on June 24th, 1853. I had dressed the boy on the morning of Mr Glover's visit. I do not remember if the nurse was with me at the time. The bandage was not connected with the wound of the soft parts, but was for the purpose of steadying the splint. There was only a dressing of wet lint and gutta percha over the wound. The gutta percha is of a reddish-brown colour; the bandage was of white calico. All the discharges are removed with the dressing in the morning. The wound was not discharging blood. When the wound is discharging blood, and dressed with wet lint, the blood may diffuse itself over the wet lint. There was nothing in the appearance of the boy—I mean apart from the examination of his wounds—that was unusual in reference to common injuries from cutting or wounding. The appearance of the tongue and the pulse were quite consistent with a trivial source of injury.

The Lord Justice-Clerk.—As you have told us there was considerable danger, how is that consistent with saying that this was a trivial thing? Were they consistent with the absence of all danger?

Dr Dobie.—No; because I considered there was some danger.

By Mr Patton.—We generally call a compound fracture a dangerous wound, and in that sense I understand it. The danger arose from the compound fracture in my view. My opinion was formed chiefly upon the local appearances. I thought the boy would recover.

The Lord Justice-Clerk.—Without amputation do you mean?—Mr Syme had decided against amputation.

The Lord Justice-Clerk.—I know; but you are asked your opinion, Sir. Be good enough to give us direct answers. Did you at that time think the boy would recover without amputation?—Well, I cannot remember what I thought.

By Mr Patton.—Professor Syme decided against amputation on the Saturday or Sunday—I think Sunday—before the visit of Mr Glover. The boy did not exhibit any unhealthiness of constitution. I thought he would recover.

The Dean.—Without amputation?—I stated to Mr Glover that amputation might be required.

The Dean.—Your opinion is asked as if it was on the morning of the 21st of March. Did you then think the boy would recover without amputation?—I cannot remember. I believe I did state to Mr Glover that morning that the boy's life was in danger, but I cannot remember the precise words I used.

The Lord Justice-Clerk.—We are not asking the words, Sir. I really am not in a state of mind to be trifled with. Be good enough to give us a direct answer. You had no difficulty about it yesterday. Repeat it now.

Dr Dobie.—I believe I did.

The Dean.—Have you been conversing with anybody about this case since yesterday?—I have conversed with Mr Lister, Mr Syme's present assistant, and with Mr Syme himself also. I am staying with Mr Syme.

The Dean.—Well, I think you had better remember what you said yesterday before you go further, and consider whether it is consistent with the honour of a professional man to vary in his statements.

Mr Patton.—There is no variation.

The Dean.—My learned friend will let me alone to conduct my examination.

Mr Patton.—Yes; but not to remark.

The Dean.—Yes, Sir, and to make remarks also. (To witness.)

What did you state to Mr Glover on the subject of amputation?—I said it might be requisite. That was my opinion. Mr Syme never changed his first opinion, which was that amputation would not be required.

The Dean.—Did he not state in a lecture afterwards——

Mr Patton.—My learned friend must recollect that when we were attempting yesterday to get the views and opinions of Professor Syme, we were stopped.

[The witness was here withdrawn, and after a short argument the witness was recalled, and the question put.]

By the Dean.—I think Professor Syme did state afterwards, in a lecture, that if he had known exactly the condition of the injury at first he would have ordered amputation. That was not a change of opinion. Mr Syme did not see the injury in the first instance. He did not form an opinion till he had seen the injury. He saw the injury first on the Saturday or the Sunday, and then he formed an opinion against amputation, but subsequently he made the statement which I have mentioned. I think that was not a change of opinion, because the aspect of matters might have been more alarming at first. He might afterwards have seen that Nature was already doing something for the recovery of the patient. I cannot tell what was the state of the boy's pulse on the 21st of March. On the 22d I have marked it 120 in the journal; it would be about the same. I don't remember the condition of his tongue. He was not suffering much pain at the time Mr Glover called; he was suffering pain no doubt, but not so much as he had done previously. I consider he was suffering pain on the 23d, but he was quiet. The expression of his countenance would indicate whether he was suffering pain or not. I stated the circumstances accurately to Professor Syme after Mr Glover's visit, substantially in the same way as I stated them here yesterday.

By the Lord Justice-Clerk.—The boy was brought in on Thursday the 17th. The circumstances and appearances when he was first brought in which were mentioned by Mr Syme in his lecture afterwards, were, that the wound had a very alarming appearance; it was a very extensive wound of the soft parts, and a compound fracture of the tibia a little above the ankle. It was bleeding very profusely. He was brought in towards the evening. Mr Syme saw him on Saturday or Sunday. It was one of those days; I cannot tell which. I have no note of it. The Infirmary book will not

show. I did not send for Mr Syme. He visits the wards daily, except when he is prevented. He did not see the boy on the Friday. I cannot tell why. I cannot tell when I first called his attention to it. He may not have been in the hospital on the Friday; I cannot remember. There is no record in the hospital to show when I called Mr Syme's attention to this case. I did pay attention to this case; I most probably would tell him. I think he would look at the boy if I told him on the Friday. He looked at it as soon as I told him the nature of the injury. This apprehension, on my part, of mortification, began on the Saturday I believe. I cannot tell whether it was upon that day Mr Syme saw him or not. That is my note-book about this matter, which details certain circumstances that I had intended to put into a letter. It is not a note-book of the cases that I attend; it was a rough book lying in the room at the time. The notes of the case are taken in the journal of the ward—a special book for the purpose. There was no other note of this case in this book. Those pages were torn out probably before I wrote in it. I have never touched the book since. I never tore anything out. The pages torn out had nothing to do with this matter. I did not refer to the journal when I found I had no recollection of some important facts, because the journal book is not always a complete record of the case. It is kept by one person. It was kept by myself, and its contents were fresh in my memory at that time.

Mr Mackenzie.—The journal is here.

The Lord Justice-Clerk.—Well, but I am asking this witness why he says he does not recollect when Mr Syme attended this case.

Witness.—I have seen the journal since, and I saw no note of the date at which Professor Syme came to see it. It records the appearance of the case as it went along.

The Dean.—There is nothing between the 17th and 22d.

By the Lord Justice-Clerk.—There is nothing upon the ticket in the Infirmary as to the character or nature of the injury. It is filled up afterwards. The disease follows the date of admission; but it is not filled up till after the boy is dismissed.

A Juror.—Can you tell us what we are to understand by a compound fracture?

Dr Dobie.—When the broken bone communicates with a wound which opens externally.

Wm. Anderson, examined by Mr Macfarlane.—I was brought to the Infirmary about a year and a half ago for an accident, and was there for a considerable time. There was a boy, Patrick Clark, there. My bed was two beds from his, on the same side of the room. I could see him perfectly from where I was. I knew Mr Glover of the Police by sight. I recollect Mr Glover coming to the Infirmary, into the room where I was. He asked for Patrick Clark. He said—"Is this the boy with the broken leg?" pointing over to his bed. Mr Glover went to Clark's bed, and told him to show his tongue, and felt his pulse. I did not hear any other conversation pass between the boy Clark and Mr Glover. Mr Glover looked under the bed-clothes. He lifted them up about an inch or two. Mr Glover then came and stood opposite the fire, and took some letters out of his pocket. He went out then. He came back again very soon with Dr Dobie and Mrs Porter, the nurse. Dr Dobie came back with him. They both went up to the boy Clark's bed, and stood there for a little time speaking together. I do not recollect what was said. Mr Glover went away in a little time. Mr Glover and Dr Dobie went out together.

By Mr Patton.—Patrick Clark's leg was dressed that morning. I could not exactly say what time. They are generally dressed after breakfast. When Mr Glover came in he waited about a minute before he went up to where Clark was. I think it was two or three minutes between the time he went out and the time he came back. Nobody was with Mr Glover the first time. I saw Mr Glover trying to lift the bed-clothes another time, and Dr Dobie said something to him, and he would not go "forrit" again. He went back from the bed.

The Dean (after putting in documents.)—That is the case for the pursuer.

EVIDENCE FOR THE DEFENCE.

Professor Syme examined by Mr Patton.—I am Professor of Clinical Surgery in the University of Edinburgh. I have been connected with the Royal Infirmary for twenty-two years all but three months, as surgeon. My duty as surgeon is to attend to the surgical cases, and to perform operations which are necessary. I have got a house-surgeon and dressers to attend particularly to the

cases. Dr Dobie was house-surgeon in March 1853. My attention was called to the case of a boy, Patrick Clark, in that month. My attention was first called to it on the 20th of March. The boy had been in the Infirmary two or three days before I saw him. There was an extensive lacerated wound on the outer side of the left leg, with a compound fracture of the tibia, or inner bone of the leg, a little above the ankle. By introducing my finger into the wound, I ascertained the situation and existence of the fracture. The lacerated wound was on the outer side, and it wend round towards the inner side, and then it penetrated to the bone, which was broken. It is difficult to say what may not be visible in a wound, but to introduce my finger was the easiest and readiest mode of ascertaining; and the customary mode I may also say. The examination of the outer side would not show it at all. The fracture was of the tibia. The fibula was not broken. That completely alters the complexion of the case from one in which both bones are broken. The injury is of a different nature when one bone is preserved, in respect to what we call the prognosis or the prediction of consequences. Because it prevents motion of the broken bone; it prevents the bones from being drawn past each other, and causing irritation.

The Lord Justice-Clerk.—Of what?—The preservation of the fibula keeps the bones of their due length, and preserves them in their place, which would not be the case if both were broken.

By Mr Patton.—It was a compound fracture; that is, a fracture in connection with an outer wound. It is a matter of material difference in the aspect of a case of that description, whether the fracture is simple or compound. Compound fractures are more serious than simple fractures. I examined the boy on the 20th, and I directed his limb to be dressed and placed in a particular way. It was not dressed in the way usual in compound fractures. May I be permitted to explain?

The Lord Justice-Clerk.—Mr Patton, this may be excessively instructive and very valuable both to us and to the people in court, but I do not see the object of it on this occasion.

Mr Patton.—I shall explain it.

The Lord Justice-Clerk.—Well, withdraw the witness.

[Witness withdrawn.]

Mr Patton.—My lord, I propose to prove particularly the nature of this injury; I propose to prove the condition of the patient, and

the state of danger, as arising apparently from what Professor Syme observed. I wish to trace the source of danger, and to show that Mr Glover had no means of ascertaining, from the inspection which he made, anything of these matters.

The Dean.—What matters?

Mr Patton.—Those matters connected with the state and condition of the boy's limb, etc.

The Lord Justice-Clerk.—You have taken no issue to show that the boy was not in danger—that it was a false certificate because he was not in danger.

Mr Patton.—No; but it is important to know, when a certificate is granted by a surgeon describing the nature of injuries of this description, whether, from the position of the wound and the nature of the dressings, he had any possible means to get at the necessary information.

The Lord Justice-Clerk.—You may ask if the nature of the injury could be ascertained by a person looking at it, supposing he merely raised the bed-clothes. I do not want to go into matters which, for aught I know, not one of us may understand. You may ask if the injury could be ascertained by a person raising the bed-clothes far enough to see the outside of the leg.

Mr Patton.—Preparatory to that I must get the nature of the dressings upon the leg and the bandages.

The Lord Justice-Clerk.—Did he see the limb after it was bandaged? You have not brought out that he saw it after he had given his directions about it.

Mr Patton.—We shall see, my lord.

[Witness recalled.]

By the Lord Justice-Clerk.—I saw the leg after it was dressed, on the following day. It was carefully and properly done.

By Mr Patton.—In fractures of both bones of the leg splints are required, one under and one over; but as the fibula was entire here, we did not require a splint above; we required one only on the side in which the leg lay. The wound on the outer side was then covered over with lint, and an impermeable covering of gutta percha placed over it. The bandages were placed at the upper and lower parts of the limb, leaving that part which was wounded free from bandages.

By the Lord Justice-Clerk.—There was a bandage to keep the splint in its place. It went round the limb.

By Mr Patton.—The bandages did not extend over the wounded part. The boy's leg was placed with the knee bent, lying upon its inner side. If any one took the bed-clothes completely off, he could see the wound. By taking them completely off, I mean turning them completely down or completely up. He certainly could not ascertain the nature or extent of the wounds, in the way in which the boy's leg was placed, by merely raising the bed-clothes. It would be necessary to enable any one to do that, to remove the bed-clothes, to lift the limb from its place, to undo the bandages, take off the splint, and then insert his finger into the wound. The wounds presented no appearance of danger. The serious consequences of such injuries show themselves within the first few days. The nature of the injury was not such as suggested the idea of danger; but two or three days having elapsed without the appearance of bad symptoms, I then more certainly concluded that there was no danger. It is not usual for a clerk to recommend an operation to his principal. My opinion was asked whether an operation was necessary.

The Lord Justice-Clerk.—By Dr Dobie?—Yes.

The Lord Justice-Clerk.—And you said not?—I said certainly not.

By Mr Patton.—I cannot say that I alluded to this matter in my clinical lectures. My lectures being extemporaneous, I cannot recollect so far back as two years ago. It is very likely that I did. My duty in the hospital is of two kinds—one for the patients, the other for the students. I have to adopt for the patients the course most conducive to safety. For the students I not only explain the course which I have adopted, but also the course which ought not to be adopted. I may have mentioned this as a course not to be taken. All the circumstances led to a favourable opinion; all the circumstances were favourable to the recovery. That being the fourth day after the injury, there must be a certain degree of fever in such a wound, and it was within such bounds as afforded the best reason to expect a satisfactory result. Only some one who had not seen the wound could think there was danger. In all my experience as a surgeon, with twenty-six years' hospital practice, I never knew such an injury as that of this boy, either prove fatal or require amputation. My attendance during the time I have spoken of has been pretty regular in the Infirmary. I have mentioned twenty-six years, because I was previously for four years in Minto

House Hospital. Of course in that time I have seen a vast number of cases. There was no injury of important bloodvessels or nerves or muscles further than the superficial wound on the outside. I was informed some days afterwards that the certificate had been granted in reference to that case of Clark's. Dr Dobie told me of it. He showed me a copy of that certificate. I am not certain whether it was the same day that he mentioned it or the following day; but he did show me a copy. It appeared to me to be a medical report as to the injuries of the boy. It is expressed in the usual language of the most solemn certification for medical purposes, usual in such inquiries. I am not acquainted with any more solemn form of certificate. I brought the matter under the consideration of the Lord Advocate. My attention had been called to a system which had been introduced into the criminal court of Edinburgh, of passing over primary evidence, and preferring that which is secondary—that is to say, passing over the original attendant, and taking evidence of secondary value, or of no value at all. My attention was called to a practice of this kind in the Royal Infirmary. During the course of my attendance at the Infirmary I have given the official authorities every information connected with patients under me.

The Lord Justice-Clerk.—I cannot go into such a matter as that. Who can doubt that Professor Syme will do that in all cases, especially when called on by those who can force him to do it. We are not trying whether the practice is right or wrong. You say it is wrong because Mr Syme is ready to give every information.

By Mr Patton.—This matter was brought before the College of Surgeons. A deputation was appointed to wait on the Lord Advocate on the subject. I was one of the deputation. I brought it before the College. This was before I knew anything of the certificate. We endeavoured to point out to the Lord Advocate the bad consequences of such a system.

In answer to a question from Mr Patton, the Lord Justice-Clerk said—You may ask what was his motive.

The Dean.—I take it that it was from no personal motive, as Professor Syme states in his letter. I am not going to impute any personal motive.

The Lord Justice-Clerk.—You had better put the general question—In writing these letters, commenting on the certificate, had you so and so?

By Mr Patton.—I had no personal feeling in regard to Mr Glover at all. I inserted the correspondence with the Lord Advocate and the Commissioners of Police in the *Medical Journal.* The article with which it is prefaced is of my writing. I got an answer from the Commissioners of Police to the letter which I wrote them on the subject, and subsequently I had an explanation of their own laws. They sent me a communication containing a statement of their regulations, and afterwards I received an explanation of the intention which they had in these regulations. I saw the dressings of the boy's limb on the morning of the 21st, before Mr Glover had been there, about twelve o'clock in the morning. I do not recollect any appearance of blood or stain on the dressings of the wound, nor do I think there could be any at that period—four days after the injury. No one could form any opinion as to the nature or extent of the injury from the appearances on that occasion; the state of the pulse showed that he was not in danger—I mean, so far as it went.

By the Dean.—I conceive he was never in danger. It looked formidable at first; but, when carefully examined, it seemed to me to be free from danger. I never entertained an opinion that the case would terminate fatally. There is no injury which may not terminate fatally; but there was no reasonable probability of this one doing so. The letter in the *Scotsman* newspaper of the 16th July, is from me. I sent that letter to the newspaper in consequence of Mr Glover having published, or the Commissioners of Police having published for him, a contradiction of a statement made by me—stating that I had said what was not true. I mean the letter from Mr Glover to the Lord Provost, published in the *Scotsman* of the 13th; and in that letter he says that I had been misinformed, and that I had not stated the facts correctly. My letter was put in the newspaper in consequence of that. In the same column of the *Scotsman* there appears my communication to the Police Commissioners. It appears in the newspaper report of the proceedings of the police commission. I am aware that the proceedings of that body are always published, but not *in extenso.* [Reads in the *Scotsman* of the 16th the second paragraph of a letter dated the 1st of July.]

"From a letter, published to-day in the *Edinburgh Monthly Medical Journal* for July (the same that was inserted in the *Scotsman* of Wednesday last), it appears that Mr Glover has attempted

to justify his conduct to your Lordship and the Lord Advocate, by alleging that he took an opportunity of privately and surreptitiously examining the limb while the nurse and clerk were absent from the ward. I express no opinion as to the extreme impropriety of such a proceeding, since it never took place. If the case had terminated fatally, as it threatened to do, or if all the inmates of the ward, which is a small one, had undergone a change, it would have been difficult to disprove the statement in question, however inconsistent with fact."

The case at one time did threaten so far as to present a formidable appearance; it frightened my clerk; it did not frighten me. It did not threaten to terminate fatally; I never thought it did. What I said in that letter was to represent the case as a serious one, to show the impropriety of the surgeon of police going into my ward and disturbing my patient. I did not wish to misrepresent the case; it was a very severe and formidable injury, so much so that my clerk suggested amputation. To my mind it did not threaten to terminate fatally. In this same letter, I say, "Mr Glover has attempted to justify his conduct by alleging that he took an opportunity of privately and surreptitiously examining the limb." By that I mean, examining it to satisfy his mind. I meant what a medical man means when he says that he examines a case—to satisfy himself from his own observation; and it was necessary in this case to have undone the dressings. What I meant in my letter was, that he alleged he had taken another opportunity in addition to that at which Dr Dobie was present—that he took another opportunity of satisfying his mind on the subject. I said that he stated he had taken an opportunity, when the nurse and attendant were absent, to satisfy his mind as to the state of the limb, and that he had done so by examination, to what extent I did not know. When I use the phrase, "examining the limb," I do not mean such an examination as necessarily infers the removal of the bandages; I mean that he had taken some other opportunity of getting information on the subject; I did not think him guilty of such extreme impropriety. I decline having words put into my mouth; I do not admit these two meanings of the term examination. What I mean by examination is, a thorough examination such as I made. There is another nominal examination—looking under the bed-clothes—an imperfect examination; and Mr Glover alleges that he made some examination of this kind. I used the term "examining the limb" in the latter sense. I was led to

believe that the more imperfect examination which I have spoken of never took place. I was led to believe this by what the patients in the ward told me; not from what Dr Dobie told me; but only the patient himself, and other patients in the ward. I cannot tell the names of the other patients. I think there was a boy of the name of Anderson. The *Monthly Medical Journal* contains, amongst other things, a letter by me to the Lord Advocate, dated the 5th of April. In that letter it was not my object to bring a charge against Mr Glover, but against the system. I state a fact, that he gave a certificate, and that he had no opportunity of knowing the circumstances. I leave the Lord Advocate to draw his own conclusion. I unquestionably considered that that was a false statement. I could not suppose that the Lord Advocate could arrive at any other conclusion. My object was not to injure Mr Glover, but to mention this additional illustration of what the system was, and to prosecute the public object which I had in view. I am not convinced that I wrote incautiously a few days afterwards on the same subject. I do not think it imprudent to speak in the way I did of a medical gentleman, if it be true. In the letter of the 13th of June, in which this sentence occurs—"Indeed, unless able to prove that Mr Glover did not examine the patient whom he has declared 'on soul and conscience' that he did examine, I should ere now have tendered my resignation"—I do impute falsehood to Mr Glover. That was necessary in the prosecution of the public object. Mr Glover had said that my statement was not true; he said so in a letter published in the newspapers. In his letter to the Lord Provost, he says, "Your Lordship will observe that the statements in Mr Syme's letters are quite contrary to the facts of the case, and that he has not only been misled by erroneous or partial information, but labours under an entire misapprehension of the object of my visit and of the certificate complained of." I did not say that Mr Glover imputed falsehood to me, but he states that what I said was not true, and I said his statement was false. I thought myself quite justified, and I felt called upon to do so. My hour of visiting the Infirmary is twelve o'clock; in cases of emergency or urgency I go sooner. I cannot recollect if I was there before twelve o'clock on the 21st of March. I believe I saw the boy on the 21st. I believe, because it was a case to which my attention had been called the day before as of a serious nature, that in all probability I saw it, I have no doubt that I did. That impression is founded on my recollection.

I recollect the case and I recollect the circumstances. It is very difficult at this period to say.

The Lord Justice-Clerk.—You directed the dressings to be applied on the 20th, and saw it after it had been done, and your belief is that you saw the boy next day?—Certainly.

By the Dean.—I learned on the 22d that Mr Glover had been there on the 21st. I did not learn that on the 21st; it was in the evening that he came. My recollection is that it was in the evening; Dr Dobie told me so. Dr Dobie said he came there some time after I had left on the 21st; I don't know the precise hour; that I learned on the 22d. I was told about the certificate upon the 25th, and I saw it on the following day, the 26th. It was a written copy I got. I don't remember by whom it was written. Dr Dobie gave it to me. He told me he had got it from a policeman, or some official.

By Mr Patton.—In the letter of Mr Glover of the 22d of April, the following occurs:—"For this purpose I immediately visited the boy. On going into the ward where he was lying, I asked the nurse to go and state that the surgeon of police wished to see Mr Syme's clerk. After waiting a short time, I turned down the bed-clothes, and examined the boy, so far as to satisfy my mind that his life was in danger in consequence of the injury of his leg, and that he was in a fit state to emit a declaration." This was certainly meant to import that he had examined the leg, that he had made such an examination as to give reasonable grounds for giving his certificate. I understood that he wished it to be believed that such an examination had been made of the limb, as to be able to speak to the injury. When I said that he had not examined the limb, I meant that he had not made such an examination as to warrant him in giving a certificate. I still adhere to that opinion.

The Lord Justice-Clerk.—What opinion, pray? What he says is that he meant that Mr Glover had not made such an examination as warranted the certificate. That may tend to fix down the matter, if libellous, more clearly upon Professor Syme. But when you say you still adhere to that opinion, all you can ask now is, "Do you still put that meaning on your letter?" If you mean that nothing would warrant that certificate, I have told you that is not evidence. It is a question for the jury. He may state his meaning, and you may fix down that meaning, if libellous, upon him. That is for your own judgment. The other is not evidence. It is a matter

for the jury, not for the opinion of the defender, surely. The meaning of the passage he has given most distinctly. He says, "I meant in that letter he had not made such an examination of the limb as warranted that certificate."

By the Lord Justice-Clerk.—When the question was put to me by my clerk, "Do you think amputation necessary?" on the Sunday, I said, "No." The question of amputation was never again under my consideration. I had no doubt on the subject on the Sunday. I felt perfectly assured, as the event proved, that I could cure the boy without taking off his leg; and I was satisfied on the Sunday, that unless some unexpected change took place, there really was no danger. I don't think the statements of Dr Dobie should have afforded any ground for Mr Glover's certificate. I acted upon Dr Dobie's information of what passed. As to danger, when one is asked if there is any danger, he means the possibility of danger. When Dr Dobie said there was danger, he meant there was a possibility of danger.

Dr Douglas Maclagan, examined by Mr Mackenzie.—I am a member of the College of Surgeons, and lecturer on Materia Medica. A complaint was made to the College of Surgeons about the mode in which medical certificates were obtained by the Procurator-Fiscal in surgical cases. I think it must have been about 1852; I am not quite certain. I think the person who brought the matter before the College was Professor Syme. There was a deputation waited on the Lord Advocate. I was a member of that deputation, and Professor Syme also. The subject was brought under his lordship's notice. [Reading Mr Glover's certificate.] I consider that a medical certificate regarding the injuries sustained by the boy Clark. It is granted in the usual terms, "on soul and conscience," that very peculiar expression is used here.

The Lord Justice-Clerk.—What do you mean by usual form? Is it as to soul and conscience you understand it?—Yes, that is the usual form. The certificate states that the party who examined the boy, "finds" a wound and a fracture.

Mr Mackenzie.—Now I propose to put this question, Whether, as a medical man, he would have granted that certificate without personally examining the wound and fracture?

The Dean.—I object to that question.

The Lord Justice-Clerk.—I certainly cannot allow that question, and for this plain reason, that if this certificate had been published

by Mr Glover as an account of the case, or if it had been used in evidence in a criminal proceeding, and you had commented on it, it would have been most important if you could have imputed an erroneous or false certificate to Mr Glover, either as to granting it without inquiry, or as to the object for which it was granted. But here the question for the jury is, whether he was warranted in the circumstances in which he granted it, and for the purpose for which he granted it. Therefore I cannot allow the question to be put.

Mr Mackenzie.—Would you be good enough to take it down. I have no more questions.

By the Dean.—The Lord Advocate told the deputation he would inquire into it, and take it into consideration. I do not know that the result of that consideration has not appeared.

CHARGE BY THE JUDGE.

The Dean of Faculty having addressed the jury for the pursuer, and Mr Patton for the defender,

The Lord Justice-Clerk charged the jury as follows:—From the time that I came to understand this case, it appeared to me a very simple and in reality a very short one, and in point of substantial justice a very clear case indeed; and but for the number of topics introduced on both sides, which appear to me to have very little to do with the case, I could have comprised in a few words all that was necessary for me to say. In the first place, I must begin, in consequence of one of the observations made by the defender's counsel, with this introductory remark—viz., that everything that is libellous is presumed to be, under the issues before you, false and calumnious, unless the defender undertakes to prove the truth of the calumny. There has been no observations addressed to you, you will observe, —and I think this must have struck you forcibly,—to the effect that the words complained of are not libellous at all, and not injurious. That is not attempted to be proved, and it would have been difficult indeed to have done so, when you find three issues taken to prove the truth of what is asserted, and in proving the truth of what is asserted to prove the falsehood of Mr Glover. Therefore the question is not in the first instance, has the pursuer proved this to be false and calumnious, because unless a case is what is called privi-

leged, whoever publishes anything injurious to another, and does not undertake to prove it, what he publishes is presumed to be false and calumnious. Therefore but for these issues taken by the defender, the line of defence, and the arguments used, would have entitled the pursuer to a verdict in respect that the defender had not disputed that the words employed in the passages in each of the issues complained of are injurious, and have the meaning that is imputed to them by the pursuer. But really, gentlemen, in this case you must see that it is impossible to separate, at least for the defender to separate, the consideration of the issues of the pursuer from the issues which he himself has taken in order to justify what he did say of Mr Glover, and accordingly none of the observations addressed to you have had that object—viz., to deny that Professor Syme did really assert the things which he did assert of Mr Glover. Now, gentlemen, a strong appeal was made to you as to the injurious consequences to Mr Glover if you should find for the defender upon the defender's issues, that such a result would brand him with the imputation of falsehood; and it was stated in still more forcible terms, would send him out of the Court branded with that declaration. Now, if you should be satisfied that the defender has made out his issues, it will not do for the pursuer to endeavour to terrify you from coming to a verdict, founded upon your opinion of the case, by saying, "This will be a desperate result to me," and, "Am I, the pursuer, to be branded with falsehood?" He ought to have thought of that, and of the true nature of the case, before he came into Court. And, therefore, if that should be the result, in point of truth and justice, in your opinion of the case, you must not allow yourselves to be withheld from doing your duty, because the pursuer finds himself in a predicament in which he must make that appeal to you. You must, however, be very well satisfied that falsehood is established against the pursuer before you can arrive at a conclusion that is, or may be, so injurious. In the next place, gentlemen, you must throw out of view entirely all this discussion, which seems to be so completely in the mind of the defender, Professor Syme, that it appears to have taken entire possession of the mind of his counsel, regarding the propriety or impropriety of the public authorities sending a particular surgeon, whom they may appoint for that purpose, to ascertain the matter of fact, which alone was to be ascertained here—viz., whether the boy was in a state of danger, and whether he could undergo, with safety, an examination by the sheriff; be-

cause, if a person was to die, and there was any charge against an individual for causing, wilfully or carelessly, the injuries which resulted in death, his evidence might be lost, or only obtained from hearsay, from things dropped, not before a magistrate, but to casual inquirers. Now, Professor Syme may think this an extremely injurious proceeding, and if the thing is followed out to the extent of sending a police-surgeon to insist upon seeing the treatment of every person who is injured, although under careful treatment privately by a surgeon of eminence, or in an hospital, it may be. But I never heard that this has been attempted—a very injurious and a very absurd proceeding. But there is a good deal to be said—and really that is all I will say about a matter we have nothing to do with—in favour of the authorities taking their own means for the purpose of ascertaining this simple point: is a person in such danger at the time as to risk the losing of his evidence if he is not examined by the Sheriff? There are considerations applicable to that case which require the matter to be well understood by the medical man who is to consider it, and it is extremely likely that such a young gentleman as Dr Dobie might not understand at all the views and objects with which that certificate was to be granted. Professor Syme, if he even understood—which I doubt very much—the object with which Mr Glover was sent there, seems to think it a gross abuse—an outrage, as he calls it—an intolerable outrage, that the Sheriff chooses to send a surgeon to examine a particular person, if he is considered in danger of his life. Professor Syme may be quite right in all this; but really with that matter we have no concern whatever. It is not a question by which you ought to allow your minds to be influenced in the least degree. If you think it a bad practice, that ought not to affect your verdict in this case in the least. Another consideration pressed upon you is this:—Professor Syme had taken up this question very keenly; he had been in communication with the Lord Advocate on the subject; his mind was hot in the matter; and in consequence of this, he seizes hold of Mr Glover's certificate as an illustration of what he was pleased to consider a very great abuse. And it is only in discussing this general question that he brings out the matter of which Mr Glover complains. He had no personal malice against Mr Glover; he did not intend to injure him; and this came out only in the heat and ardour of taking up the general question for the honour of the medical profession. He also says—but how it appears in this case we don't see—that it is for the sake

of the patients. This boy has not suffered in the least, but he says it is for the sake of the patients that he thus attacks Mr Glover and his certificate. Gentlemen, that is exactly the state of mind in which a person is extremely likely, recklessly and heedlessly, and without due consideration of, or inquiry into, the real facts, to attack an individual, and to say of him what, but for the heat and ardour of this public controversy, upon another matter he would not have said at all under the same circumstances. No doubt it is not so bad a thing as if he had been actuated by any personal motive, but if, in the course of discussing this subject he brings Mr Glover and his certificate as an illustration of what he says is a bad system—if, I say, in the course of this he says that which is libellous, and that which is injurious to Mr Glover, he ought to have considered that before he chose so to express himself; and he is answerable just as much to you for the expressions which he has used in regard to Mr Glover, or his certificate, though he brings it in, as he says, in order to illustrate his subject, which he has taken up upon general grounds, as if he had taken it up directly and personally against Mr Glover. No doubt not to the extent to which you would give damages in such a case, that is most true. The damages would depend upon the object and purpose of the party making the complaint, but on the other hand he is answerable to you, and must be subject to the verdict against him, notwithstanding the way he brought in Mr Glover and his certificate—in the course of considering a general subject. Of course you must keep in view, as you naturally will, that the damages in such a case will be much less than if it had been proved that he had been actuated by a personal motive. But, on the other hand, the observation pressed on you by the pursuer is a perfectly just and fair one. Why, even when Mr Glover feels himself hurt by this, and has, in a very full letter, which it is to me perfectly marvellous that Mr Syme would not understand, in a letter of the 22d of April, explained the only object and purpose for which that certificate was granted, it is an observation quite good on the part of the pursuer to say, even after Mr Syme knew that, not only did he not disclaim the imputation of falsehood against the certificate, but he comes forward and undertakes to prove that imputation which he had previously thrown out, and to show that the certificate was false—false in respect of its asserting two things which Mr Glover knew not to be the case; and then that Mr Glover attempted to justify the certificate by falsely alleging that

he had done something which he had not done. Now, gentlemen, throwing aside the whole of these matters, and taking up this case as between Mr Glover and Mr Syme—the one entitled to justice if he was slandered—the other bound to answer for it if he has committed that slander, and undertaken to justify it, and to prove that what was in itself libellous was true—as between these two parties, what is this case? It seems to be as simple a matter as can be brought under the consideration of a jury. Mr Glover sends to the Superintendent of Police a letter in these terms:—

Edinburgh, 21st March 1853.

I hereby certify, on soul and conscience, that I this day examined Patrick Clark, aged about eleven years, lying at the Royal Infirmary, and find he has a large lacerated wound of the soft parts, on outside of his left leg, and a fracture of the bone a little above the ankle; that his life is in danger, and that he is in a fit state to emit a declaration.

(Signed) GEO. GLOVER, Surgeon.

Now, are any of these matters alleged to be false—the large lacerated wound, the fracture of the bone, that the boy's life was in danger, and that he was in a fit state to make a declaration? Dr Dobie gave that information to Mr Glover. He thought he was in a fit state to undergo an examination. I shall immediately speak to the question otherwise, but from Mr Syme's clerk that information was directly obtained; and now Professor Syme turns round, and says that this gentleman is to be accused of falsehood, and found to be uttering falsehood by you, because he wrote that which, if they had sent to Mr Syme's assistant, Dr Dobie would himself have stated. That is somewhat hard on Mr Glover. Oh! but, says Dr Dobie, who, I think, seems to be the origin of the whole of this matter, that certificate is quite false; it struck me so the moment I took a copy of it from that stupid sheriff's-officer who took it there, and brandished it about, and showed it to all the officials of the Infirmary; it is all false on the part of Mr Glover, because he says I find so and so. Now, Dr Dobie instantly interpreted that to mean that he examined the limb, so as himself to find this; but as he did not do this, the certificate is false in that respect. Gentlemen, I think it will be difficult to persuade you, considering the object of the certificate, which I shall state to you presently, that you should convict

Mr Glover of falsehood, when all the facts are true, and because Dr Dobie says, Oh! it is false, and Professor Syme says afterwards it is false, because he says, "I examined Patrick Clark, and find," etc. They say he did not find it, because he did not examine the limb. It is quite true he found it, in another sense, because he got information at the Police-Office and in the Infirmary; but because he uses the words "I find," you are to convict Mr Glover of falsehood. Now, how does this matter originate? One witness examined yesterday, the Superintendent of Police, says he wrote the following letter to Mr Glover:—

Police-Office, 21st March 1853.

MR GLOVER,—DEAR SIR,—The boy sent to the Infirmary on Thursday, who was injured by a cart in the Canongate, is reported to be very ill. A report is to be sent to the P. F., and therefore it will be necessary to know whether he is at present in a fit state to be examined. Please see him without delay, as an operation is to be performed upon him, perhaps this forenoon.—I am, dear Sir, your most obedient servant,

(Signed) D. MILLER.

Now, gentlemen, from whom had that information come? Why plainly from that young man, Dr Dobie, who, to the last, had seemed to view his own opinion as far more authoritative, and of far more importance, than that of his superior, Mr Syme, for on the forenoon of that day, the police had ascertained that amputation was likely to be performed. Now this, Mr Syme says, that he had decided against on the Sunday before, and that the boy was in no danger; and yet it is allowed to be so known in the hospital, because, forsooth, Dr Dobie had taken up that opinion. Now, I say, that is a state of things which I think if Mr Syme devoted his attention to repress it would be of far more use to the institution than publishing letters upon this public grievance, as he calls it. I think that was a most improper state of things to take place in the hospital. And I think, that when the Superintendent of Police heard that an operation was to take place under which the patient might sink, it was very natural for him to say, we must see whether he can be examined. Well, Mr Glover, being appointed under the regulations of the police, which require him to report whether in such circumstances a patient's life is in danger, instantly obeys his instructions. You will

keep in view, in going through this case, that these regulations were afterwards sent to Mr Syme. It was said that he could not say whether he acted under the second or the third. Why did he select the third, and could not tell, and complain of it? It suited, no doubt, better the purpose of that gentleman's discussion to take up the third, which ordered the police-surgeon to visit all patients, so as to be prepared to give medical evidence on the trial of the case. But if he had attended to the terms of the certificate, he could have been at no loss as to which regulation Mr Glover was acting under; for the terms of the certificate expressly bore that the patient's life was in danger, and that he was in a fit state to make a declaration. Therefore, if he read this, he saw at once the sole purpose for which Mr Glover went there. That purpose was again stated at great length by Mr Glover, in a letter published in the *Scotsman* of the 13th of June, to which the letter in the third issue is an answer. Well, Mr Glover goes there, and makes this report, and the first consideration unquestionably for you when you find this certificate attacked by Mr Syme, and language used which is said to be injurious and libellous in regard to it—the first consideration is, What was the object of that certificate? If a person chooses to publish medical reports of cases for the instruction of the medical world, nobody knows better than Mr Syme that these are liable to be attacked in regard to their statements. If, again, a report is used at a public trial in proof of facts, but when the person who writes it must be examined also, to prove that it is a report, for a certificate is no evidence in itself, and the person says that that report is true, that he saw and examined the limb—an expression which Mr Syme has imported into this case, but which is not in the certificate or letter of Mr Glover at all—when he did not examine the limb, such a witness does not only lay himself open to a charge of falsehood, but in reality to a charge of perjury. But this certificate was not meant to be published as the medical report of a case. It was not intended as evidence at the trial. It was for the special and limited purpose of satisfying the Procurator-Fiscal whether he should take that boy's deposition. That was the sole object of it, its terms show that. The letter of the Superintendent of Police, instructing Mr Glover to perform this duty, demonstrate that. Mr Glover also swears to it. But independent of that, the certificate itself, and the instructions under which he acted, completely and sufficiently show the object and purpose of the certificate. And so entirely is it limited

to that object, that if Professor Syme had heard of it any other way than he did, he must have seen this ; for bear in mind, it was the property of the Crown, and that it could not be parted with to any one. Any information of a crime given by one individual against another the Crown must give up, but this being part of the evidence upon which they themselves were to institute proceedings, Professor Syme was not entitled to it. But this young gentleman, Dr Dobie, having been allowed to read the certificate in the hands of the sheriff's officer, to whom most strangely it appears to have been given, and who flourished it about before the lads in the Infirmary, immediately thinks that he has got a famous case for Professor Syme, and immediately copies it, and sends it to him, Professor Syme not inquiring and not knowing the object or purpose of it. Now you have that purpose and object completely proved in this case. It was not intended to be medical evidence ; it was for the purpose of satisfying the mind of the Procurator-Fiscal in the first instance, and then the Sheriff, if he joined in that opinion, that this boy was in danger, and ought to be examined by the Sheriff. Now what does Mr Glover do ? He goes to the Infirmary, and asks to see the house-surgeon, Mr Syme's clerk. Not only he swears to it, but Dr Dobie proves it, as he says the nurse came for him, and he also says he went as soon as he was informed that Mr Glover wished to see him. What time passed before the nurse found him, of course Dr Dobie cannot tell, but the boy says that Mr Glover stood for some time before he came to his bedside. Now knowing, as Mr Glover probably did know, the jealousy of the gentlemen in the Infirmary, even for this purpose, if they knew how limited his purpose was, I think it would have been better had he waited until the house-surgeon came, or until a message that he was not to come. But that is a very unimportant matter indeed, and has nothing to do with the question of the truth of the issue on the part of the defender. Well, after a little he goes forward and asks the boy a few questions. But observe, before that, Mr Glover stated that he went to the police-office, and got information of the injury, and of course in that way he knew that the boy's leg was broken. Well, he asks the boy some questions, and he turns the clothes slightly down ; but it is plain that he saw very little from that, because he must have mistaken the reddish-brown colour of the gutta-percha covering for the oozing of blood. I think that was a mistake on his part ; but he saw that the leg was broken, as he had been told. He saw the

leg lying in a particular situation, and the lacerated wound; and he asks the boy whether one bone grated upon another? That was of importance, as it shows that he knew that the bone was fractured one way or another. He examined the tongue, the pulse, and the breathing. Now, whether or not there was any danger is of no importance to this case. There is not an issue taken that it was false, because Mr Glover gave a certificate that there was danger, while there was no danger; that is not imputed. Mr Glover might be wrong in thinking there was danger, as it would appear that Dr Dobie, who knew the case better, was also wrong. But that is not the point for you. Was he able to say that there was danger? He is a medical gentleman, and states that after examining the breathing and the state of fever, that he considered that there was danger. Well, so did Dr Dobie, even after hearing the opinion of the first surgeon in Europe in the case. He retained his own opinion, and he expressly stated, to my great surprise, that he told his opinion to Mr Glover, but did not tell him Mr Syme's opinion. That being the case, satisfied that there was an injury, and satisfied that there was a fracture, he does not pretend to say in this certificate, I examined the limb of this boy, so as to ascertain precisely the nature of the injuries. He had no occasion to do so, and he does not use any expressions which import that. He says that he had made up his mind, and I dare say he had, before Dr Dobie came; but he had not written his certificate before Dr Dobie came, and therefore he says, I might have felt the boy's pulse and examined his tongue even if Dr Dobie had come at first. But as to the fact that he had a lacerated wound and a broken leg, the statement of an intelligent surgeon would have been quite sufficient for me in such circumstances for the only purpose for which that certificate was granted —viz., to state that his life was in danger, and of course in consequence of that injury which alone took him to the Infirmary. He was told also that amputation was under consideration. You see how strongly this young gentleman, Dr Dobie, has adhered to this opinion. Mr Syme said that it was not under consideration at all; but of course Mr Glover says, that, seeing all the risk that life would be lost after amputation, and that the boy's evidence would be lost, this contributed to lead me to tell the Fiscal that there was danger in the case; and therefore if the boy was to be examined at all, he should be examined before the amputation took place. Whether Dr Dobie intimated the opinion which he stated to us of the

risk of mortification, does not exactly appear. He does not say that he stated it to Mr Glover; but it shows how strong was the opinion of Dr Dobie that there was danger in the case. Now, the whole of this mighty affair, this attack on Mr Glover, reiterated on three different occasions in three ways, is founded upon this—that Mr Syme insists on taking the words, "I examined the boy Clark, and found," etc., in the sense that he had set about a surgical inspection of the limb, and that therefore, as he did not do that, he was stating a falsehood. That is the whole case; when you come to the substance, that is in reality all that you have to consider. Now, gentlemen, you will look to the object of that certificate, and you will say whether you can put that construction upon it, and fasten it down, as Mr Syme wishes to do, against Mr Glover, for the purpose of proving that he stated a falsehood upon soul and conscience. I may say that the word "find" in the certificate is one that would indicate that he did not make a personal examination of the limb, but only meant to report that the injury had taken place to the extent that the police understood. That he did find all the things stated in the certificate no one can doubt. If they had wished to prove that that was the only sense in which the certificate could be understood by those to whom it was addressed, the defender should have called the Procurator-Fiscal and the Superintendent of Police, to say whether they understood it was the duty of the police-surgeon to make an inspection of the limb, and whether they concluded, from the certificate, he did make an inspection of the limb. No such evidence has been produced, and it would have been strange indeed if those gentlemen had said so, because it would have been contrary to the object for which Mr Glover was sent there. It would have been most injurious to the boy if he had attempted to make such an inspection, and would probably have increased the danger which he was sent to ascertain the extent of. If you are satisfied upon that, the leading and primary view of the whole case, then let us see what are the matters complained of by Mr Glover. The first is in the first issue, that it was falsely and calumniously stated that he had granted a false certificate, inasmuch as he therein expressed an opinion on a matter as to which he had no means of knowing anything. Now, says Mr Patton, "that means, surgically and personally of knowing anything." That is not said in the letter of Mr Syme; it says expressly, "no means of knowing anything." Why, the certificate might have been founded

most justifiably on what Dr Dobie told him. If he meant to say that he expressed an opinion when he had not, by personal inspection, grounds for that opinion, that would have been a very different imputation indeed. That would have been an imputation which Mr Glover might have thought treated him with very little respect, but with which he would hardly have come into Court. I must say, however, this does not seem to me a very serious and aggravated case of slander, and accordingly the Dean stated that probably it would not have been brought before you but for what followed, and they could not bring the second matter forward without the first. The second matter is more serious. Here the defender undertakes to prove that the pursuer granted a certificate, on soul and conscience, that he had examined a patient, whom, in point of fact, he had never examined. Now, gentlemen, looking to the nature of the certificate, the inquiries made by Mr Glover, and the evidence given by Dr Dobie, you will say whether you can find it true that the certificate was false, in so far as in it Mr Glover expressed an opinion on matters on which he had no materials for forming an opinion at all, and as to which he had not the means of knowing anything whatever. That is the point for your consideration under the first issue. Then, as I have said, the second matter comes to be a good deal stronger. In that second issue, which contains the letter addressed to the Commissioners of Police, and published in the *Medical Journal*, Professor Syme says :—"Indeed, unless able to prove that Mr Glover did not examine the patient, whom he has declared, 'on soul and conscience,' that he did carefully examine"—It is most unfortunate for Mr Syme that he will never keep to the terms either of the certificate or of Mr Glover's published letter—"I should ere now have tendered my resignation, until assured against a repetition of the alleged outrage;" and the complaint there is that the defender falsely and calumniously asserted of the pursuer, that he had falsely certified, on soul and conscience, that he had carefully examined a patient whom, in point of fact, he had never examined. Now the certificate, you will observe, bears nothing about careful examination; if it had done so, that would have given it a character considerably different in point of importance. The object, however, of Mr Glover's examination was only to satisfy his mind on the two points already stated; and this did not require nor infer a careful examination of the limb. Indeed, of what use would that have been? If danger arose from the injury,

was it of the least consequence to the Sheriff or to the Procurator-Fiscal whether there was a fracture of the tibia or the fibula, or whether both of these bones were broken? If there was danger in the opinion of the house-surgeon and Mr Glover, that was quite sufficient. No careful inspection of the limb was necessary for that purpose, and none accordingly was made. Not only was it stated that this you must hold to be false till the contrary is proved to be true, he undertakes to prove the accusation to be true; for in the second issue he says—"Whether the pursuer granted a certificate on or before the said 21st March 1853, in which he certified, on soul and conscience, that he had examined a patient whom, in point of fact, he had never examined." Now certainly Mr Macfarlane went too far when he said that implied that he had never seen the patient. The letter and everything else refers to Mr Glover's visit to the Infirmary. Not only did he examine the patient so far as he thought necessary for the purpose of that visit, before Dr Dobie came, but what Mr Glover seemed to forget Dr Dobie said, he went over the same symptoms with him—examined the tongue, felt the pulse, observed the breathing, and wished to look under the bed-clothes, saying, at the same time, "I suppose there is not much to be seen here," or "nothing to be seen here," and of course very little could be seen, unless the splints and bandages were taken off. And, therefore, in the matter of the fracture, Mr Glover went upon what was quite sufficient for his purpose—the information that he had received. But the defender undertakes to prove that he had never examined that patient. Looking to the object of that certificate, and the statements made in it, you will ask yourselves what other examination could have or ought to have been made. The inspection of the limb not only Mr Glover does not pretend to have made, but Mr Syme says that that would have been most improper. It was not necessary to the ascertaining of danger. Other symptoms might prove that, or be thought to prove that, in the mind of Mr Glover; whether he was right in this, is another question. The question here is, whether he made such an examination as he thought sufficient. Mr Syme thought little of the fever, and he appears to have thought little of the state of the case. Very likely Mr Glover thought a great deal more of them, especially from the question which he was going to answer—viz., Ought an examination to take place, especially when he had communicated to him the opinion of Dr Dobie, that amputation was under consideration? He did not

know that Mr Syme had decided against it; and, if he had been brought into contact with Mr Syme, if Mr Syme had given him any information at all, it is extremely probable that he might have given a different certificate from that which he gave, after seeing the boy himself, and after communicating with Dr Dobie. Now, what the certificate granted with that object implies, you will say; you will also say whether you think that any other inquiry need have been made for that purpose. The next point in this case arises after the letter of Mr Glover, which has been read to you already. He writes this letter to the Lord Provost, seeing an attack in the *Medical Journal*, and he sends it to the *Medical Journal* and to the *Scotsman*. He says, "I wish to explain this matter; I have committed no impropriety;" and he then details the examination which he made, stating expressly that he did not examine the limb, and never intended to examine the limb; and he states also, in explicit terms, the limited object of his examination. He says, "I had no intention of removing the splints and bandages, or doing anything in my examination which would, in the least degree, endanger or even retard the boy's recovery;" and, before that, he says, "I turned down the bed-clothes and examined the boy, so far as to satisfy my mind that his life was in danger in consequence of the injury of his leg." Now, this does not read as my friend Mr Patton seemed to wish it—"I turned down the bed-clothes in order to satisfy myself that the leg was broken." He knew that before; and, of course, whatever danger there was, could only arise from that injury, which was patent and well known. That he did not take down the bed-clothes, or lift them up, to some extent, on that occasion, is certain, because it was proved by the boy himself, and by the other boy, Anderson. That he did not do so far enough to enable him to say that there was a fracture, without further information, is perfectly true; and whether he should have done it, in the absence of the nurse, is another question. But what is the statement made on this by Professor Syme? He says, "Mr Glover has attempted to justify his conduct by alleging that he took an opportunity of privately and surreptitiously examining the limb while the nurse and clerk were absent from the ward;" and this is the ground of the third issue. Now, where is there any such statement as that on the part of Mr Glover? He never uses the word limb; he never says that he examined the leg even, much less does he say that he examined the

limb, which would imply much more clearly and strongly such an examination as would satisfy him that there was a fracture. But Professor Syme, not reading carefully the words on which he intended to comment, says he (Mr Glover) falsely alleged that he privately and surreptitiously examined the limb. Well, then, he undertakes to prove that; and his third issue is—"whether, in a letter addressed by him (Mr Glover) to the Lord Provost, he attempted to justify the granting of the certificate, by falsely alleging that he had taken an opportunity privately and surreptitiously to examine the limb," etc. To this Mr Glover answers—"I never made the statement that I examined the limb before the nurse and clerk came; and, therefore, when you allege that I falsely state that, you impute to me another falsehood." Now, gentlemen, that is the case. If you wish me to read the evidence, I shall do so: but I confess I do not think it turns in the least degree on the details of the evidence, further than I have mentioned. I may repeat, that in every case of slander, where the issue is solely, whether the defender falsely and calumniously stated so and so, the falsehood is assumed, unless the defender undertakes to prove the truth of it. If, therefore, the defender has not satisfied you as to these three issues which he has taken, the pursuer is entitled to your verdict, unless that you think that the meaning put upon his three issues, at the close of each of them, is not a correct deduction from the words complained of. They are, however, taken exactly from the terms of the words complained of, for instance, in the first issue, "whether the defender stated that the pursuer had granted a false certificate, inasmuch as he therein expressed an opinion on a matter as to which he had no means of knowing anything," these are exactly the expressions of Mr Syme which are complained of. And, therefore, you will probably hold that there is no doubt that is a correct deduction of the meaning of the words used by Professor Syme. In the second issue, also, the complaint is in the very words of Professor Syme—viz., that Mr Glover did not examine the patient, whom he had declared on soul and conscience that he had examined. Then, in the third issue, the complaint is also in the words of the defender. Now, then, gentlemen, that being the nature of the case, I confess I think that it has been treated on both sides as a far more serious and important case than it appears to me to be either one way or another. For my own part, while I cannot at all wonder that Mr Glover should come into Court with an action of reparation for this, perhaps to get that

disclaimer which he has not got from Professor Syme, yet, on the other hand, that this could be such a serious and weighty injury to Mr Glover—a thing hurled out by Mr Syme in the course of some vehement discussion of such a question as this—I confess that is not the light in which I view it. Mr Glover has brought nobody to show that the thing was much attended to, or that these expressions, improper as they might be, and libellous as they might be, produced any impression on the mind of anybody. Perhaps some people might ascribe it to some particular mode of writing on the part of the defender, which takes away a good deal of what his professional authority gives him. The Dean says that his eminence in his profession makes the injury all the greater. It may be so, gentlemen; but really, looking over these libels of Mr Syme's, I doubt very much whether the medical world would think them so extremely injurious to Mr Glover, or whether it paid that attention to the words that the pursuer not unnaturally may suppose it did. Still, if you are satisfied that they bear the meaning which the pursuer put upon them, and if the defender has not proved the issues which he has taken in justification, it will be your duty to give such damages as you think this sort of reckless writing against Mr Glover requires in the circumstances. On the other hand, where any personal motive on the part of Mr Syme against Mr Glover is so very strongly and distinctly disclaimed by the counsel of Mr Glover, the verdict is not to be considered as against Mr Syme in such a serious light as the defending counsel represents it. It will only subject a person in damages for saying recklessly of another what he was not justified—if you find it so—in doing. But the first question for you is—Do you find for the pursuer or defender? If for the pursuer, that negatives the issue on the part of the defender; and you will also then proceed to assess the damages, giving such an amount as a sensible and reasonable jury ought to give in a question in which you find one doctor abusing another. You will keep in view, however, that there are three issues in justification, and you must consider, not merely whether one is proved, but whether all the three are proved. If you should think one of them proved—I mean for the defender—or two of them proved, and not the other, or the third and not the other two, then you must state so distinctly; if you are satisfied that the defender has not proved his three issues, then you may simply find for the pursuer, with such a sum for damages as you think fit. You need not divide the damages on

each issue in that case; it is enough to say that you find for the pursuer on all the three issues, with such a sum of damages. But observe, if you think the defender has proved any of his issues, then you must say, "We find for the defender upon the first issue," if that should be the case, "and for the defender on the first of the pursuer's issues." In like manner, if you find for the defender on the second issue, you must say, "We find for the defender on the second issue, and also on the second of the pursuer's issues." And so also with the third. But you may find for the pursuer on one or two issues, and for the defender on the third. You will probably be of opinion, however, on considering the whole case, that it is not very easy to separate the issues, and to come to any opinion in favour of one of the parties on one of them, and of another on another. I should think, in this case, that is an improbable result for you to come to. I have already said that, if you wish me, I shall read over the evidence; but the case does not appear to me one in which this is necessary. I may mention, that if you return you verdict within six hours, you must be unanimous; but if there is such a difference of opinion amongst you that you cannot do so, then you may return a verdict by a majority of nine; in that case, you must state so in your verdict. I trust, however, the case is not one which will keep you six hours.

The jury then retired, and shortly afterwards returned with a vervict for the pursuer—Damages, £250.

VERDICT OF THE JURY.

The jury, without any hesitation, returned a verdict for the pursuer of £250, which, together with the expenses on both sides, paid by the defender, amounted to £800.

REMARKS BY MR SYME TO HIS CLASS.

GENTLEMEN,—I regret not having been able to meet you on Thursday last, and as you all probably know the reason of my absence, I may mention that the result of the trial which then took place, however unexpected, surprising, or incredible, so far from opposing, is calculated greatly to promote, the object which led me

within the toils of the law. This was neither to make money nor to avoid the loss of it, but simply to maintain the honour and character of our profession. For some time past the criminal authorities here have pursued a system of selecting medical evidence that calls loudly for reform, which is not easy, when the members of the body concerned regard every suggestion for improvement as an unwarrantable interference. But the head of the Justiciary Court has now promulgated from the bench the principles upon which the law of Scotland is administered in this respect, and it will now be the duty of the legislature to consider how far the people of this country can live with comfort or safety under such a system. Not long ago, certificates of lunacy were given with the most reckless carelessness; but the law was changed, and personal examination has been strictly enforced, so that a practitioner of this city, who certified from his belief, founded upon information, instead of his knowledge, derived from observation, was stimulated to greater accuracy by a fine of £50. Now, the effect of a certificate that life is in danger seriously compromises the personal freedom of those charged with the infliction of injuries, since the offence is thus rendered no longer "bailable;" and I cannot doubt that, before long, measures will be taken to prevent any medical man from certifying, "on soul and conscience," that life is in danger on account of injuries which he has not examined, and justifying himself from the charge of inaccuracy by attributing it to the erroneous information of others. Having carried the matter so far, I can do no more, and the responsibility of tolerating the grievance in question will, for the future, rest with those who have the power of remedying it; while I shall possess the comfort of knowing, that what was felt to be a duty has been discharged, without regard to trouble, expense, or misrepresentation.

REPLY BY THE LORD JUSTICE-CLERK TO MR SYME'S REMARKS.

The Lord Justice-Clerk addressed the Court as follows:—

"Your Lordships are well aware that I care as little as anybody for any remarks that may be made about me out of doors. But I think it right to make a statement in regard to this case, because there might otherwise be an impression left on the minds of the public most detrimental to the administration of criminal justice in the kingdom, and tending to create great distrust of

the way in which the office of public prosecutor is discharged. After the late trial I saw published the report of a lecture by the very eminent surgeon who is the defender in this case. Your Lordships will recollect that the calumnies complained of by Mr Glover arose in consequence of Mr Syme thinking there were improper practices going on in the country, particularly in the county of Edinburgh, and under the authority of the Lord Advocate, with regard to taking secondary medical evidence, instead of taking what is called primary medical evidence; that is to say, omitting to call the individuals who had attended the parties who may have died, and sending the police-surgeon or others to inquire about them, and using them as medical witnesses instead of those who could give the best information; and it was in the course of Mr Syme's remarks on that subject that he made those reflections on the proceedings of Mr Glover which ended in a verdict against him, with £250 damages. Now, my Lords, I see that in that lecture, which seems to have been published with his authority, Mr Syme, having evidently received some most extraordinary misrepresentations of what passed at the trial, says, that having done all he could to correct this great defect—which, if it existed, would be a great defect in the administration of justice—it had now received the sanction of the Judge at the head of the Court of Justiciary; and that the country, unless it chose to take the matter up, must suffer the consequences of that system. Now, it so happened, as the Counsel in the case well know, that my great object was to tell the jury that we had nothing whatever to do with that matter at all, and that the sole question to be tried by them was whether there were certain calumnies in these papers against Mr Glover individually. No doubt the eloquent Counsel for Mr Syme, Mr Patton, endeavoured to enlist the feelings of the jury in favour of Mr Syme, by saying that he was fighting a public battle; and if he used some language which was a little strong, it ought to be forgiven for the motives for which it was used. But my object was specially to tell the jury that neither they nor I had anything to do with this at all. So far from giving any approbation to that course which Mr Syme condemns, on that or on any occasion, I have myself, both in the High Court and on Circuit, commented pretty sharply on some cases in which the surgeon first called in, and who had attended the deceased or injured person, had been omitted; but in this instance I pointed out to the jury that Mr Glover had been sent for to see a boy in the Infirmary, not with a

view of giving medical evidence, but solely for the purpose of telling the Sheriff whether he was in a fit state to be examined or not, in case his life was in danger. And there might have been reasons why a magistrate might wish, for such a purpose, to employ a medical man who had received instructions as to what was to be attended to, and with the view of ascertaining this particular point. And this case afforded a good deal of illustration as to the necessity of sending somebody who understood what matters were to be attended to on such occasions; because, having seen the doctor attending the patient, Mr Syme's assistant, that gentleman told him that the boy was in great danger—that there was great danger of mortification—and that the necessity of amputation was under consideration. He did not choose to state that Mr Syme had declared, the day before, that there was no danger, and that there was to be no amputation; and, accordingly, Mr Syme had the satisfaction of seeing the boy produced in the witness-box, with as good a limb as any body could have. But, supposing that gentleman had stated both his own opinion and Mr Syme's, the police-surgeon would naturally have reported these opinions to the Sheriff, and the Sheriff, acting on the opinion of the medical attendant, or on the more skilful opinion of Mr Syme, might have taken such steps as were rendered necessary. All this just shows that, for that special purpose, it may be proper for a magistrate, if he thinks fit, to send a person whom he has instructed to attend to particular points in that case, and so to make such a report as the police regulations seem to require. Whether or not such report should be made by a person who is not the individual in attendance, is a different question; but I was anxious it should not be given forth, on the authority of this lecture, that I had assented to the substitution, in the criminal courts, of inadequate medical evidence for the best. My colleagues know that I have the reputation of being too quick in finding out defects in the evidence. It was a matter of great surprise to me to see that remark made by Mr Syme. However, so far as I was concerned personally, I should never have noticed it, but that it might have created great distrust in the administration of criminal justice, if that statement went forth without contradiction. I therefore think it right to notice it, though I would not otherwise have done so. It must be satisfactory to Mr Syme to be informed that that statement was a total and complete misrepresentation of what passed at the trial."

REPLY BY MR SYME TO THE LORD JUSTICE-CLERK'S EXPLANATION.

GENTLEMEN,—In adverting to the late trial which so deeply concerned the character of our profession, I intimated my intention of abstaining from any further attempt to oppose the present system of selecting medical evidence in Scotland, under the impression that every thing in my power to remedy this grievance had been done. But it appears, as you will see from the newspapers, that the Lord Justice-Clerk has thought proper to make, from his seat on the bench, a reply to my statement, which cannot be allowed to pass unnoticed. At the trial Mr Glover declared that his mind was satisfied as to the state of the boy Clark before he saw Dr Dobie, while it was proved that neither then, nor at any other time, had he seen or examined the injured parts. Yet, according to what was stated to be a verbatim report of his charge, published in the *Lancet*, the Lord Justice-Clerk told the jury that Mr Glover was warranted in certifying "on soul and conscience" as to the existence of a fracture, because he had been informed at the police-office that there was one. The judge, then, in the most public and authoritative manner, recognised the validity of secondary or hearsay evidence; but now that a storm of indignation has been raised throughout the country, he tells us that he never meant to sanction any undue laxity in the admission of medical testimony, it being well known that he is almost over-scrupulous in this respect. As it would, however, be rather difficult to reconcile his charge in the Jury Court with his practice in the Justiciary Court, he endeavours to establish a new distinction in regard to the value of evidence. Hitherto it has been supposed to depend upon the source from which the evidence proceeds, but, according to his Lordship, it should be estimated with reference to the object in view,—secondary, or hearsay evidence, being quite sufficient to put a man in prison, but unavailing for restoring him to liberty. Thus the peculiar sort of evidence collected by the Procurator-Fiscal for immediate use fully warrants the Lord Advocate or Sheriff, to incarcerate for alleged offences; while testimony of a similar quality, afterwards produced at the trial in defence of an accused party, would, the Lord Justice Clerk says, be instantly set aside. My colleague, the Professor of Medical Jurisprudence, will therefore, in future, have to tell his class that, according to the present administration of criminal law in Scotland, there

are two sorts of evidence, which may be distinguished as hearsay or Procurator-Fiscal's, and authentic, or that of the Justiciary Court. But, if the Lord Justice-Clerk's court is so fastidious as he alleges, in regard to the admission of medical evidence, I should wish to ask how it could happen that a man was sentenced to death by this tribunal for the murder of a woman, without any examination of the medical men under whose care she died, or any information as to the cause of death, except from persons who had not seen her in life? Be this as it may, I venture to hope, that my efforts to expose the impropriety of employing secondary evidence in judicial investigations will not prove fruitless. Attention has now been fully awakened to the subject; and I need hardly say, that the most obstinate adherence to official custom cannot long resist the force of public opinion.

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