

Memorial for Dr. James Hamilton, Jun. respectfully submitted to ... the Lord Provost, Magistrates and Town-Council of the City of Edinburgh / [James Hamilton].

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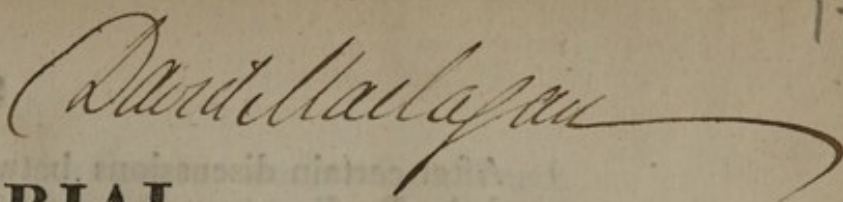
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MEMORIAL

FOR

DR JAMES HAMILTON, JUN.

RESPECTFULLY SUBMITTED TO THE RIGHT HONOURABLE

THE

LORD PROVOST, MAGISTRATES *and* TOWN-
COUNCIL *of the* CITY of EDINBURGH.

THE Memorialist regrets that he is again compelled to appeal to the Right Honourable the Lord Provost, Magistrates and Town-Council, as Governors, Founders and Patrons, of the University of Edinburgh. But, instead of resorting at once to a Court of Law, he ventures respectfully to solicit their interference; and he has the satisfaction of feeling that, in doing so, he is only requesting the Honourable Patrons to follow up those measures which their Predecessors, on 20th April 1825, *strongly recommended* the Senatus Academicus to adopt; and when he adds, that the course then suggested, was stated to be 'the most suitable for the interests of the University,' he confidently trusts that the object of the present appeal will appear both just and reasonable.

It is unnecessary for the Memorialist to narrate particularly the proceedings which led to the new Commission, with extended powers and privileges, which he obtained as a Professor in the College, and which was presented to the Senatus on 2d August 1824;—or to those circumstances which obliged the Honourable Patrons to institute an action at Law, in order to have their right and power of Government and controul over the Professors in the College judicially established. But with the view of making the grievances, of which he has now to complain, more intelligible, he must take the liberty to state the following circumstances.

After

After certain discussions between the Honourable the Patrons and the Professors on the subject of the Memorialist's Class, the Senatus transmitted a Report, on June 18th, 1824 (to the Patrons), in which they intimated, that the Medical Faculty had come to the resolution of recommending to the Senatus, that attendance on the Class of Midwifery should, on certain conditions, be required of such Medical Students as might hereafter become Candidates for the degree of Doctor of Medicine. A new Commission was, upon this, granted to the Memorialist, who presented it on August 2d, 1824, and he was received, in the usual form, by the Members of the Senatus, with the right hand of fellowship. He therefore confidently believed, that all difference of opinion, and all causes of any such differences, between the Senatus and him, had terminated.

On 25th October, however, the Senatus came to a resolution, 'that in regard to such Students as had then matriculated, or who should matriculate prior to 1st January 1825, the *Statuta Solennia*, published in 1823, should remain unchanged as to the number of years of Academical Study and the classes required.'—This resolution was communicated to the Memorialist on 6th November, by which time he was prepared to commence his Lectures, which, under the new arrangements, were to extend to a six months' course; but in consequence of the Resolution of the Senatus having been advertised and distributed among the Students, and steadily maintained by the Senatus, the privileges which had been conferred on the Memorialist by his new Commission, have, for *four years*, been rendered utterly nugatory.

When, therefore, he found that the Senatus Academicus were resolved to depart from what he understood to be their engagement to the Honourable the Patrons, as contained in their Minutes of 18th June 1824, and to suspend the privileges conferred by his new Commission, the Memorialist, on 13th December 1824, transmitted a short Petition and Complaint (together with a copy of a Printed Letter of remonstrance, which he had ineffectually addressed to his Brethren) to the Honourable the Patrons.

This Petition and Complaint was forwarded by the Patrons, on 21st December 1824, to the Senatus Academicus, with a Note, expressing, in strong terms, 'their surprise at the Senatus Academicus' having attempted to defeat the object of Dr Hamilton's new Commission.

On this Petition and Complaint, which had been remitted to a
Committee,

Committee, who reported upon it, the Senatus made a formal and final deliverance, which was transmitted, on 10th January 1825, to the Honourable the Patrons. Though that deliverance contained some very groundless insinuations against the Memorialist, it is not worth his while to notice them on the present occasion.

At a Quarterly Meeting of the Senatus, which was held on 15th January 1825, the late Dr Duncan presented a formal complaint against the Memorialist, calling upon the Senatus to inflict some punishment upon him for certain statements respecting Dr Duncan's Class, alleged to be contained in the printed Memorial addressed to the Honourable the Patrons in January 1824.

This letter, which contained reflections on the Memorialist, was ordered to be laid upon the table of the Senate Hall for the inspection of Members, and to be taken into consideration on 12th February following.

Previous to that Meeting the Memorialist transmitted to the Principal a written defence against Dr Duncan's accusation, in which he stated, in substance, that the apparent misrepresentation of Dr Duncan's duties as a Professor, *was entirely the Doctor's own invention, as he had kept one word out of the sentence* of the printed Memorial to which he referred, by which omission the meaning of the passage was completely perverted.—*Secondly*, That the printed Memorial of January 1824, had been already fully discussed by the Senatus, and their deliberate opinion upon it formally transmitted to the Patrons, on the 20th of March 1824. *Thirdly*, That Dr Duncan, Senior, had, upon two different occasions, distributed among the Students printed hand-bills, holding out the Memorialist as an ignorant empyric, and arrogant impostor, and consequently, that he was the aggressor instead of being the party injured. *Fourthly*, That the Senatus had no right to go back upon any proceedings anterior to 2d August 1824, when the Memorialist was received by them as Professor under his new Commission. And *lastly*, That as Dr Duncan had published the letter which the Senatus had ordered to lie upon their table, and had threatened to repeat his attacks, the Memorialist had been obliged to bring an action at law to compel him to desist from such proceedings.

The obvious way for the Senatus to have disposed of the question, was to have found, either that, 'as the subject at issue between Dr Duncan Senior and the Memorialist had been referred to a Court of Law the Senatus could not entertain the question,'—or that,

that, 'as the Memorialist had shown he had made no personal allusion to Dr Duncan Senior in his Memorial, the Senatus considered the charge unfounded.'—But instead of following either of these obvious plans, the Senatus chose to dispose of the subject by adopting the following motion, which was moved by Dr Hope and seconded by the Reverend Dr Brunton—

Feb. 12, 1825.

'That though the Senatus Academicus are perfectly sensible that many of the allegations in the Memorial presented to the Town-Council, *dated 19th January eighteen hundred and twenty-four*, respecting the Medical School in general, and the Members of the Medical Faculty, and the mode in which they conduct their Lectures, in particular, are totally unfounded, highly injurious to the character of the Medical School, as well as of individual Professors, and that the conduct of Dr Hamilton, is so far reprehensible; yet *as a Committee has been appointed to report on another Memorial, presented by Dr Hamilton to the Town-Council on thirteenth December eighteen hundred and twenty-four*, the Senatus Academicus delay entering into the consideration of Dr Duncan's Motion *till that Report is given in, when the whole conduct of Dr Hamilton, in regard to the University and its Members*, will be under the view of the Senatus Academicus. Which Motion was unanimously adopted;—and the Senatus Academicus remitted the charges brought by Dr Duncan, Senior, along with Dr Hamilton's Letter to *the Committee*, who were requested to take into consideration *the whole subject*, and to report without delay.'

On this motion, the whole of the injurious proceedings by the Senatus Academicus against the Memorialist have been founded; and therefore it is necessary to solicit the particular attention of the Honourable the Patrons to its true character.

First, The Preamble of the Motion is in direct contradiction to the sentiments expressed by the Senatus *on the identical same Memorial*, and which were formally transmitted to the Patrons *on the 20th March eighteen hundred and twenty-four*. The Minutes of the Senatus of that date contain *inter alia* the following words, which were sanctioned by Drs Hope and Brunton:—
'The Committee are willing to give Dr Hamilton the fullest credit for the disinterestedness of his motives and intentions in originating the present proceedings, and in submitting his Memorial

morial and Petition (of *nineteenth January eighteen hundred and twenty-four*) to the Honourable Patrons; and they are entirely satisfied, that he believed all the statements of facts which he has made in his Memorial to be well-founded, and all his inferences from these statements to be just.'—Any commentary on proceedings of so extraordinary and contradictory a nature is unnecessary.

Secondly, The motion bears, that 'As a Committee has been appointed to report on another Memorial presented by Dr Hamilton to the Town-Council on *thirteenth December eighteen hundred and twenty-four*, and sent by them to the Senatus Academicus on 22d December 1824, the Senatus Academicus delay entering into the consideration of Dr Duncan's Motion *till that Report is given in*, when the whole of the conduct of Dr Hamilton in regard to the University and its Members, will be under the view of the Senatus Academicus.' By this statement, it was held out to those Professors who had not the previous proceedings in their view, that the Committee to whom the Memorial of 13th December 1824 had been referred, was appointed to bring the whole of Dr Hamilton's conduct in regard to the University and its Members under review; while in truth that Committee had been entrusted with no such power.

Upwards of six weeks elapsed before the Memorialist was allowed to see the Motion submitted to the Senatus on 12th February, although he applied in writing both to Dr Hope and to the Secretary of the University for that purpose. From the former he received an evasive answer; and by the latter he was informed that, according to the Regulations of the University, he could not be allowed to see any Minute till it had been sanctioned by a subsequent Meeting.

After receiving an authentic copy of the Motion, the Memorialist communicated his sentiments to his brother Professors, in a printed letter which he addressed to them on the 2d, with a Postscript which is dated 4th April 1825; and as this Letter was totally disregarded by the Senatus, he felt himself called upon to address a letter to the Right Honourable the Lord Provost (then Alexander Henderson, Esq.), dated April 18, 1825, complaining of the proceedings of the Senatus, and requesting the interference of the Honourable the Patrons.

In consequence of this letter, a communication was, on 20th April 1825, made by the Patrons to the Senatus, which contains *inter alia* the following words:—

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‘ The Patrons deeply regret that angry discussions or differences should exist in the *Senatus Academicus*, being aware that such differences must lead to the injury of the University, and tend to lessen the estimation in which the Professors, for a series of years, have been most deservedly held. Unwilling, however, to enter upon any investigation, which they conceive would produce nothing but mutual recrimination, they consider that the interest of the University will be most suitably consulted by their strongly recommending that the whole of the proceedings relating to Doctor Hamilton, subsequent to the 2d of August (1824), when the new Commission was recorded, be cancelled.’

Notwithstanding, however, this strong recommendation, and notwithstanding the printed Letter from the Memorialist, dated 4th April 1825, warning the *Senatus* of the illegality and injustice of their proceedings, they thought fit to receive a Report from the said Committee. This Report is entitled, ‘ The Committee appointed on the 8th January 1825, with directions to examine and report upon the several Memorials of Dr James Hamilton, jun. in support of his claim to be made a Member of the Medical Faculty,’ &c.

It will doubtless appear to the Honourable the Patrons, when they read the following Minute, that this is a most incorrect statement of the duties confided to the Committee appointed upon that occasion.

‘ *Extract of a Minute of the Senatus Academicus of the University of Edinburgh, 8th January 1825.*

‘ The Principal read a letter from Dr Hamilton, in reference to the Memorial presented by him, which, along with the Memorial itself, was referred to a Committee, with directions to report to the *Senatus*. The Rev. Dr A. Brown, Rev. Dr D. Ritchie, Rev. Dr A. Brunton, Dr Hope and Professor Dunbar, were appointed the Committee. The Rev. Dr A. Brown, Convener.’

As this Minute is not very luminous, it is necessary to submit to the Honourable the Patrons the following copy of the Letter referred to.

‘ To the Rev. DR BAIRD.

23, St Andrew's Square,

‘ Friday, Jan. 7, 1825.

‘ DEAR SIR,—My friend, Dr Coventry, conveyed to me, on the 3d inst., the expressed wish of the Meeting of the *Senatus*, of the 27th December last, that I should attend the Meeting which you have

have summoned for to-morrow. He at the same time informed me, that much umbrage had been taken at my having quoted, in my recent Memorial to the Honourable the Patrons, certain passages of Baron Hume's opinion.

'As I cannot attend the Meeting of to-morrow, I take the liberty respectfully to solicit, that you will do me the favour to communicate to the Senatus the following explanation on the subject of Baron Hume's opinion :—

'*First*, It never appeared to me, nor to any one with whom I have consulted, that Baron Hume's opinion could be considered a *confidential* communication. It is the opinion of a Lawyer, and was given to a collective and fluctuating body. It cannot be regarded as the exclusive property of any single individual of that collective body ; for it must belong, in common, to every Member, and, of course, may be quoted or appealed to by every one of the Senatus Academicus, according to his own discretion. The whole tenor of the opinion evinces the anxious wish of an upright Lawyer to make the Senatus comprehend the true relation in which they stand to the Patrons ; and, in my humble apprehension, instead of being buried, as it was for fourteen years with a Committee who do not seem to have taken any steps to report upon it, a printed copy ought to have been furnished to every incumbent and to every incoming Professor.

'*Secondly*, It will be found, by a reference to the Minutes of that Meeting which permitted me to have access to Baron Hume's opinion, that I did not come under any obligation with regard to the use which I might make of it. Indeed it did not escape the notice of our Secretary, that I was anxious to avoid giving any pledge on the occasion. He remarked, 'that he has no doubt Dr Hamilton feels more interest on this subject than he appears to do.'

'At that time I did sincerely believe that the production of Baron Hume's opinion for the consideration of the Members of the Senatus would prevent all collision between the Senatus and the Patrons ; for I well remembered the scope of the opinion, and I know, that for nearly fourteen years, the conduct of the Senatus had been influenced by it.

'*Thirdly*, In the original sketch of my recent Memorial to the Honourable the Patrons, I took no notice of Baron Hume's opinion. It was at the suggestion and with the advice of my law-agent.

agent that I introduced the quotation which I learn has given such offence. But I venture to say, without the fear of contradiction, that he is as upright and honourable a man as any Member of the respectable Society of Writers to the Signet to which he belongs; and I am quite convinced that he is incapable of advising or of sanctioning any conduct which might be construed to be improper.

‘ If the Senatus wish for any further information upon this subject, or upon any other part of my recent Memorial, I shall be most ready and willing to give it, provided the communication be made to me in writing; for, at this season, I have no leisure for oral discussions.

‘ I have the honour to be, &c.’

The Minute of 8th January 1825 having been thus explained, it is obvious, that it contains no reference whatever to ‘ *the several Memorials of Dr James Hamilton, Junior, in support of his claim to be made a Member of the Medical Faculty.*’ The only matters on which the Committee were directed to report were Dr Hamilton’s Memorial to the Honourable the Patrons, dated 13th December 1824; and Dr Hamilton’s Letter to Dr Baird, dated 7th January 1825.—By the motion of Dr Hope, of February 12, the Committee were further empowered to report upon Dr Duncan’s Letter of Accusation; and Dr Hamilton’s Defence, dated 7th February 1825.

When therefore, this Committee took upon themselves, on 9th April 1825, the task of reporting ‘ upon the several Memorials of Dr James Hamilton, Junior, in support of his claim to be made a Member of the Medical Faculty,’ it is manifest that they *acted entirely without authority. They obtruded their individual opinions while they professed to be making a communication from a regularly appointed Committee;* and in that way those Members of the Senatus who did not enter into the particular views of the Medical Faculty were completely misled.

The Report of the aforesaid Committee, in reference to which the Resolutions of the Senatus now to be particularly noticed, proceeded, is too long to be inserted in the present Memorial; but a copy of it is herewith transmitted to the Honourable Patrons; and their serious attention to the terms in which, throughout the whole of it, the Members of that Committee have thought proper to

to express themselves towards the Memorialist, is most respectfully solicited. He begs that the Honourable Patrons will judge from their own honourable feelings, whether they would consider that they were doing justice either to themselves or to their families, if they were to allow such unqualified abuse, and judicially contradicted imputations, to remain 'as a testimony to posterity,' on the Records of any body of which they happened to be Members. The Report, as well as the Resolutions adopted upon it, forms part of the Record of the Senatus; but having respectfully referred the Honourable Patrons to the terms of the Report itself, the Memorialist will now take the liberty to make some observations upon the Resolutions *seriatim*; and for this purpose he begs leave, in the first instance, to contrast them with the deliberate opinion of the fullest Meeting of the Senatus which has ever assembled since the questions with the Memorialist had been agitated, as well as with other proofs of the Resolutions being in all respects unfounded.

Vide Conclusion of Report.

RESOLUTIONS OF SENATUS,— April 30, 1825.

' Having taken the Report into consideration, the Principal proposed a series of Resolutions as follows:—

' The Senatus Academicus having before them the whole conduct of Dr Hamilton in his late proceedings towards the University (a subject which had purposely and properly been hitherto kept quite distinct from the point of the admission of his Class into the curriculum of Candidates for Medical graduation), and which has not been articulately decided on, till the latter point was disposed of, after mature deliberation, are of opinion, that Dr Hamilton has been highly reprehensible, in the several respects under-mentioned:—

' *Imo*, In respect that, after having allowed his application to the Senatus Academicus to be added to the Medical Faculty, with a view to have his Class made imperative on Candidates for Medical graduation to lie dormant for many years, *he did not, in the first instance, renew his application to the Senatus for a decision on his claim, when an opportunity would have been*

EXTRACTS of REPORT transmitted by the SENATUS to the PATRONS.

March 20, 1824.

The Committee report that they proceeded without delay in the matter entrusted to them. *They called for such explanatory communications from the Medical Faculty, and from Dr Hamilton, as they thought necessary for enabling them to prepare a full and satisfactory representation of the Case for being laid before the Senatus Academicus; and having deliberated maturely upon the statements and reasonings in both Dr Hamilton's Memorial and Petition, and in the respective communications alluded to, they have come to the following conclusions on the leading points that seem to require their consideration.*

The Committee are willing to give Dr Hamilton the fullest credit for the disinterestedness of his motives and intentions, *in originating the present proceedings, and in submitting his Memorial and Petition to the Honourable the Patrons.*

been afforded to them of reconsidering it, under the change of circumstances which the lapse of so long a period might be supposed likely to produce, but that he did, directly, and without any previous notice of his purpose to them, petition the Honourable the Patrons to interfere in that matter, the regulation of which, in the judgment of the Senatus, belongs exclusively to themselves,—thus producing, without necessity, dissensions betwixt the Honourable the Patrons and the Senatus, which cannot fail to be highly injurious to the comfort, credit and interests of the University.

‘2do, In respect that, in his first Memorial to the Town-Council, he labours to support his claim, by endeavouring to depreciate the character of the Medical School, by the following totally unfounded and highly injurious statement—

‘These very obvious considerations have long impressed the Memorialist with the conviction that the Medical Faculty of the College of Edinburgh, as it now exists (1824), cannot communicate that information on practical subjects which may enable these Students, who obtain the degree of Doctor of Medicine, to practise even with safety to the Public, and much less to the benefit and honour of this City and Country.’—1st Memorial to the Patrons, p. 5.

As the substance of the following Resolutions was incorporated in the Issues in justification which Dr Hope pleaded in the Action of Slander brought against him by the Memorialist, the most satisfactory refutation of those Resolutions is afforded by the annexed Excerpts from the printed Report of the Case.—Vide Reports of Cases tried in the Jury-Court, &c. by Jos. Murray, Esq. Vol. IV. Part 1st, p. 266, et seq.

EXTRACT from the INTERLOCUTOR of the Lord Ordinary, confirmed unanimously by the Court, in the question between the Patrons and the Senatus.

‘Finds that the Pursuers,’ (viz. the Right Honourable the Lord Provost, Magistrates and Town Council for the time being), ‘have the right of making Regulations or Statutes for the College of King James, and that in respect of the Studies to be pursued in the College, and course of Study for obtaining Degrees, as well as in other respects,’ &c.

EXTRACT from the REPORT to the Patrons.—March 20, 1824.

‘They are entirely satisfied that he believed all the statements of facts which he made to be well founded, and all his references from those statements to be just.’

N. B.—This Excerpt misrepresents the meaning of the Memorialist. In his printed Memorial, his object was to shew *what has been admitted by the mover of these Resolutions himself*, that the lapse of time had greatly changed the Course of Study. His words are, ‘Since the first appointment of the Medical Faculty of the College of Edinburgh in 1726, a very great change in the subjects of Study, necessary for those who are to practise Surgery or Physic, has actually taken place, and consequently, the course of instruction absolutely essential in the year 1726, cannot possibly apply to the Students of 1823.’—The extract on the opposite column follows the above sentence.

b. In respect that Dr Hamilton, after pointing out minutely to the Patrons, that teaching Pharmacy was the principal object and duty of the Professor of Chemistry, charges the present Professor with a neglect of that duty, in the totally unfounded and highly injurious averment, that he can prove 'that the present Professor of Chemistry does not teach the processes of Pharmacy, nor the making of Chemical preparations for the Apothecaries' Shops,'—p. 6, while it should have been well known to Dr Hamilton himself, and is well known to several of his Colleagues, and many thousand Students who have attended the Chemistry Class, that, so far from neglecting so important a part of his duty, Dr Hope does teach Chemical Pharmacy in a full and ample manner.

c. In respect that Dr Hamilton, while adverting to the importance of exhibiting specimens and Pharmaceutical processes to the Class of Materia Medica, insinuates that an imperfection subsists in the mode of teaching this Class, by alluding to what was done by the preceding Professor, though he could not be ignorant that the present Professor takes great pains in fulfilling both of these.

d. In respect that Dr Hamilton makes a most unwarranted attack on the Class of the Theory of Medicine, depreciating its utility, and representing it as an unnecessary Class, concluding with the totally unfounded and highly injurious averment, 'That the Students can derive from that individual Professor (meaning the Professor of the Theory of Medicine), no additional knowledge which may enable them to cure disease.'

e. In respect that Dr Hamilton has given a fallacious view of the Lectures on the Practice of Physic, in the following terms:—'At any rate, the Memorialist positively asserts, that within his recollection, the Professor of the Practice of Physic has not entered into any details respecting the Diseases of Women and Children, and for the plain reason, that the other objects of his Lectures filled up all

Lord Chief Commissioner:— In giving Judgment in this Case, I shall not enter into details, but state the general principles for which I have the sanction of the Judges who cannot attend at present, as well as of those who are present. This is an important point in reference to the general jurisdiction of the Court in such matters; and on this account, as well as on account of the cause itself, we gave it most anxious consideration, and are unanimous in our opinion.

'Dr Hamilton brings an Action for Slander, and the usual issue is prepared; *two issues are also taken in justification*; the Case goes to trial, and a verdict is found, with considerable Damages. At that trial, a great deal of the time of the Court was occupied in considering the justification; and it was a question of great difficulty and magnitude. There was then evidence for the defender, and, notwithstanding that evidence, the Jury established the *falsehood* of the slander. A bill of exceptions was tendered to a direction on the law stated by me to the Jury at the trial, and the Second Division of the Court of Session thought the direction erroneous. In that situation, it was for the Pursuer to say, whether the trial was to proceed again; and he did proceed. On the second occasion he also established the slander; and during the address to the Jury by the Defender's Counsel, *the issues in justification were abandoned*.

'At this trial, the direction was such as not to give rise to a Bill of Exceptions; and the verdict is now final, after a motion by the Pursuer for a new trial. The verdict now finally establishes the slander to be CALUMNIOUS, MALICIOUS and FALSE, and finds nominal damages,' &c. &c.

'The next consideration is, whether expenses should be given in this case, and to what extent? It is said there ought to be no costs, as the damages were nominal; and that, if any are given, it ought only to be those of the last trial. I shall not enter into much detail, but it is of great importance, that there was here a *justification*, and that it was entered upon largely at the first trial, and given up at the second. If there was a discrepancy in the verdicts, still the principle as to the justification

all the time of the Course,'—p. 9. Which assertion is not only totally unfounded, and highly injurious in reference to the Lectures of the present Professor of the Practice of Physic, but is even, as the Senatus perceive, wholly inconsistent with a statement of the late Professor of that subject, which Dr Hamilton has himself quoted in the same Memorial.—*Vide* p. 34 and 37.

f. In respect that Dr Hamilton, while, in urging his claim, he professes to be actuated by no interested consideration, imputes the opposition he had formerly experienced, and again apprehended, from the Medical Faculty, to motives the most sordid and contemptible.

3tio. In respect that, in another Memorial addressed to the Town Council, and reported on by their Committee, of date 17th December 1824, he endeavours to support his claim to have attendance on his Class made imperative on those Candidates for Medical Graduation who had commenced their curriculum Medicum before the enactment of the late changes in the *Statuta Sollemnia*, by laying before the Patrons a vitiated and garbled quotation from the Minutes of the Senatus of the 18th June 1824—by a misrepresentation of the resolution of the Senatus, of dates 25th October and 20th November 1824—and by an unwarranted and improper use of a private and confidential paper, which had been written by a late most respectable member of the University, for the information of the Senatus, but which paper the Senatus had never either recorded, or judged of, or acted on, and to which Dr Hamilton had access only as a Member of the Senatus.

fication is the same. IT WAS NOT PROVED AT EITHER TRIAL. Why does a person bring an action for slander? It is to lay his character before the public, and to shew that the slander is inconsistent with truth. He challenges the defender to prove it true. If there is no justification, the Law presumes the slander false. If a justification is put in, then, by finding a verdict for the Pursuer on proof, or by its being abandoned, the Jury, in express terms, find the slander to be false. This action is brought to redeem the character of the Pursuer. The finding at the trial is, that the slander was CALUMNIOUS, MALICIOUS and FALSE. In this way he has the main fruit of his action—he has so far completely obtained his object. He is not, indeed, to put a sum of money in his pocket; but the question is, whether this is to prevent the Court giving expenses? The sum of money may be considered a material point in a case, as the world are apt to judge of the result by the amount of the damage; but that is not to affect the decision of the Court. The Jury have their jurisdiction, and the Court their's; and as we do not interfere with their jurisdiction, so we must take care that they do not interfere with the jurisdiction of this Court. Without entering farther into the case, *we are all of opinion*, that the whole expenses in this Court, and the previous expenses in the Court of Session, ought to go to the Auditor, *because the Pursuer, having a second verdict, shews that he was right from the first.*

'Though circumstances may have intervened by the wrong direction at the first trial, *still the Pursuer was right throughout.*'

'Perhaps it would be right to have a law, enacting that, if the damages amounted to a certain sum, costs should follow, and that though under that sum, the costs should be given, if the judge who had tried the cause certified that *it was an action proper to be brought. If such a law existed, and I were asked to certify that this was a proper action to raise, I should grant the certificate; and I am authorised to say the same for all the Judges of this Court.* This is the sound test by which to regulate the matter of expenses, and on this principle we act in this case.'

In addition to what the Memorialist has now exhibited, in reference to those Resolutions, he may observe, that, in passing them, the Senatus were not in the exercise, either of their duty or of any of their privileges. They had long before *fulfilled both*, in so far as regards the printed Memorial and Petition to the Patrons, of 19th January 1824; and therefore, *they were not entitled to take any further notice of that Memorial*. And of the fact that they had no right to notice or deliberate upon it, they had fair warning communicated to them, *First*, Through the printed Letter of the Memorialist, dated 4th April 1825; *Secondly*, In the strong recommendation of the Patrons, of 20th April 1825; and, *Thirdly*, They were farther warned by the only two Members of the Law Faculty who were in the habit of attending their meetings, who have recorded their decided sentiments by the following Motion, which was moved as an amendment upon the Reverend Principal's Motion, that the Senatus should adopt the Resolutions now under consideration:—

‘ It was moved by *Professor Napier* and seconded by *Professor Bell*—That, as the statements respecting the Medical Faculty, contained in Dr Hamilton's printed Memorial, presented to the Patrons of the University in January 1824, and forming the principal subject of the strictures contained in the *Report just read, were largely examined by the Medical Faculty*, at least so far as was by them thought necessary, in a Report and other relative papers, soon thereafter presented by that Faculty to a Committee of this Body, and were fully considered by it, upon a Report from that Committee, *approved and transmitted to the Patrons, as containing the deliberate conclusions of the Senatus Academicus, in regard to the statements of Dr Hamilton*; The Senatus Academicus are of opinion, *that they are not now called upon*, and that it would be *improper* to resume the consideration of the statements in question.’

Although the Memorialist could not help feeling keenly the injurious tendency of the Report of the Committee of the Senatus, and of those Resolutions, the true nature of which he has exhibited to the Honourable Patrons, he did not consider himself entitled to take any steps to obtain redress, till the question at law, which the disobedience of the Senatus Academicus had rendered absolutely necessary, should be finally determined.—And even after it had been unanimously decided by the Court of Session, that the Honourable Patrons have the government and controul of all the

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affairs of the University, he did not adopt any measures till he was convinced that the party which has for some time influenced the Senatus Academicus, was still animated with the same hostile spirit towards him.—He then addressed the following letter to the Very Reverend the Principal Baird :

‘ VERY REVD. SIR,

February 23, 1829.

‘ Now that the respective *status* of the Right Honourable the Lord Provost, Magistrates, and Town-Council, Founders, Patrons, and Governors of the University of Edinburgh, and the Professors in the said University, has been settled by an unanimous decision of the Court of Session, I beg leave to call the attention of the Senatus Academicus to certain resolutions proposed by you, and entered upon the Minutes of the Senatus on 30th April 1825.

‘ In the *first* place, I am compelled to remark, that I consider that all the ordinary forms of justice were violated on that occasion, for, although the resolutions were opposed and not seconded (as appears from the record), they were, nevertheless, adopted by the majority of the Meeting,—and of the ten or eleven individuals who voted for those resolutions, six of the number were Members of the Medical Faculty;—in other words, six Professors, out of ten or eleven, voted in their own cause.

‘ *Secondly*, Those resolutions were proposed and adopted in despite of a communication forwarded by the Honourable the Patrons, dated 20th April 1825. That document contains, *inter alia*, the following words:—‘ They, (the Patrons), consider that the interest of the University will be most suitably consulted, by their strongly recommending that the whole of the proceedings relating to Doctor Hamilton, subsequent to the 2d of August 1824, when his new Commission was recorded, be cancelled.’

‘ *Thirdly*, Those resolutions were directly at variance with the report on the same Memorial, cordially agreed to by those very ten or eleven Professors, and sent, under the sanction of an unusually full meeting of the Professors, on the 20th of March 1824, to the Honourable the Patrons, as the deliberate opinion of the Senatus.

‘ *Lastly*, The allegations of these Resolutions, viz. (of April 30, 1825), have been judicially proved to be totally unfounded.

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‘ I hold, therefore, that, as those resolutions are not only discreditable to the University, but also injurious to my character and feelings, it is my duty to require of the Senatus Academicus that they be forthwith rescinded.

‘ It will, I assure you, very Reverend Sir, be much more agreeable to me, to have this requisition voluntarily complied with, on the part of the Senatus, than to be compelled to take those steps for the purpose, which, I am advised, it is competent for me to adopt.

‘ I shall therefore delay any farther proceedings for one week from this date, with a view to put it in the power of the Senatus to cancel the Resolutions of 30th April 1825, and also the Record of all proceedings which may be injurious to my character, in order to give full effect to the advice and recommendation of the Honourable the Patrons of the University, as contained in their communication of the 20th April 1825.

‘ I have the honor to be, &c.

‘ *To the Very Reverend Dr BAIRD,*
‘ *Principal of the University of Edinburgh.*’

To this Letter the Memorialist received the following Answer :—

‘ SIR, *University Chambers, March 9, 1829.*

‘ You are aware that the Answer to your Letter of the 23d of February has been delayed in consequence of the earnest entreaty of one of the Members of the Senatus, who was desirous of trying in an amicable conference with you, whether, in the spirit of mutual concession and conciliation, an end might not be put to all record or remembrance of what was personal, or in any degree offensive, in what formerly passed between the Senatus and you.

‘ The Senatus regrets extremely that *this negotiation* has failed, from your insisting, as a preliminary, that the Senatus should depart from the performance of a duty for which they hold themselves bound to the public—namely, to make you take your part in the examination of Candidates for Medical Degrees.

‘ Those two questions are entirely distinct, and ought never to have been confounded.

‘ The question of your public duties is, according to your own wishes, before the Honourable Patrons.

‘ Of the terms in which you have made the requisition on the Senatus.

Senatus to cancel the Minute of the 30th of April, I am not instructed to take any particular notice, farther than to say, that the tone of it is any thing but conciliatory. You are not ignorant that the Minute of which you complain, was the result of certain very offensive liberties which you took with the character and honour, as well as with the mode of teaching, of several of the Professors; and you ought to have become sensible, by this time, that the first advance on your part ought to have been made by a retraction or apology, for what had thus occasioned the Resolutions of which you complain.

‘ Without such retraction the Minute in question must stand uncanceled.

‘ Before closing this correspondence, I am authorised by the Senatus to confirm the assurances made to you by Mr Bell, that the Senatus were ready to meet you in the true spirit of conciliation, and to co-operate in having every thing personal and offensive in the intercourse between the Senatus and you cancelled and forgotten. They even authorise me to say, that, although you have rejected this overture in the first instance, yet, if you shall be advised to meet the Senatus upon this ground, the way is still open for the attainment of this very desirable object.

‘ I have the honour to be,

‘ SIR,

‘ Your most obt. Servt.

(Signed) ‘ GEO. H. BAIRD, P.

‘ To DR HAMILTON,

‘ Professor of Midwifery.’

Before adverting to the great misapprehension which is contained in the first sentence of this Letter, the Memorialist addressed the following Note to Principal Baird:—

‘ March 10th, 1829.

‘ VERY REVEREND SIR,

‘ Before I can reply to your Letter, which I received late last night, I must take the liberty to request an explanation of the word *retraction*, which occurs twice in that letter. Does it apply to any thing which I said, wrote or printed previous to the 2d of August 1824? Or, does it apply to some transactions subsequent to that date?

‘ I have the honour to be, &c.

‘ To the Very Reverend
Dr BAIRD.’

The Memorialist received the following Answer to that Note :

‘ *University-Chambers,*
‘ *March 11, 1829.*

‘ SIR,

‘ The letter of the 9th instant which I had the honour of addressing you, by direction of the Senatus Academicus, was written in the sincere spirit of reconciliation, and with this explanation, its meaning seems sufficiently plain.

‘ If this, however, should not be satisfactory to you, I shall lay your note of the 10th before the next meeting of the Senatus.

‘ I have the honour to be, &c.

(Signed) ‘ GEO. H. BAIRD.

‘ *Dr JAS. HAMILTON, Jun.*’

In reply, the Memorialist addressed the following to The Principal—

‘ *March 12th, 1829.*

‘ VERY REVEREND SIR,

‘ As the spirit in which your Letter of the 9th was dictated can only be understood by the expressions which it contains, and as one of those expressions is unintelligible to me, I took the liberty to request an explanation, in order to enable me to reply to that letter.

‘ In reference to your’s of yesterday, I must again, therefore, solicit your attention to the contents of my note of the 10th ; I have the honour to be, &c.

‘ *The Very Rev. DR BAIRD.*’

No answer has been returned by Principal Baird to this Letter.

Before making some observations on the Correspondence, which has now been submitted to the Honourable Patrons, the Memorialist must explain a misapprehension which appears in the first sentence of the Very Reverend Principal’s Letter. Mr Geo. Jos. Bell, Professor of Scotch Law, it seems, had volunteered to the Senatus, upon this occasion, to try the effect of his friendly interference ; but he did not, at any time in the course of the conversations which he had with the Memorialist or his Counsel Mr Whigham, inform either of them that he had any authority from the Senatus to enter into any ‘ *negotiation* ’ on the subject. He conveyed to their minds the impression,

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that, in interfering personally in the matter, he was actuated solely by a friendly feeling towards the Memorialist; and, accordingly, in that belief, mutual communications were made by the parties, but under the understanding which is implied in all such private communings—that if the parties were not agreed in opinion on the subjects about which they were communing, any thing that passed between them was not to be communicated to any one, or made use of in any way whatever.—By some mistake, or through some misapprehension, however, it appears from the Principal's Letter, that Mr Bell did communicate to the Senatus part of what had passed between him and Mr Whigham, and that the Senatus acted upon the communication so made to them accordingly.

The *first* remark which the Memorialist must take the liberty to make upon the Letter dictated by the Senatus, is their extraordinary misinterpretation of the nature of the application addressed by him to the Principal. It is unequivocally a REQUISITION, although the Senatus choose to suppose it to be a *petition for a favour*; and every impartial person who reads the Letter must be satisfied that its object was to demand REPARATION OF INJURIES,—while it was so expressed as to leave it in the power of the Senatus to do that voluntarily which the Memorialist has reason to believe they may be compelled to do.

Secondly, It cannot fail to strike the minds of the Honourable Patrons that there is something extraordinary in the virtual refusal of the Very Reverend Principal, to give any explanation of what was meant in his Letter of 9th March by the word 'retractation.' Such conduct can only be explained on the supposition, that any specification of the expressions which were, by his Letter, required to be retracted by the Memorialist, would, from its futility, deceive those Members of the Senatus, who had either not sufficiently attended to their proceedings, or had been influenced by the representations of others.

Thirdly, The Memorialist did not anticipate, that persons in the situation of the Professors in the University of Edinburgh, who have been JUDICIALLY found to be under the controul and government of the Patrons, would have ventured to repeat injurious allegations which had been already refuted in a Court of Law. Yet such is the nature, and such was apparently the object of the Principal's Letter, in requiring the Memorialist to retract or apologize for
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for alleged offensive liberties with the character and honour of Professors, and their mode of Teaching, which were never taken by him, *and which it has been judicially established he never did take.* And furthermore, it has been no less formally intimated, that ‘ *without such retraction, the Minute in question must stand uncanceled;*’ and hence it is, that the Memorialist has been obliged to apply to the Honourable Patrons of the College to afford him that justice which his Brother Professors have denied, and that too in a manner which he deems it to be quite unnecessary for him to characterise.

By the letter of the Very Reverend Principal, it is obvious that the Senatus, notwithstanding the decisions of the Courts of Law, continue to believe, or appear to believe, that the Memorialist had been the aggressor in all the proceedings which have led to the discussions between the Senatus Academicus and him, when, in point of fact, he has been subjected to a series of persecutions, which might, had his character been less known and established, have injured in a most important degree his usefulness as a Member of the Profession to which he has the honour to belong. If the Memorialist were disposed to enter upon this subject, he could satisfy the Honourable Patrons very fully upon this point.

It now only remains for the Memorialist most respectfully to solicit the Honourable Patrons to take the premises into their serious consideration; and he ventures to hope, that he has shown sufficient cause, why, in justice to the College over which they preside, and to the Memorialist, as one of the Professors, they should order the Senatus Academicus *to expunge from their Records and Minutes the Report of the Committee of 9th, and relative Resolutions of 30th April 1825,* and the whole of the proceedings relating to him subsequent to 2d August 1824, when his new Commission was recorded, agreeably to the strong recommendation of their predecessors in April 1825,—all of which are not only unjust in themselves and injurious to his feelings and character, but calculated also to lessen his usefulness as a teacher and to bring discredit on the University.

That the Honourable Patrons have full power to order those resolutions and proceedings, to be cancelled by the Senatus, is a matter which, after the final judgment of the Court of Session, cannot admit of question; and in thus respectfully appealing to them for
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that justice to which he considers himself entitled, the Memorialist again takes the liberty to say, that he is actuated now, as he ever has been, by a sincere regard for the interest of the University, and by no hostile feeling towards any of the Professors.—It may sometimes be necessary for the public good, and for the preservation of the best interests of the College, that the wholesome controul of the Honourable Patrons should be exercised; and in a case like the present, where proceedings of such a character and tendency as those which the Memorialist has felt it his duty to exhibit, have been adopted, he respectfully trusts that the Honourable Patrons will not hesitate to interpose their authority.

EDINBURGH, 23, ST ANDREW'S SQUARE,
April 28, 1829.



April 1829

