

to a Peer, for there is no such name of a Peer in the kingdom. It must therefore be the name of a Commoner, and it will be difficult for the defenders to point out any name which can be designed by it except Jardine.

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The pursuer likewise insisted upon production of the essay, which was censured in the Reviewer's paragraph. To this the defenders replied, that they destroyed the essay, as was their custom with regard to all communications not proper to be inserted.

It was observed on the Bench, that it was difficult to get into this cause, which was to be considered in two lights;—1st, Whether such an essay was ever sent,—for if it was not sent, the paragraph was clearly scandal; and, 2d, If it was sent, then the Reviewers mention only a fact, but do not charge this pursuer.

The Court, however, by a scrimp majority, found damages and expenses due to Mr. Jardine, and of this date (22d June 1776), modified the same to fifty guineas.

Lord Reporter, *Kennet.*Act. *Alex. Bekhes.*Akt. *G. Wallace, Crosby, Tyler.**J. W.*

1776. July 12.

DR. JOHN MEMIS, Physician in Aberdeen, against PROVOST JAMES JOP, and Others, MANAGERS of the INFIRMARY of ABERDEEN.

No. 2.

DR. MEMIS instituted an action against these defenders, in order to obtain redress for the alleged injury of having caused his designation "*Medicinæ Doctor in Aberdonia*," in the charter of the Infirmary, be translated "Doctor of Medicine in Aberdeen,"—instead of "Physician in Aberdeen."—He stated, that the term Doctor of Medicine, was applicable only to Students immediately after graduation, and before entering on practice, and never to Physicians in practice. He mentioned that a direct injury had been intended against him, obvious by this circumstance, that the term *Medicinæ Doctores* occurred in a subsequent passage of the charter, which, being applied to other persons of the same professions, was translated "Physicians;"—and that, finally, he had actually suffered injury in his character and business by the marked affront put upon him.

Action sustained, for giving a designation to a professional man, alleged to be degrading.

The Lord Gardenstone Ordinary having appointed the case to be stated in memorials, pronounced, on advising them, the following interlocutor: "Finds "no evidence that the defenders, when they caused print the charter incorporating the President and Managers of the Infirmary of Aberdeen, intended "to derogate from the honour or dignity of the pursuer by translating *Joannem Memis Medicinæ Doctorem in Aberdonia*, John Memis, Doctor of Medicine in "Aberdeen, and, indeed could intend none, as the Latin was printed on the

No. 2: “ opposite page,—so every man could judge :—And further finds, that the
 “ title Doctor of Medicine is a legal title, founded on the person’s having been
 “ tried and found to be qualified, by those who are intrusted by the state, in
 “ order to distinguish them from quacks and pretenders to skill in medicine ;
 “ and in strict propriety superior to and more to be depended on by strangers
 “ than that of Physician, which every dealer in physic may assume ; and there-
 “ fore finds the process groundless, assoilzies the defenders, and decerns ;
 “ and finds the pursuer liable in expenses ; and recommends to him, if he is to
 “ reclaim, to apply to the Court by petition.”

The pursuer accordingly did present a petition to the Court, in which he endeavoured to make out, that a deliberate design to affront and injure him had been entertained by the defenders, which had discovered itself prior to the particular injury now complained of ; that having published a book upon Midwifery, he had on the title page adjected to his name the following description, “ D. M. of the Marischal College, Aberdeen.” By this he had meant only that he had been a Student of the Marischal College, not that he had received his degree there, which he had obtained at St. Andrew’s. The Physicians of Aberdeen had, however, published in the English newspapers an advertisement, declaring that he had never received any degree from the Marischal College. This had given a handle to the Reviewers in animadverting upon his book, which they had consequently ridiculed.—Thus had the defenders first affected his reputation in London, by disclaiming him as unworthy to be ranked in their society ; and now they hoped to deprive him of his bread in Aberdeen. The injury did not consist abstractedly in denominating him Doctor of Medicine, instead of Physician, but in making a *distinction*, by describing him in that way, while others of the same profession were in the same deed named Physicians. He was, however, ready to substantiate by proof, that Physician was an established technical legal term, peculiar to a *practising* Physician, which the term Doctor of Medicine was not, which any mountebank might assume with impunity, while the Physicians would have ground of action against him, if he should presume to use their peculiar title. The pursuer further averred, that before bringing the action, while the charter was in the press, he had warned the defenders of the injury about to be done to him, and had obtained and intimated to them the opinion of Principal Campbell, that the term *Medicinæ Doctor* ought to have been translated in a similar manner throughout the charter ;—yet, they had resolutely persisted in their attempt to injure him. He illustrated his case by supposing, that in a Scotch deed, in which several Advocates were named, one of them were to be called “ A. B. *procurator* ;” or where several Writers to the Signet were mentioned, one of them were to be described “ A. B. *scribe* ;” or in an English deed, of several attornies, one was to be designated *scrivener*,—a term which is now become opprobrious, and equivalent to *usurer*. He concluded, that in such cases, where two designations may be applied to a man, the one of which honours, and the other

degrades, he will be entitled to complain, if in a publication to the world, the last and not the first is intentionally and maliciously given to him.

It was further urged by the pursuer, that not only his professional honour, but his fortune had been affected.—The emoluments of a physician arise from a belief in the public that he is a physician: Strip him of that title, in the eyes of the public, and his emolument ceases. This the pursuer had sensibly felt from the time when his brethren denied him a title which they retained to themselves.—The words of Blackstone, B. 3. C. 8. p. 5. were quoted, as applicable to the case, where after treating of heinous verbal injuries, he adds, “But with regard to words that do not thus, apparently, and upon the face of them, import such defamations as will of course be injurious, it is necessary that the plaintiff should aver some particular damage to have happened, which is called laying his action with a *per quod*.”

In the answer, the defenders mentioned that they were at a loss how to treat so very singular and ludicrous a case.

To laugh, were want of decency and grace,
And to be grave, exceeds all power of face.

They utterly disclaimed all intention to give offence to the pursuer by the transaction in question. They produced a letter from Principal Campbell, declaring that he had not, as had been alleged by the pursuer, struck out the words “Doctor of Medicine” in the translation, where they are applied to the pursuer, and interlined the word “Physician;” and the Principal adds, “It never entered into my head that any person of common sense could have taken the least exception at that manner of translating the words *Medicine* “*Doctor*.”—They mentioned that the pursuer was under a mistake in supposing he had been singled out in the translation by the title of “Doctor of Medicine.” There was no particular person mentioned in the subsequent part of the charter alluded to. Upon the latter page, on one side, were these words, “*Duo Medicinæ Doctores in Aberdonia residentes*,” which on the opposite page were translated thus: “Two of the Physicians residing in Aberdeen,”—applicable to a collective body, and to no particular person. The variation of the phrase was for the sake of better language, as one talks of Physicians in the plural number, although one of the Faculty may be entitled a Doctor of Medicine.

The defenders further pleaded, that the argument from the contrasted appellations of Advocate and *Procurator*,—Writer to the Signet and *Scribe*,—Attorney and *Scrivener*,—laboured under this capital defect, that the designations of *Procurator*, *Scribe*, and *Scrivener*, are indeed inferior ones; whereas, Doctor of Medicine is an appellation equally creditable with that of Physician, and equally applied as a *vox signata* to gentlemen who profess the healing art. Had the pursuer been designed *Surgeon* or *Apothecary*, he might

No. 2. have had reason to complain: Accordingly "Justice Twisden said, he remembered a shoemaker brought an action for saying he was a cobbler, and it was held "this action lay in Chief Justice Glynn's time." Modern Reports, fol. 19.—The Roman law was extremely careful to guard against every species of affront, real or verbal; and in the title De Injuriis there are a great variety of cases put, in so much that one wonders at the very minute attention given by great lawyers to the niceties of manners in civilized life;—yet amidst all that variety, nothing can be found similar to what has struck the pursuer's fancy as an offence.—The defenders acknowledged, that there is undoubted propriety in checking injuries even of the slightest kind; and it is unquestionable that actions have been sustained in England, upon expressions at first sight not very strong. Thus, "One said in the north county of a barrister, that he was a *daffindowdilly*, which was adjudged actionable, as an *innuendo*, in respect of his profession, because by this word is meant "there an *ambidexter*, being a flower of party colour." Cro. Eliz. 914. And in the law of Scotland, it is laid down, Erskine, B. 4. T. 4. § 80, "as one "may be sensibly hurt by reproachful words, though they should have no "tendency to blacken his moral character, sarcastical nicknames and epithets, "or such other strokes of satire, are accounted injurious." But these principles are not at all applicable to the present case, where there was obviously no *animus injuriandi*, since the term DOCTOR OF MEDICINE was not in fact a degrading appellation, but an honourable one, and equally respectable with that of Physician.

Every privilege and every pecuniary advantage attendant on the title of Physician, equally belong to a gentleman who is designed Doctor of Medicine, and these are sometimes very important. The following is a noted instance: "If one that is no *Physician allowed*, take upon him to give physic, and kill his "patient, this is felony; but if he be a *Physician allowed*, and do so out of "ignorance or negligence, *contra*." Stamp. L. 1. p. 16. Fitz. Coron. 163.—Here a prodigious point was gained, of which the pursuer might rest assured his St. Andrews degree would secure him all the consequent immunities.

Scotland, it was said, had been thus ridiculed by a rhymster:

"Blest land, where Ladies, Lords, and Lairds abound,
"And *Doctorships* are sold out by the pound."

But this satire did not apply to the University of Aberdeen. The pursuer did not obtain his degree there, but, on the contrary, was refused one when he applied for it. The defenders no doubt did, when the title-page of the pursuer's book above-mentioned, appeared, publish an advertisement in the London Chronicle, signifying that John Memis had no degree from the Marischal College of Aberdeen. If the pursuer was injured by the publication of this *fact*,

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he brought the injury upon himself, by announcing himself in a manner obviously tending to mislead the public.

The matter was further commented upon in a very ingenious manner on both sides, in replies and duplies; and the Lords, *subseque[n]tibus* answered, ordained “the pursuer to give in a special and particular condescendence of the facts and circumstances he offered to prove in support of his libel.”

This was done, and the Lords, at advising, *subseque[n]tibus*, “Allowed Dr. John Memis, pursuer, to prove all the facts and circumstances contained in his condescendence and replies; and allowed James Top and the other defenders to prove all the facts and circumstances contained in their answers and duplies; and allowed both parties to prove *all other facts and circumstances* which might throw light upon the cause; and allowed each party a conjunct probation with the other; and granted commission to the Sheriff Deputé of “Aberdeenshire,” &c.

A voluminous proof followed, the import of which was stated in long and elaborate memorials, in which an uncommon degree of ingenuity was displayed on both sides. But it would be an object rather of curiosity than of use to enter into a detail of the argument.—The pursuer ultimately failed of making out his case, and the defenders were assoilzied.

Act. Dav. Rae. H. Erskine, John Dalrymple. Alt. A. Murray, Jas. Boswell.

* * This report, while it elucidates the principle of the law, that a complaint will be listened to, when there is barely the possibility that an injury has been committed,—and the matter will be patiently investigated; at the same time exhibits a striking instance of the impropriety of allowing *proofs at large* before answer. Here a tedious litigation subsisted for several years, at an enormous expense, which might have been greatly diminished, by circumscribing the proof to such articles only as were relevant.

W. M. M.

1776. August 8.

JOHN, ROBERT, and DAVID SCOTLANDS, against The REV. MR. JAMES THOMSON, Minister of Dunfermline.

AT the Michaelmass election of the Town Council of Dunfermline in 1774, reports having been spread that the Messrs. Scotlands, and particularly Robert, had acted from improper and corrupt motives in opposition to the interest of Col. Arch. Campbell, candidate for the Dunfermline district of burghs, and whose party they had espoused, Mr. Thomson, one of the Ministers of that burgh, took occasion in a sermon from Romans, chap. 8. verse 32, after con-

No. 3.
Limits of
liberty of
the pulpit,
with regard
to censure.