

Thursday and Friday, April 5 and 6.

PATERSON v. SOMERS.

*Reparation—Written Slander—Newspaper.* In an action against a newspaper publisher for slander, verdict for the pursuer—damages one farthing.

Counsel for Pursuer—Mr Patton and Mr Watson. Agents—Messrs Neilson & Cowan, W.S.

Counsel for Defender—Mr Gifford and Mr Macdonald. Agent—Mr Thomas Ranken, S.S.C.

In this case, in which James Paterson, Doctor of Medicine, residing at No. 6 Windsor Place, Sauchiehall Street, Glasgow, is pursuer, and Robert Somers, residing at No. 5 Carlton Place, Glasgow, is defender, the issue sent to the jury was in the following terms—

"It being admitted that the defender is the printer and publisher of the *Morning Journal* newspaper, published daily in Glasgow, with the exception of Sundays, and which had, at the date after referred to, a considerable circulation in Glasgow and elsewhere:

"It being also admitted that in the number of the said newspaper which bore date, and was printed and published in Glasgow upon, 24th March 1865, there were also printed and published, under the heading 'The following communication from one who had had much personal knowledge of Dr Prichard has been sent us,' the words and sentences set forth in schedule (A) annexed hereto:

"Whether the said words and sentences are, in whole or in part, and concerning the pursuer; and falsely and calumniously represent that the pursuer was the author of the anonymous letter referred to in said article, and that he was a moral coward, who hazarded a stab in the dark—to the loss injury and damage of the pursuer?"

Damages claimed, £3000.

SCHEDULE (A).

(Being excerpt from *Morning Journal* of said 24th March 1865.)

"The whole matter lies in a nutshell. An anonymous letter is written by some moral coward or other, who either hazarded a stab in the dark, or whose love of justice did not conquer his sense of modesty—a man who no doubt does 'good by stealth and blushes to find it fame,' a blush doubtless, of deservedly deep scarlet. Well this anonymous communication is traced to its source, and the writer must of course adopt the letter, and stand to it. Then the apprehension of the gentleman named or alluded to in it is a natural result, and the *post-mortem* examination, the scrutiny in his household, and all that has since taken place follow in natural sequence, and here the affair rests. But it is not a little strange that a whisper of 'antimony' should have been heard about the County Buildings before even the examination was commenced. Why, what was Dr Paterson about if he knew anything about antimony being administered? Was he not called in his professional capacity, and entitled therefore to speak with a voice of authority as to what should be administered and what withheld; and if administered against his advice, and he saw or suspected anything wrong, why did he not at once deem it his duty to boldly protest, or immediately communicate with the authorities? But we have not yet heard that he has adopted the anonymous letter referred to. It cannot be denied that his position in the case does not, *prima facie*, appear either lucid or pleasant, and this he must feel himself and acutely too. Dr Paterson should really clear himself as regards this anonymous letter; and the public, seeing that it was the primary cause of the arrest and the subsequent events, should withhold its opinion, give the accused fair play, and calmly wait for more light."

The LORD PRESIDENT, in charging the jury, said—Gentlemen, you have heard the case stated very fully and eloquently, with all those accompaniments that are usual in such cases, some topics being intro-

duced of a very indirect bearing on the matter in hand, but which ordinarily are the ornamental parts of such cases. Your duty and mine will be to see what is the precise point to be determined, and whether the case of the pursuer has or has not been made out. The allegation of the pursuer is that a certain letter was published in the *Morning Journal* on a certain date, and that is admitted. Then the pursuer puts the question whether certain words and sentences in it are, in whole or in part, and concerning him, and whether they falsely and calumniously represent that he was the author of the anonymous letter referred to in the said article, and that he was "a moral coward, who hazarded "a stab in the dark?" The letter, I think, you will have no doubt represents the author of the anonymous letter, whoever he may be, as "a moral coward," who either "hazarded a stab in the dark," or "whose love of justice did not conquer his sense of modesty," the latter part of the sentence being obviously intended, at least I presume you think so, to impute something nearly as bad as the first part of it, and scarcely to be taken as an alternative to escape from the consequences of the former. The real question is as to that expression, a moral coward who hazarded a stab in the dark, and the first point you have to consider is whether the letter imputes to Dr Paterson, the pursuer, the authorship of that anonymous letter. If it does not impute to him that he was the author of the anonymous letter, then it does not impute to him that he was a moral coward who hazarded a stab in the dark. Clearly it does not; but if it does impute to him that he was the author of the letter, then you will have no doubt, I apprehend, that it does impute to him that he was a moral coward who did not hesitate to stab in the dark. The important question therefore is, Whether it imputed to him the authorship of that letter? Some remarks were made as to its not being calumnious to say of a person, as it is said of the author of this letter, that he was a moral coward who stabbed in the dark. You will judge of that. I have great difficulty in coming to that conclusion in any case. Mr Somers, who gave his evidence with great fairness yesterday, I thought took a different view of it. He said he thought that to write an anonymous letter accusing a person of such a crime as murder was a thing that was very wrong, and that it was the act of a moral coward who stabbed in the dark. That is plainly a view of the case that would make it an unfair and calumnious accusation against a person who was not the author. But you will judge of that. And I think that Mr Alexander was very much of the same opinion when he wrote in indignation, but still the important question remains—Does it impute to Dr Paterson that he was the person who wrote the letter? That is the cardinal point in the case. Now, that is to be gathered from the reading of the whole letter, and the consideration of the whole circumstances of the case. The further question remains—Whether Mr Somers is responsible under the circumstances for having inserted it? That is a separate question. The letter says that this anonymous communication is "traced to its source, and the writer must of course adopt the letter, and stand by it." Mr Gifford said it had been traced to its source, and that the fiscal knew who was the writer of it. I do not find any evidence of that. None whatever. Dr Greenlees was the author of the letter, and he never was asked whether he was communicated with by the authorities as to the authorship of it. There is no evidence of that, but we know why that statement was made. We know it from Mr Alexander, who said it was an inference he had deduced from the circumstance of the authorities having been put in motion. I do not think that is at all a necessary inference. An anonymous letter making an accusation might set the fiscals in motion without knowing who the author was, because they might couple that information with other circumstances which they knew, and there is nothing illegal in their proceed-

ing without having discovered the author of the letter. His Lordship then quoted that portion of the letter in which Dr Paterson is alluded to by name, and continued—It is evident that this paragraph mentions Dr Paterson, and mentions him in connection with the anonymous letter. It calls upon him to disclaim the letter, and says that the authorship has been traced to its source. Now, the inference you are asked to draw is that it points to Dr Paterson as the source, because he is called upon to come forward and clear himself. It is for you to say whether that represents Dr Paterson as the author. Why this mention is made of Dr Paterson, if it does not mean that he is the author, it is very difficult to understand. The writer of that letter told you it was in his mind at the time that Dr Paterson was more likely than any other person he knew to be the author, and he states that the letter having been traced to its source, he believed therefore that Dr Paterson was more likely than any other person to be the source; and then he names Dr Paterson and asks him to clear himself. It is for you to say whether, on a reasonable reading of the letter, you can have any doubt that it imputes to Dr Paterson the authorship of the anonymous communication. It is not necessary that it should say in so many words that he was the author; the question is whether it imputes that he is the author, whether it suggests to the public that he is the author, and points the public mind and opinion to him as the author. That is the question you are to consider. But there are other considerations in this case. That discussion which was going on in Glasgow was one which occupied public attention. It was one which was within the province of the journals of the day to consider and discuss—there can be no doubt about that—to discuss it fairly, of course, and without imputing anything wrong to any person who was innocent of that wrong. It is their privilege to do so, and it is fortunate they have that privilege. It is a privilege which no country enjoys so highly as our own; and it is obvious to us in this part of the world that journals of high-class and position do not abuse that privilege, but are conscious of the responsibility attaching to it, and exercise their powers and privilege with discretion. It does, no doubt, often happen that persons who are in the immediate conduct of such journals receive communications such as the editor of this journal received, and insert these communications without having themselves a knowledge of the facts contained in them, but do it on the authority of the person who makes the communication; and an editor like Mr Somers, without any animus against Dr Paterson—without having fully scanned the matter, or having in the reading of it he gave, perceived its full application—might with perfect innocence of mind allow this article to get into his newspaper. That is perfectly possible in such circumstances, and as regards moral wrong on the part of the editor there would be none—none whatever. But still if injury is done to another by the insertion of such an article, the journal is responsible, unless by disclosing the person who inserted the article they can free themselves of the responsibility by allowing proceedings to take place against the person who wrote the article, or getting from him such a disclamation and apology as might be reasonable. The journal would be responsible though it merely copied what had appeared in another journal, if it was in itself libellous and calumnious. Although it had been done by some of their subordinates from carelessness, still there would be no moral responsibility attached. But a person whose character has been assailed by such an occurrence is well entitled to come before the public and ask the verdict of the jury as to whether he was guilty of what was imputed to him—if it was imputed—because an imputation sent forth to the public spreads everywhere, and to contradict it may not have the full effect; to contradict it in the journal in which it appeared, and still less in another journal, may not have the

effect of disabusing the minds of all the people who read it there. A party who has his character assailed as Dr Paterson's was here, and is accused of moral cowardice, is entitled to have his character cleared as publicly as it is assailed, and the redress which the country gives to such a person is to have a verdict in his favour on an appeal to a jury of his countrymen. No doubt if an apology has been tendered even at a late stage of the case, and this apology is such as the party might have safely accepted, that makes the case a very different one in regard to damages, and reduces them to merely nominal or little more than nominal damages, if clearing of his character is the object the party has in view; but it does not disentitle him to a verdict in his favour, which verdict means that he has been calumniated by the statement so made. Now, then, the writer of this letter was not Mr Somers, and I apprehend that Mr Somers, as little as the editor of any other respectable journal, would sanction some of the things that appear to have been ventilated in this letter. The writer of this letter was a friend of Dr Pritchard, and naturally and reasonably defended him while he believed him to be innocent, and was entitled to do what he could to clear Dr Pritchard, or to prevent public opinion fixing upon Dr Pritchard as certainly guilty of the crime with which he was charged, and to prevent the public mind from being possessed of the idea until it was supported by reasonable grounds. And he was well entitled to make his exertions to that effect through the instrumentality of the press—no way more reasonable or proper, none more effective; but, gentlemen, in doing that it was his bounden duty not to make accusations against any other person with out, some ground for it—not to make accusations against any other person which were untrue. The person under inquiry at the time was Dr Pritchard, and the party desiring to acquit Dr Pritchard does that by attacking another person as the author of an anonymous letter which conveyed the information of Dr Pritchard's crime; and if he did so attack another, it is no answer to Dr Paterson's demands that the writer was writing in the interests of Dr Pritchard, and naturally writing in the interests of Dr Pritchard; for it was not a natural or a reasonable part to cast aspersions upon the character of another without knowing that these aspersions were well founded. We heard a great deal about the probabilities and circumstances under which the fiscals were proceeding, and various matters of the kind were stated by Mr Gifford to-day, but which you heard yesterday in the evidence; and it is said that it was reasonable, in these circumstances, for Mr Alexander to conclude as he did that Dr Paterson had done so and so. Now, Mr Alexander himself told us that he proceeded upon his own inferences. He thought that Dr Paterson was the person of all others who was likely to be the author of the letter. He did not know whether he had done it or not; he did not know whether Dr Paterson, in regard to another thing that is alluded to here, his not having given information to the authorities, had boldly protested and immediately communicated to the authorities or not; he did not know anything about that; he knew nothing, he said, but he drew his inferences, and he wanted to evoke information. Now, if that means that a person, merely in order to evoke information, may impute to another whom he does not know to have been guilty of anything, an act which is calculated to brand him as a moral coward and a stabber in the dark, I am quite satisfied, if that is the meaning of it, that that is not a thing that would have been sanctioned by Mr Somers in any respect whatever. Mr Gifford said something about Dr Greenlees. Now, Dr Greenlees, it seems, made this clear, at least that it was not Dr Paterson who wrote that letter. Mr Gifford says—"But he proceeded on information received from Dr Paterson, which was the same thing." That is, I am bound to say, a most fallacious remark in reference to this accusation.

The accusation here is not that information was given to the public authorities; the accusation here is that it was given anonymously, and that is the whole point of the accusation; and all the witnesses yesterday told you that to give information in an anonymous letter that a man was guilty of the crime of murder was a thing that merited all the epithets that are used here. It is the anonymousness of the letter that is the point; and, therefore, that the information was derived by Dr Greenlees from Dr Paterson is nothing to the question we have here. This witness, Dr Greenlees, may be placed now by the evidence of yesterday in the position which Mr Alexander considers when he writes this letter, and which the witnesses consider, merits the epithet that is at the beginning of this issue. That is Dr Greenlees, not Dr Paterson, and it is nothing that the information was derived from Dr Paterson by Dr Greenlees, unless it is made out that he was a party to Dr Greenlees' giving that information anonymously. Now, I heard no evidence to that effect. Dr Greenlees told him a day or two afterwards that he gave the information; it is not even asked if he gave it anonymously, and there the matter rests. The clear supposition is, that Dr Paterson certainly was not the author of that, and that this letter imputes to Dr Paterson that he was the author, and that the author, whoever he was, was one that was a moral coward and a stabber in the dark. That was an imputation which he ought to be cleared of at once. It is said that proposals were made, and that Dr Paterson was not content to receive the disclamation which Mr Somers was disposed to give. Mr Somers, I think, gave, or offered to give, all that he personally knew of the matter in the way of disclamation. He said again and again, "I have no animus against you in inserting this; I did not think at the time it was imputing it to you, but I disclaim it now you say you were not the author. I am satisfied it can be proved that you were not, and I will insert in the newspaper that in publishing the letter I did not mean to impute anything against you." But still, if the letter imputed that, and in the estimation of the public imputed it, that is not all he was entitled to have, and I regret that Mr Somers dallied so much about the terms on which the name of the writer was to be given up, for he says that what was to be inserted in the newspaper, the *Journal*, must be a thing to be arranged with the writer of the letter, as well as with the editor. In short, it was not very satisfactory. At the same time I think that the expression in the defences for Mr Somers are very strong indeed; for I think the latter part of that expression is not limited to himself at all, for it says—"If the article complained of can be held to imply any such imputation, the defender sincerely regrets it, and hereby unequivocally withdraws all such imputation, and all statements on which such imputation is or may be held to be implied." That I think was the withdrawal of the statement, but it was not such as in all and in any view disentitled Dr Paterson to proceed with his case to the effect of obtaining a verdict in his favour which should clear him. Nay, it seems rather to imply that he is entitled to be cleared. That rather seems to be the meaning of it, and cleared he could be, if he went on with the case, only by a verdict in his favour. It follows, then, that as no evidence has been led of any real kind of damage done, it is clearly left to your judgment to consider what should be done in the case; that retraction or the clearance of the character is the main thing; the question of damage is a matter of indifference. I perfectly agree with my friend Mr Gifford as to what he said as to the right of comment on all matters of public interest in this country. I think it is valuable; I have said so already; but I can hardly adopt the view that this letter was written in a friendly spirit to Dr Paterson. I think it was natural for Dr Paterson to feel otherwise, and he told you it had been so considered by his friends and others, and that it had produced an impression

on the public that was injurious to him. As to Dr Paterson's conduct in reference to not having given information himself directly to the police, I confess I do not see what that has to do with this question. It may have been wrong on the part of Dr Paterson; I do not know whether it was wrong or whether it was right. I can easily understand a person very chary of stating circumstances which might land him in a very awkward predicament; but I can easily understand a person being too chary of giving such information, withholding that which he ought to have given; but still that is not the question; it is as to the accusing him of being the author of the anonymous letter; and the speech which was made just now, and the attack on Dr Paterson in that respect may or may not be well founded. I do not say that it is, and I do not say that it is not; but I think it is, away from the question you are considering here. I think we are considering here simply the question of the anonymous letter; and while I say that Mr Somers, so far as I can see in the matter, had no animus at all against Dr Paterson, and did not know who he was, and had no reason at that time to suspect that he was the author of the letter, still the letter itself, if you think along with me, imputes that to Dr Paterson; and then, whatever may be the settlement between the author of the letter and Mr Somers—and so far as I can see, Mr Alexander was not till yesterday acknowledged to be the author—the purity of our proceedings requires that the defender who has been called here should be the party who is responsible, in the first instance, to the pursuer, if he be injured, and that, in putting the real author into the box at the trial it is not to be turned over into a proceeding against him. That is very clear; and therefore the real point you have to consider is whether this letter does impute to Dr Paterson the authorship of the anonymous letter, whether that imputation is accompanied by these expressions "a moral coward who stabbed in the dark," and whether you are of opinion that these are calumnious representations, especially in the case of a professional man. If you think it imputes to him the authorship, you will deal with the case by giving a verdict in his favour. He does not ask for vindictive damages, nor ought he to get them in almost any circumstances, for it is a matter of clearing of character, as I understand, from the way in which the case has been conducted. I may say in reference to the observation on that, I think the course taken by the pursuer was perfectly right and legitimate, for all he had to do, having the admission made about Dr Paterson not being the person referred to, was to rest on what is there stated. But it is a question for you whether he is the person to whom the authorship is imputed. If he is, you will deal with the case accordingly, and if he is not, you will find for the defender.

The jury, after quarter of an hour's absence, brought in a verdict for the pursuer—damages one farthing.

*Thursday and Friday, April 5 and 6.*

(Before Lord Ormisdale.)

**WEIR OR WILSON v. MERRY & CUNNINGHAM.**

Counsel for Pursuer—Mr E. S. Gordon and Mr Strachan. Agent—Mr Thomas White, S.S.C.

Counsel for Defenders—Mr A. B. Shand and Mr Robert MacLean. Agent—Mr John Leishman, W.S.

In this case, in which Mrs Euphemia Weir or Wilson, residing at Haughhead, near Hamilton, wife of the late Henry Wilson, miner, Woodhall, near Holytown, in the county of Lanark, was pursuer; and Messrs Merry & Cunningham, coal and iron masters in Glasgow, were defenders, the issue was as follows:—

"It being admitted that the defenders are the proprietors of the Haughhead pit, near Hamilton, in the county of Lanark: