fortunate that the decreet against the Presbytery has not been followed out. There has been nothing suggested to us to show that the decreet against the Presbytery should not have been carried out unless the doubt—it may perhaps be more than a doubt, I do not know—as to whether the assessment was laid on upon a right principle. I think that has been suggested as an obstacle to the decreet being carried out.. Now there is really no obstacle at all. I do not mean to give any opinion as to whether the assessment should be laid on upon the landward heritors or upon the landward and burghal heritors; but it is quite clear that, if the Presbytery had gone wrong, all that they have got to do to get the matter put right is to direct the collector to proceed against some one heritor for his share of the assessment, and the heritor so proceeded against will either pay or bring the matter under review of this Court, so as to have it ascertained whether the assessment has been put upon a right principle or not; and if it comes to this Court either by way of suspension or in any other way, it will be the duty of the Court, if they think the assessment has been laid on upon a wrong principle, to direct that it be laid on upon a right principle. We have done that again and again. The whole thing is not to fail supposing the Presbytery may have mistaken the way in which the assessment is to be levied. It is the duty of the Presbytery, having made the decree and appointed the collector to collect the money, to direct him to proceed, or else to set the matter right in some other way. I do not wish to give any opinion as to whether the Presbytery may or may not be liable as employers here. I do not say that they are. I do not wish to say anything about that, because they are called here as defenders upon the footing that they are proper defenders, and, whether they are liable or not, I agree with your Lordship that the case ought to proceed against them; but I would merely say this, that, suppose it were to be assumed that as long as the Presbytery go on to do their duty they incur no liability, it does not follow that, if they do not give the proper directions, they won't become liable. And it is obviously the interest of the Presbytery to avoid any question of the decreet; and, if they wish to avoid it, they have only to take the course which I have just suggested. In the meantime, if it were clear that Dr Macfarlane became personally and directly liable to these tradesmen for their amounts, whatever the Presbytery should or should not do, there might be ground for saying the pursuers were entitled to decree against his executrix. I do not desire to dispose of that finally just now; but I would say this, that in so far as I have any opinion upon the matter, it is that Dr Macfarlane did become bound that the matter would be carried through before the Presbytery. I incline to think that he became bound to that extent, but I do not see my way to hold at present that he became bound that he was to pay personally and directly as the direct employer, personally responsible to those tradesmen for their accounts. I do not at present see that. If he had given a guarantee of that kind, it may be that it would have fallen under the Mercantile Amendment Act, and the pursuers would have proceeded now-a-days (which they could not have done before) directly against him, leaving him to seek his relief from the Presbytery. But I do not think at present that that is the nature of his obligation. I think the nature of his obligation was that he guaranteed that the thing should be carried on, and go through in the usual way; and if that be the nature of his obligation, the Mercantile Law Amendment Act has nothing to do with it, and the tradesmen, in that view of it, would not be entitled to go directly against him, and leave everybody else out in the way that is proposed here under the Lord Ordinary's interlocutor. I do not see my way to that, but I do not wish to go any further than suggest these things for the consideration of all parties. I don't wish to give any express decision upon them. I think this is a case in which the assessment had better have been followed out in the usual way before resorting to this Court, and I think it would be a great deal better for all parties that this were still done.

Lord Ardmillan—The purpose for which these pursuers are seeking payment is the repair of the parish church; and undoubtedly the parties who generally are liable for such repairs are the heritors, according to some assessment or other. I do not differ from your Lordship's proposal not to decide at present whether the liability rests with the Presbytery, or whether the Presbytery are bound to proceed against the heritors, or whether there is any liability against the executrix of Dr Macfarlane. The one point upon which I really have no difficulty is that the one result that would be contrary to all justice would be that these tradesmen should not be paid.

Lord President—There is not the least cause for apprehension of that in the long run.

The Court recalled the interlocutor of the Lord Ordinary, and remitted the case to the Outer House, to give the pursuers an opportunity of proceeding against the Presbytery in terms of the conclusions of the summons, or otherwise as they might be advised, reserving in the meantime all questions of expenses.

Agents for Pursuers—Murray, Beith, & Murray, W.S.

Agents for Defenders—A. & A. Campbell, W.S.

Monday, March 30.

SHARP *v.* WILSON.

Reparation—Slander—Veritas convicii. After a proof before the Lord Ordinary, damages awarded against a medical practitioner for slanderous statements as to incompetence and unskilfulness on the part of another medical practitioner.

Proof—Veritas—*Particular Case.* A defender in an action of damages for slander against a medical practitioner having, in his defences, alleged particular instances of unskilfulness on the part of the pursuer, so as to justify the defender's statements, *held* incompetent for either party to lead evidence as to other particular cases.

Hugh Sharp, member of the Royal College of Surgeons, England, residing in Cullen, in the county of Banff, sued James Wilson, licentiate of the Faculty of Physicians and Surgeons, Glasgow, also residing in Cullen, concluding against the defender for payment of £1000 in name of damages and *solatium.* It appeared that in February 1864 the defender wrote and sent to Dr Greig, Portsoy, a letter in the following terms:—

"*Cullen, 12th February* 1864.—Dear Sir, I understand you were called some time ago to attend Mrs

Wilson, Knowes, in her confinement, but being in bad health, you could not attend to her. Her husband then called *Sharp*, who visited her, but she, Mrs Wilson, has not yet been confined. This plan of procedure on the part of Wilson I cannot by any means understand. Sharp lately attended a sister of Mrs Wilson's (a Mrs Longmore, Bauds of Cullen) in her confinement, *who died undelivered!!* and for Wilson to call Sharp to his wife after this is a circumstance most unaccountable in my idea. Now, I am the last one to interfere with another medical man in his profession, neither do I wish to attend Mrs Wilson, but I most certainly will be very much chagrined to hear of Sharp attending either Mrs Wilson, or any other patient of yours or mine *in Deskford.* If you have not already done so, do by all means call and see Mrs Wilson; push her hard about her sister's case. It is too bad to see a man allowed to attend women who, I believe, is no more capable of using a forceps than an infant. This is at least the third case of the sort that has fallen under his hands since I came to Cullen. Do be so good as let me hear from you soon; and, with complements to Mrs Greig and family, I am, dear sir, yours truly. (Signed) JAMES WILSON. (Addressed) Dr Greig, Portsoy."

Dr Greig gave the letter to the pursuer, who then brought this action.

The defender, in his defences, alleged that the statements in the letter were true, and alleged four special cases of unskilfulness on the part of the pursuer.

An issue and counter issue were adjusted as follows:—

"Whether, on or about 12th February 1864, the defender wrote and transmitted, or caused to be written and transmitted, to Dr Greig, of Portsoy, the letter, a copy of which is contained in the schedule hereunto annexed? Whether the said letter is of and concerning the pursuer, and falsely and calumniously represents that the pursuer is incompetent and unskilful in his profession as a practitioner of midwifery; and that in the practice of said profession he had treated three cases incompetently and unskilfully, to the loss, injury, and damage of the pursuer?

Damages laid at £1000 sterling.

OR,

"Whether, previously to the date of the said letter, the pursuer, as a practitioner of midwifery, attended Mrs Longmore, Bauds of Cullen, Mrs Helen Spence or Geddes, Mrs George Mair, Bobbin, and Mrs John Wilson, Seatown of Cullen, or any of them, and whether he treated them, or any of them, unskilfully?"

Thereafter, instead of the case being sent to a jury, on the joint motion of the parties, a proof was taken before the Lord Ordinary, under the evidence Act 1866. Certain witnesses were also examined before a commissioner in Banffshire.

The Lord Ordinary (KINLOCH) pronounced this interlocutor:—"Finds it proved that, on or about the 12th February 1864, the defender wrote and transmitted to Dr Greig, of Portsoy, the letter No. 9 of process: Finds that the said letter is of and concerning the pursuer, and represents him as incompetent and unskilful in the practice of midwifery, and more especially states regarding him, 'It is too bad to see a man allowed to attend women who, I believe, is no more capable of using a forceps than an infant. This is at least the third case of the sort that has fallen under his hands since I came to Cullen:' Finds that the defender has failed sufficiently to instruct his allegation of incompetence and unskilfulness on the part of the pursuer in the specific cases set forth in the record: Finds the defender liable in damages to the pursuer in respect of the statements contained in the said letter: Modifies the same to the sum of fifty pounds; for which sum decerns in favour of the pursuer against the defender: Finds the defender liable to the pursuer in the expenses of process, deducting therefrom three-fourths of the expense of leading the proof taken on commission: Allows an account thereof to be given in, and remits the same to the auditor to tax and to report." With regard to the proof, the Lord Ordinary said in his note:—"A long proof was led, partly before the Lord Ordinary, and, in the case of some witnesses unable to come up to the proof, before a commissioner in the country. The Lord Ordinary is clearly of opinion that, in so far as this last-mentioned proof touched on any other specific cases in the pursuer's practice than those set forth in the record, it was irrelevant and irregular, whether led at the instance of the one party or of the other. The defender could not prove failure in any other cases: the pursuer did not require to prove success, and acted irregularly in attempting to do so. The Lord Ordinary sets aside all this evidence, as wholly removed from judicial consideration in the case. He will confine himself exclusively to the cases of alleged malpractice set forth by the defender in the record."

The defender reclaimed.

CLARK and ORR PATERSON for reclaimer.

FRASER and SCOTT for respondent.

At advising—

LORD ARDMILLAN—This is an action of damages for slander contained in a letter addressed by the defender—a surgeon practising in Cullen—to Dr Greig of Portsoy. It is not disputed that this letter is of and concerning the pursuer, who is also a surgeon in Cullen, and it is clear that it does represent him as incompetent and unskilful in an important department of his profession—that of midwifery. There is no doubt that the letter is slanderous if the charges are not true; and further, the letter was gratuitous and uncalled for, not written in answer to questions, but a volunteered expression of opinion in regard to the capacity and conduct of the pursuer, calculated and intended to injure the pursuer's practice as a medical man in the department referred to. I must say, however, that I regret that Dr Greig, who received this letter in February 1864, should, after keeping it for eight months, have communicated it to the pursuer in November. He had better have put it in the fire. To meet the action of damages, the defender has taken the position of justifying the letter by proving malpractice or unskilfulness in four cases enumerated in the counter issue. The defender must prove this issue in justification; and the burden of proof is peculiarly heavy when the slander is, on the one hand, uncalled for, and on the other, directly injurious to the professional character and the patrimonial interests of the person slandered. The Lord Ordinary has found that the defender has failed to prove the specific allegations of unskilfulness put in issue, and has decerned for £50 of damages. I have very carefully studied the whole proof, and considered the ample arguments from the bar. In regard to one of the cases specified—viz., the case of Mrs Geddes—a case where the mother recovered, and the child was safely brought

into the world—a case which occurred in 1841, long before the defender commenced practice in Cullen, so that, when he wrote the letter, he could have no personal knowledge of the facts, I agree with the Lord Ordinary that it is out of the question to hold the charge of malpractice proved. In the case of Mrs John Wilson, where also both mother and child survived, I think the defender has failed to prove his justification. The case of Mrs Longmore, in 1863, terminated fatally both for mother and child. The pursuer says, and so stated in the certificate of registration, that death was caused by rupture of the uterus. It is now said that that was an ignorant and inaccurate opinion, and that in any view Mrs Longmore's death was caused by the unskilfulness of the pursuer. There is some conflict in this case of Mrs Longmore between the testimony of the pursuer and that of Dr Carmichael in regard to the existence of rupture of the uterus. It would be very difficult, on the evidence before us, to come to a conclusion on that point; but Dr Carmichal uses an expression which may be at least consistent to some extent with the pursuer's statement, and with the opinion of Sir James Simpson, in which Dr Keiller and Dr Thatcher concurred. Certainly the case is not satisfactorily explained. But I cannot say that unskilfulness is clearly proved; and therefore I cannot differ from the Lord Ordinary. There remains the case of Mrs Mair—a very serious case, and very difficult to decide. It occurred in 1856, the year in which the defender commenced practice in Cullen, and it is not surprising that the testimony of some of the witnesses should, after the lapse of ten years, be inaccurate. On one point the evidence is directly conflicting in regard to a matter on which it is difficult to suppose a mistake. The pursuer says that he did not bleed this woman. I think it is proved that he did bleed her, and to a very considerable extent. Four witnesses (Mrs Wood, Mrs Sclater, old Mrs Mair, and Mrs John Mair) concur in speaking distinctly and decidedly to this fact, and to the circumstances attending it. I observe that the Lord Ordinary is of opinion that the fact of bleeding is proved notwithstanding the pursuer's denial, and in this I think he is right. Looking to the evidence of Sir James Simpson, certainly the highest authority on the subject, I cannot hold that bleeding in the course of a first labour is necessarily bad practice, though it is not the most approved practice of the present day. But the case occurred ten years ago, and was once a practice recognised and approved in the profession. Nor can I venture to say, in the face of Sir James Simpson's testimony, that the facts proved in regard to this woman are such as to make the bleeding her in the state in which she was clearly an improper or unskilful act. At the same time, it is to be observed that Sir James' evidence was given before the proof for the defenders, and the facts stated by the defender's witnesses might have led him to modify his opinion. If indeed, I were to venture to express an opinion, I should say that, according to my humble judgment, the propriety of bleeding Mrs Mair in the state of exhaustion in which she was, and after the survivance of the child had been abandoned as hopeless, and after the head of the child had been perforated, is, on the medical evidence before me, very questionable. Still, in the conflict of medical testimony, there is a doubt on the point; and in the case of slander in an uncalled for letter, the benefit of the doubt must be given to the person accused. The defender must prove the justification, and if he has left a doubt, that is a defect in his proof. On the other points of accusation in regard to this case of Mrs Mair, such as the employment of unnecessary force, the use of unsuitable instruments, and the introduction of the forceps at an improper time, I have only to observe that while I cannot say that the case is satisfactorily explained, I am unable to find sufficient grounds for differing from the Lord Ordinary. The defender has referred to part of the evidence taken for the pursuer on commission in support of his allegation of the improper use of the forceps. It has been suggested that the evidence taken on commission in Banffshire is incompetent; and I incline to think that evidence of the treatment by the pursuer of particular patients, not alluded to in the issues nor mentioned in the record, was not competent. But, even though it were, I am not satisfied that it can receive the effect for which the defender contends, as corroborating Mrs Wood's evidence in regard to the time and manner of using the forceps in the particular case of Mrs Mair. It rather appears to be that there has been some misapprehension on this matter. On the whole, I have arrived, not without difficulty, at the same conclusion as the Lord Ordinary, chiefly because of the ultroneous and uncalled for character of this letter, and of the great burden of proof which rested on the writer. I must express my regret that the letter was written, that it was not destroyed by the receiver, that this action was brought into Court, and that an issue of justification was taken.

The other judges concurred.

Agent for Pursuer—John Walls, S.S.C.

Agents for Defender—H. & A. Inglis, W.S.

Friday, April 3.

JURY TRIALS.

(Before Lord Ormidale.)

BEATTIE *v.* RUSSELL.

Jury Trial—Slander—Public Officer. Verdict for defender.

The pursuer in this case was Peter Beattie, inspector of poor of the Barony Parish of Glasgow, and the defender was John Russell, grain weigher and storekeeper in Glasgow, and residing at No. 31 Buccleuch Street, Glasgow.

The case arose out of the following circumstances:—On the 13th September 1867, the defender wrote and transmitted for publication in the *Glasgow Morning Journal* newspaper the following letter:—

"Barnhill Poorhouse.—To the Editor of the *Morning Journal.*—31 Buccleuch Street, Glasgow, 13th September 1867.—Sir, I beg to bring under your notice, for publication in your paper, the case of a pauper, Charles Buchanan, aged sixty-nine years, who died this day at Barnhill Poorhouse, and who, in my opinion, was subjected to the most inhuman treatment by the officials of the Barony Parochial Board. It appears that the old man, Charles Buchanan, was admitted into Barnhill in May last, and that he was an inmate of the institution till the 28th August, when he was, with or without his consent, dismissed from the poorhouse and sent home. He was so weak and infirm in body, on the day of dismissal, that he was unable to walk home, and dropped down on the road, and lay there until he was taken up by the police and conveyed home. From that day until the 11th September (Wednesday last) he was confined to bed, and nothing was