

there was a hernia, and made endeavour to reduce it unsuccessfully, till he thought it imprudent not to desist. Examined him as to his general health and found it very good. He was full and robust. He told witness that it had been coming for a considerable time. Told him to come again in a fortnight. Made a second examination on the 9th Dec. 1843. Endeavoured to reduce it (the hernia), and took considerable pains, but it was quite ineffectual. It was what is commonly called an irreducible hernia. Had no doubt that he mentioned to him that it was rupture or hernia. Saw him in December 1844 for quite a different disease—neuralgia. Had no doubt whatever that what he had spoken of was hernia. It was possible that it would be mistaken, as eminent men had mistaken it. Had as perfect a conviction as he ever had in surgical practice that it was a plain case of inguinal hernia. There might be complicated appearances in certain cases. This did not appear to be one of that kind. The swelling was very large, about the size of his two fists, and of a different character, to a sac having fluid in it (hydrocele). If a hydrocele were large it would lose the pear shape, otherwise it would be like the shape of a pear with the thick end uppermost; but hernia would never resemble a pear with the thick end downwards.

Cross-examined.—If the hernia contained omentum, which he thought it did, it might get thinner, if he got thinner, by absorption; otherwise, if irreducible, as he had stated, it must have remained undiminished in size until he died. Did not think it likely that the hernia could have escaped the observation of a medical man who was putting him into a bath. Could not say that before his death he had mentioned it to Mr. Helston, who was attending him.

Mr. Coulson then gave similar evidence as to the nature and character of hernia, as distinct from hydrocele, varicocele, swollen testis, and affection of the spermatic cord.

This being the case, for the defendants.

Mr. Humfrey proceeded to address the jury on behalf of the Plaintiffs, suggesting that physicians were not so well acquainted as surgeons with the diagnostics of a disease so peculiarly surgical, and contending that the malady was an enlarged testis, which the deceased had from his birth, and that the rupture of which he died came on a very few days only before his death, from the effects of three very strong emetics which he had taken one after the other, administered by a Mr. Smith to relieve his total blindness, or from straining at that time in the one way or the other. The learned counsel also urged the resemblance in appearance of both hydrocele and varicocele to inguinal hernia, as accounting for Dr. Kerr having been mistaken; and then called the following witnesses:—

Mr. W. Norton, farmer, knew the late Mr. R. Ashby for twenty-four years before his death; certified for him when he effected the insurance. Knew that he had a swollen testis. Never knew of his having a rupture.

Mr. Helston is a surgeon, and has been in practice fourteen years. Had attended deceased for many years until within five years ago, when he ceased to attend him for two years. In 1844, gave the certificate for the insurance office. Examined him with reference to the questions put by the insurance company. Discovered an enlargement of the left testis, and a thickening of the spermatic cord. Then examined him in the usual way for hernia, by pressure with the hand and by making him cough violently. Discovered no swelling or enlargement of the ring, which is partly muscular and partly tendinous. Continued the examination until he was perfectly satisfied that he was not then, nor ever had been, the subject of hernia. Witness was concerned for seven or eight medical clubs. Always examined the proposed members of such clubs for hernia. It was an important part of his duty. Irreducible hernia could not have existed, as had been described, in November 1843, and been so reduced as when witness examined him. He generally went about on a donkey with a saddle. He always was about his business daily. Attended him in November 1844. From his complaints then, considered at first that it was an apoplectic tendency. He complained of head symptoms, for which he was cupped and leeches, and witness ordered him the warm bath; the usual antiphlogistic treatment. He suffered from pangs at this time. Dr. Kerr attended consultations with witness and his partner during the last fortnight before his death. No mention was ever made of hernia by either. He had varicocele, which occasioned the thickening of the spermatic cord. He complained of pain arising from the testis and the spermatic cord

about a fortnight before his death. Then examined him, and there was no appearance of hernia. He was incapable of doing anything; and the women of his family attended him, lifted him in and out of bed, and washed and fed him with bread and milk like a child. This was rendered necessary, partly by paralysis and partly by blindness. He consulted Mr. Smith of Southam, who prescribed three strong emetics, and also some strychnine, all of which he took. The emetics contained a full dose of tartarized antimony. Straining would be calculated to produce hernia. Had witness supposed that he had hernia, he would not have suffered him to take what was so prescribed.

Cross-examined.—He died from the consequence of the operation for hernia. Had not seen him for nearly a fortnight before his death in Jan. 1845; did not reduce a rupture which he had (then?) or at any other time. (A letter was then put into his hand, which he said was in his hand-writing.) He again stated that he had never said that the deceased had had hernia. (The letter was then put in and read. It was addressed to Dr. Robertson, the first witness, and stated that the deceased had had a slight hernia about four months before he died, which he had reduced.) He had complained of varicocele, which he had reduced by manipulation. What he wrote in the letter was the falsehood, not what he said to-day. He called varicocele an enlargement of the veins of the spermatic cord. In April 1844, saw the suspensory bandage. He had been affected with that ailment from his birth. He had a tendency to apoplexy. He yet thought it right to order warm baths after he had cupped and leeches him, and applied cold lotions to his head. He occasionally suffered from slight rheumatism, for which, before 1841, he invariably attended him. Came into the room perhaps half an hour after the operation. Was not present, because he was unwell, and had been confined to his bed for several days. The operation was performed in the night, earlier than four o'clock.

Re-examined by Mr. Humfrey.—The disease under which the deceased had laboured had existed from his birth, and he did not think it at all important when he signed the certificate. The letter read was in answer to a letter from Dr. Robertson, which was marked "strictly private," and contained a promise that he might rely that his name would not be given up in any way.

Mr. William H. Walker, partner of the last witness, attended the deceased professionally for about a fortnight before his death. Met Dr. Kerr there many times in consultation about Mr. Ashby's case. Several times assisted in putting him in the bath. Saw no such swelling as had been described. Thought he must have seen it, if there had been such. Was fetched about 4 o'clock the day before his death. He complained of having been sick, and of a sudden violent pain and enlargement of the scrotum, as if something had fallen down. Upon that he examined the part. Asked him if he had ever had an attack of that kind before. He said "Not to my knowledge," but added, that a fortnight previously he had been taken with a violent pain in his bowels, and that Mr. Helston had been sent for, and did something to him; and he soon after became better. He said this particular appearance had happened about an hour previously. He continued very ill, and Mr. Mash was sent for from the infirmary, and attempted with his assistance to reduce the rupture. It was both omentum and intestines. Saw the operation performed by opening the ring with a knife. The cause of strangulation and pain was removed after the operation. He bore the operation very well indeed. Mr. Mash succeeded in returning the whole, but it came down again, though the cause of strangulation was removed. There was no adhesion, and it appeared to witness to be a case of recent date.

Cross-examined.—The deceased told him that the fortnight before Mr. Helston had done something which relieved him, but did not mention the word "operate" or "rupture." It was the witness's own conclusion at the time, that it might have been for rupture. [This witness here produced a letter which he had received from Dr. Robertson, and which was similar to the one addressed to Mr. Helston, which had happened not to have been brought, and sought information as to the cause of the death. It was marked "private," and gave assurance that the witness might rely that his name would not be given up, or himself brought into any trouble or difficulty. The answer was then called for, produced, and read; and, unlike the answer of the other witness, tallied very accurately with the evidence given by Mr. Helston to-day, as well as with that of the present witness.]