

A Medical Slander Case in Upper Canada 85 Years Ago



BY THE HONOURABLE
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AGO.

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AN action for slander by one medical man against another for calling in question his skill, is not now often met with in the courts. There is a strong *esprit de corps*, which generally prevents such statements being made; and even when a charge of incompetence is made, as a general rule common sense induces the maligned practitioner to "let sleeping dogs lie" and treat the charge with contempt. But this *esprit de corps* did not always characterize the profession, and the injured doctor did not always submit to unjust accusations. Accordingly, action for such slanders are to be found scattered throughout the law reports.

I have thought that medical men might be interested in the first case of the kind in Upper Canada of which we have a full account—the facts I take from the manuscript note book of Mr. Justice Macaulay, still kept at Osgoode Hall—it was tried Sept 3rd, 1827, at Newark, (Niagara).

The trial judge was himself a son of the surgery. His father was James Macaulay, M.D., M.R.C.S.E., a Scotsman, who came out to Upper Canada with the first Lieutenant-Governor, Col. John Graves Simcoe, he was surgeon to the 33rd Regiment and afterwards to the Queen's Rangers, then Deputy Inspector-General of Hospitals. He lived first at Newark, and about 1795 removed to York (Toronto), where he died in 1822, at the age of 63 years. James Buchanan Macaulay was his second son and child. He became a prominent member of the Bar, and when in 1827 Mr. Justice Boulton obtained leave of absence he was appointed judge in his place temporarily. When Boulton resigned Mr. Justice Willis was appointed in his stead, displacing Macaulay, who had to wait two years longer for a permanent appointment. He was in 1829 made a Justice of the King's Bench; and, in 1849, when the Court of Common Pleas was organized, he became its first Chief Justice. He was afterwards knighted, and died at Toronto 1859.

The case for slander was tried before him while he held the temporary commission, only a few days before his supersession.

The plaintiff in the action was James Hunter. From the date of the license to practise produced at the trial, he was, no doubt, the Dr. James Hunter, of Whitby, who was afterwards mixed up with the Rebellion of 1837. He was born in England in 1790, and came to Canada in 1823, settling in the Niagara district. He does not seem to have studied medicine in England, but on this side of the Atlantic he attended Fairfield Medical College. This college was organized in 1809 at Fairfield, a small village not far from Little Falls, New York State. At this college was given later on, in 1839, the first course of lecture of the celebrated Frank Hamilton. Most of its staff (including Hamilton) joined Geneva Medical College in 1840, and this college became the medical faculty of Syracuse University in 1872. At the period of Hunter's attendance, Fairfield Medical College had a very respectable standing as medical schools then went on this continent. He passed his examination before the Medical Board of Upper Canada and received his license to practice April 5th, 1826. The Board was composed of five gentlemen appointed by the Lieutenant-Governor, under the provisions of the Act of 1818 (59 George III., c. 13) to examine all applicants for licenses to practise "physic surgery and midwifery, or either of them." They were Christopher Widmer, F.R.C.S., "the father of surgery in Upper Canada," who survived till 1858; Robert Kerr, an old army surgeon, who married Elizabeth, daughter of Sir William Johnson and "Molly" Brant, sister of Joseph Brant;* Grant Powell (a son of Chief Justice Powell), who studied at Guy's Hospital and passed the Apothecaries' Hall—after practising in New York State and in Montreal he became surgeon-general of the militia in Upper Canada; Robert Charles Horne, M.R.C.S., who afterwards became King's Printer, and finally chief teller of the Bank of Upper Canada; and the well-known William Warren Baldwin, M.D. (Edin.): he practised a short time in Ireland, and then came with his father to Upper Canada. He shortly afterwards (in 1802) opened a school in York (Toronto), and in 1803 was called to the Bar. He practised law with much success for several years.

At the trial Dr. Baldwin testified that Hunter has passed a creditable examination before the Board, particularly in anatomy and midwifery.

*His son, William Johnson Kerr, married his mother's cousin-german, Elizabeth, daughter of Joseph Brant. He was an Indian chief and leader and became a member of the House of Assembly and a prominent man.

The defendant was Dr. Cyrus Sumner, an American, who came to Canada in 1800. He passed the Board in 1804—the Board then being that constituted under the Act of 1795, (35 George III., c. 1.) He then settled at Twenty-Mile Creek (Jordan), called "Twenty" in the evidence, and made a considerable name for himself as a successful practitioner.

Dr. Sumner was proved to have said that Dr. Hunter had been stuffing Isaac Griffin, at the Twenty, with mercury till his mouth was all sore and his teeth all loose. But as Isaac Griffin testified that the plaintiff had left physic for him, yellow, with white powders, which was to be mixed with dry sugar and molasses, and that when he took it as directed for a fever he had, his mouth got sore and raw, his teeth loose and his breath bad, the plaintiff did not get much comfort or damages out of that charge.

Dr. Lafferty gave evidence for the defendant, saying that he himself used small doses of mercury for fever, but never to the extent spoken of by Griffin. This gentleman seems to have been an army surgeon also, and practised at Drummondville. He became a member of Parliament, had a large and lucrative practice, but was no lover of novelties. It is said that after seeing one of the new school use a stethoscope, he said that the sight of the doctor using a *telescope* was enough for him.

Dr. Tiffany thought that the salivation of Griffin, if done intentionally, could not be justified. Some gave mercury in fevers, but he himself seldom gave more than one dose. This witness may have been Dr. Oliver Tiffany,* who had been educated at the Philadelphia Medical College, or his nephew, Dr. Oliver F. Tiffany, educated at Fairfield, who in January, 1822, passed the Board. After practising for a time at Ancaster with his uncle, he went to Chicago and there spent the rest of his life.

But Dr. Sumner was charged with other statements concerning Dr. Hunter. He said that Dr. Hunter had destroyed Mary Gilmour;

*The uncle was a well-known Radical and a valued friend of William Lyon Mackenzie. He had got into trouble some years before for alleged sedition. I find the following in the Term Books at Osgoode Hall: Easter term, 37, George III., April 29, 1797. An information was read against O. Tiffany and one against Tiffany, Sr. In the case of the former, in the following term, July 19th, 1797, he was sentenced "to be fined £20 to the King and to be confined for one calendar month in His Majesty's ^{goal} ~~goal~~ [sic] at Newark, and to remain in confinement till the fine is paid, and afterwards to find securities for his good behavior for three years himself in £100, and two sureties in £50 each."

that he understood he had taken five quarts of blood from her, and caused her death. To another witness he had said it was a d—d pity they hadn't employed Granny Huff and two or three men and they might have killed her sooner than they did, bleeding her five or six times, Hunter had murdered the girl.

One, perhaps, would not be inclined to find much fault with Dr. Sumner's characterization of the treatment if he had his facts right—and certainly there is no evidence that his facts were not right. But those were the days of heroic measures—and one can only pity poor Mary Gilmour, bled white in the name of science.

The main complaint is that the defendant said of the plaintiff that he was totally ignorant of the medical profession. He was proved to have said that Hunter was nothing but a butcher in Niagara; that he was a poor ignorant creature and knew nothing about doctoring; that the bleeding of Mary Gilmour was the cursedest piece of work he ever saw; that the plaintiff was not a medical man at all; that he had given Peggy Berry some drops which put her to sleep and she died immediately, "a devil of a case," and some other like choice expressions.

Very little defence was offered and the jury found a verdict for the plaintiff for £5. or \$20—not an extravagant sum. one would say, under all the circumstances. The verdict was not appealed from.