

REPORT
OF THE
TRIAL BY JURY,
OF THE
ACTION OF DAMAGES
FOR ASSAULT;
MARGARET FINLAYSON,
SPOUSE OF
ARCHIBALD FINLAYSON, SHOEMAKER,
GLASGOW,
AGAINST
MICHAEL GILFILLAN,
WRITER IN GLASGOW.

Edinburgh:
PUBLISHED BY EDWARD WEST & Co. REGISTER STREET,
ST ANDREW SQUARE; RICHARD GRIFFIN & Co., and W. R.
M'PHUN, GLASGOW; and SHERWOOD, JONES & Co.
LONDON.

~~~~~  
1825.





REPORT

OF THE

TRIAL BY JURY

OF THE

ACTION OF DAMAGES

FOR ASSAULT

MARGARET FINLAYSON

ARCHIBALD FINLAYSON, SHOEMAKER,

GLASGOW,

AGAINST

MICHAEL GILLILAN,

WRITTEN IN GLASGOW.

PRINTED BY EDWARD WEST & CO. REGENT STREET.

ST. ANDREW'S SQUARE; JOHN AND GUTHRIE & CO. 101 W. 11.

PRINTED IN GLASGOW; AND LONDON, JAMES & CO.

LONDON.

THE PURPOSE OF THIS REPORT IS TO RECORD THE FACTS OF THE CASE, AND TO SHOW THE REASONING OF THE JURY IN THEIR VERDICT. THE REPORT IS WRITTEN IN A SIMPLE AND CONCISE MANNER, AND IS INTENDED TO BE A GUIDE TO THE READER IN UNDERSTANDING THE CASE.



# REPORT, &c.

---

## SUMMONS OF DAMAGES,

*Margaret Graham Davidson or Finlayson, Spouse  
of Archibald Finlayson, Shoemaker, residing in  
College Street, Glasgow,*

AGAINST

*Michael Gilfillan, Esq. of Wester-Mains, Writer in  
Glasgow.*

GEORGE, &c.—WHEREAS it is humbly meant and shewn to us by our Lovites *Margaret Graham Davidson or Finlayson*, spouse of *Archibald Finlayson*, Shoemaker, residing in College Street, Glasgow, with consent of her said Husband, and by the said *Archibald Finlayson*, for himself and his interest. That upon the forenoon of Friday the 9th day of July last, or of one or other of the days of that month, or of the month of June preceding, or of August following, the said *Margaret Graham Davidson, or Finlayson*, went in company with a person of the name of *Mary M'Lauchlan*, who was then about to be married, and who has since been married to *James Stewart*, Tailor in Glasgow, to the office of *Michael Gilfillan, Esq. of Wester-Mains, Writer in Glasgow*, for the purpose of consulting *John Gibson*, a person in his employment, and with whom she had been acquainted, as to the said *Mary M'Lauchlan's* right to a chest of drawers, half-a-dozen of silver tea-spoons, and a mahogany cupboard, which belonged to her mother, and which were in the pos-



session of her father, who had entered into a second marriage. That the said Margaret Graham Davidson, or Finlayson, had an infant ten months old in her arms, and upon arriving at the office of the said Michael Gilfillan, without her or the female with her going in farther than the door or threshold of the office, she civilly asked for Mr Gibson, when one of the clerks answered, that he was not in, upon which the said Michael Gilfillan broke out into a violent passion, and told them to go about their business, calling them at the same time repeatedly, very obscene and disgusting names. That they then were going away, when the said Michael Gilfillan followed them out of the office cursing and swearing, and threatening to kick them down stairs if they did not instantly depart. That, without allowing time for this, and while they were moving as fast as possible, the said Michael Gilfillan violently laid hold of the said Margaret Graham Davidson, or Finlayson, and the child she had in her arms, and repeatedly kicked her with his feet about the thighs and legs, and would have driven them headlong down stairs had they not been supported by the above Mary M'Lauchlan. That he continued to call them every bad name he could possibly utter, such as 'damned bitches, whores,' &c. That she cried out, was he going to murder her and her child, or what did he mean? and the child screamed, but which had no effect upon his feelings. That not contented with injuring their characters and reputation by the vile epithets he used against them, and with having made such an unprovoked assault upon the said Margaret Graham Davidson, or Finlayson, and her companion, and with having struck and kicked the former in the brutal manner which has been mentioned, in the defenceless state in which she was, he, the said Michael Gilfillan, who is a Commissioner of Police for the city of Glasgow, and with that body at his ready command, did next send off one of his clerks for two police-officers to take them into custody. That the said Margaret Graham Davidson or Finlayson, with her child, and the said Mary M'Lauch-



lan, in going away, were met by the two Police Officers in company with the clerk who had been sent for them, and upon their being pointed out as the persons whom the said Michael Gilfillan wished to be taken into custody, they were marched off along with one of the officers through the public streets of Glasgow to the Police-Office, like common felons or delinquents, and being a market-day in Glasgow, they were the more exposed to the public. That upon reaching the Police Office they explained the matter, and were then told that the said Michael Gilfillan had done wrong, and since he had not come forward to make good his charge against them, they might depart, which they accordingly did. That the said Margaret Graham Davidson, or Finlayson, was much injured in her person by the violent outrage of the said Michael Gilfillan, and had to call in the assistance of a respectable medical gentleman, who examined the wounds inflicted, and attended her. That she and her husband represented what had taken place to the Procurator-Fiscal for the Magistrates of Glasgow, and in consequence an action was raised against the said Michael Gilfillan at the instance of that Officer, *ad vindictam publicam*, but which concluded only for a fine of £5 sterling, and expences for the *whole*, of which, after trial and conviction the said Michael Gilfillan was found liable; as an extract of the sentence and the other procedure upon this Complaint to be herewith produced will testify. But although he has thus been publicly fined, and has acquiesced in the sentence, no private reparation has been offered or made by him to the Pursuers. That the said Michael Gilfillan could have no ground for palliating, for it is impossible to justify his conduct; but, on the contrary, there are many circumstances of aggravation in the case. The said Margaret Graham Davidson, or Finlayson, and her companion were decently attired, and behaved in the most civil and peaceful manner. The said Michael Gilfillan had been in the habit of visiting a gentleman who lodged last winter in the house of the said Margaret Graham Davidson, or Finlay-



son and her husband, and he, therefore, should have known her. He also is a Commissioner of Police, whose duty, therefore, is to preserve, not to break, the peace of the public; but instead of this he used his power for a different purpose; that is, the more easily to obtain the assistance of the Police Officers, whose master he was, in dragging defenceless women, with a child in the arms of one of them, whom he had previously most unfeelingly and most unmercifully abused in their characters and persons, on a market day through the streets, exposed to the insults and observation of every one they met, as if they had been guilty of the worst of crimes.— That, by the gross and violent assault and conduct of the said Michael Gilfillan before mentioned, the said Margaret Graham Davidson, or Finlayson, suffered, and still suffers much in her character and person, and, by his subsequent conduct, her character and reputation has been still farther injured, for all which she is entitled to exemplary reparation. But the said Michael Gilfillan refuses to pay to her and her husband the damages due to them for his unjustifiable and brutal conduct. **THEREFORE**, the said Michael Gilfillan **OUGHT** and **SHOULD** BE **DECERNED** and **ORDAINED**, by Decree of the Lords of our Council and Session, or of the Lords Commissioners of our Jury Court for Scotland, to make payment to the Pursuers of the sum of £1000 Sterling, or such other sum as shall be found due by our said Lords, of damages; together with L.100 Sterling, or such other sum more or less, as they shall be pleased to modify, as the expences of process, and of extracting the Decree to follow hereon, after the form and tenor of the laws and practice used and observed in the like cases in all points, as is alleged.

**OUR WILL IS HEREOFRE, &c.**

*Dated and Signeted the 11th November, 1824.*



## DEFENCES

FOR

*Michael Gilfillan, Writer in Glasgow ;*

IN THE ACTION AT THE INSTANCE OF

*Margaret Graham Davidson, or Finlayson, Spouse  
of Archibald Finlayson, Shoemaker, residing in  
College Street, Glasgow, and Husband.*

THE defender denies this libel as laid ; and he begs, moreover, to state, that he conceives the present prosecution to owe its origin to no sense of real injury felt on the part of the pursuers—but it is promoted by certain parties in Glasgow, who have for some time combined, systematically, to harass the defender with a series of prosecutions in petty and discreditable disputes.

The defender, however, admits, that some months ago, he found a woman who turned out to be the pursuer, along with another female, hanging on in his writing chamber, said to be waiting upon one John Gibson, then in the defender's employment as a clerk. The defender, not chusing his Clerk's room to be so occupied, desired the pursuer and her friend to go about their business. The defender on coming into that room off the office some time after, found the women still there—and they not only maintained their right to remain there—but gave the pursuer much abuse, and used several opprobrious epithets towards him for insisting on their departure. The defender, a little irritated by such treatment, desired a clerk to go for the police—and probably, by way of superseding any appeal to these officers, in case they should come, the defender took one of them by the shoulders and pushed her down stairs. The defender never knew of the actual apprehension of the pursuer, till he saw it set forth in the criminal proceedings to be afterwards noticed ; but at all events, as the Police Office is in the same



*street*, and within a very short distance of the defender's office, the pursuer suffered no unnecessary injury or exposure in going there.

It now appears, that some of the defender's enemies got notice of this incident, and by way of founding clamorous proceedings on it afterwards, they sent the pursuer to Dr Corkindale, a respectable surgeon in Glasgow, who gave it as his opinion, that the pursuer had sustained no bodily injury whatever, from the alleged attack of which she complained.

Nevertheless this affair was made the subject, first of a criminal complaint to the magistrates of Glasgow, at the instance of the *Procurator-fiscal*, in which the defender paid a fine of £5, with expences. And thereafter this action of damages has been raised before this Court, at the instance of the pursuer as a private party.

In the whole circumstances of the case, the defender apprehends that the pursuer sustained no injury which entitled her to commence an action in this Court. But in case the defender should be mistaken in this view—and in order at once to deprive the pursuer of every pretence for clamour or complaint, or persistance in this process, the defender now judicially offers to pay the pursuer L20. in name of damages, besides all expences of process legitimately incurred by her;—or if this is not satisfactory, he will refer the modification of the damages to the learned person who is retained as senior Counsel for the pursuer herself.

*Under protestation to add and eik,*

**JOHN CUNINGHAME.**



## ISSUES

IN THE CAUSE IN WHICH

*Margaret Graham Davidson or Finlayson, spouse of Archibald Finlayson, Shoemaker, residing in College-Street, Glasgow, and him for his interest, are Pursuers ;*

AND

*Michael Gilfillan, Writer in Glasgow, is Defender.*

Whether, on or about the 9th day of July 1824, in the City of Glasgow, in the writing-office of Michael Gilfillan, defender, or near the door of the said office, the said defender did violently assault and kick or strike the pursuer Margaret Graham Davidson or Finlayson, to the injury and damage of the said Pursuer?

Whether, at the time and place aforesaid, in presence and hearing of Mary M'Lauchlan, (now spouse of James Stewart, Tailor in Glasgow) the defender did falsely and calumniously say that the pursuer, Margaret Graham Davidson or Finlayson, was a damned bitch, or a damned whore, or did use or utter words to that effect, to the injury and damage of the said pursuer?

Whether, at the time aforesaid, and at or near the office, the defender caused the said pursuer to be apprehended and conveyed to the Police Office in the said City, to the injury and damage of the said pursuer.

Damages laid at £1000.

(Signed)

WILLIAM ADAM,  
Lord Chief Commissioner.

JURY COURT,  
Feb. 5th, 1825.

}

B



## LIST OF PURSUERS' WITNESSES,

IN CAUSA

*Finlayson and Husband, against Michael Gilfillan.*

1. *Mary M'Lauchlan*, wife of James Stewart, Tailor, now or lately residing in Crown Street, Hutchisontown, Glasgow.
2. *Duncan M'Intyre*, late Clerk to Defender, and now or lately Clerk to the Verivaille Glass Work Co. near Glasgow, residing in High Street Glasgow.
3. *Robert Wright*, now or lately Clerk to the said Michael Gilfillan.
4. *John Campbell*, sometime Clerk to the late firm of Galloway and Urquhart, Manufacturers, and now to A. & W. Galloway, Manufacturers, Glasgow.
5. *John Gibson*, late Clerk to the said Defender, residing in Gallowgate Street, Glasgow.
6. *Robert Paterson*, Baker in Trongate Street of Glasgow.
7. *Farquhar M'Donald*, sometime superintendent of City Lamps, Glasgow, now Tavern Keeper, Glasgow.
8. *Samuel Clark*, Surgeon in Glasgow.
9. *James Corkindale*, Physician there.
10. *William Knox* Esquire, one of the Magistrates of Glasgow.
11. *William Davie* Esquire, Depute Town Clerk of Glasgow.
12. *Andrew Simson* Esquire, Procurator Fiscal of the Burgh Court of Glasgow.
13. *William Gillespie Crawford*, one of the Criminal Officers of the Burgh Court of Glasgow.
14. *John Hamilton*, sometime Police Officer, and now or lately Change-keeper in Glasgow.
15. *James Taylor*, now or lately Police Officer in Glasgow.
16. *Jean Glasgow* or *Harvie*, Wife of Robert Harvie, Agent in Glasgow.



17. *Jean Todd* or *Veitch*, Widow of the deceased *Hugh Veitch*, Turner in Glasgow, now Shop-keeper, *Hutchison Street*, Glasgow.
18. *William Wood*, Boot and Shoemaker, Glasgow.
19. *William Thomson*, Leather Merchant, Glasgow.
20. *John M'Auly*, Boot and Shoemaker, Glasgow.
21. *William Robb*, Student in the College of Glasgow, and now or lately in the service of the Defender.
22. *Robert Muir*, presently in the employment of the Defender.
23. *F. Erskine*, Clerk to the Defender.

### LIST OF WITNESSES,

*To be adduced for the Defender at Trial of Cause,  
Margaret Graham Davidson, or Finlayson, and  
Husband, Pursuers ;*

AGAINST

*Michael Gilfillan, Writer in Glasgow, Defender.*

1. *Peter Cairns*, apprentice to the Defender, and residing with his Father *George Cairns*, Grain-Dealer in *Douglas Court*, *Grahamston* of Glasgow.
2. *Robert Wright jun.* Clerk to the Defender, and residing in *Govan Street*, *Hutchiesontown*.
3. *William Robb*, now or lately Student in the University of Glasgow, and now or lately residing with *Mrs M'Coll*, No. 120, *George's Street*, Glasgow.
4. *George Chrystal*, now or lately Student in the University of Glasgow, and now or lately residing with the said *Mrs M'Coll*.
5. *James Taylor*, Serjeant of Police in Glasgow, and residing in No. 4, *Wright Street* there.
6. *John Hamilton*, lately Serjeant of Police in Glasgow, and residing at No. 21, *High Street* there.



7. *John Gibson*, Constable in the Glasgow Police, and residing at No. 19, Canon Street there.
8. *Andrew Simson*, Procurator-Fiscal, of the Burgh Court of Glasgow.
9. *Dr James Corkindale*, Physician in Glasgow.
10. *Thomas Harvie* of Westhorn.
11. *Moses M'Culloch* of Balgray
12. *William Newlands*, Merchant in Glasgow.
13. *William Davie*, Depute Town-Clerk there.
14. *Alexander Ure*, Writer in Glasgow.
15. *James Gemmell*, Writer in Edinburgh.

And all the Witnesses in the List for the Pursuers.

A. P. HENDERSON, *Defender's Agent.*

---

COURT GLASGOW, 16th April, 1825.

## JURY.

Samuel Hunter, Merchant in Glasgow.  
 William Mills, Merchant there.  
 Septimas Ellis, Manufacturer there.  
 John May, Merchant there.  
 John Henderson, Drysalter there.  
 George Schiver, Merchant there.  
 Robert Weir, Stationer there.  
 Charles Todd, Calico Printer there.  
 James Lang, Victualler there.  
 William Naismith, Manufacturer there.  
 Robert Steel, Merchant in Port Glasgow.  
 David Balderston, Merchant in Greenock.



Mr. JEFFREY, senior counsel for the pursuers, then addressed the court.

My Lord, and Gentlemen of the Jury, you will see from the paper in your hands, that the case which you are to try, is, in one respect, of an ordinary description, in which damages are claimed for a personal assault, accompanied with words of abuse. You cannot look at that paper without going further ; that it is a case of assault on a female, and that by the most brutal mode of assault to which persons of either sex are liable. If this be the description of the case, and the naked outline of it, I am persuaded you will be of opinion that there is nothing in the details that tend at all to mitigate the reprobation and scorn with which the defender must be viewed ; and having no complication or variation of acts in its form, I shall detain you merely by a very brief statement of the particular facts, which I shall proceed to prove in evidence before you.

The features in the case are these :—A person in an inferior rank of life (which I conceive to constitute an aggravation of the offence) to that of the defender, the respectable wife of a respectable tradesman in this city, and the mother of children, one of whom was, in a state of infancy, in her arms at the moment she was made a victim of this brutal outrage. She was a person not unknown to the defender, inasmuch as being in the condition of the wife of a tradesman, more fortunate than many in her station, in having a house better plenished, so as to enable her to let apartments to respectable young men attending their studies at this University, and she had so received under her roof two persons who were her acquaintances, one whom was employed with this gentleman, who frequently called for them at her house. Recently before the date in the issues, a neighbour and friend, whose name is mentioned, Mary M'Lauchlan, had occasion to make application to persons learned in the law. The fact is, she was then on the eve of marriage, and imagined she had a legal right to some furniture which belonged



to her mother, and which was in the possession of her father, who had entered into a second marriage, a part of which she wished to convey to her own nest. She had applied to Mrs Finlayson in this matter, as having more experience, who recommended her to Mr Gibson, who had been Clerk in the employment of Mr Gilfillan ; and being rather *lower* than his master, could more cheaply administer advice. Accordingly, on this innocent errand, they both posted up to Gilfillan's writing-chambers, who occupied one floor in a common stair ; there were other chambers or warehouses in the same tenement, which were entered into by the same stair ; in short, he had no right to a private occupancy in the stair, which was a common resort of weavers, potters, and all sorts of people. Mrs Finlayson takes her infant baby in her arms, and walks up the street with Mary M·Lauchlan ; they ascend in due form, without fear or dread, and pause to look round for Gilfillan's quarters. At this moment one of the clerks was coming out, and they inquired if Mr Gibson was there ; and after answering that he was not, he glides in at another door with all the nimbleness of persons in his line, and shuts it again. Then they tap. The lion had been heard growling before this, and now he rouses in his fury ; and after discharging a number of oaths to the b——es to go away, he rose to enforce his demands, and before any answer is made to it, he rushes out upon them from his den, and pushes them down the stair. Mrs F. received the first shock, and was, by the interposition of her friend, standing a step or two lower, saved from being precipitated down this trap. Mr Gilfillan, instead of being satisfied with this attack, so far forgot his character as a man—to say nothing of a gentleman—as to proceed to raise his foot and hands against the person of this helpless woman, whose back was to him, and bestow a variety of blows and kicks on her person of a violent kind. The women knew not what they said. It is affirmed that they called him bad names. This is neither improbable nor unnatural, for who could restrain



their tongue in such an unprovoked and unexpected attack. Each having hesitated to leave the stair-case, he ordered one of his clerks to bring the police officers to take them into custody, for the mighty offence and crime of remaining on his stair-case, although they were going down stairs gently. But the clerk being in no disposition, or afraid to disobey the orders of this imperious lord, did go for the police officers, who were at no great distance, and brought with him two of them, and found these two innocent and abused females exploring their way to the shop of my client, Mr Finlayson, and were on the public streets, at mid-day, charged as delinquents, taken into custody, and paraded along the street to the police office. There a little more reason and sense of justice prevailed than with Mr Gilfillan, this police commissioner ! I believe they were not retained many minutes, for the clerk being asked why they were committed, said he did not know ; but that his master desired him to do so, he believed, for encumbering his stair-case and abusing him ; and that they were ill used. Now, gentlemen, I ask redress mainly for the inhuman conduct, and for the inhuman blows with which they were assailed, in the prosecution of a lawful and a harmless request. The sanctity of his office they never profaned with their unhallowed feet ; and I seek redress for the insult and indignity which my client suffered on being committed to the officers of police,—those terrors to evil doers—in whose hands as prisoners they were paraded to the office, and seen by every one who passed, and by every on-looker, at mid-day,—which shall be proved by evidence produced, and to which there cannot be a shadow of contradiction. I shall prove also, by a medical person sent for a day or two afterwards, that even at that distance of time, the marks of this brutal outrage were visible on that unfortunate female, and he will tell you, that they must have been at that time of a very severe and painful nature. I do not mean to say that they were of such a nature as to affect the life of the individual ; but it is for the disgraceful and unfeeling outrage—the pain—the alarm—the shameful com-



mitment—that redress is now sought. I do not expect that the evidence will receive any contradiction, from considering the defence the defender has given in: it admits the facts; but with certain gross misrepresentations; and it seems to be rested on an allegation which I do not think that my learned friend will have the courage to embody in evidence to-day,—viz. that it has not arisen on their own account, but in consequence of some conspiracy which it is alledged instigated them—and that they themselves were not conscious of any wrong—and Mr Gilfillan, for this imaginary wrong, suffered condign and sufficient punishment, by a conviction at the instance of the procurator-fiscal, by which he has been condemned to pay a fine of £5 to the public.

And, lastly, he tells you, that he ought not to be called before a jury, because he was willing to save himself by rendering an adequate compensation of the *large sum of £20 as sufficient*; and if this should not be considered as satisfactory, to refer it to the senior counsel for the pursuer. I shall read to you the statement in the defence:—

“ The defender denies this libel as laid; and he begs, moreover, to state, that he conceives the present prosecution to owe its origin to no sense of real injury felt on the part of the pursuers—but it is promoted by certain parties in Glasgow, who have for some time combined, systematically, to harass the defender with a series of prosecutions in petty and discreditable disputes.—[“ *Then he does admit,*” said Mr Jeffrey, “ *that he was engaged in petty and discreditable disputes.*”]

“ The defender, however, admits, that some months ago, he found a woman, who turned out to be the pursuer, along with another female, hanging on in his writing chambers—[*they were never within his writing chambers*]—said to be waiting upon one John Gibson, then in the defender’s employment as a clerk. The defender not choosing his clerk’s room to be so occupied, desired the pursuer and her friend



to go about their business. The defender on coming into that room off the office some time after, found the women still there—and they not only maintained their right to remain there—but gave the pursuer much abuse, and used several opprobrious epithets towards him for insisting on their departure. The defender, a little irritated by such treatment, desired a clerk to go for the police, and probably by way of superseding any appeal to these officers, in case they should come, the defender took one of them by the shoulders, and pushed her down stairs. The defender never knew of the actual apprehension of the pursuer, till he saw it set forth in the criminal proceedings to be afterwards noticed; but, at all events, as the police-office is in the same street, and within a very short distance of the defender's office, the pursuer suffered no unnecessary injury or exposure in going there.

“ It now appears, that some of the defender's enemies got notice of this incident, and by way of founding clamorous proceedings on it afterwards, they sent the pursuer to Dr Corkindale, a respectable surgeon in Glasgow, who gave it as his opinion that the pursuer had sustained no bodily injury\* whatever, from the alledged attack of which she complained.

“ Nevertheless this affair was made the subject, first of a

*Glasgow, 13 July, 1824.*

\* This is to certify that yesterday I visited and examined the person of Margaret Graham Davidson, Wife of Archibald Finlayson.

I found on the outside of both thighs, large marks of contusions. About the size of the palm of the hand, the skin was black from extravasated blood, and the part was considerably swollen. These injuries must have been produced from severe blows, and must have been attended with a good deal of pain.

This I attest to be true, upon soul and conscience.

(Signed) JAMES CORKINDALE, M. D.



criminal complaint to the Magistrates of Glasgow, at the instance of the Procurator-fiscal, in which the defender paid a fine of L.5, with expenses; and thereafter, this action of damages has been raised before this Court, at the instance of the pursuer as a private party.

“In the whole circumstances of the case, the defender apprehends that the pursuer sustained no injury which entitled her to commence an action in this Court. But in case the defender should be mistaken in his view, and in order at once to deprive the pursuer of every pretence for clamour or complaint, or persistance in this process, the defender now judicially offers to pay the pursuer L.20, in name of damages, besides all expenses of process legitimately incurred by her; or, if this is not satisfactory, he will refer the modification of the damages to the learned person who is retained as senior Counsel for the pursuer herself.”

Now as to the sum of L.20, certainly that was rejected as utterly inadequate, and I have no doubt that you will to-day confirm the justice of that opinion. As to the ulterior offer, I may say that I approve of the choice of the pursuers in preferring to leave it to you, than to any other arbitration. This being the shape of the defence, I do not think it necessary to detain you with one word more. The facts which are disguised in the defence, if they are proved, as they will be, bear me out in asking whether the defender, a person brought up to the profession of the law, by station a Commissioner of Police, bound to repress disorders, upon no other provocation than a civil inquiry by two women, for a clerk who had been years in his employment, and without a single word of abuse, breaks out into abusive expressions, and then immediately proceeds to apply his foot and hand to her person, with a baby in her arms, and to drive her down stairs with violence, and to abuse and prostitute his known authority by sending for the officers of police, and ordering these helpless and innocent females to be taken into custody, and so to parade them through the public streets in Glasgow—if



such a person is not liable for more than L.20 damages paid privately, then the courts of law are not sufficient to punish such delinquencies.

I should hold it unworthy of me to seek to add one word more to the reproach with which this person must be viewed, whose name as long as the transaction of this day shall be remembered will bear a stigma along with it of no ordinary nature, every one of you must perceive how the case stands; and I assure you must feel at once, that if he has by the inadequacy of his offers, drawn her to apply to a Jury for an adequate redress, you will not be wanting in your part, to give her what she is lawfully and justly entitled to.

*Mary M. Lauchlan*, examined.—Are you acquainted with Mrs Finlayson and her husband?—A little—I have known them some time.

Had you gone to ask them, or any of them, to recommend you to a man of business in July last?—Yes.

Did they name any body to you?—Yes; a Mr Gibson.

Did you know then where he was generally to be found?—I did not know.

Did you go to Mrs Finlayson to ask her?—Yes.

Did she go with you to Mr Gibson?—Yes.

Was there any body else with you?—No.

Had she a child in her arms?—Yes; a young child.

And so you went up to Mr Gilfillan's office?—Yes.

Where is it?—In Stirling Square.

Is it up a stair?—Yes; one stair.

Are there other stairs beyond it?—Yes.

What happened there?—Mrs Finlayson asked for Mr Gibson.

Did she knock at the door?—No, a gentleman was coming out, and answered he was not there.

What happened then?—Immediately we heard a voice from the office, ordering us to go about our business, and after that it was repeated.

Who was that voice addressed to?—I do not know.



Were there no names mentioned ?—No ; but immediately after that, Mr Gilfillan came out and abused Mrs Finlayson.

What do you mean by abuse ?—He kicked her, and took the child and her by the arms, and drove them down two or three steps, and then kicked her several times on the left side ; and I went up a step to save the child, and he kicked me on the back.

You got a kick, too, did you ?—Yes.

Did he say any thing ?—Yes ; “ will the d——d b——es not go down stairs ? ”

Well, what then ?—He went in laughing, and said, that these d——d b——es would not go down stairs.

You saw him kick Mrs Finlayson several times with his foot ?—Yes.

Did she cry out ?—Yes.

Had she the appearance of being much hurt ?—Yes ; she was ill in going down the street, and I had to carry the child home.

Did you hear any thing about the police being sent for ?—Yes, Mr. Gilfillan called for a person to go for the Police.

Were you, or was Mrs Finlayson, in Mr Gilfillan's office ?—We never entered into the office ; we were only in the lobby.

Did you go down stairs as fast as you could ?—Mrs Finlayson turned up a step or two, to a woman and a boy on the upper stairs, and said she would take them as witnesses.

Did you then go down stairs both of you ?—Yes.

You said that he desired a person to go for the police ?—Yes.

Well, what happened ;—We were about half way down the street when we met two police officers, and the clerk with them.

Was any thing said ?—Yes, the gentleman said, here are the two women ; and he turned away to the office.

What was done then ?—We went with one of the Police Officers to the police office.



You said, when on the street, that Mrs Finlayson complained of the hurt which she received, which prevented her from carrying her child?—Yes; she said her side was sore, and she was very sore hurt, and I carried her child for her.

Had she the appearance of being hurt?—Yes; she could hardly walk.

What was done in the police office?—We were not put in confinement.

Did you understand that you had been taken into custody?—Yes.

Did you go there upon any other ground?—No, I went as called on to answer any ill which I might be charged with.

What time of day was it?—About twelve o'clock.

Did Mrs Finlayson say any thing to Mr Gilfillan when he came out and abused you?—She said it is not you I want.

Did she ask for Mr Gibson by name?—Yes.

Cross-examined by Mr Cockburn.—Had you any conversation lately with Mrs Finlayson on this business?—I asked her when it was to come to the court? She said she believed it would come on this month.

Did she say any thing as to the result of it? that is, did she say any thing about getting damages?—One day I met with her in a friend's house, and I asked her if she settled with Mr Gilfillan, and that it would be better to settle with him, and not take me to court again; and she said she did not expect to get a penny of his money.

Mr. JEFFREY asked, Are you sure you would know Mr Gilfillan again —Yes.

Do you see him in court?—(*Mr Gilfillan was desired to rise which he refused.*)

Duncan M. Intyre examined.—You were once a Clerk in the employment of Mr Gilfillan, in the month of July last?—I was.



Do you recollect of any disturbance taking place, at the door of his chamber?—Yes.

Were you in the office then?—Yes.

Mention what you heard and saw on that occasion?

I had been at one side of the desk with Mr Gilfillan in the public office; two women asked if Mr Gibson was in? Mr Gilfillan answered no, in a harsh manner;—they then asked, when will he be in? and he replied, go away you d——d b——es.

Were these women in the office or on the staircase?—

Neither; they were at the door.

Was the door open?—Yes.

What took place on this?—They turned about, as if going away, and disappeared. I had occasion to go to the other apartment and saw the women, then they asked me in a low voice, when would Mr Gibson be in; I said I could not tell. Mr Gilfillan heard a whispering and cried, “What the devil is that?” or words to that effect—“Are the d——d b——es not away”—and without any thing farther he came out in a violent passion, and I returned into the apartment. He cried to me afterwards—“M‘Intyre, come out,” and he ordered me to kick them down stairs.

Did you think it your duty to do so?—No.

Well what took place?—He commenced pushing the woman with the child, and the other was supporting her.

Did he push violently?—Yes; and, when from the support of the other woman, he could not force her down, he commenced kicking her in a very violent passion.

Were the kicks repeated?—Yes; I cannot say how many times, but he kicked her pretty frequently.

Did he say any thing?—Yes; he went on d——g and cursing.

Do you recollect the expressions which he used?—No; there was such a volley of oaths, that I could not distinguish one word from another.



Did you hear or see any thing done or said to provoke him ?  
—Not in the smallest degree.

How did it end ? were there any other auxiliaries called in ?—I retired immediately.

Why did you retire ?—I did not wish to see such a scene. He cried on me repeatedly, and I came out once. He desired me again to bid them go away.—They replied that they would go, but not with such violence.

Was there any thing said about sending for the police ?—Mr Gilfillan ordered me to go for the police to take them to the police office.

Did you do this ?—I did. I went and met with two policemen, and waved on them to come up immediately and take two women into custody. One of them came and one met the women coming down. There was another man who was acquainted with the officer, as he had occasion to come to Mr Gilfillan, and told him to take no more notice of it, as the women were ill used. He said he had no controul over these things, but that the other man had.

What happened when you met the women ?—I said these are the two women. They went away with the policeman, and I went away back to the office.

You mean distinctly, that besides the violent push, that various kicks of the foot were given violently and passionately ?—Yes.

Did you know at this time that he was a Commissioner of Police ?—Yes it was from that impression that I did not wish to interfere, and that he might act himself.

*Dr Corkindale* examined.—You are a medical man in Glasgow ? Yes.

Do you remember in July last of being sent for to examine the person of Mrs Finlayson ?—Yes.

At what time was this ?—On Monday the 12th of July.

Did you understand what the nature of the injury was ?—I was told she had got some blows.

Did you examine her ?—Yes.



Were there any marks of violence upon her?—Yes.

Where?—On the upper and outer part of both thighs there were some marks very black, about the breadth of my hands; they were swollen and discoloured.

Did these appearances correspond with what would have been produced by violent kicks?—Yes.

Am I right in giving the word *violent*?

I do not know—but they might be said to be violent kicks.

You could judge that they were not recently given?

I saw they were not recent.

Of course they would have been more conspicuous, and have greater appearances of harm?

I think so. They were certainly accompanied by great pain at the time.

Cross-examined by Mr Cockburn.—Did you conceive her to be in any danger? No.

Did you prescribe for her? No I did not think it necessary.

Could she work?

Hard work would have been improper; but in the state in which I saw her, she would not be hindered from ordinary work more than a day or so.

Did she say that any body sent her to you? No at that time. She called on me two or three days after, and said her man of business had sent her to show the progress of the injury.

By Mr Jeffrey.—It was going off then was it? Yes.

Mr Jeffrey stated that he was inclined to end the case here, but he was entitled to ask his learned friend if he meant to bring any evidence to show that there was a conspiracy?

Mr Cockburn said he did not.

—Mr COCKBURN.—My Lord and Gentlemen, I don't intend to lay any evidence before you, and shall not detain you five minutes. The only question before you, is, what damages



you are to give. I must tell you candidly that you must give damages, and it is completely a question for a Jury to say, what is the sum to be given. You are to assume no contradiction between me and my learned friend as to the evidence. It appears the pursuer went up a common stair, and stood in the lobby. She came there, apparently for a very important purpose, and not giving the smallest offence. I presume my client was plagued at the time, by people coming pestering his office in that way; but he was certainly quite wrong in doing what he did. She had a child in her arms; but this is not a very material circumstance. There is no difference of opinion between us as to this. He cannot state in stronger terms than I do, that it is doubly unmanly to lift a hand or foot to a female in this situation.—I perfectly go along with the pursuer, that it was extremely improper; but then that is no reason why the pursuer is to run away with the harrows altogether, and make a case out of it, that is not in it. With regard to the language, there are two expressions put into his lips, the second of which (I do not wish to repeat) it is quite clearly disproved. Not one of the witnesses say he made use of that expression; with regard to the other words, they mean mere words of general abuse, and contain no particular defamatory abuse to any person. He would have used them, in the same sense, to his horse had he been irritated. You have been also told, that they were paraded through the streets in a very disagreeable way. I do not suppose it possible for any creature to be taken more gently to a police office than they were. They were half way to it before they were met by the officers. There was no great aggravation;—the case stands thus;—they came to the office; he lost his temper and abused them; and he certainly had the impropriety to inflict those kicks, and damages are due: but you have seen examples, all of you, in which men of good characters and good feelings, have all of a sudden lost their tempers, and have been guilty of acts of violence of this kind; but whenever a man falls into that condition, the moment he makes a pecuniary acknowledgement, that actually says he is wrong. He tendered the sum



of twenty pounds, besides all costs : and previous to this, you heard that he was fined for breach of the peace, five pounds, and he offers twenty more ; and the woman herself seems satisfied ; and we find from the testimony of one of the witnesses, that she did not expect one penny. Now I infer from that statement, that if the woman had been left to herself she would have taken the compensation ; this, however, does not hinder you from making the sum larger or smaller, if you think fit. I refer merely to it, to shew that he made an offer, which was a very fair one. He loses his temper and gives a number of severe kicks ; this did not seem to hinder her from her occupation. It is stated that she was a woman in the lower rank of life, and this was an aggravation. I do not sympathise with this at all. The highest Nobleman disgraces himself, should he kick the lowest beggar in the kingdom, but you will certainly agree with me, that, to give a kick to her was not so gross an offence as it would be to kick a person in a higher rank of life. I admit her being a married woman, discharging her duties respectfully to her husband and family, but was this woman bound to take or get more than twenty pounds. My opinion is, that she came before this Court plainly for the purpose of exposing him, and not to get reparation. This is not an action to punish Mr Gilfillan. He has been punished already. What has she suffered more from his being a Writer or a Commissioner of Police ? All these things, which are considerations against the propriety of his conduct, and might be good grounds for removing him from the board, do not add one bit to her injury. So I repeat again, that it is a very frivolous case. He loses his temper, and kicks a person in the lower ranks of life ; he is fined in five pounds ; and, conscious of his fault, offers twenty pounds more ; there seems to be somebody also that expects to get more ; you are not hindered from giving more or giving less, but I repeat that his offer was a liberal one. If this case had not been brought here, and if the offer of remitting it to any man with the



feelings of a gentleman, had been accepted, I have considerable doubts if twenty pounds would have been given; but the question being merely one of reparation, you are not bound to give more than twenty pounds in any view whatever.

Lord PITMILLY.—After the very plain and clear statement you have heard, you must have an impression fully stronger in your minds than my reading over the evidence, which I shall dispense with; besides it is not my duty to read the evidence to you, because the only question is one as to the amount of damages, and this is one of that description most proper for a Jury, and with which it is not right for the Court to interfere, except in case of excess; and I see no danger of you going to any excess in this case, when I attend to the evidence and to the respectable gentlemen that form the Jury. It is for you to say what the amount of these damages should be. You have only three witnesses examined; you have the extent of the injury proved by Mrs M'Lauchlan and Mr M'Intyre, therefore you have the whole transaction by the very best witnesses in such a case, and the pursuer's Counsel deserves great credit for not embarrassing you with any evidence but what was necessary to make you acquainted with the facts, and Dr Corkindale, a most respectable medical practitioner, and a most cautious witness, has stated to you the nature and extent of the injury. It is for you, then, who know the rank of life in which Mr Gilfillan walks, and the rank in which the pursuer walks, to estimate what will be the amount of the damages. You will not go too high nor too low, as it did appear, from the cross-examination of Dr Corkindale, that the pursuer suffered no great damage to prevent her from doing the ordinary duties of domestic work; at the same time she was improperly treated, kicked, and bruised, and sent to the Police Office. It is true that he injured the peace of the country, but this does not in the smallest degree interfere with the question: for this he has already been punished. Mr Gilfillan deserves



some credit for having offered twenty pounds by way of compensation, but whether you should go beyond this, or fall short of it, I should think myself erring if I should give any opinion on it, so turn about and converse together, and decide the question.

The Jury, after consulting a few minutes, requested leave to retire, and after an absence of about five minutes, returned with a verdict of forty-five pounds damages on all the issues.

Counsel for the pursuer:—Francis Jeffrey, and Alexander M'Neill. Agents:—James Gemmell, Edinburgh, Alexander Ure, Glasgow.

Counsel for the defenders:—Henry Cockburn, and Alexander Eari Monteith. Agents:—A. P. Henderson, Edinburgh, Alexander Morrison, Glasgow, William Richardson, Glasgow.