

THE CASE OF DR. MEMIS  
v.  
MANAGERS OF ABERDEEN  
ROYAL INFIRMARY

With reference to Boswell's *Life of Johnson* and with new material concerning the case from Boswell's *Legal Diary* and the Minutes of the Aberdeen Royal Infirmary.\*

by

ALEXANDER LYALL

The Sunday evening (22nd August 1773) that we sat by ourselves at Aberdeen, I asked him several particulars of his life; and wrote them down before him. This day, (14th October 1773) I proceeded on my enquiries, also writing them in his presence. I have them on detached sheets. I shall collect authentic materials for the Life of Samuel Johnson, L.L.D.; and, if I survive him, I shall be one who will most faithfully do honour to his memory.<sup>1</sup>

It would seem that the first concrete determination to write the *Life of Dr. Samuel Johnson* was taken by Boswell when he was in Aberdeen on the occasion of his hero's admission to the Freedom of the City. This, in its turn, had some connection with the story of John Memis, M.D., a doctor practising in Aberdeen at this time, who achieved a type of literary immortality by being embalmed in the great biography. For, two years later, in 1775, when Boswell was involved in the action and in defence of the board of directors of the Aberdeen Royal Infirmary, he wrote to Dr. Johnson asking his opinion on a weighty matter of medical etiquette, using the argument that he hoped the learned doctor would acquiesce to his request since Provost Jopp, who had conferred the Freedom of the City in person upon Dr. Johnson, was one of the defendants in the action.

The interest aroused in these references contained in Boswell, their associations with the early history of the Aberdeen Royal Infirmary, and their relations with personages intimately connected with the early days of the Aberdeen Medico-Chirurgical Society, all constituted compelling reasons for attempting to discover more of the details regarding this peculiar story.

The story commences on 21 January 1766, with the record in the Minute Book of the Aberdeen Infirmary, when there were present, Mr. Forbes, Mr. Strachan Keith, Mr. Still, Dr. Forbes, Dr. Rose, Dr. Memis, Dr. Livingston, and Dr. Robertson.

The Treasurer reports to have received £25 sterling as a donation from Dr. Memis for the use of the Infirmary; in consideration whereof, the Committee appoint him to be added to the List of Managers.

\* Presidential address to the Aberdeen Medico-Chirurgical Society, October, 1957.

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Dr. Memis immediately took an active interest in the affairs of the Infirmary, and attended the meetings of the managers. They seemed to take the chair at meetings in turn, and we find Dr. Memis as chairman of the meeting of directors on 25 February 1766. We find his signature on this occasion, and again as chairman of a meeting on 8 July 1766. It would appear that Dr. Memis was assiduous in his duties as manager, for within a little more than a year of his appointment—17 February 1767—his activity brings him into conflict with his fellow managers.

There would seem to be little doubt that Dr. Memis was misguided in the action he had taken in that he appealed to external authorities before putting his criticisms before his colleagues. But, on the other hand, it also appears that they were already sensible of his criticism, and may have turned a deaf ear to his unofficial entreaty.

The minute reads as follows:

February 17th, 1767.

Whereas it has been represented to the Committee by Dr. Livingston that the information has been wrote to Edinburgh by Dr. Memis, wherein he disapproved very much of the General Dyet for this Infirmary, which was unanimously approved by all the other Physicians in this place who gave their attention to the affairs of the Infirmary. As Dr. Memis had formerly thrown out many reflections extremely ill-founded and very prejudicial to the interests of the Infirmary, and to the characters of the Physicians in ordinary, and as he has communicated his sentiments to a Gentleman of reputation in Edinburgh who looked on the latter with great contempt, it is humbly submitted by the Committee to the first General Meeting to consider whether Dr. Memis deserves to be expelled, or continued as a Director of the Infirmary.

WILL CHALMERS, *Proses.*

It was evidently tacitly agreed not to pursue this matter of discipline further. No later reference to this disciplinary measure occurs in the minutes, and the name of Dr. Memis remains in the list of perpetual managers from year to year.

But the seeds were sown and the harvest is yet to come.

There would appear to be a further cause of resentment against Dr. Memis on the part of his colleagues, and possibly also on the part of his Alma Mater: for Dr. Memis had written a book on midwifery entitled *The Midwife's Pocket Companion* which was published in London in 1765. It was a small volume of 234 pages by John Memis, D.M., of Marischal College, Aberdeen. The *London Chronicle* of Tuesday, 9 April, contained the following advertisement:

In a few days will be published (Beautifully printed on a fine paper, price 2/6 bound) THE MIDWIFE'S POCKET COMPANION: OR, A Practical Treatise of Midwifery on a New Plan. Containing full and plain Directions for the Management and Delivery of Child-bearing Women in the different cases, and the Cure of the several Diseases incident to them and new-born Children, in the safest Manner, and according to the best Improvements. Adapted to the use of the Female as well as the Male Practitioner in that Art. In three Parts.

By JOHN MEMIS, D.M.

of Marischal College, Aberdeen.

Printed for Edward and Charles Dilly, in the Poultry, near the Mansion House: and sold by all Booksellers in Great Britain and Ireland.

N.B. This Book is calculated for general Utility in the Art of Midwifery, and is a sufficient Instructor of itself, and very necessary to be consulted by all married Persons.

The advertisement announcing the appearance of Dr. Memis' book was repeated in the *Chronicle* on Saturday, 20 April 1765. The wording was identical except that it began 'This day was published'. There were subsequent insertions in later editions of the *Chronicle*.

The volume was dedicated to Dr. Thomas Young, Physician and Professor of Midwifery in the University of Edinburgh, from whom Dr. Memis had received instruction in midwifery, 'not doubting but it will meet with your kind approbation'. There is no record of any candid approbation on the part of Professor Young. Nevertheless, Memis had obviously been stimulated by his teacher, Professor Young, who was the third Professor of Midwifery in the University of Edinburgh, holding the chair from 1756 until 1780. He was the first in Edinburgh to give regular courses in midwifery to medical students, and it was through his exertions that a lying-in ward was opened in the attic of the Royal Infirmary. It was fitted up at Dr. Young's expense for four lying-in women, or as many more as Dr. Young could accommodate. Those in excess of four had to pay sixpence a day. It is recorded by Herbert Spencer<sup>2</sup> that puerperal fever occurred in the ward in 1773-4. All the six patients affected died. The ward was closed for two weeks, washed and disinfected by burning gunpowder, and no further cases occurred.

It would appear that Memis had already been giving a class of instruction in midwifery to pupil midwives. This was rather an innovation at that time, and Memis was bold enough to write in his preface:

Women for some time past, have been regularly instructed in this art by physicians and surgeons in many parts of Great Britain; and being lately engaged in the same way, we soon found it needful to bring the latest and best practice into a small compass and make it intelligible to female pupils.

His book was thus adapted to the use of the female, as well as the male practitioner in that art, and it is possible that Memis was the first to attempt the systematic teaching of midwifery in Aberdeen.

However, the publication of this book caused resentment at Aberdeen, and this culminated in an announcement in the *London Chronicle* of Tuesday, 7 May 1765:

To the Printer of the *London Chronicle*. Whereas an Advertisement appeared in your paper, in which John Memis stiles himself M.D. of Marischal College, Aberdeen, it is judged proper to inform the Public, in order to prevent Imposition, that the said John Memis has no Degree of Medicine from Marischal College; and that, when he lately made application for a Degree, it was absolutely and unanimously refused by the University.

ALEX. DONALDSON, M.P.  
in the Marischal College of Aberdeen.

ABERDEEN, April, 26th, 1765.

I have made a search for evidence of this application and for the subsequent refusal, but have failed to find any. I am indebted to Dr. Douglas Simpson for the information that John Memis attended Marischal College from 1734-8,

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taking the degree of M.A. in the latter year. He was described as a guild brother, and the son of Robert Memess, wheelwright burgess.

There is, however, no doubt that John Memis did obtain the degree of M.D. from St. Andrew's University on 6 May 1765. He was recommended by two colleagues in Aberdeen, James Forbes, M.D., and Andrew Burnett, M.D., in a testimonial dated 17 August 1764, which may have been already presented to his Alma Mater, and for some reason not sustained by the University of Aberdeen.

To all learned men whom it may concern

#### *Greeting*

We, the undersigned, Doctors of Medicine, in as much as John Memis, Surgeon at Aberdeen, intends to publish a book on Medico-surgery, and believe that a Medical Certificate would be useful for the greater success of that book, testify that he applied himself to the study of Greek Literature, Natural Philosophy, and Mathematics, at Marischal College, Aberdeen, and of Anatomy, Surgery, and obstetrics, under the auspices of the most learned Professors (especially the great Munroe), in the University of Edinburgh; and also, that he has now for more than twenty years practised Medicine with great honour and success; so much so that he is equipped with all the qualifications for obtaining the Degree of Doctor.

JAMES FORBES M.D.

ANDREW BURNETT M.D.

Aberdeen, 1764.

Dr. Memis enlisted the aid of Principal Thomas Tullideph in support of his application for the degree of M.D.

Principal Tullideph writes as follows:

To: The Very Reverend Mr. James Murison, Principal of the New College, and Rector of the University of St. Andrews.

Kilmux 25th April, 1765.

Reverend Sir,

Last night I had a letter from the Reverend Mr. Thomas Oswald at London, Desiring the Degree of Doctor of Medicine to Mr. John Memis, on the enclosed Testimony in his favour.

Mr. Oswald adds that Mr. Memis is not Master of Arts, and that therefore if the University is pleased to confer this Degree on him, the full dues are to be charged, and that they shall be paid at London as the University shall direct as soon as he is informed that the Degree is granted, and that Mr. Memis, who is now in London, has a Book on Midwifery in the Press, and is Desirous to have this Degree before it is published, and wished to have it from our University.

I beg the favour you will please to lay this before the University and if they grant this request, you will direct Mr. Adamson to send the Diploma to me, with a note of the full Charge and where it is to be paid at London, either by John Dick or by Express if John goes not over, and I shall send it off. But Mr. Adamson is not to Seal the Cover as I have a Letter to put into it. If Mr. [illegible] needs money in London, this will save him Exchange.

I am,

Reverend Sir,

Your most humble Servant,

THO: TULLIDEPH.

But even in this instance Memis is delayed in his application by an accident outwith his control, for John Dick, the college post, was unreliable and failed to collect the above letter. It is recorded by Mr. J. B. Salmond, M.A., LL.D.,

*Alexander Lyall*

Keeper of the Muniments at the University of St. Andrews, that John Dick was dismissed at the end of 1765.

On learning of this contretemps, Principal Tullideph sent another letter to Principal Murison:

To: The very Reverend Mr. James Murison, Principal of The New College, St. Andrews.

Kilmux 9th May, 1765.

Reverend Sir,

Last week I received a Letter from the Reverend Mr. Oswald at London, Desiring the Degrees of Doctor of Medicine to one Mr. Memis of Aberdeen, now at London. This I signified to you in a Letter I wrote you about ten days ago, wherein I enclosed a Certificate in favour of Mr. Memis by two Physicians in Aberdeen, and sent my letter to a house in Pitlessis where John Dick knows my Letters for him are usually left, but both he and his servant thought fit to go by without calling for it. Nor was it discovered that it had not been sent to you till Thursday last, when Mr. Hutton I understand, sent it into the Post Office at Cupar. to be from thence forwarded to you.

This I am sensible has put you to an unreasonable Expense, but though John Dick is to be blamed, if the University's pleased to grant that Degree, please direct Mr. Adamson to add your postage to the dues of the Diploma. The University will no doubt take care to get the money at St. Andrews, and the person who gives it may expect immediate payment at London. As I find I cannot longer trust to John Dick's Care, it will be necessary that an Express be sent me with the Diploma, if granted, the expense of which Mr. Adamson will also add as above, if it is not ready to come out with the Bearer.

Reverend Sir,

I am with great respect,

Your most humble Servant,

THO: TULLIDEPH.

The analysis of the chronological detail shows that Dr. Memis had indeed applied for the Doctorate at Aberdeen probably in 1764. He went up to London to supervise the publication of his book, and practically at the same time made application for the Doctorate from St. Andrews. The Rev. Mr. Thomas Oswald had written to Principal Tullideph before 25 April 1765, and further steps took until 6 May 1765, before the Doctorate was conferred. The book appeared on 20 April 1765. Dr. Memis had already received his degree before the announcement by Alex. Donaldson, M.P., from Marischal College, appeared on 9 May.

We can now review the story up to this point. We see Dr. Memis aged about forty-seven years in 1767, a member of the board of the Aberdeen Infirmary, a Doctor of Medicine of St. Andrews, a medical practitioner of some twenty years experience, a teacher of midwifery, and the author of a textbook on midwifery.

As a member of the board, he was antagonistic to his fellow-members with the exception perhaps, of Dr. Andrew Burnett and Dr. James Forbes, who had been his sponsors in 1764 for the Doctorate. The majority of the members of the board reciprocated this antagonism. He had committed the unpardonable sin of publishing abroad his criticisms in another city. His fellow members contemplated his expulsion from their midst.

Much of the sequel can be transcribed directly from the minutes of the

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Infirmary, and it is concerned with the application for a Royal Charter for the Infirmary. The first steps to this end were taken on 30 May 1770, and the charter was granted by George the Third at St. James's, 31 March 1773.

*May 30th, 1770. Report about a Charter.*

It having been observed to this Committee appointed by the last General Meeting, that the Governors of Robert Gordon's Hospital had taken first Council at Edinburgh whether they were a Legal Corporation capable of giving and taking Security for their Subjects Heritable and Moveable, and that their Council had given very doubtful answers to the Memorial. The Committee, therefore, thinks it unnecessary to consult Lawyers on the question referred by the General Meeting to them. But as the Royal Infirmary at Edinburgh did apply by Petition to the late King for a Charter establishing them into a body corporate which was granted, and as this Committee, also informed that the Governors of Robert Gordon's Hospital propose to apply to the King for a Charter electing them into a Corporation, therefore it is unanimously the opinion of this Committee that the Directors of the Infirmary should resolve to make immediate application for a Royal Charter to them and their successors in office, Directors of the Infirmary in Aberdeen for the time being, and that they should name a Committee of their number for carrying the same into execution.

(Sgd) JOHN AULDJO,  
*President.*

At the general meeting of the board, 6 July 1770, this proposal is approved.

In the minutes of the Infirmary, no fewer than twenty-three entries occur anent the steps taken to obtain the charter between the dates 30 May 1770, and 3 November 1773. There was some difficulty as usual, in these matters, in stimulating or stinging the officials into action. The text of the petition made by the Infirmary of Edinburgh was obtained and examined. The petition was signed in 1772. On 9 March 1773, £100 was given to Provost Jopp, to be remitted to London to defray expenses of the charter, already amounting to £146 4s. 4d. Further expenses to the amount of £65 11s. 7d. were incurred in Edinburgh.

A clear copy of the charter in Latin with a translation in English supervised by Principal Campbell was made, and it was decided to print 500 copies, on 20 September 1773.

Of this document only one copy is known to exist. This copy was discovered amongst the collected papers of John Anderson, journalist, in the Aberdeen Public Library.

In the introductory paragraph the persons founding the corporate body are named:

### TRANSLATION

We, by the tenor of these presents, give, appoint and nominate, the provost, four baillies, dean of guild and treasurer, the provost of the preceding year, the town clerk and the convener of the trades, all the said city of Aberdeen for the time being; the professor of medicine in the Marischal College of Aberdeen for the time; the Moderator of the Synod of Aberdeen for the time; and the persons following during their respective lives, viz:

Alexander Thomson of Banchory, Esq.

John Irvine, Esq.

George Still, John Ross and Alexander Westland, Merchants in Aberdeen.

George Strachan Keith, of Auquhorst, Esq.

JOHN MEMIS, Doctor of Medicine in Aberdeen, and

*Alexander Lyall*

David Bartlett, Advocate in Aberdeen.

all contributors to the above charity.

[Dr. Memis is mentioned by name three times in the Charter.]

*Page 2.*

Joannem MEMIS, MEDICINAE DOCTOREM IN ABERDEEN. (Accusative case)

*Translated:* John Memis, doctor of medicine in Aberdeen.

*Page 4.*

Joannem MEMIS, medicinae doctorem. (Accusative case)

*Translated:* John Memis, doctor of medicine.

In addition, on p. 8, the fourteen managers elected annually are designated:

Ex sequentibus professionibus et virorum corporibus intra civitatem Aberdoniae semper eligantur et assumantur, viz: unus Aberdoniae ministrorum ecclesiae stabilitae unus ex administraloribus pecuniae collatae ad pius usus apud sancti Pauli alessiam in civitate Aberdoniae duo medicine doctores in Aberdonia residentes unus es societate naviculorum ibidem.

*This is translated:*

‘Two of the physicians residing in Aberdeen.’

(Two doctors of medicine residing in Aberdeen should be the translation).

It is important to note that the two doctors who were already on the board and on the staff were Dr. Thomas Livingstone and Dr. Alexander Robertson.

Thus the translation of: ‘*duo medicinae doctores in Aberdonia residentes*’ rendered ‘two physicians residing in Aberdeen’ instead of ‘two doctors of medicine residing in Aberdeen’ which was in fact the literal translation, applied as all well knew to these gentlemen named above.

GENERAL MEETING

*3rd November, 1773.*

Dr. Memis, David Gordon, Mr. Strachan Keith, etc. Provost Jopp.

*Dr. Memis appeared* and presented to the meeting that the part of the Charter where his name is first mentioned is wrong translated. The clause in the chapter referred to is in the original in these words at the end of the second page, ‘Joannem Memis, Medicinae doctorem in Aberdonia’ and the translation on the opposite page is, ‘John Memis, doctor of medicine in Aberdeen’. Dr. Memis insisted the clause should have been rendered Dr. John Memis, Physician in Aberdeen. The sense of the meeting having been collected by the Process it was found unanimously that the clause was literally and justly translated and therefore dismissed the complaint as groundless and the Committee who were appointed to translate the Charter having formerly reported that they had given a clear and correct coppie thereof to be printed this meeting did approve and thereby approves of the said translation as true and genuine according to the printed coppie which is now laid before them by Mr. Strachan Keith and unanimously approved by this general meeting and appointed to be put up in the Charter Chest and the thanks of the meeting to be returned to him and the other members of the Committee for their trouble in translating and revising the Charter.

The records give no clue as to the immediate steps taken by Dr. Memis to start an action against Provost Jopp and the managers, nor by the latter to defend any such action. According to Mr. N. J. J. Walker,<sup>3</sup> the board may have acted through their local law agents. The firm of Lachlan, Mackinnon & Son performed this function for many years, and it may have been this firm

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or predecessor. In any case, Mr. Scott of Edinburgh took up the case in their defence. Mr. Walker thinks it is not unlikely that the Mr. Scott referred to was the father of Sir Walter Scott, who is known to have acted as agent for the Aberdeen Town Council. Mr. Scott, as the correspondent in Edinburgh, probably suggested Boswell as counsel in the case.

At this time, Boswell was thirty-five years of age. He was called to the Bar in 1766, and kept a consultation book carefully until 1772, when his fees increased to two hundred and seven guineas. According to T. B. Simpson<sup>4</sup> 'in Boswell's triple occupation of Law, Literature and Dissipation, Law took a considerable share of his activities in his earlier years'.

Boswell wrote to Dr. Johnson about the case in the first instance on 19 January 1775.<sup>5</sup>

19th January, 1775.

But I am now to apply to you for immediate aid in my profession, which you have never refused to grant when I requested it. I enclose you a petition for Dr. Memis, a physician in Aberdeen, in which Sir John Dalrymple has exerted his talents, and which I am to answer as Counsel for the Managers of the Royal Infirmary in that City. Mr. Jopp, the Provost, who delivered to you your freedom, is one of my clients, and *as a citizen of Aberdeen*, you will support him.

The fact is shortly this. In a translation of the Charter of the Infirmary from Latin into English, made under the authority of the Managers, the same phrase in the original is in one place rendered *Physician*, but when applied to Dr. Memis is rendered *Doctor of Medicine*. Dr. Memis complained of this before the translation was printed, but was not indulged with having it altered; and he has brought an action for damages, on account of a supposed injury, and if the designation given to him was an inferior one, tending to make it be supposed he is *not a physician*, and, consequently, to hurt his practice. My father has dismissed the action as groundless, and now he has appealed to the whole of the court.

It would thus appear that the action had failed and been dismissed by Lord Auchinlech as groundless.

Presumably by this date (19 January 1775) the plea by Dr. Memis had already been considered before Lord Auchinlech, but no record of this exists. It is unfortunate that the record of the case enclosed by Boswell is not extant.

Dr. Johnson replied to Boswell on 7 February 1775, having just written to his friend and physician, Dr. Lawrence, President of the Royal College of Physicians, in the following terms:<sup>6</sup>

February 7th, 1775.

Sir,

One of the Scotch physicians is now prosecuting a corporation that in some publick instrument have stiled him *Doctor of Medicine* instead of *Physician*. Boswell desires, being advocate for the corporation, to know whether *Doctor of Medicine* is not a legitimate title, and whether it may be considered as a disadvantageous distinction. I am to write tonight; be pleased to tell me.

I am, Sir, your most, etc.,

SAM JOHNSON.

He then writes to Boswell:

February 7th, 1775.

Dr. Memis's question is so narrow as to follow no speculation; and I have no facts before me but those which his advocate has produced against you.

*Alexander Lyall*

I consulted this morning, the President of the London College of Physicians, who says that with us, *Doctor of Physick* (we do not say *Doctor of Medicine*) is the highest title that a practitioner of physick can have, that *Doctor* implies not only *Physician*, but a teacher of physick; that every *Doctor* is legally a *Physician*: but no man, not a doctor, can practise physick but by licence particularly granted. The Doctorate is a licence of itself. It seems to us a very slender cause of prosecution.

There was no further correspondence between Boswell and Johnson on the matter, but the Doctor had considered the case, so that when:<sup>7</sup>

On Saturday, the 6th May, we dined by ourselves at the Mitre, and he dictated to me what follows:

There are but two reasons for which a physician can decline the title of DOCTOR OF MEDICINE, because he supposes himself disgraced by the doctorship, or supposes the doctorship disgraced by himself. To be disgraced by a title which he shares in common with every illustrious name of his profession, with Boerhaave, with Arbuthnot, and with Cullen, can surely diminish no man's reputation. It is, I suppose, to the doctorate from which he shrinks, that he holds his rights of practising physic. A doctor of medicine is a physician under the protection of the laws, and by the stamp of authority. The physician who is not a doctor, usurps a profession, and is authorised only by himself to decide upon health and sickness, and life and death. That this gentleman is a Doctor, his diploma makes evident; a diploma not obtruded upon him, but obtained by solicitation, and for which fees were paid. With what countenance any man can refuse this title which he has either begged or bought, is not easily discovered.

All verbal injury must comprise in it either some false position or some unnecessary declaration of defamatory truth. That in calling him doctor, a false appellation was given him, he himself will not pretend, who at the same time that he complains of the title would be offended if we supposed him to be not a doctor. If the title of Doctor be a defamatory truth, it is time to dissolve our colleagues; for why should the public give salaries to men whose approbation is reproach? It may likewise deserve the notice of the public to consider what help can be given to the professors of physic, who all share with this unhappy gentleman the ignominious appellation, and of whom the very boys in the street are not afraid to say 'There goes the Doctor'.

What is implied by the term Doctor is well known. It distinguishes him to whom it is granted, as a man who has attained such knowledge of his profession as qualifies him to instruct others. A Doctor of Law is a man who can form lawyers by his precepts. A Doctor of Medicine is a man who can teach the Art of curing diseases. This is an old axiom which no man has yet thought fit to deny. Nil dat quod non habet. Upon this principle, to be Doctor implies skill, for nemo docet quod non didicit. In England, whoever practises physic, not being a Doctor, must practice by a License; but the Doctorate conveys a license in itself.

By what accident it happened that he and the other physicians were mentioned in different terms, where the terms themselves were equivalent, or where, in effect, that which was applied to him was the most honourable, perhaps they who wrote the paper cannot remember. Had they expected a lawsuit to have been the consequence of such petty variation, I hope they would have avoided it. But, probably, as they meant no ill, they suspected no danger, and therefore, consulted only what appeared to them propriety or convenience.

Boswell adds: 'In justice to Dr. Memis, though I was against him as an advocate, I must mention that he objected to the variation very earnestly, before the translation was printed off.'

But Dr. Memis obviously did proceed with his case for, at a general meeting of the board, on 3 August 1775, steps were taken to appoint a committee consisting of Mr. George Moir, of Scotstoun, Provost Jopp, Mr. Strachan Keith and Mr. Thom, to continue proceedings under instruction from Mr. Scott, and

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to order a commission of proof. The appointment of this committee was continued at the general meeting on 18 September 1775. Expenses were incurred by Mr. Strachan Keith to the extent of £9, and the treasurer was ordered to reimburse him at the general meeting on 4 January 1775.

Provost Jopp, Dr. Livingstone, Dr. Robertson, Mr. Strachan Keith, Councillor Davidson, David Gordon, Dr. Robertson, and George Still having had laid before this meeting the state of a Process commenced by Dr. Memis against them and others in the management of this house before the Court of Session concluding against them for high damages under the pretence of their having injured him in his professional character, by their being accessory in improperly translating his designation from the latin in the original Charter of Incorporation from the King to this house and publishing the same, the particulars of which may be seen in the Minute of November, 3rd, 1773, and having also laid before them a letter from Mr. *Scott* of Edinburgh, the agent employed in their defence informing that the Court had allowed Dr. Memis a proof at large of all the facts founded on by him and also granting probation to the defenders to be reported first on 12th November next. The meeting after due deliberation was of opinion unanimously that it imports the credit of the house and of its Managers that due attention be paid to this affair and for that purpose they hereby named Mr. George Moir of Scotstown, Provost Jopp, Mr. Strachan Keith and Dr. Thom as a committee of their number to consider the state of this uncommon process, recommending to them to correspond with Mr. *Scott* on this subject for their instruction and information and if they find it necessary, empowering them to order a commission for the Proof to be extracted and to attend to the conducting of the same that all the facts introduced into the question may be clearly and properly explained and ascertained for the judgement of the Court for which purpose they are hereby invested with full powers from the meeting and to all which it is expected they will pay due attention.  
*General Meeting, January 4th, 1776.*

The meeting authorised their treasurer to pay to Mr. George Strachan Keith what money he had expended in managing and corresponding about Dr. Memis, process amounting at this date to £9 4s. 7d. sterling, and to charge the same on his account of incidental necessary expenses.

The actual hearing of the case was on 12 July 1776, and a full description is given in the *Decisions of the Court of Session*.<sup>8</sup>

Boswell was associated with A. Murray for the Infirmary of Aberdeen, while David Rae (later Lord Eskgrove), Henry Erskine and John Dalrymple were counsel for Dr. Memis.

The action was sustained for giving a designation to a professional man, alleged to be degrading.

In the hearing of the case, the pursuer averred that, *before bringing the action*, while the charter was in press, he had warned the defenders of the injury about to be done to him, and had obtained and intimated to them the opinion of Principal Campbell, that the term *Medicinae Doctor* ought to have been translated in a similar manner throughout the charter—yet they had resolutely persisted in their attempt to injure him.

It was further urged by the pursuer, that not only his professional honour, but his future, had been affected:

the emoluments of a physician arise from the belief in the public that he is a physician. Strip him of that title, in the eyes of the public, and his emolument ceases.

*Alexander Lyall*

In the answer, the defenders disclaimed all intention to give offence, and were at a loss how to treat so very singular and ludicrous a case.

To laugh were want of decency and grace  
And to be grave, exceeds all power of face.

The defenders pleaded that Doctor of Medicine is an appellation equally creditable with that of Physician, and equally applied as a *VOX SIGNATA* to gentlemen who profess the healing art. Had the pursuer been designed *SURGEON* or *APOTHECARY*, he might have had reason to complain. Every privilege and every pecuniary advantage attendant on the title of Physician equally belonged to a gentleman who is designed Doctor of Medicine.

The possession of his St. Andrew's degree conferred professional immunity. Scotland, it was said in ridicule,

Blest land, where Ladies, Lords and Lairds abound,  
And *DOCTORSHIPS* are sold out by the pound.

But this satire did not apply to the University of Aberdeen. The pursuer did not obtain his degree there, but, on the contrary, was refused one when he applied for it.

A voluminous proof followed, the import of which was stated in long and elaborate memorials, in which an uncommon degree of ingenuity was displayed on both sides. The pursuer ultimately failed of making out his case, and the defenders were assoilzied.

Act. Dav. Rae, H. Erskine,  
John Dalrymple.

Alt. A. Murray, Jas. Boswell,  
W.M.M.

W.M.M., who edits the *Decisions*, points out that this report, while it elucidates the principle of the law, that a complaint will be listened to, when there is barely the *possibility* that an injury has been committed—and the matter will be patiently investigated—at the same time exhibits a striking instance of the impropriety of allowing *proofs at large* before answer. Here a tedious litigation substituted for several years, at an enormous expense, which might have been greatly diminished, by circumscribing the proof to such articles only as were relevant.

So far as is known, the only detailed account of the case is given by J. H. Lloyd<sup>9</sup> where he refers to the *Decisions of the Court of Session, 1775–7*, as his authority.

The detailed arguments in the action on 12 July 1776, did not appear until 1930, when notes in Boswell's own hand were discovered amongst the papers in Fettercairn House. These were examined and annotated by Professor C. C. Abbott,<sup>10</sup> then Lecturer in English at the University of Aberdeen, and later Professor of English at the University of Durham. His assistant and collaborator in the work was Alexander MacDonald, M.A., now Professor of Bacteriology at the University of Aberdeen. I am indebted to Professor MacDonald who, in conversation, recollected that some of these papers referred to the Memis case. These documents had, in the meantime, been transferred to

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the Library of Yale University. Dr. Robert Metzdorf, Secretary to the Committee, Yale editions of James Boswell, kindly made available microfilm of the documents in question. These consisted of:

(a) Pages 18, 19, 20, of Boswell's day-book, not actually dated, but written prior to 26 July 1775, the date of the next entry. This date is difficult to correlate with any of the known hearings, but refers obviously to the earlier stages of the action, with Lord Kames as President.

(b) Pages 35 to 42 inclusive, of Boswell's day-book, containing his personal record of the action of 30 November 1776, with Lord Kames in the chair.

(c) Pages 70, 71 and 72 of the same legal diary containing the final stages of the action and the decision regarding expenses on 21 December 1776.

There are in addition, two letters from Sir John Pringle to Boswell giving opinions in the Memis action, from which it is only possible to quote shortly.<sup>11</sup>

London, 10th March, 1775.

Dear Sir,

I am two letters in your debt, besides the present you made me of your elaborate defence of the good people of Aberdeen. It was a pity the subject had not been of more consequence to do credit to so much good writing. But lest we should seem to Nonsigniorly one another let us leave off compliments, and suffer me to say in the way of promising myself, not you, that you still justify my prediction, when I told you, that whenever you should apply, you would make a distinguished figure at the bar.

I was glad to think I should see you in London, for 'tis very uncertain whether I shall cross the Tweed this year or not. Meanwhile be assured that I was happy in hearing of Mrs. Boswell's being well and in a fair way of making you *pater trium liberorum*. I hope that in a few months a dancing master will be no longer the presumptive heir of a certain apparent heir of a certain ancient lairdship. My warm compliments to Her.

I am, Dear Sir, most unfeignedly,  
Your affectionate friend  
and humble servant,  
JOHN PRINGLE.

London, 26th January, 1775.

Dear Sir,

Yesterday, for the first time in my life I had the honour to be consulted in a point of law in relation to the most extraordinary *Cause* I ever heard of, not excepting that of the pyeballed horses of Swift, the process concerning the puppies in Racine, nor those that have appeared at the bar of Mr. Foote in the Haymarket. I am sorry that it should have happened in our country, as it will ever rivet this character it has already got among its neighbours, of our love of Law and litigation, and going together by the ears upon the slightest pretences.

*Medicinae Doctor*: with submission to you, is as properly in English, as in Scotch, translated by *Doctor of Medicine*: nay more properly by *Doctor of Physic*; for though both are used, the former has more dignity, as being directly the interpretation of Latin expression. Where as *Physic* came from the Greek or Latin word *Physica* (in the latter, *res* or some such word understood) did not originally mean medicine in particular, but *natural knowledge* in general. In strictness therefore of language *Doctor of Physic* ought to impart *Doctor of Natural Knowledge*, or of a *Natural Philosophy*. And in fact the French always mean a Naturalist, when they call a man un phisicien and never a physician, for which they have no other term than Medicin.

If it be still objected that as *Medicine* sometimes signifies drugs only, a man may be affronted by being denominated *Doctor of Medicine*, as it might be interpreted *Doctor of Drugs*; but our very delicate brother ought to consider, that he will not be better off by being designed *Doctor*

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of *Physic*; since the last word (*Physic*) has still a lot more indelicate equivogne: it is the common expression, as you know, all over England, as well as Scotland, to signify a purge; hence *Doctor of Physic* may import a *Doctor of Purges*;

Till then adieu,  
JOHN PRINGLE.

It is obvious from the letters to Boswell on the Memis case, that Sir John Pringle was a scholar as well as doctor, soldier and campaigner. He shows considerable regard for Boswell's capacity as a lawyer, and took the matter sufficiently seriously to search the related texts in Celsus and Varro which bear on his opinion.

The court sat on 30 November 1776, with Lord Kames in the chair. Lords Kennet, Gardenston, Hailes, Auchinlech, Monboddo were present and gave opinions. The opinions of the court can be summarized as follows:

*Kennet*: Thought that there was no *animus injurandi* but thought that the defenders should have changed the translation on request. They were uncivil and obdurate. He would assoil and find expenses due.

*Gardenston*: Thought that there was wilful injury and that Dr. Memis was entitled to legal reparation. He sees his brother physicians were at war with him.

*Alva*: Men of humanity and integrity should have altered the translation. Right was on his side and expenses should fall on the members of the board as individuals.

*Hailes*: No injury intended and no injury done. If the board altered the translation, they admitted wrong. Finds Dr. Memis liable in expenses.

*Auchinlech*: Thinks Dr. Memis 'Wrong in the head'. Assoils defenders and expenses to Dr. Memis. Must discharge such actions.

*Monboddo*: Contradictory.

*Kames*: No *animus injurandi*. A petulant and wanton cause.

In the actual hearing of the case on 30 November 1776 with Lord Kames in the chair, Lord Gardenston and Lord Alva spoke strongly in favour of Dr. Memis.

*Gardenston*: I speak early as perhaps it may be singular that no impression on me. I must deliver as I have found it. After considering this cause over and over with great diffidence as I apprehended, singly, I am of opinion that there is injury here and he entitled to legal reparation. I can give no definition of injury but what is done to lessen. I think his insistence for his designation like the rest, not whimsical, and their refusal of this reasonable request is an injury. I can assign a reason. I see his brother physicians were at war with him, a great deal too much warmth and passion in their dispositions. I think it was a wilful wrong to refuse same designation as in original warrant of king and in charter. I do not enter into any disputation of language by speculative men. But everyone knows that Physician is the designation of a man high in the medical line: Doctor of Medicine not known. When his designation appeared different, people might doubt. I can assign no reason for refusal but peevishness. His asking it was not capricious but what he should have from a regard to his honour and

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reputation and what I should have insisted myself. It is the same as if Advocate, not others, designed Procurator. Yet in legal language, ancient especially, designation of Advocate. It is a wilful injury of which there are many varieties.

*Alva*: I own when this cause first came into court, I took it up much according to opinion first given in which the Interlocutor's Pronouncement had weight: but (I hope it was not prejudiced by very ingenious opinion), now different view. I do not think there was a premeditated scheme to injure by the translation. But I see from the beginning of the infirmary an unwillingness to have him amongst them, to have a grudge on their minds. The thing therefore at first was an accident—let us take him as a weak brother. But when he insisted, men of humanity, men of integrity, men who put first value on their characters, should have done what was so easy. It was touching him to the quick on a sore heel. It was taken fresh. He was supported in his demand by a king's warrant. However trifling, people's right can make them good. Therefore, he had ground for this process and ought to have small reparation. Damage small, but we should have interlocuted that they did wrong and let the expenses fall on them as individuals.

The further entry in Boswell's *Legal Diary* concerns the decision as to expenses of the court on 21 December 1776. The President, after hearing the views of Gardenston, Kames, Alva, Auchinlech, deciding for £40 in expenses to be paid by Dr. Memis.

On 14 February 1777, Boswell again wrote to Dr. Johnson to acquaint him of the result of the action.<sup>12</sup>

Dr. Memis's cause was determined against him with £40 costs. The Lord President, and two other of the judges, dissented from the majority, upon this ground; and although there may have been no intention to injure him by calling him *Doctor of Medicine*, instead of *Physician*, yet, as he remonstrated against the designation before the charter was printed off, and represented that it was disagreeable, and even hurtful to him, it was ill-natured to refuse to alter it, and let him have the designation to which he was certainly entitled. My own opinion is that our court has judged wrong. The defendants were *in mala fide*, to persist in naming him in a way that he disliked.

The board of managers acted quickly to recover damages. They held a special meeting on 9 January 1777 and again on 28 January and on the following day. On 29 January Dr. Memis offered to pay in writing as soon as he should be informed personally by the court properly authenticated.

On 17 March 1777 again at a special meeting of the board, a threat of putting Dr. Memis to the Horn was recorded, unless Dr. Memis gives satisfaction to the Provost once this day.

It is interesting to speculate whether there was, in fact, any foundation for the accusation made by Memis that the diet in the hospital was unsatisfactory or inadequate. We have few standards on which to base a judgment for the times, but the notes of accounts for foodstuffs show that the diet was rather meagre in type.

It consisted of oatmeal from farm crops, vegetables from the garden in the

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Denburn, flour and barley, bakery, raisins, from which wine was made, a half of port frequently. There was, in fact, a surprising amount of wine and spirits purchased.

Extracts from the accounts are illustrative:

Account, February, 10th 1784:

William Black, for Flour and Barley	£69
Mr. Law, for Bakery	£2 13 7
Sugar-house	£8 15 7
James Wyness for Spirits	£3 6 6

March 30th, 1784.

Warranted Thomas Bannerman & Co. Accounts of wine amounting to Twenty Pounds, Eight Shillings sterling. The treasurer is desired to commission the usual quantity of raisins for wine.

April 27th, 1784.

Warrant Thomas Bannerman & Co. account of wine being Ten Pounds, Seven Shillings.

The expenditure on wines began to disturb the board, and on 13 July 1784, when the item of raisins cost £14 12s. 9d., they suggested 'that the physicians should think of a proper substitute for wine to patients, as the expense arising from this article is considerable'.

Early in the following year, a suspicion seems to have entered the minds of the board that all was not well with the liquor accounts and consumption thereof. The minute of the meeting on 21 March 1785 reads:

The meeting recommended to the Treasurer to desire Mrs Farquhar, the Housekeeper, to give in to every Committee a note of the wine and spirits used in the House since the former Committee, in order that it may be compared with an account of the quantities prescribed by the Physician, which they are so good as to promise to take the trouble of marking down. This is to be intimated to Mrs Farquhar immediately.

The minute of 10 May 1785 reads:

By the account of the wine kept by the Physicians, it appears they have ordered since last Committee, seven bottles and a half,—and by a general account given in by Mrs Farquhar, it appears she has given out, since 12th April to this date, two dozen and five bottles of wine, and seven pints of brandy.

Mrs. Farquhar seems to have been very skilful in evasive methods, as the successive minutes on 12 April, 25 April, and 31 May, 1785 show.

12 April 1785.

On looking over the Time Book kept by the Physicians, it was found that they had ordered 15 bottles and a half from the 22nd March to the 12th of April inclusive. The Mistress' Book being called for, in order to compare with the Physicians, she said she had not as yet got one, upon which the meeting desired her to keep an account of what wine may be given out and to produce her Book to next Committee.

25 April 1785.

The Committee find by the Book kept by the Physicians, to ascertain the quantity of wine prescribed by them to the different patients, that since last Committee (April 12th) to this date,

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seven bottles of wine have been prescribed. And the Mistress being called upon to present the Book kept by her for the same purpose, the Committee find that she had not as yet complied with the Direction of last Committee, but promised to do so in the future.

31 May 1785.

Wine ordered by the Physicians since last meeting—13 bottles and a half: Mrs Farquhar reports that she has given out 18 bottles of wine.

(Less discrepancy here.)

At last, on 20 March 1786, the committee made up its mind and deprived Mrs. Farquhar of the care of the stocks of wine and spirits.

20 March 1786.

The meeting here ordain Mrs. Farquhar to deliver over to the Physicians what wine or spirits may be now in the House or may afterwards be purchased for the use of the House, that the same may be given out by the Physicians to her in such quantities as they may judge necessary from time to time as the meeting consider Wine and Spirits used in this House under the character of Medicines should always be directed by the Physicians.

Mrs Farquhar, having been called in, the same was intimated to her.

The last echo of the case is in 1786 when Memis published a *Treatise on the Prevention and Cure of Diseases*. It is printed by J. Boyle, Aberdeen, for the author, Dr. John Memis, physician in Aberdeen, and a manager of the Royal Infirmary in the City.<sup>13</sup>

There is no previous record of this short treatise of 111 pages. The printing is poor, but there is much common sense in the general injunctions as to exercise in the fresh air, dietetic rules, suitable clothing, hygiene in houses, curbing of the passions, and trust in the love of God shed abroad in the heart. He thinks that general care in diet is of great value in the treatment of disease. 'Regimen and diet are necessary, ever proper, and almost always effectual to effect a cure alone, or with a very small assistance from medicine.'

He intends to subjoin a short appendix of the regimen and diet table most proper for public infirmaries, etc. This, however, is not included in the book.

There follows a section on heredity and infant feeding.

In adult life, he believes in early to bed and early to rise, 'to live in the country rather than in a city or town; and care must be taken to go abroad as little as may be in the evenings after sunset; and when living in a city, not to remain too late in taverns and public houses'. He advises changing to lighter clothes 'at the first appearance of the swallows, which in our country is in the end of April or beginning of May', and into winter clothing 'at the first disappearance of these birds in the beginning of October'.

We can leave Dr. Memis with what might be an epitaph both for him and his antagonists in the summing-up by Lord Alva, with a glow of feeling and tears in his eyes. 'If there was something wrong in his head, there was something wrong in their hearts'.

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