

# LEGAL HISTORY

## More legal tales from the Sawyer vaults

John Sawyer\* and Dr Steve Foster\*\*

### Introduction

Previous editions of the *Coventry Law Journal* have included tales of legal history, researched by John Sawyer and relating to his ancestors, and analysed by Steve Foster in terms of those laws' modern equivalent.<sup>1</sup>

In this article, John continues to come across examples of legal cases which his forebears were involved, and turns his attention ten miles or so across Salisbury Plain to Wilton, the ancient capital of Wessex, where the Musselwhite family were established as key members of the community. John examines a couple of cases, reported in local papers that, hopefully, will be of interest to the readers of the Journal.

### **The tragic death of Mr JJ Fleming: Newspaper report of the death of Hester Talbot's nephew, John 10, April 1903**

The first case researched by John, in 1903, relates to an inquest following the death of John Fleming. The inquest jury found that he had shot himself whilst being temporarily insane whereas there was sparse evidence of insanity. The report recognises the legal formality of inquest hearings, particularly at that time, when issues of family bereavement and sadness are really the fundamental concerns. In that way, it tells us a good deal of the pomposity of the law, but deep down, the need of the law to provide a legal ending to a personal and family tragedy. It also tells us a great deal about the personal tragedy behind legal proceedings and judicial decisions; something that we, as lawyers, should always be conscious of.

The painful news that Mr. James John Fleming, of Wilton, had committed suicide by shooting himself with a revolver on Monday was not known among the townspeople until early on Tuesday morning. The announcement of Mr. Fleming's death under such distressing circumstances caused melancholy sensation in the town and was accentuated by the sympathy felt on all hands for his family who are much respected by all classes. The painful story of the suicide was disclosed by the father at inquest held by Mr. Coroner Wilson at the Town Hall on Tuesday evening.

He told the jury that he was a saddler, his dead son was 31 years of age, and was unmarried, assisted witness in his business, and went out to South Africa with contingent of Wilts Imperial Yeomanry. He went through the campaign until he was invalided home about two years ago. He was wounded in the hand, which had since caused him some inconvenience and he also suffered from abscess on the liver occasioned by the rough life he was obliged to live in South Africa. On Monday, John (deceased) was at work as usual, and at about ten minutes to four in the afternoon asked him about some harness he was working at. Witness, after expressing to his son the hope that he would finish the collar he was doing as it was wanted, had tea, and the deceased came in shortly afterwards. The witness never saw his son alive again. He expected to see him shortly after five o'clock but he did not and at about quarter to five he heard the report of a gun. He did not take any notice of it at the time, thinking that it was caused by a neighbour shooting at a pigeon. Time passed on and his son did not return but the witness, thinking that he had probably gone to Salisbury did not trouble more about it. He went out and returned a few minutes before nine o'clock and sat reading at home until twenty minutes past ten. His daughter

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<sup>1</sup> See John Sawyer and Steve Foster 'Ale not be accepting that as payment, thank you. Payment in beer and the decision in *Shore v Sawyer*' (2020) 25(2) *Cov. L.J.* 89, and John Sawyer and Steve Foster 'The dodgy billet: 'The past is a foreign country; they do things differently there'' (2022) 27(2) *Cov. L.J.* 51.

then asked him Has John come in? He replied that he had not. At half past ten he went to bed, and lay awake, listening for his son, until half-past eleven. He then went into his son's bedroom, but did not find him there. The deceased's mother asked, "Isn't he there?" and the witness said no." She said, "Do go and see where he is," and the witness accordingly dressed and went into the street. He waited there quite an hour, and the gun report he had heard earlier in the evening re-dawned upon his mind. He wondered whether anything had happened, and determined that before he went to bed again he would find out. He went into the garden and then into the footpath at the bottom of the rectory garden. There he saw something white lying across the path, and could see that it was an apron. He went straight to it, and seeing that it was his son, felt his hand. He was lying flat on his back. His hands and face were quite cold, and as there were no signs of life, the witness struck some Incifers (lamps) and made a search for a gun. He did not find a gun, but afterwards found a revolver by his son's side. He picked up the revolver and opened it and took out of the chambers three live cartridges and a shell. It was a six-chamber revolver. He afterwards gave it to Inspector Grant.

The Coroner asked: *What state had he been in since he came home?* The witness replied that he was very depressed and very low. His hand gave him a lot of trouble. At other times he was particularly bright. *Did he ever say anything about taking his life?* No, I never heard him say a word. *Was he pretty steady at his work!* Yes sir. *You never had any thought would do it?* Not the least. Is there any reason that he should do it? Not that I am aware of sir. Mr. Grant found in his pocket a photograph of a young lady he was engaged to, but that was broken off on account of his going to South Africa. Whether anything of that sort drove him out his mind I don't know: he never spoke of it.

William Clavell, labourer, of Wilton, stated that he saw the deceased at about five o'clock on Monday afternoon. The deceased was then in the Church Walk and shortly after that he heard a report like that of a gun. Dr. Straton said he knew the deceased, and had attended him frequently. He was called at about one o'clock on Tuesday morning and saw the body at nine o'clock. When he was called he went to the spot described by Mr. Fleming, Senior. The body was across the footpath, and the young man was quite dead. A bullet had entered the right temple and come out at the back of deceased's head, so that death must have been instantaneous. He had concussion of the brain some seven years ago, caused by striking his head against bracket. The witness did not think he was strong-minded. He was more childish in his mind than a man of his age should be, and recently seemed to be more uncertain.

This was all the evidence, and the Coroner remarked that it was one of those sad cases which one could not understand. It was quite clear that the young man shot himself and it was the jury's duty to say what state of mind he was in the time. There did not appear to be any reason for his act. Sometimes one found reason, either in something a man may have done, through fear and shame, which would make him take away his life, but there seemed to be nothing of the sort in this case. In answer to the Coroner Mr. Fleming, Senior said that his son had been more excitable since his illness. A juror remarked that they saw the deceased at three o'clock on Monday afternoon and that he was then joking. Several jurors and Inspector Grant informed the Coroner that the deceased had recently talked a lot of General Hector Macdonald's death. The whole of his conversation seemed to be on that subject. Sir Hector Archibald MacDonald, also known as Fighting Mac, was a soldier, and finished his career as a Major General and was knighted for his service in the second Boer War. He committed suicide in 1903 following accusations of homosexual activity with local boys. Paradoxically, the death of Sir Hector Macdonald by the same means, two weeks previous to John Flemming's, was seen by his military peers, and much of Scotland, as the decent thing to do, and regarded as the death of a working class hero; 30,000 people attended his funeral.

The jury found a verdict of "Suicide whilst temporarily insane." We should at this stage, note the important role of an inquest in examining the cause of death, and further action in terms of investigation, inheritance and the local community. Findings of "suicide" had implications for the reputation of the individual and their family, as well as sanctions, such as barring burial in consecrated ground.

### **A lady's slander action: Bristol Assize Nisi Prius Court (Before Mr Justice Grantham)**

The second report is on a case of slander brought by Kathleen Musselwhite, John's first cousin three times removed, against the landlord of the local public house, who questioned Kathleen's chastity and morality. The case is an interesting insight into the law of defamation and public morality at the time, although, theoretically, such allegations are still capable of causing 'serious harm' in the modern law, now covered essentially under the Defamation Act 2013.

The newspaper report stated that a special jury was empanelled for the hearing of action for slander (temporary defamation) brought by Miss Kathleen Musselwhite, professional musician, living at Wilton, near Salisbury, against Sidney Henry Beckett, landlord of the Bell Inn, Wilton. She was a professional musician and teacher of singing, and the defendant was Sidney Henry Beckett, landlord of the Bell Inn, Wilton, and former mayor of that town. The action related to the plaintiff (now claimant) and the local trainee doctor, Mr Racker, being in Groveley Wood together, and included reference to articles of her apparel which had been found in the wood. The defendant admitted that he spoke the words complained of, but pleaded that they were spoken upon a privileged occasion. The jury found for the plaintiff and she was awarded £50 plus costs. It appears that the original case was lodged in the name of Mr Racker but that the legal authorities had suggested that Kathleen should make the claim. Mr F. R. Y. Radcliffe, K.C. (instructed Messrs Wilson and Son), appeared for the plaintiff, and Mr Emanuel (instructed by Mr H. J. King) represented the defendant.

In opening the case, Mr Radcliffe said that there were slanders and slanders - some trumpery, some serious; and he thought when they had heard the facts of that case the jury would be of the opinion that this was a very serious slander, inasmuch as it amounted to imputation upon the chastity of a very promising young lady. She was 23 years of age, and was starting life with every prospect of success, and just at the outset of her career when she was met with this accusation. He doubted whether any slander could be more serious than that when they were dealing with a young lady. The plaintiff was professional musician, daughter of Mr Musselwhite, sanitary inspector and collector rates for Wilton, near Salisbury, and had early developed talent for music. So much that the people of the neighbourhood subscribed to help her to finish her musical education, she went to London, and became associate of the Royal College of Music, returning last June, when she started with very successful concert Salisbury. She was very much taken up and patronised by the people of the district. In the course last year she became engaged to Mr Racker, a young man who lived at Wilton and was at that time assistant and dispenser to a doctor, but had since become a qualified medical man. The couple walked out together, and often visited a favourite spot for lovers called Groveley Wood.

The defendant in 1903 was Mayor of Wilton, and on the 6th November Mr Musselwhite saw the defendant's uncle, who was also a rate collector, enter the *Bell Inn*, and as he wanted to see Kim he went into the house after the uncle. The uncle and defendant were talking in a private room, and Mr Musselwhite stood in the bar waiting. After some time, they came out, and the defendant went inside the bar, his uncle joining the plaintiff's father just outside the bar. There may or may not have been people in the taproom, and if there were they could have heard what was said.

The defendant was rather excited and put out, and he said to Mr Musselwhite: "What you think my uncle has been told! —that I am bankrupt and have someone in possession, and that it's all over the town." Mr Musselwhite said that he had heard a Mr Whatley had issued writ against him for £60, but on asking Whatley he had been told it was only tallied to the amount the defendant owed. Thereupon the defendant asked Mr Musselwhite if he had heard the tale about his daughter Kathleen and Racker. Mr Musselwhite replied. What tale there about! The defendant then said that certain garments belonging to Miss Musselwhite had been picked up at Groveley Wood. It was said in a loud voice, the defendant apparently being annoyed at what the defendant had said to him. Mr Musselwhite was proud and fond of his daughter, and was very much upset at what he heard. He at once consulted his wife and daughter and Racker, and the latter took steps to vindicate the young lady's character, being naturally averse to exposing her to the disagreeable position of having to come into court and give evidence in a case of that kind.

Next day a solicitor's letter was sent asking for apology, but the reply was that what had been said was not actionable in the case of a man, unless he could prove pecuniary damage. This was perfectly true, but as a female could sue under the circumstances, even if she could not prove pecuniary damage, the action was brought by Miss Musselwhite. The defendant said he was not the originator of the rumour, and even now he did not suggest that the imputation was true, so that the jury might take it for the purposes of the action that it was unfounded and was a bit of malevolent gossip going round this wretched little country town. The only defence was that the words were uttered on a privileged occasion, and that they were uttered on the invitation of the plaintiff's father.

The defendant further said he was an old friend of the plaintiff's father, and had heard the rumour and repeated it to him to enable him to stop the further circulation of story which tended to compromise the reputation of one of his daughters. If that were true, however, he might have taken him aside and told him confidentially. The only object of the action was to clear this young lady's reputation - it was the only way of doing it when people would not give apology. If in court the defendant would act like a man and publicly retract what had said, and say there was no foundation for it, and would repay what it had cost to bring the action, the plaintiff would be content. If he would not, counsel asked the jury not for extravagant damages, but for such sum as would recognise people in the neighbourhood that there was ground for the aspersion on Miss Musselwhite's character. William Webb Henry Musselwhite, the plaintiff's father, said that when defendant told him of the scandal about his daughter he was very much upset. It was repeated in the public bar in a loud voice, and the defendant spoke as if he was offended over the conversation he had with his uncle.

The witness could not say whether anybody was in the taproom. Next day he went with the defendant to see Mr Wilson, Mr Racker's solicitor. The defendant told Wilson he was not the originator of the rumour. He was on intimate terms with the defendant, and they had called each other by their Christian names until the defendant became Mayor, when, the witness called him Mr Beckett. (Laughter in the court). The witness did not tell Mr King, the defendant's solicitor, that he knew the defendant only spoke to him in a friendly way about his daughter. It was not true that the defendant prefaced the story with the remark, 'I hope you will not take offence. I am telling you as a friend.' The witness did not reply 'I shall be pleased.' Robert Alfred Beckett, the uncle, said he was a poor-rate collector for Wilton. He went to see his nephew in consequence of what he had heard of his financial position. He heard what the defendant said to Mr Musselwhite. He heard at the *White Horse* that there was scandal going about Wilton concerning a young lady and gentleman, but no names were mentioned, his informant remarking 'You will very likely hear who they are.' The plaintiff next gave evidence, she was doing well until this scandal got about, but since she had only had one engagement, and that she accepted in November. She had been jeered at in the streets by children until it came to such a pass that she had to remain indoors and afterwards seek the protection the police. Mr Emanuel (cross-examining) stated '*I don't suggest this alleged slander was true, but do you say that a repetition of it to your father has been the cause of any damage to you Plaintiff*'; yes, of course it has. *What has your father not given you in consequence* - she replied, nothing.

The defendant refused to give the name of the person who told him the story or to apologise for repeating it, and this was the plaintiff's case. Mr Emanuel said the two questions for the jury to decide were: whether the defendant was liable at all, and, if so, what damage had the plaintiff sustained. He contended that the defendant was not liable at all, and even if he were, that no damage had been sustained. The defendant simply repeated what was being said in order to put the plaintiff and her family on the *qui vivo*. Wilton was evidently a town where stories freely circulated. A rumour had been going about that the Mayor himself was bankrupt, and he in turn had heard what was said about the plaintiff and Mr Racker. Could the jury blame the defendant for telling her father of it! He acted without malice, and ought not to mulcted in damages for a friendly act.

The defendant was called, and said he had known Mr Musselwhite and his family all his life. His uncle knew of the rumour about Miss Musselwhite and Mr Racker when he visited his house on the day in question, and told witnesses what he had heard of at the *White Horse*. It was all over the place, in fact: "Considering the position I hold and the position you hold, I think it my duty tell you what is being said about your daughter." Mr Musselwhite replied: What is it? I shall be pleased to hear it." The witness

then told him the tale. Mr Musselwhite thanked him and said he would see what he could do to stop the rumour. Witness had ill-will against the parties, and he had his youngest son learning music from Miss Musselwhite the time. Mr Radcliffe (cross-examining) asked; *did you first hear this story from the lady, mentioning no name?* The defendant replied: I first heard it from son. *Did you not hear it from a lady T—I heard it from forty ladies.* (Laughter) it was all over the town. Generally, when tales are going about they are heard in the carpet factory. The Judge then said: ‘Oh, that’s the great disseminator of scandal, is it? (Laughter.), to which the defendant: ‘It is, my lord’. (Laughter.) Mr Radcliffe; *did not the lady in question ask you whether you had the articles mentioned on view at your public-house?* Witness: No, I have never seen any, so I don’t know what they are like. (Laughter.) *Had your pot man in your house on the previous night been showing some of these things?* —Not the previous night. I am positive. *Did he show them to some young men, who gave him a pint of beer for doing so?* —I say deliberately it is a lie. They were never shown in my house. Have you never heard of it? I have since, but they were not shown as this lady’s. They were some he had brought from Portsmouth. *He had shown something of the sort in your house?* —So it proves since, but I had not heard anything of it.

His lordship, in summing up said it was an unfortunate case. There could be no doubt, whatever of the great injury the plaintiff would suffer if such slander as this got abroad in a town which was apparently not only celebrated for a certain article of furniture, but was an emporium of scandal and gossip. (Laughter.) The defendant had told them that he spoke to the plaintiff’s father in his capacity of Mayor, but although certain privileges attached to a Mayor, his lordship did not know that one was the dissemination of scandal. He was afraid Wilton was rather a bad place for scandalmongers. He did not know whether any of the jury lived there: if so they had better look out for squalls. (Laughter.) The jury found for the plaintiff, damages of £50.

The dispute in this case might now appear out-dated, but at that time a woman’s chastity was fundamental, and allowed actions to be brought in slander without proving any financial loss. The Slander of Women Acts allowed women whose chastity was questioned to sue more easily for sexual slander by removing the burden of having to prove economic loss, known as ‘special damage’ in an action for slander. Women then brought actions in the thousands seeking to vindicate their reputations when subject to slurs of prostitution, un-chastity, fornication, or adultery.<sup>2</sup>

Such actions are still possible nowadays, especially where, as in the case above, there is a danger of the slander causing harm to the claimant’s career and earning prospects. Even without such loss, it can still be claimed that such allegations, would cause the claimant ‘serious harm’ (s.1 Defamation Act 2013), which might be the case particularly if the claimant was a public figure or held a position of trust and confidence. The success of that action would be subject to the claimant being able to prove, under s.2, the truth (or substantial truth) of the statement, or that it was (under s.3) an honest opinion and assumption based on the facts presented to the defendant. Instead, in our case, the defendant attempted to use his position as mayor to justify the disclosure on the grounds that he had a public duty to relate the gossip to her father, who had a duty or right to receive it. This was rejected by the court.

## Conclusions

Once again, our thanks go to John for his research into his family’s history, allowing us to retell news reports of those cases. What history shows us is that painful incidents at the time can then be viewed many years later less painfully, and as reminders of how times, social mores, and law have changed. Reading news reports of these events also allows us to immerse ourselves in history and find out why these proceedings took place, and what they meant in that particular community at that particular time.

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<sup>2</sup> See Jessica Lake ‘Protecting ‘injured female innocence’ or furthering ‘the rights of women?’ The sexual Slander of Women in New York and Victoria (1808–1887) 2022 (31) 3 *Women’s History Review* 451.