THE PEOPLE vs. THE PROFESSION.

HUNTER V. OGDEN.

At the Assizes recently held in Toronto by Chief Justice Richards, an action for breach of contract was brought by one Thos. Hunter, a journeyman bricklayer, now of this city, but formerly a member of Forrest's cavalry in the Confederate army, against Dr. Uzziel Ogden of Toronto, and as we think it brings up issues of very serious import to the whole profession throughout the Dominion, and may possibly be made a precedent for other similar actions in the future, we take the liberty of devoting a considerable space to its consideration in order that our friends may have some idea of the responsibility and danger they incur in their daily practice, and the kind of justice to be expected at the hands of a popular jury. It appears that on the evening of the eleventh of April, plaintiff asked Dr. Ogden to see his wife who was supposed to be in labor, the friends representing that severe pains had existed for several hours, but on examination, the os uteri was found perfectly undilated.

The pains then ceased and did not return till about noon of the next day. Plaintiff again called at Dr. Ogden's office between one and two o'clock on the 12th of April, and said he "thought his wife was going to be sick." The Doctor knowing the peculiarities of the patient, and believing that he was not needed then, told plaintiff he "he would call as he was going through the ward in the afternoon," repeating the statement several times in order that he might not expect him at any particular hour, and would send again if the pains became urgent. The defendant expressly told plaintiff that "he did not leave his

house till three o'clock," in reply to plaintiff, when asking him what time he went out.

When three o'clock came and no message was received, the Dr. went to the House of Industry where he is required to be every Tuesday and Friday at three o'clock, and in view of which engagement he declined to mention an hour when he would be at plaintiff's. Having attended to his duties there he drove directly to Hunter's, which is about *four minutes walk* from the House of Industry, and about the same distance from his own office.

On arrival at the plaintiff's, he found that instead of sending for him again, they had called in some one else, Hunter saying, "they had got another Doctor," but without mentioning his name; and the defendant found a person who was a total stranger to him, sitting by the bedside, where he showed every disposition to remain. Dr. Ogden, seeing his desire to retain the case, said he would "leave it in his hands, as there was no occasion for both to remain;" but as plaintiff urged the defendant to "wait and see," he repeated several times the statement that there was no occasion for both to remain, till, finally, the gentleman who was in attendance, got up from his chair, saying, "perhaps they would rather he would go away and leave the case in Dr. Ogden's hands;" whereupon the plaintiff's wife replied, "No, we don't mean that, but we want Dr. Ogden to remain, too."

Defendant says, when he thus saw they only wanted him to stay and watch, and the other gentleman appeared to be doing all that was necessary, he left the house.

Now it appears from the evidence that the case was one of foot presentation, and the gentleman who was called in brought down the feet, one of which, he says, was so hitched on the perineum, as to arrest labor, while the other was thrust out of the vulva. Having delivered the body, he allowed the head to remain in the pelvis for half-an-hour, where it still was—with the cord pulsating—at the time Dr. Ogden left the house, although defendant says he had no opportunity of verifying the statement.

After Dr. Ogden left, the child was delivered dead, and some weeks after labor, insanity, which had clearly manifested itself during gestation, and which was proved to be hereditary, developed itself again in a very mild form.

Plaintiff sued Dr. Ogden for breach of contract, asserting that the doctor promised to be at his house at three o'clock, and did not go for nearly two hours after; that in consequence thereof, his wife's labor was that much longer than it should have been, that the child was lost and insanity produced. Damages were laid at three thousand dollars.

Defendant swore that he did not promise as stated, and he showed by the evidence of Drs. Hodder, Workman, Nicol, Russell, Geikie, Agnew and Philbrick, that according to the plaintiff's own evidence, the labor was a very short and easy one, being only four or five hours long; that the prospects of both mother and child were not endangered by the absence of defendant; that he was present in full time to have rendered all necessary assistance if he had been allowed to do so, and that the subsequent insanity could hardly be chargeable to an unduly prolonged labor when the whole duration was less than five hours; and further that insanity was hereditary, and had evidently manifested itself during gestation, while a large proportion of the children in footling presentations were necessarily lost. Drs. Aikens, Wright, and Ross were in attendance to bear similar testimony, but defendant's counsel thought the evidence was so strong already they would not be required, and hence they were not called; but, notwithstanding the evidence, and the charge of His Lordship the Chief Justice, which appeared to be very strong in favor of defendant, the jury returned a verdict for plaintiff with five hundred dollars damages. The trial occupied two whole days.

Now we think it would be well for the profession to consider carefully the position in which they are placed by the verdict in this case.

In the first place Chief Justice Richards ruled that the ordinary promises of medical men, although generally supposed to depend upon contingencies, have all the force, character, and responsibility of written contracts, an interpretation of law we venture to say that few medical men ever dreamed of, while the counsel for plaintiff broadly asserted, without contradiction, that if a medical man was ten minutes late in keeping an appointment he would be liable for any suffering the patient might endure in the meantime. But the verdict in this case shows this principle of law in a more pernicious light still, for it proves that it is only

necessary for a person to come forward and swear that a promise had been made, and that certain misfortunes, real or imaginary, were the results of delay in keeping such promise, in order to obtain heavy damages at the hands of an ignorant or prejudiced jury, and who can say when he will not come across a man more ready to make money by strong swearing than by bricklaying.

In the face of such facts we think it is quite time for the profession to take some steps towards securing by Legislative enactment that protection which it appears they cannot hope for from the law as it now stands. We understand that Dr. Ogden has already taken the opinions of Dr. McMichael and R. A. Harrison, Esq., M. P.. his counsel, on this matter, and they advise him that if the Chief Justice's ruling in this case be sustained by the court above, that Legislative protection should be obtained by the profession without delay.