MEDICO-LEGAL NOTES

What the newspapers say:

$50,000 SOUGHT BY WOMAN FROM COUNTY SURGEONS

Alleging malicious, willful, unskillful and negligent conduct on the part of Dr. Charles H. Whitman, superintendent of the County Hospital, and two other physicians, while performing an operation upon her, Mrs. Janigje Hessing, a native of Holland, whose present address is 326 East Sixty-fourth street, filed suit in the United States District Court yesterday for $50,000 damages. Dr. Philip J. Cunnane, ward surgeon; Dr. Carl Kurtz and three others referred to as John Doe, Richard Roe and John Roe, are joint defendants.—Los Angeles Examiner, February 16, 1916.

What the doctor says:

Pacific Medical Journal, San Francisco, Cal.

Gentlemen: I am in receipt of yours of February 27th with inquiry concerning malpractice suit in which my name appeared with others. I was discharged from the case on the first day of the hearing by Federal Judge Trippett, as they failed to connect

in 1-4000 permanganate solution, to keep the fœces from soiling the patient's garments.

The nurse remembers turning the patient around in bed so as to get light from the window at the head of the bed. The nurse, Clara Blood, remembers that I used 1-4000 permanganate solution to cleanse the vagina, but she does not (?) remember that I placed a tampon in the vagina to keep the patient clean until she got to Napa!

Miss Blood took vaginal forceps with her from the hospital to remove this tampon on her arrival at Napa.

Dr. Bertha Wagner-Stark testified on the stand that Miss Blood had told her that she, Miss Blood, had removed this vaginal tampon! Did the nurse forget to remove this tampon, and was it that gauze sponge she fished out of the patient's rectum?

Nurse Blood testified that at no time after the first dressings were removed did I personally do any vaginal dressings, and the charts show in her own handwriting that I frequently dressed the vaginal, as well as the abdominal wound.

I labored hard and conscientiously to save this woman's life, for which I receive a verdict of $15,000 damages—$5000 for the husband, $10,000 for the patient! Hospital bills and professional fees unpaid.

WINSLOW ANDERSON.

MEDICO-LEGAL NOTES

What the newspapers say:

$50,000 SOUGHT BY WOMAN FROM COUNTY SURGEONS

Alleging malicious, willful, unskillful and negligent conduct on the part of Dr. Charles H. Whitman, superintendent of the County Hospital, and two other physicians, while performing an operation upon her, Mrs. Janigje Hessing, a native of Holland, whose present address is 326 East Sixty-fourth street, filed suit in the United States District Court yesterday for $50,000 damages. Dr. Philip J. Cunnane, ward surgeon; Dr. Carl Kurtz and three others referred to as John Doe, Richard Roe and John Roe, are joint defendants.—Los Angeles Examiner, February 16, 1916.

What the doctor says:

Pacific Medical Journal, San Francisco, Cal.

Gentlemen: I am in receipt of yours of February 27th with inquiry concerning malpractice suit in which my name appeared with others. I was discharged from the case on the first day of the hearing by Federal Judge Trippett, as they failed to connect

me up with having anything to do with the case. Dr. Kurtz and a former interne by the name of Cunnane, were held and stood trial, but were discharged by the jury on the first ballot, which was unanimous. There was really nothing to the case, except to extract some money from somebody. Yours truly,

C. H. WHITMAN, Medical Director.

What the newspapers say:

FIFTY THOUSAND DOLLAR DAMAGES CLAIMED

The wrong woman was operated on at the county hospital! While a jury in Federal Judge Trippett's court returned a verdict for Drs. Carl Kurtz and Phillip Cunnane in the $50,000 damage suit brought by Mrs. Yannige Hessing, native of Holland, on whom they operated over a year ago at the hospital, the fact is that a big mistake was made. The doctors thought they were operating on Mrs. Mary Laxon. In the trial this fact was admitted by the physicians, according to C. P. Johnson, attorney for Mrs. Hessing. Attorney Johnson said that the physicians blamed the confusion of their two cases on a nurse.

"Judgment went for the defendants," he explained, "because the jury thought the doctors were not responsible for the mistake in getting the two cases mixed. The defense, of course, tried to show, too, that Mrs. Hessing needed the operation that she got, anyway. But of the fact that a mistake was made and the wrong woman operated on there can be no question. This was not denied by the defense. I understand that the system of handling patients who are to be operated on has been changed at the hospital since that blunder. But of this I have no proof."

Attorney Robert P. Jennings, counsel for Dr. Kurtz, explained that the theory of the defense was that the physicians were not responsible for the mistake of the nurse, if the nurse made a mistake. "One of the nurses went to Mrs. Hessing and asked her if she was Mrs. Laxon," said the attorney for the defense. "Mrs. Hessing replied that she was. The nurse also pointed to Mrs. Laxon's bed and asked Mrs. Hessing if it was hers and she replied that it was. Mrs. Hessing's attorneys tried to show that she did not understand English, but I think we showed that she certainly understood at least some. Besides, we showed by expert testimony that the operation was needed."—Los Angeles Record, February 13, 1917.

TWENTY-FIVE THOUSAND DOLLARS

Defending the right of a poor man, unable to pay the cost of a jury trial, to have a jury pass on his claims, Attorney C. A. Linn yesterday obtained an order from the State Supreme Court directing Judge T. W. Harris of Oakland not to proceed with the trial of a suit for $25,000 damages brought by Andrew Martin against Dr. E. A. Majors. The Supreme Court on Friday issued an alternative writ of mandate to Harris ordering him to appear on April 2 and

show cause why Martin should not have a jury to hear the testimony. Nevertheless, Judge Harris placed the suit for hearing tomorrow and Linn decided to tie up any action.

Martin had a daughter, Rosie Martin, whose foot was cut about a year ago, Dr. Majors being called. Lockjaw set in and the child died. Martin started suit, claiming that the surgeon had not given proper attention to the child. When the hearing was called, Linn asked for a jury. It developed that Martin is unable to bear the $50 a day cost which a jury would entail, and Judge Harris proposed to go ahead anyhow.—San Francisco Examiner, March 4, 1917.

$50,000 VERDICT GIVEN PHYSICIAN IN DAMAGE ACTION

Oakland, December 14.—The Superior Court angle of the Oakland "doctors' war" ended today in Superior Judge Waste's court, where a jury, after a half-hour of deliberation, found for the defense in the $50,000 damage suit brought by Mrs. Annie J. Hope against Dr. A. L. Cunningham for alleged neglect in the treatment of an abscess of the right arm, causing the loss of the medial nerve, and consequent paralysis of two fingers. Cunningham charged that Dr. Graham Biddle, who took the case after him, cut the nerve and caused the damage. Drs. O. D. Hamlin and S. H. Buteau, witnesses for the defense, alleged that Biddle instigated the lawsuit to throw the blame from himself to Cunningham.—San Francisco Chronicle, December 15, 1916.

PHYSICIAN NAMED DEFENDANT IN $10,203.40 DAMAGE SUIT

Claiming that negligence, carelessness and unprofessional skill on the part of Dr. Fisher R. Clarke, made the amputation of her index finger on the right hand necessary, Mrs. Georgia Clark filed suit this morning as the initial effort to secure $10,203.40 damages from the physician. According to the complaint, Mrs. Clark ran a splinter into her finger and called in Dr. Fisher Clarke. As a result of the treatment, she alleges, it was necessary for her to go to other physicians and have the finger amputated.—Stockton (Cal.) Mail, May 10, 1916.

What the doctor says:

Stockton, Cal., March 3, 1917.

Pacific Medical Journal, 1065 Sutter Street, San Francisco, Cal.

Gentlemen: Your favor of the 27th ult. addressed to Dr. Fisher R. Clarke has been placed in my hands for reply for the reason that I could probably give you the required information more easily than he can. Some months ago, Dr. Clarke (who, by the way, is my father) was called to see a Mrs. R. P. Clark, who was suffering from a felon on the index finger of the right hand. He attended the woman three times and was discharged on the fourth visit. After going to several other physicians, some months later the finger was amputated by a doctor in Oakland. Subsequent to this, through an

attorney by the name of V. A. Dunn, of Oakland, Mrs. Clark brought suit against Dr. Fisher Clarke for $10,000 for malpractice. As soon as I received notice of the suit, I notified the secretary of the local medical society who advised me to write to Dr. Philip Mills Jones, who was then secretary of the State Medical Society. I did so, explaining all of the case, and received an immediate reply from Dr. Jones, saying that he had placed the matter in the hands of Hartley F. Peart, attorney for the society. Mr. Peart got in communication with me at once and we proceeded to file the necessary pleadings and got the case at issue. The plaintiff in the action demanded a jury trial and was represented by three attorneys. Mr. Peart, Mr. Henry L. Corson and myself represented Dr. Clarke. The plaintiff's case in chief was put in by noon of the second day of the trial, at which time Mr. Peart, for the defendant, moved the court for a non-suit, which, after possibly 20 minutes' argument, was granted, and the suit dismissed as against the defendant.

Permit me to say that both my father and myself deeply appreciate the prompt, courteous and efficient manner in which the medical society and their attorney, Mr. Peart, handled this matter for us. There was no stone left unturned in preparing a defense in the case, and we will both always be deeply grateful to Mr. Peart and the society for the courtesy shown us.

Malpractice suits against physicians are unfortunately becoming too prevalent, but I firmly believe that the society by its prompt and efficient defense of all such cases, if against its members, will discourage this class of litigation. I have recently learned that you have established, for a very nominal sum, insurance for your members against judgments in malpractice cases, which, I believe, is a most worthy move and am certain that upon consideration the majority, at least, of your members will insure themselves with the society. Trusting that the above will answer your inquiry, and again expressing our deep appreciation of all the courtesies shown us by the society in this matter, I am Yours very truly,

REED M. CLARKE.

What the newspapers say:

SUES HOSPITAL FOR $3,399

Eric J. Thavonat, former captain of the Texas Rangers and 59 years old, yesterday filed suit in the Superior Court to recover $3,399 damages from Mary's Help Hospital, alleging he was seriously burned while a patient in that institution. Thavonat, who lives at 850 Fulton street, was taken to the hospital on January 17 last for a capital operation. In preparing him for the operation, it is alleged, a nurse used a strong solution of acid which burned him so badly that the operation was impossible and still is impossible. Thavonat is represented by Attorney G. B. Benham. The aged soldier of fortune claims to have been wounded eleven times in one battle while fighting the Indians in the early days and his

life was only saved by taking him from Texas to Buffalo, N. Y., to have all the bullets removed by specialists.—San Francisco Examiner, August 27, 1916.

SURGEON SUED FOR TEN THOUSAND DOLLARS

Dr. J. M. Toner of 3197 Sixteenth street was made defendant yesterday in a suit for $10,000 damages filed by Antone Johnson. Johnson alleges that Dr. Toner operated on his wife, Mrs. Nellie Johnson, alleging her ailment to be a tumor, and that she had no such affliction.—San Francisco Chronicle, September 21, 1916.

What the doctor says:

San Francisco, Cal., March 11, 1917.

Dr. Winslow Anderson, Editor Pacific Medical Journal.

Dear Sir: Your favor of February 27, 1917, relative to malpractice suit brought against me for the sum of $10,000, to hand. In reply I will state that the patient was operated upon by myself, assisted by a prominent surgeon of San Francisco, on April 2, 1915. The patient left the hospital discharged and cured, April 24, 1915. On May 6, 1915, a payment of $50 on account was made. Suit was brought against me September 21, 1916. The defense of this case is being attended to by the attorneys for the Medical Society of the State of California. When the matter reaches final disposition I will be glad to give you a resume of the entire case, which I think will be both interesting and instructive to the medical profession.

J. M. TONER,

What the newspapers say:

SEVENTY-FIVE-THOUSAND-DOLLAR SUIT AGAINST S. P. CO.

Martinez, September 27.—When the suit of Parsons of Richmond against the Southern Pacific Company for $75,000 for malpractice comes to trial on October 24th, it will be the first case in the history of the California courts where a corporation is named defendant in a suit of this nature. Parsons was injured by a falling wrench while at work for the railroad at Mina, Nevada. He was taken to the Southern Pacific Hospital in San Francisco, where he claims he was treated for heart disease. After being discharged from the hospital his left leg was amputated. He charges that the doctors, surgeons and nurses in the hospital were but servants of the company and for that reason names the company as defendants.—San Francisco Examiner, September 28, 1916.

What the doctor says:

Pacific Medical Journal 1065 Sutter Street, City.

Gentlemen: I return herewith newspaper clipping relative to

suit of Parsons vs. Southern Pacific Company for malpractice. I had not previously seen this notice and Parsons has long since withdrawn his complaint. Yours truly,

F. K. AINSWORTH.

What the newspapers say:

TWENTY-FIVE-THOUSAND-DOLLAR DAMAGE SUIT

Dr. T. W. Huntington, a physician of 2629 Pacific avenue, is defendant in a $25,000 damage suit filed in the Superior Court yesterday by Mrs. Augusta Wise of Sacramento, who alleges that after operating on her for appendicitis, Dr. Huntington failed to remove a roll of medical gauze from her body. The operation, she says, took place July 27, 1913, and the gauze remained in her body, causing her extreme pain, until it was removed in June of last year by another physician.—San Francisco Chronicle, June 10, 1916.

What the doctor says:

San Francisco, Cal., March 1, 1917.

Pacific Medical Journal, 1065 Sutter Street, San Francisco.

Gentlemen: Referring to your note of inquiry of February 27, 1917; the suit alluded to has never developed, further than the filing of the complaint in the Superior Court of San Francisco. The papers have never been served. Very truly yours,

THOS. W. HUNTINGTON.

What the newspapers say:

THIRTY-ONE-THOUSAND-DOLLAR MALPRACTICE SUIT

John A. Boyle, a salesman, who claims the Albée operation was performed on him by Dr. Charles L. Lowman and that the doctor was negligent, brought suit yesterday for $31,000 damages. The operation consisted of grafting a piece of his left shin bone into his spine. It is alleged in the complaint that the piece of shin bone was not sterilized and that Mr. Boyle had to go to New York to be treated by Dr. Albee, the author of the operation. The suit was filed through Attorneys McKnight, Chase and Barrett.—Los Angeles Times, July 13, 1916.

What the doctor says:

Los Angeles, Cal., March 8, 1917.

Pacific Medical Journal, 1065 Sutter Street, San Francisco.

Gentlemen: In response to your letter of February 27th, in regard to a malpractice suit filed against me last July. This case has not been called for trial yet, and will probably come off some time this spring. This suit was filed as a matter of spite work and in order to avoid payment of a just bill for services. The plaintiff

has no case, as far as we can see, and it is quite possible that the case may never come to trial. Very truly yours,

C. L. LOWMAN.

What the newspapers say:

TWENTY-ONE-THOUSAND-DOLLAR MALPRACTICE SUIT

A hard-fought malpractice suit on trial for two weeks was taken under submission by Judge Houser yesterday. The suit was brought by Mrs. Hattie Henry against Dr. Paul Bresee. She claimed $12,500 damages, and her husband, Adolf Henry, asked $8500 for loss of her services, making a total of $21,000. Mrs. Henry was treated by Dr. Bresee for twelve days. She claimed that subsequently she became infected, had sinking spells, but the chief grievance was the alleged impossibility of having little ones in her home.

Dr. Bresee, through Attorney Morrow, denied that he was careless or negligent. On the contrary, he contended that his treatment was standard. Impeaching witnesses were brought to the stand, attacking the testimony of Mrs. Henry. She was represented by Attorney Keifer.—Los Angeles Times, April 26, 1916.

What the doctor says:

Los Angeles, Cal., March 2, 1917.

Pacific Medical Journal, 1065 Sutter Street, San Francisco.

Gentlemen: In reply to your request, would say the court decided in my favor on every count. For further information I will refer you to my attorney, H. T. Morrow, I. W. Hellman Building, this city. He could probably give you an interesting article, as he is the attorney the State Medical Society employs to defend the malpractice cases that come up. Yours truly,

PAUL BRESEE.

What the newspapers say:

FIFTY THOUSAND DOLLAR SUIT

Suit for $50,000 against Hahnemann Hospital was filed yesterday in the Superior Court by Andrew McGraw, who alleges that carelessness on the part of attaches caused him to be permanently crippled.—San Francisco Call, June 24, 1913.

What the doctor says:

San Francisco, March 12, 1917.

Pacific Medical Journal, 1065 Sutter Street, San Francisco, Cal.

Gentlemen: Your letter of the 24th in regard to the Hahnemann Hospital has been turned over to me for attention, and in reply, permit me to say that the suit to which you refer was brought against the late Dr. Bryant for alleged malpractice upon a little

girl, it being claimed that he had not given to her case that attention which it should have received, from the result of which she suffered damages. By a mistake of the attorney for the plaintiff, the hospital was made a co-defendant, it being presumed that the operation was performed by the doctor in a clinic maintained by the hospital, and that in performing it he acted as the representative of the hospital. Upon the taking of the doctor's deposition in the suit, the error of the attorney appeared, and he at once amended the complaint, substituting the college, in whose clinic the operation was performed for the hospital. After the taking of the deposition, the suit was settled by compromise to the satisfaction of all parties and dismissed. Permit me to assure you that neither the hospital nor the college was in any manner responsible for any operation performed upon the child referred to, neither for any alleged damages which may or may not have been suffered. The appearance of either of these institutions in the suit merely arose out of the fact that the operation was performed in a free clinic maintained by the college. Any further information which you may desire in the premises I shall be only too happy to afford. This I can probably do to your satisfaction, as I represented both the hospital and the college in the action. Yours sincerely,

WILLIAM H. JORDAN.

What the newspapers say:

TEN THOUSAND DOLLAR SUIT

Suit for $10,000 damages was instituted yesterday by Marguerite Collins through her guardian, Mrs. Westlake, against Dr. W. S. Lavy, of Gridley. The complaint alleges that by reason of the failure to properly treat a broken wrist, the injured woman lost the use of her right arm and that the excruciating pain caused her to lose her reason.—Oroville (Cal.) Register, December 8, 1914.

What the doctor says:

Gridley, Cal., March 9, 1917.

Pacific Medical Journal

Dear Sirs: Pardon my slowness in answering your request of February 26th, regarding the final disposition of the suit brought against me for $10,000 damages in December 1914. This suit was brought by the daughter, who had been appointed guardian, for alleged injury, namely loss of mind, sustained by a woman eighty odd years of age, such loss of mind being due to and caused by pain while under my care for a fractured forearm near the wrist. The story is a long one in which I have reason to believe professional jealousy, misrepresentation, and greed played a part. On the other hand I must thank several of my professional brethren for their help, which was invaluable, and the honor of these men during days of worry was a comfort and a sanctuary.

Now for the disposition of the case. After nagging me for nearly a year, at a cost, admitted by one of them, of nearly seven

hundred dollars, their attorney had the suit dismissed two days before it was to come to trial. On the evening previous to this action on the part of their attorney, my legal advisor, Mr. W. H. Morrissey of San Francisco, made him this proposition: "I will take the first nine men called into the box and allow your three clients to make up the twelve." I know of no better way of expressing the virtue of their case than the above would imply. Yours fraternally,

W. S. LAVY, M.D.

What the newspapers say:

PHYSICIAN SUED FOR TWENTY-FIVE THOUSAND DOLLARS

Suit for $25,000 damages, alleging malpractice, was filed in the Superior Court today by Rose G. Johns against Dr. Chauncey P. Pond, an Alameda physician, the plaintiff alleging that a wrong diagnosis caused her to submit to an unnecessary operation. She declared that as a result of the trouble her child, born some time later, was mentally and physically deficient and died. Mrs. Johns is the wife of Thomas Johns, a prominent rancher of Concord, Contra Costa county.—Oakland (Cal.) Tribune, September 28, 1915.

What the doctor says:

Alameda, Cal., March 6, 1917.

Pacific Medical Journal, San Francisco.

Gentlemen: In reply to yours of the 26th, in regard to my malpractice suit. Judgment for the plaintiff for $5000. The suit arose out of a case of opening a pregnant abdomen for fibroid. The history was faked in an attempt to trick me into doing a curettment which I was supposed to do before opening the abdomen. Contingent fee lawyers handled the plaintiff's case. The case will, of course, go to the Supreme Court. The most remarkable thing to me was the fact that not one of the twelve jurors looked like he could spend as much as 25 cents all at once, yet they had no hesitation in spending, or trying to spend $5000 of my money for no cause whatsoever. Thank you for your invitation to write for publication, but I will have to decline on account of lack of time to prepare the manuscript. Yours very truly,

C. P. POND.

What the newspapers say:

VALLEY DOCTOR SUED FOR TWENTY THOUSAND DOLLARS

Alleging that she has been the victim of malpractice, Mrs. Margaret Miller of Fortuna has begun suit against Dr. S. N. Jorgenson, also of the Valley town, in an effort to collect damages in the sum of $20,000. W. E. Dickson is attorney for Mrs. Miller, whose husband, Carl Miller, is also named as a plaintiff, community property being involved. It is alleged that Dr. Jorgenson treated Mrs. Mil-

ler's malady for six months but without beneficial result. Subsequently, it is claimed, as a result of the alleged unskilled and careless treatment at Dr. Jorgenson's hands, Mrs. Miller was compelled to submit to two operations, and since that time has been bedridden, suffering severe pain and mental anguish. She has been compelled to expend $1200 for medical attendance it is claimed.—Eureka (Cal.) Standard, January 16, 1914.

What the doctor says:

Fortuna, Cal., March 4, 1917.

Pacific Medical Journal:

Dear Sir: Just received your letter of February 26, 1917, in regard to malpractice-blackmail suits. The suit against me, to which you refer, was blackmail of a most rank sort. An impecunious individual appeared in my office and demanded $700, and threatened suit if I did not pay. Of course I refused. Some time later the same individual returned with his "legal" advisor, and both endeavored to induce me to part with some cash. The representative of the law asked me to step aside with him, and then earnestly and confidentially advised me to settle with his client, and informed me that he thought by an effort of his (presumably for my benefit), $300 might square the case. I refused—was served with "papers"—suit for $20,000 damages!

These "papers" were sent to our late Secretary, Dr. P. Mills Jones. The Medical Society attorney wrote and directed me to select local attorneys and he would cooperate with them in the case. This was done. My attorneys later reported that the case was dismissed; since which time nothing further has been heard from the plaintiffs. By reason of the protection afforded members of the State Society, and the prompt and efficient aid rendered by the society attorneys, I was not forced to pay anything at all for legal advice, etc., to defend myself. It would have cost me quite a large sum for attorney fees in this case, had I not had the benefit of the protection of the society defense fund.

You may be sure that after this experience I am a booster for the malpractice defense fund and also for the indemnity fund. The slogan nowadays seems to be "Sue the doctor." Fraternally yours,

SOPHUS N. JORGENSEN.

What the newspapers say:

SEVEN THOUSAND, FIVE HUNDRED DOLLARS DAMAGE SUIT

Ashland, Oregon, May 13.—A suit for $7500 damages has been filed in the Circuit Court by Attorneys J. A. Lemery of Ashland and H. A. Canady of Medford for Edward J. Mahan of Ashland against Dr. Julian P. Johnson and Dr. George O. Jarvis, both of Ashland. The suit is to recover damages for the death of Mrs. Mahan, which is alleged in the complaint to have been caused by a criminal oper-

ation performed by the defendants. The physicians are prominent here and the charge has caused a sensation. The death of Mrs. Mahan occurred December 6, 1913. The complaint alleges the operation was performed November 20, 1913. Friends of the physicians contend that the operation was self-inflicted and that the physicians were called in at the last moment.—Sacramento Bee, May 13, 1914.

What the doctor says:

The suit above referred to was an effort of two "dead-beat" lawyers to do some blackmail work, and was thrown out of court without coming to trial. Yours,

JULIAN P. JOHNSON, M.D.

What the newspapers say:

SUES DOCTOR FOR TEN THOUSAND DOLLARS DAMAGES

Anton Dias has commenced a suit in the Mendocino County Superior Court for $10,000 damages against Dr. G. P. Purlenky of Ukiah, alleging neglect in the setting of a broken bone, which has resulted in plaintiff's remaining lame for life.—Santa Rosa Press-Democrat, November 7, 1914.

What the doctor says:

Santa Clara, Cal., March 9, 1917.

Dr. Winslow Anderson, 1065 Sutter Street, San Francisco.

Dear Doctor: Yours of the 26th to hand. In regard to the malpractice suit that was brought against me on November 7, 1914, I wish to state that this case was thrown out of court on the very first day as a pure and simple blackmail case, as I was defended by Physicians' defense, who employed the best of counsel for me. The plaintiff was even willing to take $75 before the opening of court, so you can readily see the merits of the case. With kind personal regards, I remain, Very truly yours,

G. P. PURLENKY, M. D.

What the newspapers say:

PHYSICIANS WIN $25,195.50 MALPRACTICE SUIT

Judge Taft decided yesterday the malpractice suit of Mrs. Mary Cushman against Drs. J. W. Wood and C. W. Ransom, in which she asked for $25,195.50 damages, in favor of the defendants. Findings were ordered and the attorneys for Mrs. Cushman will take an appeal from the judgment. Mrs. Cushman employed the defendants after she had fallen at Long Beach, April 12, last year, and sustained a fracture of her left leg. She alleged they were negligent in their treatment of the fracture and the result was a badly swollen leg, the fracture failing to knit. The defendants, through Attor-

neys Newlin & Dehm, denied negligence, claiming that owing to the absence of callus, the fracture could not knit. They also stated they had advised an operation for the purpose of wiring the bones but that Mrs. Cushman declined to have this done. The introduction of a photograph showing the fracture had a great deal to do with the decision of the court.—Los Angeles Times, Nov. 10, 1915.

DEMANDS $25,600 DAMAGES

Dr. R. L. Byron of the Lissner Building was made defendant yesterday in an alleged malpractice suit brought by Fred Henry Fritz for the death of his daughter, Madeline Louise Fritz, aged 6 months, who was given a prescription by Dr. Byron which was to be taken until otherwise directed. Fritz, who asks $25,600 damages for the loss of his child, alleges criminal negligence and gross disregard of the duty of a physician. He alleges that the child died as the result of mercurial and medicinal poisoning. He declares that under the direction of the physician a powder was administered every hour until fourteen had been taken, when the child became dangerously ill, rapidly growing worse. The complaint states that Madeline was healthy from the time of birth until she contracted an ordinary child's disease. Dr. Byron was engaged September 23 last and wrote the prescription which is set out in the complaint. October 16, Madeline died.—Los Angeles Times, December 30, 1913.

DOCTORS WIN $25,100 MALPRACTICE SUIT

The $25,100 damage suit by Mrs. G. S. Bosky against Dr. Walter Bremm and Dr. A. H. Zeiler for alleged malpractice in connection with the death of her daughter, Josephine, five years old, was decided by a jury in Judge Houser's court in favor of the defendant. The suit originally included the health officers, but their motion for a non-suit was granted. Drs. Bremm and Jenkins were sent to Mrs. Bosky's house by the health department to make a lumbar puncture on Josephine to determine whether she had infantile paralysis. At the time, it appears, Dr. Bremm's child was suffering from the disease. Josephine subsequently died and Mrs. Bosky alleged that the child succumbed owing to the careless and negligent manner in which the puncture was made.—Los Angeles Times, May 14, 1914.

DOCTOR SUED FOR TEN THOUSAND DOLLARS

Eugene Houtz, a fourteen year old boy of Oakland, began suit yesterday, through his guardian, J. S. Wilder, against Dr. N. H. Chamberlain for $10,000 damages. Of this, $5,000 is asked because of injuries resulting when the boy was run down by Dr. Chamberlain's automobile, May 14, of last year, and $5,000 damages is asked for because, it is alleged, the physicians mismanaged the setting of broken bones after the accident.—San Francisco Examiner, November 18, 1914.

WOMAN ASKS DAMAGES FOR $51,920.00

Suit for $51,920 damages was filed yesterday by Lulu Stepp against Dr. Ray Townsend for alleged malpractice. The complaint alleges that on Townsend's advice, she submitted to an operation for appendicitis; that a second operation followed, for fistula; that again she was examined by other physicians, for tuberculosis, and operated on a third time. The discovery was made at that time, she alleges, that Dr. Townsend removed nothing by the previous operations, which, she avers, were performed in a clumsy and unskillful manner. Her alleged expenses were $270 for the first operation, $400 hospital charges, $100 for medicine, and for loss of work for seventeen months, $850.—Los Angeles Times, October 17, 1913.

ALLEGED DAMAGES FOR $50,000

Dr. C. A. Rogers and Dr. Homer Rogers, Bakersfield practitioners, have been made defendants in a $50,000 damage suit instituted in the Superior Court by Mrs. Elizabeth Clarridge of East Bakersfield. The complaint alleges malpractice in the setting of the broken arm of the plaintiff. In an accident about a year ago the plaintiff while employed at the Citizens' Laundry sustained a fractured arm. She claims she went to Rogers to have the broken bone set and it is alleged that the broken ends overlapped, due to an improper operation. She claims her arm is permanently disabled, and further states that it has caused her to lose her ability to make a living. Simpson & Chaplin are the attorneys for the plaintiff.—Bakersfield (Cal.) Californian, November 15, 1913.

$10,347.50 DAMAGE SUIT FOR ALLEGED MALPRACTICE

Charging that he has been transformed from a strong and able-bodied man to a permanent cripple on account of the "unskillful, negligent and bungling" manner in which a broken leg was set and treated, Freidrich E. Metzeler filed suit in the Superior Court today against Dr. W. W. Tourtilott of Lindsay for $10,347.50 damages.—Visalia (Cal.) Times, May 13, 1914.

ASKS FIVE THOUSAND DOLLAR DAMAGES

Mrs. Clara M. Norling is suing Dr. J. L. Bohannon of Berkeley, for $5000 damages, alleging that as the result of malpractice she lost a finger, which had become infected and which was treated by Dr. Bohannon. The trial is before a jury in Superior Judge Harris' court.—Oakland Tribune, November 5, 1913.

TWENTY-FIVE THOUSAND DOLLARS

Mrs. Rebecca Goldstein yesterday filed suit for $25,000 for injuries alleged to have been incurred by her in the German hospital.—San Francisco Call, June 24, 1913.

FIVE-THOUSAND-DOLLAR SUIT APPEALED

Returning judgment for $5000, in the case of Louise R. McFarland yesterday in the Superior Court, Judge Wellborn raised a brand-new question that promises to create country-wide discussion in medical circles as to whether a fishbone can cause peritonitis. The fishbone lodged in the throat of Frank McFarland on July 26th last. Traumatic tonsilitis resulted. He underwent an operation and this was followed by an attack of peritonitis that caused his death on August 21st. Suit was brought by Mrs. McFarland to compel the California Accident Association, in which her husband had insured himself for $5000, to pay the policy. It refused to do so on the ground that the fishbone did not cause peritonitis, and McFarland's demise was not due, therefore, to an accident. Dr. John J. Kyle, textbook writer on medical subjects, and Dr. Ethel Leonard, former city bacteriological specialists, as experts, testified in support of the contention of Mrs. McFarland. Notice that an appeal would be taken was given.—Los Angeles Examiner, October 29, 1913.

TULARE SURGEON SUED BY RANCHER FOR $18,734.85

Dr. T. D. Blodgett, of Tulare, perhaps the best known surgeon in Tulare county, was made the defendant in a heavy damage suit by Mr. and Mrs. D. M. Holsinger of Tipton. It is alleged in the suit, which asks $18,734.85, that Dr. Blodgett treated Mrs. Holsinger for an injured arm and that through negligence and incompetent surgery Mrs. Holsinger lost her arm. It is charged that Mrs. Holsinger suffered a dislocation of the shoulder and that following the treatment by Dr. Blodgett she found it necessary to go to Fresno where, it is alleged, physicians discovered that the preliminary treatment had not been good and it was necessary to remove the arm at the shoulder. She asks $11,600 damages, and her husband $7134.85 for repayment on what he has paid out. It is the first time Dr. Blodgett has ever been sued.—Visalia (Cal.) Delta, March 7, 1917.

TWO-THOUSAND-DOLLAR SUIT FOR ALLEGED MALPRACTICE

Dr. Edna F. Jerrue was made defendant yesterday in a suit filed by Mrs. Evalina Castelletti and her husband, Guiseppe, alleging malpractice. Mrs. Castelletti states she employed Dr. Jerrue March 5 last, and alleges negligence on the part of the physician in not discovering the true nature of her malady. She asks $2000 damages.—Los Angeles Times, August 29, 1914.

SUES SURGEON FOR $10,997.00 DAMAGES

Charging that Dr. Charles H. Rowe failed to properly set his arm after it had been broken by an automobile crank, J. L. Davis began suit yesterday in Oakland for $10,997 damages.—San Francisco Examiner, August 28, 1914.

WOMAN ASKS $52,814 DAMAGES

Mrs. Margaret P. Cowles of 1217 Jones street, manager of the Minnie Sabin Cooper Tuesday Morning Talks, held in the St. Francis Hotel, through Attorney Walter H. Robinson yesterday filed suit in the Superior Court against the St. Helena Sanitarium, the California Missionary and Benevolent Association and Dr. H. F. Rand to recover $52,814.05 for alleged malpractice. Mrs. Cowles alleged that she entered the sanitarium, in which Dr. Rand was employed as a physician, on February 28, 1911, and on March 1, 1911, an abdominal operation was performed by Dr. Rand. Subsequently, she says, she was discharged. On August 25, 1912, the complaint continues, she began to suffer intense pain and entered a local hospital for treatment. On January 4 following, she says, another operation was performed and a surgical sponge was found in the incision.—San Francisco Examiner, November 13, 1913.

DOCTOR IS SUED FOR TEN THOUSAND DOLLARS

Reno, Nevada, July 15.—One division of the District Court is occupied with the cases of Dr. Rein K. Hartzell against Harry Yale Whitbeck, and of Whitbeck against Hartzell. Hartzell is suing his former patient for $111.50 for medical services for a broken ankle. Whitbeck claims that Hartzell treated him negligently, and that he was damaged in the sum of $10,000. Whitbeck, of Chicago, is suing for divorce.—Sacramento Bee, July 15, 1913.

SUES FOR FIVE THOUSAND DOLLARS

The damage suit of C. W. Perkins against Dr. W. E. Trueblood went to trial in Judge Peairs' court yesterday, and with the exception of one witness the testimony for the plaintiff was all presented before the evening adjournment. The trial will be resumed this morning at 10 o'clock. Perkins alleges that Dr. Trueblood, who is a Taft physician, set a broken leg for him but that he did it so badly that the bone gave way in the same place again. X-ray photographs of the bone were introduced in connection with oral testimony. Emmons & Hudson are representing the plaintiff and Rowen Irwin is conducting the defense.—Bakersfield (Cal.) Echo, May 27, 1914.

WOMAN ASKS $15,335 FOR LOSS OF A TOE

Ester Gruhn and her husband, Joseph Gruhn, a furniture dealer, today filed suit against the Fairmont Hospital asking $15,335 damages as the result of treatment she claims to have received several months ago. Mrs. Gruhn says she went to the hospital July 7 last to be operated on for a growth on her foot. She says that the attendants were to have injected novocaine in her foot, but through carelessness injected formaline, causing injury that necessitated the amputation of a toe.—San Francisco Call, November 13, 1916.

TWO HUNDRED AND FIFTY THOUSAND DOLLAR SUIT

Dr. A. W. Hoisholt, Superintendent of the Napa State Hospital, is one of several defendants in a $250,000 damage suit filed by Dr. Avery Harcourt of Santa Rosa in the United States District Court. Dr. Harcourt charges that through the persecution of the various persons named in the complaint she lost a lucrative practice and was subjected to much humiliation by twice being forced to undergo examination as to her sanity. The Superior Court declared her sane both times, according to the complaint.

The plaintiff alleges the defendants caused her to be sent to jail for 120 days for an alleged assault, and that while incarcerated the Sheriff, J. K. Smith, struck her and abused her in other ways. She was forced to appeal to the Superior Court, the complaint alleges, in order to get sufficient food while in the county jail.

The Santa Rosa Republican and the Santa Rosa Democrat, both of which printed articles about her, are defendants in the suit, as are also Dr. W. J. G. Dawson, Superintendent of the Glen Ellen Home for Feeble Minded (formerly of St. Helena), and Sheriff Smith and District Attorney Lee of Sonoma county.—Napa Journal, October 27, 1915.

HOSPITAL SUED FOR TWENTY-FIVE THOUSAND DOLLARS

Claiming that the Liberty Hospital Association of the city took improper care of her when she broke her leg recently, Mrs. Margaret K. Harding of Suisun today started suit for $25,000 against the institution in the Superior Court here. She names Dr. Fred G. Tanney in the action, claiming that he set the leg in such a manner that it knitted improperly and threatens to make her a cripple for life.—San Francisco Call, April 14, 1915.

PHYSICIAN SUED FOR FIFTY THOUSAND DOLLARS

Ralph Lewis Hall, of 2843 West street, Oakland, today sued Dr. A. L. Cunningham for $50,000 damages, alleging that the death of his wife was due to the physician's carelessness. Mrs. Lucy Emma Hall died May 23, 1913, at the Oakland maternity home. Hall charges Doctor Cunningham with neglect and carelessness before she went to the hospital and while she was there.—San Francisco Call, May 21, 1914.

EXPERT TESTIMONY AS TO MALPRACTICE

In a malpractice action it appeared that the injury to the plaintiff, a child, was due to undue pressure caused by adjustment of splints on a broken arm by the defendant not allowing for the usual swelling accompanying such cases. It was held that the question as to whether the omission to properly adjust the splints constituted negligence was one for expert testimony.—Priestley vs. Stafford (Cal.), 158 Pac. 776.—Medical Record.

TWENTY-FIVE-THOUSAND-DOLLAR DAMAGE SUIT

Dr. Arnold C. Calegaris, a North Beach druggist, and Oliver D. Flahaven were today made defendants in an action brought in the Superior Court by Mrs. Sophie Wigand, to recover $25,000 damages for the death of her husband, Theodor Wigand. Flahaven, according to the complaint, was driving along Fillmore street on August 5 and struck Wigand with sufficient force, the wife says, to hurl him thirty feet. Flahaven, according to the complaint, took the injured man in his machine and hurried him to Dr. Calegaris, who, it is asserted, treated him and then both men took him to his home, where he was left with a statement to his wife that he was not seriously injured. Six days later, Wigand died, and now the wife asserts death was due to the accident, and the improper care afforded by the physician.—San Francisco Post, October 27, 1912.

ASKS TEN THOUSAND DOLLARS DAMAGES

Because of what he alleges to be the careless, negligent and unskilled manner in which Dr. J. D. Dameron attended him following an accident a year ago last September, when several bones in both legs were broken, Supervisor James T. Ansbro yesterday began suit against the surgeon for $10,000 damages, for $2141 expense he claims to have incurred by reason of the physician's alleged unskillful conduct, and costs. Earlier in the afternoon Dr. Dameron filed a complaint against Ansbro to collect a claim for $250 for professional services and $490 for costs of his care while at the Dameron hospital.—Stockton (Cal.) Independent, November 21, 1913.

DOCTOR SUED FOR FIFTY THOUSAND DOLLARS

Alleging negligence in an operation for the removal of her tonsils, Miss Myrtle A. McClean yesterday filed suit in the Superior Court against Dr. V. Ray Townsend for damages in the sum of $50,000. Miss McClean says she is gradually losing the use of her vocal chords.—Los Angeles Tribune, November 11, 1914.

$25,475 DAMAGES ASKED

Mayme R. Lowe yesterday filed suit in the Superior Court against Mrs. Cora Tasker, an osteopathic physician, charging the latter with unskilled treatment of her broken leg. Damages in the sum of $25,475 are asked.—Los Angeles Examiner, Dec. 6, 1916.

WANTS $25,000 DAMAGES FROM DOCTOR

Transferred from the Los Angeles Superior Court, action has been instituted here against Dr. W. R. Livingston by Charles I. Davidson for $25,000 damages. The case arises over a broken arm of the plaintiff, who claims it was improperly treated.—Ventura (Cal.) Post, November 24, 1916.

TEN THOUSAND DOLLARS FOR A SKIN TEST

According to the latest advice of counsel for George Pancera, the Normal student who is suing Normal Medical Inspector Dr. N. H. Bullock for $10,000 damages, the boy is in a precarious state of health, having recently developed a serious case of bronchial pneumonia. Pancera alleges that following an application of the Von Pirquet skin test on him by Dr. Bullock, he became infested with numerous sores and boils, which caused him great pain and necessitated a number of serious operations. Superior Judge P. F. Gosbey, who is trying the case, heard further testimony yesterday. Miss Elizabeth McFadden, Dr. Bullock's assistant, was on the witness stand in the morning, and testified to sterilizing the instruments and taking all the necessary precautions usually followed in performing the kind of a test that young Pancera underwent. The defendant was on the stand most of the morning and underwent further cross-examination at the hands of counsel for the plaintiff, James P. Sex, C. C. Coolidge and J. J. Jones. Grant R. Bennett, H. Ray Fry and D. T. Jenkins are attorneys for the defense.—San Jose (Cal.) Mercury, November 22, 1916.

PHYSICIAN IS SUED FOR $24,799.50

Edward Dooley, a salesman, living at 2525 Clay street, brought suit in the Superior Court yesterday against Dr. Edward L. Herrington of 2018 Union street for $24,799.50 damages for the death last December of an infant daughter of the plaintiff. The child died shortly after its birth, and Dooley charges that her death was due to carelessness and negligence on the part of the physician. The complaint alleges that Dr. Herrington was employed to attend Mrs. Dooley, but that when the stork came he could not be found, and the newly-born infant failed to receive proper treatment.—San Francisco Chronicle, November 11, 1916.

HOSPITAL WINS A THOUSAND-DOLLAR CASE

Oakland, May 18.—Fabiola Hospital, recently involved in a feud with Oakland City Bacteriologist P. P. Musser and others, today won a case in the Superior Court. The hospital was defendant in a $1000 damage suit brought by Grace Mackay, who alleged that on April 7, 1915, a careless nurse placed a hot water bag on her left foot in such a way that she was severely burned. Judge Brown found against the plaintiff.—San Francisco Chronicle, May 19, 1916.

PHYSICIAN WINS THIRTY THOUSAND DOLLAR SUIT

In the suit of Percy Palmateer, Spencerport, against Dr. Lewis E. Slayton, in which $30,000 damages was claimed on account of the death of the wife of the plaintiff from alleged mercurial poisoning, the jury decided in favor of Dr. Slayton.—A. M. A., Nov. 8, 1913.

LIABILITY FOR INJURY TO A PATIENT

The California Supreme Court has affirmed a judgment against the McNutt Hospital, of San Francisco, for $750 in favor of a patient and her husband on account of her being burned on the legs by a hot water bottle while she was unconscious from the effects of an anesthetic administered to her before a surgical operation was performed upon her at the hospital. Finding that the evidence warranted a conclusion that the burns were sustained while the patient was under the exclusive charge of the hospital nurses, the Supreme Court said:

"Under its contract with her, the defendant corporation owed her a duty of protection which was violated by the use of an instrumentality which produced the painful results which were made manifest when she came out from the influence of the anesthetic. Proof of the accident carried with it presumption of negligence. * * * And this is the rule, whether the liability be ascribed to the carelessness of experienced nurses or to the defendant's negligence in selecting nurses who were not competent. That is the true rule as announced in Adams vs. University Hospital, 122 Mo. App. 675, 99 S. W. 453, a case very much like this one."—The Modern Hospital.

PHYSICIAN WINS MALPRACTICE SUIT

A suit against Dr. A. M. Wilkinson of Charlevoix to recover for alleged improper treatment of a severe burn of the hands of a 17 months old child, was tried in the circuit court last week and after three days, the jury brought in a verdict "no cause of action." This is the second time suit has been brought against Dr. Wilkinson in this case. The first suit was entered in the name of the father, but the plaintiff's expert refused to testify; the second was instituted in the name of the child with the father as the next friend.—Jour. A. M. A., September 23, 1916.

PRIVILEGED COMMUNICATIONS

In a servant's action for injuries, where defendant compelled plaintiff to give testimony as to his statement to a hospital physician regarding his injury, by recalling him to the stand and exacting a statement that he had told the doctor at the hospital how long he had had pain and when it first started, the New York Appellate Division held that plaintiff did not waive his privilege covering his statement to the hospital physician.—Murphy v. New York, N. H. & H. R. R. Co., 157 N. Y. Supp. 962.—Medical Record.

$25,000 HOSPITAL SUIT SETTLED

Suit for $25,000 against the German Hospital Association by Edward Dooley for the death of his newborn baby has been settled out of court by Dooley and Attorneys Chickering & Gregory for the hospital.—San Francisco Call, September 14.

FATHER'S PROMISE TO PAY FOR SERVICES TO SON

A practising physician, at the special request of a father, rendered medical aid to his son, for the value of which he sued and recovered judgment against the father as the result of a jury trial, and the defendant appealed. The only defense was the statute of frauds, it being contended by the defendant that the testimony tended to prove no more than a verbal promise to pay the debt of another. The son had reached his majority and was afflicted with a disease for which the plaintiff refused to give a special treatment until after the boy's father consulted him and agreed to pay for the services. The plaintiff testified that this agreement was entered into before and as a condition precedent to the rendition of the services. These facts were denied by the testimony of the defendant and his son, but the issues were properly submitted to and passed upon by the jury. The promise was held to be an original one and in no way affected by the statute of frauds. No intrinsic or financial value is necessary to constitute consideration for rendition of services by a physician, the court held, and any trouble or labor undertaken by one person at the request of another will support a promise by the other, although the labor was of no benefit to him. A requested instruction that if the physician gave the boy any credit and looked to him for payment or part payment, he could not recover from the father, was properly refused, for although the father promised to pay the debt it nevertheless continued to be a liability of the son.—Mitchell v. Davis, Springfield, Mo., Court of Appeals, 190 S. W. 357.—Medical Record.

SUIT FOR TEN THOUSAND DOLLARS DAMAGES

The case of D. W. Beanblossom, who is suing Dr. J. J. Benton of 1915 University avenue, Berkeley, for $10,000 for alleged malpractice, before Judge Brown, has been continued to next Monday, when a jury will hear Beanblossom's contentions that Dr. Benton set the bones of his arm wrong after he was hurt in an automobile collision March 27, 1914. Beanblossom alleges that he has lost the use of his arm, and that his hand has withered as the result of the manner in which the doctor treated him.—Oakland Enquirer, April 15, 1915.

INSUFFICIENT EVIDENCE OF MALPRACTICE

The Appellate Court of Indiana, Division No. 2, affirms a judgment in favor of the defendants, who were charged with malpractice in the treatment of a compound fracture of the bones of the plaintiff's right forearm. The court says that, to its mind, the evidence showed nothing more than the acts of the defendants while engaged in setting the injured bones as these were observed by the plaintiff and his wife, the nature of the treatment by Dr. Miller thereafter as they observed it, the statement of the defendants as to their belief that the arm would be restored to its usefulness, and the fact that the arm was not straight when the splints were removed. There

was no evidence that any physician had given the jury any standard by which the fact in dispute could be properly determined, and, since the jury was not permitted to draw the conclusion of unskillfulness from the result of the operation or treatment, it seems to the court that to permit the jury to determine the case without some competent evidence as a standard from which it might be determined whether the services rendered by the defendant were done with reasonable care and skillfulness would be to permit a determination of that question from mere speculation and conjecture. When a physician and surgeon assumes to treat and care for a patient, in the absence of a special agreement, he is held in law to have impliedly contracted that he possesses the reasonable and ordinary qualifications of his profession, and that he will exercise at least reasonable skill, diligence and care in his treatment of him. This implied contract on the part of the physician does not include a promise to effect a cure, and negligence cannot be imputed because a cure is not effected; but he does impliedly promise that he will use due diligence and ordinary skill in his treatment of the patient so that a cure may follow such care and skill, and this degree of care and skill is required of him, not only in performing an operation, or administering first treatments, but he is held to the like degree of care and skill in the necessary subsequent treatments, unless he is excused from further service by the patient himself, or the physician or surgeon on due notice refuses to further treat the case. In determining whether the physician or surgeon has exercised the degree of care and skill which the law requires, regard must be had to the advanced state of the profession at the time of treatment and in the locality in which the physician or surgeon practices. But where a physician or surgeon is employed as a specialist on account of his peculiar learning and skill, he is bound to bring to the discharge of his duty to patients employing him, as such specialist, that degree of skill and knowledge which is ordinarily possessed by physicians who devote special attention and study to the disease, its diagnosis and treatment, having regard to the present state of scientific knowledge. In either case the legal duty of the general practitioner of medicine and surgery and the legal duty of the specialist must be measured by some legal standard. It must be tested by some competent evidence so that the jury may have before it a proper standard by which it may determine the acts or the omissions of the physician or surgeon.—Journal of Iowa State Medical Society, October, 1916.

JURY GIVES WOMAN $1500 DAMAGES

Mrs. Annie Abbott, an elderly woman living at 1817 Eddy street, was awarded $1500 damages against Dr. J. S. McCue yesterday by a jury sitting in Superior Judge Hunt's Court. Mrs. Abbott sued for $2675, alleging that Dr. McCue had permanently impaired her health by improper and unskillful treatment of an injury to her shoulder last August.—San Francisco Chronicle, August 9, 1916.

MALPRACTICE—DIPHTHERIA

In an action to recover damages for death by diphtheria caused by malpractice, because of the failure to administer antitoxin, it appeared beyond dispute that it is not usual or customary for physicians to cause bacteriological or microscopical examinations of the contents of the throat to be made, except in cases where a membrane is present. There was no evidence to show that there was at any time any membrane present in the throat of the deceased child, and, it appearing without dispute that some cases baffle the most skillful diagnosticians, the case at bar might have been such a case, in which event the defendant could not be held liable for his failure to make a correct diagnosis and consequent failure to properly treat the patient. The law does not require impossibilities, or even the exercise of the very highest degree of skill or the utmost care, but only such reasonable care and skill as is usually possessed by physicians in the same school in the locality. There was no evidence tending to show that the exercise of ordinary care and skill by the defendant would have prevented the child's death. The medical testimony showed conclusively that the result, where antitoxin is not administered in the early stages of diphtheria, is uncertain, and that no one can say in a given case what the result would be if antitoxin were administered. It appeared without dispute that the defendant made a careful and thorough examination of the child more than 24 hours after her illness began, in which he was assisted by another physician, and that, in order to make the examination thorough and complete, the child was given an anesthetic and the cavity of the throat thoroughly explored, and that at that time there was no membrane present, and according to the evidence a microscopic or bacteriological examination was not indicated. It was further undisputed that the defendant examined the child on the evening before her death, and at that time there was no membrane present in the throat. The physicians further agreed that in the absence of a membrane or other symptoms pointing directly to the presence of the disease, antitoxin should not be administered. The other symptoms were not present in the case.—Judgment for the plaintiff was reversed, and judgment was directed for the defendant.—Hrubes v. Faber, Wisconsin Supreme Court, 157 N. W. 519.—Pan-American Surgical and Medical Journal, Oct., 1916.

PRIVILEGED COMMUNICATION STATUTE DOES NOT APPLY

The South Dakota statute, Code Civ. Proc., Sec. 538, declares that a physician or surgeon cannot without the consent of his patient, be examined in any civil action as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient. Section 12 defines an action as an ordinary proceeding in the court of a justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. The South Dakota Supreme Court holds that, in view

of Section 486, excluding testimony as to transactions with deceased persons in both civil actions or proceedings by or against executors, etc., and the limitation in Section 538 to civil action, a will contest is a proceeding and not a civil action, and a physician of the testator may testify as to the latter's incompetency; for the statute making physicians incompetent, being in derogation of the common law, should be strictly construed.—In re Golder's Estate (S. Dak.) 158 N. W. 734.—Medical Record.

ACTION FOR MALPRACTICE—NOTICE REQUIRED

The Wisconsin statute 1913, §4222, provides that no action to recover damages for an injury to the person shall be maintained unless, within two years after the injury, written notice signed by the party damaged, shall be served upon the person claiming to have caused such damage, stating the time and place where the damage occurred, describing the injury, the manner in which it was received, the grounds for the claim, and a demand for satisfaction. It is held that under this statute a notice was a condition precedent in an action for malpractice, based on the breach of an implied contract on the part of a physician to exercise proper skill and care in treating plaintiff's broken leg, since the action, whether in tort or contract, was an action for injury to the person. The word "action" refers to the subject matter or nature thereof, and not to its form as a matter of remedial procedure, and the phrase "no action to recover damages for injuries to the person" refers to an action for bodily injuries, and not to injuries to feelings.—Klingbleig v. Saucerman, Wisconsin Supreme Court, 160 N. W., 1051.—Medical Record.

COMPANY PHYSICIAN SUED FOR TEN THOUSAND DOLLARS

Alleging that through the negligence of the company physician a case of appendicitis was diagnosed merely as a case of stomach trouble and that as a result complications arose which have rendered him permanently incapable of earning a livelihood, Joseph L. Gardner, formerly a watchman for the Salt Lake Route at Las Vegas, Nevada, filed suit asking $10,000 damages today in the United States District Court. Gardner alleges that following an operation which almost caused his death he subsequently was discharged by the company for incompetency and that he is unable to provide for himself by any other means.—Los Angeles Herald, September 5, 1916.

DOCTOR IS SUED FOR ELEVEN THOUSAND DOLLARS

Alleging that Dr. H. W. Chittenden, to whom he went with a fractured leg, negligently and carelessly examined and diagnosed the injury, and that as a result he will never have the normal use of his limb, E. E. Dexter yesterday sued the physician for $11,000 for alleged malpractice.—Los Angeles Examiner, Sept. 28, 1915.

THE DZURO-SCRUBY-MORDEN MALPRACTICE SUIT

John Dzuro brought suit for $15,000 against Drs. Scruby and Morden for removing the tonsils of his son John, eight years of age. It appeared that the boy was so much afflicted by enlarged tonsils that he could not do well in school and was sent home until the disease could be relieved. The mother returned with the boy and was told that it was necessary that the tonsils should be removed for his own safety and well being; the mother consented if the boy was willing. He readily consented and the next day or in a few days he went to the doctors' office and the tonsils were removed by Dr. Morden, school physician, with the mother's and the boy's consent. Young John at once returned to school, much improved in every respect. The teachers in this school testified that before the operation the boy was sub-normal both physically and mentally; afterwards improved rapidly.

It could not be shown that the father gave his consent and that according to a strict interpretation of the law he had a cause of action, notwithstanding no damage was done and even been benefited. The plaintiff's attorney did not allege damage but that consent to the operation was not granted. Our attorney filed a motion for a directed verdict and Judge W. H. McHenry with that wider conception of the duties of the law, said: "Johnnie's case is typical of the new conception of our duty to childhood. Public welfare demands that the child must be safe-guarded even though the wishes of the parents may have to be ignored. It is the duty of the public schools and of the public as a whole to see to it that the growing child has an opportunity to develop under the very best conditions." A verdict was directed for the defendant.—Journal of Iowa State Medical Society, November, 1916.

MALPRACTICE SUIT FOR $2015 FOR FINGER INJURY

During the trial of the damage suit of George M. Decker against Dr. Charles Hutchison for alleged malpractice, Mr. Decker submitted in Department Twelve to an examination at the hands of Dr. E. Clarence Moore, an expert witness for Dr. Hutchison. The result of this test to prove the truth of Dr. Moore's diagnosis that the condition of the hand of Mr. Decker was the result of anthritis deformans and not of Volkmann contracture, as the latter alleged, was a suit for $2015 damages filed against Dr. Moore yesterday.—Los Angeles Times, February 17, 1915.

SUIT FOR TWENTY-FIVE THOUSAND DOLLARS

Suit for $25,000 damages for the death of an infant child was filed against Dr. Ergo A. Majors in the Oakland Superior Court yesterday by Andrew Martin, the father of the deceased. Negligent medical attention is charged.—San Francisco Examiner, May 23, 1916.

FEES OF YOUNG PRACTITIONERS

In an action by a physician against an estate for services rendered the testatrix for some disease of the brain, the nature of which even a post mortem examination did not clearly determine, it appeared that the plaintiff was a young physician who had been an old friend of testatrix. The trial judge allowed the claim of $1500 only to the extent of $262, being of opinion that a young practitioner has no right to charge, or expect to be paid, the fees charged by those who are older and whose reputations have been established. On appeal, the Louisiana Supreme Court said that it may happen that the knowledge of the schools goes beyond that upon which reputations have been founded, and that the later graduate, bringing, with his diploma, the latest discoveries, is more competent to deal with a particular case than the earlier, with the experience of a past generation. However that may be, the court held that any physician has the right, in the absence of a custom of his own, to charge for his visits, day or night, at least the fee sanctioned by the custom of the community in which he lives; nor is he obliged, in so doing, to rate himself below the class in which, in his opinion, he properly belongs; and in such a case, the burden rests upon the patient who refuses to pay to show a better reason for such refusal than that the physician is comparatively fresh from the seats of learning. The amount to be allowed was increased to $1500, the amount claimed.—Succession of Percival (La.), 72 So. 467.—Medical Record.

BLEEDING THE DOCTOR: A NEW SPORT

It appears to be a settled policy on the part of the companies carrying compensation insurance to shake down physicians' bills. This venesection of the profession seems to be systematized. If your bill is thirty-five dollars you are asked to reduce it to twenty-five. You have dressed the wounds too often; in such a case as the one in question the company is informed by its medical advisers that a fewer number of dressings would have been sufficient; if you are not satisfied, it is proposed that the case be adjudicated by the Commission. Most physicians, it would seem, compromise the cases. A moment's thought will convince anyone that as a business proposition such a policy must save a great deal of money to the company. The aggregate loss to the profession must be correspondingly great. We are not aware what fate is met by disputed accounts that are submitted to the Commission. It would be highly interesting to know, and perhaps significant.

The medical profession seems quite helpless in matters like these. The impudence of the companies is met meekly and their compromises accepted, when in practically every case their proposals are unfair and the motive clear as daylight. The companies have found, of course, that it is perfectly safe to deal with the profession in this manner. Picture to yourself how, under health insurance, the number of your visits and office treatments will be

disputed as excessive. Picture also to yourself the personnel of a health insurance commission. Can you not see the insurance men on it settling your disputed claims?—The Medical Times.

DRUGLESS PRACTITIONER CERTIFICATE

The Supreme Court of the United States holds that the exemption in favor of persons treating the sick by prayer from the application of California Laws 1913, Chap. 354, as amended by Laws 1915, Chap. 105, which provides that persons may not practice drugless healing unless holding a "drugless practitioner certificate," obtainable only upon completion of a prescribed course of study and after an examination, does not render the statute invalid as denying the protection of the laws guaranteed by Fourteenth Amendment to the United States Constitution, to one who does not employ prayer in his treatment of diseases, but does use faith, hope, the processes of mental suggestion and mental adaptation, a form of treatment in which skill enhanced by practice is to be exercised. The requirement of the statute is held to be a valid exercise of the State's police power.—Crane v. Johnson, 37 Sup. Ct., Rep. 176.—Medical Record.

BOOKS USED TO CONTRADICT EXPERT IMPROPER

In an action for personal injuries sustained in a panic following a burst of fire from a street-car controller a medical witness for the defendants, basing his opinion on his experience, testified that the plaintiff could not have suffered epilepsy as the result of the accident in question, saying, "Fright does not produce epilepsy." The plaintiff's attorney, after having identified through the witness a book on nervous diseases written by Professor Starr, asked if Professor Starr did not say in his book that "about one-half of the cases of epilepsy is caused by fright." Questions to the same import were repeated and so framed as to appear to be statements of what was contained in Starr's book. The plaintiff's counsel then exhibited the book to the court and jury, and stated that he proposed to show by it that such contrary opinion was stated. It was held that the allowance of this constituted reversible error.—Mann vs. Blair, 195 Ill. App. 254.—Medical Record.

INJURY IN CASE OF TYPHOID

In an action for personal injuries by being run down by an automobile, the Wisconsin Supreme Court holds that testimony of a physician that typhoid fever may be caused by polluted water or food, but that in his opinion there was a connection between the plaintiff's injury and his contracting typhoid, is insufficient to warrant a finding that the illness was caused by or had any connection with the injury.—Slack v. Joyce (Wis.) 158 N. W. 310.—Medical Record.

VACCINATION OF SCHOLARS AND TEACHERS

Section 2049 of the Kentucky Statutes gives the State Board of Health general supervision of health matters in the State and the power to make and enforce rules to prevent the introduction or spread of contagious diseases. By virtue of this statute a rule of the State Board of Health provides that no person shall become a member of any school as teacher or scholar without furnishing a certificate that he has been successfully vaccinated and revaccinated at least once in seven years. The principal teacher of a graded common school, the district trustees and ten patrons of the school sought to enjoin the county board of health and the county health officer from enforcing the order. The Kentucky Court of Appeals held that the county board could enforce the order when there was a reasonable apprehension of the outbreak of smallpox. The general and uniform rule is that, when there is a reasonable apprehension of a communicable disease, such as smallpox, health boards have authority to take such action, in order to stamp out the disease and prevent it from spreading. Even without a specific delegation of power, local or administrative authorities having control of the schools or general care of the public health are justified, by the existence of an emergency, in making vaccination a condition for admission to the public schools. And the Legislature may also, by express provision, in the exercise of the police power, require or empower a local or administrative authority to require vaccination of children as a condition of their being admitted to the public schools, although smallpox be not prevalent, or its outbreak be not apprehended. Re Viemeister, 179 N. Y. 235; People v. Ekrold, 211 N. Y. 386. But the converse is equally true, that unless such power is clearly conferred local authorities may not require vaccination in the absence of smallpox or the apprehension of an immediate outbreak thereof. People v. Board of Education, 234 Ill. 422. It was held that evidence of local physicians of outbreaks of smallpox within the district during the past eight years showed that the action of the health board was not only reasonable but necessary. If it had done less it would have failed in its duty.—Hill vs. Bickers (Ky.), 188 S. W. 766.—Medical Record.

MALPRACTICE SUITS AND INDUSTRIAL INSURANCE LAW

Previous to the decision of the Washington Supreme Court, in February, 1916, in the case of Ross vs. Erickson Construction Company, malpractice suits against Washington physicians were instituted with appalling frequency. This decision has proved to be the greatest check against such suits, due to the fact that the court held that, when the injured workman received compensation from the Industrial Insurance Commission, he had no further recourse for damages as a result of his injuries. This put an immediate stop to the malpractice suits against physicians on the part of the injured workman.—Editorial from Northwest Medicine, January, 1917.

LIABILITY FOR WRONG DIAGNOSIS

Action was taken against a doctor for malpractice, the claim being that of wrong diagnosis. The plaintiff's injury was treated by the defendant as a sprain, when in fact both the tibia and fibula were fractured. There was considerable testimony, not altogether in harmony, in regard to the difficulty of diagnosing injuries to the lower leg and also as to methods of examination, but all agreed that there were certain recognized tests or examinations to be made when the diagnosis was difficult, such as an X-ray picture and manipulation or moving of the injured part, either with an anaesthetic or without, the latter being the least efficient because of the limited manipulation that can be done on account of the pain caused to the patient.

The defendant in this case did not etherize the patient nor have an X-ray picture taken, relying solely upon the manipulation of the injured parts and examination for deformation. His diagnosis was wrong, but the mere fact that the diagnosis was wrong would be insufficient to render a physician liable for malpractice. In addition to the above facts being shown, the plaintiff must show that such mistake was the result of negligence or carelessness on the part of the doctor, and that he failed to exercise his best judgment and skill in diagnosing the plaintiff's injuries.—J. A. Castagnino, in International Abstract of Surgery.

PHYSICIANS NEED NOT KEEP RECORDS

Under section 248 of the New York Public Health Law, as added by Laws 1914, c. 363, and amended by Laws 1915, c. 327, providing that all persons authorized by law to handle dangerous drugs shall keep certain records of such drugs when "dispensed, given away or in any manner delivered," and declaring a violation of the section a misdemeanor, and section 246, forbidding the delivery of such drugs without a physician's prescription, and providing for records of such delivery, a physician who wrote prescriptions for dangerous drugs without keeping a record of the transactions was not guilty of a violation of section 248, as he did not "dispense" the drugs himself; the statute making a distinction between the "dispenser" of the drugs and the physician who writes the prescription.—People v. Cohen, 157 N. Y. Supp. 591.—Medical Record.

THIRTY-THOUSAND-DOLLAR MALPRACTICE SUIT

Judgment in favor of Dr. J. C. Negley was given by a jury in Judge Wood's court yesterday in the suit brought against him by Agatha Wells, a young girl, for alleged malpractice. The girl brought suit for $30,000 through her guardian, Mrs. M. E. Martin, claiming that her injuries, sustained when she fell in front of the Hall of Records while skating on the sidewalk, were improperly treated by Dr. Negley.—Los Angeles Examiner, Nov. 13, 1915.

LIABILITY FOR SERVICES TO MINOR CHILD

In an action by a physician against a married woman for services to her minor child, living with her, it appeared that she and her husband, the father of the child, lived together. The Texas Court of Civil Appeals held that in order to make the wife personally liable for the services, she must have entered into a contract therefor. Her mere acquiescence or consent for the doctor to treat her child would not bind her personally or make her separate estate liable. It is not sufficient that she merely give an order or call in the physician, for in such case the presumption is that she does so as the agent of her husband, whose duty it is to supply such things. After the services were rendered a mere verbal promise on her part to pay would not render her separate estate liable for the debt of the community. She would not be bound personally for the default of her husband by such verbal promise to pay his debt.—Davenport v. Rutledge (Tex.) 187 S. W. 988.—Medical Record.

TEN THOUSAND DOLLARS DAMAGES CLAIMED

Andrew Eklund, a miner, alleges in a suit filed in the Superior Court that Dr. E. E. Endicott, who treated him for a broken left leg several months ago, sewed up portions of a chisel and a screwdriver in the flesh after the bone had been set. As a result plaintiff declares he has been permanently crippled and he asks for $10,000 damages. Eklund was employed by the Original Amador Mining Company at the time he was injured and sent to this city for treatment.—Oakland (Cal.) Tribune, March 31, 1914.

WHEN DEATH NOT WITHIN ACCIDENT POLICY

Under an accident and health insurance policy providing for a payment to the beneficiary in case of the death of the insured from sickness, a provision that disability resulting from ulcers and blood poisoning shall not be classified as sickness excludes any claim for payments for accidental death, where it appears that the insured died from an ulcer of the foot alleged to have been due to blood poisoning as the result of a lump of coal striking his foot.—Gertz v. Clover Leaf Casualty Co., 197 Ill. App., 462.—Medical Record.

BRINGS SUIT FOR TEN THOUSAND DOLLARS DAMAGES

Daniel J. Riordan, a member of the local fire department, has brought suit for $10,000 damages against Dr. T. P. Bodkin, alleging that the defendant left a silver screw in the leg of the plaintiff after having performed an operation on the fractured limb. As a result of the alleged failure of the doctor to remove the screw, Riordan alleges that he has lost the use of his right leg. Riordan sustained the fracture in the course of his duties as a fireman on March 28, 1912.—San Francisco Bulletin, March 26, 1914.

WAIVER OF PRIVILEGED COMMUNICATIONS

The Missouri statute makes physicians incompetent witnesses as to any information acquired from a patient, which was necessary to enable them to prescribe. This statutory provision is in derogation of the common law and creates a privilege which the patient may waive at will. In an action for personal injuries the plaintiff, as a part of his case, stated the advice given to him by his attending physician as to his physical condition and future fitness for work at the time he left the hospital. This, the Missouri Supreme Court held, opened the door for a full inquiry as to the knowledge of the physician of the health and extent of the injuries of the plaintiff at the time of the alleged statement by the physician, and as to what advice he then gave the plaintiff in view of the knowledge on which it was predicated.—Blankenbaker v. St. Louis & S. F. K. Co. (Mo.) 187 S. W. 840.—Medical Record.

TWO DOCTORS SUED BY WIDOW FOR $32,300

Santa Rosa, June 1.—Mrs. Ruby Barndt, a well known farmer's widow of Fulton, near this city, has sued Dr. S. S. Bogle, one of the leading physicians of this county, and Dr. Ethan Smith of San Francisco, for $32,300 damages. Mrs. Barndt sustained a compound fracture of both legs in a runaway accident some months ago. Mrs. Barndt alleges that the physicians did not set her fractured bones properly so that they would not knit. For nineteen weeks Mrs. Barndt alleges she was in the hospital. Recently the physicians sued the Barndt estate for their fees. Mrs. Barndt declares she had to undergo another operation. The physicians repudiate any charge of malpractice.—San Francisco Examiner, June 2, 1914.

WOMAN ASKS $19,678.68 FROM SANATORIUM

Laura H. Mills, proprietor of a sanatorium at Pasadena, filed suit in the Superior Court yesterday to recover $19,678.68 from Adler Sanatorium, Inc., and Dr. Harold Brun, connected with that institution, for alleged injuries sustained October 8, 1915, while being operated on. Mrs. Mills says she was handled so carelessly during the operation that she sustained a dislocation of the right sacro-iliac joint and was confined to her bed for twenty-eight weeks. —San Francisco Examiner, October 8, 1916.

SUES HOSPITAL FOR TWENTY-FIVE THOUSAND DOLLARS

Declaring that his son, James F. Doughty, Jr., died in the Hospital for Children because of the carelessness of a nurse, Albert F. Doughty brought suit against the institution for $25,000 today. He alleges that while the child was ill from pneumonia the nurse permitted an electric heating plate to set fire to the bed, fatally burning and scalding the patient.—San Francisco Call, June 3, 1916.

VICTIM OF SMALLPOX SUES FOR SIX THOUSAND DOLLARS

Because of an alleged incorrect diagnosis of a case of smallpox, Dr. T. N. Sample has been made defendant in a $6000 damage suit brought by Mrs. Nellie Wagerly, a lodging-house keeper. According to Mrs. Wagerly's complaint, a roomer, Taylor Briggs, consulted Dr. Sample on November 9, 1913, and was informed that he did not have smallpox. He returned to the lodging-house, and on November 19, it was found he was afflicted with smallpox. He was then removed to the pest-house. Mrs. Wagerly says she caught the disease, has been facially disfigured for life and that her business has been ruined because of the quarantine that was established.—Fresno (Cal.) Republican, February 18, 1914.

STATEMENTS TO PHYSICIAN—EXPERT EVIDENCE

The Circuit Court of Appeals, Seventh Circuit, holds that unless it clearly appears that the plaintiff's description to a physician to whom she had gone of her subjective symptoms was made solely to aid an expert to give evidence on the trial in an action for her injury, and not in good faith to assist him in diagnosing her case for purpose of treatment, it is admissible, though the weight to be given it by the jury may be slight. If there is no conflict in the evidence as to the manner of a plaintiff's injury, it is not improper to permit a physician to state that the accident did cause, and not merely that it might have caused, the injury.—Chicago Rys. Co. vs. Kramer, 234 Fed. 245.—Medical Record.

ASKS FOR TEN THOUSAND DOLLARS DAMAGES

Albert Latva has started a suit in the Superior Court against P. M. Thomas, seeking $10,000 damages for malpractice. Latva suffered a crushed foot about a year ago and Thomas was the attending physician. The complaint recites that the injury was inadequately and improperly treated, and as a result he is permanently disabled. Thomas resides at Elko.—Sacramento Union, July 2, 1916.

UNUSUAL SUIT

A physician of New York City has recently filed in the Supreme Court a suit against the New York Telephone Company for $10,000, alleging that because of the failure of the company to list his office telephone in one of the 1915 directories, he suffered damage to this amount.—Medical Record.

MALPRACTICE SUIT FAILS

Judge Monroe yesterday granted a non-suit in the suit brought by V. R. Penny for $5000 damages against Dr. L. D. Johnson for alleged malpractice.—Los Angeles Examiner, January 29, 1916.

HOSPITAL DIRECTOR SUES RECORD COMPANY FOR $150,000

Dr. C. H. Whitman, medical director of the County Hospital, yesterday filed a $150,000 libel suit against the Record Publishing Company. The suit is based on an article published Wednesday in a local evening paper, headed "Our Hospital." Dr. Whitman alleges that for a long time the evening paper has exhibited malice toward him, that the article was actuated by malice.—Los Angeles Examiner, March 2, 1917.

$25,000 SUIT DROPPED BY COURT

A plea in estoppel was yesterday granted by Superior Judge T. W. Harris in the case of Miss Kirk Latimer against Dr. George C. Reinle. The matter was dropped from the calendar when it appeared that the patient, who was suing for $25,000 damages for alleged malpractice, had disregarded the advice of the physician and that he had collected no money for his services.—Oakland Tribune, March 10, 1917.

$5,000 CLAIMED FOR WOMAN'S ANKLE SET WRONG

Charging Dr. John P. Nutall and Dr. C. P. Thomas with negligence in reducing the fractured ankle of Mrs. Birdie E. Bowden, Mrs. Bowden and her husband, Rolandus F. Bowden, filed suit in the superior court today against the physicians for $5000 damages. It was alleged in the complaint that as a result of the treatment of the defendants, the ankle was improperly set and will always be crooked. —Los Angeles Herald, June 29, 1916.

DOCTOR WINS $37,000 MALPRACTICE SUIT

Petaluma, September 30.—Suits to recover $37,000 and costs, instituted against Dr. A. D. Pitts of Point Arena by H. G. Dean, who for years was employed here by the Pacific Telephone Company, on the alleged grounds of malpractice, was decided by Judge White yesterday in favor of the defendant. Dr. Pitts attended the wife of Dean. She lost a leg as the result of blood poisoning.—San Francisco Examiner, October 1, 1916.

$10,000 SUIT—PATIENT HURT BY HOT WATER BOTTLE

Declaring that he was injured on the heel of one foot through the application of a superheated hot water bottle, Benjamin Chubbic, of San Diego, who is at present residing at the home of his son, J. F. Chubbic, of No. 750 Alamitos avenue, this city, today filed suit for $10,000 damages against the Seaside Hospital, Long Beach.—Los Angeles Times, December 17, 1916.

DOCTOR'S CERTIFICATE

The Supreme Judicial Court of Massachusetts holds that the constitution of a mutual benefit insurance society requiring as con-

dition to readmission to membership on the return of a member who has left the country a certificate of its physician that he is "physically and mentally" sound is not satisfied by one that he is "still sick with indigestion, but improving."—Societa Unione Fratellanza Italiana v. Leyden (Mass.), 114 N. E., 738.—Medical Record.

FIVE THOUSAND DOLLAR MALPRACTICE SUIT

Judgment for the defendant was given yesterday by a jury in Judge Houser's department of the Superior Court in the suit of J. B. Cooke, who asked $5000 damages from Dr. John I. Boyer for alleged malpractice. The plaintiff charged that Dr. Boyer sewed up a nail inside his neck when the surgeon operated on him at the receiving hospital, June 29, 1913.—Los Angeles Tribune, January 7, 1914.

MEDICAL COMPANY SUED FOR FIVE THOUSAND DOLLARS

J. J. Caldwell filed suit in the Superior Court yesterday against the Cook Medical Company to recover $5000 for alleged malpractice. Caldwell avers he applied to the defendants for treatment on August 19. He says they gave him medicine which they promised would increase his weight. Instead, he says, his condition became aggravated and he had to seek the services of a physician.—San Francisco Examiner, January 6, 1914.

DECLARATIONS BY INJURED PERSON TO PHYSICIAN

Declarations made by one injured to his attending physician are admissible in evidence when they relate to the part of his body injured, his suffering, symptoms, and the like, but not if they relate to the cause of the injury.—Chicago & A. R. R. Co. vs. Industrial Board, Illinois Supreme Court, 113 N. E. 629.—Medical Record.

SURGEON SUED FOR FIFTEEN THOUSAND DOLLARS

Charging that his arm will be stiff for life from unscientific surgical work in setting a break, Edward Myers, a six-year-old boy, through his guardian, Adolphus Palmer, has instituted proceedings in the Superior Court, demanding judgment of $15,000 and costs against Dr. L. Heuler, a local surgeon.—Bakersfield (Cal.) Californian, October 6, 1915.

IMPLIED PROMISE OF CORPORATION TO PAY PHYSICIAN

The St. Louis Court of Appeals holds that the engaging of a physician and surgeon to care for a corporation's employee, by instruction by the corporation to "go on until you hear from" the corporation, carried with it an implied promise to pay the reasonable value of services thereunder.—Wilson v. St. Louis Envelope & Paper Box Co. (Mo.) 190 S. W. 379.—Medical Record.

COMPENSATION ACT ALLOWS NOTHING FOR MALPRACTICE

(Ruth vs. Witherspoon-Englar Co. (Kan.), 157 Pac. R. 403)

The Supreme Court of Kansas reverses a judgment obtained by the plaintiff, who, while at work for the defendant, had his leg broken between the hip and the knee, the court holding that the plaintiff's judgment here could not be increased by the fact that through the incompetent or negligent handling of the case by physicians a disability which would otherwise have been merely temporary was rendered permanent. The court says that, even if circumstances had been shown sufficient to charge the defendant with responsibility for the fault of the physicians, the rule would not be altered; for liability under the compensation act cannot be made to depend on the degree of care exercised. A part of the loss occasioned by an accidental injury to a workman is cast on the employer, not as reparation for wrongdoing, but on the theory that it should be treated as a part of the ordinary expense of operation. So much of an employee's incapacity as is the direct result of unskillful medical treatment does not arise "out of and in the course of his employment" within the meaning of that phrase as used in the statute. For that part of his injury his remedy is against the persons answerable therefor under the general law of negligence, whether or not his employer be of the number. In other words, in an action under the workmen's compensation act of Kansas, a recovery can be had only on the basis of disability to labor resulting from the injury received in the course of employment, without the intervention of an independent cause, the separate consequences of which admit of definite ascertainment. It cannot be augmented by the fact that the disabling effects of the injury are increased or prolonged by incompetent or negligent surgical treatment, even where the employer is responsible therefor.—Jour. A. M. A., February 24, 1917.

PUBLICATION OF CHARGE OF MALPRACTICE

(Wolf vs. Harris (Mo.), 184 S. W. R. 1139)

The Supreme Court of Missouri, Division No. 2, reverses a judgment obtained by the plaintiff, a physician, who brought this action in equity to restrain perpetually and enjoin the defendant from publishing certain alleged false, defamatory and libelous statements concerning him. The court says that the plaintiff averred that he was a practicing physician and surgeon, had been such for nearly a quarter of a century, reciting the extent of his studies, practice, and experience, that he was called to treat a young daughter of the defendant, and, though exercising in that behalf the utmost care and skill, the patient, without fault of the plaintiff, died, that thereafter the defendant demanded of the plaintiff in divers ways and at divers times and places the sum of $10,000 because of the death of said patient, and threatened that, unless said sum was paid, the defendant, by circulating charges of criminal negligence of the plaintiff in

connection with the death of said patient, would destroy the reputation, business, and professional standing and income of the plaintiff, which the plaintiff averred to be lucrative and large, and that in pursuance of said threats the defendant published and circulated more than 1,000 copies of a false and libelous writing concerning the plaintiff, which was set out in the petition, and which was, if untrue, manifestly libelous. It was further alleged that thereafter the defendant, with the same malicious intent and design, published and circulated among the plaintiff's patients, friends and acquaintances more than 5,000 copies of a pamphlet in which were repeated the same or similar false, defamatory and libelous statements, and that subsequently the defendant procured the printing of a large placard, likewise containing false and libelous statements concerning the plaintiff, and that all this was done for the purpose of wrongfully extorting from the plaintiff the said sum of $10,000. It was further alleged that the defendant threatened to continue, and until and unless restrained and enjoined would continue, to print, publish and circulate the same or similar libelous statements touching the plaintiff, etc. But the court is constrained to hold that the petition stated no cause of action, because injunction (when, as here, that is the sole relief prayed for) will not lie to restrain the threatened publication of either a libel or a slander. Any other view overlooks the spirit, if not the letter, of the state constitution, which substantially guarantees to the citizen the privilege of saying, wriing and publishing whatever he desires on any matter, subject only to liability (either civil or criminal, or both) for any abuse of that privilege. It follows that, if the statements made were true, the defendant was permitted to publish them when and where and as often as he would, and that he was entitled to a jury of his countrymen to determine whether the statements were true or false. That the statements on which this action was bottomed seemed on their face to be malicious and obviously untrue did not change the case. However, after an action at law in which there was a verdict finding the statements published to be false, the plaintiff, on an otherwise proper showing, could have injunction restraining any further publication of that which the jury found to be actionable libel or slander, and of slanders or libel of a like or similar import. If the plaintiff had gone to a jury with this alleged libel and obtained a judgment, which, owing to the insolvency of the defendant, he was unable to collect, further publication of a libel of like or similar import ought to be enjoined. Or, even if the plaintiff had joined a count at law for damages for libel with a count for injunction on the theory of a threatened continuance of the false publication, and had alleged and proved, either the inadequacy of remedy by reason of the libeler's insolvency, or the legal necessity of the remedy sought in order to avoid a multiplicity of suits, the court, on a finding by the jury of the libel, and by the court of the said necessary facts on the equity side, could have enjoined continued publication thereof.—Jour. A. M. A., December 9, 1916.

DOCTOR WINS FIVE THOUSAND DOLLARS FEES

Dr. William E. MacCoy won his suit for $1000 surgical fees against H. R. Gage through a jury in Judge Wilbur's court yesterday, and Gage lost on his cross-complaint to recover $5000 for alleged malpractice. The surgical services extended from May 21 to September 27, 1910.—Los Angeles Times, March 24, 1914.

TWENTY-FIVE-THOUSAND-DOLLAR SUIT FOR FEET BURNED

Mrs. Jane Vidal, of 381 Oak street, filed a suit for $25,000 damages today against Drs. A. D. and A. W. Morton, because, she alleges, they allowed her feet to be severely burned by a hot water bottle while she was under the influence of an anesthetic.—San Francisco Bulletin, September 22, 1915.

STANFORD SUED FOR FIFTEEN THOUSAND DOLLARS

Joseph W. Connolly today sued Leland Stanford University, which conducts Lane Hospital, for $15,000 for injuries sustained when bandages applied to his legs by hospital attendants caught fire.—San Francisco Bulletin, May 11, 1916.

INTERPRETATION OF PHYSICIANS' LIABILITY CONTRACT

(Seay vs. Georgia Life Ins. Co., 179 S. W. R., 312)

The above case may prove of interest to surgeons who indemnify themselves against suits for malpractice because of the many technicalities of the policies which they carry. The plaintiff in the above suit was indemnified in the above company and carried what is known as a physician's liability policy. Prior to the institution of the above suit, the plaintiff had been sued by a patient who had been injured in an accident and who was attended by one of the plaintiff's assistants. The patient succeeded in recovering a judgment against Doctor Seay amounting to $1000 and costs. The suit under discussion was brought by the Doctor to recover this amount from the insurance company under the terms of the policy which it issued to Doctor Seay. A clause in this policy was that it undertook to indemnify Doctor Seay "against loss from liability imposed by law upon the assured for damages and on account of bodily injury or death suffered by any person or persons in consequence of any alleged error, or mistake, or malpractice by any assistant in the employ of the assured while acting under assured's instructions." In the malpractice suit against Doctor Seay the following facts were brought out by the testimony: That the assistant undertook to diagnose the injuries of the patient, proceeded to treat him, and in so doing was acting under the general directions and within the scope of his employment, although the employer, Doctor Seay, did not see the patient at the time, gave the patient no personal instructions or attention, and apparently had no knowledge of the

particular case. The defense of the insurance company in the case under discussion was predicated solely upon the clause in its policy which is quoted supra, its contention being that the assistant in his treatment of the patient in question was not acting under the assured's instructions within the meaning of the policy and that therefore the company was not liable for the expenses and judgment of that trial. The plaintiff contended that the assistant was acting in the line of his employment according to general instructions and custom which prevailed between himself and Doctor Seay. Should the court hold that an assistant acting under general instructions and within the scope of his employment was acting under "assured's instructions," the purpose as defined in the policy within the qualifications attempted would entirely fail. However, in a physician's contract such as this one, the experience and ability of the individual insured necessarily enter largely into the consideration. As a safeguard against error, mistake, malpractice, or carelessness of the assistant, the insurer stipulates for the instruction of the insured, and following this line of reasoning the reviewing court stated in substance that therefore it could not be held liable for any mistake, negligence, malpractice, or carelessness of the assured's assistant while acting under the general instructions of the insured but without any advice or directions from the assured in the particular case, the policy being without provision as to the qualifications of the assistant. From a professional standpoint, the assistant was acting independently and without the suggestion, aid, or supervision of Doctor Seay. The finding of the court was that the insurance company was not liable upon its policy and the finding was in its favor.

It might be well to add for the benefit of physicians and surgeons who indemnify themselves against the liability which the law imposes upon their acts, that the holders of this form of policy of insurance should note the many technicalities with which the insurance companies who write this form of insurance fortify themselves so as to make this form of policy a beneficial one to the company from a stockholder's point of view. The writer has a number of cases in mind where the insurance company, after accepting premiums, disclaimed liability and under the technical provisions and limitations of their policies were enabled to successfully defend and defeat any suit brought against them at a later date for the recovery of costs and expenses incurred by the policyholder in defending himself against a suit for malpractice. We would suggest, therefore, that the holder of a policy of this character, read carefully all the provisions of his policy and bear them well in mind. Malpractice suits against physicians and surgeons have been increasing in the last ten years to such an extent that they now form no inconsiderable portion of the suits filed in the courts. From the foregoing, the writer does not mean to convey the impression that physicians and surgeons are negligent. The increase is probably due to the fact that the profession has now reached such a high

standard that the patient feels that failure to cure is evidence of negligence and attempts to seek relief via the pocketbook of the attending physician and surgeon. Judge William H. Taft, in a decision which he rendered while on the bench, stated that if the foregoing were the law "few would be courageous enough to practice the healing art, for they would have to assume financial responsibility for all the ills that flesh is heir to."—J. A. Castagnino. (Surgery, Gynecology and Obstetrics.)—Journal of Iowa State Medical Society, November, 1916.

DECISION OF SUPREME COURT OF WASHINGTON IN CASE OF ROSS VS. ERICKSON CONSTRUCTION COMPANY

(No. 12747. Department One. February 17, 1916.)
Harry L. Ross et al., Respondents, vs. Erickson Construction Company, et al., Appellants

(Editorial in "Northwest Medicine," January, 1917)

Master and Servant—Injury to Servant—Medical Attendance—Malpractice—Workmens' Compensation Act—Scope—Bar of Action—Statutes—Construction.

Appeal from an order of the Supreme Court of King county, Ronald J., entered December 5, 1914, granting plaintiffs a new trial, after the verdict of a jury rendered in favor of the plaintiffs, in an action for malpractice. Reversed.

Corwin S. Shank, H. C. Belt, and George C. Congdon, for appellants.

Wilson R. Gay and S. H. Kelleran, for respondents.

CHADWICK, J.—Plaintiffs brought this action for the recovery of damages alleged to have been suffered by reason of the malpractice of defendant McGillivray. Plaintiff Harry L. Ross was employed by defendant Erickson Construction Company, and was injured in the course of his employment. The accident occurred on the 21st day of December, 1913. Plaintiff was taken to the hospital conducted by McGillivray and remained under his treatment until February 12, 1914.

McGillivray was employed to do the surgical and hospital work for the construction company, and was paid for his services out of a fund made up by deducting the sum of one dollar from the monthly wages of the employees. After leaving the hospital, plaintiff made claim under the industrial insurance law and accepted a final award. This action was thereafter brought against the defendants for the recovery of damages laid in the sum of $15,000. A trial upon the merits was had, resulting in a verdict for plaintiffs in the sum of one dollar. A new trial was granted upon the grounds of newly discovered evidence. From the order granting a new trial, defendants have appealed.

Appellants set up in their answer, and maintained throughout the trial, that no recovery could be had against either of them, for

the reason that respondent Harry L. Ross had been compensated for his injuries resulting from the primary injury, or proximately attributable thereto. This contention is urged on appeal, and our conclusion will make it unnecessary to consider the questions raised by other assignments of error, for if respondents cannot recover at all, other questions become academic.

In discussing the question, we shall consider the state of the law at the time the industrial insurance law was passed (Laws 1911, p. 345; 3 Rem. & Bal. Code, § 6604-1 et seq.); and the industrial insurance law, its objects and purposes, its accomplishments, and its relation to causes of action that had theretofore been considered as independent of the primary cause of action.

At the time the industrial insurance law was passed, one who had been injured by or through the negligence of an employer could maintain an action and recover all damages proximately traceable to the primary negligence. If the master assumed to collect fees out of the wage of the employee for the purpose of maintaining medical and surgical treatment and hospital service, without deriving any profit therefrom, he was bound to exercise due care in providing a proper place for treatment, and in selecting physicians and surgeons. A breach of this duty made him liable in damages for the malpractice of the physician or surgeon. Richardson v. Carbon Hill Coal Co., 10 Wash. 658, 39 Pac. 95; Wells v. Ferry Baker Lumber Co., 57 Wash. 658, 107 Pac. 869, 29 L. R. A. (N. S.) 426; Wharton v. Warner, 75 Wash. 470, 135 Pac. 235; Simon v. Hamilton Logging Co., 76 Wash. 370, 136 Pac. 361; 3 Wharton & Stille, Medical Jurisprudence, p. 505; 5 Labott, Master and Servant, p. 6216.

If the master retained a part of the fee for his own use and profit, he became liable as a principal with the physician and surgeon and answerable for his negligence or lack of skill and learning. Sawdey v. Spokane Falls & N. R. Co., 30 Wash. 349, 70 Pac. 972, 94 Am. St. 880; Richardson v. Carbon Hill Coal Co., 6 Wash. 52, 32 Pac. 1012, 20 L. R. A. 338; 5 Labott, Master and Servant, p. 6214; 3 Wharton & Stille, Medical Jurisprudence, p. 506; 2 Shearman & Redfield, Negligence, § 331.

If the master did not employ medical and surgical attendance, the one suffering from his negligence could, using ordinary care and diligence only, employ his own physician or surgeon, and if he became the victim of malpractice, he could recover his damages from the master. Baldwin v. Lincoln County, 29 Wash. 509, 69 Pac. 1081; Chicago City R. Co. v. Cooney, 196, Ill. 466, 63 N. E. 1029; City of Dallas v. Meyers (Tex. Civ. App.), 55 S. W. 742; Seeton v. Dunbarton, 72 N. H. 269, 59 Atl. 944; McGarrahan v. New York, N. H. & H. R. Co., 171 Mass. 211, 50 N. E. 610.

One phase of the situation was that the workman might be compelled to try one action to secure compensation for the primary injury and one or more to secure compensation for the secondary wrong; that is, the malpractice of the surgeon.

Another phase, as the legislature notes, was that, "little of the

cost of [to] the employer has reached the workman," and his remedies were "uncertain, slow and inadequate." Then, too, the master might have to defend an action predicated upon the primary issue of negligence, and thereafter submit to a second recovery for the final consequences resulting from the malpractice of the physician employed by him. Both master and servant were subject to the burden of protecting and defending rights within bounds limited only by the statute limitations. Injustice to the laborer and hardships to the industries of the state, alike called for some plan that would relieve the servant of the necessity of pursuing his remedy for compensation in the courts, and the master of the harassments, vexations, and uncertainties attending the trial of all cases where men are called upon to defend against the charge of negligence.

The state, in the exercise of its sovereign power, recognized that the welfare of the whole people depends, "upon its industries, and even more upon its wage-workers," and accordingly passed a law designed to compensate an injured workman without reference to the manner of his injury or the questions of negligence, contributory negligence, assumption of risk, or fellow servant.

The state declared its power in the following comprehensive language:

"The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided." Laws of 1911, p. 345 (3 Rem. & Bal. Code, Sec. 6604-1).

The legislature undertook to withdraw "all phases of the premises from private controversy," and provide "sure and certain relief for workmen," and to that end abolished "all civil actions and civil causes of action for such personal injuries," and abolished all jurisdiction of the courts over such cases, except as in the act provided.

"It [the act] is founded on the basic principle that certain defined industries, called in the act extra hazardous, should be made to bear the financial losses sustained by the workmen engaged therein through personal injuries, and its purpose is to furnish a remedy that will reach every injury sustained by a workman engaged in any of such industries, and make a sure and certain award therefor, bearing a just proportion to the loss sustained, regardless of the manner in which the injury was received." State ex rel. Davis-Smith Co. v. Clauson, 65 Wash. 156, 175, 117 Pac. 1101, 37 L. R. A. (N. S.) 466.

In discussing the economic and sociological features of the law, the court, in the case just cited, noticed the omissions of the common

law and the inadequacy of its remedies, and the purpose of the act to provide a remedy that would compensate for all injuries traceable to or incident to the hazards of the industry. The court notes that verdicts, just and unjust, had been rendered in personal injury cases.

"For the greater number of injuries the common law affords no remedy at all. For this unscientific system, it is proposed to substitute a system which will make an award in all cases of injury, regardless of the cause or manner of its infliction; limited in amount, it is true, but commensurate in some degree to the disability suffered." State ex rel. Davis-Smith Co. v. Clausen, supra, p. 210.

The purpose to remove "all phases of the premises" from the courts and to put upon the contributing industries the burden of bearing the consequences of all injuries, and to make them bear the burden of caring for the injured man in the condition in which the state finds him, is recognized and emphasized in Peet v. Mills, 76 Wash. 437, 136 Pac. 685, Ann Cas. 1915 D. 154. See page 439:

"It is a well accepted rule that remedial statutes, seeking the correction of recognized errors and abuses in introducing some new regulation for the advancement of the public welfare, should be construed with regard to the former law, and the defects or evils sought to be cured, and the remedy provided; that, in so construing such statutes, they should be interpreted liberally, to the end that the purpose of the legislature in suppressing the mischief and advancing the remedy be promoted, even to the inclusion of cases within the reason, although outside the letter, of the statute. (36 Cyc. 1173)." See, also, p. 440:

"To say, with appellant, that the intent of the act is limited to the abolishment of negligence as a ground of action against an employer only, is to overlook and read out of the act and its declaration of principles the economic thought sought to be crystalized into law—that the industry itself was the primal cause of the injury and, as such, should be made to bear its burdens. The employer and employee, as distinctive producing causes are lost sight of in the greater vision that the industry itself is the great producing cause, and that the cost of an injury suffered in any industry is just as much a part of the cost of production as the tools, machinery, or material that enter into that production, recognizing no distinction between the injury and destruction of machinery and the injury and destruction of men in so far as each is a proper charge against the cost of production. The legislature in this act was dealing, not so much with causes of action and remedies, as with this great economic principle that has obtained recognition in these later years, and it sought, in the use of language it deemed apt, to embody this principle into law. That in so doing the legislative mind was intent upon the abolishment of all causes of action that may have theretofore existed, irrespective of persons in favor of whom or against whom such right might have existed, is equally

clear from the language of § 5 of the act, containing a schedule of awards, and providing that each workman injured in the course of his employment should receive certain compensation, and 'such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.'"

Clearly the purpose of the act was to end all litigation growing out of, incident to, or resulting from the primary injury, and in lieu thereof, give to the workman one recovery in the way of certain compensation, and to make the charge upon the contributing industries alone. That purpose is made reasonably clear by reference to the act.

We find but one right of action reserved to an injured workman. In § 6 (Id., § 6604-6), it is provided that, if injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, his survivors, or dependents shall have a cause of action for any excess of damages over the amount received in the act.

As further confirmation of the theory that the legislature intended to remove the matter of injuries to workmen "in all its phases" from the law courts, it will be noticed (§ 5 h; Id.; §6604-5, and § 12 c; § 6604-12) that the legislature was careful to provide that the compensation allowed may be readjusted, "if aggravation . . . of disability takes place or be discovered after the rate of compensation shall have been established, . . . and if circumstances so warrant, may be increased or rearranged."

We must credit the legislature with knowing the history and the then state of the law as it pertained to recoveries for personal injuries and injuries proximately traceable thereto, and, having such knowledge, with intent to remove all rights and liabilities growing out of, or because of them, whatever their form or number might be. It undertook to, and did, devise a comprehensive scheme as far removed from the domain of legal rights, obligations and duties as they had been defined at common law, as it was possible.

The act is grounded in a humanitarian impulse. It takes account only of the place of injury and the extent of the disability, and compensates for the conditions resulting from the primary injury; or, in other words, it will reject no element of disability if it has accrued in consequence of the first hurt, or as an aggravation arising from any collateral contributing cause.

The legislature knew that workmen had been compelled to meet the defense of nonliability on the part of the employer, who might plead the malpractice of the attending surgeon as a bar to recovery, and if they pursued their remedy against the malpractitioner, they might be subject to the hazard of expert opinion evidence, from which a jury may generally find a sufficient warrant to follow its own inclination. There was no assurances of recovery against either party or against either offender. On the other hand, the employer and faithful and competent physicians and surgeons had been put to the hazard of illfounded suits. The deserving had gone

from the courts, their wrongs unredressed. The undeserving had taken that which, in good conscience, was not their own, and, to cure all, the legislature passed the industrial insurance law covering "all phases of the premises."

These things seem clear to us, but it must be admitted that we are exploring a new field, and there is but little to offer to those who find no assurance for their opinions unless something is found to throw upon the shrine of "authority" and "precedent." To all such, we can say no more than that a diligent search has convinced us that there are no cases "in point." But to confirm our conclusion that the consequences of malpractice is an element which will be considered and compensated for by the state, we can offer a few cases bearing slightly:

In Greguitis v. Waclark Wire Works (N. J.), 92 Atl. 354, it was sought to maintain an action under what was there known as the "Death Act" (P. L. 1848, p. 151; 2 Comp. St. 1910, p. 1907). It is an act like Rem. & Bal. Code, § 183 (P. C. 81 § 15), giving a right of action for the wrongful death of a person. The court sustained a demurrer upon the ground that the workmen's compensation act had provided an exclusive remedy. The court said:

"Since that act [the death act] limited the relief granted thereby to recover in cases where the decedent would, if death had not ensued, be entitled to maintain an action, we must consider whether the plaintiff's intestate, if living, could have maintained an action."

After due consideration and discussion, the workmen's compensation act was held to be exclusive, the conclusion of the court being:

"It will be observed that the workmen's compensation act deals with cases where the injury results in death, and paragraph 8 provides that, where the contract of hiring is subject to section 2 of the act such agreement shall be a surrender by the parties thereto of their rights to any other method, form, or amount of compensation or determination thereof than as provided in section 2.

"Obviously the remedy thereby provided in case of death, where the contract of the employee is subject to section 2, is inconsistent with the remedy provided by the death act, because the latter provides for a different procedure and a different rule of damages. Since the workmen's compensation act by its terms repeals all inconsistent legislation, the rights and remedies thereby given are substituted for those theretofore provided by the death act."

In in re Brightman (Mass.), 107 N. E. 527, it was held that, where an employee had overexerted himself in saving his effects from a barge which was on fire, thus aggravating a heart disease with fatal results, an award would be upheld. The court evidently considered and rejected the doctrine of intervening agency and aggravation independent of a primary wrong, and looked only to the purpose of the law.

"In the case at bar there may be found to be apparent to the

rational mind a casual connection between the employment and the thing done by the employee at the time of the sinking of the lighter.

"Acceleration of previously existing heart disease to a mortal end sooner than otherwise it would have come is an injury within the meaning of the workmen's compensation act."

So in in re Sponatski (Mass.), 108 N. E. 466, a workman had been hurt by a splash of molten metal striking him in the eye. While insane as a result of the pain suffered by reason of the injury, he threw himself from a window and was fatally injured. It was held that his widow was entitled to an award; that it was immaterial whether the death was or was not a reasonable and likely consequence, the inquiry relating solely to the chain of physical causation between the injury and the death. We think the importance of the inquiry warrants us in reproducing the holding of the court:

"It is of no significance whether the precise physical harm was the natural and probable or the abnormal and inconceivable consequence of the employment. The single inquiry is whether in truth it did arise out of and in the course of that employment. If death ensues, it is immaterial whether that was the reasonable and likely consequence or not; the only question is whether in fact death 'results from the injury' . . . When that is established as the cause, then the right to compensation is made out. If the connection between the injury as the cause and the death as the effect is proven, then the dependents are entitled to recover even though such a result before that time may never have been heard of and might have seemed impossible. The inquiry relates solely to the chain of causation between the injury and the death."

In Burns' case, 218 Mass. 8, 105 N. E. 601, the immediate cause of death was bed sores which finally produced blood poisoning. A finding that death resulted from the injury was upheld. The court quoted from McDonald v. Snelling, 14 Allen 290, 296, 92 Am. Dec. 768:

" 'The mere circumstance that there have intervened, between the wrongful cause and the injurious consequence, acts produced by the volition of animals or of human beings, does not necessarily make the result so remote that no action can be maintained. The test is to be found, not in the number of intervening events or agents, but in their character, and in the natural and probable connection between the wrong done and the injurious consequence. So long as it affirmatively appears that the mischief is attributable to the negligence as a result that might reasonably have been foreseen as probable, the legal liability continues.' Nor would it have been material, if that had been found to be the fact, that the bedsore was due to the mistake or the negligence of the physicians acting honestly."

An award was upheld in Beadle v. Milton, 5 W. C. C. 55. It was there complained that the workman had been the victim of malpractice. Although it was found that the treatment was not defective, it was said:

"Assuming it to have been defective, I hold that it would have been no defence to this application, inasmuch as the applicant had done all he could in going to the hospital and submitting to the treatment administered there, independently of his having gone there at the desire and with the privity and consent of the respondents."

In Smith v. Northern Pac. R. Co., 79 Wash. 448, 453, 140 Pac. 685, the law is broadly stated to be:

"If a person receives an injury through the negligent act of another, and the injury is afterwards aggravated, and a recovery retarded through some accident not the result of want of ordinary care on the part of the injured person, he may recover for the entire injury sustained, as the law regards the probability of such aggravation as a sequence and natural result likely to flow from the original injury."

In Brown v. Kent, 6 Butterworth's W. C. C. 745, a workman who had been injured in the knee, necessitating an operation, was stricken with scarlet fever contracted in the hospital. The contracted disease settled in the knee joint, making an injury that otherwise would have been of no consequence a permanent disability. It was held that the workman was entitled to compensation. The judges quoted from Dunham v. Clare (1902), 2 K. B. 292, 4 W. C. C. 102, as follows:

"The question whether death resulted from the injury resolves itself into an inquiry into the chain of causation. If the chain of causation is broken by a novus actus interveniens, so that the old cause goes, and a new one is substituted for it, that is a new act, which gives a fresh origin to the after consequences." And thus observed:

"It may well be that the fever, and the condition of the patient caused by it, much increased the risk of the formation of pus, but it was the old wound which was giving the trouble—the old wound which was suppurating. It was the evidence of Dr. Bone, accepted and agreed to by both parties, that if there had not been any accident and consequent injury to the knee, the scarlet fever could not have caused the injury or the incapacity in question. The result is necessarily that the incapacity is the result of the accident to the knee, although probably aggravated by the scarlet fever. This entitled the workman to compensation for the accident on the footing that the incapacity caused by it is continuing."

Other cases of the kind referred to are collected in 8 Neg. & C. C. Cases, p. 1025, and 6 Neg. & C. C. Cases, p. 624. These holdings are consonant with the reasoning of this court in the case of Zappala v. Industrial Insurance Commission, 82 Wash. 314, 144 Pac. 54, and cases cited therein.

It would seem that, having an original right to recover against the master for the consequences of malpractice, and a present right to submit his condition for appraisement notwithstanding such malpractice, the respondents fall within the statute. It does not

merely deny a right of action, but abolishes all civil actions and all civil causes of action to which he might have resorted, as well as the jurisdiction of the courts to entertain such causes.

But it is said that a holding that the master and the surgeon are not liable to answer for an aggravated condition resulting from the ill treatment of a wound, or the malpractice of a surgeon, may result in grievous wrong in that only a partial recovery may be had.

What is or what is not a full recovery in a given case is a relative question with which we have nothing to do. It is enough that the legislature has fixed a schedule of recoveries within which the discretion of the commissioners may move, subject to a "court review" as provided in the act, and in lieu of a system that often brought a full recovery in unmeritorious cases and as often no recovery at all in meritorious cases; it has substituted a system that will insure an award in all cases.

It may be asserted, without doing violence to the rules of logic or law, that whatever sum is fixed for partial or total disability is theoretically the exact sum necessary to measure and compensate the wrong. The logic of our former decision in State ex rel. Davis-Smith v. Clausen, supra, is that the admeasurement of damages in money for injuries to employees is within the police power of the state, and it is axiomatic that the courts will not restrain or enlarge upon the exercise of that power. Nor will it substitute its judgment for that of the legislature upon any question of fact arising under it. State v. Somerville, 67 Wash. 638, 122 Pac. 324; State v. Mountain Timber Co., 75 Wash. 581, 135 Pac. 645.

Counsel put this case to us: Suppose a workman has his finger crushed; a slight wound which if permitted to heal or if properly treated would result in no evil consequences. He is sent to a hospital and blood poison results by reason of negligent and unskillful treatment, and his arm is amputated that his life may be saved. Can it be said that the legislature intended to deny a recovery for such malpractice, it being an injury entirely independent of the injury suffered in his employment?

We have passed the question of allowance and the amount of compensation and will concern ourselves only with the question submitted. Counsel reason from a wrong premise. The resultant injury or "aggravation," to use the words of the statute, is not an independent injury. It is proximate to the original hurt and is measured as such.

Surgical treatment is an incident to every case of injury or accident and is covered as a part of the subject treated. By the law, the commission is given authority, § 24 (Id, § 6604-24), subd. 4, to "supervise the medical, surgical and hospital treatment to the intent that same may be in all cases suitable and wholesome." When a workman is hurt and removed to a hospital, or is put under the care of a surgeon, he is still, within every intendment of the law, in the course of his employment and a charge upon the industry, and so continues as long as his disability continues.

The law is grounded upon the theory of insurance against the consequences of accidents. The question is not whether an injured workman can recover against any particular person, but rather is his condition so directly or proximately attributable to his employment as to invoke the benevolent design of the state.

In construing statutes, courts have always looked to possible consequences as an efficient aid in clearing doubts. It surely was not the intention of the legislature to leave it to the commission to apportion the compensation allowed by the state with some fancied judgment that might be rendered in a potential suit brought against the attending physician, or to encourage a settlement for a lesser sum than the amount really due by holding out the hope or suggestion that the claimant had a cause of action against a surgeon.

Counsel insist that our conclusion will lead to absurd consequences; that we must thereafter hold that an injured workman who has had compensation has no right to sue for any tort, and that no person is liable to him for a tort committed during the time of disability; that he can be wounded and injured at will, provided the injury is confined to the original hurt.

We do not so read the statute. It is only such results as are proximately traceable to the original hurt that are within the contemplation of the statute. An independent cause, that in no way proximates the act out of which the right to compensation flows, might afford a ground of recovery, and might not be considered an "aggravation" warranting an increase of compensation within the meaning of the act. We will meet these questions when a state of facts is presented which will call for their solution.

Nor will our holding bar a right to recover upon an accident policy as is suggested. That right rests upon a contract which is independent of the subject treated by the statute, and with parties with whom it has no concern.

The respondent has no cause of action. The case is reversed, and remanded with directions to dismiss.

MORRIS, C. J., FULLERTON and MOUNT, J.J., concur.

PROTECTION AGAINST BRONCHITIS

In winter with its changeable weather, the old folks of reduced vitality and resistance, begin to suffer from bronchial inflammations. Prevention in these conditions is better than cure, and prevention lies in the employment of those agents that will add to the patient's bodily strength and more narrowly restrict the resistance of bronchial tissue to atmospheric disturbances with a consequent germ invasion. For this purpose Cord. Ext. Ol. Morrhuæ Comp. (Hagee) has been found of the utmost value not alone for its therapeutic influence but also by reason of the fact that it does not upset the stomach. Give it to your patients who suffer annually from bronchial attacks.

The law is grounded upon the theory of insurance against the consequences of accidents. The question is not whether an injured workman can recover against any particular person, but rather is his condition so directly or proximately attributable to his employment as to invoke the benevolent design of the state.

In construing statutes, courts have always looked to possible consequences as an efficient aid in clearing doubts. It surely was not the intention of the legislature to leave it to the commission to apportion the compensation allowed by the state with some fancied judgment that might be rendered in a potential suit brought against the attending physician, or to encourage a settlement for a lesser sum than the amount really due by holding out the hope or suggestion that the claimant had a cause of action against a surgeon.

Counsel insist that our conclusion will lead to absurd consequences; that we must thereafter hold that an injured workman who has had compensation has no right to sue for any tort, and that no person is liable to him for a tort committed during the time of disability; that he can be wounded and injured at will, provided the injury is confined to the original hurt.

We do not so read the statute. It is only such results as are proximately traceable to the original hurt that are within the contemplation of the statute. An independent cause, that in no way proximates the act out of which the right to compensation flows, might afford a ground of recovery, and might not be considered an "aggravation" warranting an increase of compensation within the meaning of the act. We will meet these questions when a state of facts is presented which will call for their solution.

Nor will our holding bar a right to recover upon an accident policy as is suggested. That right rests upon a contract which is independent of the subject treated by the statute, and with parties with whom it has no concern.

The respondent has no cause of action. The case is reversed, and remanded with directions to dismiss.

MORRIS, C. J., FULLERTON and MOUNT, J.J., concur.