A view of the laws relating to physicians, druggists and dentists.

WILLIAMS

ON LAWS RELATING TO

PHYSICIANS, DRUGGISTS AND DENTISTS.

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BY

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INTRODUCTION.

THE purpose of this book is to give information as to the laws relating to physicians, druggists and dentists. All of them by reason of their presumed skill and learning in their callings, are responsible as specialists. They have the human body as the subject of their operation, and therefore have responsibilities alike or analogous. They have the same or similar rights and remedies for the purpose of obtaining their charges or compensation for services. Because of these similarities it has been thought proper to collect in one book the laws applicable to each class.

A large portion of the book comprises what is known as the common law, applicable throughout all of the United States. This is largely so as to those relating to responsibilities and book accounts. The author is not aware of any work heretofore published with the same designs, and thinks the book, as now submitted, will prove of interest and value.

The responsibilities of and for physicians have a wide and varied range. In the first place they are of great public concern and interest. In the State of Pennsylvania, the people, by its Legislature, have awakened to the necessity of acting for their protection in such matters, and the result has been that important Acts of Assembly have lately been passed for the regulation of each of the classes named, and which laws are collected in the Appendix. In the next place, the Courts are responsible to see that those laws are properly administered, and so far they have done so fearlessly and uprightly.

Again, there are responsibilities both of students and professors. On the part of the students, that they will go through their prescribed courses fully and faithfully; and, on the part of the professors, that no student shall be granted a diploma unless he is justly entitled to the same and is a physician in fact as well as name. They are not only bound to teach, but to see that what they teach is understood and in fact acquired by the student. The Acts of Assembly direct what branches of learning shall be taught, and prescribe the standard of qualification and in effect command the professors of colleges to bring every student up to that standard. Then there are responsibilities clustering around the daily path of the practitioner. He is bound to keep pace with the advancement of medical science. To review and keep what he has acquired

in the schools and to be constantly adding to his store of knowledge from fresh fields of discovery. In the whole range of responsibilities, there is none so great as that of the physician when in practice he is left to exercise his own judgment free from all human responsibility. In a joke it has been remarked that the evidences of a physician's mistakes are buried underground. There is a great deal of serious meaning in this remark. The secrecy with which a physician pursues his practice, with no professional person to overlook his actions, gives him a great liberty and advantage. Probably it is by reason of this great trust to be reposed in a physician that the law expressly requires him to be a person of good moral character. The law, however, can merely provide for training and character, and must necessarily leave the physician responsible only to his God, for a faithful execution of such trust.

The author has selected, as one of his subjects for consideration, the responsibilities under the law. Such matters must be at least interesting to the classes addressed, as it may be in the course of events that their property, and even their personal liberty, may be at stake upon the solution of the questions considered. In writing a law book, the main things to be considered are the decisions of the Courts in actual cases, and consequently the book now presented is largely composed of

references to and extracts from such decisions, and the author's own private thoughts have to a large extent given way to these. He has also treated of subjects, which, although of no public importance, must be interesting to those concerned. He has referred to the various modes of securing and collecting fees and charges, which are, in many cases, very necessary matters to be considered. The author will first treat of the principles relating to responsibility and afterwards will consider the other matters in the order of the index.

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Physicians, Druggists and Dentists.

A physician is only bound to employ such reasonable skill and diligence as are ordinarily exercised in his profession.

This is the great cardinal principle as to professional responsibility, and is universally recognized. But after an extensive review of the authorities as to this principle, the author has come to the conclusion that some of them are confusing and unsatisfying. These results arise from a neglect to consider and define what this ordinary knowledge and skill is. Like many other general rules of universal application, the rule in question has its exceptions, and shifts according to a variety of circumstances. Some authorities, by reason of the variety of the degrees of responsibility under the rule, have almost come to the conclusion that there is no such general rule at all. Notwithstanding, however, there is great uncertainty in the application of the rule, there is much that is certain.

Considering such confusion and doubts, the author has

taken the liberty, upon his own responsibility, of expressing his views as to the principle in question.

The authorities are agreed that a physician should and must have a good medical education, and our Act of Assembly not only requires such an education, but prescribes the course of studies to be pursued. This education, or presumed education, lies at the foundation of a physician's responsibility. All that is elementary, certain and material, in such education, is ordinary knowledge. A knowledge of the symptoms of disease, of remedies, of modes of treatment, of apparatus, of medicines and their properties, of the different parts of the human body and their functions, is ordinary knowledge. Generally, all that knowledge which a graduate should know before he can get a diploma, and which it would be a professional disgrace not to know, is ordinary knowledge. Hence, the graduates at the same time of a particular medical school may be considered as standing in the same position as to responsibility.

But after such graduation the responsibility shifts and varies according to a variety of circumstances. Medical science is constantly changing and advancing, and consequently the standard of ordinary knowledge and skill changes. Old remedies, or the manner of their application, become obsolete, and are superseded by others. When in any particular place such changes are generally known and adopted, they become ordinary, and consequently physicians of such place become responsible for a knowledge of and a practice according to such changes.

The nearest expression the author has found as to this doctrine, is in the opinion of our Supreme Court in McCandless *vs.* McWha, hereinafter cited at length, in which it was said: "The standard of ordinary skill is on the advance; and he who would not be found wanting, must apply himself with all diligence to the most accredited sources of knowledge." There is a distinction to be noted between things certain and uncertain in medical science and practice in fixing responsibility. Ordinary knowledge may become uncertain in its application. For instance, there may be two or more remedies for the same disease or symptom; there may be different instruments to perform the same operation; there may be uncertainties as to how ordinary medicines are to be administered in cases of a complication of diseases, or by reason of the age, temperament, or physicial endurance of the patient. In such cases a physician may be thrown back upon his own mental resources and responsibility. In these cases of doubt a physician is not responsible if he does the best he can under the circumstances.

What is ordinary care.

"What is ordinary care cannot be determined abstractly. It has relation to and must be measured by the work or thing done, and the instrumentalities used, and their capacity for evil as well as good. What would be ordinary care in one case, may be gross negligence in another.

"Ordinary care has relation to the situation of the parties and the business in which they are engaged, and varies according to the exigencies which require vigilance

and attention, conforming in amount and degree, to the particular circumstances under which it is to be exerted. And a much stricter standard than ordinary care, testing the word ordinary by mere local or limited custom and usage in like cases, has been often applied; as when life is endangered."

Cayzer *vs.* Taylor, 10 Gray, 280.
Fletcher *vs.* Boston, 1 Allen, 9.
Hilliard on Torts, vol. 1, p. 118.

Test of "average capacity" inadequate.

"The question of diligence in each particular case is to be determined, not by inquiring what would be the average diligence of the profession, but what would be the diligence of an honest, intelligent and responsible expert in the position in which the defendant was placed."

This is a proposition stated in Wharton on the Law of Negligence, sec. 734. In support of the proposition, he says: "The average skill of a profession, taking in good and bad, young and old, as a mass, is difficult to reach; and if we count into the aggregate the young who have had no practice, and the old who have retired from practice, the average would give a standard lower than that which should be required. Nor is this all. Even supposing such a standard could be reached and should be adequate, it is too inflexible to be indiscriminately applied. In a city there are many means of professional culture which are inaccessible in the country. In a city, hospitals can be readily walked, and new books and appliances promptly purchased and libraries easily visited, and in a city, also,

exists that intercourse with prominent professional men which leads not only to the promotion of keenness and culture, but to the free interchange of new modes of treatment. In the country, such opportunities do not exist. What is due diligence, therefore, in the city is not due diligence in the country, and what is due diligence in the country is not due diligence in a city."

Wharton on Negligence, sec. 734.

An increased degree of care required when life is in danger.

"The common law has a peculiar regard for human life; and for this reason exacts a greater degree of care when life is at peril, than in relation to any matter of mere property. Accordingly, the law requires from all persons, including those who render gratuitous services, at least ordinary care for the safety of life; from those who render service for compensation, great care; and from those whose business or occupation necessarily involves great risk of life, it demands a peculiar degree of vigilance and sagacity, sometimes called "the utmost care."

Shearman and Redfield on Negligence, sec. 24.

A physician is only bound for the exercise of his best judgment in matters of doubt.

"He is not accountable for a want of the highest degree of skill, or for an erroneous though honest conclusion according to his best lights."

Wharton and Stille on Medical Jurisprudence, sec. 1087.

Under this head, the case of Bogle *vs.* Winslow, 5 Phila., Rep., 136, is given, and it must prove of great interest to all those who have occasion to use chloroform in practice; and because of the various interesting points raised and decided, the author has taken the liberty of making extensive extracts therefrom.

A driver was thrown from his car, his head striking a tree-box as he fell. He was picked up insensible, but returned to work the next day. Afterwards he went to Dr. Winslow's office for the purpose of having teeth extracted under the influence of chloroform. The chloroform was administered, and not long after he was struck with partial paralysis; and the question at issue was, whether this was attributable to the neglect of Dr. Winslow.

Judge Hare, in his charge to the jury, said: "The defendant is not answerable unless two things appear: First, that he was guilty of negligence or want of skill in administering the chloroform; and second, that the disease which followed was the result of the use of this remedy. On the first point it has been well said that the negligence must consist either in the unfitness of the remedy itself, or in its unskilful application. The highest medical evidence has been brought to bear on the point, and a number of surgeons examined, who all, with one exception, testify that chloroform is an acceptable and proper agent even in minor surgery, sanctioned by science and experience." . . . . . "The evidence shows also that the defendant is skilful in his profession, and specially

conversant with the administration of chloroform, being called upon by eminent surgeons to give it for them. This, in the absence of proof, affords a presumption in favor of his skill in the particular instance in question. There is nothing from which malpractice can be inferred, except the length of time, during which it was used, and the quantity made use of; the time being longer, and the quantity given greater, than is ordinarily necessary to produce the effect; but the scientific men who have been examined have declared that the amount of the dose, and the prolongation of its influence, are not productive of danger unless there is a want of proper care. Testimony of this sort ought to have great weight with the jury and be decisive, unless there is something to overthrow its force. We know nothing of the effects of the agents of this description, except from experience, and the records of that experience are to be found in scientific works, and the evidence of men who have made the subject their study. The jury are, however, to decide in the last resort; but even if they doubt the safety of the agent employed, there is still a consideration of the highest reason which they ought not to disregard. All science is the result of a voyage of exploration, and the science of medicine can hardly be said to have yet reached the shore. Men must be guided, therefore, by what is probably true, and are not responsible for their ignorance of the absolute truth which is not known. If a medical practitioner resorts to the acknowledged proper sources of information; if he sits at the feet of

masters of high reputation, and does as they have taught him, he has done his duty, and should not be made answerable for the evils that may result from errors in the instruction which he has received. Medical opinion varies from time to time. What is taught at one period may be discovered to be erroneous at another, but he who acts according to the best known authority, is a skilful practitioner, although that authority should lead him, in some respects, wrong. He will then have done all that he can, all that is given to man to do, and may leave the result, without self-reproach, in the hands of a higher power. If, however, you should decide that chloroform was an improper agent, or that it was erroneously administered in this instance, you will then have to consider whether the paralysis was the result of its administration. Scientific evidence has been adduced on this point also, to show that paralysis is not a natural, or even a possible, consequence from giving chloroform."

The learned Judge, after reviewing the testimony on this point, said: "This topic is not irrelevant, because the medical testimony here is, that the severe blow on the head received by the plaintiff might have produced a latent disease, only requiring some exciting cause to rouse it into activity. If the plaintiff was, from previous circumstances, predisposed to paralysis, it might well happen that the extraction of his teeth without the chloroform, or the use of chloroform without the extraction, would bring on a paralytic attack. Even if this was the case, still it would not be just to make the defendant answer-

able for the consequences which he could not foresee, which were not the ordinary or probable result of what he did. He was only bound to look to what was natural, and probably to what might reasonably be anticipated. There is nothing to show that he was made acquainted with the accident that had befallen the plaintiff, or had any reason to suppose that there was greater danger in his case than that of other men. Unless such guard is thrown around the physician, his judgment may be clouded, or his confidence shaken by the dread of responsibility at those critical moments when it is all-important that he should retain the free and undisturbed enjoyment of his faculties, in order to use them for the benefit of the patient."

The jury returned a verdict for the defendant.

In Shearman and Redfield on Negligence, sec. 439, it is held that a physician about to administer an anæsthetic, is bound to inform himself as to the condition of the patient's heart, lungs, or other organs, which, if diseased, would warn a prudent physician against the administration of that beneficent agency. In view of this doctrine, it would be the better and safer practice to make the inquiry as suggested, and more especially so if there are any outward signs of any such internal disorders.

Where there is a system of treatment, it must be followed.

If there is no established mode of treatment, the patient must trust to the skill and experience of the surgeon he calls; but when the case is one as to which a system of

treatment has been followed for a long time, there should be no departure from it, unless the surgeon who does it, is prepared to take the risk of establishing, by his success, the propriety and safety of his experiment.

Carpenter *vs.* Blake, 60 Barbour, 488–99, per note of Wharton and Stille, sec. 1092.

A physician is only bound to practice according to the rules of his particular school.

"The great variance between the medical theories which find acceptance among different schools, each of which has its sincere and devoted adherents, and each being, in the estimation of its opponents, mere quackery, make it impossible to assert, as a proposition of law, that any particular system affords an exclusive test of skill."

Shearman and Redfield on Negligence, sec. 437.

The patient must submit to the physician's treatment.

This principle is illustrated by the case of McCandless *vs.* McWha, 22 Pa. St. Rep. 261. This case is here placed although it goes largely into other important matters. It seems to be a leading case, not only in the State of Pennsylvania but throughout the United States. It was an action by James McWha *vs.* Dr. McCandless for an injury sustained by reason of alleged malpractice in the setting and treatment of his broken limb. The plaintiff, by accident, had his left leg broken, about the 24th March, 1847, and the defendant, a surgeon and physician of good standing in his profession and otherwise, was called to set the leg and attend to it. After the leg had healed,

this suit was brought to recover damages for malpractice, on the alleged ground of a want of the exercise of sufficient surgical skill and attention to the broken limb, whereby it was alleged the leg had become shorter than the other one.

Judge Woodward, in delivering the opinion of the majority of our Supreme Court, said: "This was an action on the case by the defendant in error against the plaintiff in error, a respectable physician and surgeon, for malpractice in setting a broken leg of the plaintiff, and the only question of any importance presented for our consideration is, whether the Court erred in charging 'that the defendant was bound to bring to his aid the skill necessary for a surgeon to set the leg so as to make it straight and of equal length with the other, when healed; and if he did not, he was accountable in damages, just as a stonemason or bricklayer would be in building a wall of poor materials, and the wall fell down, or if they built a chimney and it should smoke by reason of a want of skill in its construction.' It is impossible to sustain this proposition. It is not true in the abstract, and if it were, it was inapplicable to the circumstances of the case under investigation. The implied contract of a physician or surgeon is not to cure—to restore a fractured limb to its natural perfectness—but to treat the case with diligence and skill. The fracture may be so complicated that no skill vouchsafed to man can restore original straightness and length; or the patient may, by wilful disregard of the surgeon's directions, impair the effect of the best conceived

measures. He deals not with insensate matter, like the stonemason or bricklayer, who can choose their materials and adjoin them according to mathematical lines; but he has a suffering human being to treat, a nervous system to tranquilize, and a will to regulate and control."

After commenting upon the evidence, etc., the Court said: "Not to multiply authorities, these are sufficient to show that the rule presented by the Court is too rigid for this class of cases; that shortening of the leg may result from the most careful and approved practice, or from the misconduct of the patient. Nothing can be more clear than that it is the duty of the patient to co-operate with his professional adviser, and to conform to the necessary prescriptions; but if he will not, or under the pressure of pain cannot, his neglect is his own wrong or misfortune, for which he has no right to hold his surgeon responsible. No man may take advantage of his own wrong, or charge his misfortunes to the account of another. We do not mean to intimate an opinion that this case was properly treated, or that the leg could not have been restored to the length of its fellow; but in view of the diversified circumstances that attend cases of this sort it was very important that the true rule of professional responsibility should have been given to the jury, with instructions that they should inquire, from all the facts in proof, whether the defendant had come up to it, or stopped short of it. We have stated the rule to be reasonable skill and diligence; by which we mean such as thoroughly educated surgeons ordinarily employ. If more than this is

expected it must be expressly stipulated for; but this much every patient has a right to demand, in virtue of the implied contract which results from intrusting his case to a person holding himself out to the world as qualified to practice this important profession. If a patient applies to a man of different occupation or employment for his assistance, who either does not exert his skill or administers improper remedies to the best of his ability, such person is not liable in damages; but if he applies to a surgeon, and he treats him improperly, he is liable to an action, even though he undertook *gratis* to attend the patient, because his situation implies skill in surgery. Per Heath, J., in Shiels *vs.* Blackburn, 1 Hen. Blac., 161; Seare *vs.* Prentice, 8 East., 348. The principle is contained in the pithy saying of Fitzherbert, that 'it is the duty of every artificer to exercise his art rightly and truly as he ought.' This is peculiarly the duty of professional practitioners, to whom the highest interests of man are often necessarily intrusted. The law has no allowance for quackery. It demands qualification in the profession practiced—not extraordinary skill, such as belongs only to few men of rare genius and endowments, but that degree which ordinarily characterizes the profession. And in judging of this degree of skill, in a given case, regard is to be had to the advanced state of the profession at the time. Discoveries in the natural sciences, for the last half century, have exerted a sensible influence on all the learned professions, but especially on that of medicine, whose circle of truths has been relatively much enlarged.

And, besides, there has been a positive progress in that profession, resulting from the studies, the experiments, and the diversified practice of its professors. The patient is entitled to the benefit of these increased lights. The physician or surgeon who assumes to exercise the healing art, is bound to be up to the improvements of the day. The standard of ordinary skill is on the advance, and he who would not be found wanting must apply himself with all diligence to the most accredited sources of knowledge. If, in view of the principles here stated, Dr. McCandless shall be found, on re-trial, to have performed his whole duty to his patient, and that any defects in the limb are due to the patient's fault, or to the peculiarities of the fracture, there ought to be no recovery in damages; but if the blemish be fairly attributable to professional negligence, the jury should assess the damages."

A paid physician has no right to desert a patient before the end of his illness.

"The peculiar nature of the services which a medical man undertakes to render, often makes it his duty to continue them long after he would gladly cease to do so. He may, no doubt, decline absolutely to take charge of a case; but having once begun the task, he cannot abandon it as freely. Even if his services are gratuitous, he must continue them until reasonable time has been given to procure other attendance; and if he is not attending gratuitously, he has no right to desert a patient before the end of the illness which he undertook to treat, without

reasonable cause. The propriety of this rule is obvious, in some instances, and is easily demonstrable in all cases.

"Thus no one can doubt, that even where his attendance was gratuitous, a surgeon could not be allowed to cut off a limb, and then leave the patient to stop the flow of blood as best he could; and this, although an extreme case, proves that there must be a rule adequate to secure justice for such a case, that a paid physician must continue his attendance, if desired, until the emergency which he was called to meet is past, seems to be not only reasonable in itself, but to be sustained by analogy from the rule which requires lawyers to conduct their clients' causes, to trial and judgment, after they have once undertaken them. A patient is surely as much entitled to the continuance of his physician's services during a single illness, as a client to that of his lawyer's aid during the progress of a single action."

Shearman and Redfield on Negligence, sec. 441.

Proof of physician's skill.

"When the physician's general skill is at issue, he may adduce evidence to prove the existence of such general skill, irrespective of the particular case. That a physician or surgeon possesses skill, may be shown by those of the same profession, who can speak from personal knowledge of his practice."

2 Wharton and Stille's Medical Jurisprudence, sec. 1087.

There appears to be some conflict with the above

authority as to the right to prove a physician's general skill, by the decision of our Supreme Court, in Mertz *vs.* Detweiler, 8 W. & S., 376, hereinafter cited. But since that decision Acts of Assembly have been passed, making it necessary that physicians should have certain evidences of general skill, such as the pursuit of a particular line of studies, a diploma and the like, and the author's own opinion is that now a question of general skill, at least in certain cases, can be made an issue. If a quack doctor makes a mistake, the fact of his being such a doctor would be considered, and for the same reason all the degrees from the skill of such a doctor to that of the ordinary practitioner should be matters of judicial investigation.

A physician attending without compensation is only liable for gross negligence.

This principle is of very doubtful acceptation. It seems to have been adopted by analogy to the exemption from liability in working upon insensate matter without compensation. To hold such a principle would be lowering the standard of professional responsibility to that of mechanics and the like, with no regard for humanitarian reasons. The author feels warranted in stating that a large majority of respectable physicians would not, for the sake of their profession and humanity, shield their liability for neglect with the plea of gratuitous service. A physician has the right to refuse to take a case, or, if he acts gratuitously, to abandon a case if

another physician is ready to take his place; but that is another thing from liability while attending a patient, whether for compensation or not. An important exception to the principle is to be noted: That it does not apply in cases when death may be the consequence of neglect. It seems to the author that, if the principle is to be recognized, the exception should have the fullest possible scope. That if from the nature of the disease it may terminate, or can possibly in any event terminate, fatally, a physician should be held to the rule for ordinary care.

If a patient is aware of a physician's want of knowledge or skill, he cannot complain for the lack of that which he knew did not exist.

Shearman and Redfield on Negligence, sec. 435.

This principle would not prevent criminal responsibility, but it would probably shield quack doctors and the venders of quack medicines from the ordinary civil responsibility of regular physicians and druggists for negligence; but although this may be so, it appears that such quack doctors would be debarred from recovering compensation for their services in the Courts. In Holt *vs.* Green, 23 P. F. Smith, 198, our Supreme Court held that although a contract may not be declared by the statute void, and a penalty may be imposed for its violation, an action cannot be maintained on a contract in violation of a statute. There is no difference whether the contract is *malum prohibitum* or *malum in se.* The test is whether the plaintiff requires the illegal transaction to establish his

case. Public policy will not allow Courts to aid one in grounding his action on an illegal or criminal act.

In Harlocker *vs.* Gerntner, 4 Clark, 277, it was held that the plaintiff could not recover in an action for medicines sold and delivered, when his only evidence was his book of original entries, proved by his own oath, when it appeared that he had commenced the practice of medicine without any previous study or experience, and that he did not disclose the nature of his compounds, or the ingredients of which they were composed, and when the book only described them as "papers" and "boxes of salve." It was held that the jury would be fully justified in finding them to be of no value whatever; that to allow a recovery on a book account for secret remedies, would encourage empiricism in its worst form.

The laws of our land, however, seem to tolerate the sale of quack or patent medicines. This being so, it may be that such storekeeper can recover for such medicines sold.

A physician is not bound to accept the assistance of other physicians.

In Potter *vs.* Warner, 91 Pa. St. Rep., 262, our Supreme Court held, that, "Having assumed the charge of the boy Warner, the measure of professional skill which the plaintiff in error was bound to exercise, did not depend on whether or not he refused the proffered assistance of other medical men. His refusal was no more than an implied declaration of his ability to treat the case properly. By assuming and continuing the

charge of the patient, he was under an obligation to exercise a degree of skill which was neither increased nor diminished by such refusal."

A physician is not liable in case of concurring negligence of the patient.

If injuries are the result of mutual and concurring negligence of the parties, no action to recover damages therefor will lie.

The law has no scales to determine, in such cases, whose wrong weighs most, and in Potter *vs.* Warner, 91 Pa. St. Rep., 362, in a suit against a physician and surgeon, for alleged negligence and want of skill, the Supreme Court said: "If they find the parents of the child were in charge of and nursed him during his sickness, and they did not obey the directions of the plaintiff in error in regard to the treatment and care of their son, during such time, but disregarded the same, and thereby contributed to the several injuries of which he complains, he cannot recover therefor."

A physician's liability should not be made a matter of sympathy.

The case of Byles *vs.* Hazlett, 11 Weekly Notes of Cases (Phila.), page 212, was against a physician for malpractice in the setting and treatment of a broken leg. The Court, in charging the jury, said, *inter alia:* "The plaintiff, by his manner upon the stand, and his misfortune, has, no doubt, made inroads upon your sympathies—he certainly has on mine. He is an intelligent man, and

he appeared to be a candid witness upon the stand, so far as the Court could observe." . . . "If the plaintiff is entitled to a verdict, he ought to have it, not only as a remuneration for himself, but as a protection to the public generally; because, if he is entitled to a verdict and does not get it, it would have a strong tendency to make surgeons, no matter how skilful they might be, reckless in their management of a case of this kind, or any other surgical case." The Supreme Court held these instructions to be error. That it is not within the legitimate province of a Court, when instructing a jury in a case of this kind, to express sympathy with the plaintiff or with the defendant. That it was an action for malpractice. That the question was one of strict right.

Liabilities of druggists.

"Druggists are specialists, and, like physicians, come under the laws governing specialists. They are bound to know—expected to know—the kinds and natures of the medicines with which they deal, excepting, however, it may be quack or patent medicines not put up by them. If an apothecary administer improper medicines, the law holds him liable, although his contract is with a third person."

1 Hilliard on Torts, 224.

"Even the greatest care has been sometimes held to be no defense, as where a druggist, requested to compound a certain medicine, grinds the different ingredients in a mill used to grind poisonous drugs, without properly

cleansing it; the rule, as to the degree of care and diligence necessary to exempt a party from liability, does not apply; but a druggist is *bound to know* the properties of the medicines he vends, and he and his servants are liable to a person injured by a prescription improperly prepared, even though he used extraordinary care and diligence in compounding the medicine."

Fleet *vs.* Hallenkemp, 13 B., Moni. 219.

1 Hilliard on Torts, page 120.

This strict accountability has been doubted, but it seems to the author to be founded upon sound and reasonable grounds. A druggist, as to drugs, deals in things certain—things which his eyes can see and his hands can handle. He, like the physician, is liable for ordinary care and skill, and it is ordinary for a druggist to know of every medicine in his shop, and to have his medicines in their proper places and properly labeled. The recent legislation as to druggists, seems to indicate what the public requires and expects from a druggist.

Criminal liability of physicians.

In certain cases physicians are criminally liable for their neglect or malpractice.

"It was resolved (Lord Raymond, 214), that mala praxis is a great misdemeanor and offense at common law, whether it be for curiosity or experiment, or by neglect; because it breaks the trust which the party has placed in his physician, and tends to the patient's destruction."

Note, 1 Hilliard on Torts, 224.

"There have been several cases of indictments against medical men, etc., arising from the death of patients; and this general rule seems to be established by them: that if any person, whether medical man or not, professing to deal with the life or health of another, cause death, either by his gross ignorance or want of skill, or by his gross negligence, or by his gross rashness and want of proper caution, he is guilty of manslaughter."

Archibald's Criminal Practice and Pleading, vol. 1, p. 775.

"Involuntary manslaughter is, where it plainly appears that neither death nor any great bodily harm was intended, but death is accidentally caused by some unlawful act, not amounting to felony; or an act, not strictly unlawful in itself, but done in an unlawful manner, and without due caution."

Commonwealth *vs.* Gable, 7 S. & R., 428.

Commonwealth *vs.* Bilderbach, 2 Pars., 447.

"If any person shall be charged with involuntary manslaughter, happening in consequence of an unlawful act, it shall or may be lawful for the District Attorney, with the leave of the Court, to waive the felony and to proceed against and charge such person with a misdemeanor, and to give in evidence any act or acts of manslaughter, and such person, on conviction shall be sentenced to pay a fine not exceeding $1000, and to suffer an imprisonment not exceeding two years, or the District Attorney may charge both wilful and involuntary manslaughter in the same

indictment, in which case the jury may acquit the party of one and find him or her guilty of the other charge."

1 Pur. Dig., 339.

"It matters not whether a man has received a medical education or not; the thing to look at is, whether in reference to the remedy he has used, and the conduct he has displayed, he has acted with a due degree of caution, or on the contrary, has acted with gross and improper rashness and want of caution. I have no hesitation in saying, for your guidance, that, if a man be guilty of gross negligence in attending to his patient after he has applied a remedy, or of gross rashness in the application of it, and death ensues in consequence, he will be liable to a conviction for manslaughter" Bayley B., in his charge to the jury in Long case.

Wharton and Stille's Medical Jurisprudence, sec. 1080.

"We must be careful and most anxious to prevent people from tampering in physic, so as to trifle with the life of man; and, on the other hand, we must take care not to charge criminally a person who is of general skill, because he has been unfortunate in a particular case. It is God that gives, man only administers medicine, and the medicine that the most skilful may administer may not be productive of the expected result; but it would be a dreadful thing if a man were to be called in question criminally whenever he happened to miscarry in his practice. These are things for your consideration when

you are considering whether a man is acting wickedly; for I call it acting wickedly when a man is grossly ignorant, and yet affects to cure people, or when he is grossly inattentive to their safety.

From the charge to the jury by Mr. Justice Park, in the criminal case against Long, in Wharton & Stille's Medical Jurisprudence, sec. 1069.

"From the leading cases, the following propositions as to criminal liability may be extracted:—

"1. If the defendant acted honestly, and used his best skill to cure, and it does not appear that he thrust himself in the place of a competent person, it makes no difference whether he was at the time a regular physician or not.

"2. To constitute guilt, gross ignorance or negligence must be proved.

"3. A defendant who, with competent knowledge, makes a mistake in a remedy, is not answerable; but it is otherwise when a violent remedy, shown to have occasioned death, is administered by a person grossly ignorant, but with the average capacity, in which case malice is presumed, in the same way that it is presumed when a man, compos mentis, lets loose a mad bull into a thoroughfare, or casts down a log of wood on a crowd.

"4. When competent medical aid can be had, the application of violent remedies by an ignorant person, though with the best motives, involves him in criminal responsibility.

"5. Express malice, or an intent to commit a personal

or social wrong, makes the practitioner criminally responsible in all cases of mischief."

Wharton and Stille's Medical Jurisprudence, sec. 1063.

Physicians and others are liable, under our criminal code, for abortion and the like, as by reference thereto will appear.

Right of heirs to recover damages for death of patient by negligence.

The Act of April 15, 1851, provides that actions for negligence shall not abate by death. (1 Pur. Dig., p. 1093.)

"Sec. 18. No action hereafter brought to recover damages or injuries to the person by negligence or default, shall abate by reason of the death of the plaintiff; but the personal representative of the deceased may be substituted as plaintiff, and prosecute the suit to final judgment and satisfaction."

"Sec. 19. Whenever death shall be occasioned by unlawful violence or negligence, and suit for damages be not brought by the party injured, during his or her life, the widow of any such deceased, or if there be no widow, the personal representative, may maintain an action for, and recover damages for the death thus occasioned."

Act of April 26, 1855 (1 Pur. Dig., p. 1094, sec. 1), provides "that the persons entitled to recover damages for any injury causing death, shall be the husband, widow, children, or parents of the deceased, and no other rela-

tive; and the sum recovered shall go to them in the proportion they would take his or her personal estate in case of intestacy, and that without liability to creditors."

Sec. 2 provides "the declaration shall state who are the parties entitled in such action; the action shall be brought within one year after the death, and not thereafter."

Negligence as to poisons.

Shearman and Redfield, in their work on Negligence, sec. 592, say:

"All persons who deal with deadly poisons are held to a strict accountability for their use. The highest degree of care known among practical men, must be used to prevent injury from the use of such poisons. And one who sells poison, labeled (by his culpable negligence) as an innocent drug, is liable to any person injured thereby, no matter through how many hands it may have passed. A druggist is undoubtedly held to a special degree of responsibility for the erroneous use of poisons, corresponding with his superior knowledge of the business; and in Kentucky it has been held that he is absolutely liable, notwithstanding any degree of care that he may have used for his mixture of poisons with ordinary drugs; but this is a rule that does not generally prevail."

The author's views as to the Act requiring the word "poison" to be placed on medicines by druggists.

By the Act of Assembly of 31st March, 1860, a copy of which appears in the Appendix, apothecaries and others selling certain poisons at retail, are required to place the

name "poison" upon the package, bottle, etc. A controversy has lately arisen, in the matter of the committal by the Coroner of McKelway's drug clerk, as to whether an apothecary is bound to label a package, etc., containing poison when prescribed by a physician.

The author is of opinion that according to the letter of the law an apothecary is bound, but that the Act should be construed according to its reason and intent. Certainly the great object of the law was to prevent injury or death from the poisons, and that if a preparation is harmless when taken in the quantities contained in the preparation it is not necessary to place the label.

It would be absurd, for instance, to require the name "poison" to be placed upon some homœopathic medicines, composed wholly or principally of poison; while, on the other hand, if a physician should prescribe a poisonous medicine for external use, a small quantity of which, if taken inwardly, would kill, the name should be placed. Now, between these two extremes is a line of separation along which the Act has application. The test, in every case is, Is the proportion, by reason of its quantity of poison, dangerous? As a general rule, prescriptions for poisons to be taken inwardly must be harmless, because that which would kill a well person would kill a sick person. If one or a few doses would be harmless—but a large number taken together, contrary to orders, would be harmful—the druggist can protect from this danger, by making the whole number of doses at any one time delivered harmless.

A druggist should not be held liable for medicines ordered by a physician to be taken in small, harmless doses, even in cases where the whole amount ordered, if taken in one dose, would kill. There are a great many compounds which have no poison in them, and which would not be considered poisons, and yet if taken in such large doses as were never intended, might kill. The author thinks that as to all such medicines a druggist should be allowed, as in civil cases, to plead contributory negligence. That in cases where the injury arises in not placing medicines out of harm's way, or from using them in an extraordinary manner, or contrary to orders plainly written on the bottle or package, there should be no liability.

Licenses to sell patent medicines.

In the case of the Commonwealth of Pennsylvania *vs.* Gross & Son, 2 Pearson's Rep., 410, it was held that a druggist must take out a license to sell patent medicines, under the Act of April 10, 1849, in addition to his apothecary's license; and that he was not exempted from so doing by the exception contained in sec. 25 of the above Act. The opinion of the Court reads as follows: "This suit is brought to recover the amount claimed to be due for a license, which should have been taken out by the defendants, for leave to sell patent medicines under section 25 of the Act of April 10, 1849 (P. L., 575). The defendants are regularly licensed storekeepers under the Acts of Assembly, but claim the right to sell patent medicines without any additional license, as apothecaries,

under the exception contained in section 25 of the Act of 1849. There is no doubt but that they are regular apothecaries, and as such have the right to sell all simple medicines, also under the prescription of physicians, and to compound their medicines according to the Pharmacopœia and the several Dispensatories of the United States without taking out an additional license. But have they a right as such apothecaries to sell patent medicines properly and strictly so called? If they have not, they are required by law to take out a license for that purpose. The object of the Legislature in enacting that law, was two-fold—to raise revenue and check the sale of patent medicines, the ingredients of which might be dangerous or pernicious, and which were not known to be compounded on scientific principles. Where the apothecary sells simple medicines, with which he is mostly well acquainted, or where he prepares them according to the prescription of a physician, or when called upon to compound a medicine believed to be efficacious in certain diseases, and he does prepare it according to the Pharmacopœia and Dispensatories of the United States, he is in the legitimate line of his business, and needs no license; he comes within the plain exception of the statute. But when he engages in the manufacture or sale of nostrums, medical compounds, or patent medicines, whether pills, powders, mixtures, or in any other form whatsoever not within the Pharmacopœia, he must take out a license. These patent medicines are prepared by those who compound them, and carried around in vials, small boxes and

packages, and sold by druggists, storekeepers, and others, under the name of patent medicines; and neither the druggist nor apothecary knows the ingredients of which they are compounded. Now, as we clearly understand the evidence of Mr. Gross, in addition to the sale and preparation, as apothecary within the exception, they sell patent medicines not prepared by themselves, but by others, and furnished to them—patent medicines strictly so called, and also well known in common parlance as such. Therefore their firm must take out a license to make such sales; and not having done so, must pay for the license."

Since writing the above, the author has discovered an Act of Assembly of the 5th day of June, 1883, which repeals the Act of April 10, 1849, and which amendment appears in the Appendix; but, as the new law is recent, and as there may be unpaid licenses under the old law, about which there may be a controversy, the author has concluded to let what he has written remain.

Comments on the Act of the 24th of March, 1877, as to the qualifications of physicians, etc.

By the Act of the 24th of March, 1877, a copy of which appears in the Appendix, the standard qualifications of physicians and surgeons are prescribed. He must be a person of good moral character, he must have a thorough elementary education, a comprehensive knowledge of human anatomy, human physiology, pathology, chemistry, materia medica, obstetrics, and practice of medicine and surgery and public hygiene.

They are required to have diplomas, excepting those resident practitioners who had been in continous practice in Pennsylvania for a period of not less than five years previous to the 24th of March, 1877, and who make an affidavit setting forth the time of continuous practice and the place or places where such practice was pursued. The Act also regulates transient practice. Those desiring to open a transient office, or to itinerate, are required to furnish satisfactory evidence to the Clerk of the Quarter Sessions that the provisions of this Act have been complied with, and shall take out a license for one year, for which they shall pay $50.

The Act is badly framed, but the author is of the opinion that the general features of the law are as above expressed.

There is certainly, however, room for question as to what the Legislature meant by the law.

In the first place it raises the standard for all practitioners whatever. Now how a person can have all the knowledge required by the standard without going through a full course of a medical college, and how the question can be determined as to whether a person has all the requisite knowledge, without a diploma, it is difficult to comprehend. The meaning, possibly, may be that a practitioner, claiming under a diploma, must be a graduate of a college teaching all the medical branches of learning required. That an old practitioner who has practiced in Pennsylvania five years before the date of the Act is not required to have a diploma, but whether he is required

to have all the knowledge comprised in the standard, is doubtful, as without a diploma the acquisition of such knowledge cannot be proved. As to transient or traveling practitioners, they have to comply with the law, and the Clerk of the Court is to be the judge. How they are to comply with the law is not stated, but it is the author's opinion that such practitioner must have the standard knowledge of the Act, of which a diploma is to be the evidence, for it would be absurd for a Clerk of the Court to take the position of a specialist and go into an examination which he could not possibly make.

Implied contracts for services.

"In general, there must be evidence that defendant requested plaintiff to render the services, or assented to receiving their benefit under circumstances negativing any presumption that they were to be gratuitous. The evidence usually consists, either in—

"1. An express request, precedent to the service; or,

"2. Circumstances justifying the inference that the plaintiff, in rendering the service, expected to be paid, and defendant supposed, or had reason to, and ought to have supposed, that he expected, and still allowed him to go on in the service without doing anything to disabuse him of this expectation; or,

"3. Proof of benefit received, not on an agreement that it be gratuitous, and followed by an express promise to pay. . . .

"The fact that the services were for the sole benefit of a

third person, is not material, if an original *request and agreement to pay is shown, otherwise if only a request is shown*, as where one calls a physician to attend another."

Abbott, Trial Ev., 358.

Evidence having been given that work was done by plaintiff for defendant, it is enough to prove that defendant, on presentation of plaintiff's bill therefor, promised to pay it, or admitted its correctness.

31 Miss., 51–56; 4 Ohio, 272.

In Boyd *vs.* Sappington, 4 Watts Rep., 247, it was held that a request by a father to a physician to attend his son, then of full age, and sick at the father's house, raises no implied promise on the part of the father to pay for the services rendered, that had the defendant been a stranger, however urgent he may have been, and whatever opinions the physician may have formed as to his liability, he would not have been chargeable, *without an express engagement* to pay; as for instance, in the case of an innkeeper, or any other individual whose guest may receive the aid of medical advice. That a different principle would be very pernicious; as but very few would be willing to run the risk of calling in the aid of a physician, where the patient was a stranger, or of doubtful ability to pay.

In Patton's Executor *vs.* Hassinger, 19; P. F. Smith, 311. A son over age, and working for himself, made the plaintiff's house his home; he was taken sick, and while living with plaintiff, the father declared that whoever would take care of his son should be well paid; this was

communicated to plaintiff, who continued to take care of the son; the plaintiff demanded payment from the father, who promised to pay; this was sufficient for the jury to infer the acceptance of the offer by the plaintiff.

The promise was not to pay the son's debt, but an independent undertaking of the father, and therefore was not required to be in writing.

From the above cases, the practical hint to physicians is not to rest a claim against one person for services to another, upon a mere request—a promise to pay, or an acknowledgment of liability in some way should be procured.

Claims for medical services for minors.

In the State of Pennsylvania, males and females who are under the age of twenty-one years, are minors. As a general rule, minors cannot contract, but the law allows exceptions in certain cases, when their contracts are for necessaries. "The ground upon which contracts of infants for necessaries are enforced, has been said to be, not because they are contracts, but only 'since an infant must live as well as a man,' the law gives a reasonable price to those who furnish him with necessaries."—Story on Contracts, sec. 77. When a minor has a parent or guardian extending towards him his care and protection, it is incumbent upon those who intend to furnish necessaries for the minor, to apply to such guardian or parent, and contract with him. A minor cannot bind himself for necessaries when he has a guardian or parent who sup-

plies his wants.—Guthrie *vs.* Murphy, 4 Watts, 80. A stranger may supply a minor with necessaries proper for him, in default of supply by any one else. Inquiry must be made whether the minor is provided with necessaries by his parents or friends.—Johnson *vs.* Sims, 6 W. and S., 80. Minors not residing under the parental roof, and not provided by their parents with the necessaries of life, may bind themselves by contract for their necessary physic, etc. In case of an utter desertion of a child by his father, he would be liable for necessaries supplied to him by another person.—Story on Contracts, sec. 79; Addison on Contracts, sec. 157. And it would seem that if a guardian cannot or will not furnish necessaries for his ward, the ward may be furnished with the same upon his own contract.—Johnson *vs.* Sims, 6 W. and S., 80. A father is bound to support his children, and will not be allowed for their maintenance from their private estate; yet when the father is without any means, or without adequate means to maintain them, an allowance will be made out of their estates for the purpose.—Newport *vs.* Cook, 2 Ashmead, 332; Harland's Accounts, 5 Rawle, 323. The mother of minors having a separate estate, is not bound to support them by her own exertions, or out of her individual estate.—Estate of James McDaid, minors, 14 Phila. Rep., 253. If the father be in a state of separation from his wife, and allow his child to live with her, he impliedly constitutes her his agent to supply him with necessaries. . . . If a person adopt the relationship of father, or hold out the child as being his own, he will be

liable in like manner as if it were truly his child. . . . If an infant is supported by his parent, it is presumed that credit is given to the parent for necessaries furnished to the child."

Story on Contracts, sec. 79, 80.

"When credit is given to the parent or guardian, the creditor has no recourse to the infant."

3 Wills. Bacon, 595, in marg.

Claims for medicine and medical services for persons of unsound mind.

The modern cases show a strong analogy between the responsibility of an infant and a lunatic upon their contracts. Both are liable for necessaries supplied bona fide.

Story on Contracts, sec. 43.

The laws of the State of Pennsylvania provide for the care of lunatics and their estates. They provide for the determination of lunacy by a jury, an appointment of a committee of the lunatic's person and a committee of his estate.

As some time may elapse before the appointment of the committees, the relatives of the lunatic, from the necessity of the case, usually see that the lunatic is cared for in the meantime, although they have no strict legal authority.

In the case of La Rue *vs.* Gilkyson, 4 Barr, 375, our Supreme Court decided "That the executrix of a lunatic is liable for necessaries furnished to his testator, while non compos mentis, before a commission to determine the

lunacy issued and after the issuing of the commission and before the appointment of a committee."

In such cases the advice of the author is for physicians to act under the direction and approval of the relatives and next of kin. In case a committee of the estate is appointed, the Court will probably authorize such committee to pay for the necessaries furnished.

Claims for medical services for married women.

By the Act of Assembly of Pennsylvania of 1848, a married woman, or her separate property, is not liable for necessaries furnished to her unless she makes a contract therefor in her own behalf. The primary presumption is, that when a wife obtains necessaries for the family of her husband and herself, that she is acting as his agent, for on the husband lies the primary duty of furnishing and paying for necessaries. The Act contemplates a joint suit against the husband and wife for necessaries, an execution, first against the husband's property, and then an execution against the wife's separate property. The law, however, carries out the intention of the Act, in certain cases, without a suit; for instance, if a married woman dies, and her estate is being settled in the Orphans' Court. In Sawtelle's Appeal, 84 Pa. St. Rep., 306, a married woman's estate was settled in the Orphans' Court, and the Supreme Court, upon appeal, said:

"The claims of Dr. Dale and Mrs Dr. Hall, for medical attendance, were also improperly allowed. It is very clear, that if suit had been brought against Sawtelle and his

wife, in her lifetime, for the purpose of charging her separate estate for the services rendered to her, the testimony adduced before the Auditor would have been wholly insufficient. Instead of showing that they were rendered upon request of the wife, it appears that the husband himself employed one of the physicians, and as to the other there is no evidence on the subject. The Act enables the wife to bind her separate estate for necessaries obtained for herself and family, but the very essence of the liability is, *that they are furnished at her request and on her credit.*"

"The exemption of a married woman from liability for necessaries furnished to her, arises not only from the paramount duty of the husband to support her, but from her own inability to bind herself except in the manner and to the extent authorized by the Act of Assembly."

Remarks of Judge Penrose in Darmody's Estate, 13 Phila. Rep., 207.

Book accounts of physicians, druggists and dentists.

Physicians', druggists' and dentists' claims are generally manifested by their books. The general rules as to books of original entries are applicable to them. The essential or ordinary features of such book accounts are these: There should be a book, and not unconnected scraps of paper or memorandums. The entries should be made on the same day the services are rendered or the goods are furnished; although some authorities allow a short grace after the day, it is best to have the entries complete on

the same day. They should charge the person who is to pay, and give the dates, items, and prices. They should be kept as free as possible from interlineations and erasures, although they may be explained. The entries should be made by the claimant or his assistant in the line of the business. The charges should not be lumping, but as specific as possible; they should not make one charge for attendance and medicine. Day-books are *prima facie* evidence, not only of the delivery of goods and the performance of services, but are also *prima facie* evidence of the prices.—Decoign *vs.* Schreffel, 1 Yeates, 347. If the prices are not carried out, the books are imperfect, and if admissible at all, prove nothing as to the price, and the jury cannot guess at that, so the charge goes virtually for nothing.—Hagaman's case, 1 South, 370. But the book of original entries of a physician is not conclusive as to the value of services charged. Gross excess in amount or price is evidence of fraud.—Langolf *vs.* Pfromer, 2 Phil. Rep., 17. A physician's book without the prices may be evidence of the number of visits, but the burthen is in such case upon him to prove the price. It is decidedly the best practice to place the price at once, and it becomes of vital importance to do so in case the debtor should happen to die. In such case the physician could not testify, excepting as to his books as far as they go. He would have to prove the value of services by other persons, and which in certain cases he could not do. The entries can be made into a book from a physician's memorandum, if done on the

same day. The author is of the opinion that a clerk can make the entry, as in cases of shop books, although he has not found any case upon the subject. A physician can have books made so that he can enter at once his visits.

If a physician produce his book, and it is made up in a proper manner, he can rest his claim upon it and it will then be with persons objecting to impeach it. If a clerk has made the entry, he should be produced at the trial, or if he is dead or out of the county, his handwriting can be proved. A physician, however, is not bound to prove his claim by his books. If the debtor is living, a physician, under the Act of 1869, can be a witness himself, to prove his claim in any way, but in case his debtor is dead, he is confined to his book account and other testimony besides his own.

If proper books are kept, an advantage will be gained in the State of Pennsylvania, under its affidavit-of-defense law. That law authorizes copies of book accounts to be filed in suits in Court, and thereupon the defendant will be required to file an affidavit, stating the grounds of his defense. If no such book is kept, or if such book has not been kept properly, the result may be that the claimant will have to prove his claim before a jury. Much time generally elapses before a claimant can succeed in having his case brought to trial, and it will be greatly to the interest of the persons addressed, and especially physicians and dentists with a large practice, to avoid, if

possible, such a result, by keeping books that will stand the test of judicial scrutiny.

As a general rule, physicians charge a certain rate for every visit, but this rate increases in extraordinary emergencies. For instance, there may be a visit late at night, or very early in the morning; a visit may be necessarily prolonged beyond the usual time, resulting in a loss by not visiting other patients. There may be a surgical operation in which the usual compensation for an ordinary visit would be grossly inadequate. In such case the author suggests that the extraordinary character of the visit or service be made to appear upon the physician's book account. This course would not only be satisfactory to the patient, but may result to the advantage of the physician. It may possibly answer in certain cases to make one lumping charge for an operation with attendant sickness extending over a considerable time, but the author deems the other course the best. The cases as to physicians' book accounts are very scarce and the author has not been able to find any as to the proper course to be pursued, but from analogous cases he believes his views would be judicially sustained.

A collection of some of the cases illustrating the laws as to physician's book accounts.

In case of services, book accounts are evidence of retainer to do the service, and the doing of it.

McBride *vs.* Watts, 1 McCord, 384.

"When the charge was for medicine and attendance on an aged menial servant of the defendant, the plaintiff's

book was received as usual; but it was held that the defendant's agreement to pay must be proved by evidence *aliunde*."

Coffin *vs.* Cross, 3 Danes' Abr., 322.

"Books are in general not allowed to prove a direction or instruction to deliver to a person other than the defendant."

1 Nott and McCord, 436.

In the case of Langolf *vs.* Pfromer, 2 Phila. Rep., 17, the book of original entries of a physician was held not to be conclusive as to the value of services charged. The jury may make an abatement for unreasonable or excessive charges. It was held that a physician cannot recover a claim for professional services unless he possesses the requisite skill. A reasonable doubt or disbelief of qualification, induced by the nature of the entries in his books, will justify a reduction or rejection of the charges by the jury.

That gross excess in amount or price is, under certain circumstances, evidence of fraud, and will justify the jury in disregarding a claim sustained by such doubtful evidence. . . . That admitting what ought probably to be conceded, that his employment was *prima facie* evidence of his competency, it might still be disproved by evidence adduced by the defendant, but above all by the plaintiff himself. It was said that no man who examines the account given in the plaintiff's book of the diseases of his patients and his own remedies, can deny that it justifies doubt or disbelief of his possessing the acquirements

necessary for the responsible office which he undertook to fill. That the jury, no doubt, thought that whatever the enormous quantity of medicine charged in the plaintiff's bill might have cost the physician, the defendant had paid quite as much as it was worth to the patient.

In 2 W. N. C., 272, an affidavit of defense to a physician's book account was held insufficient, because it merely set forth his treatment as unskilful, and that actual want of skill should be specifically shown.

In the matter of the settlement of the estate of Ambrose White, 11 Phila. Rep., 100, a claim was presented for services as a dentist to the decedent. It was resisted as wholly false and unfounded; and to disprove the charges against decedent, made by the claimant in his book of original entries, both his reputation for truth and veracity and of his books of original entry, for correctness and fair dealing, were attacked, and the claim was disallowed. The Orphans' Court held that particular instances of irregularity and false charges may be proved to discredit the books, and show them unreliable. But the evidence as to character must be confined to *general character* or common reputation in the community or neighborhood, and among persons having dealings with him whose character is sought to be impeached. The individual opinions and personal knowledge of the witness, derived from private transactions, are always to be excluded.

In Davidson *vs.* Geddes, D. C., Sep. 24, 1 W. N. C., 9, the plaintiff was a chiropodist, and the entries in the book account filed contained such items as these:

1873, Jany. 1. To attending his feet, one month, $15.00
Feby. " " " 15.00

And the book account was held insufficient.

"A plaintiff is not *bound to put his books in evidence*, nor is he *concluded* by them—the claim may be proved in other ways."

3 Whar., 75.

2 W. and S., 458.

By the statutes enabling parties to be witnesses, books of original entries have lost the peculiar significance formerly attached to them.

A party may prove his own claim as a stranger. Books of original entries may be used to refresh the memory.

Whar. Ev., sec. 679.

In Thomas *vs.* Askin, 6 W. N. C., 501 (Phila.), the charges for a physician's visits were so varied, and, in some instances so large, that book entries were not regarded as conclusive, and as the defendant swore that the charges were excessive and unusual, the Court ordered the matter to be passed upon by a jury.

In Birch *vs.* Gregory, 7 W. N. C. (Phila.), 147, the copy of entries from plaintiff's book of original entry consisted of items similar to the following, viz.:—

Cornelius Gregory

1877. Dr. To John P. Birch, M. D.
Sep. 28. To 1 visit and medicine, . . . $1.50
" 29. " 2 " " . . . 3.00

The Court, in refusing judgment for want of sufficient affidavit of defense, held that the lumping charge for visit and medicine was not good.

In Matthews *vs.* Glenn, 7 W. N. C., 213, the items in the book account were:—

March 3–4. To 2 visits, medicine, and vaccinating 2, $4.50

And it was held that lumping charges for medicine and attendance were insufficient.

Claims for services against decedents' estates.

By the Act of Assembly of Pennsylvania of the 24th of February, 1834, sec. 21 (1 Purdon's Digest, page 421), "All debts owing by any person within this State, at the time of his decease, shall be paid by his executors or administrators, so far as they have assets, in the manner and order following, viz.: 1. Funeral expenses, *medicine furnished and medical attendance* given during the last illness of the decedent, and servants' wages, not exceeding one year. 2. Rents, not exceeding one year. 3. All other debts, without regard to the quality of the same; except debts due to the Commonwealth, which shall be last paid."

Sec. 22, of the same Act, "No executor or administrator shall be compelled to pay any debt of the decedent except such as are by law preferred in the *order of payment of rents*, until one year be fully elapsed from the granting of the administration of the estate."

Under the above Act of Assembly, claims of physicians and druggists, for services or drugs given during the last illness are preferred and should be paid as soon as pos-

sible after the decedent's death, if the estate is solvent and the claims are just and reasonable. What is a last illness is sometimes difficult to determine. The two following authorities lay down the law of the matter about as near as can be done.

In the matter of the Estate of Mary Ann Duckett in the Orphan's Court of Chester County (1 Chester County Reports, 78), Judge Butler, in deciding upon a claim to a preference, under the 21st section of the Act of Feb. 24, 1834, said:

"Charges for medical attendance 'during the last illness' are entitled to preference. But what is meant by the term 'last illness'? As applied to the great majority of cases, the question is readily answered. But when death results from lingering illness that has stretched across many months or many years, it is otherwise. Men sometimes die from disease of the heart, lungs or other organs, which, commencing with infancy, terminate only with old age. They are never well, always complaining, but linger on throughout the usual period allotted to human life. In other instances, the disease runs its course in shorter time, but still the patient lingers for years, down at times, up and about at others. This is often the effect of diseases of the brain. Such cases, where the illness is so protracted, the statute certainly does not contemplate. Where the disease assumes a fatal form, runs its course rapidly, the patient virtually prostrated, and the services of a physician constantly necessary, the case just as certainly is contemplated. Others, like the

one before us, more nearly approaching the boundary line (which is difficult to define and need not be attempted here), give rise to doubt and difficulty. From the beginning of Dr. Hoskins' visits, and probably for some time before, Mrs. Duckett was afflicted with softening of the brain. The progress of the disease was gradual and slow. She lived for more than a year after the doctor's attendance commenced—going about the house, waiting upon herself generally, once visiting abroad for several weeks, the disease manifesting itself only in weakness and irritability up to within a short time of her death, when it resulted in apoplexy. Prior to this change, the doctor's attendance was irregular. The patient being sometimes better and sometimes worse, he went only when called. Subsequently his visits seem to have been regular and pretty constant. We think the claim to preference must be confined to the latter period."

In the matter of Reese's Estate, in the Orphans' Court of Dauphin County (2 Pearson Rep., 482). By the Court.—"This estate being insolvent, the auditor distributed it *pro rata* among creditors. Dr. Seiler claimed a medical bill, and demanded the whole of it under the Act of Assembly, on the ground that it was for attendance during the last sickness of the decedent. The evidence shows that Mr. Reese received an injury from a fall in May, 1870; was attended by Dr. Seiler for some time; so far recovered as to be able to attend to his ordinary business, but doubtless with less efficiency than formerly; visited New York and Philadelphia in the course of the

autumn, and made his purchases, and received little or no medical attendance for some time; afterwards called in another physician, and died in the following December. It is quite probable that the effects of the fall caused his death, and that he never entirely recovered; but as we construe the words 'medicine furnished and medical attendance during the last illness of the decedent,' it relates not to the remote but proximate cause of death, and the attendance spoken of must be during the last sickness; it does not relate to cases where the party lingers for a long period, partially convalescing; then the attendance is broken off, and the patient again relapsing, the attendance is renewed. If we were to so construe the statute the claim might run over a long lifetime, as some persons are never in good health, but linger under the same disease from the cradle to the grave. This medical bill must take its *pro rata* with other claims."

As to claims not for a last illness, physicians and druggists must come in *pro rata* with the general creditors for what remains after the payment of preferred debts. The claims should be presented to the executor or administrator soon after his appointment; if he does not see fit to pay the claim, the claimant must appear at the audit of the account in the Orphans' Court, and make and prove his claim. Executors and administrators have one year to file their accounts after they receive their letters testamentary or of administration. If the estate is solvent, the account may be filed before then. In the City of Philadelphia the only notice of the audit of the account

given to claimants is by publication in the *Legal Intelligencer* and other papers. It would be well for physicians and druggists having a large business, to take or examine said legal paper, so as to obtain notice of the settlement of estates against which they may have claims. If a decedent leaves real estate, any liens by judgment or mortgage must be paid before other debts.

In the matter of Hocker's Estate, 2 Pearson, 493, the decedent died possessed of a very small amount of personal property, appraised at $40.72, which was taken by the widow at the appraisement. The real estate of the decedent was sold at Orphans' Court sale. Numerous judgments were entered against the decedent before his death. The executors claimed credit for $28.25, paid by them for medical attendance during the last sickness, and it was held that the claim for medical attendance could not prevail against the lien of the judgments and was struck out of the account.

Collection of claims by suit.

Formerly in England a physician could not sue for his fees, though a surgeon could, but now by Act of Parliament (21 and 22 Victoria c. 90), a physician who is registered under the Act, may bring an action for his fees, if not precluded by any by-law of the College of Physicians. In this country, the various States have statutory enactments regulating the collection of fees and the practice of medicine. In a number of States a license is required. —2 Bouvier's Dictionary (Rawles' Ed.), 412. In 1819 the

Supreme Court, in Mooney *vs.* Lloyd, 5 S. & R., 411, said: "In England, physicians are placed on the same honorable footing as counsel. They cannot sue for fees. But to prevent improper inferences from being drawn with respect to physicians, we think proper to say, that as regards them, the law is held differently in Pennsylvania, and this difference is founded on practice and Acts of Assembly. In view, however, of recent legislation, it may possibly be held that physicians cannot recover fees unless they come up to the standard prescribed thereby."

Aldermen, justices of the peace, or magistrates generally, have jurisdiction to hear cases for small claims. In the City of Philadelphia, the magistrates have jurisdiction as to claims not amounting to over one hundred dollars. At places outside of that city, justices of the peace have jurisdiction as to claims for somewhat larger amounts. If judgment is obtained, the defendant can appeal and have the case taken to court, where the case is proceeded with as other cases. In case of a suit in court, it goes before a jury, unless, in the City of Philadelphia and some other places, a judgment is obtained upon a copy of the book account filed, for want of an affidavit of defense. The judgment is followed by an execution, unless there is a stay of execution upon giving security for the payment of the judgment.

The statute of limitation.

Physicians often have upon their books claims of long standing against persons. It sometimes happens that

persons who are not able to pay at one time, may be able to do so at another time, and it may be well in certain cases to preserve claims from outlawry. In all, or most of the States, they have what are known as the limitation laws, that is, laws outlawing claims after a certain lapse of time. In the State of Pennsylvania, a physician's, druggist's, or dentist's claim will be outlawed in six years, unless there has been a payment on account, a fresh promise to pay, or a suit commenced within that time. In case it is desired to preserve a claim from outlawry, the author suggests that it would be a good method to obtain a note or due bill for the claim, if immediate suit is not deemed advisable. The request would be so reasonable that it would be generally acceded to.

Physicians as experts.

"Generally speaking, a witness must speak to facts, and his mere opinion is not evidence. But upon questions of skill or science, men who have made the subject-matter of inquiry the object of their particular study, are competent to give their opinions in evidence. Such opinions, however, are to be deduced from facts that are not disputed, or, at least, from facts that are in evidence before the jury; they need not, however, be founded upon their own personal knowledge of such facts, but may be formed upon the statement of facts proved by others."

1 Phillips on Evidence, * p. 778.

"Thus the opinions of medical men are evidence, not only as to the state of a patient whom they have seen,

or as to cause of death of a person whose body they have examined, or as to the nature of the instrument causing wounds which they have inspected, but also in cases where they have not themselves seen the patient, and have only heard the symptoms and particulars of his state detailed by other witnesses at the trial; their opinion on the nature of such symptoms is always admitted. Thus in prosecutions for murder they are allowed to state their opinion, whether the wounds or injuries, described by other witnesses, were likely to be the cause of death. So, upon a question of sanity, they may form their judgment from the representations which witnesses at the trial have given of the conduct, manner, and general appearance exhibited by the patient; or they may give their opinion whether certain circumstances were likely to produce a paroxysm of the disorder. But they cannot be asked to state their opinion upon the very point which the jury have to decide, namely, whether the act for which the prisoner is tried, was an act of insanity."

1 Phillips on Evidence, * p. 779.

"Whenever the opinions of persons having peculiar knowledge of the subject of which they speak are received in evidence, such opinions must be accompanied with the reasons upon which they are founded."

Springer's Application, 4 Clark, 188.

"An expert may show that his views are sustained by standard authorities in his profession.

"A general knowledge of the department to which a specialty belongs is only requisite to qualify a witness

to testify as an expert. Thus a physician, not an oculist, has been permitted to testify as to injuries to the eye; a physician not making insanity a specialty, can testify as to whether a person he visits is insane, or a person not a surgeon can prove that a death was caused by wounds.

"As to a specialty entirely out of his line a physician cannot be examined as an expert."

Wharton's Law of Evidence, sec. 434, etc.

"A physician may give an opinion on a supposed state of facts; but if he has not heard the whole evidence in a case he cannot give an opinion founded on what he has heard. If the facts are not disputed, he may give an opinion founded on them; not so when they are disputed."

Note to 1 Phillips on Ev., * p. 779.

A collection of some miscellaneous cases.

"A guardian is entitled to credit for moneys advanced to his ward to enable him to complete a medical education."

Stephen Smith's Appeal, 6 Casey, 397.

"The words 'unlawful violence or negligence' in a statute giving an action to surviving relatives for an injury causing death, include malpractice as a physician or surgeon, if the proximate cause of the death. As where a surgeon treated the severe fracture of a limb as a mere flesh wound, in consequence of which the party died;

while amputation would have been the course adopted by reasonable skill, and might have saved his life."

Bramberger *vs.* Cleis, Amer. Law Reg., August 1865, N. S., iv, p. 587 (Pennsylvania).

"If a license is necessary to render the services legal, it will be presumed that plaintiff had one until the contrary appears." *So held in case of physicians.*

Thompson *vs.* Sayre, 1 Denio (N. Y.), 175, 180; Crane *vs.* McLaw, 12 Rich. (S. C.); 129 S. P., 287 of this vol., contra; Adams *vs.* Stewart, 5 Harr (Del.), 144; Bower *vs.* Smith, 8 Geo., 74.

"A physician is competent as to the value of a nurse's services."

Woodman *vs.* Bugsbee, 2 Hun., 128.

"A medical man is responsible to a person neglected by him, for the negligence, though the contract to employ the medical man was made with a friend of the person neglected."

Wharton's Law of Negligence, sec. 437.

"I may engage a physician to attend a hospital; and if he neglects his duty to a particular patient in that hospital, who thereby suffers, he is liable to me in an action on the contract, but to the patient, in an action on the case."

Wharton's Law of Negligence, sec. 439.

Some miscellaneous cases relating to physicians, etc.

"An action arising from want of care or skill of a physician does not survive against his executor."

Vittum *vs.* Gilman, Am. Law Reg., N. S., ix, 516.

"A superintendent cannot employ a physician to attend an employee who has been injured by railroad company's locomotive, and bind the company."

Marquette, H. & O. R. R. Co. *vs.* Taft, Am. Law Reg., N. S., xiii, 527.

"'Gross and improper rashness and want of caution' are held necessary to an indictment."

Rex *vs.* Long, 4 C. & P., 440; see Com. *vs.* Thompson, 6 Mass., 134.

"A physician sued for the value of certain services. He was called to see the defendant, who was ill of typhoid fever. The defendant's wife objected to the plaintiff's visiting the defendant, if he had, and while he had, small-pox patients. This objection was repeated and the plaintiff continued to visit such patients while attending the defendant. Finally small-pox broke out in the defendant's family. Held this evidence was admissible to reduce the plaintiff's claim for services rendered to defendant during the fever and small-pox."

Piper *vs.* Menifee, 12 B. Mon., 465.

"A guardian may pay a physician's bill for services rendered to the ward before his appointment."

In the matter of Guardian of Blosser, 2 Pearson Rep., 485.

In the case of Mertz *vs.* Detweiler, 8 Watts and Ser., 376, it was held that a witness could not be asked as to the measure of the defendant's responsibility for his patient, not being a subject of professional skill and that testimony was not admissible, on the part of the defendant,

as to his general skill. That the nature and properties of the powders employed by the defendant in the case, were proper questions to medical witnesses called by the plaintiff; as to the question as to the physician's general skill, the Supreme Court said: "It was not that, but his treatment of the particular case, with which the jury had to do. If the latter was notoriously bad, of what account would be his abstract science or treatment of other cases? It may be said that his general qualifications might serve to shed light on the propriety of his practice in this particular instance; but it is light which would be less likely to lead to a sound conclusion than to lead astray. The jury, assisted by the opinions of medical witnesses, would be better able to judge of the treatment from the treatment itself than from the more remote consideration of the defendant's professional reputation, which was consequently not the best evidence of which the case was susceptible."

In Mock *vs.* Kelly, 3 Ala., 378, it was held that what is a reasonable compensation, cannot be shown by the opinion of one not a physician.

In Hill *vs.* Boddie, 2 Stew. and Port., 56, it was held that a parchment purporting to be a diploma, to practice medicine, is not evidence, *per se*, that the college issuing it is a regularly constituted medical institution.

In People *vs.* Monroe, 4 Wend., 200, it was held that physicians and surgeons can recover for the services of their students in attendance upon their patients.

In Allcott *vs.* Barber, 1 Wend., 526, it was held that

an unlicensed physician cannot recover for his services as a physician, under cover of charges for medicines furnished by him.

"The mere production of a diploma of a doctor of physic, under seal of one of the Universities, is not sufficient evidence to show that the party named in the diploma is entitled to that degree."

2 Phillips on Evidence, p. 303.

In Finch *vs.* Gridley, 25 Wend., 462, it was held that the diploma is sufficiently proved by a witness who identifies the corporate seal, and testifies as to the genuineness of the signature of the officers attached to it.

In Abbott's Trial Evidence, p. 382, it is held that a knowledge of the handwriting of the officers would not have to be by having seen them write, but from familiarity with diplomas under their signatures, including the one granted to the witness. As to proofs in such cases, and all other cases, the physician should rely upon his counsel. The information as to the probable proofs required, is given, as it must be somewhat interesting to those concerned, and may indicate what probably counsel may require.

Compensation for medical attendance upon the poor.

"The spirit of the poor laws is to cast upon the public the duty of providing for the relief of all helpless poor. This duty is to be performed through the agency of officers selected for the purpose, who are to procure for

the proper subjects for relief, sustenance, clothing, medical attendance if necessary, and burial at the expense of the public."

Directors of the Poor *vs.* Worthington, 38 Pa. St. Rep., 160.

There are poor laws for each of the counties of Pennsylvania. By the 8th section of the Act of Pennsylvania of the 5th of March, 1828 (City Ordinances, p. 319), in the City of Philadelphia the Guardians of the Poor are intrusted with the care of the poor. The Board appoints visitors of the poor, who report to the Board. Thereupon the Board orders such relief as they deem proper. In cases of sudden emergencies, when a party cannot be removed to the Hospital or Almshouse, it is the duty of the visitor, with the consent and approbation of one of the Guardians, to administer such relief and assistance as the case may require. When necessary accommodations are prepared in the Hospital, Almshouse, or other buildings: all relief granted to the out-door poor shall be temporary.

It is undoubtedly true, in cases of emergency, relief may be furnished before an order is obtained, and, if necessary, it may be furnished by others than the overseers and directors, and the latter are under obligation to pay, provided an order of approval be afterwards obtained, but it is sometimes a question by what form of proceeding.

Campbell *vs.* Green, 13 W. N. C., 368.

In the case of the Directors of the Poor of Chester county

(64 Pa. St. Rep., 144) *vs.* Malany, there was an action by a physician against the directors for services rendered to a pauper, on a night in December, 1867. A man was badly frozen, about three miles from West Chester, and about nine from the poor-house. He was in so dangerous a condition, that it would have been unsafe to take him to the poor-house; he was brought to West Chester, where he was attended by the plaintiff until July, 1868. The plaintiff did not know that the man was a pauper. The principal ground of defense was that the rules made by the directors had not been complied with. Our Supreme Court said: "The rule which declares that any person claiming pay for medical attendance must notify one of the directors of the circumstances of the case within three weeks after the first services shall be rendered to the pauper, has no application to the case of a party who had no knowledge of the patient's circumstances at the time the services were rendered — that he was a pauper with whom the district was chargeable. It would be an unreasonable interpretation of the rule, to require a physician, called suddenly to attend a stranger, in suffering and danger, to institute an inquiry into his circumstances and condition in life. No high-minded professional gentleman would ask his patient any question upon such a subject, and in many cases it would be improper to do so."

When a statute designates the tribunal, and prescribes the form of proceeding, for fixing the liability of a

county for relief furnished a pauper, the remedy designated by the statute is the only remedy for the adjudication of the claim.

When a physician rendered services to an alleged pauper in Fayette county, he was not, by virtue of the provisions of the Act of April 16, 1846, sec. 6, P. L., 348, entitled to sue the directors of the poor of the said county in the Common Pleas for the value of his said services. His sole remedy is by petition to the Quarter Sessions. By the said Act a board of directors were to decide upon such claims, and from their decision there was an appeal to the Court of Quarter Sessions.

13 W. N. C., 368, as above.

The advice of the author is for physicians to become acquainted with the poor laws of their respective counties, in case they have claims against the public for attending the poor in cases of emergency and the like, the only object of the author being to indicate that there sometimes may be claims in such cases.

The renting of places of business by physicians, druggists and dentists.

Comparatively few professional men own the properties in which they have their offices, and the consequence is that they hold the same under leases. Hence they enter into the relation of landlord and tenant, and the laws as to such relations become important and interesting. To those who desire to become acquainted with such laws,

they would do well to examine a small book of the author, intended to give information to the public upon the subject. Druggists also generally rent their places of business, and it is often an object to them to remain as long as possible in one place, in order to preserve the good-will of their establishments. In a short time, and at a small expense, any one reading the book can obtain a knowledge of all the important laws relating to landlords and tenants.

Views of the author as to some recent legislation.

Before leaving the subject of this treatise, the author feels it his duty to point out what he considers some defects in recent legislation respecting physicians.

The main object of the law requiring physicians to register their diplomas, etc., in the Court Office, is to inform the people as to the professional standing of practitioners. The author thinks that this object will not be attained by a mere registry. That the public should be informed in some way by publication of what has been done under the law. But few people know of the existence of the law, and those who do will not be apt to go to the trouble of overhauling the records to ascertain whether a particular physician has been registered. The other point is this: By an Act of Assembly of Pennsylvania of 1874, a medical college can be incorporated upon the approval of the charter by one of the Judges of the Courts. Although the Judges of the Courts of Pennsyl-

vania have a high reputation for integrity, still it seems a great risk to run, to leave it possible for a weak or corrupt Judge to approve of the incorporation of a medical college, which may work great public damage by means of incompetent graduates. An attempt was made under the law to incorporate an Electrical College, but it was frustrated by the firm refusal of one of our Philadelphia Judges, who was of the opinion that it did not come up to the proper standard. The wholesale delegation of legislative power to the Courts, seems out of place generally, but more emphatically so when the health and lives of citizens are at stake.

APPENDIX.

The Act of Assembly of the Commonwealth of Pennsylvania, of the 24th of March, 1877, in relation to the qualifications of physicians and surgeons.

QUALIFICATIONS OF MEDICAL PRACTITIONERS.—Section 1. The standard qualifications of a practitioner of medicine, surgery or obstetrics, shall be and consist of the following, namely: a good moral character, a thorough elementary education, a comprehensive knowledge of human anatomy, human physiology, pathology, chemistry, materia medica, obstetrics, and practice of medicine and surgery and public hygiene.

NO PERSON TO PRACTICE WITHOUT A DIPLOMA.—Section 2. It shall be unlawful after the passage of this Act, for any person to announce himself or herself as a practitioner of medicine, surgery or obstetrics, or to practice the same, who has not received, *in a regular manner*, a diploma from a chartered medical school, duly authorized to confer upon its alumni the degree of *doctor of medicine*:

EXCEPTION.—Provided, that this Act shall not apply to any resident practitioner of medicine, surgery or obstetrics, who has been in such continuous practice in

this Commonwealth for a period of not less than five years previous to the passage of this Act.

Duties of Persons Practicing without Diploma.—Section 3. Before any person shall engage in the practice of medicine, surgery or obstetrics in this Commonwealth, or who has not a diploma as provided for in section second of this Act, such person shall make affidavit, under oath or affirmation, before the prothonotary of the county where such person intends practicing, setting forth the time of continuous practice and the place or places where such practice was pursued in this Commonwealth; thereupon, the prothonotary shall enter the same of record in a book specially provided therefor, to be kept in his office, and open to the inspection of the public; and for such service he shall receive the sum of two dollars, to be paid by the affiant, one-half for the use of the prothonotary, the other for the use of the county.

Transient Practice Regulated.—Section 4. Any person who shall practice medicine or surgery for a valuable consideration, by opening a transient office, within this Commonwealth, or who shall by handbill or other form of written or printed advertisement, assign such transient office, or other place, to persons seeking medical or surgical advice or prescription, or who shall itinerate from place to place or from house to house, and shall propose to cure any person, sick or afflicted, by the use of any medicine, means or agency whatsoever, for a valuable consideration, shall, before being allowed to practice in this manner, appear before the clerk of the Court of

Quarter Sessions of the county wherein such person desires to practice, and shall furnish satisfactory evidence to such clerk that the provisions of this Act have been complied with; and shall, in addition, take out a license for one year, and pay into the county treasury, for the use of such county, the sum of fifty dollars therefor; whereupon, it shall be the duty of such clerk to issue to such applicant, a proper certificate of license, on the payment of the fee of five dollars for his services.

PENALTY FOR VIOLATION.—Section 5. Any person who shall violate or fail to comply with any of the provisions of this Act, shall be deemed guilty of a misdemeanor; and on conviction before any Court, shall be sentenced to pay a fine not less than two hundred dollars, nor more than four hundred dollars, for each and every such offense, for the use of the county wherein such misdemeanor is committed.

An Act of the Commonwealth of Pennsylvania, to provide for the registration of all practitioners of medicine and surgery, approved the 8th day of June, 1881.

PROTHONOTARY TO PROVIDE MEDICAL REGISTER.—Section 1. Be it enacted, &c., That the Prothonotary of each county shall purchase a book of suitable size, to be known as the Medical Register of the county (if such book has not been purchased already), and shall set apart one full page for the registration of each practitioner, and when any practitioner shall depart this life, or remove from the county, he shall make a note of the same at the bottom

of the page, and shall perform such other duties as are required by this Act.

PHYSICIANS AND SURGEONS TO REGISTER DIPLOMAS, ETC.—Section 2. Every person, who shall practice medicine or surgery, or any of the branches of medicine or surgery, for gain, or shall receive or accept, for his or her services as a practitioner of medicine or surgery, any fee or reward, directly or indirectly, shall be a graduate of a legally chartered medical college or university having authority to confer the degree of Doctor of Medicine (except as provided for in section five of this Act), and such person shall present to the Prothonotary of the county, in which he or she resides or sojourns, his or her medical diploma, as well as a true copy of the same, including any endorsements thereon, and shall make affidavit before him, that the diploma and endorsements are genuine; thereupon the Prothonotary shall enter the following in the register, to wit: The name in full of the practitioner, his or her place of nativity, his or her place of residence, the name of the college or university that has conferred the degree of Doctor of Medicine, the year when such degree was conferred, and in like manner any other degree or degrees that the practitioner may desire to place on record, to all of which the practitioner shall likewise make affidavit before the Prothonotary, and the Prothonotary shall place the copy of such diploma, including the endorsement, on file in his office, for inspection by the public.

WHERE DIPLOMA IS LOST OR DESTROYED.—Section 3. Any person, whose medical diploma has been destroyed

or lost, shall present to the Prothonotary of the county, in which he or she resides or sojourns, a duly certified copy of his or her diploma, but if the same is not obtainable, a statement of this fact, together with the names of the professors whose lectures he or she attended, and the branches of study upon which each professor lectured, to all of which the practitioner shall make affidavit before the Prothonotary, after which the practitioner shall be allowed to register, in manner and form as indicated in section two of this Act, and the Prothonotary shall place such certified statement on file in his office, for inspection by the public.

HEREAFTER PRACTITIONERS HOLDING DIPLOMAS OUTSIDE OF THIS STATE TO PRESENT THEM TO MEDICAL COLLEGE FOR CERTIFICATION.—Section 4. Any person who may desire to commence the practice of medicine or surgery in this State, after the passage of this Act, having a medical diploma issued, or purporting to have been issued, by any college, university, society or association in another State or foreign country, shall lay the same before the faculty of one of the medical colleges or universities of this Commonwealth for inspection, and the faculty being satisfied as to the qualifications of the applicant, and the genuine ness of the diploma, shall direct the dean of the faculty to endorse the same, after which such person shall be allowed to register, as required by section two of this Act.

PRACTITIONERS NOW WITHOUT DIPLOMAS TO MAKE AND REGISTER STATEMENT.—Section 5. Any person who has

been in the continuous practice of medicine or surgery in this Commonwealth since one thousand eight hundred and seventy-one, without the degree of Doctor of Medicine, shall be allowed to continue such practice, but such person shall nevertheless appear before the Prothonotary of the county, in which he or she resides, and shall present to him a written statement of these facts, to which the practitioner shall make affidavit. Thereupon the Prothonotary shall enter the following in the register, to wit: The name in full of the practitioner, his or her place of nativity, his or her place of residence, the time of continuous practice in this Commonwealth, and the place or places where such practice was pursued, to all of which the practitioner shall likewise make affidavit, and the Prothonotary shall place the certified statement on file in his office, for inspection by the public.

FEES.—Section 6. Every practitioner, who shall be admitted to registration, shall pay to the Prothonotary one dollar, which shall be compensation in full for registration, and the Prothonotary shall give a receipt for the same.

PUNISHMENT FOR VIOLATING ACT.—Section 7. Any practitioner, who shall present to the faculty of an institution for endorsement or to any Prothonotary a diploma which has been obtained fraudulently, or is in whole or in part a forgery, or shall make affidavit to any false statement to be filed or registered, or shall practice medicine or surgery without conforming to the requirements of this Act, or shall otherwise violate or neglect to comply with

any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and on conviction shall be punished, for each and every offense, by a fine of one hundred dollars, one half to be paid to the prosecutor and the other half to be paid to the county, or be imprisoned in the county jail of the proper county for a term not exceeding one year, or both, or either, at the discretion of the Court.

WHO TO BE SUBJECT TO ACT.—Section 8. Nothing in this Act shall be so constructed as to prevent any physician or surgeon legally qualified to practice medicine or surgery in the State in which he or she resides, from practicing in this Commonwealth, but any person or persons opening an office or appointing any place where he or she may meet patients or receive calls, shall be deemed a sojourner, and shall conform to the requirements of this Act.

WHEN ACT TO TAKE EFFECT.—Section 9. This Act shall take effect on the first day of June, one thousand eight hundred and eighty-one.

REPEAL.—Section 10. That all Acts or parts of Acts, heretofore passed and inconsistent with this Act, be and the same are hereby repealed.

An Act of Assembly of the Commonwealth of Pennsylvania, of the 17th of April, 1876, entitled An Act to regulate the practice of dentistry, and to protect the people against empiricism in relation thereto in the State of Pennsylvania, and providing penalties for the same.

WHO MAY PRACTICE DENTISTRY.—Section 1. It shall be unlawful for any person, except regularly authorized

physicians and surgeons to engage in the practice of dentistry in the State of Pennsylvania, unless said person has graduated and received a diploma from the faculty of a reputable institution, where this specialty is taught, and chartered under the authority of some one of the United States, or of a foreign government, acknowledged as such, or shall have obtained a certificate from a board of examiners duly appointed and authorized by the provisions of this Act to issue such certificate.

Board of Examiners.—Section 2. The board of examiners shall consist of six practitioners of dentistry, who are of acknowledged ability in the profession. Said board shall be elected by the Pennsylvania State Dental Society, at their next annual meeting, as follows: Two shall be elected for one year, two for two years, and two for three years; and each year thereafter two shall be elected to serve for three years, or until their successors are elected. The said board shall have power to fill all vacancies for unexpired terms, and they shall be responsible to said State Dental Society for their acts.

Duties of the Board.—Section 3. It shall be the duty of this board:—

Examination of Applicants.—I. To meet annually at the time and place of meeting of the Pennsylvania State Dental Society, and at such other time and place as the said board shall agree upon, to conduct the examination of applicants. They shall also meet for the same purpose, at the call of any four members of said board, at such time and place as may be designated.

NOTICE.—Thirty days' notice must be given of the meetings, by advertising in at least three periodicals, one of them being a dental journal, and all published within this State.

CERTIFICATES.—II. To grant a certificate of ability to practice dentistry, which certificate shall be signed by said Board, and stamped with a suitable seal, to all applicants who undergo a satisfactory examination, and who receive at least four affirmative votes.

REGISTRY.—III. To keep a book in which shall be registered the names and qualifications of such, as far as practicable, of all persons who have been granted certificates of ability to practice dentistry under the provisions of this Act.

COPY TO BE EVIDENCE.—Section 4. The book so kept shall be a book of record, and a transcript from it, certified to by the officer who has it in keeping, with the seal of said Board of Examiners, shall be evidence in any court of this State.

QUORUM.—Section 5. Four members of this Board shall constitute a quorum for the transaction of business; and should a quorum not be present on any day appointed for their meeting, those present may adjourn from day to day until a quorum is present.

PENALTY FOR VIOLATION OF THE ACT.—Section 6. Any person who shall, in violation of this Act, practice dentistry in the State of Pennsylvania, shall be liable to indictment in the Court of Quarter Sessions of the proper county, and on conviction, shall be fined not less than

fifty, or more than two hundred dollars; *Provided*, That any person so convicted shall not be entitled to any fee for services rendered, and if a fee shall have been paid, the patient, or his or her heirs, may recover the same as debts of like amount are now recoverable by law.

Section 7. All fines collected shall inure to the poor fund of the county in which the prosecution occurs.

EXCEPTIONS.—Section 8. Nothing in this Act shall apply to persons who shall have been engaged in the continuous practice of dentistry in this State, for three years or over, at time of, or prior to, the passage of this Act.

FEE FOR CERTIFICATE.—Section 9. To provide a fund to carry out the provisions of the third section of this Act, it shall be the duty of the said Board of Examiners to collect from those who receive the certificate to practice dentistry, the sum of thirty dollars ($30) each; of which sum, if there be any remaining after liquidating necessary expenses, the balance shall be paid into the treasury of the said Pennsylvania State Dental Society, to be kept as a fund for the more perfect carrying out of the provisions of this Act.

An Act of Assembly of the Commonwealth of Pennsylvania, of the 20th day of June, 1883, for the registration of Dentists, being a supplement to the Act of the 17th of April, 1876.

DENTISTS TO REGISTER DIPLOMAS, ETC., IN THE RECORDER'S OFFICE.—Section 1. Be it enacted, etc., That it shall be the duty of any person practicing dentistry

within this Commonwealth, within three months after the passage of this Act, and of any person intending to practice dentistry within this Commonwealth, before commencing the same, to have recorded in the Recorder's office in the county in which he or she practices or intends to practice, the diploma or certificate provided for in the Act to which this is a supplement.

DENTISTS HAVING DIPLOMAS, TO PRESENT THEM TO THE STATE EXAMINING BOARD FOR APPROVAL, BEFORE COMMENCING TO PRACTICE.—DUTIES OF EXAMINING BOARD.—Section 2. Any person beginning to practice dentistry in this State after the passage of this Act, having a dental diploma issued, or purporting to have been issued, by any college, university, society or association, shall present the same to the State Examining Board provided for in the Act to which this is a supplement, for approval; such Examining Board being satisfied as to the qualifications of the applicant and the genuineness of the diploma, shall, without fee, endorse the same as approved, after which the same may be recorded as aforesaid.

PRACTICING DENTISTS WITHOUT DIPLOMAS, TO MAKE WRITTEN AFFIDAVITS.—AND HAVE THEM RECORDED.—DUTY OF RECORDER.—Section 3. Any person who is entitled to practice dentistry in this Commonwealth without a diploma or certificate, under the provisions of the eighth section of the Act to which this is a supplement, shall make written affidavit before some person qualified to administer an oath, setting forth the time of his continuous practice, and the place or places where such practice

was pursued in this Commonwealth, and shall, within three months after the passage of this Act, have such affidavit recorded in the Recorder's office of the county in which he is practicing. And it shall be the duty of the Recorder to record such diplomas, certificates and affidavits in a book provided for such purpose.

VIOLATION OF ACT MADE MISDEMEANOR.—PENALTY.—Section 4. Any person who shall violate or fail to comply with any of the provisions of this Act, or of the Act to which this is a supplement, or who shall cause to be recorded any diploma or certificate which has been obtained fraudulently, or is in whole or in part a forgery, or shall make affidavit to any false statement to be recorded as aforesaid, shall be guilty of a misdemeanor, and on conviction, shall be sentenced to pay a fine of not less than fifty nor more than two hundred dollars, for each offense, for the use of the proper county.

An Act of Assembly of the Commonwealth of Pennsylvania, of the 4th of April, 1872, as to the qualification of Apothecaries, etc.

APOTHECARIES TO HAVE CERTIFICATE OF COMPETENCY.—Section 1. No person whatsoever shall open or carry on, in the City of Philadelphia, any retail drug or chemical store, as the proprietor or manager thereof, nor engage in the business of compounding or dispensing medicines or prescriptions of physicians, or of selling at retail any drugs, chemicals, poisons or medicines, without having obtained a written certificate that he is duly competent and qualified to do so, from the

Pharmaceutical Examining Board, and having been duly registered as hereinafter provided.

Pharmaceutical Examining Board.–Section 2. There shall be established in the City of Philadelphia, a board to be styled the Pharmaceutical Examining Board, to consist of five persons (three of whom shall constitute a quorum), who shall be appointed by the mayor of the City of Philadelphia, out of the most skilled and competent pharmacists at the time engaged in said business in the said city, who shall be and constitute the said the Pharmaceutical Examining Board as aforesaid; the said persons shall hold their office for three years, and until their successors are duly appointed and qualified; they and each of them shall, within ten days after their appointment, take and subscribe an oath or affirmation before the clerk of the Court of Quarter Sessions of the Peace for the County of Philadelphia, that they will faithfully and impartially perform the duties of their office; and any vacancy occurring in said board shall be filled for the unexpired term by the mayor.

To Register Apothecaries.—Section 3. The said the Pharmaceutical Examining Board shall keep a book of registration, open at some convenient place, of which due notice shall be given by advertisement, in at least two of the public newspapers of the City of Philadelphia, in which book shall be registered the name and address of every person duly qualified under this Act to conduct the retail apothecary business; and it shall be the duty of all persons now conducting, or who shall hereafter conduct,

the business of retail apothecaries in said City, to appear before said Board, and be registered within thirty days after such notice.

Fees.—Section 4. The said Pharmaceutical Examining Board shall be entitled to demand and receive from each applicant for such registration, and the certificate herein provided for, a fee not to exceed five dollars ($5), to be applied to the payment of expenses arising under the provisions of this Act.

Examination of Applicants.—Section 5. The duty of the said the Pharmaceutical Examining Board, shall be to examine every person who shall desire to carry on the business of a retail apothecary, or that of retailing drugs, chemicals, or poisons, or of compounding and dispensing physicians' prescriptions, touching his competency and qualification for that purpose, and upon the said Board, or a majority of them, being satisfied of such competency and qualification, they, the said Board, or a majority of them, shall grant to such person a certificate of his competency and qualification, which certificate shall entitle the holder thereof to conduct and carry on the business as aforesaid.

Penalty for Practicing without Certificate.—Section 6. If any person should hereafter engage in the business of an apothecary, or of retailing drugs, chemicals, and poisons, or of compounding and dispensing the prescriptions of physicians, either directly or indirectly, without having obtained such certificate as aforesaid, such person shall be liable to a penalty of one hundred

dollars ($100) for each and every week during which they shall continue to carry on such business without such certificate as aforesaid, to be recovered by a suit to be brought before any alderman, or in any competent court in said city, by the said Board, or by any other person, for the use of the Guardians of the Poor for the City of Philadelphia, to whom the said penalties are to be paid.

EXCEPTIONS.—Section 7. The foregoing provisions of this Act shall not apply to, or affect any person who shall have a diploma or certificate from any incorporated college or school of pharmacy, whose diploma or certificate is based upon a regular term of service in the drug and apothecary business, or who shall be engaged in the drug and apothecary business prior to the passage of this Act, except only in so far as relates to registration, as provided for in sections three and six of this Act.

WHO MAY COMPOUND PRESCRIPTIONS.—PENALTY FOR VIOLATION.—Section 8. No person, not a graduate in pharmacy, shall be allowed by the proprietor or manager of any store to compound or dispense the prescriptions of physicians (except as an aid under the immediate supervision of said proprietor or his qualified assistant), unless he has been at least two years apprenticed in a store where medicines are compounded and dispensed, and has attended one full course of lectures on chemistry, materia medica, and pharmacy; and no proprietor shall leave his store in charge of any but a qualified assistant. Any person violating the provisions of this section of this Act, shall be deemed guilty of a misdemeanor, and on

conviction thereof, be liable to a penalty not exceeding one hundred dollars ($100).

Qualified Assistants.—Section 9. A qualified assistant in the meaning of this Act, shall be either a graduate in pharmacy, holding a diploma or certificate of competency, based upon a regular term of service to the drug and apothecary business, from an incorporated college or school of pharmacy, or a person holding a certificate of competency and qualification from the Pharmaceutical Examining Board appointed under this Act.

Penalty for Adulterating Drugs.—Section 10. Any person who shall knowingly, wilfully or fraudulently falsify or adulterate, or cause to be falsified or adulterated, any drug or medicinal substance, or any preparation authorized or recognized by the Pharmacopœia of the United States, or used or intended to be used in medicinal practice, or shall mix or cause to be mixed with any such drug or medicinal substance, any foreign or inert substance whatsoever, for the purpose of destroying or weakening its medicinal power or effect, and shall wilfully, knowingly or fraudulently sell or cause the same to be sold for medicinal purposes, shall be guilty of a misdemeanor, and upon conviction thereof, shall pay a penalty not exceeding five hundred dollars ($500), and shall forfeit to the Commonwealth all of the articles so adulterated.

Not to apply to Physicians.—Section 11. Nothing contained in this Act shall apply to or in any manner whatever interfere with the business of any practitioner

of medicine who does not keep open shop for the retailing, dispensing or compounding of medicines and poisons, nor prevent him from administering or supplying to his patients such articles as may seem to him fit and proper, nor shall it interfere with the making and dealing in proprietary remedies, popularly called patent medicines.

The 70th section of the Act of the 31st March, 1860, as to labeling poisons.

1 Purdon's Digest, 335.

Selling Poisons.—No apothecary, druggist, or other person, shall sell or dispose of, by retail, any morphia, strychnia, arsenic, prussic acid or corrosive sublimate, except upon the prescription of a physician, or on the personal application of some respectable inhabitant of full age, of the town or place in which such sale shall be made; and in all cases of such sale, the word poison shall be carefully and legibly marked or placed upon the label, package, bottle or other vessel or thing in which such poison is contained; and when sold or disposed of, otherwise than under the prescription of a physician, the apothecary, druggist, or other person, selling or disposing of the same, shall note in a register kept for that purpose, the name and residence of the person to whom such sale was made, the quantity sold, and the date of such sale; any person offending herein shall be guilty of a misdemeanor, and on conviction, be sentenced to pay a fine not exceeding fifty dollars.

An Act of Assembly of the Commonwealth of Pennsylvania, of the 13th day of June, 1883, entitled, An Act for the promotion of Medical Science, by the distribution and use of Unclaimed Bodies for Scientific Purposes, through a Board created for that purpose, and to prevent unauthorized uses and traffic in human bodies.

A BOARD FOR THE DISTRIBUTION AND DELIVERY OF CERTAIN DEAD BODIES CONSTITUTED.—Section 1. Be it enacted, &c., That the professors of anatomy, the professors of surgery, the demonstrators of anatomy, and the demonstrators of surgery of the medical and dental schools and colleges of this Commonwealth, which are now, or may hereafter become incorporated, together with one representative from each of the unincorporated schools of anatomy or practical surgery within this Commonwealth, in which there are from time to time, at the time of the appointment of such representatives, shall be not less than five scholars, shall be and hereby are constituted a Board for the distribution and delivery of dead human bodies, hereinafter described, to and among such persons as, under the provisions of this Act, are entitled thereto. MEETING OF THE BOARD TO BE CALLED.—The Professor of Anatomy in the University of Pennsylvania, at Philadelphia, shall call a meeting of said Board for organization, at a time and place to be fixed by him, within thirty days after the passage of this Act. POWERS OF THE BOARD.—The said Board shall have full power to establish rules and regulation for its government, and to appoint and remove proper officers, RECORDS TO BE KEPT.—And shall

keep full and complete minutes of its transactions, and records shall also be kept under its direction of all bodies received and distributed by said Board, and of the persons to whom the same may be distributed, AND BE OPEN TO INSPECTION.—Which minutes and records shall be open, at all times, to the inspection of each member of said Board, and of any district attorney of any county within this Commonwealth.

OFFICIALS HAVING CHARGE OF DEAD BODIES TO NOTIFY THE BOARD.—Section 2. All public officers, agents, and servants of any and every county, city, township and borough, district and other municipality, and of any and every almshouse, prison, morgue, hospital, or other public institution, having charge or control over dead human bodies, required to be buried at the public expense, are hereby required to notify the said Board of Distribution, or such person or persons, as may from time to time, be designated by said Board or its duly authorized officer or agent, whenever any such body or bodies come to his or their possession, charge or control, AND DELIVER THE SAME WITHOUT FEE OR REWARD —And shall, without fee or reward, deliver such body or bodies, and permit and suffer the said Board and its agents, and the physicians and surgeons from time to time designated by them, who may comply with the provisions of this Act, TO BE USED IN THE CAUSE OF MEDICAL SCIENCE.—To take and remove all such bodies to be used within this State for the advancement of medical science, NOTICE NOT TO BE GIVEN WHEN BODIES ARE CLAIMED BY RELATIVES.—But no such notice need be

given, nor shall any such body be delivered if any person claiming to be, and satisfying the authorities in charge of said body, that he or she is of kindred, or is related by marriage to the deceased, shall claim the said body for burial, but it shall be surrendered for interment; NOR WHEN THE PERSON WAS A TRAVELLER.—Nor shall the notice be given or body delivered if such deceased person was a traveller who died suddenly, in which case the body shall be buried.

DISTRIBUTION OF BODIES REGULATED.—Section 3. The said Board, or their duly authorized agent, shall take and receive such bodies so delivered as aforesaid, and shall, upon receiving them, distribute and deliver them to and among the schools, colleges, physicians, and surgeons aforesaid, in manner following: Those bodies needed for lectures and demonstrations, by the said schools and colleges, incorporated and unincorporated, shall first be supplied, the remaining bodies shall then be distributed proportionately and equitably, preference being given to said schools and colleges, the number assigned to each to be based upon the number of students in each dissecting or operative surgery class, which number shall be reported to the Board at such times as it may direct. PHYSICIANS MAY BE DESIGNATED BY THE BOARD TO RECEIVE BODIES.—Instead of receiving and delivering said bodies themselves, or through their agents or servants, the Board of Distribution may, from time to time, either directly or by their authorized officer or agent, designate physicians and surgeons who shall receive them, and the number which

each shall receive; CERTAIN SCHOOLS, ETC., TO BE PREFERRED.—*Provided* always, however, that schools and colleges, incorporated and unincorporated, and physicians or surgeons of the county where the death of the person or such person described takes place, shall be preferred to all others; BODIES TO BE HELD FOR TWENTY-FOUR HOURS.—*And provided also*, That for this purpose such dead body shall be held subject to their order in the county where the death occurs for a period of not less than twenty-four hours.

CARRIERS MAY BE EMPLOYED.—Section 4. The said Board may employ a carrier or carriers for the conveyance of said bodies, BODIES TO BE ENCLOSED.—Which shall be well enclosed with a suitable encasement, and carefully deposited free from public observation. RECEIPTS TO BE TAKEN FOR BODIES.—Said carrier shall obtain receipts by name, or if the person be unknown, by a description of each body delivered by him, and shall deposit said receipt with the secretary of the said Board.

SCHOOLS, ETC., TO GIVE BOND BEFORE RECEIVING BODIES. Section 5. No school, college, physician or surgeon shall be allowed or permitted to receive any such body or bodies until a bond shall have been given to the Commonwealth by such physician or surgeon, or by, or in behalf of, such school or college, TO BE APPROVED BY THE PROTHONOTARY AND FILED.—To be approved by the prothonotary of the Court of Common Pleas in and for the county in which such physician or surgeon shall reside, or in which such school or college may be situate, and

to be filed in the office of said prothonotary, AMOUNT OF BOND, CONDITION.—Which bond shall be in the penal sum of one thousand dollars, conditioned that all such bodies which the said physician or surgeon, or the said school or college, shall receive thereafter shall be used only for the promotion of medical science within this State, TRAFFIC IN BODIES PROHIBITED.—And whosoever shall sell or buy such body or bodies, or in any way traffic in the same, or shall transmit or convey or cause to procure to be transmitted or conveyed said body or bodies to any place outside of this State, PENALTY.—Shall be deemed guilty of a misdemeanor, and shall, on conviction, be liable to a fine not exceeding two hundred dollars, or be imprisoned for a term not exceeding one year.

EXPENSES OF DELIVERY, ETC., REGULATED.—Section 6. Neither the Commonwealth nor any county or municipality, nor any officer, agent or servant thereof, shall be at any expense by reason of the delivery or distribution of any such body, but all the expenses thereof, and of said Board of Distribution, shall be paid by those receiving the bodies, in such manner as may be specified by said Board of Distribution, or otherwise agreed upon.

PUNISHMENT FOR VIOLATION OF ACT.—Section 7. That any person having duties enjoined upon him by the provisions of this Act, who shall neglect, refuse or omit to perform the same as hereby required, shall, on conviction, be liable to a fine of not less than one hundred nor more than five hundred dollars for each offense.

Extracts from the Act of Assembly of the Commonwealth of Pennsylvania, of the 8th day of March, 1860, as to Registration of Births, Deaths, etc.

PHYSICIANS TO GIVE CERTIFICATES TO UNDERTAKERS.—Section 3. Whenever a person shall die in the City of Philadelphia, it shall be the duty of the physician who attended during his or her last sickness, or of the Coroner, when the case comes under his notice, to furnish, within forty-eight hours after the death, to the undertaker or other person superintending the burial, a certificate, setting forth, as far as the same can be ascertained, the full name, sex, color, age, and condition (whether married or single) of the person deceased, and the cause and date of death.

NO CORPSE TO BE INTERRED WITHOUT SUCH CERTIFICATE.—Section 4. No person having the charge, as sexton or otherwise, of any vault, burying-ground, or cemetery within the said city, shall inter, or allow to be interred, or place, or allow to be placed in any vault, burying-ground or cemetery, the dead body of any person; nor shall any undertaker or other person remove the dead body of any person who has died in the said city, and has not been buried, to any place beyond the limit of the said city, without first procuring the certificate of the attending physician or Coroner. WHAT MATTER TO BE ADDED BY UNDERTAKER.—To said certificate the undertaker or other person having charge of the body shall, as far as can be ascertained, add the occupation of the deceased, the place of birth, the ward, street, and number of the house in

which the death occurred, the place and date of interment, and, where the deceased is a minor, the full names of the parents. In case any person shall die without the attendance of a physician, or if the physician who did attend at the time of the death, refuses or neglects to furnish a certificate as aforesaid, it shall be the duty of the undertaker, or of any other person acquainted with the facts, to report the same to the Health Officer, who shall be authorized to give a certificate of death as aforesaid, provided it be not a case requiring the attendance of the Coroner. WHEN CERTIFICATES TO BE RETURNED TO HEALTH OFFICER.—Every sexton or other person having charge of any vault, burying-ground, or cemetery within the said city, and every undertaker or other person who shall remove any dead body from or out of the city, shall return the said certificate to the Health Officer before twelve o'clock M. on the Saturday of every week, accompanied by a schedule of the same; which returns shall be published weekly by the Health Officer, in such manner as may be designated by the Board of Health.

PENALTY FOR REFUSING CERTIFICATE.—Section 5. In case any physician, or the Coroner, shall refuse or neglect to furnish such certificate as aforesaid, he shall forfeit and pay the sum of five dollars for each offense; and every undertaker, sexton, or other person removing the dead body of any person, or having charge of any vault, burying-ground, or cemetery, who refuses or neglects to perform any of the duties required by this Act, shall forfeit and pay for every such offense the sum of twenty-five dollars.

Duties of Persons practicing Midwifery.—Section 6. Every person practicing midwifery in the city aforesaid, under whose charge or superintendence a birth shall hereafter take place, shall keep a true and exact register of such birth, and shall enter the same on a blank schedule, to be furnished by the Health Officer. Schedule of Births to be returned to Health Officer.—The schedule shall contain a list of the births which have occurred under his or her care during the month, and shall set forth, as far as the same can be ascertained, the full name of each child (if any name shall have been conferred), its sex, color, the full name and occupation of its parent or parents, the day and place of its birth; and the said schedule shall be delivered, duly signed by the practitioner, in the form of a certificate, on the first day of each and every month, to the Health Officer, or to any other authorized person calling for the same. In case the birth of any child shall have occurred without the attendance of a physician, or of a practitioner of midwifery, or should no other person be in attendance upon the mother immediately thereafter, it shall then become the duty of the parent or parents of such child to report its birth to the Health Officer, in the manner and form and within the period above required.

Penalty for refusing to register Place of Residence.—Section 8. Every . . . practicing physician and every person practicing midwifery in the City of Philadelphia . . . who shall neglect or refuse to leave his or her name and place of residence at the Health Office as

herein provided, and who shall refuse or neglect to perform any other of the duties required as aforesaid, shall forfeit and pay for each offense the sum of ten dollars.

Extracts from the Act of Assembly of Pennsylvania, of the 16th of April, 1870; provides for the Registration of Marriages, Births and Deaths in the City of Pittsburgh.

Section 1. The Board of Health shall furnish separate books, in which shall be registered, in the manner hereinafter directed, the returns made to said Board of the marriages which may be contracted, and of the births and deaths which may occur in the City of Pittsburgh.

Section 2. Provides that every practicing physician, and every practitioner of midwifery, and other persons therein named, shall report his name and place of residence, for registry, to the Health Officer, at the office of the Board of Health, and in case of removal, notice of that fact is to be given within thirty days thereafter, excepting when a person ceases to act in his official capacity.

Section 3. Whenever any person shall die in the City of Pittsburgh, it shall be the *duty of the physician* who attended his or her case during his or her last sickness, or of the Coroner (when the case comes under his notice), to furnish to the undertaker, or other person superintending the burial, a certificate setting forth, as far as the same can be ascertained, the full name, occupation, sex, color, age and condition (whether married or single) of the dead person, and the cause and date of the death. In

case any person shall die without the attendance of a physician, or if the physician who did attend at the time of the death, refuses or neglects to furnish such certificate, it shall be the duty of the physician of the Board of Health, upon being notified thereof, to make the necessary examination in such cases, and to give a certificate of death as aforesaid. Provided, it be not a case requiring the attendance of the coroner.

Section 4. Provides, among other things, that it shall be the duty of every undertaker, or other person, before removing any corpse for burial, within the city or elsewhere, to obtain from the Board of Health a permit so to do, which shall be granted by said Board; but before obtaining such permit he shall deposit, in the office of the Board of Health, the physician's or coroner's certificate.

Section 5. Every person practicing midwifery in the city aforesaid, under whose charge or superintendence a birth shall hereafter take place, shall keep a true and exact register of such birth, and shall enter the same on a blank schedule, to be furnished by the Board of Health; this schedule shall contain a list of the births which have occurred under his or her care during the month, and shall set forth, as far as the same can be ascertained. the full name of each child (if any name shall have been conferred), its sex, color, the full name and occupation of its parent or parents, the day and place of its birth, and the said schedule shall be delivered, duly signed by the practitioner, in the form of a certificate, on the first

day of each and every month, to the Health Officer, or to any other authorized person.

Section 7 of the Act fixes the penalty for violating the Act at a sum not less than five nor more than twenty dollars, for the use of the Board of Health.

Extracts from the Act of Assembly of the Commonwealth of Pennsylvania, of the 5th of May, 1876, relating to the Registration of Marriages, Births and Deaths, applying to the cities of the State, excepting those of the first and second classes.

Section 1. Whenever Boards of Health are established by law in the cities of the Commonwealth, said Boards shall furnish separate books in which shall be registered, in the manner hereinafter directed, the returns made to said Boards of the marriages which may be contracted, and the births and deaths that may occur in said cities.

Section 2. It shall be the duty of clergymen of all denominations, of clerks or keepers of records of all churches and religious societies, as also of every magistrate, and of other persons by or before whom any marriage may hereafter be solemnized or contracted, *and of every practicing physician*, and of every practitioner of midwifery in said cities, on or before the first day of July next ensuing (the day in which the law goes into effect), *to report his, her, or their names and places of residence*, to the Secretary of the Board of Health, at the office of the Board of Health; and it shall be the duty of the Secretary of the Board of Health to have the same properly registered in index form, in suitable books to be

furnished by the Board of Health. In the event of any of the persons above specified removing to any other place of residence, it shall be their duty to notify the Secretary of the Board of Health of the fact, within thirty days after such removal, except when the persons removing shall cease to act in such official capacity, as to make them subject to the provisions of this Act.

Section 3. Every person practicing midwifery in said cities, under whose charge or superintendence a birth shall hereafter take place, shall keep a true and exact register of such birth, and shall enter the same on a blank schedule to be furnished by the Board of Health; this schedule shall contain a list of the births which have occurred under his or her care during the preceding three months, and shall set out, as far as can be ascertained, the full name of each child (if any name shall have been conferred), its sex, color, the full name and occupation of its parent or parents, the day and place of its birth, and the schedule shall be delivered, duly signed by the practitioner, in the form of a certificate, on the first days of October, January, April and July, or within ten days thereafter, to the Secretary of the Board of Health, or to any other authorized person. In case the birth of any child shall have occurred, without the attendance of a physician or practitioner of midwifery, or should no other person be in attendance upon the mother immediately thereafter, it shall then become the duty of the parent or parents of such child to report its birth to the Secretary

of the Board of Health, in the same manner and form as above required.

The remaining sections are:

Section 4, relating to returns of marriages.

Section 5, relating to penalty for violation, the same being not less than five nor more than twenty dollars for every violation.

Section 6, providing that Registers shall be evidence.

Section 7, as to fees for certificates and searches.

Section 8, as to form of registry of marriages and births.

Section 9, provides that the Boards of Health shall have power to make all rules and regulations for carrying the provisions of the Act into effect.

Apparently there has been an oversight as to the providing for the registry of deaths. Boards of Health are to register deaths, but the Act is silent as to how they are to get the information. The Act passed afterwards for cities of the third class, was probably intended to cover this defect.

Extracts from the Act of Assembly of the Commonwealth of Pennsylvania, of the 7th day of June, 1881, relative to the Board of Health in cities of the third class, providing for the Registration of Marriages, Births and Deaths, and relative to imposing penalties for violation thereof.

Section 1. That in the cities of the third class, the Board of Health shall furnish separate books in which shall be registered, in the manner hereinafter directed,

the returns made to said Board of the marriages which may be contracted, and of the births and deaths which may occur in said cities.

Section 2. Provides that every practicing physician, and every practitioner of midwifery, and certain other persons, shall report their names and places of residence, to the Health Officer, at the office of the Board of Health, and in case of removal, notice is to be given in thirty days.

Section 3. Provides that deaths shall be reported, and what the report shall contain, and made in the same way as section 3 of the Act of 16th April, 1870, relating to Pittsburgh.

Section 5. Provides for the reporting of births and for the contents of such report as is provided in section 5 of the said Act of 1870.

Section 6. Fixes the penalty the same as in the said Act of 1870.

An Act of Assembly of the Commonwealth of Pennsylvania, in relation to the public health and sanitary condition of cities of the second class, approved the 25th day of May, 1883.

PHYSICIANS TO MAKE IMMEDIATE REPORT.—Section 1. Be it enacted etc., That every practicing physician in said cities of the second class, who shall have a patient suffering or afflicted with small-pox (variola or varioloid), diphtheria, scarlet fever, typhoid fever, typhus fever, yellow fever, cerebro-spinal or Asiatic cholera, shall forthwith make report thereof to the Board of Health, CONTENTS

OF REPORT.—Describing the street, number and locality of the house or place where the said patient may be located, PENALTY FOR NEGLECT.—And for neglecting or refusing so to do, shall be liable to a fine of not less than five, nor more than fifty dollars.

HOW PENALTY RECOVERED.—Section 2. That in all cases of the breach of any of the provisions of this Act, subjecting the offender to penalty or fine therefor, the suit for the recovery thereof may be maintained before any Mayor, Deputy Mayor, or Alderman, in like manner as suits for the recovery of debts may now be maintained before them, and upon payment thereof a *capias ad satisfaciendum* may issue.

BOARD OF HEALTH INSTITUTE PROCEEDINGS.—Section 3. That all proceedings for the recovery of the fines, and penalties imposed and inflicted by the provisions of this Act shall be instituted and carried on by the Board of Health, and in its name and for the use of said Board.

An Act of Assembly of the Commonwealth of Pennsylvania, of the 5th day of June, 1883, amendatory of the license laws of the State, determining the license fee to be paid by manufacturers and venders of nostrums or patent medicines, and repealing prior laws.

TAXATION OF MANUFACTURERS, ETC., OF PATENT MEDICINES REGULATED.—Section 1. That hereafter every individual or co-partnership, who shall engage in the business of manufacturing or vending nostrums or patent medicines, of whatever class or character, shall, for the purpose of

taxation, be deemed and taken to be dealers in merchandise, and shall be classed and rated for a yearly license in the same manner, except as is hereinafter provided, other dealers in merchandise are now by law classed and rated. Provided, That nothing herein contained shall be so construed as to exempt any manufacturer of nostrums or patent medicines, from the payment of the proper license fee, or any part thereof, on the grounds that he is selling goods of his own manufacture, from the place where the same were manufactured."

Section 2 (Repeals sections 25 and 26 of the Act of April 10, 1840).

The 87th Section of Act of 31st of March, 1860, as to Abortions, etc.

1 Purdon's Digest, p. 341, etc.

If any person shall unlawfully administer to any woman pregnant or quick with child, or supposed or believed to be pregnant or quick with child, any drug, poison or other substance whatever, or shall unlawfully use any instrument or other means whatsoever, with the intent to procure the miscarriage of such woman, and such woman, or any child with which she may be quick, shall die in consequence of either of said unlawful acts, the person so offending shall be guilty of felony, and shall be sentenced to pay a fine not exceeding five hundred dollars, and to undergo an imprisonment by separate or solitary confinement at labor, not exceeding seven years.

Section 88 of same Act.

If any person, with intent to procure the miscarriage of any woman, shall unlawfully administer to her any poison, drug or substance whatsoever, or shall unlawfully use any instrument or other means whatsoever, with the like intent, such person shall be guilty of felony, and being thereof convicted, shall be sentenced to pay a fine not exceeding five hundred dollars, and undergo an imprisonment by separate and solitary confinement at labor, not exceeding three years.

The 8th Section of the Act of 11th of April, 1848, relating to claims and suits against married women.

In all cases where debts may be contracted for necessaries for the support and maintenance of the family of any married woman, it shall be lawful for the creditor, in such case, to institute suit against the husband and wife for the price of such necessaries, and after obtaining a judgment, have an execution against the husband alone; and if no property of the said husband be found, the officer executing the said writ shall so return, and thereupon an alias execution may be issued, which may be levied upon and satisfied out of the separate property of the wife, secured to her under the provisions of the first section of this Act: Provided, That judgment shall not be rendered against the wife, in such joint action, unless it shall be proved that the debt sued for in such action was contracted by the wife, or incurred for articles necessary

for the support of the family of the said husband and wife.

Ordinance of the City of Philadelphia, of July 11th, 1860, relating to Vaccination.

Section 1. Immediately on the passage hereof, and annually thereafter, on the fourth Tuesday of January, the Board of Health shall elect twenty-four persons, who shall have had conferred upon them the degree of Doctor of Medicine, to serve as vaccine physicians in the several wards of the City of Philadelphia. The said vaccine physicians shall reside in the respective wards, for which they shall be elected, and shall hold their offices as such for one year, unless sooner removed by the said Board of Health.

Section 2. It shall be the duty of each of the vaccine physicians to vaccinate gratuitously in their respective wards, all persons who may make application or be reported to him by the collector of vaccine cases in his ward, either at his own office or at the respective places of abode, according to the option of the applicant; and he shall continue to visit every such patient as often as may be necessary, to enable him to ascertain whether the person or persons so vaccinated have passed through the genuine disease. Each of the said vaccine physicians shall keep, in some convenient part of his ward, an office with a sign in front having on the words "Vaccine Physician, — Ward" (the blank to be filled with the number of the respective ward), where application may be made at all reasonable

hours in relation to the duties of his appointment; and each of said physicians shall preserve and keep on hand a sufficient quantity of genuine vaccine matter for distribution, without fee or charge, to all practicing physicians residing within the City of Philadelphia, who may make personal application therefor.

Section 3 The said physicians shall each furnish the said Board of Health, quarterly, with a list, alphabetically arranged, of the names, ages, birth-places, residences and occupations (and, when children, of the occupations of their parents), of the persons whom he may have successfully vaccinated.

Section 5. It shall also be the duty of the Board of Health, immediately after the passage of this ordinance, and annually thereafter, upon the fourth Tuesday of January, to elect thirteen persons to serve as collectors of vaccine cases, eleven of whom shall be chosen for the first twenty-two wards in order, one for the Twenty-third and one for the Twenty-fourth ward. Each person so elected shall reside in the ward or wards for which he is elected, and the said collectors shall hold their offices until their successors are elected, unless sooner removed by the said Board of Health. It shall be the duty of said collectors to call on each and every family residing within the ward or wards for which he may be elected, and inquire whether any, and if any, what members thereof may be liable to small-pox disease, and if he find any person or persons so liable, he shall offer the gratuitous services of the vaccine physician of the ward to

vaccinate such person or persons; and if the offer shall be accepted, the said collector shall report immediately to the said physician, the names of the individuals, with their residences; and at the expiration of each quarter, he shall leave a copy of all the cases, with their residences, collected by him and returned to the physicians, at the Health Office with the Health Officer.

Section 7. In case of vacancy or vacancies caused by death, resignation, suspension or removal of any of the said vaccine physicians or collectors of vaccine cases, the Board of Health shall have power to fill such vacancy or vacancies.

Section 8. Warrants for the payment of the said vaccine physicians and collectors of vaccine cases, shall be drawn quarterly by the Board of Health, in conformity to existing ordinances.

Ordinance of the City of Philadelphia, of May 27, 1863, relating to Vaccination.

Section 2. The said collectors shall each receive for each and every case so reported and successfully vaccinated, the sum of ten cents, except said collectors from the Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, and Twenty-fifth Wards, who shall receive the sum of twenty-five cents for each case, payable quarterly.

Ordinance of the City of Philadelphia, of January 27, 1865, relating to Vaccination.

Section 1. For the purpose of more effectually providing gratuitous vaccination throughout the City of Philadel-

phia, and to guard the inhabitants from small-pox, the Board of Health may, from time to time, appoint such persons to act as vaccine physicians and collectors of vaccine cases, divide the city into such districts, and may make such rules and regulations for their government, as they in their judgment may deem proper and expedient; *Provided, however*, That the compensation to be paid to such persons shall not exceed twenty-five cents to each physician, and fifteen cents to each collector, for each and every case collected and successfully vaccinated, and duly reported and vouched to the said Board of Health, except to those appointed for the Twenty-first, Twenty-second, Twenty-third, and Twenty-fourth Wards, for which said services the physicians shall receive fifty cents, and the collectors twenty-five cents, for each case therein so collected, successfully vaccinated, and duly reported and vouched as aforesaid, and it shall be the duty of the Board of Health to publish quarterly the number of persons successfully vaccinated in each district, with the names of the physicians, and also to report annually to Councils, through the Mayor, the whole number vaccinated in each district during the year, and by whom so vaccinated.

ADDENDA.

Judge Elcock's construction of the Act of 31st of March, 1860, relating to labeling of poisonous drugs.

Since the foregoing matter was printed the following opinion has been given as to the construction of the said Act.

Drug clerk Charles W. Mengle was discharged from all liability for the death of Ann Carroll, the victim of a reckless indulgence in strychnine pills.

Judge Elcock, in his opinion, after quoting the Act of Assembly requiring the label "poison" to be used in the sale of certain drugs, and reviewing the testimony, said: "The question therefore is, is it the duty of a druggist who sells a poison by direction of a physician, to affix thereon the label aforesaid? A construction must be given to the Act, which must be in accordance with the intention of the framers of the law. By the report of the Commissioners of the Penal Code it is stated that it was enacted to prevent mistakes in the sale of noxious drugs, to throw impediments in the way of malicious and wicked persons obtaining them for murderous purposes and to facilitate the detection of such persons when their malignant purpose has been accomplished. There is nothing, therefore, in the intention of the framers of the

Act to enact any law which would restrict or narrow the sale of drugs for legitimate purposes, or where directed to be used by the accustomed mode of legal practice known at the time. Two modes of sale are provided for—one by the prescription of a physician and the other on the personal application of a respectable inhabitant of the place. The prescription furnishes all the information required by the law, and all that is given when the sale is made on the personal application of the inhabitant.

"It is argued that the plain reading of the Act would compel any one selling the drugs named to mark them as poison. If this were so, it might also be argued that any compound containing poison should also be so marked, and thus any sale of a poison in the most infinitesimal quantities would require the same labeling. A homeopathic physician might be compelled to label his remedy in like manner. No good purpose would be served by such a construction. It is clear from the reading of the section, which is not artistically drawn, that it should be divided into sentences, and that the first sentence should end with the word 'physician' where first named, and that the words 'such sales,' as they afterward occur in the section, refer to sales made to others than those on the prescription of a physician. By this division of the section, the reading of it will be in accordance with the end sought to be accomplished by the Legislature. The Legislature could never have intended that a prescription of a reputable physician in a case of delicate treatment in which one of the poisons named should be used in a proper

quantity, should be sent by the druggist to the sick room of a nervous patient with the word 'poison' marked on the label.

"Medical treatment would be ended, and the power placed in the hands of the druggist to destroy the benefit of the physician's remedy. Such a law would be destructive of medical science, unreasonable and against the spirit of sound legislation. The direction placed upon the box, 'Use one at meals, as directed by Dr. Atlee,' showed plainly the nature and power of the dose, and that it was not an article of food. If the unfortunate people who in a rash banter ate this box of pills, had been gifted with the smallest amount of prudence or ordinary caution in observing the directions upon the label, they would not have been the subject of sickness and death, as has resulted. I see not wherein the relator has been guilty of any breach of the law, and he should go hence freed and discharged of all liability. Relator discharged."