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THE LAW
RELATING TO
MEDICAL PRACTITIONERS

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THE LAW

RELATING TO

MEDICAL PRACTITIONERS

IN ENGLAND;

AS WELL IN

PRIVATE PRACTICE

AS IN

PUBLIC OFFICES.

BY

JOSEPH CRAVEN,

Of the Middle Temple, and of the North-Eastern Circuit, Barrister-at-Law,
Author of "The High Bailiff's Handbook,"

ASSISTED BY

THEODORE COPPOCK, M.A., LL.B., CANTAB.,

Of the Inner Temple, and of the Northern Circuit,
Barrister-at-Law.

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PREFACE.

THIS Work is an attempt to collect, within a reasonable compass, the Law relating to Medical Practitioners in England. There are now many important public offices which are tenable only by duly qualified medical men, the duties and responsibilities of which are very great; there are also many duties which a Medical Practitioner is frequently called upon to perform in his private capacity which are of a *quasi*-public nature; and even in private practice the law hardly regards the physician or surgeon as an ordinary citizen; he has certain privileges and advantages, and he has to comply with certain requirements. It may, therefore, be an advantage to the medical profession to have a book which will give concisely and in ordinary language the law on these various matters, for it is believed that there is no such book which is not considerably out of date.

We have to acknowledge several very valuable suggestions offered by Arthur Roberts, Esq., M.D., Medical Officer of Health for the Borough of Keighley, &c.

J. CRAVEN,
37, Park Square, Leeds.

T. COPPOCK,
8, King's Bench Walk,
Temple.

Sept., 1890.

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The General Council of Medical Education and Registration.

THE General Council is an incorporated(*a*) body created by an Act of Parliament in 1858,(*b*) whose duties, as defined by that Act and others amending the same,(*c*) are the maintenance of an efficient standard of medical education and examination, and the compilation and revision of the Medical Register. The Council consists of five persons nominated by Her Majesty in Council, three of whom are for England, one for Ireland, and one for Scotland, together with five direct representatives elected by the registered medical practitioners, three of whom are elected for England, one for Ireland, and one for Scotland, and one person chosen by each of the following bodies:—

The Royal College of Physicians, London;
The Royal College of Surgeons, England;
The Apothecaries' Society, London;
The University of Oxford;
The University of Cambridge;

(*a*) By 25 & 26 Vict. c. 91, s. 1.
(*b*) 21 & 22 Vict. c. 90, s. 3.
(*c*) In particular the Medical Act, 1886, 49 & 50 Vict. c. 48.

The University of London(*a*);
The University of Durham;
The Victoria University, Manchester;
The Royal College of Physicians, Edinburgh;
The Royal College of Surgeons, Edinburgh;
The Faculty of Physicians and Surgeons, Glasgow;
The University of Edinburgh;
The University of Glasgow;
The University of Aberdeen;
The University of St. Andrews;
The King's and Queen's College of Physicians, Ireland;
The Royal College of Surgeons, Ireland;
The Apothecaries' Hall, Ireland;
The University of Dublin; and
The Royal University of Ireland.(*b*)

The direct representatives, who must be registered medical practitioners, are elected by the whole of the registered medical practitioners in that part of the United Kingdom which they represent for a period of five years. They are capable of re-election, and may resign at any time by letter to the President of the Council.(*c*) For the purposes of the election the President (or some other person appointed by the Council) acts as returning officer. Between two months and six weeks before the expiration of the term, a precept is issued to the Branch Council (the constitution of which is hereafter explained) requiring the holding of an election within twenty-one days.(*d*) The nomination must be in writing and must be signed by not less than twelve registered medical practitioners; the Branch Council then forwards voting papers by post to the

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(*a*) The election in this case is by the Senate and not by the whole body of graduates: *R.* v. *Storrar*, 28 L. J. Q. B. 326.
(*b*) 49 & 50 Vict. c. 48, s. 7.
(*c*) *Ib.* s. 8 (1).
(*d*) *Ib.* s. 8 (3).

registered address of each practitioner, and the omission of any particular one does not invalidate the election; but any registered practitioner who does not receive a voting paper may obtain it by applying to the registrar of the Branch Council. Each practitioner has as many votes as there are persons to be elected, but can only give one vote to one candidate.(*e*) The conduct of the election is also subject to the regulation of the Privy Council. The Branch Council then certifies the result of the election to the General Council,(*f*) and the expenses of the election are paid by it.(*g*) The direct representatives are entitled to receive such fees and travelling expenses as are sanctioned by the Treasury,(*h*) in the same way as other members.(*i*) The President of the Council is elected for his period of office as a member, not exceeding five years.(*k*) A registrar is also appointed by the General Council, who also acts for the branch for England,(*l*) his duty being to keep the register correct in accordance with the provisions of the Acts, and with the regulations and orders of the Council.(*m*) A treasurer is also appointed, whose duty is to keep the accounts in the prescribed form.(*n*)

The duties of the General Council are to make regulations as to registration,(*o*) and to secure the maintenance of the standard of efficiency of medical education, which must be such as to guarantee the possession of the knowledge and skill requisite for the efficient practice of

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(*e*) 49 & 50 Vict. c. 48, s. 8 (4).
(*f*) *Ib.* s. 8 (5).
(*g*) *Ib.* s. 8 (7).
(*h*) *Ib.* s. 8 (2).
(*i*) 21 & 22 Vict. c. 90, s. 12.
(*k*) 49 & 50 Vict. c. 48, s. 9.
(*l*) 21 & 22 Vict. c. 90, s. 10.
(*m*) *Ib.* s. 14.
(*n*) *Ib.* ss. 13, 44.
(*o*) *Ib.* s. 15.

medicine, surgery, and midwifery.(*a*) For this purpose it may appoint inspectors to attend the examinations of the various bodies authorised to grant diplomas. These inspectors cannot interfere with such examinations, but must report to the General Council and to the Privy Council(*b*). The General Council has power to represent to Her Majesty in Council that it is necessary, on account of some defect in the course of study or examination,(*c*) to withhold from any medical authority the right to hold qualifying examinations(*d*). For the purpose of making such representation the Council has the right to require information as to the course of study required for such qualifications(*e*). During the period when the right to hold examinations is suspended a diploma cannot be granted, neither can a representative be sent to the General Council.(*f*) The Council may not, however, impose restrictions as to any particular theory of medicine or surgery on any of the examining bodies.(*g*) Another duty of the Council is to publish under its direction a book containing a list of medicines and compounds, and the manner of preparing them, together with the true weights and measures by which they are to be prepared and mixed, and containing such other matters and things relating thereto as the Council shall think fit, to be called the "British Pharmacopœia," and to cause the same to be altered, amended, and re-published as often as necessary.(*h*) The Council also has

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(*a*) 49 & 50 Vict. c. 48, s. 3 (2).
(*b*) *Ib.* s. 3 (3). The salary and expenses of the inspector must be sanctioned by the Privy Council: s. 3 (4).
(*c*) 21 & 22 Vict. c. 90, s. 20.
(*d*) *Ib.* s. 21, and 49 & 50 Vict. c. 48, s. 4 (1).
(*e*) 21 & 22 Vict. c. 90, s. 18.
(*f*) 49 & 50 Vict. c. 48, s. 4 (2).
(*g*) 21 & 22 Vict. c. 90, s. 22.
(*h*) 21 & 22 Vict. c. 90, s. 54. The right of printing and publishing is vested solely in the Council by 25 & 26 Vict. c. 91. A retailer's license from the Excise is not required by a medical practitioner for the

power to represent to the Privy Council that it is desirable to revise its constitution, and any such recommendation can be carried out by Her Majesty's Order in Council (subject to certain restrictions as to the consent of Parliament).(*i*) If at any time the Council is in default, the Privy Council may step in and perform its duties.(*k*)

Branch Councils are formed for England, Ireland, and Scotland. They consist of the members nominated by Her Majesty for each country respectively, the direct representatives for that country, and those chosen by the medical authorities in that country. The President of the General Council is *ex officio* a member of each branch. The Branch Councils may exercise any power which the General Council may delegate to them, except the right to make representations to Her Majesty in Council.(*l*)

Registration.

No person can now be registered (since the 1st of June, 1887),(*m*) as a medical practitioner, unless he or she(*n*) has passed a qualifying examination in medicine, surgery, and midwifery held by a competent authority.(*o*) The authorities entitled to grant diplomas(*p*) which entitle

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sale of any spirituous liquor which he may use in the preparation or making up of medicines for sick, lame, or distempered people only; such a sale is not affected by the Licensing Laws: 16 Geo. 2, c. 8, s. 12; 35 & 36 Vict. c. 94, s. 72.

(*i*) 49 & 50 Vict. c. 48, s. 10. (*k*) *Ib.* s. 19.

(*l*) 21 & 22 Vict. c. 90, s. 6.

(*m*) 49 & 50 Vict. c. 48, s. 27.

(*n*) For the Acts are now "without distinction of sex," except that it is not compulsory upon any authority to admit females, and if such are granted diplomas, they have no right of taking part in the government of the authority: 38 & 39 Vict. c. 43, s. 2; 39 & 40 Vict. c. 41, ss. 1, 2.

(*o*) *Ib.* s. 2. (*p*) The word "diploma" is defined as meaning any diploma, degree, fellowship, membership, license, or authority to practise, letters testimonial, certificate, or other status or document granted by any university, corporation, college, or other body, or by any departments of or persons acting under the authority of the government of any country or place within or without Her Majesty's dominions: *Ib.* s. 27.

the holder to be registered as a medical practitioner are described as—(1) Any university in the United Kingdom; (2) Any medical corporation, being legally qualified to grant diplomas in medicine and surgery;(*a*) (3) Any combination of two or more such corporations; and (4) Any combinations of medical corporations and universities. Provided that in case of such combinations one of the authorities must be able to grant a diploma in medicine and one in surgery at least.(*b*) At the present time any person is entitled to be registered who possesses a qualifying diploma in *medicine, surgery, and midwifery*, from amongst the following :—

Fellow, member, licentiate, or extra licentiate of the Royal College of Physicians, London;

Fellow or licentiate of the Royal College of Physicians, Edinburgh;

Fellow, member, or licentiate of King's and Queen's College of Physicians, Ireland;

Fellow, member, or licentiate in midwifery of the Royal College of Surgeons, England;

Fellow or licentiate of the Royal College of Surgeons, Edinburgh;

Fellow or licentiate of the Faculty of Physicians and Surgeons, Glasgow;

Fellow or licentiate of the Royal College of Surgeons, Ireland;

(*a*) A "medical corporation" means any body in the United Kingdom, other than a university, for the time being competent to grant a diploma or diplomas, conferring on the holder thereof, if he has passed a qualifying examination, the right of registration under the Medical Acts : 49 & 50 Vict. c. 48, s. 27.

(*b*) *Ib.* s. 3 (1). If any authority is unable to enter into such combination it may obtain an assistant examiner from the General Council for such branch as it is not entitled to grant diplomas for, and so be able to grant full qualifying diplomas : s. 5 Colleges may also unite : 21 & 22 Vict. c. 90, s. 19.

Licentiate of the Society of Apothecaries, London;
Licentiate of Apothecaries' Hall, Dublin;
Doctor, or bachelor, or licentiate of medicine, or master in surgery of any University in the United Kingdom; and
Master in obstetrics in any University in the United Kingdom.(*c*)

Registration is effected by producing to the registrar of the Branch Council (or sending to him by post) the documents conferring or evidencing the qualifications in respect whereof the applicant seeks to be registered.(*d*) Some medical authorities periodically supply the registrar with lists of those persons who have been qualified by them; and in such case it will not be necessary to send the diplomas to the registrar.(*e*) A fee of not more than 5*l.* is payable to the registrar. A registered person may have any subsequently obtained qualification added to his name in the register upon payment of a further fee.(*f*) Any registered person who has received a diploma in sanitary science, public health, or state medicine, after special examination in such subject, can, upon payment of a fee of 5*s.*, have the same registered if it has received the recognition of the General Council.(*g*) The

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(*c*) 21 & 22 Vict. c. 90, Sched. A; 22 Vict. c. 21, s. 4; and 49 & 50 Vict. c. 48, s. 20. Certain foreign diplomas are also registrable if obtained before 1858; a doctorate granted by the Archbishop of Canterbury, prior to 1858, is also still a sufficient qualification for registration.

(*d*) 21 & 22 Vict. c. 90, s. 15.

(*e*) *Ib.* and s. 28. (*f*) *Ib.* s. 30.

(*g*) 49 & 50 Vict. c. 48, s. 21. Those at present recognised by the Council are the Diploma of Public Health, granted by the R. C. P., Lond., the R. C. S., Irld., and the Universities of Cambridge and Aberdeen; the Certificate in Public Health granted by the R. C. P., Edin., and the Universities of Oxford and of London; the Diploma in State Medicine by K. & Q. C. P., Irld., and the University of Dublin; Qualification in Public Health by the Faculty P. & S., Glas.; License in Sanitary Science of Durham; B. Sc. (Pub. Health), Edin., and the Diploma in Sanitary Science of the Royal University of Ireland.

registrar is entitled to satisfy himself that the applicant is entitled to registration before placing him upon the register; and if his decision is unsatisfactory to the applicant, an appeal lies to the Branch or General Council, who also have power to remove any entry which has been made fraudulently or incorrectly.(*a*)

A separate list is kept in the Medical Register for Colonial and Foreign practitioners,(*b*) and any person entitled may be registered in either or both,(*c*) and may have a description of his diplomas added to his name.(*d*) Any person showing to the satisfaction of the registrar that he holds a recognised colonial qualification, granted to him in a British possession to which the Act applies, and that he is of good character, and that he is by law entitled to practise medicine, surgery, and midwifery in such possession, is entitled to be registered, without further examination, as a colonial practitioner, provided that he proves to the satisfaction of the registrar—(1) that his diplomas were obtained at a time when he was not domiciled in the United Kingdom, or in the course of a period of not less than five years, during the whole of which he resided out of the United Kingdom; or (2) that he was practising either in the United Kingdom on the prescribed day, or that he has continuously practised in the United Kingdom or elsewhere for a period of not less than ten years immediately before the prescribed day.(*e*)

(*a*) 21 & 22 Vict. c. 90, s. 26; *R.* v. *General Council, &c.*, 30 L. J. Q. B. 201.

(*b*) 49 & 50 Vict. c. 48, s. 14.

(*c*) *Ib.* s. 13. (*d*) *Ib.* s. 15.

(*e*) *Ib.* s. 11. For this purpose a recognised diploma means one which is for the time being recognised by the General Council as furnishing sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of medicine, surgery, and midwifery. If the General Council refuses to recognise any such there is an appeal to the Privy Council: *Ib.* s. 13. Her Majesty has power by Order in Council to define those colonies to which this Act applies,

When any person shows to the satisfaction of the registrar that he holds some recognised foreign medical diploma, granted in a foreign country to which the Act applies, and that he is of good character, and that he is entitled by law to practise medicine, surgery, and midwifery in such country, he is entitled to be registered as a foreign practitioner, provided that he shows to the satisfaction of the registrar (1) that he is not a British subject; or (2) being such, that his diplomas were granted to him at a time when he was not domiciled in the United Kingdom, or in the course of a period of not less than five years, during the whole of which he resided out of the United Kingdom; or (3) that being such subject, he was practising medicine or surgery, or a branch of either in the United Kingdom on the prescribed day, and has done so continuously in the United Kingdom or elsewhere, for not less than ten years immediately preceding the prescribed day.(*f*)

Registered medical practitioners, with English, Irish, or Scotch qualifications, may (after the prescribed day) have any foreign medical degree added to their names in the register, upon satisfying the General Council that such was obtained after proper examination, and before the 25th of June, 1886.(*g*) Persons not British subjects, who are duly qualified to practise in their own

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if in her opinion such places offer equal facilities to British practitioners: s. 17. A British possession is any part of Her Majesty's dominions other than the United Kingdom: s. 27.

(*f*) *Ib.* s. 12. For this part of the Act the prescribed day is the date mentioned in the Order in Council, which brings any foreign country within the Act: s. 17. Note (*c*), p. 7, applies to this section. The General Council may make special exemptions in favour of any person who was practising before 1858. There is nothing in the Act to prevent a colonial practitioner holding an appointment on a British ship, registered in some possession, although he is not registered in England, and notwithstanding that the ship trades with a British port: s. 18.

(*g*) 49 & 50 Vict. c. 48, s. 16.

country, may act as resident physicians, &c., to any hospital exclusively for foreigners, without being registered.(*a*)

It is the duty of the registrar to keep the register in accordance with the provisions of the Acts of Parliament and the regulations of the General Council. He erases the names of all practitioners who have died, and makes all necessary alterations in names, addresses, and qualifications. To enable him to do this, he has power to write to any registered person at the address on the register, to inquire whether he has ceased to practise, or changed his residence, and if no answer shall be returned to such letter within six months, he has power to erase the name from the register, although the General Council has power to restore it.(*b*) The register is published yearly, and contains the names, residence, titles, and qualifications of all persons duly registered. It is evidence in all courts, until the contrary is made to appear.(*c*) Any person whose name for any cause does not appear on the published register, but who is duly registered, can prove the fact by a certificate of the entry under the hand of the registrar.(*d*).

The General Council has power to erase the name of any registered person who has been convicted of felony or misdemeanor, or who has, after due inquiry, been judged guilty of infamous conduct in any professional respect, whether before or after registration.(*e*). The General Council is in such cases the sole judge of all questions of fact, and there is no appeal from their decision on a question of conduct arrived at after due

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(*a*) 22 Vict. c. 21, s. 6.
(*b*) 21 & 22 Vict, c. 90, s. 14. (*c*) *Ib.* s. 27.
(*d*) *Pedgrift* v. *Chevallier*, 8 C. B. (N.S.) 246.
(*e*) 21 & 22 Vict. c. 90, s. 29. *R.* v. *General Council, &c.*, 30 L. J. Q. B. 201 ; 3 E. & E. 525 ; 7 Jur. (N.S.) 798.

inquiry.(*f*) But if a medical man be removed from the register without due inquiry, or without being given the opportunity of being heard in his defence, either in person or by counsel or his solicitor, the Court can grant a *mandamus* to restore him.(*g*) To constitute a due inquiry, the accused person must have notice of what he is accused, he must have an opportunity of being heard, and the decision must be honestly arrived at after he has had a full opportunity of being heard.(*h*) When holding such an inquiry the Council cannot take evidence on oath, nor have they any power to give any costs.(*i*) The fact that a member of the General Council, taking part in such an inquiry, is a member of the Medical Defence Union, although the committee of that society prefer the complaint, does not invalidate the inquiry.(*k*)

To obtain registration by false pretences not only justifies the name being erased, but subjects the offender to a fine or imprisonment for not more than twelve months.(*l*)

The privileges of registered persons include the right to practise medicine, surgery, and midwifery in the United Kingdom (and subject to any local laws in any other part of Her Majesty's dominions), and to recover in due course of law in respect of such practice any expenses, charges in respect of medicaments or other appliances, or any fees to which he may be entitled, unless he is a fellow of a College of Physicians, the fellows of which are prohibited from recovering their charges or fees, in which case such prohibition by the

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(*f*) *Ex parte La Mert*, 33 L. J. Q. B. 69; 4 B. & S. 582; *Allbutt* v. *General Council, &c.*, 23 Q. B. D. 400; 58 L. J. Q. B. 606; *Ex parte Partridge*, 19 Q. B. D. 467.

(*g*) *Reg.* v. *General Council, &c.*, 3 E. & E. 525.

(*h*) *Leeson* v. *General Council, &c.*, 43 Ch. D. 366.

(*i*) *Ib.* per Cotton, L.J. (*k*) *Ib.*

(*l*) 21 & 22 Vict. c. 90 s. 39.

college is a bar to all recovery of fees by action.(*a*) Registered persons are also (if they so desire) exempt from service on all juries and inquests, and from serving all corporate, parochial, ward, hundred, and township offices, and also from serving in the militia.(*b*) It is necessary, however, that the exemption should be claimed at the revision of the list, for if the name is returned the person will be liable to serve.(*c*) Registered persons are the only persons entitled to hold certain public offices (*qu. vi.*), and to sign certificates which any statute requires to be signed by a medical practitioner.(*d*) A surgeon in the army, while on active service, and a surgeon in the navy, while at sea, are regarded by the law as members of the respective services, and can, therefore, make informal wills, which will be binding, although the usual formalities are not complied with.(*e*)

It may be useful to state shortly the provisions made by the law for the punishment of those who wrongfully assume medical titles, so that the medical practitioner may know what means he has of protecting himself from the competition of unregistered persons. It is provided(*f*) that any person who shall wilfully and falsely pretend to be, or take or use the name or title of a physician, doctor of medicine, licentiate in medicine and surgery, bachelor of medicine, surgeon, general practitioner, or apothecary, or any name, title, addition, or description, implying that he is a registered medical practitioner, or that he is recognised by law as a

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(*a*) 49 & 50 Vict. c. 48, s. 6. See generally p. 15, as to recovery of fees and position of persons registered prior to 1887.

(*b*) 21 & 22 Vict. c. 90, s. 35; 33 & 34 Vict. c. 77, ss. 3, 9, and Sched.

(*c*) 33 & 34 Vict. c. 77, s. 12; 2 Hawk. c. 43, s. 26.

(*d*) 21 & 22 Vict. c. 90, ss. 36, 37.

(*e*) *In re Donaldson*, 2 Curt. 386; 1 Vict. c. 26, s. 11; *In bonis Saunders*, L. R. 1 P. & D. 16; 29 Car. 2, c. 3, s. 23.

(*f*) 21 & 22 Vict. c. 90, s. 40.

physician, or surgeon, or licentiate in medicine and surgery, or a practitioner in medicine, or an apothecary, is liable to a penalty not exceeding 20*l*., which can be recovered summarily, and which is payable to the treasurer of the General Council.(*g*) It has been held that it is a question of fact for the magistrates whether or not the conduct of the defendant infringes this section.(*h*) Where a person was duly qualified to practise (as M.R.C.S., Eng., and L.S.A.L.), and held a diploma of M.D. from a German University, which entitled him to practise in that country, it was held that the justices were right in not convicting him for describing himself as "Dr. K.";(*i*) but in a similar case, where the defendant was shown to have obtained his M.D. diploma upon payment of money, and without any examination or course of instruction (in fact, never having been in the country from which he obtained it), it was held that he was rightfully convicted, for there was nothing to distinguish the title from those which may be lawfully assumed.(*k*) The reason for this decision is shown in another case,(*l*) where it was held that a person who described himself as "Doctor of Medicine of the Metropolitan College of New York" was not punishable under the section, for he was in fact entitled to such diploma, and he did not hold himself out to be anything different; for the offence is not that of practising without being registered, but of assuming a name or title which implies registration. In a case where customers went to the shop of a druggist, who was not an apothecary, and asked what was good for certain complaints, he suggested

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(*g*) 21 & 22 Vict. c. 90, ss. 41 and 42.
(*h*) *Ladd* v. *Gould*, 24 J. P. 357 ; 1 L. T. 326.
(*i*) *Ellis* v. *Kelly*, 30 L. J. M. C. 35 ; 6 H. & N. 222 ; 3 L. T. (N.S.) 331 ; 25 J. P. 279.
(*k*) *Andrews* v. *Styrap*, 26 L. T. (N.S.) 704.
(*l*) *Carpenter v. Hamilton*, 41 J. P. 615 ; 37 L. T. 157.

medicines, made them up, and sold them; and it was held that he was liable to the penalty provided by the statute for practising as an apothecary.(*a*)

(*a*) *The Apothecaries' Company* v. *Nottingham*, 34 L. T. 76, decided under 55 Geo. 3, c. 194, s. 20, under which a civil remedy exists. In the cases of *Pedgrift* v. *Chevallier*, 29 L. J. 225; 8 C. B. (N.S.) 240; and *Steel* v. *Hamilton*, 3 L. T. 322; 25 J. P. 643, which are under section 40, the question turned upon the date at which the defendants had been in practice, a point which can hardly arise now under the same circumstances. In *Cromach* v. *Brennand*, 37 J. P. 276, it was decided (under the Vaccination Act of 1867) that a person who was unregistered cannot, although the holder of a foreign diploma, perform vaccination within the meaning of the Act, and that the father of the child was rightly convicted for failing to have it vaccinated. The case of *R.* v. *Henry Hodgson*, 1 Dears. & B. 3, deals with the question of forging and uttering a diploma of the R. C. S. It decides that such is not a public document, and that the intent to defraud some particular person must be shown, notwithstanding 14 Vict. c. 100, s. 8.

PART II.

PRIVATE PRACTICE.

Recovery of Fees.

The Medical Act, 1886(*b*) enacts that a registered medical practitioner shall, save as in the Act mentioned, be entitled to practise medicine, surgery, and midwifery in the United Kingdom, and (subject to any local law) in any other part of Her Majesty's dominions, and to recover, in due course of law, in respect of such practice any expenses, charges in respect of medicaments or other appliances, or any fees to which he may be entitled, unless he is a fellow of a college of physicians, the fellows of which are prohibited by bye-law from recovering at law their expenses, charges, or fees, in which case such prohibitory bye-law, so long as it is in force, may be pleaded in bar of any legal proceeding instituted by such fellow for the recovery of expenses, charges, or fees.

Such bye-laws have been made by the Royal College of Physicians in London, and (though apparently without compulsory force under the Act), the Royal College of Surgeons of England.

But although those who are registered after the 1st June, 1886, must have a qualification in medicine, surgery, and midwifery, there still exists a large number of medical practitioners who were registered before that date, but were not all of them qualified in every branch,

(*b*) 49 & 50 Vict. c. 48, s. 6.

and were only entitled to be registered, and accordingly were only registered according to their qualifications. They are still entitled to remain on the register as before, but it is expressly provided by the Medical Act of 1886(*a*) that that Act shall not increase or diminish the privileges in respect of his practice of any person who, on the day preceding the 1st June, 1887, the appointed day, is a registered medical practitioner, and such person shall be entitled, on and after the said appointed day, to practise in pursuance of the qualification possessed by him, before the said appointed day, in medicine, surgery, and midwifery, or any of them, or any branch of medicine or surgery, according as he was entitled to practise the same before the said appointed day, but not further or otherwise.

It therefore is still necessary to consider what is the position of medical practitioners who were registered after the passing of the Medical Act, 1858, and before the Medical Act, 1886, came into force. Section 31 of the Medical Act, 1858, is repealed by section 28 of the Medical Act, 1886, but with the proviso that the repeal enacted by that section shall not affect anything done or suffered, or any right or title acquired or accrued, before such repeal takes effect, or any remedy, penalty, or proceeding in respect thereof. It would, therefore, appear that the position of those who were registered before June, 1886, is still, in spite of its repeal, governed by section 31. So that in all cases there is now no longer any presumption of honorary employment;(*b*) and a physician practising, without distinctly making an arrangement that he shall not be paid, is entitled to be paid unless he is restrained by some bye-law of the College of Physicians.(*c*)

(*a*) 49 & 50 Vict. c. 48, s. 24.
(*b*) *Gibbon* v. *Budd*, 2 H. & C. 92; 32 L. J. Ex. 182.
(*c*) It may be convenient to state shortly what was the position of a

It is competent, however, for a medical man to attend a patient on the understanding that his attendance shall be gratuitous, and whether such an understanding exists or not in a disputed case is a question of fact for a jury.(*d*)

Section 31 of the Medical Act of 1858 enabled a practitioner to sue only "according to his qualification,"(*e*) and a qualification in one capacity did not entitle

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physician before the passing of the Medical Act, 1858. It was presumed, in accordance with the general usage and understanding, that the services of a physician were honorary, and were not intended to create any legal obligation; hence, no contract to pay for them could be implied from his rendering them at the request either of the patient or of a third person: *Chorley* v. *Bolcot*, 4 T. R. 317; *Lipscombe* v. *Holmes*, 2 Camp. 441. But this was a presumption only, and there was nothing contrary to law in an express contract to pay a physician for his services, which contract would effectually exclude the presumption: *Style* v. *Smith*, cited 2 Leon. 111; *Veitch* v. *Russell*, 3 Q. B. 928; 12 L. J. Q. B. 13. This presumption did not apply in the case of a surgeon, but he was entitled to be paid only for services rendered and medicine administered in the province of a surgeon, and not for those within the province of an apothecary or a physician: *Allison* v. *Haydon*, 3 C. & P. 246; 4 Bing. 619; *Battersby* v. *Lawrence*, Car. & Mar. 277; *Little* v. *Oldacre*, Car. & Mar. 370; *Handey* v. *Henson*, 4 C. & P. 110.

The Medical Act, 1858, by section 31, enacted that every person registered under that Act shall be entitled, according to his qualification or qualifications, to practise medicine or surgery, or medicine and surgery, as the case may be, in every part of Her Majesty's dominions, and to demand and recover in any court of law, with full costs of suit, reasonable charges for professional aid, advice, and visits, and the costs of any medicines or other medical or surgical appliances, rendered or supplied by him to his patients; provided always that it shall be lawful for any college of physicians to pass a bye-law to the effect that no one of their fellows or members shall be entitled to sue in manner aforesaid in any court of law, and thereupon such bye-law may be pleaded in bar to any action for the purposes aforesaid, commenced by any fellow or member of such college.

(*d*) *Gibbon* v. *Budd*, *supra*.

(*e*) In cases governed by the Act of 1858, therefore, a practitioner having registered his qualification, can then only recover according to his qualification; and a qualification in one capacity does not entitle him to sue for services rendered in another: *Leman* v. *Fletcher*, L. R. 8 Q. B. 319. Thus, in order to recover for medicines supplied, he must be registered either as an apothecary or as a physician, or, being registered as a surgeon, must have supplied them in a surgical case. The Act 55 Geo. 3, c. 194, is not repealed by implication by the Medical Act, 1858 (*Davies* v. *Makuna*, 29 Ch. D. 596), and by section 21

him to sue for services rendered in any other;(*a*) but these words do not occur in the Act of 1886, which, on the other hand, requires all practitioners, registered after June, 1886, to be generally qualified.

But no person is entitled to recover any charge in any court of law for any medical or surgical advice, attendance, or for the performance of any operation, or for any medicine which he shall have both prescribed and supplied, unless he shall prove upon the trial that he is registered.(*b*) And it must be noted that in order to recover he must have been registered at the time of the services rendered, and not merely at the time of the trial.(*c*)

Where the plaintiff sues the maker of a promissory note given to the plaintiff for his medical attendance, in order to recover, the plaintiff must prove registration.(*d*)

The section(*e*) is not confined to cases in which the patient is sued for medicines or medical attendance, but applies also where the action is brought not against the patient himself, but against any one who is liable to pay

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an apothecary cannot recover his charges without having a certificate from the Apothecaries' Society ; thus the effect of this is that a person entered in the Medical Register under the Medical Act, 1858, and possessing no other qualification than that of a member of the Royal College of Surgeons, England, cannot recover charges for medical advice and attendance, or medicines administered in the cure of diseases or complaints not requiring surgical treatment : *Leman* v. *Fletcher*, L. R. 8 Q. B. 319. It is probable that in cases to which section 31 applies even an express contract is subject to the condition of the charges being reasonable.

(*a*) *Leman* v. *Fletcher*, L. R. 8 Q. B. 319.

(*b*) 21 & 22 Vict. c. 90, s. 32.

(*c*) *Leman* v. *Houseley*, L. R. 10 Q. B. 66 : *Howarth* v. *Brearley* 19 Q. B. D., p. 306 ; notwithstanding *Haffield* v. *Mackenzie*, 10 Ir. C. L. R. 289 ; and *Turner* v. *Reynall*, 14 C. B. (N.S.) 328 ; 32 L. J. C. P. 164.

(*d*) *Blogg* v. *Pinkers*, Ry. & Moo. 125.

(*e*) 21 & 22 Vict. c. 90, s. 32.

for medical attendance or medicine prescribed and supplied to the patient. Thus, if medicines were administered by an unregistered practitioner to a patient, under a guarantee for payment given by a third person, the statute would be a defence either to the principal debtor or to the surety; and if medicines were administered to the poor of a parish or union, on the credit of overseers of the parish or guardians of the union, the statute would in like manner be a defence.(*f*)

The section applies also to contracts between medical men, so that an unregistered practitioner cannot sue a registered practitioner for medicines supplied to or attendance upon the patients of the latter at his request. Thus, where the chief medical officer of a Peruvian vessel of war lying in the Thames agreed to pay the plaintiff, who was a Spanish practitioner domiciled in England, but unregistered, a monthly sum for the plaintiff's medical attendance on the crew and troops (partly on board the vessel and partly on shore) during the defendant's temporary absence, it was held that the plaintiff could not recover, for the defendant was in the situation of an ordinary paymaster, and not the less so because he happened to be a medical man. The patients during his absence had no benefit from his skill or

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(*f*) If an action be brought to recover a doctor's bill, and the plaintiff allege in his statement of claim that he is a "legally qualified medical practitioner," what will be the effect of the defendant omitting to traverse this special allegation? According to the new Rules (O. xix. r. 13) this amounts to an admission of the fact not traversed. But then what effect is to be given to section 32 of the Medical Act, 1858? Will it be open to the defendant to contend that an admission is not strictly proof, but only a *substitute for proof*, and that in spite of his defective pleading the court must take care that the registration of the plaintiff be duly *proved* at the trial. If this reasoning be not recognised, the law as it exists is exposed to the absurd anomaly that a quack doctor, who must inevitably be nonsuited in a county court, may have a fair chance of recovering his charges if he elects to sue in the High Court. See Taylor on Evidence, p. 298.

attendance, and the plaintiff was not his assistant, but acted independently, and had merely looked to him for payment.(*a*)

A great many attendances, in the case of a medical man in large practice, must necessarily be given by assistants. A duly qualified and registered medical practitioner can recover for attendances by an assistant, if the assistant be also duly qualified and registered; but in case the assistant is not duly qualified and registered, the principal can only recover when he has himself given advice, and "the unqualified man has been merely the ministering hand under the directing brain of the qualified man,"(*b*) or, in other words, when the assistant has acted under the immediate superintendence and control of his principal.(*c*)

A registered practitioner cannot permit an unregistered person to practise in his name without consulting him or taking his advice, and then sue for the services rendered by the unqualified person.(*d*)

Any service, benefit, or advantage rendered to a third person at the request of the promissor is a sufficient consideration for the promisee. Thus, if one person should say to another, "Heal such a poor man of his disease, and I will give thee so much," and he doeth it, an action lieth at the common law.(*e*)

(*a*) *De la Rosa* v. *Prieto*, 16 C. B. (N.S.) 578; 33 L. J. C. P. 262.

(*b*) *Howarth* v. *Brearley*, 19 Q. B. D. 303.

(*c*) *De la Rosa* v. *Prieto*, 16 C. B. (N.S.) 578; 33 L. J. C. P. 262.

(*d*) Thus, where a duly qualified and registered medical practitioner established a branch practice under the management of his brother, who was not so qualified or registered, and held no apothecary's certificate under 55 Geo. 3, c. 194, in an action by the assignee of the qualified medical practitioner to recover charges for medical aid and advice rendered, and the cost of medicines supplied to the defendant by the brother alone without consulting the qualified practitioner, it was held that under 21 & 22 Vict. c. 90, ss. 31 and 32, the plaintiff was not entitled to recover: *Howarth* v. *Brearley*, 19 Q. B. D. 303.

(*e*) Addison on Contracts, p. 7, citing 1 Rolle Abr. Action sur case.

In *Style* v. *Smith*(*f*) it was held that "if a physician, who is my friend, hearing that my son is sick, goeth to him in my absence, and helps and recovers him, and I, being informed thereof, promised him in consideration, &c., *ut supra*, to give him 20*l*., an action will lie for the money."(*g*) But as the law now stands a past benefit, not conferred at the request of the promissor, is no consideration for the promisee, and to that extent this case is no longer law. But from the expressions used it may be inferred that the son lived with the father, and that the medicine was administered to the son in the house of the father while the latter was absent, from which it results that though the physician's debt was not founded on any immediate benefit to the father, or on his request, the father's promise to pay was evidence of an acknowledgment on the part of the father that the physician was called in by some one who had the father's authority to pledge his credit, so as to render him liable to pay.(*h*)

Where a regular practitioner has used due care and diligence, his claim to remuneration does not depend upon the question whether he has affected a cure, for he is entitled to be paid for his services, although he is unsuccessful;(*i*) and if an operation, which *might* have been useful, has merely failed in the event, he is nevertheless entitled to charge.(*k*) But there are two cases in which a medical practitioner is precluded from recovering for his services: one where work which is useful has been performed unskilfully; the other, where work which is useless for the object in view has been performed, even skilfully. Thus, if the patient has received no benefit

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(*f*) Cited by POPHAM, J., in *Marsh* v. *Rainsford*, 2 Leon. 111.
(*g*) *Eastwood* v. *Kenyon*, 11 A. & E. 438.
(*h*) See *Wennall* v. *Adney*, 3 B. & P. at p. 252 *n* (*a*).
(*i*) *Hupe* v. *Phelps*, 2 Starkie, 480.
(*k*) *Hill* v. *Featherstonhaugh*, 7 Bing. 573.

in consequence of the medical practitioner's want of skill, ignorant and improper treatment, and neglect to use due care and diligence, the latter cannot recover; or if a surgeon were to make his patient undergo an unnecessary operation, or a course of medicine which plainly could be of no service, he could not make it a subject of charge. To have performed an operation, which could have been useful in no event, would create no claim on the patient.(*a*)

In a case where the demand is compounded of skill and things administered, if the skill, which is the principal part, is wanting, the action fails, because the defendant has received no benefit.(*b*)

If a medical practitioner deliver a bill, leaving blanks for the sums to be paid him for attendances, it has been held that he can recover no more for them than the employer thinks fit to give.(*c*)

An unqualified medical practitioner, who has supplied medicines, not being in a capacity to recover for the medicines, cannot recover even for the phials and bottles in which the medicines were contained.(*d*)

When a medical man, practising as a general practitioner, dispenses medicine to his patients, but does not charge for the medicines, but by the visit irrespectively of the medicine supplied, which is covered by the charge for the visit, such a dealing with medicines is not selling medicines as a trader, and such a medical practitioner is not a trader in drugs within the meaning of the Bank-

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(*a*) *Hill* v. *Featherstonhaugh*, 7 Bing. 569.

(*b*) Many cases may be imagined where great mischief would happen were the law otherwise. If a man is sent for to extract a thorn which might be pulled out with a pair of nippers, and through his misconduct it becomes necessary to amputate the limb, shall it be said, exclaimed Lord KENYON, that he may come into a court of justice to recover fees for the cure of that wound which he himself has caused? *Kannen* v. *M'Mullen*, Peake N. P. 59; *Duffit* v. *James*, cited 7 East, 480.

(*c*) *Tuson* v. *Batting*, 3 Esp. 192.

(*d*) *Steed* v. *Henley*, 1 C. & P. 574.

ruptcy Act, 1869.(*e*) In an action by a surgeon and apothecary for goods sold and delivered, where the plaintiff was an uncertificated bankrupt when the cause of action accrued, and was in possession of his original stock of medicines on credit, and of other stock also on credit, it was held that he was not entitled to recover the value of his services, as being a mere demand for personal labour, but that he was in substance carrying on his business as a medical practitioner for profit, with such stock and his personal skill, and that the proceeds passed to his assignees.(*f*)

Speaking generally, the patient is the person who is liable to pay the charges of the medical man who attends him. In some cases it is another person who has promised payment.

There are also certain cases where, by operation of law, some person other than the patient is liable to the practitioner; thus, a husband is liable for medical attendance upon his wife, for every wife, whatever the husband's circumstances, is entitled to medical care and nursing when sick. To withhold from a wife in sickness medical assistance which the husband has the means to provide is cruelty, which the Divorce Court will recognise as such.(*g*) While a husband and wife are living together it is a presumption of fact that the wife is agent for and has the authority of her husband to pledge his credit for proper medical attendance on herself and children, and in most cases on domestic servants.(*h*)

When the husband has deserted the wife, or has by his conduct compelled her to live apart from him, as by

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(*e*) *Hance* v. *Harding*, 20 Q. B. D. 732; *Ex parte Dawbeny*; *In re Bridon*, 3 Mont. & A. 16; 2 Dea. 72; 6 L. J. (N.S.) Bky. 49; *Ex parte Crabb*; *In re Palmer*, 8 De G. M. & G. 277; 2 Jur. (N.S.) 628; 25 L. J. Bky. 45.

(*f*) *Elliot* v. *Clayton*, 20 L. J. Q. B. 217; 16 Q. B. 581.

(*g*) *Dysart* v. *Dysart*, 1 Rob. 106, 111.

(*h*) *Cooper* v. *Phillips*, 4 C. & P. 581.

turning her out of the house, or by bringing another woman under his roof,(*a*) without properly providing for her, leaving her without necessaries and the means of obtaining them, then a presumption of law arises, which cannot be rebutted by evidence, that she was turned out with the authority of her husband to pledge his credit for necessaries. If the wife is in a state of ill health, medical attendance is such a necessary, and the wife as agent for the husband can make him liable for such attendance.(*b*) In fact, any person who lends the wife money to pay the doctor for her cure in equity stands in the doctor's place, and becomes a creditor of the husband.(*c*) But when the husband and wife are living apart, the husband is not liable for the wife's debts for necessaries if he makes a reasonable allowance to his wife and duly pays it;(*d*) if he has agreed to make an allowance but does not pay it he remains liable.(*e*)

The implied authority of a wife who is not living with her husband as a part of his family to charge him for necessaries is put an end to by her adultery.(*f*)

Medicine and medical attendance are necessaries for which an infant may make a valid contract of purchase;(*g*) and if an infant be married, the things necessary for his wife and children are necessary for himself, and what is supplied to them on his express or implied credit is considered as purchased by him.(*h*)

If in an emergency a wife or even a servant send for a medical man he is entitled to be paid by the husband or

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(*a*) *Aldis* v. *Chapman*, Sel. N. P. 232.
(*b*) *Harrison* v. *Grady*, 12 Jur. (N.S.) 140; 14 W. R. 139; 13 L. T. (N.S.) 369; *Forristall* v. *Lawson*, *Connelly* v. *Lawson*, 34 L. T. (N.S.) 903.
(*c*) *Harris* v. *Lee*, 1 P. Wms. 482.
(*d*) *Todd* v. *Stokes*, 1 Ld. Raym. 444; 1 Salk. 116.
(*e*) *Beale* v. *Arabin*, 36 L. T. (N.S.) 249.
(*f*) *Cooper* v. *Lloyd*, 6 C. B. (N.S.) 519.
(*g*) Co. Litt. 172. (*h*) *Turner* v. *Trisby*, 1 Str. 168.

master. If the father of a family lives at a distance from the place at which his children are, and puts them under the protection of servants, and any accident occurs to one of the children, even from the carelessness of a servant, the father of the family is bound to pay for the medical attendance on such child, although he may not have known the medical man who is called in.(*i*)

But in a case where a servant, who had hurt her foot getting over a gate, called in a surgeon, who was not the regular attendant of the family, without the knowledge of her master or mistress, it was held that the master was not liable to pay the surgeon's bill,(*i*) for at common law a master is not bound to furnish medical aid or medicine to his servant;(*k*) neither is he liable upon an implied contract to pay for medical attendance on a servant who has met with an accident in his service; the obligation of the master to provide medical assistance for his servant, if any, must arise from contract with the medical attendant, or with the servant as one of the terms of service. In some cases a master engages to supply his servant with necessary victuals, and it may undoubtedly be argued that necessary victuals mean such victuals as may suit the state of health or infirmity in which the servant happens to be; so that wine or victuals of that description may be given by way of medicine;(*l*) but this would not include drugs. Very slight evidence, such as interference on the part of the master, or the fact that he called in his own medical man, will suffice to fix him with liability.(*m*) Thus, it was held that where B. (the servant) became ill in con-

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(*i*) *Cooper* v. *Phillips*, 4 C. & P. 581.

(*k*) *Newby* v. *Wiltshire*, 2 Esp. 739; *Wennall* v. *Adney*, 3 B. & P. 247, overruling *Scarman* v. *Castell*, 1 Esp. 270; and *Simmons* v. *Wilmott*, 3 Esp. 93.

(*l*) *Wennall* v. *Adney*, 3 B. & P. 247, per Lord ALVANLEY, C. J.

(*m*) *Sellen* v. *Norman*, 4 C. & P. 80; *Cooper* v. *Phillips*, 4 C. & P. 581.

sequence of the service, and called in C. (a surgeon), and after this A. (the master) sent his own surgeon to see B., and A.'s wife, who had the general superintendence of the house, knowing of C.'s attendance, expressed no disapprobation, A. was liable to C. for this attendance.(*a*)

The case is different with respect to an apprentice, for a master is bound during the illness of his apprentice to provide him with proper medicines.(*b*)

The Truck Acts do not prevent an employer, or his agent, from supplying or contracting to supply to any workman in his employ any medicine or medical attendance, nor from making or contracting to make any stoppage or deduction from the wages of any such workman for or in respect of any such medicine or medical attendance, provided that such must not be done unless the agreement or contract be in writing and signed by the workman;(*c*) nor do they prevent an employer advancing to any workman in his employ any money for his relief in sickness.(*d*)

But when any deductions are made from the wages of any workmen in respect of medicine or medical attendance, once at least in every year the employer shall by himself, or his agent, make out a correct account of the receipts and expenditure in respect of such deduc-

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(*a*) *Cooper* v. *Phillips*, *ubi supra*. A master who has called in his own medical man to attend a menial servant who has fallen ill, and so himself becomes liable to pay the medical man, cannot afterwards deduct what he has paid from the servant's wages, unless there be some special contract between the master and servant that he should do so: *Sellen* v. *Norman*, 4 C. & P. 80.

(*b*) *R.* v. *William Smith*, 8 C. & P. 153. When a master (or mistress), being legally liable to provide for his servant or apprentice necessary . . . medical aid . . . wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant is or is likely to be seriously or permanently injured, he is on summary conviction liable either to pay a penalty not exceeding 20*l.* or to be imprisoned for a term not exceeding six months, with or without hard labour: 38 & 39 Vict. c. 86, s. 6.

(*c*) 1 & 2 Will. 4, c. 37, s. 23. (*d*) *Ib.* s. 24.

tions, and submit the same to be audited by two auditors appointed by the said workmen, and shall provide to the auditors all such books, vouchers, and documents, and afford them all such other facilities as are required for such audit.(*e*)

In cases of emergency requiring immediate action it will in some cases be presumed that a servant of a railway company on the spot has authority to enter into a contract on behalf of the company for medical and surgical aid to injured passengers or railway servants. Thus, it has been held that a general manager of a railway company has, as incidental to his employment, authority to bind the company to pay for surgical attendance, bestowed at his request, on a servant of the company injured by an accident on their railway;(*f*) and also that a sub-inspector of railway police, whose duty it was to proceed to the spot of an accident, has authority to pledge the credit of the company for medical assistance rendered to injured passengers.(*g*) It was, however, held in an earlier case, which would probably not now be followed, that a station-master has no such authority.(*h*)

Any person over sixteen years of age who having the custody, control, or charge of a child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, wilfully ill-treats, neglects, abandons, or exposes such child, or causes or procures such child to be ill-treated, neglected, abandoned, or exposed in a manner likely to cause such child unnecessary suffering or injury to its health, is guilty of a misdemeanor.(*i*) It will probably be held that where the defendant has not

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(*e*) 50 & 51 Vict. c. 46, s. 9.

(*f*) *Walker* v. *The Great Western Railway Company*, L. R. 2 Ex. 228; 36 L. J. Ex. 123.

(*g*) *Langan* v. *The Great Western Railway Company*, 30 L. T. (N.S.) 173.

(*h*) *Cox* v. *The Midland Counties Railway Company*, 3 Ex. 268.

(*i*) 52 & 53 Vict. c. 44, s. 1.

the means himself of providing for the child, he is nevertheless guilty of wilful neglect unless he can also prove that he could not have procured relief from the relieving officer.(*a*) Neglect to provide medical attendance, which was a doubtful offence at common law,(*b*) should now be punishable as likely to cause injury to health.

There was formerly a statutory duty on parents to provide adequate medical aid for their children in their custody under the age of fourteen; and any person wilfully neglecting this duty, whereby the health of a child was or was likely to be seriously injured, committed a misdemeanor, and was liable on summary conviction thereof before two justices to a maximum punishment of six months hard labour.(*c*) It had to be shown that the parent actually had, not merely that he might have obtained from the relieving officer, the means of providing for the child before he could be punished for neglecting to do so.(*d*)

Deliberately abstaining from providing medical aid in accordance with the principles of the sect called "Peculiar People" was within this section. And if the wilful neglect of the positive duty imposed on the parent by the statute to provide adequate medical aid when it was reasonable and proper and his duty to provide it, he having the means and opportunity to do so, caused or

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(*a*) This assumes that *R.* v. *Chandler*, Dear. 453, is not applicable.

(*b*) *R.* v. *Downes*, 1 Q. B. D. 25; Stephen's Dig. C. L. Art. 264*n*. By the common law, every one commits a misdemeanor who, being the parent or master or mistress of any child of tender years, and unable to provide for itself, refuses or neglects (being able to do so) to provide sufficient food, clothes, bedding, and other necessaries for such child, so as thereby to injure the health of such child; but it is doubtful whether this common law duty includes medical attendance: *R.* v. *Friend*, R. & R. 20; 1 Russ. Cr. 949; *R.* v. *Ryland*, L. R. 1 C. C. R. 99; Stephen's Dig. C. L. Art. 264(*n*); *R.* v. *Downes*, 1 Q. B. D. 25.

(*c*) 31 & 32 Vict. c. 122, s. 37, repealed by 52 & 53 Vict. c. 44, s. 18.

(*d*) *R.* v. *Chandler*, Dear. 453.

accelerated the death of the child, the parent was guilty of manslaughter. Thus, the parent was held to have been properly convicted of manslaughter when the child that died suffered from chronic inflammation of the lungs and pleura, which was of long standing, and was, according to the evidence, a disease which might have been cured at any time if competent advice had been obtained, and probably though not certainly would have been so cured if the advice had been called in in the early stages of the disease.(*e*) But the conviction of the parent was quashed where the child died of confluent small pox, and the medical witness for the prosecution stated that in his opinion the chances of life would have been increased by having medical advice, that life might possibly have been prolonged thereby, or indeed might probably have been, but that he could not say that it would, or indeed that it would probably have been prolonged thereby,(*f*) thus giving no evidence that the prisoner caused death or accelerated it.

Whenever any accident happens to a poor person of such a nature as to render removal out of the parish dangerous or improper, the law casts the obligation of providing medical attendance upon the parish where the accident has happened. The parish officers cannot by improperly or wrongfully removing the pauper elsewhere, even into his own parish, shift upon other people the burden which the law casts upon themselves. And whether they procure medical attendance to be given in the parish, or out of it, they are liable to pay the medical practitioner's bill.(*g*) A pauper who meets with an accident is casual poor in the parish where it happens; he

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(*e*) *R.* v. *Downes*, 1 Q. B. D. 25.
(*f*) *R.* v. *Morby*, 8 Q. B. D. 571.
(*g*) *Tomlinson* v. *Bentall*, 5 B. & C. 738; *Gent* v. *Tompkins*, 5 B. & C. 746*n*; *R.* v. *The Inhabitants of St. James in Bury St. Edmunds*, 10 East. 25.

cannot be removed; and the parish must pay for his medical attendance.(*a*) But if he is carried into the next parish to be cured, he becomes irremovable there. Thus, when a pauper met with an accident in one parish, and was immediately conveyed to the nearest and most convenient house, which was a public house in the adjoining parish of E., and was confined there and visited by the overseer, and attended by the surgeon who attended the parish poor, with the knowledge of the overseer, it was held that the surgeon could recover from the overseer of E. the expenses of the cure, for there was no exclusive liability attaching to the parish where the accident arose, and the fact that the overseer knew of and did not repudiate the surgeon's attendance was equivalent to a request.(*b*) Parish officers are bound to assist where an accident takes place; and the law will so far raise an implied contract against them as to enable any person who affords that immediate assistance which the necessity of the case usually requires, to recover against them the amount of money expended.(*c*)

If a surgeon attend a pauper without the order or sanction of the overseers, he cannot afterwards sue the overseers for the amount of his bill, unless they have expressly promised to pay it,(*d*) or be under a legal obligation to have found medical assistance for the pauper.(*e*) If a mere stranger direct a surgeon to attend a poor man, such person is liable to pay the surgeon.(*f*)

(*a*) *R.* v. *The Inhabitants of St. Lawrence, Ludlow*, 4 B. & Ald. 660; but see also 11 & 12 Vict. c. 110, s. 2.

(*b*) *Lamb* v. *Bunce*, 4 M. & S. 275.

(*c*) *Wennall* v. *Adney*, 3 B. & P. 247.

(*d*) *Atkins* v. *Banwell*, 2 East, 505; *Gent* v. *Tompkins*, 5 B. & C. 746*n*; *Watling* v. *Walters*, 1 C. & P. 132; *Wing* v. *Mill*, 1 B. & A. 104.

(*e*) *Tomlinson* v. *Bentall*, 5 B. & C. 738; *Lamb* v. *Bunce*, 4 M. & S. 275; *Painter* v. *Williams*, 2 L. J. (N.S.) M. C. 105; 1 Cr. & M. 81.

(*f*) *Watling* v. *Walters*, 1 C. & P. 132.

Where an overseer was indicted for neglecting to supply medical assistance, when required, to a pauper labouring under dangerous illness, the learned judge before whom the indictment was tried held that an offence was sufficiently charged and proved, though such pauper was not in the parish workhouse, nor had, previously to the illness, received or stood in need of parish relief.(*g*)

It may be noted that a surgeon having a fixed residence but attending upon his patients at their houses in several parishes, carries on his business within the jurisdiction of the county court in which those parishes are situate.(*h*)

Negligence.

I.—Civil Liability.

Where an individual employs a medical practitioner to cure his body of its wounds and ailments, this is a matter of contract. But whenever there is a contract, and something to be done in the course of that employment, which is the subject of that contract, if there be a breach of duty in the course of that employment, the plaintiff may recover either in tort or in contract.(*i*) It therefore becomes of more importance for each to know what remedy is open to him for unskilful treatment and consequent pain and injury, than to seek a remedy on the contract.

Negligence has been defined to be the omission to do something which a reasonable man, guided upon those considerations, which ordinarily regulate the conduct of human affairs, would do, or doing something which a

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(*g*) *R.* v. *Warren*, Russ. & R. 48*n*.
(*h*) *Mitchell* v. *Hender*, 18 Jur. 430.
(*i*) *Brown* v. *Boorman*, 11 Cl. & F. 44.

prudent and reasonable man would not do.(*a*) Every person who enters into a learned profession undertakes to bring to the exercise of it a reasonable degree of care and skill; and every person who deals with the life or health of Her Majesty's subjects is bound to use competent skill and sufficient attention.(*b*) It matters not whether the individual consulted be the President of the College of Physicians, the President of the College of Surgeons, or the humblest bone-setter of the village; but, be it one or the other, he ought to bring into the case ordinary care, skill, and diligence;(*c*) as Mr. Justice STEPHEN puts it, it is the legal duty of every person who undertakes(*d*) (except in case of necessity) to administer

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(*a*) *Blyth* v. *Birmingham Waterworks Company*, 11 Ex. p. 784; 25 L. J. Ex. p. 213, per ALDERSON, B.

(*b*) *R.* v. *Spiller*, 5 C. & P. 333.

(*c*) *R.* v. *St. John Long*, 4 C. & P. 398.

The employer is bound to exercise ordinary caution and discrimination in the choice and selection of the party he employs. If he selects a common quack or an unauthorised practitioner, the latter is responsible only for a reasonable and *bonâ fide* exertion of his capacity. He is bound to exercise such skill as he actually possesses; and if he has done his best and failed, he cannot be made responsible for a want of skill, for it was the employer's own fault to trust an unlearned and unskilful person, known not to be regularly and properly qualified.

If the employer voluntarily employs in one art a man who openly exercises another, his folly has no claim to indulgence, and unless the latter makes false pretensions or a special undertaking, no more can be fairly demanded of him than the best of his ability. The case which Sadi relates with elegance and humour in his "Gulistan, or Rose Garden," is not inapplicable to the present subject. "A man who had a disorder in his eyes called on a farrier for a remedy; and he applied to them a medicine commonly used for his patients. The man lost his sight and brought an action for the damages; but the judge said 'No action lies, for if the complainant had not himself been an ass, he would never have employed a *farrier*.' And Sadi proceeds to intimate that 'if a person will employ a common mat-weaver to weave or embroider a fine carpet, he must impute the bad workmanship to his own folly.' "—Sir William Jones on Bailments, p. 100.

(*d*) Of course there is no law to compel a medical man to attend to a case, unless he holds a public appointment, and it is part of his duty to attend such a case; but having once put his hand to the plough he must not go back except at his own risk. If he desires to withdraw from a case which he is attending gratuitously, he is nevertheless bound

surgical or medical treatment, or to do any other lawful act of a dangerous character, and which requires special knowledge, skill, attention, or caution, to employ in doing it a common amount of such knowledge, skill, attention, and caution.(*e*)

When a medical practitioner is employed there is on his part an implied warranty that he is of skill reasonably competent to the task he undertakes: "*Spondes peritiam artis.*" The public profession of an art is a representation and undertaking to all the world that the professor possesses the requisite ability and skill, and an express promise or express representation in the particular case is not necessary;(*f*) and a medical practitioner would be justly responsible in damages for having rashly adventured upon the exercise of a profession without the ordinary qualification of skill to the injury of a patient,(*g*) and it is clear that damages can be recovered in such cases.(*h*) It is not necessary to enable the patient to recover damages that there should have been a previous retainer on his part of the person professing to be able to cure him. The duty of the medical practitioner is the same by whomsoever he was called in, although if a stranger had sent the medical practitioner to cure a patient, undertaking to pay him for his attendance, the stranger would not be entitled to recover or sue for damages and injury done to the patient in consequence

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to give the patient a reasonable opportunity of obtaining other assistance before he ceases his attendance. If he is being paid for his services he has no right to withdraw from the case, except for reasonable cause, such as the patient declining to carry out the treatment prescribed: *Hoby* v. *Built*, 3 B. & A. 350; *R.* v. *Markuss*, 4 F. & F. 356; Sherman's "Negligence," p. 470, and Wharton's "Negligence," s. 735 (where several American cases are cited).

(*e*) Dig. of Crim. Law, 137: *R.* v. *Noakes*, 4 F. & F. 920; *Bowater* v. *Smith*, 3 Times L. R. 186.

(*f*) *Harmer* v. *Cornelius*, 5 C. B. (N.S.) 236; *Pippin* v. *Sheppard* 11 Price, 400.

(*g*) *Seare* v. *Prentice*, 8 East, 348.

(*h*) *R.* v. *Van Butchell*, 3 C. & P. 629.

of the medical practitioner's neglect or want of skill, the only person who can properly sustain an action for damages being the patient himself,(*a*) as a wrong has been done to him for which he would have a right of action, even though no contract whatever had been made by any one with the medical practitioner.

In such an action the plaintiff's consent to the medical treatment is material only because without it the defendant would be a mere trespasser, and the incompetence would not be the gist of the action, but matter for aggravation of damages.

If the death of the patient is caused by the negligence of the medical man, and the negligence is such as would (if death had not ensued) have entitled the patient to maintain an action and recover damages in respect thereof, an action may be maintained by the personal representatives of the deceased against the medical man under the provisions of Lord Campbell's Act.(*b*)

But where the death of the patient is due to some cause other than an injury, affecting the life or health of the deceased, arising out of the unskilfulness of the medical practitioner, even though the deceased had suffered such an injury, no action can be sustained by the executor or administrator of the patient on the breach of the implied promise of the person employed to exhibit a proper portion of the skill and attention; such cases being in substance, actions for injuries to the person; and *actio personalis moritur cum personâ*.(*c*) So also, if the medical practitioner by whom the injury was

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(*a*) *Pippin* v. *Sheppard*, 11 Price, 400; *Gladwell* v. *Steggall*, 5 Bing. N. C. 733; 8 Scott, 67; 8 L. J. C. P. 361; *Longmead* v. *Holliday*, 6 Ex. 761.

(*b*) 9 & 10 Vict. c. 92, under which Act no action can be maintained unless the plaintiff prove actual pecuniary damage: *Duckworth* v. *Johnson*, 4 H. & N. 653.

(*c*) *Chamberlain* v. *Williamson*, 2 M. & S. 408.

committed, dies, no action for negligence can be brought against his executor or administrator.(*d*)

Where a surgeon employed by a railway company to examine a passenger who had sustained an injury in a collision on their line, told the passenger, on his own statement of his injuries, that they were slight, so that he accepted a small sum in compensation, it was held that even assuming that his injuries were greater, there was no ground of action against the surgeon, for there was no proof either of a contract with the passenger nor of any injury sustained by him as a result of any neglect on the part of the surgeon to examine him, which was the only duty laid or proved.(*e*)

The killing of a human being by culpable negligence being a criminal offence, it is obvious that the law in civil cases ought to follow the criminal law, and even to go beyond it; so that there is a manifest propriety in affording redress in a civil action for a low degree of the same negligence which, in a little higher degree, the law would punish as a crime.(*f*)

Thus, it has been held that an ordinary degree of skill is necessary for a surgeon who undertakes to perform surgical operations, and that an action lies against a surgeon for gross ignorance and want of skill in his profession, as well as for negligence and carelessness.(*g*) But although a medical practitioner may, doubtless, by

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(*d*) *Finlay* v. *Chirney*, 20 Q. B. D. 494.

(*e*) *Pimm* v. *Roper*, 2 F. & F. 783. This case is not at all at variance with those which show that if a stranger retain a surgeon to tend a patient, the surgeon is liable to the patient for due and proper care. Such an action is founded on injury, the result of negligence, of which in this case there was no evidence, neither of the negligence nor of any injury the result of it.

(*f*) Shearman: "Negligence," p. 25.

(*g*) *Seare* v. *Prentice*, 8 East, 348. Thus, mercurial treatment in a case for which it is wholly unfit, has been held to be such negligence or ignorance as will sustain an action: *Jones* v. *Fay*, 4 F. & F. 525.

express contract, undertake to perform a cure absolutely, the law will not imply such a contract from the mere employment of a medical practitioner. He does not become an actual insurer of a cure, and is not to be tried by the result of his remedies, for while he is bound *bonâ fide* and honestly to exercise his best skill, still his only contract is to treat the case with reasonable diligence and skill, and if more than this is expected, it must be expressly stipulated for.(*a*) If from any accident or variation in the frame of a particular individual, an injury happens, it is not a fault in a medical man,(*b*) for the medicine that the most skilful may administer may not be productive of the expected result, and an operation may have been performed with the most proper instrument and in the most proper manner, and yet have failed.

It is a question for the jury in each case as it arises to say whether any injury sustained is attributable to the want of a reasonable and proper degree of care and skill in the medical practitioner's treatment.(*c*) If the jury should be of opinion that there has been a culpable want of attention and care on the part of the medical practitioner, he is liable; but he is certainly not answerable merely because some other man might possibly have shown greater skill and knowledge; nor is it

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(*a*) The right of action for personal injuries arising out of a contract to cure does not pass to the assignees of a bankrupt; and if a consequential damage to the personal estate follows from the injury to the person, that may be so dependent upon and inseparable from the personal injury, which is the primary cause of action, that no right to maintain a separate action in respect of such consequential damages will pass to the assignees: *Drake* v. *Beckham*, 11 M. & W. p. 319, per Lord DENMAN. But a right to a sum of money, whether ascertained or not, expressly agreed to be paid in the event of failing to cure, would pass: *Beckham* v. *Drake*, 2 Cl. & F. p. 622, per MAULE, J., and p. 645, per CAMPBELL, L. C.

(*b*) *Hancke* v. *Hooper*, 7 C. & P. 81.

(*c*) *Lanphier* v. *Phipos*, 8 C. & P. 475.

enough that he himself acknowledges some degree of want of care; there must be a want of competent and ordinary care and skill and to such an extent as to lead to a bad result.(*d*) The question of diligence in each particular case is to be determined not by enquiring 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.

In an action against a medical practitioner for malpractice, the plaintiff, if he shows no injury resulting from negligence or want of due skill in the defendant, will not be entitled to recover even nominal damages.(*e*)

(*d*) *Rich* v. *Pierpont*, 3 F. & F. 35.

(*e*) In an action against a medical practitioner the plaintiff must affirmatively prove all the elements of the negligence charged, including the defendant's want of knowledge or skill, where that is relied on. This may, however, be done by simple evidence of the mode of treatment pursued by the defendant in the particular case. If that indicates want of skill, it is not necessary to go outside the case for proof upon that point: *Seare* v. *Prentice*, 8 East, 348. The defendant may, however, produce evidence of his general skill when an issue is made upon his possession of skill and not merely upon his use of it: *R.* v. *St. John Long*, 4 C. & P. 398. And where there is much doubt as to the skilfulness of his treatment of a particular case, evidence of his general skilfulness will be material upon all the issues of the case; for if he had skill it is natural to assume that he used it. But where the plaintiff does not question the defendant's general skilfulness, evidence thereof is not competent on behalf of the defendant in a case not otherwise evenly balanced: *Seare* v. *Prentice*. 8 East, 348; Shearman, "Negligence." Where the plaintiff relies upon the fact of his non-recovery or slow recovery as some evidence of the defendant's unskilfulness or neglect, the defendant is at liberty to prove anything tending to show that the fault was in the patient and not in the treatment. It is the duty of the patient to co-operate with his professional adviser, and to conform to the proper and necessary prescriptions; and if he will not, or, under the pressure of pain, cannot, his neglect is his own wrong and misfortune, for which he has no right to hold his medical attendant responsible. Thus, it will be a defence for the medical practitioner to prove that any injury the patient may have sustained is the result of intervening neglect on the part of the patient himself, or that the patient has by his own carelessness directly conduced to such injury: *Jones* v. *Fay*, 4 F. & F. 525. There must, however, be such a substantial disregard of the physician's

It makes no difference whether a medical man is dealing with a patient for remuneration, or, as a volunteer gratuitously, dealing with a friend or with his wife.(*a*)

If a medical man direct a nurse or other person to use a remedy, it is the same as if he used it himself. But he will only be liable for the natural and reasonable consequences of the proper carrying out of his directions, and not for injuries which are the result of the negligence of other people in improperly carrying out his instructions.(*b*)

A person who becomes a patient in a hospital is

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instructions, or such recklessness, as would defeat the effect of the physician's treatment. And this disregard must not have been induced by any prior negligence of the physician.

(*a*) *R.* v. *Macleod*, 12 Cox C. C. 534 ; *Shields* v. *Blackburne*, 1 H. Bl. 158.

(*b*) *R.* v. *St. John Long*, 4 C. & P. 398 ; *R.* v. *Spiller*, 5 C. & P. 333 ; *Perionowsky* v. *Freeman*, 4 F. & F. 977. A medical man may render himself answerable for the acts of a nurse or attendant on a patient, either by having engaged and employed such or by having given directions in the way of authority and command. A careful distinction must be drawn between direction by way of authority and command and by way merely of advice to another as to what it may be right to do. And there is no case in which it is more necessary to advert to that distinction and adhere to it more carefully than in the case of medical men, for when medical men are called in it often becomes necessary for them to give directions as to the care and management of their patients, and care must be taken not to confound that which is instruction and advice with that which is authority and command. If, therefore, it is sought to make the medical man liable for the acts of an attendant, the question would arise whether the medical man put the patient under the charge of the attendant, or whether he found the patient so placed by his friends or otherwise in the charge of the attendant, and merely in the discharge of his duty gave the attendant such advice and directions as he deemed for the benefit of the patient, and not such orders as made the attendant his servant or agent. In the latter view, the medical man is not responsible. Even if, however, the medical man acted by way of authority and command and was not justified, the jury would have to consider, with a view to damages, whether he acted oppressively and cruelly, or wantonly and recklessly, without due regard to the comfort of the patient, or in the honest and conscientious discharge of his duty ; and further, whether what was done was for the injury of the patient, or rather for his benefit and advantage—whether, in fact, he did more than advise what it was his duty to recommend for the protection and care of his patient: *Symm* v. *Fraser*, 3 F. & F. 859.

entitled to no more than the usual and ordinary degree of care and attention. Our great hospitals, supported as they are entirely by alms and voluntary subscriptions, could not be supported if they had to engage a staff of medical men sufficient to attend to all the minor incidents or details of medical or surgical operations which might be ordered. It is indispensable that such matters should be left to nurses, who are necessarily familiar with them; and the hospital doctor is not responsible for acts which it is no part of his duty personally to direct or superintend, or even to be present at.(*c*)

A medical practitioner is responsible for an injury done to a patient through the want of proper skill in his assistant or apprentice; but in an action against him the plaintiff must show that the injury was produced by the inexperience or want of previous knowledge on the part of the assistant or apprentice, and such cannot be inferred without proof.(*d*)

An unqualified person who pretends to act as a doctor is, of course, equally bound to bring competent skill to the performance of the duty which he has undertaken, and is liable to an action for negligence if he does not do so.(*e*)

A person who is present at an accident requiring immediate provisional treatment, no skilled aid being on the spot, must act reasonably according to common knowledge if he acts at all; but he cannot be answerable to the same extent that a surgeon would be. There does not seem to be any distinct authority for such cases; but it may be assumed that no more is required of a person in such a situation than to make a prudent and reason-

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(*c*) *Perionowski* v. *Freeman*, 4 F. & F. 977.

(*d*) *Hancke* v. *Hooper*, 7 C. & P. 81. This case is that of an apprentice, but presumably it will cover that of an assistant.

(*e*) *R.* v. *St. John Long*, 4 C. & P. 398, 423; *Jones* v. *Fay*, 4 F. & F. 525.

able use of such skill, be it much or little, as he actually has.(*a*) If a patient represent to a medical practitioner that a certain course of treatment has on previous occasions produced a beneficial result in his particular case, and if there be no external indications in the patient's appearance that such a mode of treatment would be improper, the medical practitioner who acts on such representation would not be answerable for its not producing a beneficial result, nor liable for its not effecting the same result as at other times, because it might depend on the constitution of the patient.(*b*)

None but the most general test of a medical practitioner's skill can be stated as rules of law. 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 often 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. The point is not as to the system employed, but the simple question is, Did he in the particular department he undertook to fill exhibit such diligence as medical practitioners in such department (be it general or special) are accustomed to exhibit?(*c*) Upon many points of medical and surgical practice, however, all the schools are agreed; and, indeed, common sense and universal experience

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(*a*) Pollock: "Torts," p. 26; *Shiells* v. *Blackburne*, *supra*. There would, of course, be this difference in the case of one who was known *not* to be, and did *not* assume to be a medical practitioner or to practise medicine or surgery, that evidence of gross ignorance or gross carelessness would be required to render him liable; whereas in the case of a regular practitioner the *ratio* would be *reasonable* knowledge and skill, that is, such as is usual and reasonable among medical men: *Ruddock* v. *Lowe*, 4 F. & F. 522*n*.

(*b*) *Hancke* v. *Hooper*, 7 C. & P. 81.

(*c*) *Jones* v. *Fay*, 4 F. & F. 525.

prescribe some invariable rules, to violate which may generally be called gross negligence.(*d*)

A physician, although he is not answerable in a given case for the errors of an enlightened judgment,(*e*) cannot interpose his judgment contrary to the known rule and usage of medical men; he must apply without mistake what is settled in his profession. He cannot try experiments with his patients to their injury.(*f*)

Gross negligence may be of two kinds. In one sense it merely means neglect, as where a man goes hunting and neglects his patient, who dies in consequence. In another it means rashness, as where a person deals with drugs and medicines of a dangerous nature and is ignorant of their properties and of their proper use and dose, and so takes a leap in the dark.(*g*)

Thus, a medical man who administers a dangerous drug, such as arsenic, or allows a patient to apply it without taking any care to observe its effects or guard against them, would be gravely wanting in due care.(*h*)

The questions for the jury in such an action will be:— 1. Did the defendant undertake to treat the plaintiff for his disorder? 2. Did he do so, either with negligence or ignorance? and 3. Did this negligent or ignorant treatment cause injury to the plaintiff?(*i*)

The state of health of the patient may have much weight in determining whether ordinary diligence and care have been used by the attending physician. What might be deemed ordinary care in some instances would

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(*d*) Shearman: "Negligence," p. 469.

(*e*) *R.* v. *Macleod*, 12 Cox C. C. 534.

(*f*) *Slater* v. *Baker*, 2 Wils. 359; *R.* v. *St. John Long*, 4 C. & P. 423.

(*g*) As to medicine, *R.* v. *Markuss*, 4 F. & F. 356; as to surgery, *Slater* v. *Baker*, 2 Wils. 359.

(*h*) *R.* v. *Chamberlain*, 10 Cox C. C. 486; *R.* v. *Macleod*, 12 Cox C. C. 534.

(*i*) *Jones* v. *Fay*, 4 F. & F. 525.

be gross negligence in others. A disease known to be rapid and dangerous will require a more instant and careful attention and application of remedies than one comparatively harmless and requiring only good nursing. Thus, aside from the manipulation of a fractured limb, a surgeon has to contend with many very powerful and hidden influences, such as the habits, hereditary tendencies, vital force, mental state, and local circumstances of the patient. While, on the one hand, these will explain his ill-success and moderate the degree of his responsibility, it would seem that he is, therefore, bound to inform himself of these facts, so far, at least, as they ought to influence him in the management of the case. Thus, for example, a physician about to administer an anæsthetic ought 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 the beneficial agency.

The following report of an American decision is interesting, but no similar case appears in the English reports:—Where a physician, during his attendance upon a patient (the defendant), having also attended patients infected by small pox, had by want of proper care communicated the infection to the defendant and his family, thus necessitating further attendance and an increased bill, it was held in an action by the physician to recover for his services that no recovery could be had for the additional services rendered necessary by the plaintiff's own want of proper care, and that the defendant was entitled to a further deduction from that portion of the bill which was properly charged, sufficient to reimburse him for all damages which he had sustained by bodily suffering and loss of time.(*a*)

(*a*) *Piper* v. *Menifee*, 12 B. Monr. 465 (Kentucky); see Shearman on Negligence, vol. ii. p. 604.

II.—Criminal Liability.

The question of the criminal liability of medical practitioners for negligence is a difficult one to explain clearly, and at the same time concisely; the law upon the subject is contained in a large number of cases and judicial dicta, which it is not easy to summarize. It is, however, hoped that the following statement will sufficiently show the principles upon which the judges have dealt with such cases.

If any person cause the death of another intentionally, it is murder; and there is no doubt that cases might arise where, from the manner in which an operation was performed, malice might be inferred, which would be sufficient to show the intention;(*b*) but by the law of this country killing by omission is in no case criminal unless the thing omitted is one which it is a legal duty to do. And of course, if a man in administering medicines acts with criminal inattention or carelessness, he is guilty of manslaughter.(*c*)

As has already been stated, it is the legal duty of every person who undertakes (except in case of necessity) to administer surgical or medical treatment, or to do any other lawful act of a dangerous character which requires special knowledge, skill, attention, or caution, to employ in doing it a common amount of such knowledge, skill, attention, and caution.(*d*)

But "if a physician gives a person a potion without any intent of doing him any bodily hurt, but with an intent to cure or prevent a disease, and contrary to the expectation of the physician it kills him, this is no

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(*b*) *R.* v. *Van Butchell*, 3 C. & P. 629.

(*c*) *R.* v. *Joseph Webb*, 1 Moo. & R. 405; *R.* v. *Simpson*, 1 Lew. C. C. 172.

(*d*) Stephen's Dig. of Crim. Law, Art. 217; *R.* v. *Spiller*, 5 C. & P. 333.

homicide and the like of a chirurgeon."(*a*) Thus a person acting as a medical man, whether licensed or unlicensed,(*b*) is not criminally responsible for the death of a patient occasioned by his treatment, unless his conduct is characterised either by gross ignorance of his art, or gross inattention to his patient's safety.

"I make no distinction," said GARROW, B., "between the case of a person who consults the most eminent physician, and the cases of those whose necessities or whose folly may carry them into any other quarter. It matters not whether the individual consulted be the President of the College of Physicians, the President of the College of Surgeons, or the humblest bone-setter of the village; but be he one or the other, he ought to bring into the case ordinary care, skill, and diligence."(*c*) For a man is not responsible for what is simply an error of judgment, or for the failure of remedies; neither is a person of general competency guilty of manslaughter because through acting on an erroneous judgment, he unfortunately fail in a particular instance,(*d*) nor because he makes an accidental mistake in his treatment of his patient, through which mistake death ensues.(*e*) And although it is quite clear that damages may be recovered against a medical man for want of skill, yet as Lord HALE says, "God forbid that any mischance of this kind should make a person guilty of murder or manslaughter."(*f*) The question is not whether the act done is the thing that a person of the greatest professional

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(*a*) 1 Hale, 429, 430.

(*b*) *R.* v. *Webb*, 1 Moo. & R. 405; *R.* v. *Van Butchell*, 3 C. & P. 629.

(*c*) *R.* v. *St. John Long*, 4 C. & P. 398; and see *R.* v. *Ferguson*, 1 Lew. C. C. 181.

(*d*) *R.* v. *St. John Long*, 4 C. & P. 398.

(*e*) *R.* v. *Joseph Webb*, 1 Moo. & R. 405; and see *R.* v. *Pym*, 1 Cox C. C. 339; *R.* v. *Davis and Wagstaffe*, 15 Cox C. C. 174; *R.* v. *Bull*, 2 F. & F. 201.

(*f*) 1 Hale, 430, and *R.* v. *Crick*, 1 F. & F. 519.

skill would do, but whether it shows such total and gross ignorance in the person who did it, as must necessarily produce such a result. "On the one hand," said PARK, J., "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 man administers may not be productive of the expected effect; 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."(*g*) Blunder alone would not render the prisoner criminally responsible. The jury must be satisfied that there was such gross and culpable negligence as would amount to a culpable wrong and show an evil mind,(*h*) or such a degree of complete negligence as the law means by the word felonious.(*i*) Even a culpable mistake and some degree of *culpable* negligence is not *felonious*, unless it is so gross as to be reckless.

The mere fact that death has occurred, through mistake or misfortune is not enough, or no medical man would be safe.(*k*) The jury cannot convict unless there is such a degree of complete negligence as the law means by the word "felonious," and evidence of negligence that would be sufficient in a civil action, may be quite insufficient to support a conviction in a criminal case.(*l*)

Gross negligence may be of two kinds. In one sense, where a man, for instance, goes hunting and neglects his

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(*g*) *R. v. St. John Long*, 4 C. & P. 398; *R.* v. *Macleod*, 12 Cox C. C. 534.

(*h*) *R.* v. *Spencer*, 10 Cox C. C. 525.

(*i*) *R.* v. *Noakes*, 4 F. & F. 920; *R.* v. *Tessymond*, 1 Lew. C. C. 169.

(*k*) *R.* v. *Chamberlain*, 10 Cox C. C. 486.

(*l*) *R.* v. *Noakes*, 4 F. & F. 920; *R.* v. *Crook*, 1 F. & F. 521.

patient, who dies in consequence. Another sort of gross negligence consists in rashness, where a person is not sufficiently skilled in dealing with dangerous medicines which ought to be carefully used, of the properties of which he is ignorant, or how to administer a proper dose.(*a*)

It is the legal duty of every person to do dangerous acts in a careful manner, and to employ reasonable knowledge, skill, care, and caution therein; to take proper precautions in dealing with dangerous things; and to do any act undertaken to be done by contract or otherwise, the omission of which would be dangerous to life; and in the same way a man is not justified in making use of an instrument, in itself a dangerous one, unless he do so with a proper degree of skill and caution.(*b*) Although to cause death by the omission of any such duty is homicide, there is a distinction of a somewhat indefinite kind, as to when it is and is not unlawful in the sense of being criminal. In order that a homicide by omission may be criminal, the omission must amount to what is sometimes called gross and sometimes culpable negligence. There must be more, but no one can say how much more carelessness than is required to create a civil liability.(*c*) Neither is "culpable negligence" capable of definition. It is a question for the jury; for it is a question of degree. It is a qustion of more or less, and it cannot be defined,(*d*) for it depends on the circumstances of each particular case.

Thus, if a man acting as a surgeon, physician, or midwife causes the death of a patient by improper treatment arising from ignorance or inattention, he is not criminally

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(*a*) *R.* v. *Markuss*, 4 F. & F. 356.
(*b*) *R.* v. *Spilling*, 2 M. & Rob. 107; *R.* v. *Whitehead*, 3 C. & K. 202; *R.* v. *Senior*, 1 Mood. C. C. 346.
(*c*) Stephen's Hist. of Crim. Law, III. 10—11.
(*d*) *R.* v. *Chamberlain*, 10 Cox C. C. 486.

responsible unless his ignorance, or inattention, or rashness is of such a nature that the jury regard it as culpable under all the circumstances of the case.(*e*) It is not, however, every slip that a man may make that renders him liable to a criminal investigation. It must be a substantial thing.(*f*)

On an indictment for manslaughter against a medical man for administering poison by mistake for some other drug, the prosecution are bound to show that the poison got into the mixture in consequence of the gross negligence of the prisoner, and it is not sufficient to show merely that the prisoner who dispensed his own drugs, supplied a mixture which contained a large quantity of poison. In such a case it would be gross negligence on the part of the medical man if it were proved that he kept his ordinary drugs and his poisons in such a way that he could not tell which he was using;(*g*) but a mere error would not be such negligence.

What is called *mala praxis* in a medical person is a misdemeanor; but it must be such a practice that everybody can see that it is *mala praxis*.(*h*)

In Dr. Groenvelt's case, in 1697, the Court resolved that *mala praxis* is a great misdemeanor and offence at common law (whether it be for curiosity and experiment or by neglect), because it breaks the trust which the party has placed in the physician, tending directly to his destruction.(*i*)

If a medical man command a nurse to use a remedy, it is the same as if he used it himself;(*k*) but no one is

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(*e*) Stephen's Dig. of Crim. Law, Art. 211.
(*f*) *R.* v. *Markuss*, 4 F. & F. 356.
(*g*) *R.* v. *Spencer*, 10 Cox C. C. 525; *R.* v. *Bull*, 2 F. & F. 201.
(*h*) *R.* v. *St. John Long*, 4 C. & P. 398.
(*i*) 1 Lord Raym. 213.
(*k*) *R.* v. *St. John Long*, 4 C. & P. 398; *R.* v. *Spiller*, 5 C. & P. 333.

deemed to have committed a crime by reason of the negligence of any servant or agent employed by him.

It must be remembered that a prosecution is for the public benefit; and that, therefore, the willingness of the patient to submit to the treatment under investigation cannot take away the offence against the public.(*a*)

On an indictment for manslaughter by reason of gross negligence and ignorance in medical or surgical treatment, neither on the one side nor on the other can evidence be given of former cases treated by the prisoner; but witnesses may be asked, *causa scientiæ*, their opinion of his skill.(*b*) Witnesses, who have themselves been patients of the prisoner, may not be asked any questions as to their respective disorders for which he treated them and the mode of cure adopted by the prisoner. All that is evidence is that the prisoner has displayed so much skill in other cases as to show that he is not so grossly ignorant or inattentive as to be likely to be guilty of manslaughter.(*c*)

(*a*) *R.* v. *St. John Long*, 4 C. & P. 423; *R.* v. *James Ellis*, 2 C. & K. 470; *R.* v. *Coney*, 8 Q. B. D. 549, per STEPHEN, J.

(*b*) *R.* v. *Williamson*, 3 C. & P. 635; *R.* v. *St. John Long*, 4 C. & P. 398; *R.* v. *Whitehead*, 3 C. & K. 202.

(*c*) *R.* v. *Williamson*, 3 C. & P. 635; *R.* v. *St. John Long*, 4 C. & P. 398; *Wells Harbour Case*, Stark. Evid. 621.

NOTE.—If the infliction of a wound is the cause of death, it is no answer to say that a different course of treatment by the doctor who treated it might have prevented death: *R.* v. *St. John Long*, 4 C. & P. 423.

If a man were unlawfully wounded by one man, and another applied to his wound, either from bad faith or by negligence, sulphuric acid or something which was of a dangerous nature and ought not to be applied, and which led to fatal results, then the person who applied the remedy would be answerable and not the person who inflicted the wound, because a new cause would have supervened: *R.* v. *Markuss*, 4 F. & F. 356; 1 Hale, 428; Stephen, Dig. of C. L. Art. 220.

But if the person who dressed the wound applied a remedy which he in good faith regarded as necessary, then if a fatal result ensued, he who inflicted the wound would remain liable: *R.* v. *Markuss*, 4 F. & F. 356; 1 Hale 428; Stephen's Dig. of C. L. Art. 220.

So would he also, although the wound was not in its nature instantly

If a man, professing to act as a medical adviser, fraudulently induces a girl to allow him to undress her, by falsely alleging that it is necessary for medical reasons to do so, he is guilty of a common assault.(*d*) In 1850, a medical man, who had connection with a girl under the pretence that he was thereby treating her medically for the complaint for which he was attending

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mortal, but became the cause of death by reason of the deceased not having adopted the best mode of treatment; as where, for instance, the deceased refused to act under the advice of his surgeon who urged him to submit to the amputation of a finger, an operation which would in the opinion of the surgeon most probably have preserved his life: *R.* v. *Holland*, 2 Moo. & R. 351.

Or if a dangerous wound is given and the best advice is taken and an operation is performed under that advice which is the immediate cause of death, the party giving the wound is criminally responsible; and this is so, even though it appears that the surgeons were mistaken as to the necessity of the operation: *R.* v. *Pym*, 1 Cox C. C. 339.

It is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill: Stephen, Dig. of C. L., Art. 220.

Thus where an injury was inflicted by one man on another, which compelled the injured man to take medical advice, and death ensued under chloroform administered for the purpose of an operation recommended by competent medical men, for that death the assailant is in the eye of the law responsible and the death must be traced back to the act of the man by whom the original injury was done. "For," said MATHEW, J., "it would never do to have a serious injury by one man on another, and have the issue raised that death was due to want of skill on the part of the medical men": *R.* v. *Davis and Wagstaffe*, 15 Cox C. C. 174.

Therefore evidence is not admissible to show that the medical men were wrong in their opinion and that the operation was unnecessary, and that the deceased might have lived had it not been performed.

Such evidence was tendered and rejected in a case where it was proved that there was a gunshot wound, and a pulsating tumour arising therefrom, which in the opinion of competent medical men was dangerous to life, and that they considered a certain operation necessary, which was skilfully performed, and was the immediate and proximate cause of death: *R.* v. *Pym*, 1 Cox C. C. 339.

To admit such evidence would be to raise a collateral issue in every case as to the degree of skill which the medical men possessed: *R.* v. *Pym*, 1 Cox C. C. 339.

These cases also illustrate the fact that medical men are not answerable for the ill-success of well advised treatment.

(*d*) *R.* v. *Rosinski*, 1 Lew. C. C. 11.

her (she, being in ignorance of the nature of the act, making no resistance owing solely to the *bonâ fide* belief that such was the case) was found guilty of an assault.(*a*)

In 1877, however, under somewhat similar circumstances, a prisoner was convicted of rape. He professed to give medical and surgical advice for money. The prosecutrix, a girl of nineteen, consulted him with respect to illness from which she was suffering. He advised that a surgical operation should be performed, and under pretence of performing it, had carnal connexion with the prosecutrix. She submitted to what was done, not with any intention that he should have sexual connexion with her, but under the belief that he was merely treating her medically and performing a surgical operation, that belief being wilfully and fraudulently induced by the prisoner.(*b*) But now section 3 (2) of the Criminal Law Amendment Act, 1885(*c*) provides that "any person who by false pretences or false representations procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connexion, either within or without the Queen's dominions shall be guilty of a misdemeanor."

With regard to the question of assault we may note that the existence of surgery as a profession assumes the truth of the proposition that force to the person is

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(*a*) *R.* v. *Case*, 1 Den. 580 ; 19 L. J. (N.S.) M. C. 175.

(*b*) *R.* v. *Flattery*, 2 Q. B. D. 410 ; 46 L. J. M. C. 130.

(*c*) "The effect of the Criminal Law Amendment Act (48 & 49 Vict. c. 69, ss. 3 and 4)," says Sir James STEPHEN, "appears to be that *R.* v. *Flattery*, 2 Q. B. D. 410 ; 46 L. J. M. C. 130, is no longer law, though it was recognised as having created doubts as to *R.* v. *Barrow*, L. R. 1 C. C. R. 158, which doubts are declared to have been well founded, but I think the point doubtful": Dig. Crim. L., Article 254*n* (2). But even if the act would not now amount to rape, it would amount to an offence under section 3 of the Act.

rendered lawful by consent in such matters as surgical operations for the cure or extirpation of disease. Taking out a man's tooth without his consent would be an aggravated assault and battery; with consent it is lawfully done every day. Every one has the right to consent to the infliction of any bodily injury in the nature of a necessary and *bonâ fide* surgical operation upon himself or upon any child under his care, and too young to exercise a reasonable discretion in such a matter.(*d*) If a person is in such circumstances as to be incapable of giving consent to a surgical operation, it is not a crime to perform such operation upon him without his consent or in spite of his resistance. For example, a man is rendered insensible by an accident which renders it necessary to amputate one of his limbs before he recovers his senses. The amputation of his limb without his consent is not an offence; and, if the accident made him mad, the amputation, in spite of his resistance, would be no offence.(*e*)

But consent alone is not enough to justify what is on the face of it bodily harm; there must be some kind of just cause, as the cure or extirpation of disease. Wilful hurt is not excused by consent or assent if it has no reasonable object. Thus, if a man licenses another to beat him, not only does this not prevent the assault from being a punishable offence, but the better opinion is that it does not deprive the party beaten of his right of action.(*f*)

The general principle of law is that every one has a right to consent to the infliction upon himself of bodily harm not amounting to a maim. It seems that such a hurt of any part of a man's body whereby he is

(*d*) Stephen: Dig. of C. L. Art. 204.
(*e*) Stephen: Dig. of C. L. Art. 205.
(*f*) *Matthew* v. *Ollerton*, Comb. 218; and see POLLOCK, "Torts," p. 139.

rendered less able in fighting either to defend himself or to annoy his adversary is properly a maim. And, therefore, the cutting off or disabling or weakening a man's hand or finger, or striking out his eye or foretooth, or castrating him are said to be maims; but the cutting off his ear or nose will not be esteemed maims because they do not weaken but only disfigure him.(*a*) It is to be observed that all maim is felony.

But no one has a right to consent to the infliction upon himself of death, or of an injury likely to cause death, in any other case than the infliction of bodily injury in the nature of a surgical operation for the cure or extirpation of disease, or to consent to the infliction upon himself of bodily harm amounting to a maim, for any purpose injurious to the public.(*b*) Thus to castrate for any purpose other than the cure or extirpation of disease is unlawful, as it must be injurious to the public in rendering the patient a less useful citizen.

When a person is indicted for inflicting personal injury upon another, the consent of the person who sustains the injury is no defence to the person who inflicts the injury, if the injury is of such a nature or is inflicted under such circumstances that its infliction is injurious to the public as well as the person injured.(*c*) Thus if A. gets B. to cut off A.'s right hand in order that A. may avoid labour and be enabled to beg, both A. and B. commit an offence.

(*a*) Hawk. P. C. c. 55; 1 Inst. 127 *a*, *b*.

(*b*) Stephen: Dig. C. L., Art. 207.

(*c*) *R.* v. *Coney*, 8 Q. B. D. 549, per STEPHEN, J. "I think," says Mr. Justice STEPHEN, "the qualification, 'for any purpose injurious to the public,' must be supplied. It seems absurd to say that if A. gets a dentist to pull out a front tooth of A.'s because it is unsightly, though not diseased, A. and the dentist both commit a misdemeanor. When it was an essential part of a common soldier's drill to bite cartridges I believe that it was not an uncommon military offence to get the front teeth pulled out, and this would, I presume, be an offence at common law also:" Stephen, Dig. of C. L., Art. 207 *n*.

In the same way if a medical man from malice were, under the pretence of curing a patient, to rub him with an ointment that caused a serious sore, and the patient submitted at the time, supposing the treatment was for his good, though there would be consent in one sense of the word, the medical man might nevertheless be indicted for an assault.(*d*)

A man may take forcible measures to prevent a person of unsound mind from doing mischief to himself or others.(*e*) "God forbid," exclaimed Lord MANSFIELD, "that a man should be punished for restraining the fury of a lunatic."(*f*) But every one who takes upon himself the responsibility of imprisoning another on the ground of insanity must, in order to protect himself at common law, be able to show that the person so imprisoned was actually insane at the time; it is not enough that he appeared to be insane, nor that he pretended to be mad, nor that he conducted himself as if he were insane.(*g*) A medical man is not warranted, merely on statements made by the relations of a person supposed to be insane, in sending men to take him into custody and confine him, unless he is satisfied from those statements that such a step is necessary to prevent some *immediate* injury from being done by the individual either to himself or to other persons.(*h*) Thus, at common law and apart from the lunacy statutes, a medical man may justify measures necessary to restrain a dangerous lunatic, in such a state that it is likely he may do mischief to anyone, and that not merely at the moment

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(*d*) Per WILDE, C.J., *R.* v. *Case*, 19 L. J. (N.S.) M. C. 175.

(*e*) Bac. Abr. Idiots and Lunaticks (C.); Com. Dig. Pleader, 3 M. 22.

(*f*) *Brookshaw* v. *Hopkins*, Lofft. p. 243.

(*g*) Bro. Abr. Faux Imprisonment, pl. 28; *Fletcher* v. *Fletcher*, 1 E. & E. 420; 28 L. J. Q. B. 134.

(*h*) *Anderdon* v. *Burrows*, 4 C. & P. 210.

of the original danger, but also until there is reasonable ground to believe that the danger is over. So, also, if a medical man be called in to attend a person suffering under *delirium tremens*, he may justify such measures as are reasonably necessary either to cure him or to restrain him from doing mischief, so long as the fit lasts or is likely to return.(*a*) And even if the restraint were such that the patient might maintain an action, the jury would have to consider, with a view to assessing the damages, whether what was done by the medical man was done by him in the honest discharge of what he believed to be his duty, acting as he deemed for the best—for the welfare and safety of his patient—or whether what he had done or directed to be done were acts of cruelty and oppression, or of careless indifference and disregard to the comfort and welfare of his patient; and also, whether what was done was really to the injury of the patient, or rather for his benefit and protection; and even whether the restraint had not resulted in the preservation of the patient's life and health, and the prevention of serious mischief either to himself or others.(*b*)

To inoculate with small pox is a criminal offence; any person who "shall produce or attempt to produce in any person, by inoculation with variolous matter, or by wilful exposure to variolous matter, or to any matter, article, or thing impregnated with variolous matter, or wilfully by any other means whatsoever produce the disease of small pox in any person is liable to imprisonment for not more than one month.(*c*)

An infant in its mother's womb, not being in *rerum*

(*a*) *Scott* v. *Wakem*, 3 F. & F. 328; *Symm* v. *Fraser*, 3 F. & F. 859.

(*b*) *Symm* v. *Fraser*, 3 F. & F. 859.

(*c*) 30 & 31 Vict. c. 84, s. 32, and see *R.* v. *Burnett*, 4 M. & S. 272; and *R.* v. *Sutton*, 4 Bur. 2117.

natura, is not considered as a person who can be killed within the description of murder; and, therefore, if a woman being quick or great with child, take any potion to cause an abortion, or if another give her any such potion, or if a person strike her whereby the child within her is killed, it is not murder or manslaughter.(*d*) But if an injury be received by the child in the womb, and the child afterwards born alive dies of that injury, it is murder or manslaughter according to the circumstances of the case.(*e*) So, giving a child, while in the act of being born, a mortal wound in the head, as soon as the head appears and before the child has breathed, will, if the child is afterwards born alive and dies thereof, and there is malice, be murder.(*f*) It is material that the child be born alive, for otherwise the prisoner cannot be convicted of murder; and being born must mean that the whole body is brought into the world; for it is not sufficient that the child respires in the progress of the birth.(*g*)

If a person intending to procure abortion does an act which causes a child to be born so much earlier than the natural time, that it is born in a state much less capable of living, and afterwards dies in consequence of its exposure to the external world, the person who by such misconduct so brings the child into the world and puts it thereby in a situation in which it cannot live, is guilty of murder; and the mere existence of a possibility that something might have been done to prevent the death would not render it the less murder.(*h*)

If a woman be with child, and any person gives her a

(*d*) 1 Hale, 433.

(*e*) 3 Inst. 50; 1 Hawk. P. C. c. 31, s. 16; 4 Bl. Com. 198; 1 East P. C. c. 5, s. 14, 228; *contra* 1 Hale, 432, and Staund. 21.

(*f*) *R.* v. *Senior*, 1 Moo. C. C. 346.

(*g*) *R.* v. *Poulton*, 5 C. & P. 329.

(*h*) *R.* v. *West*, 2 C. & K. 784.

potion to destroy the child, and she takes it and it works so strongly that it kills her, this is murder, for it was not given to cure her of a disease, but unlawfully to destroy her child within her, and therefore he that gives a potion to this end must take the hazard, and if it kills the mother, it is murder.(*a*) But by statute, whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, unlawfully administers to her, or causes to be taken by her any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever, with the like intent, is guilty of felony.(*b*) A person who gives another a drug to be taken in the absence of the giver "causes it to be taken" and, it would seem, "administers" it, though absent when it is taken.(*c*) And whosoever unlawfully supplies or procures any poison or other noxious thing(*d*) or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, commits a misdemeanor,(*e*) even although the intention so to use the same exists only in his own mind, and is not entertained by the woman whose miscarriage he intends to procure.(*f*)

Whoever unlawfully and maliciously administers to, or causes to be administered to, or taken by any other person, any poison or other destructive or noxious thing with intent to injure, aggrieve, or annoy such person,

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(*a*) 1 Hale, 430; *Tinckler's Case*, 1 East P. C. c. 5, s. 17, p. 320, and s. 124, p. 354.
(*b*) 24 & 25 Vict. c. 100, s. 58.
(*c*) *R.* v. *Wilson*, D. & B. 127; *R.* v. *Farrow*, D. & B. 164.
(*d*) *R.* v. *Isaacs*, 32 L. J. M. C. 52; L. & C. 220.
(*e*) 24 & 25 Vict. c. 100, s. 59.
(*f*) *R.* v. *Hillman*, 33 L. J. M. C. 60; L. & C. 343.

commits a misdemeanor.(*g*) An intent to excite sexual passion is within this provision.(*h*)

The law does not formally recognise the induction of premature labour by the medical practitioner. But it is impossible to admit that there can be any immorality in performing an operation to give a chance of saving the life of a woman, when, by neglecting to perform it, it is almost certain that both herself and the child will perish. Any question respecting its illegality cannot be entertained, provided the means are administered or applied with the *bonâ fide* hope of benefitting the female, and saving the life of the mother or child, or both, and not with any criminal design; that which is performed *bonâ fide* would not be held unlawful.

It is manifest that if any question were to arise, or action at law be commenced, against a medical man, either for inducing abortion or for manslaughter, if the child born alive died because it was immature, it would be necessary to show (1) that there was a necessity for the operation, the life of the mother being at stake, and the operation being less to be feared than natural delivery; and (2) that his action was *bonâ fide*. Medical men, therefore, should not induce premature labour or abortion without the most mature consideration nor until after consultation with a second practitioner; and should in any case have the full consent, in writing if possible, of the husband or guardian.(*i*)

(*g*) 24 & 25 Vict. c. 100, s. 24.

(*h*) *R.* v. *Wilkins*, 31 L. T. 72; L. & C. 80. See also *R.* v. *Hannah*, 41 J. P. 171.

(*i*) Taylor's "Medical Jurisprudence," II., 201; Tidy's "Legal Medicine," II., 158.

Gifts and Legacies.

When a medical man attends any one in the character of a friend, and on the understanding and agreement that he is merely acting as a friend and not intending to make any charge, he cannot afterwards recover any fees for such attendance; where a lady, who had been so attended, wished her medical man to have a handsome remuneration, and desired her executors by letter to pay it, it was held that he had no claim which could be enforced at law, and his demand, as a debt against the estate, was rejected.(*a*) On the same principle if a medical man attend a patient without claiming any remuneration on the understanding that he is to receive a legacy by way of payment, and the patient neither pays him nor leaves him a legacy, he will have no claim against the patient's estate; a payment made to a physician under such circumstances by the executor of the patient was disallowed by the court.(*b*) But where a surgeon attended a patient in his medical capacity upon the usual terms, but forbore to send in his bill, under an *expectation* of receiving a remuneration in the shape of a legacy, it was held, that as no proof was given of an agreement or understanding that he was to make no charge and be paid by legacy only, he was entitled, on being disappointed in his expectation, to require payment for the services he had rendered to the deceased.(*c*) On the other hand, however, where a medical man had taken from a poor patient a promissory note for an amount beyond what was due to him, it was held that he could not recover the amount of the promissory note, although he was entitled to be paid what was due to him.(*d*)

(*a*) *Packman* v. *Vivien*, 24 Bea. 290.
(*b*) *Shallcross* v. *Wright*, 12 Bea. 558; 19 L. J. Ch. 443; 14 Jur. 1037.
(*c*) *Baxter* v. *Gray*, 3 M. & G. 771; 4 Scott, N. R. 374.
(*d*) *Billage* v. *Southee*, 9 Ha. 534; S. C. *Billing* v. *Southee*, 21 L. J. (N.S.) Ch. 472; 16 Jur. 48, 188.

There is, of course, nothing in the relation of medical practitioner and patient to prevent the one from entering into an ordinary contract with the other; but the transaction must be fair and *bonâ fide*, and the patient must be perfectly aware of what he is doing;(*e*) and the burden of proving that such a contract is an unfair transaction and not binding is on the party who impeaches it.(*f*)

If a medical attendant enters into a contract in any way depending on the length of the patient's life, and does not communicate to the patient any knowledge he may have acquired professionally (whether by forming his own opinion or by consulting with other practitioners) as to the probable duration of the patient's life, such a contract cannot be maintained, even if the patient were at the time of making it of sound mind and capable of business.(*g*) Thus, in a case where a medical adviser made an agreement with a patient, by which the former, in consideration of his past and future services, was to be paid 25,000*l.* after the death of the latter, SHADWELL, V.C., said:—"It is plain that the existence of such an agreement is a direct premium to the medical adviser to accelerate the death upon the happening of which he is to have 25,000*l.*, and it is in vain to say that, in fact, it did happen that the party who was to give the 25,000*l.* did live four or five years after the agreement. You must look at the agreement as it stood at the time when it was made, and it must be admitted that the human mind is so constituted as that this agreement might be a temptation to some persons to do the very thing which, it is obvious, it was the duty of the party who took the agreement not to do; and my deliberate opinion is that it is

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(*e*) *Ahearne* v. *Hogan*, Dru. 310; *Holmes* v. *Howes*, 20 W. R. 310; and *Blackie* v. *Clark*, 15 Bea. 595; 22 L. J. Ch. 377.

(*f*) *Ib. supra.*

(*g*) *Popham* v. *Brooke*, 5 Russ. 8.

totally void in point of law for that reason."(*a*). For so long as the relation(*b*) of doctor and patient continues a court of equity will look at a contract entered into without the intervention of a third party with considerable jealousy,(*c*) for whenever the relation of employer and agent exists in situations in which much confidence must of necessity be placed by the employer in the agent, then the case arises for watchfulness on the part of the court that that confidence shall not be abused;(*d*) and if there is a dealing between two parties, one of whom is subject to the influence of the other, the court will expect to find a fair and correct statement of the transaction upon the face of the contract itself; for if such parties mean to uphold their dealings in a court of equity they must state the nature of them fully and fairly upon the face of the contracts themselves.(*e*)

Whenever one person obtains by voluntary donation a large pecuniary benefit from another, the burden of proving the transaction is righteous falls on the person taking the benefit;(*f*) but this proof is given, if it is shown that the donor knew and understood what it was that he was doing. If, however, besides the obtaining the benefit of this voluntary gift from the donor, the donor and donee were so situated towards each other that undue influence might have been exercised by the donee over the donor, then a new consideration is added, and the question is not whether the donor knew what he was doing, but how

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(*a*) However, when this case came before COTTENHAM, L.C., on appeal, he decided it on other grounds, and expressly stated that he expressed no opinion on whether the agreement was illegal on the face of it: *Dent* v *Bennett*, 7 Sim. 539; *Dent* v. *Bennett*, 4 My. & Cr. 269; *Allen* v. *Davis*, 20 L. J. Ch. 44; 4 De G. & Sm. 133.

(*b*) The relation being one which naturally creates an influence over the mind: *Nottidge* v. *Prince*, 29 L. J. Ch. 865.

(*c*) *Ahearne* v. *Hogan*, Dru. 310; *Peacock* v. *Kernot*, 8 L. T. 292.

(*d*) *Dent* v. *Bennett*, 7 Sim. 539.

(*e*) *Ahearne* v. *Hogan*, Dru. 310.

(*f*) *Gibson* v. *Jeyes*, 6 Ves. 266.

the intention was produced ;(*g*) and though the donor was well aware of what he did, yet if his disposition to do it was produced by undue influence the transaction would be set aside. In many cases the court, from the relations existing between the parties to the transaction, will infer the probability of such undue influence having been exerted ; and the relation of medical adviser and patient is one of those cases.(*h*) On these grounds, therefore, a gift or voluntary settlement made by a patient to or for the benefit of the medical man is liable to be set aside by the court on the ground of undue influence ; but such gifts have always been treated as voidable, and not as void. In order to sustain the gift or voluntary settlement, if called in question, it must be shown that a sufficient protection has been interposed against the exercise of this influence. If the confidential relationship existed at the time of the gift or voluntary settlement, undue influence will be presumed, and if not rebutted the gift or voluntary settlement will be avoided.

The influence itself flowing from such relations is neither blamed nor discountenanced by the court; on the contrary, the due exercise of it is considered useful and advantageous to society, but the court holds as an inseparable condition that this influence should be executed for the benefit of the person subject to it, and not for the advantage of the person possessing it.(*i*) The courts do not prohibit such gifts, but they regard them with a jealous eye.(*k*)

(*g*) *Huguenin* v. *Baseley*, 14 Ves. 300—that is, as to whether his judgment was free and unfettered, or whether perverted by undue influence : *Archer* v. *Hudson*, 7 Bea. 551 ; *Parfitt* v. *Lawless*, L. R. 2 P. & M. 468.

(*h*) *Hoghton* v. *Hoghton*, 15 Bea. 298.

(*i*) *Hoghton* v. *Hoghton*, 15 Bea. 298.

(*k*) *Blackie* v. *Clark*, 15 Bea. 595. Thus the attempt to set aside a gift to a medical attendant was unsuccessful under the following circumstances :—The object of bounty was one who had been employed for many years as the surgeon and apothecary of the donor, an aged

The general principle that gifts made to, or voluntary settlements made in favour of, a medical attendant by a patient are voidable at the option of the patient unless the medical man can prove the transaction to have been conducted as if between two strangers, has been illustrated by several decisions,(*a*) which are, moreover, themselves illustrations of the principle which the courts of equity apply "to every case where influence is acquired and abused, where confidence is reposed and betrayed."(*b*) The principle has also been applied to the relation between the keeper of a house for lunatics and a person under his care, and a deed entered into between them set aside for fraud and undue influence.(*c*)

The following circumstances have been regarded as in a special degree probable marks of undue influence:— The fact that the patient had not any independent advice;(*d*) the statement of a fictitious valuable consideration;(*e*) the age of the patient (whether very young or

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and infirm man, had received his dividends for him, and had oftentimes been consulted by him respecting the management of his property. Through him the instructions to frame the deed were conveyed to the donor's solicitor, who so far deviated from these instructions as to leave a blank for the donee's name till he saw his client; and because it was proved that the donor understood the nature of the gift, and had the deed read over and explained to him by a disinterested third person, his solicitor, before he executed it, the court held that the execution of the deed was the free and voluntary act of the donor, and refused—and without hesitation, or even hearing the defendant—to set it aside: *Pratt* v. *Barker*, 1 Sim. 1; 4 Russ. 507; *Hunter* v. *Atkins*, 3 Myl. & K. 139; and *Billage* v. *Southee*, 9 Ha. 534.

(*a*) *Pratt* v. *Barker*, 1 Sim. 1; 4 Russ. 507; *Dent* v. *Bennett*, 7 Sim. 539; 4 My. & Cr. 269; *Gibson* v. *Russell*, 2 Y. & C. Ch. C. 104; *Ahearne* v. *Hogan*, Dru. 310; *Blackie* v. *Clark*, 15 Bea. 595; *Billage* v. *Southee*, 9 Ha. 534; S. C. *Billing* v. *Southee*, 21 L. J. (N S.) Ch. 472; 16 Jur. 48, 188; *Mitchell* v. *Homfray*, 8 Q. B. D. 587; 50 L. J. Q. B. 460; 45 L. T. 694; *Allen* v. *Davis*, 20 L. J. Ch. 44; 4 De G. & Sm. 133; *Wright* v. *Proud*, 13 Ves. 136.

(*b*) *Smith* v. *Kay*, 7 H. L. C., p. 779, per Lord KINGSDOWN.

(*c*) *Wright* v. *Proud*, 13 Ves. 136.

(*d*) *Dent* v. *Bennett*, 7 Sim. 539; 4 My. & Cr. 269; *Gibson* v. *Russell*, 1 Y. & C. Ch. C. 104; *Ahearne* v. *Hogan*, Dru. 310.

(*e*) *Gibson* v. *Russell*, *ubi sup.*

very old), or his infirm state of health ;(*f*) the concealment of the agreement till after the death of the patient ;(*g*) the fact that the effect of the gift was not really understood by the patient ;(*h*) or that the facts of the case known to the medical man were not fully communicated to the patient.(*i*)

There is, however, one limitation to the application of this general principle, which may be noted: a mere trifling gift to a medical attendant, or a mere trifling liability incurred in his favour, will be upheld by the court, unless there be proof not merely of the confidential relation, but of *mala fides*, or of an undue or unfair exercise of the influence arising from the confidential relation.(*k*)

So long as the relation between the donor and the donee which invalidates the gift lasts, so long lapse of time affords no sufficient ground for refusing relief to the donor. But this necessity ceases when the relationship itself comes to an end ; so that if the donor desires to have his gift declared invalid and set aside, he ought to seek relief within a reasonable time after the removal of the influence under which the gift was made. If he does not the inference is strong, and if the lapse of time is long it becomes inevitable and conclusive that the donor is content not to call the gift in question, or, in other words, that he elects not to avoid it, or, what is the same thing, that he ratifies and confirms it.(*l*) If, however, after the confidential relation has ceased to exist,(*m*) the

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(*f*) *Ib.*, *Allen* v. *Davis*, 20 L. J. Ch. 44 ; 4 De G. & Sm. 133.

(*g*) *Dent* v. *Bennett*, *ubi sup.*; *Allen* v. *Davis*, 20 L. J. Ch. 44 ; 4 De G. & Sm. 133.

(*h*) *Billage* v. *Southee*, 9 Ha. 534.

(*i*) *Popham* v. *Brooke*, 5 Russ. 8.

(*k*) *Rhodes* v. *Bate*, L. R. 1 Ch. 252.

(*l*) *Allcard* v. *Skinner*, 36 Ch. D., p. 187, per LINDLEY, L.J.

(*m*) The relation of physician and patient does not properly cease because the physician may not happen to be in actual attendance at the time : *Ahearne* v. *Hogan*, Dru. 310 ; nor because the patient has not

donor intentionally elects to abide by the gift, and does, in fact, abide by it, it cannot be impeached after his death, even if it is not proved that the donor was aware that the gift was voidable at his election;(*a*) but, of course the principle does not apply if at the time of the gift or voluntary settlement that relation has entirely ceased, and the donor is no longer subject to its influence.

The influence which is undue in the case of a gift or voluntary settlement made *inter vivos* is very different from that which is required to set aside a will. Where once it has been proved that a will has been executed with due solemnities by a person of competent understanding, and apparently a free agent, the burden of proving that it was executed under undue influence is on the party who alleges it, and undue influence cannot be presumed.(*b*) The cases before mentioned apply to a wholly different state of things. In the first place, in the case of gifts or contracts *inter vivos*, there is a transaction in which the person benefited at least takes part, whether he unduly urges his influence or not; and in calling on him to explain the part he took, and the circumstances that brought about the gift or obligation, the court is plainly requiring of him an explanation within his knowledge; but in the case of a legacy under a will, the legatee may have, and in point of fact generally has, no part in or even knowledge of the act; and to cast upon him, on the bare proof of the legacy and his relation to the testator, the burden of showing how the thing came

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medicine actually administered to him at the time, any more than the relation of attorney and client ceases because no suit may be actually in progress: *Dent* v. *Bennett*, 4 My. & Cr. 269.

(*a*) *Mitchell* v. *Homfray*, 8 Q. B. D. 587. The proper questions to be left to the jury in such a case would be—(1) Was the advance a gift? (2) Was there an undue influence? (3) If yes, when was it removed? And (4) Was there an intention of abiding by the advance if it was a gift? *Mitchell* v. *Homfray*, 8 Q. B. D. 587; 50 L. J. Q. B. 460; 45 L. T. 694; 29 W. R. 558; W. N. (1880) 119.

(*b*) *Boyse* v. *Rossborough*, 6 H. L. C. 49.

about, and under what influence or with what motives the legacy was made, or what advice the testator had, professional or otherwise, would be to cast a duty on him which in many, if not most, cases, he could not possibly discharge. For these reasons the law regarding wills is very different from what we have seen it to be regarding gifts.

The natural influence of the medical man over his patient may lawfully be exerted to obtain a will or legacy, so long as the testator thoroughly understands what he is doing and is a free agent; and no amount of persuasion or advice would avail according to the existing law to set aside a will so long as the free volition of the testator to accept or reject the advice was not invaded.(*c*)

To establish undue influence sufficient to invalidate a will it must be shown that the will of the testator was coerced into doing that which he did not desire to do. If the testator has been persuaded or induced really and truly to intend to give his property to another, it is strictly legitimate in the sense of being legal. The coercion may, of course, be of different kinds; it may be in the grossest form, such as actual confinement or violence, or a person in the last days or hours of life may have become so weak and feeble that a very little pressure may be sufficient to bring about the desired result, and it may even be that the mere talking to him, at that stage of illness, and pressing something upon him may so fatigue the brain that the sick person may be induced for quietness' sake to do anything, which would equally be coercion, though not actual violence. If the act is shown to be the result of the wish and will of the testator at the time, then, however it has been brought about—for we are not dealing with a case of fraud—although the testator may be condemned for having such

(*c*) *Parfitt* v. *Lawless*, L. R. 2 P. & M. 468.

a wish, and although any person who has endeavoured to persuade and has succeeded in persuading the testator to adopt that view may be equally condemned, still it is not in law undue influence.(*a*)

It is not sufficient in such cases to establish that a person has the power unduly to overbear the will of the testator. It is also necessary to prove that in this particular case that power was exercised, and that it was by such means that the will, such as it is, has been produced.(*a*)

The law of the land prescribes no restrictions upon testamentary dispositions, and when the power is exercised in favour of medical attendants, the degree of proof required will be greater or less according to circumstances; but if the court be satisfied that there was adequate capacity, testamentary intention untainted by fraud, and a due execution, the instrument is valid. Fraud cannot be presumed, but the circumstances may render fraud so probable, that the court will require stronger proof than in a case where all natural presumptions are in favour of the disposition and the free will of the testator.(*b*) The burden of proof is always on those who set up a testamentary instrument, and where the surrounding facts are such as to suggest undue influence, the affirmative must be stronger than in ordinary cases.(*c*) In general, the burden of proof of undue

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(*a*) *Wingrove* v. *Wingrove*, L. R. 11 P. D. 81.

(*b*) *Jones* v. *Godrich*, 5 Moo. P. C. 16.

(*c*) Thus, where, by a codicil to his will, a testator, whose capacity was impaired, appointed as residuary legatee his medical attendant—"all powerful in a sick chamber with a dying man"—by whose instrumentality, in the absence of other proof, the court presumed it to have been prepared, the court pronounced against the codicil, on the ground *deficit probatio*, and not on the ground of fraud, as the court required to be satisfied of the testator's knowledge of the contents of the codicil, by proof beyond the mere fact of execution. The greater the benefit, and the less the capacity, the more stringent is the requirement of proof of knowledge of the contents: *Durnell* v. *Corfield*, 1 Rob. 51.

So also the codicil to the will of an aged female, made in favour of

influence lies on the person who alleges it, but to this rule there is the exception, that a person who takes a benefit under a will, which he has been instrumental in preparing or obtaining, has thrown on him the onus of showing the righteousness of the transaction.(*d*)

When a will is made in favour of a medical man in whose house the testator is resident, the court will be on its guard against undue influence, for practising which there is so much opportunity;(*e*) and where a will under such circumstances is made by a solicitor who had no previous knowledge of the deceased, the court must be satisfied that he distinctly understood him, and acted as his agent, and not as the agent of the legatee, who procured his attendance;(*e*) for although there is no rule of law which says that no person may bequeath his or her property to a medical attendant, yet it is undoubtedly an unfavourable circumstance for one in such a confidential position with respect to a patient labouring under severe disease, to take a large benefit, more particularly where the will is executed with secrecy, and the whole transaction assumes the character of a clandestine proceeding. In such a case the onus will lie very heavily upon the party benefited to maintain the validity of the will. But though the court may express disapprobation of clandestine proceedings so carried on, and terminating in a large bequest to a medical practitioner from a patient while in attendance upon him, yet nevertheless if, in spite of these circumstances, the testator is shown to have known what he was doing, and to have an unimpaired mind, the court will pronounce for the validity of

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her medical attendant, the instructions not being proved to have emanated from her, and the contents not having been explained to her, was excluded from probate, to which the will was admitted, on the ground of *deficit probatio: Major* v. *Knight*, 4 N. C. 661.

(*d*) *Fulton v. Andrew*, L. R. 7 H. L. 448.

(*e*) *Jones* v. *Godrich*, 5 Moo P. C. 16.

the will.(*a*) If a physician, after a long attendance on a patient, thinks fit, when she is almost on her death-bed, to prepare and procure the execution of a will by which he becomes the principal object of her bounty, and particularly if it is to the exclusion of her near relations, and to do this without the intervention of any solicitor, or other person competent to give her advice and guard her against undue influence, the interests of the public require that his conduct should be regarded by courts of justice with the utmost jealousy; and, under such circumstances, clear evidence is required both as to the bequest in his favour being contained in the will at the time of its execution, and as to the testator's knowledge that it was so. And unless the physician is able to sustain the burden of this proof, probate of the will will be refused.(*b*)

To invalidate a will on the ground of fraud and undue influence, it must be shown that they were practised with respect to the will itself, or so contemporaneously with the will, or connected with it in such a way, as by almost necessary presumption to affect it, or that the circumstances which attended the execution of the will are inconsistent with any other hypothesis than that of undue influence.(*c*)

A will may be set aside, wholly or in part only, on the ground of undue influence or fraud.(*d*)

(*a*) *Ashwell* v. *Lomi*, L. R. 2 P. & M. 477; *Farlar* v. *Lane*, 29 L. T. 2; *Reece* v. *Pressey*, 2 Jur. (N.S.) 380.

(*b*) *Greville* v. *Tylee*, 7 Moo. P. C. 320.

(*c*) *Jones* v. *Godrich*, 5 Moo. P. C. 16.

(*d*) The Probate Division of the High Court of Justice has exclusive jurisdiction on the question whether a will or any part of it was obtained by undue influence or fraud, and such question must be raised when probate is applied for.

Assistants.(*e*)

When a medical practitioner takes an assistant into his service, it is usual for the assistant to agree that he will not, on the termination of the term of service, practise in such a way as to compete with his former master. The performance of this agreement is usually secured by the execution of a bond, conditioned for the payment of a named sum, in case of any breach of the agreement. The conditions are, of course, a matter of agreement in each case.

An unregistered assistant may sue a registered practitioner for his salary,(*f*) but an agreement by a qualified practitioner to serve a medical practitioner, not duly qualified, as assistant in his profession as a medical practitioner is illegal, and cannot be enforced, as it is an agreement to assist the unqualified practitioner in carrying on a business which he cannot lawfully carry on.(*g*) Still, possibly an unqualified practitioner may lawfully carry on medical business by means of duly qualified assistants, if he do so entirely, and without himself personally in any way acting as a physician, surgeon, or apothecary.

A duly qualified and registered medical practitioner may administer medicines without being subject to the penalties of the Apothecaries Act;(*h*) but if an unqualified medical practitioner acts, as an ordinary medical practitioner does, he will, by dispensing and mixing medicine, giving medical advice, and attending the sick

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(*e*) See also the chapters on "Restrictive Agreements," p. 70, and "Partnership," p. 77.

(*f*) *De la Rosa* v. *Prieto*, 16 C. B. (N.S.) 578; 33 L. J. C. P. 262.

(*g*) *Davies* v. *Makuna*, 29 Ch. D. 596; 55 Geo. 3, c. 194, s. 14.

(*h*) 32 Hen. 8, c. 40, s. 3; 55 Geo. 3, c. 194, s. 29; *Apothecaries Company* v. *Collins*, 4 B. & Ad. 604; *Apothecaries' Company* v. *Lotinga*, 2 M. & Rob. 495. See also p. 4, note (*h*).

as medical adviser, be acting as an apothecary, and bring himself within that statute.(*a*)

A person has a right to dismiss a servant for misconduct, but he has no right to turn away an apprentice because he misbehaves. But the case of a young man, 17 years old, who under a written agreement not under seal, is placed with a surgeon as "pupil and assistant," and with whom a premium is paid, "is a mixed case, something between that of apprenticeship and service," and the young man can only be dismissed for such conduct as occasions real danger to his master's business, and what such conduct is is a question for the jury.(*b*)

Restrictive Agreements.

A contract not to carry on a particular trade or occupation, which is unlimited in regard to locality, is generally void, as being against public policy, unless an adequate reason or consideration can be shown for such a restraint on the ordinary right, and, indeed, duty of an individual. But it is now well settled law that a medical practitioner may, as vendor of a medical practice, partner, or assistant, enter into an agreement not to practise within fixed limits of space, and the courts will enforce such agreement, provided that there is consideration for it, and that the limits fixed are reasonable. A sum may be fixed by the agreement to be paid as liquidated damages for its breach. It is on grounds of public policy alone that contracts in restraint of trade are supported or avoided. Thus when a medical practitioner takes a partner or assistant on condition that he agrees not to carry on the same profession within certain limits, such a partial restraint of trade is perfectly con-

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(*a*) *Davies* v. *Makuna*, 29 Ch. D. 596.
(*b*) *Wise* v. *Wilson*, 1 Car. & Kirw. 662.

sistent with public convenience and the general interest, for in such a case the public derives an advantage in the unrestrained choice which such a stipulation gives to the employer of able assistants, and the security it affords that the master will not withhold from the servant instruction in the secrets of his trade, and the communication of his own skill and experience, from the fear of his afterwards having a rival in the same business.(*c*) Nor is the public likely to be injured by an agreement of this kind, since every other medical practitioner is at liberty to practise within the limits.(*d*)

Some consideration for such a contract must appear(*d*) in the document by which it is created, and this whether by deed or agreement. If there is no consideration, or a consideration of no real value, the contract in restraint of trade, which in itself is never favoured in law, must either be a fraud upon the rights of the party restrained, or a mere voluntary contract (a *nudum pactum*), and therefore void. But it is enough that there actually is *a* consideration for the bargain, and that such consideration is a legal consideration and of some value. And the court will not go into the question whether the consideration was adequate or equal in value to the restraint agreed on.(*e*) It is sufficient if the consideration is valuable. Thus, the taking a man into service as assistant in the business of a surgeon for so long a time as the master should please, was held to be a valuable consideration,(*d*) also the receiving a man into the service of a chemist and druggist as an assistant in his trade or business at a certain annual salary,(*e*) as an assistant to a surgeon dentist for a fixed time,(*c*) and also an agreement to continue an existing service as assistant

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(*c*) *Mallan* v. *May*, 11 M. & W. 653.
(*d*) *Davis* v. *Mason*, 5 T. R. 118.
(*e*) *Hitchcock* v. *Coker*, 6 A. & E. 438 ; 1 N. & P. 796.

to a surgeon, so long as the master pleases.(*a*) In the case of a partnership such an agreement cannot be invalid for want of consideration.(*b*) As before stated, the restraint must be fair and reasonable. No better test can be applied to the question whether reasonable or not than by considering whether the restraint is such only as to afford a fair protection to the interests of the party in favour of whom it is made, and not so large as to interfere with the interests of the public. Whatever restraint is larger than is necessary for the protection of the party can be of no benefit to either, and can only be oppressive; and if oppressive, it is in the eye of the law unreasonable,(*c*) and the contract which would enforce it must be therefore void.(*d*) Upon the principles above stated a contract not to exercise the profession of medicine within reasonable limits of space is valid. In every case it is right to lay down such a limit as, under any circumstances, will be a sufficient protection to the interests of the contracting party, for, if the limit stipulated for does not exceed that, the court will pronounce the contract to be valid.(*e*)

The following decisions of the courts will show what limits of space are reasonable in the case of such contracts between medical practitioners:—Limits held reasonable in the case of a surgeon: "The borough of Thetford and 10 miles round";(*f*) "the town of Aylesbury, or within 20 miles";(*g*) "within the distance of three miles from Park Street, Camden Town";(*h*) "Mac-

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(*a*) *Gravely* v. *Barnard*, 18 Eq. 518.
(*b*) Per Lord CRANWORTH, in *Austen* v. *Boys*, 2 De G. & J. 626.
(*c*) *Horner* v. *Graves*, 7 Bing. 735.
(*d*) *Hitchcock* v. *Coker*, 6 A. & E. 438; 1 N & P. 796.
(*e*) *Mallan* v. *May*, 11 M. & W. 653.
(*f*) *Davis* v. *Mason*, 5 T. R. 118; *Gravely* v. *Barnard*, 18 Eq. 518; 43 L. J. Ch. 659; 30 L. T. 863; *Palmer* v. *Mallet*, 36 Ch. D. 411; 57 L. J. Ch. 226; 58 L. T. 64; 36 W. R. 460.
(*g*) *Hayward* v. *Young*, 2 Chit. 407.
(*h*) *Rawlinson* v. *Clarke*, 14 M. & W. 187; 14 L. J. Ex. 364.

clesfield, or within seven miles thereof";(*i*) "No. 28, Dorset Crescent, London, or within the distance of two and a-half miles thereof, measuring by the usual streets or ways of approach thereto";(*k*) "the town of Wellington, or within 12 miles thereof;"(*l*) "within one mile of the parish church of W.";(*m*) "within the distance of five miles from C."(*n*) In the case of a chemist and druggist: "The town of Taunton, or three miles thereof."(*o*) In the case of a dentist: "London"(*p*) and "Chester, or 16 miles by the nearest road from Chester Cross, and any place within the boundaries of Birkenhead."(*q*) On the other hand, "York and 100 miles round";(*r*) and "any of the towns and places in England or Scotland where the employers might have been practising before the expiration of the service,"(*p*) have been held to be unreasonable limitations.

The distance in such covenants is to be measured in a straight line upon a horizontal plane, "as the crow flies,"(*s*) unless it is expressly, or by necessary implication, directed to be measured in some other way, as, for instance, "by the usual streets or ways of approach."(*t*)

Where an agreement of this sort contains a stipulation which is capable of being construed divisibly, and one part is void as being unreasonable, while the other is

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(*i*) *Sainter* v. *Ferguson*, 7 C. B. 716; 18 L. J. C. P. 217; 13 Jur. 628.

(*k*) *Atkyns* v. *Kinnier*, 4 Ex. 776; 19 L. J. Ex. 132.

(*l*) *Reynolds* v. *Bridge*, 6 E. & B. 528; 25 L. J. Q. B. 12; 2 Jur. (N.S.) 1164; *Fox* v. *Scard*, 33 Bea. 327.

(*m*) *Mercer* v. *Irving*, El. Bl. & El. 563; 27 L. J. Q. B. 291; 5 Jur. (N.S.) 143.

(*n*) *Giles* v. *Hart*, 5 Jur. (N.S.) 1381; 1 L. T. (N.S.) 154; *Carnes* v. *Nesbitt*, 7 H. & N. 778; 31 L. J. Ex. 273.

(*o*) *Hitchcock* v *Coker*, 6 A. & E. 438; 1 N. & P. 796.

(*p*) *Mallan* v. *May*, 11 M. & W. 653.

(*q*) *Bullin* v. *Teece*, 1 Set. 180; W. N. (1868), 196.

(*r*) *Horner* v. *Graves*, 7 Bing. 735.

(*s*) *Mouflet* v. *Cole*, L. R. 7 Ex. 70; 8 Ex. 32.

(*t*) *Atkyns* v. *Kinnier*, 4 Ex. 776.

not, the latter will be upheld, and the contract will not be void altogether.(*a*)

A covenant not to reside at any time within the limits within which there is a valid covenant not to carry on business, is not unreasonable, and is unobjectionable in point of law, and will be enforced.(*b*)

A covenant in restraint of trade may also be limited in point of time;(*c*) but it need not be, for if the restriction be in other respects reasonable, it will not be held void merely on the ground of the restriction being indefinite as to duration;(*d*) for the goodwill of a medical practice is a subject of value and price, and such a restriction enables the goodwill of the business to become the subject of purchase and sale.(*e*) Thus, the following limits of time have been held to be reasonable:—"Fourteen years;"(*f*) "so long as the covenantee or his assigns practise at N.;"(*g*) "the covenantee's life, or within ten years of his decease;"(*h*) "at any time without the consent in writing of the obligee;"(*i*) "at any time, whether the covenantee be living or not;"(*k*) "at any time."(*l*)

It is usual for the party in whose interest the covenant is framed, to stipulate for protection against the violation of the covenant by means of a provision, entitling him to

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(*a*) *Mallan* v. *May*, 11 M. & W. 653.

(*b*) *Atkyns* v. *Kinnier*, 4 Ex. 776; *Rawlinson* v. *Clarke*, 14 M. & W. 187; 14 L. J. Ex. 364.

(*c*) *Davis* v. *Mason*, 5 T. R. 118; *Fox* v. *Scard*, 33 Bea. 327; *Gravely* v. *Barnard*, 18 Eq. 518.

(*d*) *Hitchcock* v. *Coker*, 6 A. & E. 438; 1 N. & P. 796; *Hastings* v. *Whitley*, 2 Ex. 611; *Sainter* v. *Ferguson*, 7 C. B. 716; *Giles* v. *Hart*, 5 Jur. (N.S.) 1381.

(*e*) *Atkyns* v. *Kinnier*, 4 Ex. 776.

(*f*) *Davis* v. *Mason*, 5 T. R. 118.

(*g*) *Gravely* v. *Barnard*, 18 Eq. 518.

(*h*) *Fox* v. *Scard*, 33 Bea. 327.

(*i*) *Hastings* v. *Whitley*, 2 Ex. 611.

(*k*) *Giles* v. *Hart*, 5 Jur. (N.S.) 1381.

(*l*) *Hitchcock* v. *Coker*, 6 A. & E. 438; *Sainter* v. *Ferguson*, 7 C. B. 716; *Atkyns* v. *Kinnier*, 4 Ex. 776; *Palmer* v. *Mallet*, 36 Ch. D. 411; 57 L. J. Ch. 226; 58 L. T. 64; 36 W. R. 460.

a specific sum by way of liquidated damages in case of breach.(*m*) The advantages of a provision of this kind are obvious in preventing the necessity of his adducing evidence of the extent of the injury he has sustained—evidence which, from the nature of the case, it is often very difficult to obtain; and in entitling him to recover a sum frequently far exceeding the amount of the injury; and when there is no adequate means of ascertaining the precise damage that may result to the covenantee from a breach of the covenant, it is perfectly competent to the parties to fix a given amount of compensation in order to avoid the difficulty.(*n*) Where the whole object of the covenant is to afford the covenantee protection from a rival, it is impossible to say precisely what damage might result to him from a breach of the agreement, and it is not unreasonable, therefore, that in such a case the parties should themselves fix and ascertain the sum that should be paid.(*n*)

If there be a contract consisting of one or more stipulations, the breach of which cannot be measured, then the parties must be taken to have meant that the sum agreed on was to be liquidated damages, and not a penalty. And if the parties choose to measure the breach of any one of the stipulations by a sum named, the court cannot say they are wrong, inasmuch as the damages are uncertain.(*o*)

In such an agreement, although the word "penalty," which would *primâ facie* exclude the notion of stipulated damages is actually used, the court will look at the nature of the agreement and the surrounding circumstances, and if in the opinion of the court the parties clearly intended the sum named to be considered *liqui-*

(*m*) *Mercer* v. *Irving*, E. B. & E. 563.
(*n*) *Sainter* v. *Ferguson*, 7 C. B. 716.
(*o*) *Atkyns* v. *Kinnier*, 4 Ex. 776; *Reynolds* v. *Bridge*, 6 E. & B. 528.

dated damages, the court will give effect to the contract of the parties by holding the sum named to be liquidated damages, and not a mere penalty.(*a*)

A court of equity will restrain a party who has entered into a binding contract not to carry on a business to the injury of another person from acting in breach of his engagement. The contract may be so drawn as to enable the covenantee, on its breach, either to obtain an injunction, or to sue for an agreed sum by way of liquidated damages, or so as to give the choice of either remedy. The later will be usually the proper method to adopt, and is often effected by an agreement not to practise, secured by a bond.(*b*) Indeed, care should, as a general rule, be taken not to make the contract alternative; for if it is, and the stipulated sum is paid, a court will not interfere by injunction.(*c*) The mere existence of an agreement for liquidated damages does not, however, necessarily make a contract alternative, and preclude such interference.(*d*) After damages at law have been once obtained, the court will not grant an injunction to restrain the further breach of the agreement, for it would be telling a party that though he had purchased the right to do the act, he should not have the benefit of the purchase,(*e*) and will dissolve an injunction already granted.(*f*) The fact that owing to the bankruptcy of the defendant after judgment in the action the plaintiff has not recovered the sum stipulated by way of damages does not give him any equity to an injunction.(*g*)

(*a*) *Sainter* v. *Ferguson*, 7 C. B. 716.
(*b*) *Palmer* v. *Mallet*, 36 Ch. D. 411; 57 L. J. Ch. 226; 58 L. T. 64; 36 W. R. 460; *Howard* v. *Woodward*, 34 L. J. Ch. 47.
(*c*) *Sainter* v. *Ferguson*, 1 M'N. & G. 286.
(*d*) *Palmer* v. *Mallet*, 36 Ch. D. 411.
(*e*) *Sainter* v. *Ferguson*, 1 M'N. & G. 286; *Carnes* v. *Nesbitt*, 7 H. & N. 778; 31 L. J. Ex. 273.
(*f*) *Fox* v. *Scard*, 33 Bea. 327.
(*g*) *Sainter* v. *Ferguson*, *ubi supra*.

When the words "carry on the business or profession of a medical practitioner" are used to denote what is done by a man acting as a medical practitioner, a man acts as and carried on the business of a medical practitioner none the less because he is not the principal, or engaged in the business as a partner, but is merely carrying it on and acting as assistant, at a salary, for another man, who is carrying on the business for his own benefit.(*h*)

Partnership.

A partnership between medical men ought always to be created by an agreement or deed. As in all probability the parties to such will see the necessity of taking competent legal advice thereon, it is not necessary to here set out a form. The main provisions, however, are explained in the hope that it may lead to the true understanding of the document and the relationship; and note is made of those points which ought to be considered by the parties before instructions are given to the solicitor who prepares the document.

The points that require consideration are the premium (if any); the duration of the partnership; the style of the firm; the place of business; whether or not the house or houses, &c., occupied, are to become joint property or not; whether a partner is to receive the profits of any appointment he may hold, or be appointed to, to his own exclusive use, or for the benefit of the firm; and the division of profits. It is necessary carefully to define what are to be considered profits.(*i*)

(*h*) *Palmer* v. *Mallet*, 36 Ch. D. 411; 57 L. J. Ch. 226; 58 L. T. 64; 36 W. R. 460.

(*i*) In a recent case a deed of partnership between two medical men, in which there was an arbitration clause, provided that all pecuniary presents and gratuities, and all other professional emoluments, were to be treated as profits. A lady, living in the district usually worked by one of the partners, died, having made a will by which she appointed

Further questions are the way in which losses are to be borne; the method in which the accounts are to be kept; the periods for taking balance sheets; the attendance of each to the business; the mode of determination of the partnership by time, notice, or death; and how the final account is to be taken, and division of shares arranged on the determination of the partnership; with a general arbitration clause, if such should be thought better than an appeal to the law. It is also usual to agree upon the bank with which the partnership will deal; the rights of a senior partner as to choice of patients; as to whether patients are to be kept separate; and that a partner shall not assign his share or take part in any other business, or accept any appointment without his partner's consent.

A subject on which it is always desirable to make some express agreement is the extent to which a retiring partner shall be restrained from commencing business on his own account, and in opposition to the continuing partner.(*a*) If the partnership be determined by death or voluntary withdrawal, it is often desirable that a

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him one of her executors, and gave him, among other benefits, the residue of her personal estate. Two questions thereupon arose: first, was the lady a patient; secondly, was the gift of residue within the words, "all pecuniary presents and gratuities from patients, and all other professional emoluments." His partner appointed an arbitrator to decide these two questions, and called on him to appoint his arbitrator; whereupon he, the legatee, commenced an action in the High Court to have it declared that the bequests to him did not come within the words of the clause. Mr. Justice KAY refused to stay the action, because, although the questions clearly came within the terms of the arbitration clause, still in the exercise of the discretion given to him by section 11 of the Common Law Procedure Act, 1854, he was of opinion that the questions at issue were such as would be better decided by a judge of the High Court than by any arbitrator whatever. The case does not appear to have gone further at present. *Lyon* v. *Johnson*, 40 Ch. D. 579.

(*a*) *Atkyns* v. *Kinnier*, 4 Ex. 776; *Giles* v. *Hart*, 5 Jur. (N.S.) 1381.

provision of the partnership deed should be that the continuing partner should pay for the goodwill, a sum to be fixed in manner specified in the deed. It may happen that the survivor may obtain the benefit of the goodwill without paying for it; for he is at liberty (unless restrained by agreement) to carry on business on his own account. Under these circumstances, if, on the death of a partner, the goodwill is put up for sale, it will produce nothing, if it is known that the surviving partner will exercise his rights. He will, therefore, acquire all the benefits of the goodwill, but he does not acquire them by survivorship, as something belonging to him exclusively, with which the executors of the deceased partner have no concern, for if he did he might sell the goodwill for his own benefit, and this he cannot do. When, therefore, it is said that on the death of one partner the goodwill of the firm survives to the other, what is meant is, that the survivor is entitled to all the advantages incidental to his former connection with the firm, and that he is under no obligation in order to render those advantages saleable to retire from business.(*b*) In one case the articles of partnership between two surgeons provided that in the event of the death of a partner, the survivor might purchase his share and interest in the business, but if he should decline, it should be sold to any other person. On the death of one partner, the other declined either to purchase or to admit a purchaser into the business. The court, however, ordered him to be charged with the value of the deceased partner's share and interest.(*c*)

A clause is usually inserted in a partnership deed by which each partner binds himself to pay, either by way

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(*b*) Lindley on Partnership, p. 443; *Farr* v. *Pearce*, 3 Mad. 74.
(*c*) *Featherstonhaugh* v. *Turner*, 25 Bea. 382.

of penalty, or by way of liquidated damages, a certain sum in case of the infringement by him of any agreement contained in the previous clauses.(*a*)

Under some circumstances a premium which has been paid by a partner for his share, may be returned, wholly or partially, by order of a court. Thus, where two surgeons agreed to become partners for fourteen years, and the one paid the other a premium of 1000*l*., upon a disagreement, the partnership was dissolved by the court, with the assent of both of them; and, as there were faults on both sides, the court directed a due proportion of the premium to be returned.(*b*) In another case a dissolution of a partnership between surgeons was decreed, and the return of half the premium received by one of the partners was adjudged on the ground of his misrepresentation of the amount of his profits previous to the partnership.(*c*) Again, where a medical practitioner, who at the time knew himself to be suffering from a mortal disease, concealed the fact, and induced another to enter into partnership with him, and to pay him a premium, and shortly afterwards died, the fraud so practised was held to entitle the partner paying the premium to a return of part of it, and he obtained such return in an action for a partnership account.(*d*)

If an assistant enter into the employment of a firm of medical practitioners on the terms that he will not at any time set up or carry on the business or profession of a medical practitioner in the town where they reside, or within so many miles thereof, such an agreement is for the protection, not merely of the partnership business, but also of the business carried on by them as partners; and as they have in the business a joint interest during

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(*a*) *Reynolds* v. *Bridge*, 6 E. & B. 528.
(*b*) *Astle* v. *Wright*, 23 Bea. 77.
(*c*) *Jauncey* v. *Knowles*, 29 L. J. Ch. 95.
(*d*) *Mackenna* v. *Parkes*, 36 L. J. Ch. 366; 15 W. R. 217.

the partnership, and several interests in the event of a dissolution, the agreement must be taken to be joint as well as several, so that, on a dissolution, one partner can sue alone for a breach of the agreement. For the assistant to act as assistant to one partner alone, will be a breach of the agreement for which the other partner can obtain an injunction.(*e*)

Sale of Practice.

Although the document which will record the sale of a practice will most probably—and properly—be drawn by a solicitor, it may be well to set out shortly the leading points of the law on the subject, to enable a medical man to understand the document, as well as to assist him upon the points to which he will have to direct his attention in giving instructions for the preparation of the document.

Though formerly the policy of permitting the sale of a professional practice by one medical man to another was much debated,(*f*) agreements of this description have been too often sanctioned to be now questioned. On the sale of a medical practice(*g*) the subject-matter of the sale is such that a formal agreement is absolutely essential. There must be some arrangement between the seller and the purchaser in writing which they can understand, and which judges and juries can understand if the question ever arises as to what was the meaning of the parties.

The sale of a medical practice is the selling of the introduction of the patients of the doctor who sells to

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(*e*) *Palmer* v. *Mallet*, 36 Ch. D. 411 ; 57 L. J. Ch. 226 ; 58 L. T. 64 ; 36 W. R. 460.

(*f*) *Edgar* v. *Blick*, 1 Stark, 464 ; *Bunn* v. *Guy*, 4 East, 190 ; *Candler* v. *Candler*, Jac. 231 ; *Whittaker* v. *Howe*, 3 Bea. 383.

(*g*) *May* v. *Thomson*, 20 Ch. D. 705 ; 51 L. J. Ch. 917 ; 47 L. T. 295.

the doctor who buys.(*a*) He can persuade his patients, probably, who have confidence in him to employ the gentleman he introduces as being a qualified man, and fit to undertake the cure of their maladies, but that is all he can do. The introduction is not only a detail; it is the substance of the thing. Therefore the terms of the introduction are everything; and care must be taken to provide for the commencement, the character, and the duration of the introduction. The question of the length of the introduction is most important. There must also be stipulations which ensure the performance of the services attending the introduction by the vendor. The amount of the premium and the time and the method of payment must also be fixed.

The price and the introduction are mutually important. They naturally depend on each other, and each acts and reacts on the other. In negociating matters of this sort, it becomes of the utmost importance to settle what sort of introduction is to be given, and what is to happen as regards alteration of terms for the payment of the price or premium if the purchaser does not get the introduction that is bargained for; if the selling doctor fail in health, or die,(*b*) or is incapacitated in any way from giving the stipulated introduction, an action for damages will lie against him or his executor; it is therefore desirable that a term of the agreement should provide what abatement in the purchase money should be made under such circumstances.

There is also always a stipulation that the selling doctor shall retire from practice, either altogether, or within a given distance; to which is sometimes added a stipulation that he shall not solicit the patients at all, or

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(*a*) Of course this remark applies generally, for where a purely dispensing practice is sold, the matter is quite different: it is an ordinary trade transaction.

(*b*) *Mackenna* v. *Parkes*, 36 L. J. Ch. 366; 15 W. R. 217.

for a given time, nor introduce any other practitioner to them. It is usual for the purchaser to stipulate for protection against the violation of this covenant by means of a provision entitling him to a specific sum by way of liquidated damages in case of breach.(*c*)

Where there had been a sale of a medical practice under an agreement which provided that the vendor would not practise or reside within a given radius, or in any other manner whatsoever directly or indirectly enter into competition with the purchaser in the practice or profession of a physician, surgeon, or accoucheur within such radius, and the vendor was subsequently called in by patients within the radius and visited them, although he did not solicit such patients, and they stated that they would in no event have called in the purchaser, the court held that the acts of the vendor constituted an infringement of the covenant, and granted an injunction against him, on the ground that the competition contemplated by the agreement was not confined to active competition. The judge declined to draw a distinction between active and passive competition, and held that the vendor by coming into the area of the practice was acting most injuriously towards the purchaser, and diminishing his fair chance of obtaining what he had purchased. "The vendor had said that the patients would not have called in the purchaser under any circumstances; but to that it could be answered that there might be circumstances under which it would be most important to call in the doctor on the spot".(*d*) But where the vendor had covenanted not to carry on or exercise the practice or profession of a surgeon or apothecary or either of them, either by residing or visiting any patient within

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(*c*) *Rawlinson* v. *Clarke*, 14 M. & W. 187; *Mercer* v. *Irving*, E. B. & E. 563.

(*d*) *Rogers* v. *Drury*, 57 L. J. Ch. 504; 36 W. R. 496.

a given area, and he in several instances visited sick persons within that area, but in each case at the request and for the benefit of the purchaser, it was held that in so doing he was not exercising the profession on his own account in the manner forbidden by the covenant, but that the purchaser was in fact carrying it on by his means, and therefore there was no breach of the covenant.(*a*) It may be added that had there been a breach, the purchaser's consent would not have afforded a good defence.

It is often arranged that the purchaser shall have possession of the vendor's house or place of business; in which case it becomes necessary to state when possession will be given up, on what terms the lease will be assigned, and the furniture sold, if at all.

An agreement to refer all matters of dispute arising out of the sale to arbitration will often be found useful, and should in all ordinary cases be included in the document.

The sale of a practice constitutes the purchaser an assignee, and he can therefore enforce covenants not to practise entered into by former assistants of the vendor, for the protection of the vendor and his assigns.(*b*)

In case a medical man buys a practice and agrees to pay a portion of the profits for a fixed number of years as part of the price, he is bound to go on working at the business during those years in order to make those profits. He cannot lawfully discontinue the practice, for there is an implied contract to keep it up; and, if he do so, an allegation that by "his own acts and defaults" he has disabled himself from performing his agreement,

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(*a*) *Rawlinson* v. *Clarke*, 14 M. & W. 187; 14 L. J. Ex. 364.
(*b*) *Palmer* v. *Mallet*, 36 Ch. D. 411; 57 L. J. Ch. 226; 58 L. T. 64; 36 W. R. 460.

has been held properly to set forth the cause of action.(*c*) But where A. sold to B. his medical practice, and covenanted that he would for one year from the date of the deed carry on and attend to the said practice as he had hitherto done, and would to the utmost of his power introduce B. to his patients, and B. covenanted to allow A. during the year a moiety of the clear profits of the concern, it was held that the parties were not thereby constituted partners in the trade during the first year, and therefore B. might sue A. for money received by him from their patients during that year.(*d*)

Where B. (the widow and executrix of A., a surgeon dentist) agreed with C. (a surgeon dentist) that C. should give B. 500*l.* for the goodwill of the business of A., and the advantage of being introduced to the patients of A., and evidence was produced by B. to show that the agreement as to the 500*l.* was not entered into by B. in the character of executrix, and that it was the intention of the parties that the sum should be paid to her for her own benefit as the price of her personal influence with the patients of A., and her personal exertions in introducing them to C., it was held that the whole or a part of the 500*l.* belonged to the estate of A.(*e*)

It is doubtful whether the court can enforce specific performance of a contract to sell a medical practice;(*f*) but if such a contract were proved, an action for damages would lie for the breach of it.

(*c*) *M'Intyre* v. *Belcher*, 14 C. B. (N.S.) 654; 32 L. J. C. P. 254; and see *Rhodes* v. *Forwood*, L. R. 1 Ap. Ca. p. 274, *per* Lord PENZANCE.

(*d*) *Rawlinson* v. *Clarke*, 15 M. & W. 292.

(*e*) *Smale* v. *Graves*, 19 L. J. Ch. (N.S.) 157; 14 Jur. 662.

(*f*) *May* v. *Thomson*, 20 Ch. D. 705.

Defamation.(*a*)

Words, whether spoken or written, imputing to a medical practitioner misconduct in, or want of some necessary qualification for the practice of his profession are actionable *per se*. For example, the following words have been held actionable—spoken of an apothecary:—"It is a world of blood he has to answer for in this town, through his ignorance; he did kill a woman's two children at Southampton; he did kill John Prior at Petersfield. He was the death of John Prior; he has killed his patients with physic";(*b*) and of a physician, "By his practice he has killed many of his patients";(*c*) "thou art a quack-salver,"(*d*) or "He is a quack; if he shows you a diploma, it is a forgery,"(*e*) and "He is an empiric and mountebank, and a base fellow."(*f*) Of a doctor of physic, "Thou art a drunken fool and an ass. Thou wert never a scholar, nor ever able to speak like a scholar," because they did discredit to him in his profession, for he could not be a good physician if he was not a scholar in other matters; and it was held special damage when by reason of these words others did not come to him.(*g*)

The words spoken of a surgeon, "I wonder you had him to attend you. Do you know him? He is not an apothecary; he has not passed any examination; he is a bad character; none of the medical men here will

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(*a*) The law of defamation of course applies in cases of public appointments as well as in private practice.

(*b*) *Tutty* v. *Alewin*, 11 Mod. 221.

(*c*) *Anon.* 1 And. 268.

(*d*) *Allen* v. *Eaton*, 1 Roll. Ab. 54; *Pickford* v. *Gutch*, 8 T. R. 305*n*.

(*e*) *Moises* v. *Thornton*, 8 T. R. 303.

(*f*) *Goddart* v. *Haselfoot*, 1 Roll. Ab. 54; 1 Vin. Ab. (8*a*), pl. 12.

(*g*) *Cawdry and Tetley's Case*, Godb. 441; 1 Roll. Ab. 54; Cro. Car. 270.

meet him. Several have died that he has attended, and there have been inquests held on them," without the aid of any innuendo to explain them, by reference to extrinsic circumstances, were held actionable, as their plain and obvious meaning, when taken together, imputed to the plaintiff a want of proper qualification for his profession or business of surgeon and accoucheur;(*h*) for the words begin with an expression of opinion that the plaintiff is an unfit person to attend a certain patient; they then proceed to state that the plaintiff is a bad character in such a sense as to render him, in the judgment of his professional brethren, unfit to meet them, so that he is a person who, in case of necessity requiring a consultation with others, could not obtain the benefit of this assistance for his patient; these alone are actionable, for they import a want of a necessary qualification for a surgeon in the ordinary discharge of his professional duties. The remaining words, too, are actionable, for, according to their ordinary sense, and when meant as a reason for the opinion of the speaker that the plaintiff was unfit to be employed, they obviously import that the plaintiff was so deficient in skill or care as that he had either caused his patients to die or, at least, that coroner's inquests had been held in which the inquiry had been whether he had not been the cause of the death of many persons.

Where one surgeon, the plaintiff, sent to another, the defendant, staying at the same hotel a book on a surgical subject unfit for the public eye, and the defendant afterwards published a paper charging him with having indecently left it in a public place, and the defendant was not called to explain how it was that it came to be so exposed, it was held that the jury might infer that

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(*h*) *Southee* v. *Denning*, 17 L. J. Ex. 151; 1 Ex. 196.

the defendant had himself put it there with a view to using it as a pretext for the charge.(*a*)

The imputation must, however, be a charge of professional misconduct, and not a mere imputation of unworthy habits or bad taste. Thus, it is not a libel to write of a physician that he has met homœopathists in consultation, although it is further alleged that, in the opinion of the profession, meeting homœopathists is improper and against etiquette, or even that it is disgraceful in the opinion of the profession.(*b*)

So, to say of a physician that he has committed adultery,(*c*) or that a female servant has had a bastard child by him(*d*) is not actionable without special damage, as, for instance, that the person to whom the words were spoken would not in consequence employ him as an accoucheur. It would, however, be actionable to say that the medical man had committed adultery with one of his patients.

In an old case, it was stated that it cannot be any discredit to a physician to say that he killed one with physic; it is a usual and common expression, and it may be without any default in him; for they may mistake the diseases in their own bodies, much more in others, and apply wrong medicines, which may be the cause of the patient's death, and yet no discredit to them.(*e*) But possibly to-day a different view might be taken of such a case; at any rate, the question of malice would be considered, and it might even be implied.

If one said of a surgeon "he did poison the wound of his patient," that is not actionable, for it might be for

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(*a*) *Wells* v. *Webber*, 2 F. & F. 715.
(*b*) *Clay* v. *Roberts*, 11 W. R. 649; 9 Jur. (N.S.) 580; 8 L. T. 397.
(*c*) *Ayre* v. *Craven*, 2 A. & E. 2.
(*d*) *Dixon* v. *Smith*, 5 H. & N. 450; 29 L. J. Ex. 125.
(*e*) *Poe* v. *Mondford*, Cro. Eliz. 620; 1 Roll. Abr. 71.

the cure of it; but if he said "he did poison the wound of his patient to get money," that is actionable.(*f*)

Where the words are actionable only by reason of the plaintiff exercising the profession of medicine, the plaintiff must show that he exercised, and was legally qualified to exercise, such profession at the date of publication, and that the words complained of were spoken of him in that capacity.

Where a libel, imputing to the plaintiff misconduct in his practice as a medical man, does not call in question or deny his qualification to practise, he need only prove that he was acting in the particular professional capacity imputed to him at the time of the publication of the libel.(*g*) It is as a rule sufficient to call the plaintiff to say, "I am a M.R.C.S.," or as the case may be.

Moreover, in actions of this kind, where the statement of claim alleges that the plaintiff belongs to a particular profession, no evidence is required to support this statement unless it be distinctly denied in the defence.(*h*) But where the words complained of charge a want of qualification and not mere misconduct, and the professional qualification is again denied on the pleadings, the plaintiff should always be prepared to prove it, by producing his diploma or certificate, duly sealed or signed, and stamped where a stamp is requisite. At common law there was no other way,(*i*) but now the Medical Register is *primâ facie* evidence that the persons specified therein are duly registered medical practitioners.(*k*) If, however, it is known that the plaintiff's qualification will be

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(*f*) *Suego's Case*, Hetl. 175; *Anon.* 1 And. 268.
(*g*) *Smith* v. *Taylor*, 1 B. & P. 196, 204.
(*h*) Rules of Supreme Court, 1883, O. xix. r. 13.
(*i*) *Moises* v. *Thornton*, 8 T. R. 303; *Collins* v. *Carnegie*, 1 A. & E. 695; 3 N. & M. 703.
(*k*) 21 & 22 Vict. c. 90, s. 27; *ante*, p. 10, and p. 19, note (*f*).

seriously challenged at the trial, it is safer not to rely solely on such *primâ facie* proof, but to produce all diplomas and certificates. A medical man can sue for a libel on him professionally, although his name does not appear in the Medical Register, if he can show by a certificate under the hand of the registrar, or in any other way, that he is duly qualified or entitled to be registered.(*a*)

Where special damage is claimed, such must have actually occurred, and must be the natural and direct consequence of the wrongful act, and not too remote. Thus, a plaintiff is not entitled to recover damages from the original slanderer in respect of a general loss of business that might have been caused by repetitions of the slander, but could not have arisen directly from the speaking of the words by the defendant.(*b*)

Where a communication is made *bonâ fide* upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty, either public or private, and whether legal, moral, or social, such a communication, if made to a person having a corresponding interest or duty, rebuts the inference of malice, and is privileged.(*c*) And where in an action for defamation the occasion is held privileged, it is for the plaintiff to establish that the statements complained of were made from a malicious or indirect motive, or with a knowledge that they were untrue, or without caring whether they were true or false, and not for the reason which would otherwise render them privileged; and if the defendant made the statements believing them to be true, he will not lose the protection

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(*a*) Odgers on Libel, p. 558.
(*b*) *Dixon* v. *Smith*, 5 H. & N. 450; 29 L. J. Ex. 125.
(*c*) Addison on Torts, p. 770.

arising from the privileged occasion, although he had no reasonable ground for his belief.(*d*)

Thus, words spoken by a medical officer of a school to the steward to the effect that a butcher who supplied it with meat sold bad meat, have been held to be privileged, as he might reasonably suppose that it was part of his duty to speak them.(*e*)

And where the medical officer of a workhouse, at a discussion in the board room on the supply of wine to the workhouse, said, "No matter what price is given for wine in Naas, it will be South African sherry," the occasion was held to be privileged; as from the very nature of his employment it was both the medical officer's duty and interest to see that proper wine should be provided for the use of his patients, he was, therefore, interested in the subject-matter of the discussion in the board room at which the words complained of were spoken.(*f*)

And, again, in a case where A. was clerk to the board of guardians of a union of which B. was the medical officer and C. the relieving officer, a pauper was to be removed to another district, and had previously to be examined by B. A., in pursuance of directions from the board of guardians, called twice on B. for the purpose of getting him to see this pauper, but could not get B. to do so. A. then went to C. and asked him to try and get B. to examine the pauper, telling C. at the same time that when he (A.) saw B. on the preceding evening he was not sober. Whereupon C. served B. with a formal order to examine the pauper, and B. did so. In

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(*d*) *Clark* v. *Molyneux*, 3 Q. B. D. 237; 47 L. J. Q. B. 230; 37 L. T. 694.

(*e*) *Humphreys* v. *Stilwell*, 2 F. & F. 590.

(*f*) *Murphy* v. *Kellett*, 13 Ir. C. L. R. 488.

an action by B. against A. for slander, it was held that the communication between A. and C. was privileged, and B. was non-suited, as nothing had been done by A. except in the performance of his duty, and from no improper motives whatever.(*a*)

But words spoken to a subscriber to a charity in answer to enquiries by another subscriber respecting the conduct of a medical man in his attendance upon the objects of the charity are not, merely on account of those circumstances, held to be a privileged communication.(*b*)

Whatever is fairly written of a work and can be reasonably said of it or of its author as connected with it, is not actionable unless it appear that the party, under the pretext of criticising the work takes an opportunity of attacking the character of its author. In cases of libel, a subsequent publication brought out even after issue joined may be evidence to show the motives of the party.(*c*) When a man brings forward what professes to be a new system of treatment, and by advertisement invites the public to adopt it as the best or only means of curing some particular disease, he thereby challenges public criticism; and a public writer is justified in warning the public against such advertisers, and in exposing the absurdity of their professions, provided he does so honestly, fairly, and with reasonable moderation and judgment, and while thus discussing the subject he is privileged even if, in drawing inferences of imposture and bad intention he falls into error as to the facts or the inferences, and goes beyond the limits of strict truth.(*d*)

(*a*) *Sutton* v. *Plumridge*, 16 L. T. (N.S.) 741.
(*b*) *Martin* v. *Strong*, 5 A. & E. 535; 6 L. J. (N.S.) K. B. 48; 1 N. & P. 29.
(*c*) *Macleod* v. *Wakley*, 3 C. & P. 311.
(*d*) *Hunter* v. *Sharpe*, 4 F. & F. 983.

Thus, where the plaintiff, a surgeon, had petitioned Parliament against quacks, and the defendant, a journalist, commented severely on the contents of the petition, and charged the plaintiff with ignorance of his profession, pointing out ignorance of chemistry which, he said, appeared on the face of the petition, BEST, C.J., was of opinion that if what was written was no more than a fair comment on the petition, the defendant was entitled to a verdict; for where a man obtruded himself on the public by proposing measures to affect the interests of the community at large, his proposals were legitimate objects of observation and criticism; and if professing to instruct and inform the world, he manifested an incompetence for the task he chose to impose on himself, there could be no offence in warning the public against the incapacity of such a self-constituted instructor. But if the writer, without any ostensible cause for an attack, had come forward as of his own knowledge, to impute to the plaintiff ignorance in his profession of a surgeon, that would be a libel for which, unless justified by proof of its truth, the writer would be liable to answer in damages.(*e*)

All actions for oral slander must be commenced within two years next after the cause of action arose, and all actions for libel within six years;(*f*) but if the words are actionable only by reason of the special damage, the period begins to run from the date of the damage, and not that of the slander.(*g*)

To advertise pills as prepared by a medical man (contrary to the fact) would probably be a libel on him as an attempt to impute to him that he is concerned in vending quack medicines.(*h*)

(*e*) *Dunne* v. *Anderson*, 3 Bing. 88; 10 Moore, 407; R. & M. 287.
(*f*) 21 Jac. 1, c. 16.
(*g*) *Saunders* v. *Edwards*, 1 Sid. 95.
(*h*) *Clark* v. *Freeman*, 11 Bea. 117. In this case, Lord LANG-

In a case where a medical practitioner had, by way of advertisement, published large portions of his book, occupying from time to time whole columns of *The Times* and other newspapers, COCKBURN, C.J., in his charge to the jury, observed:—"I hope the time is far distant when any member of a liberal profession in this country, publishing a treatise on any branch of science, shall descend to such a piece of claptrap as that! Not satisfied with the unprecedented success of his book, the plaintiff must needs republish it by advertisements filling whole columns of *The Times* and numerous other newspapers in town and country. It is said, then, in excuse that he comes from America, and that there it is usual; but however that may be, happily the practice has not extended itself here. If it were open to professional men here thus to advertise themselves, the dignity and honour of a noble profession would be tarnished and soiled. A member of my own profession, who should republish a treatise in the papers, followed with a card of his address, would be scouted from the profession; and what difference is there in this respect between the professions of medicine and of law? They are sister pro-

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DALE, M.R., refused to grant an injunction to prevent a chemist selling a quack medicine under a false and colourable representation that it was a medicine of the plaintiff, an eminent physician, on the ground that the court had no jurisdiction to restrain a libel: *Clark* v. *Freeman*, 11 Bea. 112. Lord CAIRNS has, however, said of this case that it always appeared to him that it might have been decided in favour of the plaintiff on the ground that he had a property in his own name: *Maxwell* v. *Hogg*, L. R. 2 Ch. 310. And now since the Judicature Act, 36 & 37 Vict. c. 66, s. 25, the court has power to restrain the publication of libellous or slanderous matter, if it is immediately calculated to injure the person or trade of any one against whom it is directed, but whether the jurisdiction should be exercised or not is a matter for the discretion of the court, and it is only exercised in the clearest cases, where any jury would say that the matter complained of was libellous: *Thorley's Cattle Food Company* v. *Masson*, 14 Ch. D. 763; *Thomas* v. *Williams*, 14 Ch. D. 864; *Coulson* v. *Coulson*, 3 Times L. R. 846; *Liverpool Household Stores Association* v. *Smith*, 37 Ch. D. 170; and see generally Odgers on "Libel," 2nd ed., chap. xi.

fessions, equally amenable to the same rules of professional honour, and therefore I must say that, whatever may be the practice in America (and I cannot believe that such practices are resorted to there by members of the medical profession, or any other liberal profession), I hope it will never be deemed consistent with professional honour in this country to resort to such practices; and I cannot but think that the writer of this article was right in denouncing the practice as 'unworthy of an honourable profession.' "(*a*)

The publication of the minutes of the General Council, containing a report of proceedings, comprising a statement that the name of a specified medical practitioner has been removed from the register on the ground that in the opinion of the Council he has been guilty of infamous conduct in a professional respect, is, if the report be accurate and published *bonâ fide* and without malice, privileged, and the medical practitioner cannot maintain an action of libel against the Council in respect of the publication.(*b*) The Medical Council would, in many cases, fail in discharging their social and moral duties to the public if they shrank from the responsibility of making known to the public the grounds on which they had removed a man's name from the register, and thereby converted him from a qualified into an unqualified practitioner.(*c*)

The administration of the poor law, both by the government department and by the local authorities, including the conduct of the medical officers, is a matter of public interest, but the publication of a report of proceedings at a meeting of poor law guardians, at which *ex parte* charges of misconduct against the medical officer of the

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(*a*) *Hunter* v. *Sharpe*, 4 F. & F. 983.
(*b*) *Allbutt* v. *General Council*, 23 Q. B. D. 400.
(*c*) *Ib.*, per LOPES, L.J.

union were made, is not privileged by the occasion; if it had been a discussion on the medical officer's conduct, the facts not being in controversy, the matter would have been a subject of such general interest as to give a right to comment on it, and fair and *bonâ fide* comments would be justified.(*a*)

Where a medical man, who had been slandered by the defendant to one of his patients, claimed as special damage the loss of that patient, and also a general falling off of his business, and recovered damages under both heads, it was held that he was not entitled to the latter damages, because the general loss of patients could only be connected with the slander on the supposition that it had been repeated without the authority of the defendant, and for that he was not responsible. But it was also held that he was not limited to the loss of the single patient, and "the jury might consider what loss he had sustained in consequence of the speaking of the words." He was, therefore, entitled to something for being defamed in addition to the special damage actually proved.(*b*)

If the plaintiff prove that the register contains the name of a person bearing the same Christian name and surname as himself, and that he is actually in practice, this will be considered sufficient *primâ facie* evidence to show the identity of the plaintiff with the person named in the register, and the onus of proving the contrary will be thereby thrown upon the defendant.(*c*)

(*a*) *Purcell* v. *Sowler*, 2 C. P. D., 215; 46 L. J. C. P. 308; 25 W. R. 362; 36 L. T. 416; but see Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64), s. 2.

(*b*) *Dixon* v. *Smith*,, 5 H. & N. 450; 29 L. J. Ex. 125.

(*c*) *Simpson* v. *Dismore*, 9 M. & W. 47; 11 L. J. Ex. 137.

PART III.

PUBLIC APPOINTMENTS.

Medical Officer of Health.

Every urban and rural sanitary authority *must* now appoint a fit and proper person as their medical officer of health,(*d*) who must be a legally qualified (*i.e.*, duly registered) medical practitioner.(*e*) A county council *may* also appoint one or more of such officers, who shall not hold any other appointment, or engage in private practice, without the express written consent of the council.(*f*) The qualifications necessary for such post are those which are now necessary for registration—medicine, surgery, and midwifery—unless the Local Government Board shall otherwise order; but after the 1st January, 1892, where the population is above 50,000, a further qualification will be necessary: the applicant must be registered as the holder of a diploma in sanitary science, public health, or State medicine, or must have been a medical officer for a district having a population of not less than 20,000 during three consecutive years preceding 1892.(*g*) There should be a contract made between the authority and the medical officer, to enable him to enforce payment of his salary, although as regards

(*d*) 38 & 39 Vict. c. 55, ss. 189, 190.

(*e*) *Ib.* s. 191, and 21 & 22 Vict. c. 90.

(*f*) 51 & 52 Vict. c. 41, s. 17. These officers may be required to act for any district councils which may be hereafter created.

(*g*) *Ib.* s. 18. As to diploma in public health, see p. 7. A person who has been medical officer or inspector of the Local Government Board for three years is also eligible.

third parties the appointment is complete upon election, and a minute of the authority is sufficient evidence of the fact.(*a*) The authority is empowered to remunerate the medical officer by such reasonable salary and allowances as they shall think proper. They may pay the whole of such sum, or one-half may be paid by the county council, in which case the medical officer is removable only after consultation with the Local Government Board.(*b*) With the consent of the Local Government Board a person may hold the office of medical officer to more than one authority, and may be medical officer of a union.(*c*) In case of illness or incapacity of the medical officer, the authority may, with the approval of the Local Government Board, appoint and pay a deputy. A medical officer may not be in any way concerned or interested in any bargain or contract (other than his salary and allowances) made with the authority; and if so concerned, or if under colour of his office or employment, he exacts or accepts any fee or reward whatsoever (other than his salary and allowances) he becomes incapacitated from holding office, and liable to a penalty of 50*l*., and the costs of the action.(*d*) This, however, does not include the sale, purchase, leasing or hiring of any lands, rooms, or offices, or where he is only interested as a shareholder in any joint stock company, or if the contract was made before his appointment, but in any of these cases the consent must be obtained of two-thirds of the members present at a meeting of the authority convened by seven days' notice in a local paper, and by notice in writing to each

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(*a*) See Lumley's "Public Health," p. 251, note (*b*).

(*b*) 38 & 39 Vict. c. 55, s. 189, as amended by 51 & 52 Vict. c. 41, s. 24 (2) (*c*). There appears to be some doubt as to how the payment of salary is to be enforced (*i.e.*, by *mandamus* or action); but see Lumley's "Public Health," p. 253, note (*f*).

(*c*) 38 & 39 Vict. c. 55, s. 191.

(*d*) *Ib.* s. 193.

member;(*e*) and in no case can proceedings be commenced without the written consent of the Attorney-General.(*f*) The authority has the right to demand all books, papers, writings, property, and things in the possession of the medical officer, which belong to the authority or which relate to the execution of his duty, upon giving five days' written notice to that effect; and failure to comply with such notice renders a person liable to imprisonment (to the extent of six months) until the things required are performed.(*g*)

The Public Health Act, 1875, which is the principal Act under which sanitary authorities act, makes but very scanty mention of the duties of medical officers, although it declares that he *may* exercise any of the powers of an inspector of nuisances;(*h*) the Local Government Board, however, has power to issue regulations as to his duties.(*i*) Upon the appointment of a medical officer these regulations(*k*) will be supplied to him, and as they are most ample, and contain the necessary references to the Acts, it will not be necessary to do more than enumerate the various duties in these pages, and explain those points about which any difficulty is likely to arise.

The medical officer will have to supply periodical reports not only to the authority by which he is appointed, but also to the Local Government Board, and where the half of his salary is paid by the county council, they may decline to make such payment until the necessary reports have been made.(*l*)

Probably one of the most important branches of public health, which will from time to time require the attention

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(*e*) 48 & 49 Vict. c. 53, s. 2.
(*f*) 47 & 48 Vict. c. 74, s. 2.
(*g*) 38 & 39 Vict. c. 55, s. 196.
(*h*) *Ib.* s. 191.
(*i*) *Ib.* Sched. V., Part 3, re-enacting 35 & 36 Vict. c. 79, s. 48.
(*k*) In particular, the Regulations of March, 1880.
(*l*) 51 & 52 Vict. c. 41, ss. 19, 24.

of the medical officer, is the subject of nuisances. It is the duty of the authority to cause to be made an inspection of their district, with a view to ascertain what nuisances exist.(*a*) This inspection may be made either by the medical officer or by the inspector of nuisances, and either of these persons, in making such inspection, has the right of entry into any premises for the purpose of examining as to the existence of any nuisance thereon, between the hours of 9 A.M. and 6 P.M.; or, if the nuisance arises in the course of any business, then during such hours as such business is carried on. If entrance is refused, a complaint upon oath must be made to any magistrate, who will then order that entrance shall be permitted.(*b*)

A public or common nuisance has been defined as an offence against the public, being either the doing of a thing to the annoyance of all the subjects, or the neglecting to do a thing which the common good requires.(*c*) The Public Health Act recognizes several matters as nuisances, on the ground that they are nuisances within the foregoing definition, or that they are injurious to health. It must be noted that these terms are disjunctive, and that it is equally a nuisance to cause personal discomfort as to cause injury to health(*d*)

The following are nuisances mentioned in the Act:(*e*)—Any premises in such state as to be a nuisance *or* injurious to health;(*f*) any pool, ditch, gutter, water-

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(*a*) 38 & 39 Vict. c. 55, s. 92.

(*b*) Such order continues in force until the nuisance has been abated, *ib.*, s. 102; after such order, any person still refusing entrance, is liable to a penalty of 5*l.*, *ib.*, s. 103.

(*c*) 1 Hawk. P. C., c. 32, s. 4.

(*d*) *Bishop Auckland Local Board* v. *Bishop Auckland Iron Company*, 10 Q. B. D. 138.

(*e*) Section 91.

(*f*) The word premises here includes any tent, van, shed, or similar structure (48 & 49 Vict. c. 72, s. 9), and any ship or vessel lying in any

course, privy, urinal, cesspool, drain, or ashpit, so foul or in such a state as to be a nuisance or injurious to health;(*g*) any animal so kept as to be a nuisance or injurious to health;(*h*) any accumulation or deposit which is a nuisance or injurious to health;(*i*) any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, and this whether they are members of the same family or not;(*k*) any factory or work-place(*l*) not kept in a cleanly state, or not ventilated in such manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious to health, or so overcrowded, while work is carried on, as to be dangerous or injurious to the health of those employed therein; any fireplace or furnace which does not, as far as practicable, consume the smoke arising from the combustible used therein, and which is used for working engines by steam in any mill, factory, dyehouse, brewery, bakehouse, or gashouse, or in any manufacturing or trade process whatsoever; and any chimney (not being the chimney of a

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river, harbour, or water within the jurisdiction of any sanitary authority (except ships commanded under Her Majesty's commission, or the property of a foreign government, s. 110). As to canal boats, see p. 117.

(*g*) See Lumley's "Public Health," p. 107 (*d*).

(*h*) *Ib.* p. 108 (*e*).

(*i*) *Ib.* p. 108 (*f*). In the *Bishop Auckland case* (*supra*) an accumulation of cinders which threw off fumes or effluvia was held to be a nuisance. A penalty will not, however, be inflicted where it is proved that an accumulation or deposit is necessary for the carrying on of a business or process of manufacture, and that it has not been kept longer than is necessary for such purpose, and also that the best available means have been taken for preventing injury thereby to the public health (s. 91).

(*k*) Note (*f*), *supra*, applies to the definition of house.

(*l*) This clause only applies to such places as are "not already under the operation of any general Act for the regulation of factories or bakehouses," *i.e.*, such as do not come within sections 3 and 93 of the Factories and Workshops Act of 1878. As to these, see chapter on "Certifying Surgeon for Factories," p. 156.

private dwelling house) sending forth black smoke in such quantities as to be a nuisance.(*a*)

Where any candle-house, melting-house, melting place, or soap-house, slaughter-house, or any building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building, or place used for any trade, business, process, or manufacture causing effluvia is certified to any *urban* authority by their medical officer of health (or by two legally qualified practitioners, or by ten inhabitants) to be a nuisance *or* injurious to the health of any inhabitants of the district, the authority shall direct proceedings to be taken before the justices.(*b*)

Another important part of the duties of a medical officer of health is in relation to infectious diseases. The Act provides(*c*) that "where any local authority are of opinion on the certificate of their medical officer of health, or of any other legally qualified medical practitioner(*d*) that the cleansing and disinfecting of any house, or a part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious

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(*a*) It should be noted that smoke need not be injurious to health to be a nuisance (*Gaskell* v. *Bayley*, 30 L. T. (N.S.) 516); the material question is whether the annoyance produced is such as materially to interfere with the ordinary comfort of human existence (*Crump* v. *Lambert*, L. R. 3 Eq. 409; affirmed on appeal, 17 L. T. (N.S.) 133). If the court is satisfied that the furnace is of the best construction, having regard to the nature of the trade, and that it was properly attended to, no penalty will be inflicted (s. 91).

NOTE.—In connection with the question of nuisances may be mentioned certain trades which may not be carried on without the consent of the local authority. These trades—which are designated in the Act as "offensive"—are those of Bloodboiler, Boneboiler, Fellmonger, Soapboiler, Tallowmelter, Tripeboiler, and any other noxious or offensive trade, business, or manufacture (38 & 39 Vict. c. 55, s. 112). Bye-laws may also be made for the regulation of such trades, where permitted (s. 113).

(*b*) *Ib.* s. 114, extended to where the nuisance is without the district by s. 115.

(*c*) 38 & 39 Vict. c. 55, s. 120.

(*d*) *i.e.*, registered under 21 & 22 Vict. c. 90, s. 34.

disease," a notice must be given requiring such to be done.(*e*). Where any bedding has been used in any *dangerous* infectious disease it may be destroyed by order of the authority.(*f*) A local authority now has power to provide a place and apparatus necessary for the process of disinfection,(*g*) as well as a carriage suitable for the conveyance of any person having any infectious disorder.(*h*). Where any suitable hospital or place(*i*) for the reception of the sick is provided within (or within a convenient distance of) the district of the authority, any person who is suffering from any *dangerous* infectious disorder, and who is without proper lodgings or accommodation, or who is lodged in a room which is occupied by more than one family, or who is on board any ship or vessel,(*k*) may, on the certificate of any legally qualified medical practitioner (*i.e.*, registered), and with the consent of the superintending body of such hospital or place, be removed there by order of the justices, at the cost of the local authority. If the person is in a common lodging-house he may be removed under like circumstances on the order of the local authority.(*l*) The Local Government Board may make regulations as to the treat-

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(*e*) This provision is also extended to canal boats by 40 & 41 Vict. c. 60, s. 4 ; and to ships by 48 & 49 Vict. c. 35.

(*f*) 38 & 39 Vict. c. 55, and see preceding note.

(*g*) *Ib.* s. 122.

(*h*) *Ib.* s. 123.

(*i*) Which includes the sick ward of a workhouse or an infirmary. The justices will decide if the place is suitable.

A local authority may now provide hospitals or temporary places and medicine (ss. 131, 133). They may also provide mortuaries and make bye-laws for their use (s. 141), and any justice may order the removal of a body to a mortuary on the certificate of a legally qualified medical man, if the deceased died of an infectious disease, and is retained in a room in which persons live or sleep, or in such a state as to endanger the health of persons in the same house (s. 142).

(*k*) See 48 & 49 Vict. c. 35. As to quarantine, see 6 Geo. 4, c. 78 ; 29 & 30 Vict. c. 90, s. 52 (as re-enacted by Sched. V., Part 3, of 38 & 39 Vict. c. 55).

(*l*) 38 & 39 Vict. c. 55, s. 124. The Local authority may make regulations as to removal from ships (s. 125).

ment of persons, and for the prevention of the spread of cholera, epidemic, endemic, or infectious diseases, which will be supplied to the medical officer as made. These regulations must be carried out under a penalty of 50*l.*(*a*) Penalties are also provided for exposing infected persons or things, or for using public conveyances for the purpose of carrying infected persons;(*b*) for failing to disinfect public conveyances which have been so used;(*c*) for letting infected houses or any part thereof;(*d*) and for making false declarations as to any of the above matters.(*e*) Under the regulations of the Local Government Board the officers of the local authority will have a right of entry, without the necessity of obtaining a warrant, and any person obstructing will be liable to a penalty of 5*l.*(*f*)

The Infectious Disease (Notification) Act, 1889,(*g*) where it is in force,(*h*) requires that where any inmate of any building(*i*) used for human habitation (unless

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(*a*) 38 & 39 Vict. c. 55, s. 130.
(*b*) *Ib.* s. 126. (*c*) *Ib.* s. 127.
(*d*) *Ib.* s. 128.
(*e*) *Ib.* s. 129.
(*f*) *Ib.* ss. 137 and 140. As to metropolis, see 46 & 47 Vict. c. 35.

NOTE.—In the case of infectious diseases of animals, the officers of the local authority have the same right of entry as under s. 102 (*i.e.*, as if examining for a nuisance), except into a cowshed where there are animals infected with disease, when such cowshed is in a place declared to be infected, in which case the authorisation of the authority in that behalf is necessary—*i.e.*, the county justices or corporation, as the case may be: 49 & 50 Vict. c. 32, s. 9 (4). The Dairies, Cowsheds, and Milkshops Order of 1885 (issued under 41 & 42 Vict. c. 74, s. 34) will now be administered by the county council: 51 & 52 Vict. c. 41, s. 3 (xiii.).

(*g*) 52 & 53 Vict. c. 72. There are many places which, previous to the passing of this Act, had similar provisions under local Acts. The authority can continue the local Act, or adopt this Act, as they judge best: s. 14.

(*h*) The Act came into force in the London districts (that is, the places within Schedules A. and B. of the Metropolis Management Act, 1855, and Woolwich) on the 30th October, 1889. In other places it comes into force upon being adopted by the local sanitary authority, and being advertised in the local papers and otherwise: ss. 2 and 5.

(*i*) "Building" includes ship, vessel, boat, van, shed, or similar structure: s. 13.

such is a hospital in which persons suffering from an infectious disease are received) is suffering from an infectious disease to which the Act applies, the following provisions shall be complied with:(*k*)—(1) the head of the family to which the patient belongs, and, in his default, the nearest relatives of the patient present in the building or being in attendance on the patient, and, in default of such relatives, every person in charge of or in attendance on the patient, and, in default of such, the occupier(*l*) of the building shall, as soon as he becomes aware that the patient is suffering from an infectious disease to which the Act applies, send notice thereof to the medical officer of health of the district; (2) every medical practitioner attending or called in to visit the patient shall forthwith, on becoming aware that the patient is suffering from an infectious disease to which the Act applies, send to the medical officer of health(*m*) for the district a certificate(*n*) stating the name of the patient, the situation of the building, and the infectious disease from which in his opinion the patient is suffering. Every person failing to perform the duty imposed by this section is liable, upon summary conviction, to a penalty of forty shillings.(*o*) The medical practitioner is to be paid, by the sanitary authority, a fee of two shillings and sixpence if the case occurs in his private practice, and

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(*k*) Section 3 (1).

(*l*) "Occupier" includes a person having the charge, management, or control of a building, or part of such in which a patient is, and in case of a house the whole of which is let out in separate tenements, or in the case of a lodging-house the whole of which is let to lodgers, the person receiving the rent payable by the tenants or lodgers, either on his own account or as the agent of another person; and in the case of a ship, vessel, or boat, the master or other person in charge thereof: s. 16.

(*m*) The certificate, as well as notices, may be sent to the medical officer, or delivered at his office or residence, or addressed to him at such places and posted: s. 8.

(*n*) The Local Government Board will prescribe the forms to be used, and they are to be supplied gratuitously by the sanitary authority to all medical practitioners residing or practising in the district: s. 4.

(*o*) Section 3.

of one shilling if in his practice as medical officer of any public body or institution(*a*) Where a medical officer of health attends any patient in his private capacity he is entitled to the same fee as any other medical man.(*b*) The diseases to which the Act applies are: Small pox, cholera, diptheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names:—typhus, enteric, relapsing, continued, or puerperal.(*c*) These diseases are to be notified in all places where the Act is in operation, and other diseases may also be added by the local authority,(*d*) either permanently or for a fixed period, with the approval of the Local Government Board. If any further diseases are added not only must advertisement thereof be made, but a list must be sent to every medical man residing or practising in the district. The Act does not apply to any building, ship, vessel, boat, tent, van, shed, or similar structure belonging to Her Majesty the Queen, or to any inmate thereof.(*e*) It does, however, apply to port sanitary authorities,(*f*) but not to ships belonging to foreign governments.(*g*)

A local authority now has power, under certain conditions, to provide markets and slaughter-houses, and to make bye-laws for their regulation.(*h*) They may also license and register slaughter-houses, in which case such must have the words "licensed slaughter-house" or "registered slaughter-house" upon them. The medical officer may have certain duties in connection with these bye-laws, but a more important duty will be in relation

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(*a*) 52 & 53 Vict. c. 72. A payment made to a medical man under this Act does not disqualify him for serving as a member of any council, or municipal or parochial body, or office: s. 11.

(*b*) Section 11.
(*c*) Section 6.
(*d*) Sections 6 and 7.
(*e*) Section 15.
(*f*) Section 2.
(*g*) Section 13 (3).
(*h*) 38 & 39 Vict. c. 55, ss. 166, 167, and 169.

to the inspection of unsound meat. The Act provides(*i*) that any medical officer (or inspector of nuisances) may at all reasonable times(*k*) inspect and examine any animal,(*l*) carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk exposed for sale or deposited in any place(*m*) for the purpose of sale or of preparation for sale, and intended for the food of man. The proof that the article was not so deposited or exposed for sale, or intended for the food of man, rests with the defendant. If any of the above-mentioned articles(*n*) appear to the medical officer (or inspector) to be diseased, unsound, unwholesome, or unfit for the food of man, he may seize and carry away the same (himself or by an assistant), in order to have it dealt with by a justice, who may condemn it and order its destruction,(*o*) and that without any summons or notice to the person to whom it belongs.(*p*) The owner is then liable to a penalty of 20*l.* for every carcase or piece seized, or to imprisonment for not more than three months ;(*q*) but it has been laid down that if the owner is ignorant of the unfitness of the article no further proceedings than the destruction ought to be taken.(*r*) Any person who in any manner prevents any medical officer (or inspector) from entering any premises and inspecting any animal, &c.,

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(*i*) 38 & 39 Vict. c. 55, s. 116.

(*k*) This is a matter which depends upon circumstances ; Sunday is not necessarily an unreasonable time : *Small* v. *Bickley*, 32 L. T. (N.S.) 726.

(*l*) Probably this includes live animals : *Moody* v. *Leach*, 44 J. P. 459. Horseflesh intended for human food is also included by 52 & 53 Vict. c. 11, which regulates the sale of such.

(*m*) Or it may be *in transitû: Daly* v. *Webb*, 4 Ir. L. R. C. L. 309 ; *Young* v. *Grattridge*, 38 L. J. M. C. 67 ; L. R. 4 Q. B. 166.

(*n*) It has been held by justices that cheese, butter, and eggs do not come within the section : Stone's "Justices' Manual," p. 692.

(*o*) 38 & 39 Vict. c. 55, s. 117.

(*p*) *White* v. *Redfern*, 5 Q. B. D. 15 ; 28 W. R. 168 ; 41 L. T. 524.

(*q*) *In re Hartley*, 31 L. J. M. C. 232 ; 26 J. P. 438 ; but see *Waye* v. *Thompson*, 15 Q. B. D. 342.

(*r*) *R.* v. *Blount*, 43 J. P. 383.

or who obstructs or impedes him when executing his duties under this Act, is liable to a penalty of 5*l.*(*a*) On complaint made on oath by a medical officer (or inspector) any justice may grant a warrant empowering such officer to enter any building, or part of a building, in which such officer has reason for believing that there is kept or concealed any animal, &c. (as in section 116), and to search for, seize, and carry away, to be dealt with by a justice.(*b*)

The Sale of Food and Drugs Act, 1875,(*c*) also gives certain powers to the medical officer of health, for it provides that he—*inter alios*—may, under the direction of a local authority, and at their cost, procure any sample of food or drugs,(*d*) and that if he suspect the same to have been sold to him contrary to the provisions of this Act, he shall submit it to be analysed by the district analyst.(*e*) The person purchasing(*f*) any article with the intention of submitting it to analysis must, after the purchase has been completed, forthwith notify to the seller, or his agent, his intention to have the same analysed by the public analyst, and must offer to divide the article

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(*a*) 38 & 39 Vict. c. 55, section 118. There must be some active step of obstruction: *Small* v. *Bickley*, *supra*.

(*b*) Section 119. The learned editor of Lumley's "Public Health" (p. 136) expresses a doubt as to what this means, for "how can a thing be exposed for sale when it is concealed."

NOTE.—If there was not a reasonable ground for assuming that the article was intended for human food, it would be unwise to seize it, as it is probable that such seizure would be bad, and that the owner might obtain compensation under section 308: see *White* v. *Redfern*, 49 L. J. M. C. 22.

Private persons have not the power to institute proceedings under this section, and must therefore complain to the medical officer, although at common law it is a nuisance to expose for sale things which are unfit for human food: *Shillito* v. *Thompson*, 1 Q. B. D. 12; 45 L. J. M. C. 18; *R.* v. *Stevenson*, 3 F. & F. 106.

(*c*) 38 & 39 Vict. c. 63. "Food" includes any article used as food or drink by man, other than drugs or water; and "drug" includes any medicine for internal or external use (section 2).

(*d*) Any person refusing to sell to the officer is liable to a penalty of 10*l.* (s. 17).

(*e*) *Ib.* s. 13.

(*f*) Or his agent: *Horder* v. *Scott*, 5 Q. B. D. 552.

into three parts, to be then and there separated, and each part to be marked, sealed, and fastened up in such manner as its nature will permit; if the seller requires this to be done, his request must be complied with, and one of the parts must be delivered to the seller, or his agent. Of the two remaining parts, one must be retained for future comparisons, and the other is for submission to the analyst.(*g*) It is not sufficient to say the article is for analysis;(*h*) the formalities of the section must be complied with, except in the case of milk. A medical officer has the right to demand a sample of any milk being delivered to a purchaser or consignee, if he suspects the same to be contrary to the provisions of the Act.(*i*) The Act creates the following offences:—(1) the mixing of any article of food with any matter injurious to health, or the mixing of any drug with any injurious ingredient so as to affect its quality or potency, with intent to sell the same, as well as the actual selling;(*k*) it is equally an offence to abstract any part of the article so as to injuriously affect it;(*l*) (2) the selling to the prejudice of the purchaser of any article of food or drug which is not of the nature, substance, and quality of the article demanded;(*m*) and (3) the selling of any compound article of food, or any compounded drug which is not composed of ingredients in accordance with the demand of the pur-

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(*g*) *Ib.* s. 14.

(*h*) *Barnes* v. *Chipp*, 3 Ex. D. 176.

(*i*) 42 & 43 Vict. c. 30, s. 3. Section 4 provides a penalty of 10*l.* for refusing such a sample: *Rouch* v. *Hall*, 6 Q. B. D. 17.

(*k*) 38 & 39 Vict. c. 63, ss. 3, 4. (The intent may be gathered from the fact of exposing for sale, and this whether in a shop or in the open street: 42 & 43 Vict. c. 30, s. 5.)

(*l*) *Ib.* s. 9.

(*m*) *Ib.* s. 6. It is no defence to say that the article was only purchased for the purpose of analysis, and that the purchaser could not, therefore, be prejudiced: 42 & 43 Vict. c. 30, s. 2. A reduction is allowed in the case of brandy, whiskey, and rum of 25 degrees under proof, and in the case of gin 35 degrees, if made by water only: *ib.* s. 6.

chaser.(*a*) The Act, however, provides the following exceptions:—It is no offence where the mixture is not injurious to health, and where it is necessary for the production or preparation of an article of commerce in a state fit for carriage or consumption, and not made fraudulently to increase the bulk, weight, or measure, or to conceal the inferiority of quality;(*b*) it is also no offence if the admixture of extraneous matter was unavoidable in the process of collection or preparation.(*c*) It is provided, however, that where an article is sold, which comes within the provision of section 7, as being an admixture which is not injurious to health, and not made fraudulently to increase the bulk, &c., the seller must, at the time of delivering the article, supply to the person receiving it a notice by label, distinctly and legibly written or printed, to the effect that the same is a mixture.(*d*) The seller will be exonerated if he proves that he bought the article in the same state as he sold it, and with a written warranty.(*e*) Proceedings must be commenced by the person causing the analysis to be made,(*f*) and within a reasonable time.(*g*)

(*a*) 38 & 39 Vict. c. 63, s. 7.

(*b*) *Ib.* s. 6 (1). In the case of a proprietary medicine, or the subject of a patent, the article must comply with the specification: s. 6 (2).

(*c*) *Ib.* s. 6 (4), as, for example, water in buttermilk: *Warwick v. Johnstone*, 8 Sc. Sess. Cas. Series IV. 55.

(*d*) *Ib.* s. 8. The notice may be given verbally, *Gage* v. *Elsey*, 10 Q. B. D. 518; *Sandys* v. *Small*, 3 Q. B. D. 449; although, of course, this does not necessarily give the same amount of protection to the seller. The notice is not required to state the proportions of the ingredients: *Pope* v. *Tearle*, 43 L. J. M. C. 129. The notice will not exonerate the seller if there is any fraud in the matter: *Liddiard* v. *Reece*, 44 J. P. 233.

(*e*) *Ib.* s. 25.

(*f*) *Ib.* s. 20.

(*g*) 42 & 43 Vict. c. 30, s. 10.

Closely allied to this subject is the Margarine Act, 1887.(*h*) It provides that a medical officer of health—*inter alios*—may procure samples for analysis of any butter, or substance purporting to be butter, if he has reason to believe that the provisions of the Act are infringed; he may examine any package, and may take samples therefrom, without the necessity of going through the form of purchase, but must comply with the provisions of section 14 of the Sale of Food and Drugs Act (as to dividing the sample, &c.)(*i*) The provisions of the Act are that all packages of margarine must be branded or durably marked with the word "Margarine" on the top, bottom, and sides, in printed capital letters, not less than three-quarters of an inch square, and that when exposed for sale by retail there must be attached to each parcel, in such manner as to be clearly visible to the purchaser, a label marked in printed capital letters, not less than one and a-half inches square, with the word "Margarine"; and every person selling by retail, save in packages duly branded, or durably marked as aforesaid, shall in every case deliver the same to the purchaser in or with a paper wrapper, on which shall be printed in capital letters, not less than a quarter of an inch square, the word "Margarine."(*k*) Every margarine factory is also required to be registered with the local authority in accordance with the regulations of the Local Government Board.(*l*) Proceedings are the

(*h*) 50 & 51 Vict. c. 29. Margarine is defined as "all substances, whether compounds or otherwise, prepared in imitation of butter, and whether mixed with butter or not"; and butter means "the substance usually known as butter, made exclusively from milk or cream, or both, with or without salt or other preservative, and with or without the addition of colouring matter": s. 3.

(*i*) *Ib.* s. 10.

(*k*) *Ib.* s. 6. "Exposed for sale" means "exposed to the view of intending purchasers." Margarine in bulk behind a screen is not so exposed: *Crane* v. *Lawrence*, 89 L. T. 137; 25 L. J. (N.C.) 88.

(*l*) *Ib.* s. 9.

same as under the Adulteration of Food and Drugs Act.(*a*)

Common Lodging Houses are under the care of the local authority,(*b*) and it is part of their duty to keep a register of all such.(*c*) All such houses must be registered, and can be kept only by registered proprietors.(*d*) They must be of an annual value of at least 6*l*., and the local authority may refuse to register them until they have been inspected and approved of by their officer.(*e*) The words "Registered Common Lodging House" must be affixed in some conspicuous place outside.(*f*) These regulations apply as well to a part of a house as to a complete house, if such part only is used for the purpose.(*g*) It is part of the duty of the local authority to make bye-laws for the regulation of such places,(*h*) which must provide (1) for the number of lodgers that may be taken in, and for the separation of the sexes; (2) for cleanliness and ventilation; (3) as to the notification of infectious diseases and the necessary precautions; and (4) for the general well-ordering of such houses. The local authority can also require such houses to be supplied with water;(*i*) and must require the keeper to limewash the walls and ceilings in the first week of April and

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(*a*) 50 & 51 Vict. c. 29, s. 12. The penalties are for a first offence not more than 20*l*.; for a second, 50*l*.; and for a third or subsequent offence, 100*l*.: s. 4. The court may direct a part of the penalty to go to the person proceeding, to reimburse him for the cost of the analysis and any other reasonable expenses: s. 11. If the medical officer prosecutes, such sum will be payable by him to the local authority to meet these expenses: 38 & 39 Vict. c. 63, s. 26.

(*b*) Except in the metropolis, where they are under the care of the police authorities.

(*c*) 38 & 39 Vict. c. 55, s. 76.

(*d*) *Ib.* s. 77.

(*e*) *Ib.* s. 78. The Local Government Board has issued a Memorandum on the subject.

(*f*) *Ib.* s. 79. (*g*) *Ib.* s. 89.

(*h*) *Ib.* s. 80. Model bye-laws are issued by the Local Government Board.

(*i*) *Ib.* s. 81.

October in every year.(*k*) The keeper is also required to give immediate notice of fever or any infectious disease to the medical officer of health.(*l*) The keeper, or any person acting for him, shall at *all* times, when required by any officer, give him free access to such house and any part thereof.(*m*)

A cellar dwelling—which is defined as a vault or underground room(*n*)—which has been built or rebuilt since 1848,(*o*) cannot be occupied unless it complies with the following requirements:(*n*)—(1) It must be at least seven feet high from floor to ceiling, and not more than four feet below the surface of the nearest street or adjoining ground; (2) There must be an area along the frontage of at least two feet six inches wide, and to a depth of at least six inches below the level of the floor of cellar(*p*); (3) It must be effectually drained by a drain which is at least one foot below the cellar floor in every part; (4) There must be sufficient privy or closet and ashpit accommodation; and (5) It must have a fireplace, chimney, or flue, and an external window of at least nine superficial feet area, clear of the sash, and made to open (as approved by the surveyor), except in the case of an

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(*k*) Under a penalty of 40*s.*: s. 32.

(*l*) *Ib.* s. 84. Under a penalty of 5*l.* and 40*s.* a day. The notice need not be in writing.

(*m*) *Ib.* s. 85.

NOTE.—Similar regulations may be made in the case of lodgings for hop-pickers: s. 314; persons employed in gathering fruit and vegetables: 45 & 46 Vict. c. 23; seamen: 46 & 47 Vict. c. 41, s. 48; and for "houses let in lodgings": 38 & 39 Vict. c. 55, s. 90, as amended by 48 & 49 Vict. c. 72, s. 88. Regulations for houses occupied by members of more than one family can also be made under the Housing of the Poor Act, 1885: s. 8. As to the erection of lodging-houses by a local authority, see 14 & 15 Vict. c. 34; 29 Vict. c. 28; 30 Vict. c. 28; and 48 & 49 Vict. c. 72.

(*n*) 38 & 39 Vict. c. 56, s. 71.

(*o*) 11 & 12 Vict. c. 63, s. 67.

(*p*) There may be steps in the area if they are six inches clear of the external wall, and there may be steps over the area if they are not over, across, or opposite a window: s. 72.

inner or back cellar which is occupied with the front one, in which case the window will be sufficient if it contains four superficial feet.(*a*)

Although the subject of privies and water-closets is a matter which usually comes within the duties of the surveyor or the inspector of nuisances, it may be well to explain the chief points of the Act(*b*) which refer to these matters, as the medical officer may at times be called in to report thereon.(*c*) If a report is made to the effect that any house has insufficient privy accommodation, or has not a proper ashpit with door and covering, the local authority has power to enforce these provisions.(*d*) An earth closet, or, in fact, any place for the reception and deodorization of fæcal matter, will do as well as a water-closet, provided that it is constructed to the satisfaction of the local authority.(*e*) The authority has power to provide public urinals and closets.(*f*) It is also the duty of the authority to see that all drains, closets, ashpits, and cesspools are constructed and kept so as not to be nuisances or injurious to health.(*g*) On the written application of any person the local authority may require the surveyor, inspector of nuisances, or the medical officer, after 24 hours' written notice (by whom does not appear, but presumably by the clerk) to the occupier, or *in cases of emergency without notice*, to enter, with assistants if necessary, upon the premises complained of, and under such circumstances the officer has power to examine the drains and closets, and for that purpose to cause the ground to be opened. If they are found to be

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(*a*) If any cellar which does not comply with these regulations is occupied, there is a penalty of 20*s*. per day : s. 73. It may be said to be occupied if any person passes a night therein : s. 74. If there are two convictions within three months, the cellar may be closed : s. 75.

(*b*) 38 & 39 Vict. c. 55.
(*c*) See p. 99.
(*d*) 38 & 39 Vict. c. 55, s. 36.
(*e*) *Ib.* s. 37.
(*f*) *Ib.* s. 39.
(*g*) *Ib.* s. 40.

in proper condition, he must cause the ground to be again closed, and all damage must be made good; if, however, they appear to be in a bad condition, notice must be given requiring them to be placed in proper order, and if necessary, the authority can execute the work.(*h*) They may be said to be in bad order whenever they are either a nuisance or injurious to health.

There are also certain analogous duties in relation to scavenging and cleaning; a medical officer may be required to give a certificate (which may also be given by any two registered medical practitioners) as to the condition of any house or part thereof. The points to be dealt with are as to its filthy or unwholesome condition, and as to the likelihood of health being affected or endangered thereby, or that the whitewashing, cleansing, or purifying of such house, would tend to prevent or check infectious diseases.(*i*) In *urban* districts, where it appears to the inspector of nuisances (or the medical officer) that the accumulation of manure, dung, soil, filth, or other offensive or noxious matter ought to be removed, *he* shall give notice to the owner of such matter, or to the occupier of the premises where the same is, to remove it, which must be done within 24 hours.(*k*) It may be noted that notices may be either written or printed, or partly both, and that they must be signed by the officer giving them.(*l*) They may be served by delivery to the person against whom they are issued, or at his residence, or to some person on the premises affected thereby, or by prepaid letter post. If there is no person on the premises to whom they can be delivered, they may be affixed to some conspicuous part of the premises.(*m*)

(*h*) *Ib.* s. 41.
(*i*) *Ib.* s. 46.
(*k*) *Ib.* s. 49.
(*l*) *Ib.* s. 266.
(*m*) *Ib.* s. 267.

The medical officer may also have certain duties to perform under the Factory and Workshops Act, 1878, for that Act provides(*a*) that where it appears to the factory inspector that any neglect or default of the occupier of a factory is punishable under the Public Health Act, 1875, and not under the Factory Act, he must give notice of such to the sanitary authority. He also has power to take an officer of the authority with him into the factory.

The following regulations as to bakehouses, in all places with more than 5,000 inhabitants, are also to be enforced by the sanitary authority, for which purposes the medical officer has the power of entry of a factory inspector:(*b*)—All ceilings and walls of rooms, passages, and staircases must be painted with three coats of oil, or varnished once in every seven years, or limewashed once in every six months; and if painted, they must be washed with hot water and soap once in every six months, unless a special exemption has been granted by the Secretary of State.(*c*) Such bakehouses must not have any sleeping place on the same level *and* in the same building, unless separated by a partition which extends from the floor to the ceiling, and unless it has an external glazed window of at least nine superficial feet in area, of which at least four-and-a-half will open for ventilation.(*d*) If any child, young person, or woman is employed in any retail bakehouse, to the knowledge of the medical officer, it is his duty to forthwith give written notice of the fact to the inspector of factories for the district.(*e*)

(*a*) 41 Vict. c. 16, s. 4.
(*b*) 46 & 47 Vict. c. 53, s. 17. As to powers, see chapter on "Certifying Surgeon for Factories," p. 156.
(*c*) 41 Vict. c. 16, ss. 33, 34.
(*d*) *Ib.* s. 35.
(*e*) 46 & 47 Vict. c. 53, s. 17 (2). For definition of child, &c., see chapter on "Certifying Surgeon for Factories," p. 156.

Certain duties may also devolve upon the medical officer under the Canal Boats Acts, 1877 and 1880.(*f*) The Local Government Board makes regulations as to—(1) the registration; (2) the lettering, numbering, and marking of canal boats; (3) the number, age, and sex of persons allowed to dwell therein; (4) the promotion of cleanliness; and (5) regulations for the prevention of the spread of contagious diseases. It is the duty of the local authority to enforce these regulations,(*g*) and to register every boat which conforms to them.(*h*) A penalty of 20*s.* is provided for an infringement of the regulations.(*i*) Where any sanitary authority within whose district a canal or part of a canal is situate,(*k*) is informed by the master, or any person for the time being in charge or command of a canal boat, or otherwise, that a person on such boat is suffering from an infectious disorder, the authority shall cause such steps to be taken as may by the certificate of their medical officer of health, or of any other legally qualified (*i.e.*, duly registered) practitioner, appear requisite for preventing the disorder from spreading, and for that purpose may exercise the power of removing a person so suffering, and all other powers in relation to provisions against infection conferred by the Public Health Act, 1875(*l*), and may also, if need be, detain the boat, but such detention must not be longer than is necessary for cleansing and disinfecting the same.(*m*) Any person duly authorised by the registration, or sanitary authority, or a justice of the peace,

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(*f*) 40 & 41 Vict. c. 60; 47 & 48 Vict. c. 75 (s. 11 of which enacts that the two Acts are to be read as one).

(*g*) Issued December 3, 1884.

(*h*) 40 & 41 Vict. c. 60, s. 2.

(*i*) *Ib.* ss. 1 and 2.

(*k*) If there is any doubt as to the authority, the Local Government Board defines it: *Ib.* s. 7.

(*l*) See p. 102.

(*m*) 40 & 41 Vict. c. 60, s. 4.

having reasonable cause to suppose any contravention of the Acts, or the existence of any infectious disorder on board a canal boat, may, on producing (if demanded) either a copy of his authorization purporting to be signed by the clerk or a member of the authority, or some other sufficient evidence of authorization, enter by day—*i.e.*, between the hours of six A.M. and nine P.M.(*a*)—any boat, and examine the same and every part thereof in order to ascertain the state of the boat and its occupants. No longer time must be taken than is reasonably necessary. The master is bound to produce his certificate, to allow it to be examined, and, if required, copied, and must furnish all necessary means and assistance for the examination, under a penalty of 40*s.*(*b*)

Poor Law Medical Officers.(*c*)

It is the duty of the guardians of the poor, whenever it is requisite, or when a vacancy occurs, to appoint fit persons to hold the offices of medical officer for the workhouse and district medical officer.(*d*) The appointment ought

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(*a*) 47 & 48 Vict. c. 75, s. 9.

(*b*) 40 & 41 Vict. c. 60, s. 5.

NOTE.—For the purposes or these Acts "canal" includes any river, inland navigation, lake or water, being within the body of the country, and whether or not within the ebb and flow of the tide: 40 & 41 Vict. c. 60, s. 14; "canal boat" includes any vessel used for the conveyance of goods on such waters, no matter how propelled: *Ib.* The Local Government Board has power to declare within the Acts any vessels which are not registered under the Merchant Shipping Acts: 47 & 48 Vict. c. 75, s. 10. Boats must be lettered and numbered in accordance with the regulations, on both sides and at the stern, in such a manner as to be plainly readable from both sides of the canal, no matter how the boat is placed; they must also bear the word "registered," and the name of the place where the registration is effected: 40 & 41 Vict. c. 60, s. 3; 47 & 48 Vict. c. 75, s. 7. Structural alterations in a boat necessitate re-registration: 47 & 48 Vict. c. 75, s. 1.

(*c*) See generally Macmorran and Lushington's "Poor Law General Orders."

(*d*) General Order (Consolidated), 24th July, 1847, Art. 153.

to be under seal;(*e*) a contract is in addition necessary, for the contract may be open to change in its terms, although the appointment itself may be permanent.

The guardians may advertise for the services of medical officers, provided such advertisements specify the amount of salary or other remuneration fixed or approved by the Local Government Board.(*f*) The competition of the candidates should turn on their respective characters and skill, and not on the sum at which they may be severally willing to undertake the office.

The supply of an expensive medicine, such as quinine, may be made the subject of a special agreement with the guardians on the appointment of a medical officer. Cod liver oil and any other expensive medicines should be specified and excepted from the provisions of the medical contract, which requires generally that medical officers should themselves provide the requisite medicines and medical appliances for their pauper patients.(*g*)

No person shall hold any appointment as a physician, surgeon, or other medical officer in any house of industry, parochial or union workhouse or poorhouse, parish, union, or other public establishment, body, or institution, unless he be registered under the Medical Act, 1858.(*h*)

(*e*) *Dyte* v. *St. Pancras*, 27 L. T. (N.S.) 342.

(*f*) General Order, 24th July, 1847, Article 157. The guardians may pay to their medical officers such salaries or remuneration as the Commissioners may, from time to time, direct or approve, provided that the guardians, with the approval of the Commissioners, may pay a reasonable compensation on account of extraordinary services, or other unforeseen circumstances connected with the duties of such officer, or the necessities of the union: General Order (Consolidated), Article 172. The half of the salaries of the medical officers, and half the cost of medicines and surgical appliances, when provided by the guardians, will be repaid to the guardians by the county council: 51 & 52 Vict. c. 41, s. 26; but the guardians must, in the first instance, pay the salaries.

(*g*) See Poor Law Board Circular, 12th April, 1865.

(*h*) 21 & 22 Vict. c. 90, s. 36; 22 Vict. c. 21, s. 1; 23 Vict. c. 7, s. 3.

In respect of appointments made after the 1st of March, 1860, no person shall hold the office of medical officer under any of the Poor Law Orders, unless he shall be duly registered under the Medical Act, 1858, and be qualified by law to practise both medicine and surgery in England and Wales, such qualification being established by the production to the board of guardians of a diploma, certificate of a degree, license, or other instrument granted or issued by competent legal authority in Great Britain or Ireland, testifying to the medical or surgical, or medical and surgical qualification or qualifications of the candidate for such office.(*a*) Provided always that if it be impracticable, consistently with the proper attendance on the sick poor, for the guardians to procure a person residing within the district in which he is to act, and duly qualified as aforesaid to attend on the poor in such district, or that the only person resident within such district, and so qualified, shall have been dismissed from office by the Commissioners,(*b*) or shall be unfit or incompetent to hold the office of medical officer, then the Commissioners may permit the employment by the guardians of any person duly licensed to practise as a medical man, although such person be not qualified as aforesaid.(*c*) Degrees in medicine granted by foreign universities, although the persons on whom

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(*a*) Medical Officers' Qualification Order, 10th December, 1859: General Order (Consolidated), Article 167, subsequently issued. There are certain alternative qualifications, but as they date back to 1815 and 1826, it is hardly possible that they can now qualify for the office.

(*b*) In 1871 the Poor Law Board ceased to exist, and its power and duties were transferred to the Local Government Board, then established: 34 & 35 Vict. c. 70, s. 2; and in the construction of and for the purposes of any Act of Parliament, contract, or other document passed, entered into, or made, before the establishment of the Local Government Board, the name of such Board shall be deemed to be substituted for the Poor Law Board, and any act or thing which might have been done by the Poor Law Board may be done by the Local Government Board: s. 7.

(*c*) General Order (Consolidated), 24th July, 1847, Article 169.

they have been conferred may be registered in respect of them, cannot be recognized as conferring a qualification for the office of medical officer, inasmuch as they are not "granted by some competent authority in Great Britain or Ireland," as required by the Order. Sex does not now affect the appointment.(*d*)

The guardians may, in case of emergency, or under special circumstances, appoint one or more medical officers to act temporarily for such time and upon such terms as the Poor Law Board shall approve.(*e*) If before a temporary appointment can be made, the guardians call in a medical man to attend any particular pauper who is sick and is in need of medical aid, they can do so, and pay his charges for attendance; but when a temporary appointment is made, the sanction of the Local Government Board must be obtained.

When any medical officer shall cease to hold his office, the guardians must make a new appointment to the office rendered vacant, unless such shall become unnecessary.(*f*) If the guardians shall have given notice to determine the continuance in office of any medical officer, with the consent of the Local Government Board, they may appoint a successor to such officer.(*g*)

In the case of any medical officer, who holds his office for a specified term, the guardians may provide for the continuance of such officer, or appoint his successor, within the three calendar months next before the expiration of such term.(*h*)

Every medical officer is bound to visit and attend personally, as far as may be practicable, the poor persons entrusted to his care, and is responsible for his attendance

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(*d*) 39 & 40 Vict. c. 41, s. 1.
(*e*) Med. App. Order, 25th May, 1857, Article 6.
(*f*) *Ib.* Article 7.
(*g*) *Ib.* Article 8.
(*h*) General Order (Consolidated), 24th July, 1847, Article 197.

on them.(*a*) The medical officer cannot expressly delegate to his assistant, in his general practice, the duties of his office, however well qualified, legally or otherwise, such assistant may be. Though an assistant may visit a patient or aid his principal in the performance of his duties, no diminution or sub-division of the duty of personal attendance and personal responsibility on the part of the medical officer will be recognised on that account. But every medical officer shall, as soon as may be after the appointment, name to the guardians some legally qualified medical practitioner to whom application for medicines or attendance may be made, in the case of his absence from home, or other hindrance to his personal attendance, and who will supply the same at the cost of such medical officer, and the name and residence of every medical practitioner so named shall be forwarded by the clerk to each relieving officer, and to the overseers of every parish in the district of such medical officer.(*b*) If the partner or assistant of the medical officer be a duly qualified and registered medical man, he may be named as substitute, or any other medical officer of the union. The medical officer will be considered by the Local Government Board as responsible for the skill and diligence of the person named by him as his substitute.(*c*)

The following are the duties of every medical officer

(*a*) General Order (Consolidated), Article 199.

(*b*) General Order (Consolidated), Article 200; and General Order, District Schools, 11th November, 1879, Article 3.

(*c*) Though the appointment is not by this Article made subject to the approval of the guardians, they have the power to object to the appointment of any person of whom they may not approve; and it is certainly expedient that the provision that the medical officer may make for the discharge of his duties in his unavoidable absence from home or other hindrance should be such as to secure the confidence of the guardians.

The medical officer can at any time rescind his nomination of a substitute, and name some other medical practitioner in his stead. A guardian of the union may be appointed substitute of a medical officer. 11 Off. Cir. 80.

appointed by the guardians, whether he be the medical officer for a workhouse or for a district:—(*d*)

No. 1. To give to the guardians, when required, any reasonable information respecting the case of any pauper who is or has been under his care; to make any such written report relative to any sickness prevalent among the paupers under his care, as the guardians or the Commissioners may require of him; and to attend any meeting of the board of guardians when requested by them to do so. (The guardians, when they require the attendance of a medical officer at any meeting, must make a special request for his attendance, as a general notice to attend all the meetings of the guardians will not come within this regulation.)

No. 2. To give a certificate respecting children whom it is proposed to apprentice, in conformity with Articles 59 and 61 of the General Order (Consolidated).

No. 3. To give a certificate under his hand in every case to the guardians, or the relieving officer, or the pauper on whom he is attending, of the sickness of such pauper or other cause of his attendance, when required to do so. (He is not bound to give the certificate to boards of guardians or relieving officers of other unions than his own. The certificate need not be in any particular form.)

Every medical officer appointed by the guardians after 28th of February, 1879, whether for a district or a workhouse, shall immediately upon the occurrence of any case of contagious, infectious, or epidemic disease of a dangerous character amongst the pauper patients under his care, give notice thereof to the clerk of the sanitary authority of the urban or rural sanitary district, as the case may be, within which he acts as medical officer, or to the medical officer of health of such authority. He

(*d*) General Order (Consolidated), Article 205.

shall also furnish from time to time to the medical officer of health of such sanitary authority such information with respect to the cases of sickness and the deaths amongst the pauper patients under his care as the Local Government Board may direct, and whenever the Local Government Board shall make regulations for all or any of the purposes specified in section 134 of the Public Health Act, 1875, he shall observe such regulations as far as the same relate to or concern his office.(*a*)

The proper books and papers of account for the medical officers of the union are purchased by the board of guardians.(*b*)

In case the guardians are dissatisfied with the opinion pronounced by their medical officer, or where any difficult or dangerous operation is necessary, it is competent for the guardians to call in another medical man to advise them, or to provide assistance for their medical officer, and themselves to pay him for his services.(*c*)

The guardians, with the consent of the Local Government Board, may grant superannuation allowances to officers in their service. The allowance may not exceed in any case two-thirds of the officer's salary on his retirement; and the retiring officer must be at least sixty years of age, and have served as an officer of some union or parish for twenty years at the least. Such an allowance may be granted to a medical officer, notwithstanding he shall not have devoted his entire time to the service of the union, district, or parish.(*d*)

(*a*) General Order, 12th February, 1879, Article 3; and see "Public Health," p. 103.

(*b*) General Order for Accounts, 14th January, 1867, Article 56. A register of attendance, &c., kept by the medical officer of a poor law union and laid before the board of guardians weekly for inspection, in obedience to rules made by the Commissioners under the statute 4 & 5 Will. 4, c. 76, s. 15, is not receivable in evidence for the party making it as a public official book: *Merrick* v. *Wakley*, 8 A. & E. 170.

(*c*) *Haigh* v. *North Bierley*, 28 L. J. Q. B. 65; 5 Jur. (N.S.) 511.

(*d*) 33 & 34 Vict. c. 94.

A medical practitioner appointed by the guardians of a union, and also the guardians of any union, may, whenever they see fit, between eight in the morning and six in the evening, visit and examine any pauper lunatic chargeable to the union confined in any institution for lunatics, unless the medical officer of the institution delivers to the person or persons intending to make the visit a statement signed by him certifying that for the reasons set forth in the statement the visit would be injurious to the lunatic; and the medical officer must forthwith enter in the medical journal the reasons set forth in the statement, and sign the entry.(*e*)

In the opinion of the Commissioners in Lunacy, a board of guardians are not compelled to ask permission from the visiting committee of any asylum previously to their sending their medical officer to examine and report as to the sanity of their pauper lunatics confined in the asylum. Any such medical officer should, the Commissioners think, be specially appointed on that behalf by a resolution of the guardians, and a verified copy of it should be produced to the superintendent of the asylum when the visit is made.

Whenever a justice directs a lunatic or an alleged lunatic, whether a pauper or not, to be examined by a medical practitioner, the justice directing the examination, or any other justice having jurisdiction in the place where the examination took place, may make an order upon the guardians of the union named in the order for the payment of such reasonable remuneration to the medical practitioner as the justice thinks proper.(*f*).

A Memorandum has been issued by the Local Government Board regarding returns of deaths and pauper sickness, together with a Circular in which the Local Government Board request that the guardians, both in their

(*e*) 53 Vict. c. 5, s. 201.
(*f*) 53 Vict. c. 5, s. 285.

poor law capacity and as the rural sanitary authority, will, if they have not already done so, take such steps in the matter as may be requisite.(*a*)

(*a*) MEMORANDUM (20th July, 1879).

Returns of deaths from registrars.

Returns of pauper sickness from district medical officers.

Under Articles 14 and 15 of section 4 of the General Order of the 11th November, 1872, every medical officer of health whose appointment has been approved by the board is required to prepare an annual report comprising, amongst other things, tabular statements of the mortality and of the pauper sickness in his district. Information as to mortality and sickness is required by the medical officer of health not only in preparing these statements, but also in discharging the duties of his office, and this Memorandum is intended to indicate the arrangements which should be made for furnishing him with such information.

I. The sanitary authority should, under section 28 of the Births and Deaths Registration Act, 1874, require the registrars of births and deaths to supply returns of the deaths registered within their respective districts. These returns should be made weekly as regards all deaths registered as having occurred within the registrar's district during the preceding week; but an immediate notice should be given of all deaths of infectious disease in fresh localities, and of all groups of deaths from such disease, or from diarrhœa in any localities. The Registrar-General has prepared for the use of registrars a form in which the weekly returns may be conveniently made. A fee of twopence for each entry is payable by the sanitary authority.

II. The medical officer of health should be regularly supplied with information of the new cases of pauper sickness in his district. The information is valuable to him, not only as an index to the prevalence of non-fatal disease among all classes in the sanitary district, but as giving him occasion to exercise useful and immediate sanitary supervision over localities which are most apt to require such supervision. It is requisite for this object, as well as to enable him to complete the annual returns, that (except where the medical officer of health is himself the poor law medical officer for the whole sanitary area under his superintendence, in which case he will, of course, possess this information) the guardians should instruct their clerk to copy from the district medical officers' relief lists the new cases which are reported at each meeting of the guardians, and to forward the same promptly and regularly to the medical officer or officers of health within the union. Arrangements should be made for the regular transmission of the copies referred to as early as practicable after each meeting. It is competent to the sanitary authority, whether rural or urban, to pay a reasonable sum to the clerk to the guardians for the supply of the information.

III. The guardians should request the poor law medical officers to give to the medical officer of health (or to the inspector of nuisances, for the information of the medical officer of health) acting within their respective districts, the earliest possible information of cases of dangerous

The following are the duties of the medical officer for the workhouse :(*b*)—

No. 1. To attend at the workhouse at the periods fixed by the guardians, and also when sent for by the master or matron.

No. 2. To attend duly and punctually upon all poor persons in the workhouse requiring medical attendance, and, according to his agreement, to supply the requisite medicines to such persons.

No. 3. To examine the state of the paupers on their admission into the workhouse, and to give the requisite directions to the master according to Articles 91 and 92.

No. 4. To give directions and make suggestions as to the diet, classification, and treatment of the sick paupers and paupers of unsound mind, and to report to the guardians any pauper of unsound mind in the workhouse whom he may deem to be dangerous, or fit to be sent to a lunatic asylum.

No. 5. To give all necessary instructions as to the diet or treatment of children, and women suckling children, and to vaccinate such of the children as may require vaccination.(*c*)

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infectious disease under their charge, as it is evident that, unless such information is given as soon as the cases occur, the action of the sanitary authority in regard to the prevention of infection may often fail in its effect.

IV. Under the Board's General Order of the 12th February, 1879, it is incumbent upon all district and workhouse medical officers appointed since the 28th February, 1879, to furnish the medical officer of health with returns of pauper sickness and deaths, as well as to notify the outbreak of dangerous infectious disease. A similar obligation has been imposed by the Board's Order of 14th June, 1879, upon medical officers of district schools appointed after the 24th June, 1879 : Macmorran and Lushington's "Poor Law General Orders," p. 195.

(*b*) General Order (Consolidated), Article 207.

(*c*) A fee is payable on vaccination performed in the workhouse, provided a contract has been duly entered into : 30 & 31 Vict. c. 84, s. 6. The Commissioners have stated that the guardians have, without the permission of the parent, the right to vaccinate any child in their custody during any danger of contagion from the small pox.

No. 6. To report in writing to the guardians any defect in the diet, drainage, ventilation, warmth, or other arrangements of the workhouse, or any excess in the number of any class of inmates, which he may deem to be detrimental to the health of the inmates.

No. 7. To report in writing to the guardians any defect which he may observe in the arrangements of the infirmary, and in the performance of their duties by the nurses of the sick.

No. 8. To make a return to the guardians at each ordinary meeting, in a book prepared according to the prescribed form, and to insert therein the date of every attendance, in conformity with Article 205, and the other particulars required by such form to be inserted by the medical officers, and to enter in such return the death of every pauper who shall die in the workhouse, together with the apparent cause thereof.

No. 9. To enter in the commencement of such book, according to the form prescribed, the proper dietary for the sick paupers in the house, in so many different scales as he shall deem expedient.

By a further Order it is required that :(*a*)—

Art. 1. The medical officer for the workhouse shall keep a book to be termed "The Workhouse Medical Officers' Report Book" (supplied by the guardians), in which he shall enter in writing, duly and punctually and under the correct dates, every report required by No. 6 (above), and as to every defect he may observe in the arrangements of the infirmary or sick wards, and in the performance of their duties by the nurses of the sick; and, further, a report of any other matter which, in the discharge of the duties of his office, he shall consider to require the attention of the guardians, and also such

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(*a*) Workhouse Medical Officers' Order, 4th April, 1868.

recommendations relating to any of the matters aforesaid as he may think it right to submit to the said guardians.

Art. 2. He shall cause this book to be delivered to the clerk to the guardians in sufficient time to allow it to be laid before the board of guardians at the ordinary meeting held at or next following the date of the report, and to be produced to the visiting committee and to the inspectors of the Poor Law Board when they shall require to see it.

Art. 3. He shall enter on a card, to be affixed at or near the head of the bed of every patient upon whom he shall be in attendance, all medical or other extras which he shall deem necessary to be supplied.

Art. 4. He shall report in writing to the Poor Law Board the case of every sudden and every accidental death which may occur in the workhouse within 24 hours after he shall receive information of the same, and the cause of the death so far as he is able to explain it.

It is further provided(*b*) that :—

The medical officer for the workhouse shall, in addition to the reports required to be made from time to time, under Article No. 1 of the Order of the 4th April, 1868 (as above set out), report specially to the guardians, on or about the 1st day of January and the 1st day of July in every year, upon the several matters set forth in the statement contained in the said order, and such reports shall be entered in or preserved with the medical officers' report book.(*c*)

(*b*) Workhouse Medical Officers' Order, 24th August, 1869.

(*c*) In the following form :—

Statement of the Medical Officer for the Workhouse :—

To the Guardians of the Union (incorporation or parish), . . . Workhouse.

STATEMENT of the MEDICAL OFFICER for the above-named workhouse, for the half-year ended on the day of 18 , in answer to the following inquiries in reference to the said workhouse :—

1. Is there sufficient ventilation and warmth ?

As soon as a pauper is admitted to the workhouse, he shall be placed in some room to be appropriated to the reception of paupers on admission, and shall then be examined by the medical officer.(*a*) If the medical officer, upon such examination, pronounce the pauper to be labouring under any disease of body or mind, the pauper shall be placed in the sick ward, or in such other ward as the medical officer may direct;(*b*) if the medical officer pronounce the pauper to be free from any such disease, the pauper shall be placed in the part of the workhouse assigned to the class to which he may belong.(*c*)

A preliminary examination of the paupers by the medical officer is necessary, in order to prevent the introduction of contagious or infectious diseases into the workhouse. If the pauper, on inspection, should be found to labour under a contagious or infectious disease, he must not, on that account, be refused admission into the workhouse, but he should, after being inspected, be placed in the ward appropriated for the reception of persons afflicted with contagious or infectious disorders, and proper precautions should be taken to prevent the spread of the disease amongst the other inmates. The

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2. Has the accommodation during the preceding six months for the several classes of sick been sufficient?

3. Are the arrangements for cooking and distribution of food, as regards the sick, satisfactory?

4. Is the nursing satisfactorily performed?

5. Is there a sufficient supply of towels, vessels, bedding, clothing, and other conveniences for the use of the sick inmates?

6. Are the medical appliances sufficient and in good order? Are there any water-beds or rack bedsteads? and, if so, are they sufficient in number and in good order?

7. Are the lavatories and baths sufficient and in good order?

8. Are the supply and distribution of hot and cold water sufficiently provided for?

(Signed) , Medical Officer.

at this day of 18 .

(*a*) General Order (Consolidated), Article 91.

(*b*) *Ib.* Article 92. (*c*) *Ib.* Article 93.

law does not admit of the medical officer or of the guardians resorting to compulsion to examine into the state of a sick pauper, when such pauper (being of sound mind) refuses to permit an examination of his or her person to be made.(*d*)

It is the duty of the master of the workhouse to send for the medical officer in case any pauper is taken ill or becomes insane, and to take care that all sick and insane paupers are duly visited by the medical officer, and are provided with such medicines, attendance, diet, and other necessaries as the medical officer or the guardians direct;(*e*) and to give immediate information of the death of any pauper in the workhouse to the medical officer.(*f*)

It is also the duty of the master of the workhouse to report forthwith to the medical officer and to the guardians, in writing, all cases in which any restraint or compulsion may have been used towards any pauper inmate who is of unsound mind.(*g*) The Local Government Board recommend that strait waistcoats be not used in the case of any workhouse inmates without the sanction of the medical officer of the workhouse. But if he be absent, and the master require to take immediate steps to restrain a violent inmate, and if he finds it necessary to make use of a strait waistcoat, the board think he will not be acting illegally in so doing.(*h*)

In the event of any casual pauper being ill, the master of the workhouse or the superintendent of the casual ward shall, as soon as practicable, obtain the attendance

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(*d*) The Local Government Board has expressed this opinion in a letter to guardians.

(*e*) General Order (Consolidated), Article 208, No. 14.

(*f*) *Ib.* No. 16.

(*g*) *Ib.* No. 27.

(*h*) 53 Vict. c. 5, s. 40.

of the medical officer, who shall give directions as to the treatment of such pauper, and if, in the opinion of the medical officer, the pauper cannot be properly treated in the casual ward, he shall be transferred to a sick ward of the workhouse, and be deemed to be an ordinary inmate thereof.(*a*) If the casual pauper be sick or infirm, the medical officer of the workhouse or casual ward shall prescribe the dietary for such pauper.(*b*)

It is the duty of a nurse for the workhouse to attend upon the sick in the sick and lying-in wards, and to administer to them all medicines and medical applications, according to the directions of the medical officer, and to inform the medical officer of any defects which may be observed in the arrangements of the sick or lying-in ward.(*c*)

The medical officer (for the workhouse) may direct in writing, such diet for any individual pauper as he may deem necessary, and the master shall obey such direction until the next ordinary meeting of the guardians, when he shall report the same in writing to the guardians.(*d*) This provision refers to the diet of individual paupers, and not to any class of paupers. The direction of the medical officer should be entered accordingly in the workhouse medical relief book, and he should specify therein the articles of diet to be supplied to the pauper.

The Inland Revenue Board do not consider the supply as medicines by the medical officer of the workhouse of wines, spirits, &c., for sick patients in the workhouse to be a selling of such liquors, for which excise licenses would be required.

(*a*) Casual Paupers Regulations Order, 18th December, 1882, Article 13.
(*b*) *Ib.* Article 10, No. 2.
(*c*) General Order (Consolidated), Article 213.
(*d*) *Ib.* Article 108.

If the medical officer at any time certify that he deems a temporary change in the diet essential to the health of the paupers in the workhouse, or of any class or classes thereof, the guardians shall cause a copy of such certificate to be entered on the minutes of their proceedings, and may forthwith order, by a resolution, the said diet to be temporarily changed, according to the recommendation of the medical officer, and shall forthwith transmit a copy of such certificate and resolution to the Local Government Board.(*e*)

The medical officer shall be consulted by the matron as to the nature of the food of the infants, and of their mothers when suckling, and the time at which such infants should be weaned.(*e*)

No pauper shall smoke in any room of the workhouse except by the special direction of the medical officer.(*f*) The medical officer possesses no authority to order tobacco or snuff for any class of paupers generally. If he considers it to be absolutely necessary for any pauper on the ground of health, it should be inserted as an extra in the proper column of the workhouse medical relief book against the name of the pauper, and the period over which the allowance is to extend should be specified. When the entry has been once made, it need not be repeated every week.

No pauper who may have been under medical care, or who may have been entered in the medical weekly return as sick or infirm, at any time in the course of the seven days next preceding the punishment, or who may be reasonably supposed to be under 12 or above 60 years of age, or who may be pronounced by the medical officer to be pregnant, or who may be suckling a child, shall be punished by alteration of diet, or by confinement, unless

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(*e*) General Order (Consolidated), Article 108.
(*f*) *Ib.* Article 121.

the medical officer shall have previously certified in writing that no injury to the health of such pauper is reasonably to be apprehended from the proposed punishment; and any modification diminishing such punishment, which the medical officer may suggest, shall be adopted by the master.(*a*)

The guardians shall, from time to time, after consulting the medical officer, make such arrangements as they may deem necessary with regard to persons labouring under any disease of body or mind.(*b*)

The guardians may, without any direction of the medical officer, make such allowance of food as may be necessary to paupers employed as nurses or in the household work; but they shall not allow to such paupers any fermented or spirituous liquors on account of the performance of such work, unless in pursuance of a written recommendation of the medical officer.(*c*) The medical officer of the workhouse does not possess any authority to order rations or extra nourishment for the officers of the workhouse beyond the allowance assigned to them by the guardians.

The workhouse or other officers of the union are not entitled to call upon the medical officer to attend them when they are sick, as a part of the duty of the latter. If they do so, the medical officer will be entitled to require them to remunerate him for his attendance as private patients.

When it is proposed to bind apprentice a child in the workhouse, under the age of 14 years, the guardians shall require a certificate in writing from the medical officer of the workhouse as to the fitness in regard to bodily health and strength of such child to be bound

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(*a*) General Order (Consolidated), Article 134.
(*b*) *Ib.* Article 99. (*c*) *Ib.* Article 108.

apprentice to the proposed trade.(*d*) If the child be not in the workhouse, but in the union by the guardians of which it is proposed that he shall be bound, and the guardians, after preliminary enquiries by the relieving officer, think proper to proceed with the binding, they shall, when the child is under the age of 14 years, direct the relieving officer to take the child to the medical officer of the district to be examined as to his fitness in respect of bodily health and strength for the proposed trade or business; and such medical officer shall certify in writing, according to his jungment in the matter, which certificate shall be produced by the said relieving officer to the next meeting of the guardians.(*e*) If the child be not residing within the union, the guardians who propose to bind him shall not proceed to do so unless they receive a certificate from some medical man practising in the neighbourhood of the child's residence to the effect required.(*f*) No premium, other than clothing for the apprentice, can be given upon the binding of any person above the age of 16 years, unless such person be maimed, deformed, or suffering from some permanent bodily infirmity, such as may render him unfit for certain trades or sorts of work;(*g*) when it is proposed to give such a premium, the guardians shall require a certificate in writing from some medical practitioner, certifying that the person is maimed, deformed, or disabled to the extent specified above, and shall cause a copy of such certificate to be entered on their minutes, before they proceed to execute the indenture.(*h*)

Except in the case of pauper lunatics, temporarily taken to a workhouse, no person shall be allowed to remain in a workhouse as a lunatic unless the medical

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(*d*) General Order (Consolidated), Article 59.
(*e*) *Ib.* Article 61.
(*f*) *Ib.* Article 62.
(*g*) *Ib.* Article 54.
(*h*) *Ib.* Article 63.

officer of the workhouse certifies in writing that such person is a lunatic, with the grounds for the opinion; and that he is a proper person to be allowed to remain in a workhouse as a lunatic; and also that the accommodation in the workhouse is sufficient for his proper care and treatment, separate from the inmates of the workhouse not lunatics, unless the medical officer certifies that the lunatic's condition is such that it is not necessary for the convenience of the lunatic or of the other inmates that he should be kept separate.(*a*) Such a certificate is sufficient authority for detaining the lunatic therein named against his will in the workhouse for fourteen days from its date.(*b*) But no lunatic may be detained against his will, or allowed to remain in a workhouse for more than fourteen days from the date of such a certificate without an order under the hand of a justice having jurisdiction in the place where the workhouse is situate.(*c*) This order may be made upon the application of a relieving officer of the union to which the workhouse belongs, supported by a medical certificate under the hand of a medical practitioner, not being an officer of the workhouse, and by the certificate under the hand of the medical officer of the workhouse already mentioned.(*d*) The guardians of the union to which the workhouse belongs must pay such reasonable remuneration as they think fit to the medical practitioner who, not being an officer of the workhouse, examines a person for the purpose of such a certificate.(*e*) If in the case of a lunatic being in a workhouse, the medical officer thereof does not sign a certificate, or if at or before the expiration of 14 days from the date of the certificate an order is not

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(*a*) 53 Vict. c. 5, s. 24 (1).
(*b*) *Ib.* (2).
(*c*) *Ib.* (3).
(*d*) *Ib.* (4).
(*e*) *Ib.* (5).

made under the hand of a justice for the detention of the lunatic in the workhouse, or, if after such an order has been made, the lunatic ceases to be a proper person to be detained in a workhouse, the medical officer of the workhouse shall forthwith give notice in writing to a relieving officer of the union to which the workhouse belongs, that a pauper in the workhouse is a lunatic and a proper person to be sent to an asylum, and the relieving officer must take the requisite proceedings.(*f*) No entry by the medical officer in his books, nor any notice by him to the master, will suffice as a substitution for the notice to the relieving officer. The notice should be given to the relieving officer of the district in which the workhouse is situated. Where a pauper lunatic is discharged from an institution for lunatics, and the medical officer of the institution is of opinion that the lunatic has not recovered and is a proper person to be kept in a workhouse as a lunatic, the medical officer shall certify such opinion, and the lunatic may thereupon be received and detained against his will in a workhouse without further order if the medical officer of the workhouse certifies in writing that the accommodation in the workhouse is sufficient for the lunatic's proper care and treatment, separate from the inmates of the workhouse not lunatics, or that the lunatic's condition is such that it is not necessary for the convenience of the lunatic, or of the other inmates, that he should be kept separate.(*g*) The certificates given from time to time by the medical officer should be preserved by the master of the workhouse, and laid before the visiting Commissioners in Lunacy with the book or list of insane inmates required to be kept.(*h*)

A poor person suffering from mental disease may on the report of the medical officer that such person is not

(*f*) 53 Vict. c. 5, s. 24 (6).
(*g*) *Ib.* s. 25.
(*h*) *Ib.* s. 54.

in a proper state to leave the workhouse without danger to himself, and others, be detained in the workhouse, but not so as to prevent his removal to an institution for lunatics, when such removal is otherwise required by law.(*a*) The guardians should inform themselves, through the medical officer for the workhouse, and through the medical officer in whose district paupers of unsound mind reside, whether the cases of any of them present a reasonable prospect of cure if submitted to the treatment of an asylum, and all such cases should at once be sent to an asylum.

Every pauper about to be removed to a lunatic or other asylum, should on the day of removal be carefully examined by the medical officer in charge of the case, in order that he may satisfy himself, and may certify that the removal may, in his opinion, be effected with safety. If the removal should from any cause be delayed until the day following that on which the medical examination is made, the patient should be again seen by the medical officer prior to his being removed.(*b*)

It is the duty of the medical officer of the workhouse to visit once in every quarter, every pauper lunatic resident in the workhouse, and to make on the forms furnished by the guardians for that purpose, the prescribed returns relating to pauper lunatics not in an institution for lunatics ;(*c*) but no provision is made for the payment of a fee in such a case.

In answer to a question whether the medical officer would be justified in using force in order to perform an operation which he considered necessary for the recovery of a diseased pauper inmate of the workhouse, such pauper refusing to submit to the operation, the Com-

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(*a*) 53 Vict. c. 5, ss. 24, 25, 26.

(*b*) Circular of Local Government Board, 23rd May, 1879, 9th Annual Report, p. 92.

(*c*) 53 Vict. c. 5, s. 202 (1), (2).

missioners have stated that the question appeared to them to turn upon the point whether the pauper was competent to exercise a discretion of his own; and that if any medical practitioner could certify that the pauper was not of sound mind, they thought that the guardians would be justified in authorising those means to be used which they were informed could alone save his life. On the other hand, they stated that if the patient was of sound mind, he must be allowed to judge for himself in the matter.

Mechanical means of bodily restraint may not be applied to any lunatic unless the restraint is necessary for purposes of surgical or medical treatment, or to prevent the lunatic from injuring himself or others; in every case where such restraint is applied in the case of a lunatic in a workhouse, a medical certificate must, as soon as it can be obtained, be signed by the medical officer for the workhouse, describing the mechanical means used, and stating the grounds upon which the certificate is founded.(*d*) A full record of every case of restraint by mechanical means shall be kept from day to day by the medical officer of the workhouse; and a copy of the records and certificates shall be sent to the Commissioners at the end of every quarter by the clerk to the guardians.(*e*)

It is neither required by law nor by any regulation of the Local Government Board, that in the case of a person dying from natural causes, although the result of an accident, an inquest should be held on the body. There is no greater reason for holding an inquest upon the body of a person dying in a workhouse than there would be in the case of a person dying under similar circumstances in a hospital.

(*d*) 53 Vict. c. 5, s. 40.

(*e*) 53 Vict. c. 5, s. 40. Any person who wilfully acts in contravention of this section is guilty of a misdemeanor.

Excepting by the direction of the coroner when holding an inquest, or of the Board of Guardians, for any special, urgent, and peculiar reason which they may deem of sufficient importance to render such an examinatfon necessary, or at the request of the nearest relatives of the deceased, the Commissioners deem that the medical officer would not be justified in making a *post mortem* examination when a pauper has died in the workhouse. They add, that they think that the guardians would hardly be justified in directing in any particular case that a *post mortem* examination should take place if the nearest relations of the deceased objected clearly and decisively to that course.

Whether the medical officer is entitled to claim the usual remuneration for his services, irrespective of his office of medical officer when he is required by the coroner to perform the *post mortem* examination appears doubtful.(*a*) A penalty is imposed on medical officers who neglect to attend an inquest.(*b*)

Every medical officer of a workhouse duly qualified at the time of his appointment according to the regulations of the Poor Law Board then in force, holds his office until he shall die, or resign, or be proved to be insane by evidence which the Local Government Board shall deem sufficient, or become legally disqualified to hold such office, or be removed by the Local Government Board.(*c*)

The office of district medical officer is held under the same conditions as that of medical officer of a workhouse, but with the further condition that he must, within two

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(*a*) 6 & 7 Will. 4, c. 89, s. 5.

(*b*) *Ib.* s. 6 ; 50 & 51 Vict. c. 71, s. 23, which inflicts a penalty of 5*l.*

(*c*) Medical Appointments Order, 25th May, 1857, Art. 1. The office is held *durante bene placito*, and the Local Government Board can dismiss at any time; *Donahoo* v. *Dodson*, 30 W. R. 334 ; S. C. *Donahoo* v. *Local Government Board*, 46 L. T. 300.

months of his appointment, become resident within his district, unless with the consent of the Local Government Board, when his appointment will usually only be for three years, except in the metropolis, where under certain provisions it may be permanent.(*d*)

The guardians—with the consent of the Local Government Board—divide the union into districts, and assign a medical officer to each. These districts are not to contain more than 15,000 population, or to have a larger area than 15,000 statute acres. They may be re-arranged from time to time, so as to ensure the efficient medical attendance upon the paupers therein, and any medical officer declining to be transferred can be dismissed by the guardians, with the consent of the Local Government Board, by a six months' notice.(*e*) A transfer is not a vacation of appointment.

Partners cannot be appointed *joint* medical officers of a district, but the fact that they are partners will be no objection to their being appointed individually, as medical officers of distinct districts in the same or in any other union. There is nothing to prevent a medical officer of a district being also appointed to the union workhouse, if his residence is conveniently situate.(*f*)

The following are the duties of a district medical officer:(*g*)—

No. 1. To attend duly and punctually upon all poor persons requiring medical attendance within the district

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(*d*) Medical Appointments Order, 25th May, 1857, Arts. 2, 3, 4, and Metropolis District Non-resident Medical Officers (Tenure of Office) Order, 14th July, 1880.

(*e*) General Order (Consolidated), Arts. 158, 159, 160; Medical Appointments Order, 25th May, 1857, Art. 5; and Instr. Letter.

(*f*) Instr. Letter.

(*g*) General Order (Consolidated), Art. 206.

of the union assigned to him, and according to his agreement to supply the requisite medicines to such persons, whenever he may be lawfully required to furnish such attendance or medicines by a written or printed order of the guardians, or of a relieving officer of the union, or of an overseer.

No. 2. On the exhibition to him of a ticket, according to Art. 76,(*a*) and on application made on behalf of the party to whom such ticket was given, to afford such medical attendance and medicines as he would be bound to supply if he had received in each case an order from the guardians to afford such attendance and medicines.

No. 3. To inform the relieving officer of any poor person whom he may attend without an order.

No. 4. To make a return to the guardians at each ordinary meeting, in a book prepared according to the prescribed form, and to insert therein the date of every attendance, and the other particulars required by such form, in conformity with Art. 205, No. 4.

Provided, however, that the medical officer may, with the consent of the guardians, but not otherwise, make the entries which he is directed to make in such book on detached sheets of paper, according to the same form, and cause the same to be laid before the guardians at every ordinary meeting, instead of such book; and the guardians shall, in that case, cause such sheet to be bound up at the end of the year.

It forms no part of the official duty of a medical officer to attend the justices to prove that the sickness or dis-

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(*a*) General Order (Consolidated), Arts. 75 and 76, facilitate the obtaining of attendance and medicines by permanent paupers.

ability of a pauper is likely to produce permanent disability, so as to render such pauper removable to the parish of his settlement under 9 & 10 Vict. c. 66, s. 4; 28 & 29 Vict. c. 79. He must be summoned or subpœnaed to attend before the justices, the same as any other witness whose attendance is necessary, and he will be entitled to be recompensed accordingly for his trouble.

In the metropolis the duties of a district medical officer are the same as elsewhere, except so far as those duties are inconsistent with the following.(*b*)

When a dispensary shall have been established in his district, it shall be his duty :—

No. 1. To attend at the dispensary to which he shall be appointed by the guardians, every day except Sundays, at such time as may be appointed by the said guardians, and to remain there for one hour at the least, or for such longer period as the guardians may direct, for the purpose of affording such medical or surgical aid and advice, and prescribing such medicines, as may be necessary, to all paupers for whom application is made, and in respect of whom an order is presented, as hereinafter provided, and to enter in a book, kept for that purpose at the dispensary, the time of his arrival and departure, and to write his name or the initials of his name against such entry at the time of his attendance.

No. 2. To attend upon, duly and punctually, either at the dispensary during the appointed hours for attendance thereat, or at the home of the poor person on whose behalf application is made, or elsewhere, as the case may require, and supply all requisite medical or surgical

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(*b*) Metropolitan Dispensaries Order, 22nd April, 1871, Art. 10.

advice and assistance to every pauper in the district placed under his charge, whom he shall be required to attend as medical officer by a written or printed order of the guardians, or of a relieving officer, or of an overseer, when such overseer shall be lawfully entitled to grant relief to such pauper.

No. 3. To file and keep at the dispensary until the guardians shall otherwise direct, all such orders as last aforesaid received by him, which orders, when given by direction of the guardians or by a relieving officer, shall be in the form prescribed.

No. 4. To keep and duly enter up daily a *Medical Relief Register* and *Index* thereto, in the form prescribed, and submit the same to the guardians at the first ordinary meeting in each quarter, and whenever the guardians shall require it to be produced to them, which register shall be deposited at the dispensary, except on the days when the same is required to be submitted to the guardians, and shall be open to the inspection of the Dispensary Visiting Committee, and, at any time between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, to the medical officer of health, if any, appointed by the vestry or other competent authority within whose jurisdiction the dispensary shall be situate.

No. 5. To supply to each pauper under his treatment when requisite a written prescription, in one of the forms prescribed, signed with his initials, and to renew such signature, with the proper date, whenever the prescription may be changed or renewed by him either at the dispensary or at the home of the pauper or elsewhere.

No. 6. To notify, at the commencement of every quarter of a year, to the Board of Guardians, the paupers whose names have been inserted in the permanent

medical relief list for a period of *six* months, and advise the guardians as to the continuance of such paupers in such list, and to take the directions of the board of guardians thereon.

No. 7. To attend any meeting of the dispensary visiting committee, when required by them to do so.

The medical officer is bound, if a domiciliary visit is necessary, to visit his patients at their own homes; and if serious inconvenience is likely to be caused to any pauper by coming to the medical officer, the visits should be so made. It does not follow, however, that the medical officer is to visit every sick pauper, when the pauper can himself, without injury or danger to his health, attend at the medical officer's surgery; but if the medical officer refuses or neglects to visit, he must be prepared to show that he was justified in the particular case.

Matters in relation to dental surgery fall within the scope of the duties of a medical officer.

In cases of midwifery the medical officer is not permitted to employ a midwife as his substitute. If a midwife be employed, she must be employed by, and paid by, the guardians, and not by the medical officer.

It is immaterial whether the poor person is in the receipt of other relief when a medical order is given; the fact of the person applying for such order, and its being granted constitute him *de facto* a pauper, and the medical officer is bound to attend. If he thinks he is able to procure medical aid in his illness, from his own resources, he should, nevertheless, continue his attendance till the next meeting of the guardians, to whom he should report the circumstances, and take their future directions on the case.

If by the terms of the medical officer's appointment he is required to supply medicines to the sick poor, it is

his duty to supply the medicines which he prescribes in such a state that they admit of being conveyed to his pauper patients. If the medicine be fluid, he must supply a bottle or some other vessel; if solid, a box, &c. He may, however, require the paupers to preserve them, and return them when done with. Medical officers are not bound by any regulation in the Orders to forward, or cause to be forwarded, to the residences of the sick paupers, the medicines which they may prescribe. If the paupers are able to go themselves for the medicine, or if they can send any member of their family, or any other person, they may reasonably be expected to do so. In general, the medical officers co-operate in forwarding the medicines, so far as the means of sending medicines in their general practice may be available, without incurring additional expense. But if the paupers themselves are unable to go or send for the medicines, and if the medical officers cannot forward them without employing special messengers for the purpose, it becomes the duty of the relieving officers to provide for the conveyance of the medicine to the paupers, who must in no case be left without the medicine prescribed for them by the medical officer.

The medical officer will receive from the clerk or the relieving officer, lists of paupers who are entitled to his services; but he must also attend to all such as produce to him a ticket from the guardians,(*a*) or an order from the relieving officer, or, in some cases, from the overseer. In cases where the order is received from any of the above sources, other than an overseer, the medical officer's duty is merely to obey the order—it is not for him to enquire if the person requiring assistance is a pauper, that is a matter for others. But when an order is received from an overseer, some little care is needed.

(*a*) General Orders (Consolidated), Arts. 75 and 76.

The law requires an overseer of the poor to administer relief in cases of "*sudden and urgent necessity;*" his order to the medical officer to attend a case of sickness which is of "sudden and urgent necessity," is therefore of equal force with the order of the relieving officer. If the medical officer should refuse to attend, upon the order of an overseer, on the plea that the case is not one of "sudden and urgent necessity," he must be prepared to justify the refusal on that ground. If an overseer gives an order for medical attendance, the medical officer should satisfy himself whether it be lawful or not, *i.e.*, whether the case be one of "sudden and urgent necessity," and if he receives an order requiring his attendance in a case which is not sudden and urgent, he may act upon it or not, as he may think fit, requiring, if he act upon it, that the overseer giving the order should undertake personally to remunerate him for his services; but in general it would be advisable for him to attend the case, and afterwards represent the facts to the board of guardians, and take their directions as to his further attendance. When an overseer gives an order for medical attendance in a case in which he is not justified in doing so, he incurs no personal liability, unless he expressly undertakes personally to remunerate the medical officer in case the order is bad.

In cases requiring immediate medical or surgical attendance, when the services of the medical officer of the district cannot be promptly obtained, the relieving officer may upon the emergency employ any other medical man to attend the case; but the medical officer of the district should be directed to take charge of it as soon as practicable. It must be noted that the guardians, and not the medical officer, are the persons who have to decide whether a person is in such destitute circumstances as to entitle him to medical aid at the cost of the poor rate.

A medical officer is not empowered by the Orders of the Local Government Board to order food or articles of diet, as meat, milk, wine, or porter for his pauper patients. The power of granting relief rests with the guardians, and in case of sudden and urgent necessity with the relieving officer, and any direction or certificate given by the medical officer for the allowance of extra nourishment to any of his patients, can only be regarded as a recommendation or statement of his opinion as to what is required.

A medical officer is not bound to attend any case without a regular order, but if he be sent for and attends the case without an order, or treats the patient as being under his care, he will be held responsible for any neglect which may occur, and will not be permitted to plead in justification the want of an order.

If a pauper refuses to adopt the remedies prescribed for his disease, the medical officer should report such fact to the board of guardians, and continue his attendance on the pauper, or, at all events, watch the case till he obtains the directions of the guardians for his future guidance in regard to it.

Every medical officer of a union who has knowledge that a pauper resident within the district of the officer is or is deemed to be a lunatic and a proper person to be sent to an asylum, must, within three days of obtaining such knowledge, give notice thereof in writing to the relieving officer of the district, or if there is no such officer, to an overseer of the parish where the pauper resides;(*a*) and the relieving officer or overseer must, within three days, give notice thereof to a justice having jurisdiction in the place where the pauper resides. The justice must then, by order, require the alleged lunatic to be brought before him or some other justice having jurisdiction, within

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(*a*) 53 Vict. c. 5, s. 14.

three days. A lunatic, wandering at large, whether a pauper or not, may be apprehended and brought before a justice.(*b*) The justice before whom a pauper alleged to be a lunatic, or an alleged lunatic wandering at large, is brought, is required to call in a medical practitioner, and to examine the alleged lunatic, and to make such enquiries as he thinks advisable, and if the justice is satisfied in either case that the alleged lunatic is a lunatic, and a proper person to be detained, and in addition, in the latter case, that he was wandering at large, and if in each case the medical practitioner who has been called in signs a medical certificate with regard to the lunatic, the justice may, by order, direct the lunatic to be received and detained in an institution for lunatics, to which he must be forthwith conveyed.(*c*) The justice may examine the alleged lunatic at his own house or elsewhere.(*d*) A lunatic is not to be treated as a pauper unless the justice is satisfied that he is in receipt of relief, or in such circumstances as to require relief for his proper care; a person, however, who is visited by a medical officer of the union, at the expense of the union, is for this purpose deemed to be in receipt of relief.(*e*) The order which the justice makes is called a summary reception order, and the justice may suspend its execution for such period not exceeding fourteen days as he thinks fit, and in the meantime may give such directions or make such arrangements for the proper care and control of the lunatic as he considers proper; moreover, if a medical practitioner who examines a lunatic as to whom a summary reception order has been made, certifies in writing that the lunatic is not in a fit state to be removed, the removal must be suspended until the same

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(*b*) *Ib.* s. 15.
(*c*) *Ib.* s. 16.
(*d*) *Ib.* s. 17.
(*e*) *Ib.* s. 18.

or some other medical practitioner certifies in writing that the lunatic is fit to be removed, and every medical practitioner who has certified that the lunatic is not in a fit state to be removed, as soon as in his judgment the lunatic is in a fit state to be removed, is bound to certify accordingly.(*a*) In urgent cases a lunatic may be removed to a workhouse, but may not be detained there for more than three days, before the expiration of which, proceedings for obtaining a summary reception order must be taken.(*b*) The justice has also the power in certain cases to order the detention of a lunatic in a workhouse, but in no case for more than fourteen days, after which period the detention is not lawful, except it is in accordance with the general provisions of the Act as to the detention of lunatics in workhouses.(*c*)

Any two or more Commissioners may visit a pauper lunatic, or alleged lunatic, not in an institution for lunatics, or workhouse, and may, if they think fit, call in a medical practitioner, and if the latter sign a medical certificate with regard to the lunatic, and the Commissioners are satisfied that the pauper is a lunatic, and a proper person to be detained, they may by order direct the lunatic to be received in an institution for lunatics.(*d*)

Every pauper lunatic not in an institution for lunatics shall once in every quarter of a year (reckoning the quarters as ending on the thirty-first of March, the thirtieth of June, the thirtieth of September, and the thirty-first of December) be visited, if not resident in a workhouse, by the medical officer of the union, or district in which the lunatic is resident.(*e*) The guardians of the union shall from time to time furnish to every

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(*a*) 53 Vict. c. 5, s. 19.
(*b*) *Ib.* s. 20.
(*c*) *Ib.* s. 21.
(*d*) *Ib.* s. 23.
(*e*) *Ib.* s. 202 (1).

medical officer of the union forms for the prescribed returns relating to pauper lunatics not in an institution for lunatics.(*f*) Where a pauper lunatic has, by order of the visiting committee, been delivered over to the custody of a relative or friend to whom an allowance is made for the maintenance of the lunatic, the medical officer of the union or district in which the lunatic resides shall, within three days after each quarterly visit, send to the visiting committee a report stating whether in his opinion the lunatic is properly taken care of, and may properly remain out of an asylum.(*g*) Each medical officer shall be paid two shillings and sixpence for each quarterly visit to a pauper not in a workhouse, and in addition two shillings and sixpence for every report sent to a visiting committee, and those sums shall be paid by the same persons and be charged to the same account as the relief of the pauper.(*h*) If at any time during the quarter the lunatic is chargeable to the poor rates, the medical officer is bound to visit and report the case, and is entitled to his fee for so doing. If the lunatic be not so chargeable, no duty is cast upon the medical officer, and he cannot claim a fee if he visit in such a case.

If an order for the attendance of the medical officer on a pauper lunatic or idiot be given, indefinite as to time, and the medical officer continues his attendance, and regularly enters the case in his out-door medical relief list, the case will come within the section; but if the medical officer does not make any entry of the case in his medical relief list, he will be estopped from saying that the visitation and certificate came within the section. A

(*f*) *Ib.* s. 202 (2).
(*g*) *Ib.* s. 202 (3).
(*h*) *Ib.* s. 202 (4). Nothing in this section of the Act shall relieve any medical officer from any obligation under this Act to give notice to a relieving officer or overseer, when it appears to such medical officer that a pauper lunatic ought to be sent to an asylum. *Ib.* s. 202 (5).

pauper lunatic settled in and relieved by the guardians of one union, but who resides in another union, should be visited quarterly by the medical officer of the district in which the lunatic is residing;(*a*) that officer should include the case so visited in his return, which is to be delivered to the clerk to the union for which he acts as medical officer. The fee of two shillings and sixpence must, however, be paid by the guardians by whom the relief is granted to the lunatic.(*b*)

When the medical officer is in attendance as such upon a person sick of small pox, and vaccinates any person who is resident in the same house with the sick person, and has never been vaccinated or had the small pox, or re-vaccinates any such resident person, he will be entitled to the same fee as the public vaccinator would in the like case be entitled to, on application to the guardians.(*c*)

In cases in which any medical officer, either for the workhouse or a district, shall be called on by order of a person legally qualified to make such order, to attend any woman in or immediately after childbirth, or shall, under circumstances of difficulty or danger, without any order, visit any such woman actually receiving relief, or whom the guardians may subsequently decide to have been in a destitute condition, such medical officer shall be paid for his attendance and medicines by a sum of not less than ten shillings, nor more than twenty shillings, according

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(*a*) 53 Vict. c. 5, s. 202 (1).

(*b*) *Ib.* s. 202 (4). The statute defines the word "lunatic" to mean an idiot or person of unsound mind; and "pauper" a person wholly or partly chargeable to a union, county, or borough. The medical officer will decide generally whether any particular pauper is or is not a lunatic within the above definition, but the guardians may in any case call upon him for a statement of the grounds for his treating the pauper as a lunatic or idiot. If the relief be given to parents for themselves and for their children, the latter are paupers, and if lunatic, must be visited by the medical officer; otherwise, if the relief be to the parents alone.

(*c*) 34 & 35 Vict. c. 98, s. 13, and see p. 167.

as the guardians may agree with such officer.(*d*) Provided that in any special case in which great difficulty may have occurred in the delivery, or long subsequent attendance in respect of some puerperal malady or affection may have been requisite, any *district* medical officer shall receive the sum of two pounds.(*e*)

When an orphan or deserted child is placed in a house and boarded-out by the guardians, it is the duty of the medical officer of the district in which the child may be resident, to visit the child once in each quarter, and after each visit to make to the guardians a report in the form prescribed, and for each such visit duly reported the medical officer shall be paid by the guardians a fee of two shillings and sixpence.(*f*)

Frequent and regular inspection of the children in pauper schools should be made by the medical officer, for the purpose of securing the removal of such cases of sickness as the superintendent or matron have failed to observe. The Local Government Board consider that it would greatly add to the efficiency of such inspections if the medical officer examined the children weekly, and recorded concisely the results of his examination in writing for the information of the managers or guardians, as the case might be. When epidemic disease is present in the school a daily inspection should be made.(*g*)

Every medical officer appointed by a board of management of a district school after the 24th June, 1879, and every medical officer appointed by the guardians after the 1st August, 1879, for a separate workhouse school, shall, immediately upon the occurrence of any case of contagious, infectious, or epidemic disease of a dangerous

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(*d*) General Order (Consolidated), Article 182.
(*e*) *Ib.* Article 183.
(*f*) General Order as to out-door relief within unions—Orphans and Deserted Children : 10th September, 1877.
(*g*) Local Government Board Letter, 7th December, 1872.

character amongst the pauper patients under his care, give notice thereof to the clerk of the sanitary authority of the urban or rural sanitary district, as the case may be, within which the school building is situated, or to the medical officer of health of such authority. He shall also furnish from time to time to the medical officer of health of such sanitary authority such information with respect to the cases of sickness and the deaths amongst the pauper patients under his care as the Local Government Board may direct, and whenever the Local Government Board shall make regulations for all or any of the purposes specified in section 134 of the Public Health Act, 1875, he shall observe such regulations as far as the same relate to or concern his office.(*a*) Every medical officer shall be bound to visit and attend personally, as far as may be practicable, the children intrusted to his care, and shall be responsible for the attendance on them.(*b*) Every medical officer shall, as soon as may be after his appointment, name to the board of management some legally qualified medical practitioner as a substitute.(*c*)

No salary of any district medical officer shall include the remuneration for operations and services of the following classes performed by such medical officer in that capacity for any out-door pauper, but such operations and services shall be paid for by the guardians according to the rates specified in the Article.(*d*)

(*a*) General Order, Amendment of Regulations, District Schools, 14th June, 1870 ; General Order, Separate Workhouse Schools Order, 21st June, 1879, Article 2.

(*b*) General Order, District Schools, 11th November, 1879, Article 2.

(*c*) See p. 122.

(*d*) 1. Treatment of compound fractures of the thigh.
2. Treatment of compound fractures or compound dislocation of the leg.
3. Amputation of leg, arm, foot, or hand.
4. The operation for strangulated hernia.

} 5*l*.

Medical men who are not medical officers of the union are not entitled to any fees under this order for operations performed upon and services rendered to paupers, but guardians, if they think fit, can nevertheless pay such medical men for their services such a sum as may be fair and reasonable; for guardians may pay for any medical or other assistance which shall be rendered to any poor person on the happening of any accident, bodily casualty, or sudden illness, although no order may have been given for the same by them or any of their officers.(*e*)

After the 28th of February, 1879, no district medical officer shall, except in cases of sudden accident immediately threatening life, be entitled to receive the remuneration prescribed as aforesaid for any amputation unless, before performing it, he shall have obtained, at his own cost, the advice of some person who shall be registered under the Medical Act of 1858, and shall be qualified by law to practise in England and Wales either medicine or surgery, or both; and unless he shall produce to the guardians a certificate from such person stating that in his opinion it was right and proper that such amputation should be then performed.(*f*) As a general rule it is thought not desirable that a medical man who is a guardian of the union should give certificates under this Article in his own union. The medical officer (when he deems it needful to do so) should obtain any additional professional aid which may in his judgment be necessary for a successful operation, and after the operation has been performed submit the facts to the

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5. Treatment of simple fractures or simple dislocations of the thigh or leg. } 3*l.*
6. Amputation of a finger or toe ... ... 2*l.*
7. Treatment of dislocations or fractures of the arm ... 1*l.*

The above rates shall include the payment for the supply of all kinds of apparatus and splints: General Order (Consolidated), Article 177.

(*e*) 11 & 12 Vict. c. 110, s. 2.

(*f*) Genera Order, 12th February, 1879 Article 4.

guardians. It then rests with them to determine whether the case was of such unusual and exceptional character as to warrant them in making a special allowance for the assistance so rendered.(*a*) The guardians should themselves pay for the assistance so rendered. If, in any case, the patient has not survived the operation more than thirty-six hours, and has not required and received several attendances after the operation by the medical officer who has performed the same, such medical officer shall be entitled only to one-half of the payments respectively prescribed.(*b*) Also, if several of the fees specified in Article 177 become payable with respect to the same person at the same time, and in consequence of the same cause or injury, the medical officer shall be entitled only to one of such fees, and if they be unequal, to the highest.(*c*) In any *surgical* case not provided for in Article 177 which has presented peculiar difficulty, or required and received long attendance from the district medical officer, the guardians may make to the medical officer such reasonable extra allowance as they may think fit and the Local Government Board may approve.(*d*)

Certifying Surgeon for Factories and Workshops.

The Factories and Workshops Act of 1878(*e*) prohibits totally the employment of children under the age of ten years; it allows the partial employment of children between the ages of ten and fourteen (or thirteen in the case of compliance with certain provisions of the Education Acts), and also places certain restrictions upon the employment of young persons, *i.e.*, persons under the age

(*a*) Letter of the Poor Law Board (*Lancet*), 21st November, 1857.
(*b*) General Order (Consolidated), Article 179.
(*c*) General Order (Consolidated), Article 180.
(*d*) *Ib.* Article 181.
(*e*) 41 & 42 Vict. c. 16.

of sixteen.(*f*) It is not necessary that these provisions should be explained to the certifying surgeon, as his duty is merely to certify that the person presented to him for examination is of the age stated, if he shall be so satisfied either by the production of a certificate of birth or by other sufficient evidence, and that the applicant is not incapacitated by disease or bodily infirmity to such an extent as to render him unfitted to work in the factory(*g*) named in the certificate for the time allowed by law.(*h*) Every child or young person must be presented to the certifying surgeon for examination within seven days from the time when first employed in the factory, unless the surgeon resides more than three miles from the factory, in which case thirteen days are allowed.(*i*)

The certifying surgeon is appointed, subject to the regulations of the Secretary of State,(*k*) by the inspector for the district, who also has power to revoke the appointment, subject to appeal to the Secretary of State, who has power to annul both appointment and revocation.(*l*) A person who is the occupier of a factory or workshop, or who is directly or indirectly interested in such, or in any process or business carried on in such place, or in any patent connected therewith, cannot be appointed to the office.(*m*) If there is no surgeon resident within three miles of the factory, the poor law medical officer must act as certifying surgeon for the time being.(*n*)

The duties of a certifying surgeon are :—(1) the examination of children and young persons, and the granting of certificates as to the result of such examination ; and

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(*f*) Sections 10, 12, 14, 20, 26, 27, and 96.

(*g*) Factory, for the purposes of the surgeon, includes workshop : ss. 28 and 41.

(*h*) *Ib.* ss. 27 and 28. (*i*) *Ib.* s. 27.

(*k*) The appointment is made by the chief inspector under the present regulations : those of 31st December, 1878.

(*l*) *Ib.* s. 72.

(*m*) *Ib.* s. 72. (*n*) *Ib.* s. 71.

(2) certain steps to be taken in case of accidents occurring in any factory in his district. First, then, as to certifying. Subject to any regulations issued to certifying surgeons by the Secretary of State as to the form of certificates and the entries of visits to be made in the registers,(*a*) the requirements of the Act may be stated as follows:—The surgeon must make a personal examination of the applicant at the factory, unless the number of children or young persons employed therein is less than five, or unless the inspector has given his written permission to the surgeon to conduct his examination at some other place. The same condition applies to the signing of the certificate. If the surgeon refuses to grant the certificate he must, if required, state in writing his reasons for so doing, and sign the same.(*b*) If the surgeon is satisfied of the age of the applicant and of his physical capacity for work in the factory, he must grant and sign a certificate that he is satisfied by the production of a certificate of birth (or other sufficient evidence) that the person named in the certificate is of the age therein specified, and has been personally examined by him, and is not incapacitated by disease or bodily infirmity from working daily for the time allowed by law in the factory named in the certificate.(*c*) All the factories in the occupation of the same person and in the district of the surgeon may be named in the certificate if the surgeon is of opinion that he can truly certify that the applicant is fit for employment in all of them.(*d*) The certificate of birth may be either a certified copy of the entry, in the

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(*a*) For these regulations, see page 162.

(*b*) 41 & 42 Vict. c. 16, s. 73. If it appears to the surgeon that the certificate has been falsified in any way he must mark it with his initials, so as to be able to identify it afterwards, and forward it immediately to the inspector for the district, with his observations thereon: Regulations of 1878, vii. 7.

(*c*) *Ib.* s. 27. (*d*) *Ib.* s. 30.

register of births, of the birth of the child or young person,(*e*) or a certificate from the local authority having the administration of the Education Acts, to the effect that it appears from the returns transmitted to them by the registrar of births that such child was born on the date named in the certificate.(*f*) If the surgeon grants the certificate upon other evidence as to age than a certificate of birth, the inspector has power, by notice in writing, to annul such certificate if he has reasonable cause to believe the age to be really less than stated. Upon a child becoming a young person a further examination is necessary, and a new certificate must be granted.(*f*) Although a child or young person has at some previous time received a certificate of fitness, an inspector has power at any time to require a surgical certificate as to fitness for employment in a factory; and, subject to certain limitations, the certificate must be obtained before employment can be continued.(*g*) In cases where an inspector sees fit to prosecute an employer on the ground that a child or young person is not of the age stated, it is not necessary for the surgeon to attend personally to give evidence of his opinion, for it is sufficient if he supplies the inspector with a written declaration stating that he has personally examined the person employed, and believes him to be under the age mentioned.(*h*)

Next, as to the duties of the surgeon in cases of accidents. Where an accident in a factory causes loss of

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(*e*) Whether such certificate be obtained under the Education Acts or otherwise. Under section 25 of the Education Act, 1876, such certificate can be obtained, on a written application, for such fee not exceeding one shilling, as the Local Government Board shall from time to time fix. This fee was fixed at sixpence by an order of the 22nd February, 1877.

(*f*) *Ib.* s. 30. (*g*) *Ib.* s. 29.

(*h*) *Ib.* s. 92.

life or bodily injury to any person *employed therein*,(*a*), and is produced either by machinery moved by mechanical power, or through a vat, pan, or other structure filled with hot liquid or molten metal or other substance, or by explosion, or escape of gas, steam, or metal, *and* is of such nature as to prevent the person injured by it from returning [to his work(*b*) within forty-eight hours after the occurrence of the accident, notice must be forthwith sent to the inspector and to the certifying surgeon for the district. This notice must state the residence of the person killed or injured, or the place to which he may have been removed; it must be sent by the actual employer, and if he neglects so to do he becomes liable to a penalty of five pounds.(*c*) In cases under the Explosives Act, 1875, it is, however, only necessary to send notice to the inspector and not to the surgeon.(*d*) Upon receipt of such notice it is the duty of the surgeon to proceed to the factory, with the least delay possible, and to make a full investigation as to the nature and cause of the death or injury caused by the accident, and to send a report thereof to the inspector(*e*) within the next twenty-four hours.(*f*) For the purpose of investigating an accident—and for this purpose only—the surgeon has power to enter any room in any building to which the person killed or injured has been removed, and also all the powers, in respect of the factory, which

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(*a*) If the accident happens to any person not employed by the occupier, it is not necessary for him to report it, but the actual employer must do so.

(*b*) This, of course, means the same work, and not to any sham work which may be given to escape reporting the accident.

(*c*) *Ib.* s. 31. (*d*) *Ib.* and 38 & 39 Vict. c. 17.

(*e*) Although these are the words of the section, the report is always sent to the chief inspector, and the forms issued by the Government are addressed to him.

(*f*) 41 & 42 Vict. c. 16, s. 32.

an inspector has.(*g*) These powers are as follows:—(1) a right to enter, inspect, and examine at all reasonable times (by day or night) the factory where the accident happened; (2) to take a police constable with him if he has any reasonable cause to apprehend any serious obstruction; (3) to require the production of any registers, certificates, or documents kept under the Factory Acts, and to examine and copy the same; (4) to examine alone or in the presence of any other person, as he thinks fit, any person employed in the factory; and (5) to exercise any other powers which may be necessary to carry out his duty. The occupier, his agents, and servants are bound to furnish all necessary means of entry, and all reasonable facilities for such examination and inquiry.(*h*)

The remuneration of the surgeon may be agreed upon between himself and the occupier, but in the absence of any such agreement, the following fees are allowed by law:—

For a visit to a factory not more than one mile from the surgeon's residence, 2*s*. 6*d*. for the visit, and 6*d*. for each person examined after the first five.

If more than one mile from the residence of the surgeon, the above fees and 6*d*. *for each complete half mile* over and above the first mile.

When the examination is not at the factory, but at the residence of the surgeon or at some other duly appointed place, 6*d*. for each person examined.

The fees (which may be altered by an order of the Secretary of State) are payable on the completion of the

(*g*) *Ib*. s. 32.
(*h*) *Ib*. s. 68.

examination, or when the certificate (if granted) is signed, or at a time named by order of the inspector.(*a*)

For investigating an accident the surgeon is entitled to such fee not exceeding 10*s*., and not less than 3*s*., as the Secretary of State shall consider reasonable.(*b*)

The Act provides the following penalties,(*c*) *inter alia* :—For wilfully obstructing a surgeon when investigating an accident, a fine of 5*l*. if the obstruction is by day, and 20*l*. if by night.(*d*) For forging or counterfeiting a certificate, or for giving or signing a certificate, knowing it to be false in any material part, a fine not exceeding 20*l*., or imprisonment for not more than three months with or without hard labour. The same penalty is incurred by wilfully making a false entry in a register, or personating any person named in a certificate, or by conniving at any of these offences.(*e*)

The regulations of the Secretary of State at present in force are those of the 31st December, 1878. They provide, *inter alia*, for the appointment of a substitute, the points to be considered in granting certificates, the procedure and necessary forms, and the particulars to be reported in case of accident. As they are supplied to every certifying surgeon on his appointment, and as they are liable to alteration at any time, it is hardly necessary that they should be set out here.

(*a*) 41 & 42 Vict. c. 16, s. 74. (*b*) *Ib*. s. 32.

(*c*) Offences are triable before any stipendiary magistrate, or before any two justices of the peace : s. 89, and are subject to appeal to quarter sessions : s. 90. Informations cannot be laid after two months if punishable by imprisonment : s. 91.

(*d*) *Ib*. s. 32, 68. (*e*) *Ib*. s. 85.

Public Vaccinator.

The law relating to the office of public vaccinator is contained in the Vaccination Act of 1867,(*f*) and the amending Act of 1871,(*g*) which are to be construed together as one statute.(*h*) Under these Acts it is the duty of the guardians of the poor to make and alter the districts into which the union is divided,(*i*) and to appoint suitable persons as public vaccinators in them. The qualifications necessary for the office are that the holder of it shall be a registered medical practitioner,(*k*) and shall also possess a special certificate, showing that he has been duly instructed and examined in the practice of vaccination and all that relates thereto, unless such certificate is included in his diplomas, or unless he was in actual practice prior to 1860.(*l*) This special certificate can be obtained from any public vaccinator who has been appointed for that purpose; and in most large towns there are vaccination stations for this purpose.(*m*)

The appointment is made by a contract between the guardians and the public vaccinator, which provides for the vaccination of all persons resident within the district,(*n*) and which will contain stipulations to secure the proper performance of the operation, and observance of the provisions of the Acts.(*o*) This contract may or may not include re-vaccination, but in the latter case the

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(*f*) 30 & 31 Vict. c. 84.
(*g*) 34 & 35 Vict. c. 98.
(*h*) *Ib.* s. 3.
(*i*) 30 & 31 Vict. c. 84, s. 2.
(*k*) *Ib.* ss. 3 and 35.
(*l*) *Ib.* ss. 4 and 9; 34 & 35 Vict. c. 98, s. 16; and Order in Council, 1st December, 1859.
(*m*) In London they can be obtained from Dr. Cory on Tuesdays and Thursdays, at the Surrey Chapel, Blackfriars Road, E.C. Attendance at 2 p.m.
(*n*) 30 & 31 Vict. c. 84, s. 3. (*o*) *Ib.* s. 7.

consent of the Local Government Board is necessary to it;(*a*) and in any case the contract must be approved by that authority before it becomes valid and of binding effect.(*b*) The Local Government Board also has power to determine the contract at any time.(*c*) Any person who acts as deputy to a public vaccinator must possess the same qualifications as are required for the office.(*d*)

The law requires that every child shall be vaccinated within three months of its birth, either by a public vaccinator or some other duly qualified medical man,(*e*) unless it is certified, as hereinafter explained, as being in an unfit state for the efficient performance of the operation; and it is the duty of the public vaccinator to attend at the appointed stations for the purpose of vaccinating all children that are brought to him for that purpose.(*f*) Generally, his duties may be stated to be the carrying out of the regulations which will be supplied to him by the Local Government Board(*g*) as to the performance of the operation, the attendance at the appointed stations, the provision and supply of vaccine or lymph, and as to small pox.(*h*) The Government establishment for the supply of vaccine is at 95, Lamb's Conduit Street, London, W.C.

On the same day, in the week following the day upon which the operation was performed, the child must be brought to the station to be inspected by the public vaccinator (or his deputy), so that he may ascertain the result of the operation, and also, if he sees fit, to take

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(*a*) 30 & 31 Vict. c. 84, s. 8; 34 & 35 Vict. c. 98, s. 16.
(*b*) 30 & 31 Vict. c. 84, ss. 9 and 10; 34 & 35 Vict. c. 98, s. 16.
(*c*) *Ib.*
(*d*) 30 & 31 Vict. c. 84, s. 4.
(*e*) *Ib.* s. 16; a penalty of 1*l.* can be imposed by the justices for refusing to vaccinate, and the same penalty is incurred for refusing to obey an order to vaccinate: s. 29. (*f*) *Ib.* s. 16.
(*g*) 37 & 38 Vict, c. 75.
(*h*) 30 & 31 Vict. c. 84, s. 4; 34 & 35 Vict. c. 98, s. 16.

from the child lymph for the performance of other vaccinations.(*i*) If the operation has, in his opinion, been successful, he must certify to that effect,(*k*) and such certificate must be forwarded to the vaccination officer of the district within seven days.(*l*) The parent, or person having charge of the child, is also entitled to receive a duplicate of this certificate without payment of any fee.(*m*) If the operation has been unsuccessful, it must be performed again, and it may be done forthwith.(*n*) The public vaccinator may give the certificate, after inspection, in cases where he has not himself performed the operation;(*o*) but it must be noted that the operation must have been performed by a registered medical practitioner.(*p*) As has been stated, the public vaccinator has the right to take lymph from the child, and any person preventing him from so doing is liable to a penalty of 1*l*.(*q*) When a person is re-vaccinated upon his own application, he is entitled to a certificate showing the result of the operation.(*r*) The forms of the various certificates are supplied by the Local Government Board.(*s*)

If the public vaccinator is of opinion that a child is not in a fit and proper state to be successfully vaccinated, he must forthwith deliver to the parent, or person in charge of the child, a certificate to the effect that the child is then in a state unfit for successful vaccination, and such a certificate must be signed by him, and forwarded within seven days to the vaccination officer. This certificate remains in force for a period of two

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(*i*) 30 & 31 Vict. c. 84, s. 17.
(*k*) *Ib.* s. 21, Form D.
(*l*) *Ib.* s. 21, as amended by 34 & 35 Vict. c. 98, s. 7.
(*m*) 30 & 31 Vict. c. 84, s. 17. (*n*) *Ib.* s. 17.
(*o*) 34 & 35 Vict. c. 98, s. 12.
(*p*) *Cromach* v. *Brennand*, 37 J. P. 276.
(*q*) 34 & 35 Vict. c. 98, s. 10. (*r*) *Ib.* s. 9.
(*s*) *Ib.* ss. 5, 15, and 16.

months, and is renewable for successive periods of two months until the child shall be in a fit state for the operation, when it will no longer be exempt from the necessity of having the operation performed;(*a*) but a certificate cannot be renewed unless the child is produced for the inspection of the vaccinator.(*b*) If after three attempts a child is found to be insusceptible to vaccination, the public vaccinator must grant a certificate to that effect, which must be forwarded to the vaccination officer within seven days, and a duplicate given to the parent or the person having charge of the child. The three attempts need not be made if the child has already had small pox, and a certificate to that effect must be given. No charge can be made for these certificates.(*c*)

When a person applies to be re-vaccinated, and the operation is performed by a public vaccinator without charge (*i.e.*, when he does it in his public capacity, and not in his private practice), he must deliver to the person vaccinated a notice requiring him to attend at the same place, on the same day in the following week, for the purpose of inspection, and stating that in default he will be liable to pay a fee of half-a-crown to the guardians.(*d*)

If the public vaccinator fails to comply with any of these provisions as to the granting or forwarding of certificates, he becomes liable to a penalty of 20*s.*; and the wilfully signing of a false certificate or duplicate constitutes a misdemeanor, which is punishable with two years imprisonment, with or without hard labour.(*e*)

Where any stations are necessary other than the residence or surgery of the public vaccinator they are

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(*a*) 30 & 31 Vict. c. 84, s. 18, Form B.
(*b*) *Ib.* s. 19.
(*c*) 30 & 31 Vict. c. 84, ss. 20, 22, as amended by 34 & 35 Vict. c. 98, s. 7, Form C.
(*d*) 34 & 36 Vict. c. 98, s. 9.
(*e*) 30 & 31 Vict. c. 84, s. 30, and 34 & 35 Vict. c. 98, s. 7.

provided by the guardians ;(*f*) and public notice of such arrangements, and of any alterations in them, must be given by the guardians.(*g*) It is necessary to attend at every station at least once in every three months, unless the guardians are of opinion that it is not necessary on account of the scarcity of population,(*h*) and the consent of the Local Government Board is obtained.(*i*).

The contract will provide the scale of remuneration payable to the public vaccinator for the performance of his duties, but the sums must not be less than certain limits prescribed by the Act :(*k*)—For each successful primary vaccination at an appointed station, in a workhouse, or within one mile of the residence of the public vaccinator, not less than eighteen pence ; if the station is more than one mile and less than two miles from his residence, a fee of not less than two shillings for each successful operation ; and if the distance is over two miles, the fee in each case must not be less than three shillings. The distance is reckoned by the nearest public carriage road. No fee is payable in cases which are not successful. If the vaccination is not done at one of the appointed stations, the remuneration is to be in accordance with the terms of the contract, which has been approved by the Local Government Board.(*l*) If any fee is received from the parents of the child, no fee can be obtained from the guardians.(*m*) Upon a favourable report being made by the medical inspector, the Local Government Board may order extra payment to be made to the public vaccinator of such sum as they approve,

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(*f*) 30 & 31 Vict. c. 84. s. 7.
(*g*) *Ib.* s. 13. (*h*) *Ib.* s. 12.
(*i*) 34 & 35 Vict. c. 98, s. 16.
(*k*) 30 & 31 Vict. c. 84, s. 6.
(*l*) *Ib.*, as amended by 34 & 33 Vict. c. 98, s. 6.
(*m*) 30 & 31 Vict. c. 84, s. 22.

not exceeding 1*s.* per child successfully vaccinated.(*a*) For this purpose inspections are made at intervals of about two years, and the grant is paid by the county council on receipt of the certificate of the Local Government Board.(*b*) The conditions under which this grant is obtained are as follows:—The contract must have been approved by the Board; the requirements of the Acts, regulations, and contract must have been carried out, as to attendances, vaccination, and inspection, and the duties must have been habitually performed in person; and if the number of vaccinations performed is less than the average, the Board must be satisfied that such a state of things has not been brought about by the unpunctuality or other fault of the public vaccinator; the result of the work is to be judged by the practice in the station, and by the standard of merit of the scars, and the proportion of successful cases; the scars must be well marked in their foveation, and collectively at least half-an-inch square in total area; the vaccinator must have been in office for at least one year, and must, except under special circumstances, be actually in office at the time of the grant; and the grant is only made in respect of successful infantile vaccinations as recorded in the vaccinator's register, and verified by the guardians, from the quarter day preceding the last inspection to that preceding the present one.(*c*)

A public vaccinator cannot receive payment for vaccinations done out of his district unless done during a vacancy in the office of vaccinator in the district of the person vaccinated, or unless he has been instructed so to do by the order in writing of the guardians, or unless the person vaccinated has been sent to him by the relieving

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(*a*) 30 & 31 Vict. c. 84, s. 5, as amended by 34 & 35 Vict. c. 98, s. 16.

(*b*) 51 & 52 Vict. c. 41, s. 24, sub-sect. 2 (*a*).

(*c*) Local Government Board Regulations.

officer of his union, with an order in writing.(*d*) The public vaccinator has the right to search the register of births for any purpose connected with his duties without payment of any fee.(*e*)

All vaccinations and inspections under contract must be performed in accordance with the "Instructions for Vaccinators under contract," issued by the Local Government Board.(*f*)

The public vaccinator is authorised to vaccinate, elsewhere than at the public station, cases in which there exists a special reason (to be noted by him in his register) for taking this exceptional course.(*g*)

A Memorandum on the steps specially requisite to be taken by boards of guardians and sanitary authorities, in places where small pox is prevalent,(*h*) has been issued by the Local Government Board.

Re-vaccinations by public vaccinators under their contracts shall only be performed when—

(1) The applicant, so far as the public vaccinator can ascertain, has attained the age of 12 years, or in case there be any immediate danger of small pox, the age of 10 years, and has not before been successfully re-vaccinated.

(2) In the judgment of the public vaccinator the proposed re-vaccination is not for any sufficient medical reason undesirable; and

(3) The public vaccinator can afford lymph for the purpose without interfering with the performance of primary vaccination in his district.

Provided that in the case of children in a workhouse

(*d*) 30 & 31 Vict. c. 84, s. 11. (*e*) *Ib.* s. 24.

(*f*) General Order, Vaccination: Instructions to Public Vaccinators, 28th February, 1887, Article 2 and Schedule.

(*g*) Order of Privy Council, 18th February, 1868, Regulation I., Article 1.

(*h*) Memorandum, 10th February, 1888.

the public vaccinator may, in any case in which he deems the primary vaccination to have been inadequate, re-vaccinate any child under the age above specified, who has not before been successfully re-vaccinated; but he shall in every such case enter in his vaccination register a statement of the circumstances which render such re-vaccination desirable.(*a*)

Medical and sanitary officers and the medical profession generally are invited by the Local Government Board(*b*) to urge upon parents and guardians the importance of having their children re-vaccinated at the age of 12 years or thereabouts, and to urge upon all persons beyond this age who have not yet been successfully re-vaccinated the duty of obtaining for themselves the additional protection which may be had by this means.

Prison Surgeon.

A duly registered medical practitioner must now be appointed as surgeon to every gaol, house of correction, bridewell, or penitentiary.(*c*) He is appointed by the Home Secretary, who fixes his salary, and he holds office during the pleasure of that official.(*d*) The Home Secretary has power, where a surgeon has reached the age of 60, and has served at least 20 years, to grant a superannuation allowance of not more than two-thirds of the total salary and emoluments, or a gratuity not exceeding the amount of one year's salary, in cases

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(*a*) General Order, Regulations as to Vaccination, 3rd February, 1888, Article 2. The term "public vaccinator," as used in this Order, includes the medical officer of any workhouse, separate workhouse school, or infirmary, who, under a contract, performs vaccination therein.

(*b*) Memorandum on re-vaccination, March, 1888.

(*c*) 28 & 29 Vict. c. 126, ss. 4, 10.

(*d*) 40 & 41 Vict. c. 21, ss. 4, 5, 9. The salary is not liable to deductions for military or naval half-pay: *ib.* s. 35.

where the surgeon has become incapacitated from performing his duties, owing to confirmed sickness, age, infirmity, or injury received during the actual execution of his duty. Before the allowance can be made a medical certificate will be necessary, as well as a certificate of good conduct from the Prison Commissioners.(*e*) The prison surgeon is under the supervision of the Prison Commissioners,(*f*) inspectors,(*g*) and the visiting committee of the justices.(*h*)

The duties of the surgeon are chiefly defined in the Schedule to the Act of 1865.(*i*) They are to visit the prison at least twice every week (oftener if necessary), and to see every prisoner at least once every week. To visit daily such prisoners as are in the punishment cells, to also visit such as are sick as often as necessary, but not less than once every day, and to order such into the infirmary when it may seem necessary to him to do so [86].(*k*) Once in every three months to inspect every part of the prison, and to enter the result of his observations in the "Journal" [88]. If it should appear to him that the mind of any prisoner is likely to be injuriously affected by the treatment or discipline to which he is subjected, he must report in writing to the gaoler *i.e.*, the governor, keeper, or chief officer(*l*), and must state such precautions as he thinks necessary [89]. It is also his duty to call the attention of the chaplain to any prisoner who appears to him to require his special notice [89]. He may in cases of danger or difficulty call in additional medical assistance, and must not

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(*e*) 40 & 41 Vict. c. 21, s. 36. Service in military or naval prisons will also count : 49 Vict. c. 9, s. 1.

(*f*) *Ib.* s. 6. (*g*) *Ib.* s. 7.

(*h*) *Ib.* s. 14.

(*i*) 28 & 29 Vict. c. 126, Sched. 1, s. 20.

(*k*) The numbers in square brackets—thus [86]—refer to the clauses of the first Schedule of 28 & 29 Vict. c. 126.

(*l*) 28 & 29 Vict. c. 126, s. 4.

perform any serious operation without consultation with another medical practitioner, except under circumstances which do not admit of delay [90]. Where a surgeon considers it necessary to apply any painful test to a prisoner to detect malingering or otherwise, such can only be applied by authority of an order from the visiting committee of the justices or a prison Commissioner.(*a*) Every prisoner must be medically examined as soon as possible after his admission, and an entry must be made in a book which is kept by the gaoler, which must state the health of the prisoner as well as any observations the surgeon may see fit to add [9]. Previous to the removal of any prisoner he must also be examined, and the removal cannot be carried out unless the surgeon certifies that the prisoner is free from any illness that would render him unfit for removal. When a prisoner is about to be discharged, he must also be examined, and if he is found to be suffering from any dangerous or acute disease, the surgeon has power to order him to be detained until such time as he can be safely discharged, unless the prisoner demands to be discharged at once [10]. No wine, beer, spirituous liquors, or tobacco can be brought into the prison for the use of a convicted prisoner except upon the written order of the surgeon, which must specify the quantity to be admitted, and the person for whose use they are intended [13, 14, 22]. Spirits may, however, be kept in the infirmary [13]. The surgeon may order such diet as he thinks necessary for any prisoner [21]. He may order an epileptic prisoner (or any other prisoner suffering from any disease which requires assistance or supervision by night) to be placed in association with not fewer than two other prisoners of the same sex [26]. All prisoners who are sentenced to hard labour must be examined from time to

(*a*) 40 & 41 Vict. c. 27, s. 42.

time, and if unfit for such, the surgeon may order total or partial remission of the hard labour. Such certificate, as well as an order to resume hard labour, must be entered in the "Journal" [34, 35, 37]. The hair of a female prisoner may be ordered to be cut on the ground of health [29]. Any prisoner working in his own cell may be ordered such exercise in the open air as is in the opinion of the surgeon necessary [40]. Bedclothes are to be aired, changed, and washed as often as the surgeon may direct [27]. It is the duty of the surgeon to attend all inflictions of corporal punishments, and to give such directions as he deems necessary for the prevention of injury to the health of the prisoner, which directions the gaoler is bound to carry out, and to enter in the punishment book [60]. It is the duty of the gaoler to report to the surgeon any prisoners who desire his attendance, or who appear to require it, and to carry out any written directions which the surgeon may give [41, 73]. Such lists must be delivered to the surgeon daily, as well as lists of prisoners in the infirmary, and of those who are confined to the punishment cells [73, 74]. It is also the duty of the surgeon to attend all executions,(*b*) and as soon as may be thereafter he must examine the body, ascertain the fact of death, and sign and deliver to the sheriff a certificate thereof.(*c*)

The "Journal" is a book which must be kept by the surgeon, in which he must enter daily, in the English language, an account of the state of every sick prisoner, his disease, and any diet, medicine, or treatment that he may order [87]. The result of the quarterly inspection must also be entered, and must state any observations that he has to make on uncleanliness, drainage, warmth,

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(*b*) 31 & 32 Vict. c. 24, s. 3.

(*c*) *Ib.* s. 4. The penalty for wilfully and knowingly signing a false certificate is two years' imprisonment : s. 9.

ventilation, bad quality of provisions, insufficiency of clothing or bedding, insufficient or defective water supply, or anything that may affect health [88]. Any dangerous operation performed under clause 90 must be entered, together with a record of its circumstances [90]. On the death of a prisoner, the date must be entered, together with particulars of his disease, the date of its commencement, and of its communication to the surgeon. If a *post mortem* examination was made its results must be stated, and anything worthy of special remark must be added [91]. Should the surgeon be unable to attend to his duties on account of sickness, necessary engagement, or in case of leave of absence, he may appoint a deputy, with the consent of the visiting justices [92]; but in such case the name and address of the deputy must be entered in the "Journal" [92]. Any order for spirits, wine, beer, or tobacco must also be entered [15, 22], as must the name of any prisoner who is ordered to discontinue hard labour [37]. A daily record must be entered of any order (other than medicines or treatment carried out by the surgeon himself), and the gaoler must note in a separate column any observations thereon, and whether they are carried out or not [42]. The "Journal" must be laid before the justices once a quarter at least, and as often as they may direct, and signed by their chairman [100]. A quarterly report on the condition of the prison and the health of the prisoners must also accompany the "Journal" [100].

The status of the prison surgeon is somewhat peculiar: he is not a subordinate officer [104]; but he is bound to obey the gaoler in all matters not regulated by Act of Parliament [93], and the gaoler has power to enforce the performance of his duties [69]. He has the right of free ingress and egress to and from the prison at all hours of the day and night [5.] The gaoler has power to enquire into all threats and insults offered to the

surgeon, and to punish a prisoner for such [57]. The surgeon may not employ any officer of the prison in any private capacity [69], and is subject to penalties for improperly introducing spirits, wines, beer, or tobacco into the prison [13],(*a*) and also for carrying letters to or from a prisoner [39]. The penalty in either case is 10*l.*, and loss of office and all arrears of pay(*b*). While performing the duties of his office the surgeon is *ex officio* a constable, and can exercise any of the privileges of such [63]. The visiting justices have power to inquire into any complaints made against the surgeon, and to report upon the same [53]. An inspector of prisons or the Commissioners(*c*) may by letter call their attention to any complaint [22]. If the surgeon does not reside within the prison he must enter in a book, to be kept by the gaoler, the date of each visit, and must sign the entry [101]. If he resides within the prison, and is suspended or removed, he (and in case of his death his family) must quit his apartment when required. Upon failure to do so, two justices may, after 48 hours' notice, direct forcible dispossession.(*d*)

If an action is brought against a prison surgeon for anything done in the performance of his duties, he may plead the general issue.(*e*) Such action must be tried within the county where the act complained of was committed, and can only be brought within six calendar months.(*f*) The surgeon cannot be a juror on any inquest held on any person dying within the prison.(*g*)

(*a*) 28 & 20 Vict. c. 126, s. 38.
(*b*) *Ib.* s. 39.
(*c*) 40 & 41 Vict. c. 21, s. 9.
(*d*) 28 & 29 Vict. c. 126, s. 16.
(*e*) *Ib.* s. 49.
(*f*) *Ib.* s. 50. Penaltles can be recovered summarily: s. 52.
(*g*) *Ib.* s. 48.

Appointments relating to Shipping.

I.—Surgeons in Ships.

Every passenger ship must carry a registered medical practitioner, to be rated on the ship's articles,(*a*) whenever the duration of the intended voyage exceeds 80 days if a sailing ship, and 45 days if a steamship, if the number of passengers exceeds fifty, and in all cases where there are more than 300 persons (including passengers, officers, and crew) on board. The duration of the voyage is reckoned in accordance with a scale issued by the Emigration Commissioners.(*b*) This provision does not of course apply to foreign ships. The name of the surgeon proposed to be taken must be notified to the emigration officer at the port of clearance, who is entitled to consider any objection to it.(*c*) If the majority of the persons on board are foreigners, or if there are at least 300 such on board, any medical practitioner, approved by the Emigration Office, can be appointed, whether registered in England or not. The ship must be provided with proper surgical instruments and medicines to the satisfaction of the emigration authority.(*d*)

Over and above the ordinary duties of a medical practitioner, the surgeon is empowered to enforce any regulations which may be prescribed by any Order in Council for the purpose of promoting health, cleanliness, ventilation, the supply of fresh water, and the preservation of order; and any person obstructing the surgeon in the performance of his duty is liable to a penalty of 40*s*., or imprisonment for not more than one month.(*e*)

(*a*) 18 & 19 Vict. c. 119, s. 41.
(*b*) *Ib.* s. 30. (*c*) *Ib.* s. 42.
(*d*) *Ib.* s. 42, and see p. 180.
(*e*) *Ib.* ss. 59, 60.

When in the tropics the issue of lime juice is compulsory, but at other times it is in the discretion of the surgeon.(*f*)

In every passenger ship a sufficient space must be properly divided off to the satisfaction of the emigration officer at the port of clearance, to be used exclusively as a hospital for passengers. It must be situate under the poop, or in the round-house, or in a deck-house properly built and secured, or on the upper passenger deck, and it must not be less than 18 clear superficial feet for every 50 passengers. It must be fitted with bed places, and supplied with proper beds, bedding, and utensils.(*g*) Any person acting as a ship's surgeon, or attempting so to act, and not being duly registered, is liable to a penalty of not more than 100*l*., and not less than 10*l*.(*h*)

Merchant ships must also carry a surgeon when they have not less than 100 persons on board.(*i*) It is the duty of the owner to provide medicines according to the Board of Trade scale, as well as lime or lemon juice, or such other anti-scorbutic as may be directed by an Order in Council. If any seaman refuses to take such anti-scorbutic, it is the duty of the surgeon to make and sign an entry to that effect in the log-book.(*k*) If the ship's crew suffers in consequence of any neglect to provide or supply the necessary medicines, the owner will be liable to certain penalties and to an action for damages.(*l*)

Damages may be recovered by the charterer of a vessel against a surgeon who accepts the appointment and situation of surgeon for a voyage, and then refuses to go.(*m*)

(*f*) 26 & 27 Vict. c. 51, s. 9.
(*g*) 18 & 19 Vict. c. 119, s. 42.
(*h*) *Ib.* s. 42.
(*i*) 17 & 18 Vict. c. 104, ss. 2, 230.
(*k*) 30 & 31 Vict. c. 124, s. 4.
(*l*) 7 & 8 Vict. c. 112, s. 18; 13 & 14 Vict. c. 93, ss. 64, 66; *Woolf* v. *Claggett*, 3 Esp. 256; *Couch* v. *Steel*, 3 E. & B. 402; 23 L. J. Q. B. 121; but see CAIRNS, L.C., in *Atkinson* v. *The Newcastle, &c., Company*, 2 Ex. D. 441.
(*m*) *Richards* v. *Hayward*, 2 M. & G. 574.

II.—Medical Inspector of Merchant Ships.

The medical inspector of merchant ships is a registered medical practitioner(*a*) appointed by the Local Marine Board for the port, or, where there is no such board, by the Board of Trade,(*b*) for the purpose of inspecting all ships (other than those used exclusively in fishing, Government vessels, and pleasure yachts), registered in the United Kingdom, and also ships registered in a British possession, and trading with any port in the United Kingdom.(*c*) If appointed by a local marine board, his remuneration is fixed by such board, with the approval of the Board of Trade; and if appointed directly by the latter, it is fixed by the order of appointment.(*d*)

The duties of an inspector are to inspect, under the direction of the Board, all medicines, medical stores, lime or lemon juice, sugar, and vinegar, which the ship is required to carry. The inspection must be made three days at least before the ship goes to sea, and it is the duty of the master, owner, or consignee to give notice to the inspector of the date of sailing. If the inspection is satisfactory, a second one cannot be made unless the inspector has reason to suspect that some of the articles inspected have been subsequently removed, injured, or destroyed.(*e*) If the inspector is of opinion that any of the above-mentioned articles are deficient in quality or quantity, or are kept in improper vessels, he must report the matter in writing to the chief officer of Customs in the port, and to the master, owner, or consignee of the ship, in which case the ship cannot proceed to sea until

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(*a*) 21 & 22 Vict. c. 90, s. 37.
(*b*) 17 & 18 Vict. c. 104, s. 226.
(*c*) *Ib.* s. 109. (*d*) *Ib.* s. 226. (*e*) *Ib.*

the defect has been remedied to the satisfaction of the inspector.(*f*)

The powers of the inspector are to board any ship and inspect the articles mentioned, but so as not to unnecessarily detain or delay the ship; to enter and inspect any premises where any of the above-mentioned stores are placed; to enforce production of the ship's books and papers; to administer an oath, and to require a declaration of the truth of a statement; also to seize and detain any person wilfully impeding him in the execution of his duty, until such person can be taken before a magistrate.(*g*) The Board of Trade issues regulations as to the medicines to be carried by ships.(*h*)

III.—Medical Inspector of Passenger Ships.

Every sea-going ship which carries more than 50 passengers, or a greater number than 1 to every 33 tons registered, if a sailing ship, or 1 to every 20 tons if a steamship, must be inspected before it commences any voyage from the United Kingdom to any place out of Europe and not within the Mediterranean.(*i*) A medical inspector is appointed for this purpose by the emigration officer at the port, and no ship of the above description is allowed to clear until its crew, passengers, and medicines have been examined.(*k*) The inspection must take place on board unless the emigration officer has appointed some place on shore for that purpose. Before the ship can sail the inspector has to certify that none of the passengers or crew appear, by reason of any

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(*f*) 17 & 18 Vict. c. 104, s. 226.
(*g*) *Ib.* ss. 14, 15, 16.
(*h*) 30 & 31 Vict. c. 124, s. 4.
(*i*) 18 & 19 Vict. c. 119, s. 3; 26 & 27 Vict. c. 51, s. 3.
(*k*) 18 & 19 Vict. c. 119, s. 44.

mental or bodily disease, unfit to proceed, or likely to endanger the health or safety of the others. If any persons on board cannot be included in such certificate, they will be required to leave the ship, and, if necessary, all persons on board can be required to leave the ship for the purpose of having it purified.(*a*) The ship must carry a proper supply of medicines, medical comforts, instruments, and other things necessary for the treatment of diseases and accidents incident to the voyage, including an adequate supply of a disinfecting agent or fluid (with printed or written directions for use), of good quality and sufficient quantity for the probable exigencies of the intended voyage. All these things must be properly packed, and must be examined and certified by the inspector.(*b*)

IV. Medical Inspector of Seamen.

The medical inspector of seamen is appointed and remunerated by the Local Marine Board, or, where there is no such authority, by the Board of Trade. His duty is to examine seamen upon an application being made to him by the owner or master of any ship, and to draw up and sign a report stating whether or not such persons are fit for duty at sea.(*c*)

(*a*) 18 & 19 Vict. c. 119, s. 45.
(*b*) *Ib.* s. 44.
(*c*) 30 & 31 Vict. c. 124, s. 10.

PART IV.

QUASI-PUBLIC MATTERS.

Lunacy.(*d*)

The law relating to lunatics was formerly contained in a great number of statutes extending from 1845 to 1889, but this year (1890) an Act has been passed which

(*d*) In the Lunacy Act, 1890 (53 Vict. c. 5), if not inconsistent with the context, by s. 341—

"Asylum" means an asylum for lunatics provided by a county or borough, or by a union of counties or boroughs:

"Hospital" means any hospital or part of a hospital or other house or institution (not being an asylum) wherein lunatics are received and supported wholly or partly by voluntary contributions, or by any charitable bequest or gift, or by applying the excess of payments of some patients for or towards the support, provision, or benefit of other patients:

"Institution for lunatics" means an asylum, hospital, or licensed house:

"Lunatic" means an idiot or person of unsound mind:

"Manager" in relation to an institution for lunatics means the superintendent of an asylum, the resident medical officer or superintendent of a hospital, and the resident licensee of a licensed house:

"Medical officer" means, in the case of an asylum, the medical superintendent, or, if the superintendent is not a medical practitioner, the resident medical officer of the asylum, in the case of a hospital the superintendent, and in the case of a licensed house the resident medical practitioner, or, if none, the medical practitioner who visits the house as the medical attendant thereof:

"Medical practitioner" means a medical practitioner duly registered under the Medical Act, 1858, and the Acts amending the same, and the Medical Act, 1886:

"Prescribed" means prescribed by the Act or by any rules under the Act:

"Private patient" means a patient who is not a pauper:

"Reception order" means an order or authority made or given before or after the commencement of the Act for the reception of a lunatic, whether a pauper or not, in an institution for lunatics or as a single patient, and includes an urgency order:

"Relative" means a lineal ancestor or lineal descendant, or a lineal descendant of an ancestor not more remote than great-grandfather or great-grandmother:

consolidates, and in fact codifies, this branch of law.(*a*) The subject is a large one, and although greatly simplified in comparison to the old law, it is still to some extent complicated. The Act consists of twelve parts, and the most useful course will be to explain as shortly as is consistent with accuracy the effect of those provisions which deal with medical men who are either in charge of lunatics or who may have to give certificates or perform other duties in connection with the Act.

The first part of the Act deals with the reception of lunatics. It provides that a lunatic (except one so found by inquisition) shall not be received and detained in an institution for lunatics, or as a single patient, unless under a reception order made by a judicial authority,(*b*) *i.e.*, a county court judge or a magistrate specially appointed for this purpose.(*c*) This order can be obtained upon a private application accompanied by a statement of particulars and by two medical certificates on separate sheets of paper.(*d*) The petition must be presented if possible by the husband or wife or by a relative of the alleged lunatic, and if presented by any other person it must explain fully the reasons for such a course. A petitioner must be of full age, and must have seen the alleged lunatic within fourteen days before presentation of the petition; he has also to undertake to visit the patient, or cause him to be visited by some one specially appointed for that purpose, at least once in every six months.(*e*) The persons signing the medical certificates

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"Visiting committee" means a committee of visitors of an asylum appointed under the Act.

(*a*) 53 Vict. c. 5. The passing of this Act, which came into force on the 1st of May, 1890, has necessitated the re-writing of this chapter, but as the result is a great simplification of the matter it is not to be regretted.

(*b*) 53 Vict. c. 5, s. 4 (1). Two Commissioners also have power to make such order: s. 23.

(*c*) Sections 9 and 10.

(*d*) Section 4 (2). (*e*) Section 5.

may be required to be present when the petition is heard;(*f*) and, if they are, they are bound to keep secret all matters and documents which may come to their knowledge, except when required to divulge them by lawful authority.(*g*)

The petition and particulars have to be in a form provided by the Act.(*h*) The medical certificates have to be in the following form:—(*i*)

"In the matter of *A. B.*, of [*a*], in the county [*b*] of [*c*], an alleged lunatic.

I, the undersigned C. D., do hereby certify as follows:—

1. I am a person registered under the Medical Act, 1858, and I am in the actual practice of the medical profession.

2. On the day of 18 , at [*d*] in the county [*e*] of [separately from any other practitioner] [*f*], I personally examined the said A. B. and came to the conclusion that he is a [lunatic, an idiot, or a person of unsound mind], and a proper person to be taken charge of and detained under care and treatment.

3. I formed this conclusion on the following grounds, viz.:—

(*a*) Facts indicating insanity observed by myself at the time of examination [*g*], viz.:—

(*b*) Facts communicated by others, viz.:—[*h*]

[*If an urgency certificate is required it must be added here. See* Form 9, *inf.*]

4. The said A. B. appeared to me to be [*or* not to be] in a fit condition of bodily health to be removed to an asylum, hospital, or licensed house [*i*].

5. I give this certificate, having first read the section of the Act of Parliament printed below.

Dated (Signed) *C. D.*, of [*j*].

Extract from Section 317 *of the Lunacy Act*, 1890.(*k*)

Any person who makes a wilful mis-statement of any material fact in any medical or other certificate, or in any statement or report of bodily or mental condition under this Act, shall be guilty of a misdemeanor.

[*a*] Insert residence of patient.

(*f*) Section 6 (3).
(*g*) Section 6 (5).
(*h*) Schedule 2, Forms 1 and 2.
(*i*) Schedule 2, Form 8.
(*k*) No prosecution under this section can take place except by order of the Commissioners, or by direction of the Attorney-General, or the Director of Public Prosecutions: s. 317.

[*b*] City or borough, as the case may be.
[*c*] Insert profession or occupation, if any.
[*d*] Insert the place of examination, giving the name of the street, with number or name of house, or should there be no number, the Christian and surname of occupier.
[*e*] City or borough, as the case may be.
[*f*] Omit this where only one certificate is required.
[*g*] If the same or other facts were observed previous to the time of the examination, the certifier is as liberty to subjoin them in a separate paragraph.
[*h*] The names and Christian names (if known) of informants to be given, with their addresses and descriptions.
[*i*] Strike out this clause in case of a private patient whose removal is not proposed.
[*j*] Insert full postal address.

The following is the form of an urgency certificate to be added (when necessary) after clause 3(*b*) of the above form :—(*a*)

I certify that it is expedient for the welfare of the said *A. B.* [*or* for the public safety, *as the case may be*] that the said *A. B.* should be forthwith placed under care and treatment.
My reasons for this conclusion are as follows :—[*state them*].

The following regulations also apply to medical certificates :—They must be made and signed by a medical practitioner; they must state the facts upon which the certifying medical practitioner has formed his opinion that the alleged lunatic is a lunatic; they must distinguish between the facts observed by himself and those communicated by others. A certificate which merely contains the latter class of facts will be worthless. A certificate for use with an urgency order must state that it is expedient for the welfare of the alleged lunatic *or* for the public safety that he shall be *forthwith* placed under care and treatment, and must contain the reasons for such statement.(*b*) An order will not be granted upon a petition unless the certifiying medical practitioners have personally examined the alleged lunatic within seven days. If the petition is under an urgency order the

(*a*) 53 Vict. c. 5, Sched. 2, Form 9.
(*b*) Section 28.

certifying practitioner must have made his examination within two days. In other cases, where two medical certificates are necessary, each of the certifying practitioners must have examined the alleged lunatic separately.(*c*) It is important to note that a medical certificate accompanying a petition for a reception order, or accompanying an urgency order, may not be signed by the petitioner or person signing the urgency order, or by the husband or wife, father or father-in law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, partner or assistant of such petitioner or person.(*d*) The Act also forbids the reception of any person as a lunatic (either into any institution or as a private patient) in all cases where any certificate is signed by any of the following persons:—The manager of the institution, or the person in charge of the single patient; any person interested in the payments on account of the patient; any regular medical attendant in the institution; and any person related to any of these in any of the degrees mentioned under the previous provision (section 30). A lunatic cannot be received into a hospital where the order was granted upon the application of a member of the managing committee, or where such person signed a certificate upon which the order was granted.(*e*) One of the certificates must, whenever practicable, be given by the usual medical attendant (if any) of the alleged lunatic;(*f*) but in no case can the certificates be signed by two persons who are related within the degrees prohibited (by section 30), as explained above.(*e*) A medical practitioner who is a Commissioner or visitor in Lunacy

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(*c*) Section 29.

(*d*) Section 30. And a person signing such cannot afterwards act as medical attendant to the lunatic while he is under restraint: s. 43.

(*e*) Section 32. (*f*) Section 31.

is forbidden to sign any certificate for the reception of a patient, unless he is directed to visit the patient by a judicial authority.(*a*) With the approval of the Commissioners in Lunacy a certificate may be amended at any time within fourteen days after the reception of the patient.(*b*)

Any medical practitioner signing a certificate in good faith and with reasonable care is protected from any civil or criminal proceedings, and if any such are commenced they may be summarily stayed by a judge of the High Court upon his being satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, and upon such terms as to costs and otherwise as he may think fit.(*c*)

A reception order, when it appears to be in conformity with this Act, is sufficient authority for the petitioner or any person authorised by him to take the lunatic and convey him to the place mentioned in such order, and for his reception and detention therein, and it may be acted on without further evidence of the signature or of the jurisdiction of the person making the order. The order, together with the petition, statement of particulars, and medical certificates, will be delivered or sent by post to the person presenting the petition, and must be delivered by him or his agent to the manager of the institution for lunatics in which, or to the person by whom, the lunatic is to be received.(*d*) The order, it must be noted, only continues in force for seven clear days after its date, and if the lunatic is not taken or received within that time a new order will be necessary.(*e*) In cases, however, where the removal of a lunatic has been suspended by reason of a medical certificate that the lunatic is not in a fit state for removal, he

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(*a*) 53 Vict. c. 5, s. 33.
(*b*) Section 34.
(*c*) Section 330.
(*d*) Section 35.
(*e*) Section 36 (3).

may be received in the institution named in the order within three days after the date of a medical certificate that he is in a fit state to be removed.(*f*)

In cases of urgency, where it is expedient, either for the welfare of a person (not a pauper) alleged to be a lunatic, or for the public safety, that the alleged lunatic should be at once placed under care and treatment, he may be received and detained in an institution for lunatics or as a single patient upon an urgency order, made (if possible) by the husband or wife or by a relative of the alleged lunatic, accompanied by one medical certificate;(*g*) but no person shall be received under an urgency order under this section unless the medical practitioner who signs the certificate has personally examined the person to whom the certificate relates not more than two clear days before his reception.(*h*) A lunatic so found by inquisition may be received upon an order signed by his committee, but an office copy of the order appointing the committee must be attached. If no committee has been appointed, the order can be made by a Master in Lunacy.(*i*) Lunatics not under proper care and control, or cruelly treated or neglected, or wandering at large and pauper lunatics, are received under an order of a magistrate after medical certificates have been granted.(*k*)

When a lunatic has been received as a private patient (*i.e.*, not a pauper) under an order of a judicial authority, without any statement in the order that the patient has been personally seen by such judicial authority, the patient has the right to be taken before, or visited by, a judicial authority other than the one who made the order, unless the medical officer of the institution, or, in the case of a single patient, his medical attendant,

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(*f*) Section 36 (2).
(*g*) Section 11.
(*h*) Section 29 (3).
(*i*) Section 12.
(*k*) Sections 13, 15, 16, and 18.

within twenty-four hours after his reception, in a certificate signed and sent to the Commissioners in Lunacy, shall state that the exercise of such a right would be prejudicial to the patient.(*a*) Where no such certificate has been signed and sent, the manager of the institution in which the patient is, or the person having charge of him as a single patient, shall, within twenty-four hours after reception, give to the patient a notice in writing of his right under this section, and shall ascertain whether he desires to exercise the right. The notice must be accompanied with a form for the patient to sign in case he desires to exercise his right, which can be done at any time within seven days. If the patient signs this form it must at once be transmitted by post in a prepaid registered letter to the judicial authority, who is to exercise the jurisdiction, or to the justices' clerk of the petty sessional division or borough where the lunatic is, when arrangements will be made as to the visiting or bringing up of the lunatic. The judicial authority has a right to see the certificates and documents relating to the case, and will report to the Commissioners. Any person who omits to perform any duty imposed upon him by this section is guilty of a misdemeanor.(*b*)

An order remains in force for 12 months from its date, unless the Commissioners order its termination at any other date. The order can be renewed for periods of one, two, three or five years by order of the Commissioners. Not more than a month and not less than seven days before the expiration of any such order, a special medical report as to the mental and bodily condition of the patient, and a certificate(*c*) must be sent to the Com-

(*a*) 53 Vict. c. 5, s. 8 (1). (*b*) Section 8.

(*c*) In the following Form (Schedule 2, Form 13):—

"I , certify that *A. B.*, the patient to whom the annexed report relates, is still of unsound mind, and a proper person to be detained under care and treatment.

Dated (Signed) *C. D.*

Medical Officer (*or* Attendant) of the, *etc.*"

missioners. Any person detaining a person as a lunatic after the reception order has to his knowledge expired is guilty of a misdemeanor.(*d*)

The medical officer of every institution, and the medical attendant of every single patient, must at the expiration of one month after the reception of a private patient, prepare and send to the Commissioners a report as to the mental and bodily condition of the patient, in such form as the Commissioners may direct. If the place is a house licensed by justices, a copy of such report must be sent at the same time to the clerk of the visitors of licensed houses in the borough where the house is situate.(*e*)

Mechanical means of bodily restraint must not be applied to any lunatic unless necessary for the purpose of surgical or medical treatment, or to prevent the lunatic from injuring himself or others. In every case where such restraint is applied a medical certificate must, as soon as it can be obtained, be signed, describing the mechanical means used and stating the grounds upon which it is founded. It must be signed by the medical officer of the institution or by the medical attendant of a private patient, as the case may be. A full record of every case of restraint by mechanical means must be kept from day to day, and a copy of such and of the certificates must be sent to the Commissioners at the end of every quarter. "Mechanical means" are such instruments and appliances as the Commissioners may by regulations determine.(*f*)

The regulations as to letters are as follows:—The manager of every institution or person in charge of a

(*d*) Section 38. If the order is dated before February 1890, it will expire on the 1st of May, 1891. If the lunatic was so found by inquisition, the report and certificates must be sent to the Masters in Lunacy: section 115.

(*e*) Section 39 (1 and 2).

(*f*) Section 40. Any person contravening this section is guilty of a misdemeanor. The Commissioners have issued a Circular on this subject. See end of Chapter.

single patient is bound to forward unopened all letters written by any patient, and addressed to the Lord Chancellor or any Judge in Lunacy, or to a Secretary of State, or to the Commissioners, or any of them, or to the person who signed the order for the reception of the patient, or on whose petition such order was made, or to the visitors or any of them, or to any visiting committee or member of such, and *may* also *at his discretion* forward to its address any other letter if written by a private patient. Any default in complying with this provision is punishable with a fine of twenty pounds.(*a*) Whenever the Commissioners so direct, printed notices must be posted up in every place where there are private patients setting forth—(1) The right of every private patient to have any letter written by him forwarded as explained, and (2) The right of every private patient to request a personal and private interview with a visiting Commissioner or visitor, at any visit that may be made. These notices must be posted so that they can be seen by the patients, and in such places as the Commissioners and visitors may direct. Any default for ten days after notice is punishable with a penalty of twenty pounds.(*b*)

A male person must not be employed in the personal custody or restraint of any female patient, unless on such occasion of urgency as may, in the judgment of the manager of the institution, render such course necessary, in which case it must be reported to the visiting Commissioners or visitors at the next visit.(*c*)

The Commissioners, or any one of them, have power to give written orders for the admission of friends to see

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(*a*) 53 Vict. c. 5, s. 41. (*b*) Section 42.

(*c*) Section 53. A penalty of twenty pounds is provided for a contravention of this section. A penalty of two years hard labour can be inflicted for any carnal knowledge (or attempt of such) of any female patient, and consent is no defence : section 324.

a lunatic, and any person who disobeys such order is liable to a penalty of twenty pounds.(*d*)

Every hospital and licensed house may at any time, by day or night be visited by any one or more Commissioners, without previous notice;(*e*) and where a licensed house is within the jurisdictfon of visitors (appointed by the justices) they have the same power.(*f*) Upon an inspection the Commissioners or visitors have the following powers :—

1. To inspect any and every part of the building where lunatics are received, and every building communicating therewith or detached therefrom, but not separated by ground belonging to any other person, and every part of the ground and appurtenances held, used or occupied therewith; 2. To see every patient and inquire whether any patient is under restraint, and why; 3. To inspect the order and certificates or certificate for every patient received since the last visit; 4. To consider the observations made in the visitors book; 5. To enter in the visitors book a minute of the condition of the house, of the patients therein, and the number of patients under restraint, with the reasons thereof; 6. To inquire:—when Divine Service is performed, and to what number of patients, and its effect; what occupations and amusements are provided for the patients, and the results thereof; how the patients are classified; as to the condition of pauper patients when first admitted; as to the diet of the pauper patients; as to the moneys paid to the manager on account of any lunatic under his care; and as to such other matters as may in their opinion require investigation. The result of such inspections and inquiries, as well as any observations as to the condition of any patient, or as to any irregularity

(*d*) Section 47.
(*e*) Section 191.
(*f*) Section 193.

in any order or certificate, will be entered by the Commissioner or visitor in the visitors and patients books. A note may also be made as to whether suggestions made on a previous visit have been attended to.(*a*) The manager of every hospital or licensed house is bound to show to each Commissioner and visitor every part of the premises and every person detained therein as a lunatic; and any failure to do this is a misdemeanor, as is also a failure to give full and true answers to the best of his knowledge to any question asked by the Commissioners or visitors.(*b*)

Where a Commissioner has made a minute in the patients book relating to doubtful cases, a copy of the minute must be sent to the clerk to the visitors within two clear days. Failure to send such copy is a misdemeanor.(*c*)

The manager of every hospital or licensed house must lay before the Commissioners or visitors at each visit:—

(1) A list of all patients then in the hospital or house (distinguishing pauper patients from other patients, and males from females, and specifying such as are deemed curable);

(2) The books required to be kept by the manager and medical officer (*i.e.*, books to be kept in accordance with the requirements of the Act, or of rules from time to time made under the provisions of the Act);

(3) All orders and certificates relating to patients admitted since the last visit;

(4) In case of a licensed house, the licence then in force; and

(5) All other orders, certificates, documents, and papers relating to any of the patients, received at any

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(*a*) 53 Vict. c. 5, s. 194. (*b*) Section 195.
(*c*) Section 197.

time, which may be required to be produced. Each visiting Commissioner or visitor will then sign such books as having been produced.(*b*)

Any two visitors of an asylum may, with the advice in writing of the medical officer, permit a patient to be absent on trial so long as they think fit. The manager of a hospital or licensed house may with the consent of a Commissioner, two members of the managing committee (if a hospital) or two visitors (if a house licensed by justices), send or take private patients under proper control to a specified place for such period as may be thought necessary for the benefit of their health. It must, however, be noted that it is also necessary to obtain the written approval of the person upon whose petition the reception order was made, or by whom the last payment on behalf of the lunatic was made, unless the consenting authorities dispense with it. The medical officer has power upon his own authority alone to permit any patient to be absent for a period not exceeding 48 hours. If a patient absent upon trial does not return at the expiration of the period allowed, and a certificate has not been granted to the effect that his detention is no longer necessary, he can be retaken at any time within 14 days as in the case of an escape.(*d*)

A lunatic may be removed by the written order of the person having authority to discharge such lunatic, after obtaining the written consent of the Commissioners.(*e*) Any two Commissioners have power to order the removal of a lunatic at any time;(*f*) and their written order is a sufficient authority for so doing.(*g*) Under these circumstances the manager of the institution from which, or the person from whose care, the lunatic is removed, must deliver, free of expense, a copy of the reception order

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(*d*) Section 55.
(*e*) Section 58.
(*f*) Section 59.
(*g*) Section 70 (2).

and of the documents accompanying the same to the person executing the order for removal, to be by him delivered to the manager of the institution into which, or the person into whose care, the lunatic is removed; and such copy must be certified under the hand of the person whose duty it is to deliver the same.(*a*) If the lunatic is an alien and is to be removed to his native country, the Commissioners will report to a Secretary of State, and it is under his warrant that the lunatic must be delivered.(*b*)

Next we must consider the means by which a lunatic is discharged. A private patient who is detained in an institution or who is under care as a single patient, can be discharged by a signed written order of the person on whose petition the reception order was made. If such person is dead, then upon the order of the person who made the last payment on account of the patient, or the husband or wife, or the father, mother or any of the next-of-kin of the patient—in the order in which they are named, *i.e.*, the latter-named cannot give the order so long as those named before are living and capable. If there are none of these persons living and capable, the order must be made by the Commissioners.(*c*) But it must be distinctly noted that a patient cannot be discharged by any of these persons, under these sections, if the medical officer of the institution, or, in the case of a single patient, his medical attendant, certifies in writing that the patient is dangerous and unfit to be at large, together with the grounds on which the certificate is founded, unless two of the visitors of the asylum, or the Commissioners visiting the hospital or house, or the visitors of the house, or in the case of a single patient, one of the Commissioners, after the certificate has been produced, consent in writing to the patient's discharge.(*d*)

(*a*) 53 Vict. c. 5, s. 70 (3), (4).
(*b*) Section 71.
(*c*) Section 72.
(*d*) Section 74.

Two of the Commissioners, one of whom must be a medical and the other a legal Commissioner, may visit a patient detained in any hospital or licensed house, or as a single patient, and may within seven days after their visit, if the patient appears to them to be detained without sufficient cause, make an order for his discharge.(*e*) Any person who detains a patient, after an order by the Commissioners for his discharge has been duly served, is guilty of a misdemeanor.(*f*) Any three of the visitors of an asylum may order the discharge of any person detained therein whether he is recovered or not; and any two of such visitors may make such order with the written advice of the medical officer.(*g*)

In the case of a patient in a house licensed by the justices two visitors (one of them being a medical practitioner) after two visits may order the discharge if it appears to them that the patient is detained without sufficient cause. The visits must be at least seven days apart, and as soon as the manager receives notice of the second visit he must post a copy to the person on whose petition the reception order was made, or to the person by whom the last payment was made on account of the lunatic. Before making an order for discharge the visitors are bound to examine the medical officer of the house as to his opinion as to the fitness of the patient for discharge *if he tenders himself for examination.* The medical officer also has the power of delivering to the visitors a written statement of his reasons against the discharge, when it will be forwarded to the clerk to the visitors.(*h*)

The manager of every hospital and licensed house, and a person having charge of a single patient, must *forthwith*, upon the recovery of a patient, send notice thereof

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(*e*) Section 75.
(*f*) Section 76 (2).
(*g*) Section 77.
(*h*) Section 78.

to the person on whose petition the reception order was made, or by whom the last payment on account of the patient was made. This notice must state that unless the patient is removed within seven days he will be discharged; and he must be so discharged at the expiration of the seven days.(*a*)

If any person detained as a lunatic escapes, he may, without any fresh order and certificates, be retaken at any time within 14 days, by the manager of the institution, or any officer or servant thereof, or by the person in whose charge he was as a single patient, or by any person authorised in writing by such manager or person.(*b*) If the lunatic escapes from England to Ireland or Scotland, notice must be given to the Commissioners as soon as possible; and they may authorise (in writing and under seal) an application to a magistrate for a warrant authorising some person to retake and bring back the lunatic. After being countersigned by a sheriff (in Scotland) or a justice (in Ireland) such warrant will be sufficient authority for the retaking of the lunatic.(*c*)

The following penalties are provided by the Act, over and above those already mentioned:—

Neglecting to send notice of the admission of a patient, or neglecting to send the prescribed documents and information to the Commissioners, or to make the prescribed entries, and to give the prescribed notices of removal, discharge, or death of a patient is a misdemeanor. In case of a single patient the guilty person is also liable to a penalty of 50*l*.(*d*) Any person who knowingly makes a wilful mis-statement or false entry in any book, statement, or return is also guilty of a misdemeanor.(*e*) It is also a misdemeanor to fail to give notice of the death of a patient to the coroner.(*f*) Any person who makes

(*a*) 53 Vict. c. 5, s. 83.
(*b*) Section 85.
(*c*) Section 86.
(*d*) Section 316.
(*e*) Section 318.
(*f*) Section 319.

default in complying with the provisions of the Act, or of any rules made under the Act, is liable to a penalty of 10*l.* a day during the continuance of the default, in all cases where there is no other penalty provided by the Act. If, however, the court is satisfied that the default was a mere accident or oversight, and did not arise from wilful or culpable neglect on the part of the person sued, the cumulative penalties may be remitted in whole or in part.(*g*) Any person who obstructs any Commissioner (or visitor) in the performance of his duty is liable to a penalty of 50*l.*, and is also guilty of a misdemeanor. The wilful obstruction of any other authorised person renders him liable to a penalty of 20*l.*(*h*)

A manager, or other officer or servant of any institution or any person having charge of a lunatic (whether by reason of any contract or of any tie of relationship or marriage, or otherwise), who ill-treats or wilfully neglects a patient, is guilty of a misdemeanor, and, if convicted upon an indictment, is liable to fine or imprisonment, or both. If he is convicted summarily (*i.e.*, before justices), he is liable to a penalty not exceeding 20*l.* and not less than 2*l.*(*i*) The same penalty is imposed upon any person who wilfully permits, assists, or connives at the escape or attempted escape of a patient, or who secretes a patient.(*k*) The decisions of justices are liable to an appeal to quarter sessions by the person aggrieved thereby.(*l*)

(*g*) Section 320.
(*h*) Section 321.
(*i*) Section 322.
(*k*) Section 323.
(*l*) Section 327.

Single Patients.

A medical practitioner or any other person may keep one lunatic as a patient without having his house licensed, but every house in which a lunatic is received for profit is under the supervision of the Commissioners in Lunacy, and the keeper is liable to a penalty of 50*l.* if he neglects the provisions of the Lunacy Acts.(*a*)

The Commissioners may by order direct how often any single patient is to be visited by a medical practitioner, but until such an order is made such patient must be visited once at least in every two weeks by a medical practitioner not deriving and not having a partner, father, son, or brother who derives any profit from the charge of the patient. Any two of the Commissioners have power

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(*a*) 53 Vict. c. 5, s. 315.

NOTE.—Not more than one patient may be taken in an unlicensed house, unless the Commissioners are satisfied that it is desirable, under special circumstances, and for the interest of the patient, that another patient, or more than one other, should reside in the same house. Under such circumstances other patients may be received as if each of them were a single private patient, and upon the same terms and conditions (s. 46). It must be noted that the regulations as to single patients only refer to cases where they are received for profit, but it may be useful to state that there are certain provisions whereby the Commissioners may interfere in cases where the patient is not received for profit. The Act provides (s. 206) that if it comes to the knowledge of the Commissioners that any person appears to be detained or treated as a lunatic or alleged lunatic, without an order and certificate, by any person receiving no payment for the charge, or in any charitable, religious, or other establishment (not being an asylum, hospital, or licensed house), they may require the person by whom the patient is detained to send to them, at such times as they appoint, reports by a medical practitioner on the mental and bodily condition of the patient, and all such other particulars as to him and his property as they may think fit. They may at any time visit such patient, and may exercise all powers given to them by the Acts, except that of discharge. They may, however, report to the Lord Chancellor upon the matter, and he has power to order the discharge or removal of the patient. Any expenses arising from such are payable by the guardians—at any rate in the first instance.

to direct that the medical attendant shall cease to act in that capacity, and that some other person be employed in his place; and it is a misdemeanor to fail to give effect to any such direction of the Commissioners.(*b*)

The medical attendant must at any time, upon the request of the Commissioners, report to them in writing upon the condition of the patient, in such form and with such particulars as they may require.(*c*)

The person in charge of a single patient may change his residence, and remove the patient to any new residence *in England*. Before doing so, however, it is necessary to give seven clear days' written notice to the Commissioners, and to the person upon whose petition the reception order was made, or by whom the last payment on account of the patient was made. The patient may also be sent to any specified place for a specified time for the benefit of his health, with the previous consent of a Commissioner. Before this can be obtained it will be necessary to procure the written approval of the person who petitioned for the reception order, or the person who made the last payment on account of the patient, unless the Commissioner dispenses with it.(*d*).

The Commissioners are bound to cause a single patient to be visited at least once every year,(*e*) but they have power to visit such at other times, or to appoint visitors. They have the right to inspect the medical register, and if they do so must sign it;(*f*) they also have power to inspect the house and grounds, and it is a misdemeanor to refuse to show any part of the house and grounds.(*g*)

(*b*) Section 44.
(*c*) Section 45.
(*d*) Section 56.
(*e*) Sections 198 and 204.
(*f*) Section 199.
(*g*) Section 200.

Licensed Houses.

The issue of licences is now much restricted. The Act provides(*a*) that if the house is within the immediate jurisdiction of the Commissioners,(*b*) and they are of opinion that the house has been well conducted by the licensees, then they may grant a new licence to the former licensees or to their successors. If the house is not within the immediate jurisdiction of the Commissioners, then the justices in quarter sessions are the authority.(*c*) A further provision is that if, on the 26th August, 1889, the licensees of any house had made arrangements to establish a new house, a licence will be granted for it in place of the old one, if it had been well conducted, and if the new house is as well suited as the old one for the purpose.(*d*) Power is also given to grant a licence at any future time to any suitable new house in place of an old one upon the same conditions.(*e*) If a house has been carried on by joint licensees, and they desire to separate, they may obtain licences for suitable houses, but the two together must not have more patients than they were authorised to have by the joint licence.(*f*) Where a medical man is in the employment of the proprietor of such house as his manager, the licence is transferable or renewable to the licensee so long as he con-

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(*a*) 53 Vict. c. 5, s. 207.

(*b*) Section 208. The following places are in the immediate jurisdiction of the Commissioners:—Cities of London and Westminster, counties of London and Middlesex, and the parishes of Barnes, Kew Green, Mortlake, Merton, Mitcham, and Wimbledon (in Surrey); Southend (Kent); East Ham, Leyton, Leystonstone, Low Leyton, Plaistow, West Ham, and Walthamstow (Essex); and any place within seven miles of any part of the Cities of London and Westminster or of Southwark.

(*c*) Sections 207 (1), and 208 (2).

(*d*) Section 207 (2).

(*e*) Section 207 (3).

(*f*) Section 207 (4)

tinues manager of the house, or to the proprietor, or to any other medical manager while employed by the proprietor in the place of the former manager.(*g*) It is important to note that, with the foregoing exceptions, no new licence can now be granted to any person for a house for the reception of lunatics, and no house in respect of which there was on the 29th March, 1890, an existing licence can be licensed for a greater number of lunatics than the number authorised by the existing licence.(*h*) The Lord Chancellor, acting on a report of the licensing authority, has power to revoke a licence or to prohibit the renewal of one at any time.(*i*) The following conditions are imposed whenever a licence is granted:—The Commissioners must inspect the premises and report upon their fitness to the justices.(*k*) The licensee (or one of the licensees, if there are more than one) must undertake to reside in the house.(*l*). No addition or alteration must be made in the house or appurtenances without the previous written consent of the Commissioners; and if the house is within the jurisdiction of visitors, it is also necessary to obtain the written consent of two of them.(*m*) Any wilfully untrue statement or incorrect information, plan, statement, or notice is a misdemeanor.(*n*) If a licence is granted to joint licensees, and one of them dies before it expires, the survivor can continue to carry on the house upon giving a written undertaking within ten days to reside in the house.(*o*)

Licences are granted for a period of not more than thirteen months. They must bear a ten shilling stamp, and a further fee must be paid of ten shillings for every private patient, and half-a-crown for every pauper patient, but in no case must the total fee be less than fifteen

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(*g*) Section 207 (5).
(*h*) Section 207 (6).
(*i*) Section 221.
(*k*) Section 210.
(*l*) Section 211.
(*m*) Section 213.
(*n*) Section 214.
(*o*) Section 212.

pounds, unless the licence is for a less period than thirteen months, in which case it may be reduced to not less than five pounds. If the licence is to a new house upon the transfer of patients from an old one, the fee may be reduced to not less than one pound (and the stamps).(*a*)

If a house not previously licensed is to be substituted for a licensed house (except where the substitution is necessitated by fire or tempest) seven clear days' notice must be sent to the person on whose petition the reception order of each patient was made, or to the person making the last payments for them. In the case of pauper patients, such notice must be sent to the authority liable for their maintenance.(*b*) If a licensee dies or becomes incapacited, the licence can be transferred (by indorsement by the authority) for its unexpired term to any approved person.(*c*) The terms of the licence must be strictly complied with as to number, sex, and class of patients, or the licensee becomes liable to a penalty of 50*l*. for each patient received contrary to the licence.(*d*)

The visiting Commissioners, at their first visit to a licensed house after the grant or renewal of the licence, will examine the licence, and if it is in conformity with the Act they will sign it; if it should prove to be informal they will make an entry in the Visitors' Book as to in what respect it is informal.(*e*)

The Commissioners have power to make regulations for the management of licensed houses, and when such are made a copy will be supplied to the manager of each house.(*f*) It is also provided that a copy of the plan upon which the licence was granted must be hung up in some conspicuous part of the house.(*g*)

(*a*) 53 Vict. c. 5, s. 217.
(*b*) Section 219.
(*c*) Section 218.
(*d*) Section 220.
(*e*) Section 192.
(*f*) Section 226.
(*g*) Section 227.

The following regulations are in force as to medical attendance:—If the house contains not less than one hundred patients there must be resident, as manager and medical officer, a medical practitioner; if there are less than one hundred but more than fifty patients (and if the house is not kept by or has not a resident medical practitioner), it must be visited daily by a medical practitioner; if there are less than fifty patients (where there is not a resident practitioner), it must be visited twice a week by a medical practitioner. The Commissioners or visitors, however, have power to direct that a licensed house shall be visited at any other times, not being oftener than once a day. They also have power, in cases where there are less than eleven patients, to give written authority for visits as infrequent as once in every two weeks.(*h*)

The manager of a licensed house may, with the previous written consent of the Commissioners or justices (as the case may be) receive and lodge as a boarder, for a specified time, any person who is desirous of voluntarily submitting to treatment. In the same way any relative or friend of a patient may be boarded. The consent will only be granted upon the application of the intending boarder. Boarders must be discharged at the end of the specified time unless a further consent is obtained. It must be noted that the total of patients and boarders must not exceed the number of patients allowed by the licence. A boarder is entitled to leave at any time upon giving twenty-four hours' written notice, and if detained after that time he can recover ten pounds as liquidated damages for every day or portion of a day during which he is detained. Commissioners and visitors have the right to see boarders as well as patients.(*i*)

(*h*) Section 228. (*i*) Section 229.

Hospitals.

No lunatic can be received in any hospital unless it is duly registered for the reception of lunatics, and the superintendent of any such place who receives or detains any lunatic in an unregistered hospital is guilty of a misdemeanor.(*a*) Every such hospital must have a registered medical practitioner either as superintendent or medical officer.(*b*) When an application is made to the Commissioners to register a hospital they will cause it to be inspected, and then grant a provisional certificate for six months, or if they decline to do so, report as to their reasons to the Secretary of State. Lunatics can be received as soon as a provisional certificate is granted, but cannot be detained after its expiration unless a complete certificate of registration has been obtained. The certificate will state the number of patients allowed in the hospital. Within three months after the date of the provisional certificate the committee must frame regulations and submit them to the Secretary of State.(*c*) The regulations must be printed, and a copy must be forwarded to the Commissioners, and another hung up in the visitors' room at the hospital, under a penalty of 20*l*.(*d*) The Commissioners, by their rules, require a plan of the hospital to be deposited with them, and it is a misdemeanor to detain or lodge any lunatic in any building not shown on the plan.(*e*)

The committee may grant a superannuation allowance to any medical officer who is incapacitated by confirmed illness, age, or infirmity, *or* who has been medical officer for not less than fifteen years, and is not less than fifty

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(*a*) 53 Vict. c. 5, s. 231 (9), (10).
(*b*) Section 230.
(*c*) Section 231.
(*d*) Section 232.
(*e*) Section 233.

years old; such superannuation not to exceed two-thirds of the salary with the value of the lodgings, rations, or other allowances enjoyed by him.(*f*) It should be noted that the medical officer is disqualified from being a member of the managing committee.(*g*) The Commissioners have power to require the medical officer to give them all information that they may require at any time.(*h*)

Regulation as to Mechanical Restraint of Lunatics.

The Commissioners in Lunacy have issued (9th of April, 1890) the following Regulation as to instruments and appliances for the mechanical bodily restraint of lunatics:—

"By sub-section 6 of section 40 of the Lunacy Act, 1890, it is enacted as follows:—

"'In the application of this section, mechanical means shall be such instruments and appliances as the Commissioners may, by regulations to be made from time to time, determine.'

"The intention and object of the above section obviously is to discourage the employment of mechanical restraint in the treatment of the insane, except in cases of manifest and urgent necessity—an object which the Lunacy Commission have always endeavoured to promote. It is with great reluctance, therefore, that the Commissioners approach the performance of the duty imposed on them by the Legislature of determining the instruments and appliances of restraint, and their discharge of the duty must not be construed as implying any greater

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(*f*) Section 235.
(*g*) Section 236.
(*h*) Section 237 (1).

countenance by them of this mode of treatment than they have hitherto given to it.

"They recognise, however, as the section referred to recognises, that cases will occur in which it is necessary for the safety of the patient or of others, or is beneficial to the patient, that mechanical restraint should be applied; but they hold that the application of it should be restricted within the narrowest limits possible, that the restraint should be applied by means the most humane that can be contrived, should not be long continued without intermission, and should be dispensed with immediately it has effected the purpose for which it is employed.

"In pursuance of sub-section 6 of section 40 of the Lunacy Act, 1890, the Commissioners in Lunacy, by this Regulation under their seal, do hereby determine that in the application of that section 'mechanical means' of bodily restraint shall be and include all instruments and appliances whereby the movements of the body or of any of the limbs of a lunatic are restrained or impeded.

"The Commissioners direct that at each visit of Commissioners or a Commissioner to an asylum, hospital, or licensed house, or to a single patient, all instruments and mechanical appliances which may have been employed in the application of bodily restraint to a lunatic since the last preceding visit of Commissioners or a Commissioner be produced to the visiting Commissioners or Commissioner by the superintendent, resident medical officer, or resident licensee, or the person having charge of the single patient."

Lunacy Rules.

Rules (dated the 29th of March, 1890) have been made by the Commissioners in Lunacy with the approval of the Lord Chancellor, the effect of which, so far as is material to the present purpose, is as follows:—

1. In every institution for lunatics there must be kept (*a*) a visitors' book, (*b*) a register of patients, (*c*) a medical journal, (*d*) a register of mechanical restraint, (*e*) a medical case book, (*f*) a register of removals, discharges, and deaths; also in every hospital and licensed house, a patients' book and a register of voluntary boarders; in every house where a single patient is detained a medical journal and a register of mechanical restraint; in every institution for lunatics in which private and pauper patients are admitted, a separate register of patients, medical journal, and register of removals, discharges, and deaths for each class of patients; and in every workhouse a register of mechanical restraint. All these books must be kept in the forms prescribed by the Commissioners in the schedules to the rules.

7. The clerk of every asylum and the manager of every hospital and licensed house must, immediately on the reception of a person as a lunatic, make an entry with respect to such lunatic in the register of patients according to the prescribed form, and containing the particulars therein specified, except as to the form of disorder. The entry as to the form of disorder shall be supplied by the medical officer of every asylum within one month, and by the medical officer of every hospital or house within seven days after the reception of a patient. The clerk of every asylum and the manager of every hospital or licensed house must, in the case of a

person not a pauper, within one clear day, and in the case of a pauper, after the second and before the end of the seventh day after the patient's admission, send to the Commissioners a notice of admission in the form prescribed, and also a copy of the reception order and medical certificate or certificates upon which the same was made, and in case of reception orders upon petition a copy of the petition and statement of particulars, and must, in every case after the second and before the end of the seventh clear day after the patient's admission, send to the Commissioners a medical statement to be made and signed by the medical officer of the institution, according to the form prescribed. The manager of every licensed house within the jurisdiction of visitors must also, within the like times, send the like documents to the clerk of the visitors. Every person who has charge of a single patient must, within the times limited as before stated as regards patients not paupers, send to the Commissioners the like documents concerning such single patient, and must, with the notice of admission, send a statement of the Christian and surname and occupation of the occupier of the house and of the person who has charge of the patient. The medical statement must, in this case, be made and signed by the medical practitioner who visits the patient.

8. The report to be sent to the Commissioners by the medical officer of every institution for lunatics, and the medical attendant of every single patient, at the expiration of one month after the reception of a private patient, must be in the form prescribed.

9. The Medical Journal and Case Book to be kept in every institution for lunatics must be kept by the medical officer thereof, and every entry made therein respectively must be signed by the person making the same.

10. The prescribed entries in the Medical Journal must be made once in every week, or, in the case of a licensed house, at which visits by a medical practitioner at more distant intervals than once a week are permitted, at each visit.

11. In the Medical Case Book the following particulars must be entered:—

(*a*) A statement of the name, age, sex, and previous occupation of the patient, and whether married, single, or widowed.

(*b*) An accurate description of the external appearance of the patient upon admission:—Of the habit of body and temperament; appearance of eyes, expression of countenance, and any peculiarity in form of head; physical state of the vascular and respiratory organs, and of the abdominal viscera, and their respective functions; state of the pulse, tongue, skin, &c.; and the presence or absence, on admission, of bruises or other injuries.

(*c*) A description of the phenomena of the mental disorder:—The manner and period of the attack, with a minute account of the symptoms, and the changes produced in the patient's temper or disposition, specifying whether the malady displays itself by any and what illusions or irrational conduct, or morbid or dangerous habits or propensities; whether it has occasioned any failure of memory or understanding, or is connected with epilepsy, or ordinary paralysis, or symptoms of general paralysis, such as tremulous movements of the tongue, defect of articulation, or weakness or unsteadiness of gait.

(*d*) Every particular which can be obtained respecting the previous history of the patient:—What are believed to have been the predisposing and exciting causes of the

attack; what were the previous habits, active or sedentary, temperate or otherwise; whether the patient has experienced any former attacks, and if so, at what periods; whether any relatives have been subject to insanity; and whether the present attack has been preceded by any premonitory symptoms, such as restlessness, unusual elevation or depression of spirits, or any remarkable deviation from ordinary habits and conduct; and whether the patient has undergone any, and what, previous treatment, or has been subjected to personal restraint.

(*e*) An accurate record of the medicines administered and other remedies employed, with the results.

(*f*) An accurate record of all injuries and accidents.

12. The prescribed entries must be made in the Case Book at least once in every week during the first month after reception, and oftener when the nature of the case requires it. Afterwards, in recent or curable cases, such entries must be made at least once in every month, and in chronic cases subject to little variation once in every three months.

13. The medical officer of every institution for lunatics must, whenever required to do so by notice in writing signed by the secretary of the Commissioners, send to the Commissioners a correct copy of all entries, or of any particular entries or entry, in the Medical Case Book relative to any specified patient who is, or may have been, confined in the institution.

14. The medical attendant of a single patient must, as soon as possible after the admission of the patient, enter on blank pages to be left at the beginning of the Medical Journal a sketch of the previous history of the case and full particulars of the mental and bodily condition of the patient on admission. He must also at each visit enter in the Medical Journal the date of the

visit and full particulars of the mental and bodily condition of the patient, and a statement as to the condition of the house. If the Commissioners allow a single patient to be visited less often than once in every two weeks, and the patient is in charge of a medical practitioner, such practitioner must once at least in every two weeks enter in the Medical Journal full particulars of the mental and bodily condition of the patient, with the date of the entry. Every entry must be signed by the person who makes the same.

15. Every medical practitioner who visits a single patient, or under whose charge a single patient is, must on the tenth of January, or within seven days from that time, in every year report in writing to the Commissioners the state of health, bodily and mental, of the patient, with such other circumstances as he may deem necessary to communicate.

16. The manager of every institution for lunatics, and every person having charge of a single patient, must at the end of every quarter send to the Commissioners a copy of every entry in the Register of Mechanical Restraint made during the quarter.

17. The Register of Voluntary Boarders to be kept in licensed houses and hospitals must be kept by the manager thereof.

18. The manager of every licensed house and hospital must prepare and keep up an accurate list of the private patients for the time being on the books of the house or hospital, with the rates of payment made for the maintenance and care and treatment of such patients respectively, and such list must be at all times accessible to the Commissioners or Commissioner visiting the house or hospital, and, in the case of a house licensed by justices, to the visitors of such house.

19. When application is made to the Commissioners for their consent to the transfer of a private patient from one institution for lunatics to another, the medical officer of the institution from which the patient is to be removed must furnish the Commissioners with a report as to the patient's mental and bodily condition and fitness for transfer. When application is made for the grant by the Commissioners or by visitors of leave of absence of a private patient from an institution for lunatics, or of a single patient from the house in which he is received, either for the benefit of the patient's health or on trial, it shall be accompanied by a recommendation from the medical officer of the institution or the medical attendant of the patient.

23. Where upon the discharge of a pauper lunatic from an institution for lunatics the medical officer of the institution certifies that the lunatic has not recovered, and is a proper person to be kept in a workhouse as a lunatic, a copy of the certificate must accompany the notice of discharge.

24. In the case of the death of a patient, not being a patient in a workhouse, a statement setting forth :—

(*a*) The name, sex, and age of the patient ;

(*b*) Whether married, single, or widowed ;

(*c*) The profession or occupation of the patient ;

(*d*) His place of abode immediately prior to being placed under care and treatment, if known ;

(*e*) The time and cause of, and the circumstances attending, the death ;

(*f*) The duration of the disease of which the patient died ;

(*g*) The name or names of any person or persons present at the death ;

must be prepared and signed, in the case of a death in

an asylum, by the clerk and medical officer of the asylum, and in any other case by the medical person or persons who attended the patient in his last illness; and must, within forty-eight hours of the death, be sent to the coroner of the district by the manager of the institution for lunatics in which the patient died, or by the person having charge of a single patient. In the case of a lunatic dying in an institution for lunatics, the medical officer of the institution must, within three days after the death, enter a copy of the statement in the Medical Case Book, and in the case of a single patient the person having charge of him must, within the like period, enter a copy of the statement in the Medical Journal. The clerk of the asylum, or the manager of the hospital or house, or, upon the death of a single patient, the person who had charge of him, must, within forty-eight hours of the death of a patient, send notice thereof in the form prescribed—(*a*) to the Commissioners; (*b*) to the relation or one of the relations named in the statement accompanying the order for the reception of the patient; (*c*) to the registrar of deaths for the district; (*d*) in the case of a licensed house within the jurisdiction of any visitors, also to the clerk of the visitors; (*e*) in the case of a lunatic so found by inquisition, also to the Chancery visitors; (*f*) if the patient was not a pauper, also to the person upon whose petition the order for the admission of the patient was made, or who made the last payment on account of the patient; (*g*) if the patient was a pauper, also to the relieving officer of the union or the clerk of the peace of the county or borough to which the patient was chargeable.

27. The manager of every asylum must once at least in each half-year send to the guardians of every union a statement of the mental and bodily condition of every pauper lunatic chargeable to the union.

28. In the case of pauper lunatics not in an institution for lunatics, the medical officer of every district of a union and of every workhouse must, within seven days after every thirty-first of March, thirtieth of September, and thirty-first of December, make a return of all such lunatics visited by him during the preceding quarter; or if there were no such lunatics within the district or workhouse of which he is medical officer, must make a return to that effect; such return must be in the form prescribed, and must, within the time aforesaid, be delivered or sent to the clerk to the guardians of the union to which the return relates.

30. All entries to be made under the rules of the Commissioners must be made in a manner so clear and distinct as to admit of being easily referred to and extracted whenever the Commissioners shall so require.

The manager of every institution for lunatics shall furnish to the Commissioners, at such time and in such form as they may from time to time prescribe, such annual and other returns and information of or in any way relating to the patients of or boarders in the institution as the Commissioners may, in their discretion, require.

32. Every applicant for a licence for a house must at least fourteen clear days before a quarterly or other meeting of the Commissioners, or before a quarter or special sessions of the licensing justices, give notice of the application:—

(*a*) If the house is within the immediate jurisdiction of the Commissioners, to the Commissioners; (*b*) if elsewhere, to the clerk of the peace for the county or borough in which it is situate. The notice must contain (1) the Christian and surname, place of abode, and occupation of the proposed licensee; (2) the Christian and surname

of the person who is to reside in the house; and if the house has not been previously licensed, a full description of the estate or interest of the proposed licensee therein. Also, if the house has not been previously licensed, the applicant must send with his notice the following documents:—

(*a*) A plan of all houses and buildings to be included in the licence, drawn upon a scale of eight feet to an inch, with a description of the situation of the house, and the length, breadth, and height of, and a reference by a figure or letter to, every room therein, distinguishing the rooms to be appropriated to patients from those to be occupied by the family and domestic servants of the resident licensee.

(*b*) A statement of the quantity of land not covered by buildings annexed to the house, and appropriated to the exclusive use, exercise, and recreation of the patients, with a plan thereof drawn to the scale of 100 feet to an inch.

(*c*) A statement of the number of patients of each sex to be received, and of the means by which the sexes are to be kept apart.

The notice and accompanying documents, when sent to a clerk of the peace, must by him be laid before the justices when they consider the application for the licence. If a house not within the immediate jurisdiction of the Commissioners has not been previously licensed, copies of the notice and accompanying documents must, at least thirty days before the quarter or special sessions at which the application is to be considered, be sent by the applicant to the Commissioners.

33. Every person applying for the renewal of a licence must send to the Commissioners, and if his application is to any justices, also to the clerk of the peace of the

county or borough a statement, signed by the applicant, containing the names and number of the patients of each sex then detained in such house, and distinguishing between private and pauper patients. Copies of all entries made by the visiting Commissioners in the books of a licensed house since the last renewal of the licence must be laid before the justices upon every renewal of a licence.

Idiots.

The Idiots Act of 1886,(*a*) which came into force on the 1st of January, 1887, legislates for idiots or imbeciles, as distinct from lunatics,(*b*) for the first time.(*c*) It provides for the registration of places set apart for the reception of such, and regulates the mode of obtaining admission.

The Act requires hospitals or institutions for the reception of idiots to be registered with the Commissioners in Lunacy, who first satisfy themselves that the place is a proper one for such purpose. The Commissioners also license houses for the reception, cure, education, and training of idiots or imbeciles, and the magistrates also have power to grant licences to such places;(*d*) no idiot can lawfully be received in such place until it has been duly registered.(*e*) No place will be registered which is used for the reception of lunatics.(*f*)

The admission of an idiot to such a place is obtained, where the idiot has been so from birth or from an early age, and is still under age, by the parent or guardian, or by any person undertaking and performing towards him the duty of parent or guardian, upon the certificate in writing of a duly qualified (*i.e.*, registered) medical practitioner (in the form provided by the Act), accompanied

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(*a*) 49 & 50 Vict. c. 25.
(*b*) *Ib.* ss. 11, 17.
(*c*) *Ib.* s. 3.
(*d*) *Ib.* ss. 7, 8, and 17.
(*e*) *Ib.* s. 7.
(*f*) *Ib.* s. 17.

by a statement signed by the person making the application for admission. Upon such certificate and statement an idiot can be received into a registered hospital or licensed house, and may be lawfully detained there until of full age for the purpose of his efficient care, education, and training.(*g*) When an idiot so detained has arrived at full age the consent of the Commissioners in Lunacy must be obtained in writing before he can be further detained. An idiot of full age is admitted upon the same certificate and statement.(*h*) When an idiot is first received into any hospital or licensed house, the superintendent or principal officer must within fourteen days certify the fact in writing, in a form provided, to the Commissioners, and must sign such certificate.(*i*) The Commissioners may at any time order any person of full age to be discharged, but must state their reasons for so doing in the order.(*k*) The death or discharge of any idiot must be at once notified in writing to the Commissioners.(*l*) A "Medical Journal" must be kept, in accordance with the regulations of the Commissioners,(*m*) and they may by written order require a duly qualified medical practitioner to reside on the premises.(*n*) They will also inspect the place and inmates once in every twelve months at least.(*o*)

The Act also gives power to the committee of management of any registered hospital or licensed house to grant a superannuation allowance to any officer or servant who is incapacitated by confirmed illness, age, or infirmity, *or* who has been in their employ for not less than fifteen years, and who is not less than fifty years of age. Such allowance must not exceed two-thirds of the total value of the

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(*g*) *Ib.* s. 4.
(*h*) *Ib.* s. 5.
(*i*) *Ib.* s. 9.
(*k*) *Ib.* s. 6.
(*l*) *Ib.* s. 10.
(*m*) *Ib.* s. 13.
(*n*) *Ib.* s. 14.
(*o*) *Ib.* s. 12.

appointment—salary, lodgings, rations, and other allowances.(*a*)

Retreats for Habitual Drunkards.

An Act of Parliament came into force in 1880 for the purpose of facilitating the control and cure of Habitual Drunkards(*b*) by the licensing of houses for the reception, control, cure, and curative treatment of persons who, not being amenable to any jurisdiction in lunacy, were, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to themselves or to others, or incapable of managing themselves or their property.(*c*) This Act was an experimental piece of legislation in force for ten years, but was made permanent and to some extent amended in 1888.(*d*)

A local authority (*i.e.*, the justices of the peace)(*e*) may, subject to any conditions which they shall deem fit, grant to any person, or to two or more persons jointly, a licence for any period of not more than thirteen months to keep a retreat, and may from time to time renew or revoke such licence.(*f*) The application must be made in a form which can be obtained from the clerk, and will require to be stamped with impressed stamps of the value of 5*l.*, and ten shillings for every patient above ten that it is intended to admit. This sum, together with such court fees as are prescribed by the Secretary of State, must be paid by the applicant.(*g*) It is necessary that

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(*a*) 49 & 50 Vict. c. 25, s. 16.
(*b*) 42 & 43 Vict. c. 19.
(*c*) *Ib.* s. 3.
(*d*) 51 & 52 Vict. c. 19, s. 2.
(*e*) 42 & 43 Vict. c. 19, s. 5, and Sched. 1. In a city, or borough having a separate quarter sessions, the justices in special sessions assembled; in a county, the justices in general or quarter sessions assembled.
(*f*) *Ib.* s. 6.
(*g*) *Ib.* s. 34.

one at least of the licensees resides in the retreat and is responsible for the management, and unless such licensee is a registered medical practitioner, he must employ one as medical attendant.(*h*) A licensee may, subject to the approval of the local authority, appoint a deputy with full power to act for him during his temporary absence for not more than six weeks in any one year.(*i*) A licence cannot be granted to a person who is licensed to keep a house for the reception of lunatics.(*k*) If at any time the licensee becomes incapable, from sickness or otherwise, of keeping such a retreat, or if he dies or becomes bankrupt, or has his affairs liquidated by arrangement, or becomes mentally incapable or otherwise disabled, the local authority may, if in its discretion it shall think fit, transfer the licence to another person.(*l*) If the retreat becomes unfit for the habitation of the persons detained therein, or otherwise unsuitable for its purpose, the local authority or the inspector may order the discharge of any persons detained therein;(*m*) and if such order, which must be in writing, is made, it becomes the duty of the licensee to send by post, with all practical speed, a copy of the order to the person by whom the last payment for any person ordered to be removed was made, or to one at least of the persons who signed the statutory declaration.(*m*)

Any habitual drunkard who is desirous of obtaining admission to a retreat may make application in writing to the licensee of a retreat, and must state the time during which he is willing to remain in the retreat. The signature of the applicant must be attested by any two justices of the peace, who must first satisfy themselves

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(*h*) *Ib.* s. 6.
(*i*) 51 & 52 Vict. c. 19, s. 3.
(*k*) 42 & 43 Vict. c. 19, s. 7.
(*l*) *Ib.* s. 8.
(*m*) *Ib.* s. 9.

that the applicant is a habitual drunkard withir the meaning of the Act, and must have explained to him the effect of his application.(*a*) The application must also be accompanied by a statutory declaration of two persons to the effect that the applicant is a habitual drunkard within the meaning of the Act.(*b*) When a person has been admitted to a retreat he is not entitled to leave it until he is discharged, or until his time has expired, unless authorised by licence so to do. But under no circumstances can the term exceed twelve months.(*c*) When a person has been received into a retreat it is the duty of the licensee to send a copy of the application to the clerk to the local authority and to the Secretary of State within two clear days.(*d*) The Secretary of State may appoint an inspector and assistant inspector for the purpose of inspecting every retreat at least twice every year,(*e*) and making annual reports and returns thereon.(*f*)

Any person admitted to a retreat may be discharged upon the written request of the licensee by order of a justice of the peace, if such shall appear reasonable and proper to the justice;(*g*) or by the Secretary of State either upon the recommendation of the inspector or upon his own initiative;(*h*) a judge of the High Court or a county court judge has power at any time to make an order authorising and directing any person to visit and examine any person detained in a retreat, and to enquire into and report upon any matter relating to such person; and upon receiving such report he may, if he thinks fit, order the discharge of such person.(*i*)

(*a*) 42 & 43 Vict. c. 19, s. 10, as amended by 51 & 52 Vict. c. 19, s. 4.
(*b*) *Ib.* s. 10.
(*c*) *Ib.* s. 10.
(*d*) *Ib.* s. 11.
(*e*) *Ib.* ss. 13, 15.
(*f*) *Ib.* s. 16.
(*g*) *Ib.* s. 12.
(*h*) *Ib.* s. 15.
(*i*) *Ib.* s. 18.

A justice of the peace may at any time, at the request of the licensee, permit, by licence under his hand, any habitual drunkard to live with any trustworthy and respectable person named in the licence who is willing to receive and take charge of him, for a definite time of not more than two months for the benefit of his health; and may also renew such licence from time to time.(*k*) Such licence may be revoked in writing, either by the magistrate who granted it or by the Secretary of State, upon the recommendation of the inspector, when the person to whom it refers must forthwith return to the retreat.(*l*) If the person escapes or refuses to be restrained from drinking intoxicating liquors the licence is, *ipso facto*, forfeited, and he can be taken back to the retreat.(*m*) The period during which a person is out on licence counts as part of the time for which he is to remain in the retreat, unless the licence has been revoked.(*n*) The Secretary of State may from time to time make rules for the management and conduct of retreats.(*o*)

The Act provides the following penalties for breaches of its provisions:—A licensee knowingly and wilfully failing to comply with the provisions of the Act, or doing anything in contravention of its provisions, or neglecting, or permitting to be neglected, any habitual drunkard placed in his care becomes liable to a penalty of not more than 20*l*., or imprisonment for not more than three months, with or without hard labour.(*p*) The same penalty is incurred by any person ill-treating any inmate; by any officer or servant employed in the retreat wilfully neglecting any inmate; by any person inducing or assist-

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(*k*) *Ib.* s. 19.
(*l*) *Ib.* s. 22.
(*m*) *Ib.* s. 21.
(*n*) *Ib.* s. 20.
(*o*) *Ib.* s. 17; a copy signed by the inspector is evidence.
(*p*) *Ib.* ss. 23, 28.

ing any inmate to escape; and by any person who, except in cases of urgent necessity, gives or supplies to any inmate any intoxicating liquor, sedative, narcotic or stimulant drug or preparation, without the authority of the licensee or medical attendant.(*a*) The same penalty can also be inflicted for a breach of the rules laid down by the Secretary of State.(*b*) Any habitual drunkard who wilfully neglects, or wilfully refuses to conform to these rules is liable to a penalty of 5*l*., or, at the discretion of the justices, imprisonment for seven days, after which he will be taken back to the retreat, and the time during which he was in prison will not be counted as part of the time for which he entered the retreat.(*c*) When any habitual drunkard has escaped from a retreat or from the person in whose charge he has been placed, any magistrate in the district where he is found, or where the retreat is situate, or from which he has escaped may, upon the sworn information of the licensee, issue a warrant for his apprehension, at any time before the expiration of the period of detention. When such person is arrested he will be brought before the justice, who may order his return to the retreat.(*d*)

Upon the death of any habitual drunkard in a retreat a statement of the cause of death, and of the name of any person present at the death must be drawn up and signed by the medical attendant, and copies duly certified by the licensee must be transmitted to the coroner, the registrar of deaths, the clerk to the local authority, and the person by whom the last payment was made, or one at least of the persons who signed the declaration.(*e*) To neglect this is an offence against the Act, and is punishable to the same extent as those mentioned above,

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(*a*) 42 & 43 Vict. c. 19, s. 24.
(*b*) *Ib.* s. 17.
(*c*) *Ib.* s. 25.
(*d*) *Ib.* s. 26.
(*e*) *Ib.* s. 27.

and it must be noted that the medical attendant is equally liable with the licensee.(*f*)

Vaccination.(*g*)

As the operation of vaccination is frequently performed by medical practitioners who do not hold the office of public vaccinator, it may be useful to point out shortly the provisions of the Vaccination Acts which apply to them, and also to the parents of the child.

When the birth of a child is registered, or within seven days after, the registrar will deliver to the parent or person having charge of the child, a notice requiring the child to be vaccinated, stating the vaccination station and attendances of the public vaccinator, together with the necessary forms of certificates.(*h*) The operation must—subject to the provision hereafter explained—be performed within three months,(*i*) either by the public vaccinator or by some other registered medical practitioner,(*k*) otherwise a penalty of 20*s*. is incurred,(*l*) and the same penalty can be inflicted for refusing to carry out an order of the justices requiring the child to be vaccinated.(*m*)

If in the opinion of the medical practitioner the child

(*f*) Penalties are recoverable summarily (s. 29), subject to appeal, by notice within seven days, to quarter sessions (s. 30). Limitation, two years (s. 31).

NOTE—It may be well to state that where any person holds any estate subject to residence, he does not forfeit it by going into a retreat, except in the case of an ecclesiastical benefice (s. 33).

(*g*) The law relating to vaccination is contained in 30 & 31 Vict. c. 84, as amended by 34 & 35 Vict. c. 98.

(*h*) 30 & 31 Vict. c. 84, s. 15 ; and 34 & 35 Vict. c. 98, s. 4.

(*i*) 30 & 31 Vict. c. 84, s. 16.

(*k*) *Ib.* s. 35. This must be construed strictly : where the operation was performed by an M.D. of Philadelphia, it was held not to be a sufficient compliance with the Act : *Cromack* v. *Brennand*, 37 J. P. 276.

(*l*) *Ib.* s. 29.

(*m*) *Ib.* s. 31.

is not in a fit and proper state to be successfully vaccinated, he must forthwith deliver to the parent or person having the custody of the child a certificate to that effect. This certificate remains in force for a period of two months, and can, after personal inspection,(*a*) be renewed for a like period as often as necessary.(*b*) When in the opinion of the medical practitioner it is no longer necessary, the child must be vaccinated with all reasonable dispatch, and if successful a certificate must be given to that effect.(*b*)

If after three attempts at vaccination the operation proves unsuccessful, or if the child has already had the small pox, the medical practitioner must give a certificate, which he must sign, stating the fact as it may be, after which there will be no further necessity for having the operation performed.(*c*)

When a child has been successfully vaccinated, a certificate to that effect must be delivered to the parent or person in charge of the child.(*d*)

The Local Government Board supply the necessary forms of certificate(*e*); and a medical practitioner refusing to deliver the proper certificate to the parent or person in charge of the child, becomes liable to a penalty of 20*s.*; and to wilfully and falsely certify renders him liable to fine, or imprisonment to the extent of two years.(*f*) It may be usefully pointed out that the parent or person in charge of the child is required to forward whatever certificate the medical practitioner gives, to the vaccination officer of the district, within seven days of its being made.(*g*)

(*a*) 30 & 31 Vict. c. 84, s. 19.
(*b*) *Ib.* s. 18.
(*c*) *Ib.* s. 20.
(*d*) 34 & 35 Vict. c. 98, s. 7.
(*e*) *Ib.* ss. 5 and 16.
(*f*) *Ib.* s. 7 (amending 30 & 31 Vict. c. 84, s. 23).
(*g*) 34 & 35 Vict. c. 98, s. 7.

Certificates of Cause of Death.

In case of the death of any person who has been attended during his last illness by a registered medical practitioner, that practitioner must sign and give to such person as is required by law to register the death a certificate stating to the best of his knowledge and belief the cause of death.(*h*) This certificate is to be given in a printed form, which it is the duty of the registrar to supply gratuitously to all registered medical practitioners residing or practising in the district.(*i*) The certificate is not necessary in cases where an inquest is held by the coroner, as his order takes the place of the certificate of registration.(*k*)

A deceased child cannot be buried as stillborn unless a written certificate from a registered medical practitioner states that he was in attendance at the birth, *or* that he has personally examined the body, *and* that he is satisfied that the child was not born alive, unless a declaration is signed by some person, whose duty it would have been to have registered the birth if the child had lived, to the effect that there was no medical practitioner present at the birth, and that a certificate cannot be obtained, or unless by order of the coroner. The penalty for breach of this enactment is a fine of 10*l*., or (upon indictment), penal servitude for not more than seven years.(*l*) It may also be useful to note that where a coffin contains more than one body notice to that effect must be given, under the same serious penalty.(*m*) A medical practitioner is bound to give a certificate of the cause of death, although his bill has not been paid.

(*h*) 37 & 38 Vict. c. 88, s. 20 (2).
(*i*) *Ib.* s. 20 (1).
(*k*) *Ib.* s. 20 (3).
(*l*) *Ib.* ss. 18, 40.
(*m*) *Ib.* ss. 19, 40.

The Notification of Infectious Diseases.(a)

By an Act of Parliament passed in 1889,(b) the notification of infectious diseases is now made compulsory in London, and in such other places in which the sanitary authorities adopt the provisions of the Act. This is a matter of great importance to medical practitioners, and is explained at p. 104. In certain towns there has been such provision for some time under local Acts of Parliament,(c) and it remains to be seen whether such places will

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(a) The law relating to infectious diseases generally will be found at p. 102.

(b) 52 & 53 Vict. c. 72.

(c) In all these places it is the duty of the medical attendant to notify the disease, and in many of them the occupier has a similar duty as well; these towns are as follows:—

Aberdeen.
Accrington.
Ashton-under-Lyne.
Barrow-in-Furness.
Birkenhead.
Blackpool.
Blackburn.
Bolton.
Bradford (Yorks).*
Burnley.
Burton-on-Trent.
Bury.
Chadderton.
Chester.
Croydon.
Darwin.
Derby.
Dewsbury.
Guildford.
Halifax.
Hartlepool.
Heywood.
Huddersfield.
Jarrow.
Kingston-on-Thames.
Lancaster.
Leicester.
Llandudno.
Llanelly.
Macclesfield.
Manchester.
Melcombe Regis.
Nelson.
Newcastle.
Norwich.
Nottingham.
Oldham.
Portsmouth.
Preston.
Reading.
Ripon.
Rotherham.
Salford.
Stafford.
Staleybridge.
Sunderland.
Torquay.
Wakefield.
Warrington.
West Ham.
Weymouth.
Wigan.
Willesden.
York.

* * In those towns which are printed in italics the notification is to be made to the sanitary authority; in others to the medical officer of health, except in Bradford (Yorks), where it is to be made to the police.

* See note above.

elect to continue the provisions of their local Acts, or to adopt those of the Act of 1889.

Medical Witnesses.

Medical practitioners may frequently find themselves compelled to attend before courts of law for the purpose of giving evidence, either as witnesses to facts, as in cases where they have examined a person and the courts require evidence of the state of that person at the time of the examination, or as experts, as where it is desired to have the evidence of a specialist as to what probably led to certain results, or as to what may result from certain facts.(*d*) It will probably be as well to explain in the first place the rights of a person who has received a subpœna to attend and give evidence before any court; and secondly, to explain shortly what his duties are when in the witness-box.

When a person has received a subpœna, which must be served a reasonable time before the action, so as to allow him to arrange his affairs as conveniently as possible,(*e*) to attend and give evidence in a civil action, he is entitled to receive his full expenses at the time of receiving his subpœna, or at a reasonsble time before the

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(*d*) Medical evidence may be of two kinds; and it is under such conditions that medical evidence is received in courts of justice. First, that it is necessary for the satisfaction of the court that it should be informed of the conclusions drawn by persons of skill and science as to a matter from facts proved in the cause *aliunde*, for instance, it may ask the opinion of medical men, if so and so were the case; secondly, opinions founded upon the observation and inspection of the medical man himself (*Collett* v. *Collett*, 1 Curt. 687, *per* Dr. LUSHINGTON). The opinions of medical men are constantly admitted as to the cause of disease or death, or the consequences of wounds, or the treatment of sickness; and as to the sane or insane state of a person's mind, as collected from a number of circumstances, and as to other subjects of professional skill.

(*e*) *Hammond* v. *Stewart*, 1 Stra. 510.

day named for his attendance.(*a*) A medical man, being a professional witness, is also entitled to remuneration at the rate of one guinea a day for his services;(*b*) and he is entitled to claim this whether called in his professional capacity or not,(*c*) and whether in actual practice or not.(*d*) If called in to advise by the court itself the witness will be entitled to receive special remuneration.(*e*) If the parties do not pay the expenses and remuneration, the witness has a right to enforce payment by an action, but he will not recover more than the above fees unless it has been expressly agreed between himself and the party requiring his attendance that he is to have certain additional remuneration.(*f*) The witness is entitled to recover his fees even though he was not put into the box, provided he was present, and willing to give his evidence.(*g*) The necessary expenses are the cost of coming to, remaining during, and returning from the trial, together with such reasonable costs for maintenance as are necessary, having regard to the circumstances.(*h*) It has been held that a witness who was served in August when about to leave England for a holiday with a subpœna to attend a trial in October, was entitled to a tender of sufficient money to pay his fare home.(*i*) If a witness is called as a scientific expert he may be entitled to much higher remuneration; for example, a medical practitioner called to speak as to the mental state of a person, would generally be entitled to recover remunera-

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(*a*) *Whitelaw* v. *Grant*, 4 Jur. 1061 ; and see note (*c*) ; *Clark* v. *Gill*, 1 Kay & J. 19.
(*b*) *Brocas* v. *Lloyd*, 23 Beav. 129.
(*c*) *Parkinson* v. *Atkinson*, 31 L. J. C. P. 199.
(*d*) *Turner* v. *Turner*, 5 Jur. (N.S.) 839.
(*e*) *Robb* v. *O'Conner*, Ir. L. R. 9 Eq. 373.
(*f*) *Pell* v. *Daubney*, 5 Exch. 955 ; 20 L. J. Ex. 41.
(*g*) *Morrison* v. *Harmer*, 5 Scott, 410.
(*h*) 5 Eliz. c. 9, s. 12.
(*i*) *Vice* v. *Anson*, 3 C. & P. 19. The same costs are allowed before an examiner as before a court, *Brocas* v. *Lloyd*, *supra*.

tion for the time spent in considering the information placed before him to enable him to give an opinion. It has been held that an expert, in one case, was not unreasonable in charging seven guineas a day, while employed in reading papers which were necessary to enable him to give his evidence.(*k*) The witness also has another remedy: to refuse to give evidence until compensated for his loss of time, but such objection must be taken before the oath is administered.(*l*) The costs of experiments to enable the witness to give evidence will not be allowed unless the court so orders.(*m*) The law relating to attendance before courts of criminal jurisdiction is somewhat different. The witness is entitled upon receiving the subpœna to have tendered to him a reasonable and sufficient sum of money to defray his expenses,(*n*) but not to anything more. If the witness is called at the assizes on behalf of the prosecution he can recover any expenses which are unpaid, and any remuneration to which he may be entitled from the treasurer of the county.(*o*) If the witness is called on behalf of the prisoner, the court has a discretion to order the payment of his fees on the same scale as for the prosecution, but of course the county treasurer will not be liable unless this order is made.(*p*) In the county court the witness can recover his expenses, as in the High Court. Magistrates have an absolute discretion to allow fees.(*q*) When attending before a coroner's in-

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(*k*) *Smith* v. *Buller*, L. R. 19 Eq. 473.

(*l*) *Clark* v. *Gill*, 1 Kay & J. 19. (This case also decided that a medical witness was entitled to a guinea a day for attending in London if he resided there, and if he resided elsewhere, three guineas a day and travelling expenses.) See also *Webb* v. *Page*, 1 Car. 4 Kir. 23.

(*m*) *Small* v. *Batho*, 21 L. J. Q. B. 254.

(*n*) 45 Geo. 3, c. 92, ss. 3, 4.

(*o*) 14 & 15 Vict. c. 55, s. 2; 24 & 25 Vict. c. 97, s. 121. See also 24 & 25 Vict. c. 98, s. 77 and c. 100, ss. 54, 77.

(*p*) 30 & 31 Vict. c. 35, s. 5.

(*q*) *Ib.* ss. 2, 5.

quiry a medical witness is entitled to a fee of one guinea for giving evidence, or two guineas if a *post mortem* examination has been made by order of the coroner.(*a*)

A witness also has the right to be privileged from arrest while going to, attending, and returning from the court,(*b*) not only on the ground that public justice might otherwise be interfered with, but also that such a proceeding would be a contempt of the court that had issued the subpœna.(*c*)

A further very important privilege of a witness is the right to be protected from having to give any answer which might incriminate him. This includes any answer which would subject the witness to any penalty, punishment or forfeiture.(*d*) It is not necessary that the consequences must follow the answer, but it is sufficient that they *may* do so.(*e*) The witness must, however, satisfy the court of the reasonableness of his apprehension before he can claim the privilege.(*f*) It must be noted that this privilege is that of the witness alone, and that the objection must come from him and not from counsel.(*g*)

A witness is also protected from an action for defamation for anything he may say in giving evidence, no matter how scandalous, or false it may be. This privilege is absolute and applies to any court.(*h*)

Every witness who objects to being sworn either on the ground that he has no religious belief, or that the taking

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(*a*) 50 & 51 Vict. c. 71, s. 22.
(*b*) *Montague* v. *Harrison*, 3 C. B. (N.S.) 292; and see generally Fisher's Digest (1870) II., 3849, *et seq.*
(*c*) See generally Sichel's Witnesses, p. 115.
(*d*) *Osborne* v. *London Dock Company*, 24 L. J. Ex. 40; and see Stephen, J., on Evidence, Article 120; Sichel on Witnesses, p. 119.
(*e*) *Adams* v. *Lloyd*, 9 Jur. 590.
(*f*) *In re Reynolds*, 20 Ch. D. 294; and above authorities.
(*g*) *Boyle* v. *Wiseman*, 24 L. J. Ex. 160.
(*h*) *Henderson* v. *Bromhead*, 4 H. & N. 569.

of an oath is contrary to his religious belief now has the right to make a solemn affirmation, instead of an oath in all courts and places where an oath is required by law.(*i*)

The medical expert, as such, is asked only for his opinion, either on the facts, or on a hypothetical state of facts, and he may be required to give reasons for the opinion he expresses.

Although a medical witness, as an expert, can give an opinion as well as evidence to facts, he cannot express an opinion on the question which is for the jury to find; his opinion must be as to the deductions to be drawn from the facts put to him.(*k*) Thus he cannot say "the wounds which I examined on the prosecutor were inflicted, in my opinion, by the knife produced," but he may say "I am of opinion that the wounds in questfon could have been inflicted by the knife produced." Again, a medical witness cannot say "the prisoner is insane," but he may say "such and such appearances are evidence of insanity," and "I observed such and such appearances upon an examination of the prisoner."(*l*)

Thus when the question, asked a surgeon, was whether a physician in refusing to consult with the plaintiff, had honourably and faithfully discharged his duty to the medical profession, the question was held inadmissible, because the answer might depend altogether on the temper and peculiar opinions of the individual witness, and was a point on which the jury was as capable of forming an opinion as the witness himself.(*m*)

It has, however, been held in one case that a medical

(*i*) 51 & 52 Vict. c. 46, s. 1.

(*k*) *Ramadge* v. *Ryan*, 9 Bing. 333; 2 L. J. (N.S.) C. P. 8; 2 M. & Sc. 421; *Jameson* v. *Drinkald*, 12 Moore, 157.

(*l*) *R.* v. *Wright*, Russ. & R. 456.

(*m*) *Ramadge* v. *Ryan*, 9 Bing. 333; 2 L. J. (N.S.) C. P. 8; 2 M. & Sc. 421.

witness who has heard the evidence in a case may be asked if the facts and appearances proved show symptoms of insanity.(*a*) On the trial of an indictment for manslaughter against a medical practitioner, a medical witness may give evidence as to his opinion of the skill of the prisoner.(*b*) Medical books cannot be put in as evidence, but a medical witness can be asked if in the course of his reading he has seen certain things laid down; and he can state as a reason for his opinion, that his judgment is founded in part on the writings of his professional brethren.(*c*) No good reason can be given why a medical man should not be allowed to strengthen his recollection by referring to such as he considers to be works of authority; and why he should not be asked after such a reference, whether his judgment was or was not thereby confirmed. It does not, however, appear that this course has ever been directly sanctioned.(*d*)

A medical witness cannot decline to give evidence of a communication on the ground that it was made to him in confidence, or to disclose information that came to his knowledge professionally.(*e*) Neither is a report made

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(*a*) *R.* v. *Searle*, 1 Moo. & R. 75; but see *M'Naghten's Case*, 10 Clark & Fin. 11; 8 Scott N. R. 603; 1 C. & K. 136.

(*b*) *R.* v. *Whitehead*, 3 Car. & Kir. 202; *Rich* v. *Pierpont*, 3 F. & F. 35.

(*c*) *Collier* v. *Simpson*, 5 C. & P. 73.

(*d*) Taylor on Evidence, p. 1214.

(*e*) STEPHEN, J., on Evidence, Article 117; *Duchess of Kingston's Case*, 20 State Trials, 572; Best on Evidence § 582. This provision of our law is at direct variance with the practice in France, and the Statute Law of America, and it has on more than one occasion been stated by our judges that it is doubtful if such provision is wise: BULLER, J., in *Wilson* v. *Rastall*, 4 T. R. 753, said—"There are cases in which it is much to be lamented that the law of privilege is not extended—those in which medical persons are obliged to disclose the information which they acquired by attending in their professional capacity." Lord BROUGHAM, referring to the privilege of legal advisers—in *Greenough* v. *Gaskell*, 1 Myl. & K. 98—said "certainly it may not be very easy to discover why a like privilege has been refused to others and especially to medical advisers."

to an insurance,(*f*) or railway company privileged,(*g*) unless it is made in view of litigation.(*h*)

It may happen that a medical practitioner may have attended a person whose death amounts to murder or manslaughter, and he may be called as a witness to prove some statement which the deceased had made. Under these circumstances it must be remembered that a dying declaration can only be given in evidence when it is shown to the satisfaction of the judge that the declarant was in actual danger of death, and had given up all hope of recovery; hence the witness must be prepared to answer on these points.(*i*) It should also be remembered that declarations and admissions which are obtained under threats are of no value, and cannot be given in evidence.(*k*)

The representations by a sick person of the nature and effects of the malady under which he is labouring, are receivable as original evidence, whether they be made to the medical attendant or to any other person, though the former are naturally entitled to greater weight than the latter, inasmuch as a physician is far more capable than a man unacquainted with the symptoms of diseases, of forming a correct judgment respecting the accuracy of the statements;(*l*) but letters written by a patient to a medical man, describing the symptoms of his illness upon which the medical man advised the patient, have been held not admissible in evidence.(*m*)

(*f*) *Lee* v. *Hammerton*, 10 L. J. (N.S.) 730.

(*g*) *Baker* v. *London and South Western Railway Company*, L. R. 3 Q. B. 91.

(*h*) *Cossey* v. *London and Brighton and South Coast Railway Company*, L. R. 5 C. P. 146.

(*i*) STEPHEN, J., on Evidence, Article 26, and *R.* v. *Crockett*, 4 C. & P. 544.

(*k*) *Ib.* Article 22, and *R.* v. *Kingston*, 4 C. & P. 387.

(*l*) *Aveson* v. *Lord Kinneard*, 6 East, 198; *R.* v. *Blandy*, 18 How. St. Tr. 1135—1138.

(*m*) *Witt* v. *Witt and Klindworth*, 3 Swab. & Tris. 143.

It has frequently been held, in actions or indictments for assault that what a man has said about himself to his surgeon is evidence to show what he suffered by reason of the assault.(*a*)

It may not be out of place to give a few suggestions as to the preparation, and giving of evidence. Whenever a medical practitioner is called to see a person whose condition is likely to give rise to inquiry in a court of justice, his first care should be to make a careful note of his examination, so as to show clearly what he saw, for though this may not be read to the court, yet he has a perfect right to refresh his memory by referring to his notes before answering any question. Another point is to be able to give reasons for any matter of opinion which he may be called upon to advance. If the bearing of the facts of the case upon the opinion formed is not considered beforehand, there is very little likelihood of being able to do so under the process of cross-examination. It need hardly be said that a medical witness is bound, for the honour of his profession, and as an English gentleman, to give his honest opinion quite independent of any consequences which may ensue from it to any person; in fact, the consequence ought not to be thought of, except as a reminder of the necessity of exercising the greatest care. When in the box, the witness should give as short answers as are consistent with clearness; and as directly in answer to the question as is possible; in fact, to do otherwise is only to give ample opportunity to hostile counsel to find more holes to pick in the evidence. Use as few technical words as possible, and above all things be natural. There is nothing so absurd as to see a man commence his evidence as if he were addressing himself to a large audience, and then suddenly in the excitement of cross-examination forget his assumed tone,

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(*a*) *Aveson* v. *Lord Kinneard*, 6 East, 198, *per* LAWRENCE, J.; *R.* v. *Guttridge*, 9 C. & P. 472, *per* PARKE, B.

lofty bearing, and unnatural manner and become an ordinary mortal. Never attempt to air your learning before the court, or to argue with counsel, for this cannot improve your evidence and may minimise it very seriously. Simply answer the question and never mind any explanation, unless such affects you personally, for, if it is necessary to the case, the opposing counsel will take care to give you an opportunity to set the matter right when the proper time comes to do so. It is very important to remember that counsel is in possession of the exact words used by the witness in the magistrates' and the coroner's courts, and that the slightest variation from it will need a most thorough explanation.

When pregnancy is pleaded a jury of matrons is empowered to decide the issue upon examination of the person of the prisoner, and the matrons may in addition to their personal inspection, hear the evidence of a surgeon, but in that event he must be examined as a witness in open court.(*b*)

In all cases of sudden and violent death, and especially where it is likely that a criminal charge will be made against any person, a surgeon ought to be called as a witness at the inquest(*c*), and a *post mortem* examination ought to be made. If the deceased has been attended by a medical practitioner, his attendance should be secured, care being taken that he is able to identify the body. Such a medical witness ought to prepare himself to give the required evidence by making a careful examination of the body, not only externally or of the supposed seat of injury, but also of the different cavities and the head, and by taking written notes of the appearances. If this be done before the sitting of the court, time may be saved and the trouble and inconvenience of an adjournment avoided.

(*b*) *R.* v. *Wycherley*, 8 C. & P. 262.
(*c*) *R.* v. *Quinch*, 4 C. & P. 571.

PART V.

MISCELLANEOUS.

The Anatomy Act.

Prior to the passing of this Act in 1832, although the practice of anatomy was not illegal, there was no provision by which bodies could be obtained for the purpose.(*a*) To practise anatomy it is necessary to obtain a licence from the Home Secretary. This licence will be granted to any registered medical practitioner, or to any professor or teacher of anatomy, medicine or surgery, or to any student attending any school of anatomy, on an application being made for such purpose, which must be countersigned by two justices of the peace for the place where the applicant resides, who must certify to their knowledge or belief that the applicant is about to carry on the practice of anatomy.(*b*) It is also necessary to give one week's notice to the Home Secretary of the place where it is intended to practise anatomy.(*c*) An inspector is appointed for the purpose of inspecting such places and schools of anatomy.(*d*) Any person duly

(*a*) This is practically, though not strictly, correct, for in 1540 a grant of four bodies of executed criminals annually was made to the Company of Barbers and Surgeons; in 1565 Elizabeth granted the same number from Middlesex; in 1663 Charles 2 increased it to six; and 25 Geo. 2, c. 37, granted the bodies of all executed criminals, and made attempts to rescue the same a felony.

(*b*) 2 & 3 Will. 4, c. 75, s. 1. The licence may be granted to a number of persons, and to either sex: s. 19.

(*c*) *Ib.* s. 12.

(*d*) *Ib.* ss. 2 and 5.

authorised under this Act is not liable to punishment for being in possession of human bodies.(*e*) This Act, of course, has no reference to *post mortem* examinations which are ordered by a competent legal authority.(*f*)

It is now lawful for any executor or person having the lawful possession of the body of any deceased person (except an undertaker, or person intrusted with the body for the purpose only of interment) to permit such body to undergo anatomical examination, unless such person knows that the deceased has at any time expressed his desire in writing, or, during his last illness, verbally in the presence of at least two witnesses, that his body after death might not undergo such examination, or unless the surviving husband or wife, or any known relative of the deceased, shall require the body to be buried without such examination.(*g*) The master of a workhouse is for the above purpose a person having lawful possession of the body of paupers who have died in the workhouse, and he has a right to sell them for the purpose of dissection, unless the relatives specifically require that they be buried without such examination;(*h*) but the governor of a prison has not the same power, unless dissection is part of the sentence.(*i*) Any person can either in writing, at any time during his life, or verbally in the presence of at least two witnesses during his last illness, direct that his body after death may be examined anatomically, and can nominate any person licensed to practise anatomy to conduct such examination; and if before the burial of the body such direction of the deceased shall be made known to the person having lawful possession of the body, he shall direct and permit such examination to be made, unless the surviving husband or wife of the deceased, or

(*e*) *Ib.* s. 14.
(*f*) *Ib.* s. 15.
(*g*) *Ib.* s. 7.
(*h*) *R.* v. *Feist*, 8 Cox C. C. 18; 27 L. J. M. C. 164.
(*i*) *R.* v *Cundick*, 1 D. & R. N. P. C. 13.

the nearest known relatives (or any one of such) shall require the body to be buried without such examination.(*a*) It is important to note that the Act says "before the burial," for it is still an indictable offence punishable with fine or imprisonment, or both, to disinter a body for the purpose of dissection.(*b*)

When a body has been obtained it must not be removed from the place of death until forty-eight hours after the death, and twenty-four hours' notice of the intended removal must be given to the inspector of the district, or, if there is no inspector in the district, to some registered medical practitioner residing at or near the place of death. A certificate as to the cause of death, signed by a registered medical practitioner who attended the deceased during his illness, or, if he was not so attended, by some practitioner (who is not concerned in the anatomical examination) after examination of the body, must be delivered with the body.(*c*) This certificate is necessary to show that the person received the body lawfully,(*d*) and within twenty-four hours after doing so it must be transmitted to the inspector for the district, together with a return shewing the day and hour of the receipt of the body, the date and place of death, the sex, and (so far as is known) the full name, age, and last place of abode of the deceased. If there is no inspector for the district the certificate and return must be delivered to some neighbouring registered medical practitioner, who is bound to produce them to the inspector when required.(*e*) All bodies must be removed in a decent coffin or shell, and must be afterwards decently interred in consecrated ground or in some public burial ground in use for persons

(*a*) 2 & 3 Will. 4, c. 75, s. 8.
(*b*) *R.* v. *Gillies*, R. & R. 366*n*; *R.* v. *Lynn*, 2 T. R. 733; and *R.* v. *Sharpe*, 26 L. J. M. C. 47.
(*c*) *Ib.* s. 9.
(*d*) *Ib.* s. 10.
(*e*) *Ib.* s. 11.

of that religious persuasion to which the deceased belonged; and the certificate of interment must be forwarded to the inspector within six weeks after the receipt of the body,(*f*) unless the period is extended by an order of the Home Secretary.(*g*) Any person practising anatomy without being authorised under this Act is guilty of a misdemeanor, and can be imprisoned for not more than three months, or fined to the extent of fifty pounds.(*h*) If any person not duly licensed were to receive a body bearing marks of foul play he would probably be liable to indictment as an accessory after the fact.

Vivisection.

In 1876 an Act was passed to amend the law relating to cruelty to animals by extending it to the cases of animals which are subjected, when alive, to experiments calculated to inflict pain for medical, physiological, or scientific purposes.(*i*) It provides that no person shall perform on any living animal, except invertebrate animals,(*k*) any experiment calculated to give pain, except subject to the restrictions of the Act.(*l*) These restrictions are:—(1) That the experiment must be performed with a view to the advancement by new discovery of physiological knowledge which will be useful for saving or prolonging life, or alleviating suffering, or for the purpose of testing a particular former discovery alleged to have been made for such purpose, on a certificate being given that such test is absolutely necessary for the

(*f*) *Ib.* s. 13.
(*g*) 34 Vict. c. 16.
(*h*) 2 & 3 Will. 4, c. 75, s. 18. Actions must be brought within six months, and the general issue can be pleaded, and special matter given in evidence: s. 17.
(*i*) 39 & 40 Vict. c. 77.
(*k*) *Ib.* s. 22.
(*l*) *Ib.* s. 2.

effectual advancement of such knowledge; (2) The experiment must be performed by a person holding a licence from one of the principal Secretaries of State (practically the Home Secretary), and it may be granted conditionally that the experiment be performed in a registered place; (3) The animal during the whole of the experiment must be under the influence of some anæsthetic of sufficient power to prevent it feeling pain (and for this purpose urari, or curare, is not a sufficient anæsthetic(*a*)), unless a certificate has been obtained to the effect that insensibility cannot be produced without necessarily frustrating the object of the experiment; (4) If the pain is likely to continue after the effect of the anæsthetic has ceased, or if any serious injury has been inflicted, the animal must be killed before it becomes sensible again, unless a certificate has been obtained that to so kill the animal would necessarily frustrate the object of the experiment, in which case the animal must be killed as soon as the object has been attained; (5) The experiment must not be performed in any medical school, hospital, college, or elsewhere as an illustration to a lecture, unless a certificate is obtained to the effect that the experiment is absolutely necessary for the due instruction of persons to whom such lectures are given, with a view to their acquiring physiological knowledge for the purpose of prolonging life or alleviating suffering; and (6) No such experiment shall be performed for the purpose of obtaining manual skill.(*b*) Any person who performs or takes part in any such experiment in contravention of the above restrictions is guilty of an offence against the Act, and becomes liable to a penalty of fifty pounds for a first, and a hundred pounds, or not more than three months' imprisonment, for a subsequent offence.(*c*) Under

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(*a*) 39 & 40 Vict. c. 77, s. 4.
(*b*) *Ib.* s. 3.
(*c*) *Ib.* s. 2.

no circumstance can such an experiment be performed in public; it is illegal whether payment is made or it is done gratuitously; and not only does it subject the offender to the same penalties as described above, but any person advertising notice of any such experiment becomes liable to a penalty of twenty shillings.(*d*) Dogs, cats, horses, asses, and mules are also further protected, for no experiment can be performed on them without anæsthetics, unless a certificate has been obtained to the effect that (in addition to the above-mentioned requirements) the object of the experiment will be necessarily frustrated unless performed on an animal similar in constitution and habits to the animal to be experimented upon, and that no other animal is available for such purpose.(*e*)

The licence is obtained from the Home Secretary, who has power to grant it to any person he considers qualified to hold it; he has also power to suspend or revoke it at any time.(*f*) If it is a condition of the licence that the experiment must be performed in a registered place, which must have been approved by him(*g*) and must be inspected,(*h*) and he has power to annex any condition which he may think expedient so long as it is not inconsistent with the Act,(*i*) an application for a licence, as well as the before-mentioned certificates, must be signed by the president of at least one of the following societies:—The Royal Society, the Royal Society of Edinburgh, the Royal Irish Academy, the Royal Colleges of Surgeons of London, Edinburgh, or Dublin; the Royal Colleges of Physicians in the same places, the General Medical Council, the Faculty of Physicians and Surgeons of Glasgow, and, in case the experiment is to be performed under anæsthetics, with a view to the advancement by

(*d*) *Ib.* s. 6.
(*e*) *Ib.* s. 5.
(*f*) *Ib.* ss. 8 and 11.
(*g*) *Ib.* s. 7.
(*h*) *Ib.* s. 10.
(*i*) *Ib.* s. 8.

new discovery of veterinary science, the Royal College of Veterinary Surgeons, and the Royal Veterinary College of London. It is also necessary to have the signature of a professor of physiology, anatomy, medicine, medical jurisprudence, materia medica, or surgery in a university in Great Britain or Ireland, or in University College, London, or in some college incorporated by charter. But the applicant's signature will not be sufficient, although he holds one of these offices. The application and certificates must be forwarded to the Secretary of State at least a week before the licence is required.(*a*) The Secretary of State also has power to require the person performing the experiment to report the result to him.(*b*) Any of Her Majesty's judges have power to grant a certicate, when it is required, for the purpose of a criminal trial.(*c*)

A justice of the peace has power, on an information upon oath, to issue a warrant to search any place where there is a reasonable belief that this Act is being contravened, and a constable carrying out this warrant has a right to demand the name and address of any person found thereon. Any person refusing this information, or obstructing the officer, or giving a false name or address, is liable to a penalty of five pounds.(*d*) No prosecution can be brought against any person licensed under this Act without the written consent of the Secretary of State.(*e*)

(*a*) 39 & 40 Vict. c. 77, s. 11.
(*b*) *Ib.* s. 9.
(*c*) *Ib.* s. 12.
(*d*) *Ib.* s. 13. The penalties are recoverable summarily before any two justices of the peace (s. 14), but if the penalty is above 5*l.* the defendant can demand to be indicted (s. 15). If the demand is not made and the justices deal with the matter, there is still an appeal to quarter sessions, provided notice is given within ten days (s. 16).
(*e*) *Ib.* s. 21.

Registration of Births.(*e*)

The law requires that the birth of every child born alive should be registered. It is, in the first place, the duty of the parents of the child to register the birth within forty-two days after its occurrence. If they fail so to do, the duty is cast upon the occupier of the house in which the birth happened to his knowledge, *any person present at the birth*, or the person having charge of the child. The person effecting the registration must supply the necessary particulars, and must sign the register in the presence of the registrar.(*f*) If the parents have failed to effect the registration within the prescribed time, the registrar can, by notice in writing, at any time within three months(*g*) require any of the above persons to attend at his office and supply him with the requisite particulars, and failure to do so renders the person liable to a penalty of forty shillings.(*h*) During the forty-two days registration can be effected without payment of any fee unless written notice is given to the registrar to attend at the house of the informant to effect the registration, in which case he is entitled to a fee of one shilling.(*i*) After the forty-two days and within twelve months registration can only be effected upon the parent, or guardian, or some person present at the birth making a

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(*e*) Although the medical practitioner is but remotely affected by the law of registration—as frequently being a "person present at the birth"—it may still be useful to have an epitome of the chief points of the Acts, as the importance of registration cannot be over-estimated, not only on the grounds of the safeguards to the civil rights of individuals, but also on account of the important part which registration statistics play in matters of political, social, and sanitary science.

(*f*) 37 & 38 Vict c. 88, s. 1. In the case of an illegitimate child, the father's name cannot appear on the register except with his consent (s. 7).

(*g*) *Ib.* s. 4.

(*h*) *Ib.* s. 2.

(*i*) *Ib.* s. 27.

solemn declaration as to the truth of the necessary particulars; and in this case the signature of the superintendent registrar is necessary as well as that of the registrar, and certain fees are payable.(*a*) After the expiration of twelve months registration can only be effected on the authority of the Registrar-General.(*b*) Additional names given at baptism can be added to the register at any time within twelve months.

Registration of Deaths.(*c*)

A death must be registered within five days of its occurrence, or within fourteen days, provided that written notice, accompanied by a certificate from a medical practitioner showing the cause of death, is sent to the registrar.(*d*) The duty devolves upon the nearest relatives of the deceased who were present at the death or in attendance during the last illness. If they fail to perform this duty it falls upon any other relatives of the deceased who may reside in the same registrar's district; then upon any person present at the death, or the occupier of the house in which the death happened; and if all these persons fail in performing their duty any inmate of the house where the death occurred, or the person causing the body to be buried may be required to fulfil the duty.(*e*) If no person gives the requisite particulars to the registrar he can in writing require attendance before him at his office for the purpose of supplying the necessary information and signing the register. The penalty for omitting to register within fourteen days is forty shillings, and a person who declines to give the necessary

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(*a*) 6 & 7 Will. 4, c. 86, s. 22.
(*b*) 37 & 38 Vict. c. 88, s. 5.
(*c*) See note (*e*), page 243.
(*d*) 37 & 38 Vict. c. 88, s. 13.
(*e*) *Ib.* s. 10. As to deaths happening other than in a house, see s. 11.

information may be indicted criminally for his refusal.(*f*) The same penalty can be inflicted for refusing to deliver the certificate as to the cause of death to the registrar.(*g*) If the registration is effected within twelve months there is no fee payable,(*h*) unless the registrar is required by notice in writing to attend at the house of the informant, when he is entitled to a fee of one shilling.(*i*) After twelve months registration cannot be effected except by the authority of the Registrar-General.(*k*) When the registration has been effected a certificate to that effect is given to the person registering it, by the registrar, and this certificate or a coroner's order ought to be obtained before the funeral.(*l*)

Protection of Infant Life.

The Infant Life Protection Act, 1872, better known as the Baby-farming Act,(*m*) was passed because, as the preamble recites, it was expedient to make better provision for the protection of infants intrusted to persons to be nursed or maintained for hire or reward. It enacts that no person shall retain or receive for hire or reward in that behalf more than one infant (and in the case of twins more than two) under the age of one year, for the purpose of nursing or maintaining such apart from their parents for a longer period than twenty-four hours, except in a house which has been registered.(*n*) The

(*f*) *R.* v. *Price*, 11 A. & E. 727 (under 6 & 7 Will. 4, c. 86, s. 47).
(*g*) 37 & 38 Vict. c. 88, s. 20.
(*h*) *Ib.* s. 14.
(*i*) *Ib.* s. 27.
(*k*) *Ib.* s. 15.
(*l*) For delivery to the person performing the funeral service, for although it is not absolutely necessary, many serious difficulties may be raised if it is not done : 37 & 38 Vict. c 88, s. 17. See also for special provisions under Burials Act, 1880, 43 & 44 Vict. c. 41, s. 11, and 44 & 45 Vict. c. 2.
(*m*) 35 & 36 Vict. c. 38.
(*n*) *Ib.* s. 2.

only exceptions made to this clause are in the cases of relatives or guardians, institutions established for the protection and care of infants, and persons receiving infants for their nursing or maintenance under the provisions of the Poor Law Acts (*i.e.*, from the guardians of the poor).(*a*)

The registration is effected with the local authority (*i.e.*, in a borough the council, and in a county the magistrates in petty sessions,(*b*)) for one year at a time, and there is no fee payable for such. The local authority has power to make bye-laws as to the number of infants to be taken in any registered house,(*c*) and they may refuse to register until they are satisfied that the house is suitable, and until the applicant has produced certificates of good character and of ability to maintain the infants.(*d*)

A register must be kept, in a book supplied gratuitously by the local authority, showing the name, sex, and age of each infant, the date of receipt, the names and address of the persons from whom received, and also the date of removal, and the names and addresses of the persons to whom delivered. This book must be produced to the local authority whenever demanded.(*e*) If at any time it is proved to the satisfaction of the local authority that any person whose house is registered has been guilty of serious neglect, or is incapable of providing the infants intrusted to his care with proper food or attention, or that the house has become unfit for the purpose, they may strike the name and house off the register.(*f*)

(*a*) 35 & 36 Vict. c. 38, s. 13.
(*b*) *Ib.* Sched. 1. In the City of London the common council, and in other parts of the metropolis the county council (51 & 52 Vict. c. 41).
(*c*) *Ib.* s. 3.
(*d*) *Ib.* s. 4.
(*e*) *Ib.* s. 5.
(*f*) *Ib.* s. 7.

Upon the death of an infant in a registered house, notice must be given to the coroner within twenty-four hours, who must hold an inquest, unless a certificate under the hand of a registered medical practitioner, who has personally attended or examined the deceased infant, and specifying the cause of death is produced to him.(*g*)

The Act provides a penalty of 5*l*., and to be struck off the register, or imprisonment for not more than six months with or without hard labour(*h*) for any infringement of its provisions.

Income Tax.

The complex nature of the law relating to income tax can be understood when it is stated that it is dealt with in no less than forty-four Acts of Parliament; it will therefore be impossible to do more than refer to those practical points which affect professional men.

The tax is an annual assessment laid on the 6th of April, and the portion which relates to medical men (as such) "is for and in respect of every twenty shillings of annual profits or gains arising or accruing to any person residing in the United Kingdom from any profession, trade, employment, or vocation." The sub-clause defining professional avocations runs: "Every art, mystery, adventure, or concern."(*i*) Every person whose income is more than 150*l*. per annum is liable to assessment.(*k*) Notice that returns must be made is posted on the church door, and a blank form is sent to each person. This form must be filled up, signed, and returned to the surveyor within twenty-one days, under a penalty of 20*l*. and

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(*g*) *Ib.* s. 8.
(*h*) *Ib.* s. 9, prosecuted summarily (s. 11).
(*i*) Sched. D., 5 & 6 Vict. c. 35, s. 100; 16 & 17 Vict. c. 34, s. 2.
(*k*) 5 & 6 Vict. c. 35, ss. 163, 164; 39 & 40 Vict. c. 16, s. 8.

treble duty.(*a*) The profits are to be a fair and just average of three years ending on the day upon which the accounts are usually balanced, or upon the 5th of April in the preceding year.(*b*) If the profession has not been commenced for a period of three years, the average is then taken for the whole time.

The person making the return is allowed to make the following deductions from his income:—Any payment made for a life insurance, or for a deferred annuity for himself or his wife,(*c*) but such deduction must not exceed one-sixth of the total profits, and in no case will it entitle to total exemption if it reduces the income to less than 150*l.*;(*d*) the value of such part of a dwelling-house as is used solely for professional purposes may be deducted to the extent of two-thirds of the rent;(*e*) persons carrying on more than one trade may set off the losses in one against the profits in the other.(*f*) The value of doubtful debts must be estimated, and if a debtor has become bankrupt, the debt must be returned at a sum equal to such estimated dividend as may be reasonably expected.(*g*)

No deductions are allowed for repairs to premises or for supply of instruments for a greater sum than the average of the last three years. A loss not arising from the profession cannot be allowed. Nothing is allowed for capital employed or withdrawn, or expended on building. Debts may not be deducted unless bad, nor may any disbursement for other than professional purposes. No

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(*a*) If sued for before the Commissioners, or 50*l.* if sued for in the High Court, 5 & 6 Vict. c. 35, s. 55.

(*b*) *Ib.* s. 100.

(*c*) 16 & 17 Vict. c. 91; c. 34, s. 54; 18 & 19 Vict. c. 35, s. 1; 22 & 23 Vict. c. 18, s. 6; and 41 & 42 Vict. c. 15, s. 2.

(*d*) 16 & 17 Vict. c. 34, s. 54.

(*e*) 5 & 6 Vict. c. 35, s. 101.

(*f*) *Ib.*

(*g*) 16 & 17 Vict. c. 34, s. 50.

deduction can be made for maintenance, or for the rent of a house, except for such part as is used only professionally.(*h*)

Where the whole income from all sources is less than 400*l*., there is no tax payable on the first 120*l*.(*i*)

After the return has been made the surveyor makes an assessment, which, if not satisfactory, is liable to appeal. When the assessment is received it states when the district Commissioners sit to hear appeals, and notice of an intention to appeal must be given ten days before.(*k*) The person appealing must appear personally (*i.e.*, not by counsel or solicitor), but the Commissioners have power to allow an agent, clerk, or servant to appear(*k*). There is also an appeal to the special Commissioners instead of to the district Commissioners.(*l*)

If the income is actually less than it has been returned, or if it has been paid under a mistake, it can be recovered upon making a claim to the district Commissioners(*m*). If the person making such claim (and also in case of an appeal) is dissatisfied with the decision of the Commissioners on a point of law, he can, within twenty-one days, by notice to their clerk, and upon payment of a fee of 1*l*., require the Commissioners to state and sign a case for the consideration of the High Court. The tax will, however, have to be paid in the ordinary course, and if the appellant succeeds it will be repaid.(*n*)

The Commissioners can recover the tax by a distress by the collectors, in which case the goods seized have to be kept five days, and then sold by auction, after being valued by two inhabitants or other persons; and the

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(*h*) 5 & 6 Vict. c. 35, s. 100.
(*i*) *Ib.* ss. 163, 164.
(*k*) *Ib.* ss. 118, 119.
(*l*) *Ib.* s. 130.
(*m*) *Ib.* ss. 133, 169.
(*n*) 43 & 44 Vict. c. 19, s. 59.

surplus (if any) returned to the owner.(*a*) The defaulter may also be committed to prison for non-payment;(*b*) or the amount may be recovered by an action in the High Court.(*c*)

Notes on Wills.

Circumstances arise at times when it is impossible to obtain the immediate assistance of a lawyer in the making of a will. At such times it frequently happens that a medical man is present, and his assistance is requested; therefore, it may not be out of place to give concisely those points of law which must be borne in mind. The making of an ordinary will is not at all a difficult matter, but of course it is impossible to deal with complicated trusts and such matters, except with the assistance of a lawyer.

First, then, as to who can make a will. Speaking generally, every adult person, who is not under some disability, can make a valid will, but no person under the age of twenty-one has power to do so unless he is a soldier engaged on active service, or a sailor at sea at the time. A married woman is now no exception, and can make a will. An idiot or lunatic is under disability, and cannot make a will; but if a lunatic recovers and makes a will, it will hold good, even though his sanity only proves to be a lucid interval, after which he again relapses into insanity. If there is any doubt on this point a medical man should take care to render himself very sure of the conclusion to which he comes, for it is very possible that he may be called upon to give evidence upon the point. A will made by a man while he is actually drunk would not be valid, but the mere fact of

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(*a*) 43 & 44 Vict. c. 19, s. 86.
(*b*) *Ib.* ss. 89, 91.
(*c*) *Ib.* s. 111.

his being a drunkard would not invalidate it. Blind, deaf, dumb, and illiterate persons are not precluded from making wills, but the greatest precaution should be taken in such cases, so that it can, if necessary, be clearly shown that they fully understood what they were doing. The same remark applies to persons of great age and weakness of body or mind.

Next, as to how to make a will, which must, of course, be in writing. The first rule to lay down is the absolute necessity of using none but the simplest and plainest of language. On no account should an attempt be made to use legal phraseology, or it is very probable that something will be said which was never intended. Do not be anxious to get the very words of the testator, but make every endeavour to express his meaning. Use plain English sentences, and if one does not convey the meaning perfectly clearly, add another to explain it; but, of course, no useless words should be used, for the fewer the words that are used, the fewer there are to misunderstand. Probably the simplest way to commence a will is to say: *This is the last will of me, John Smith, of* 23, *Blank Street, in the City of London.* To conclude it, say: *Dated this first day of January, one thousand eight hundred and ninety.* Be careful to give all names in full, and where any person is related to the testator, state the relationship which exists. A residuary legatee should be appointed. This may be a person already named in the will, or a number of persons may be named. An executor or executors should also be appointed, who may or may not be persons benefiting under the will. If an executor is a relative of the testator, such should be stated; if not, his address should be given. It is always wise for a testator to state that he revokes all previous wills. Where only the income of property is left to a person, it is desirable to appoint a trustee of such fund. The will must be signed by the testator at the foot or

end, or by some other person in his presence and by his direction, and such signature must be made or acknowledged by the testator in the presence of two witnesses, who must sign it afterwards in his presence, *and* in the presence of each other. An attestation clause is not necessary to the validity of a will, but it should always be used, as such a course saves much trouble in the proving of a will. The following form will be sufficient:—

> *Signed by the testator in the presence of us, who thereupon signed our names in his presence and in the presenee of each other.*

It is desirable that the full addresses of the witnesses should be given, together with their descriptions, as circumstances may afterwards arise which will necessitate the finding of one or both of them for the purpose of proving the will.

If it is necessary to make any alterations in a will the initials of the testator and of the witnesses should be placed opposite to such, or they should be recited in a clause. An alteration made after the execution of a will is of no effect unless it is signed and executed in the same way as the will itself, by both the testator and the witnesses. In the same way, if anything is added, whether on the same sheet or not, it must be executed in exactly the same way.

Any person can be a witness to a will, but it must be remembered that a witness cannot take any benefit under the will. If a person is a witness and also a legatee, the will will be good, but he will lose his legacy. The husband or wife of a witness is also under a similar disability.

A medical man, who signs his name as witness to a will, should remember that he is thereby practically testifying to the competency of the testator to make the will.

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