

**Percival's code : a chapter in the historical development of medical ethics /
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PERCIVAL'S CODE

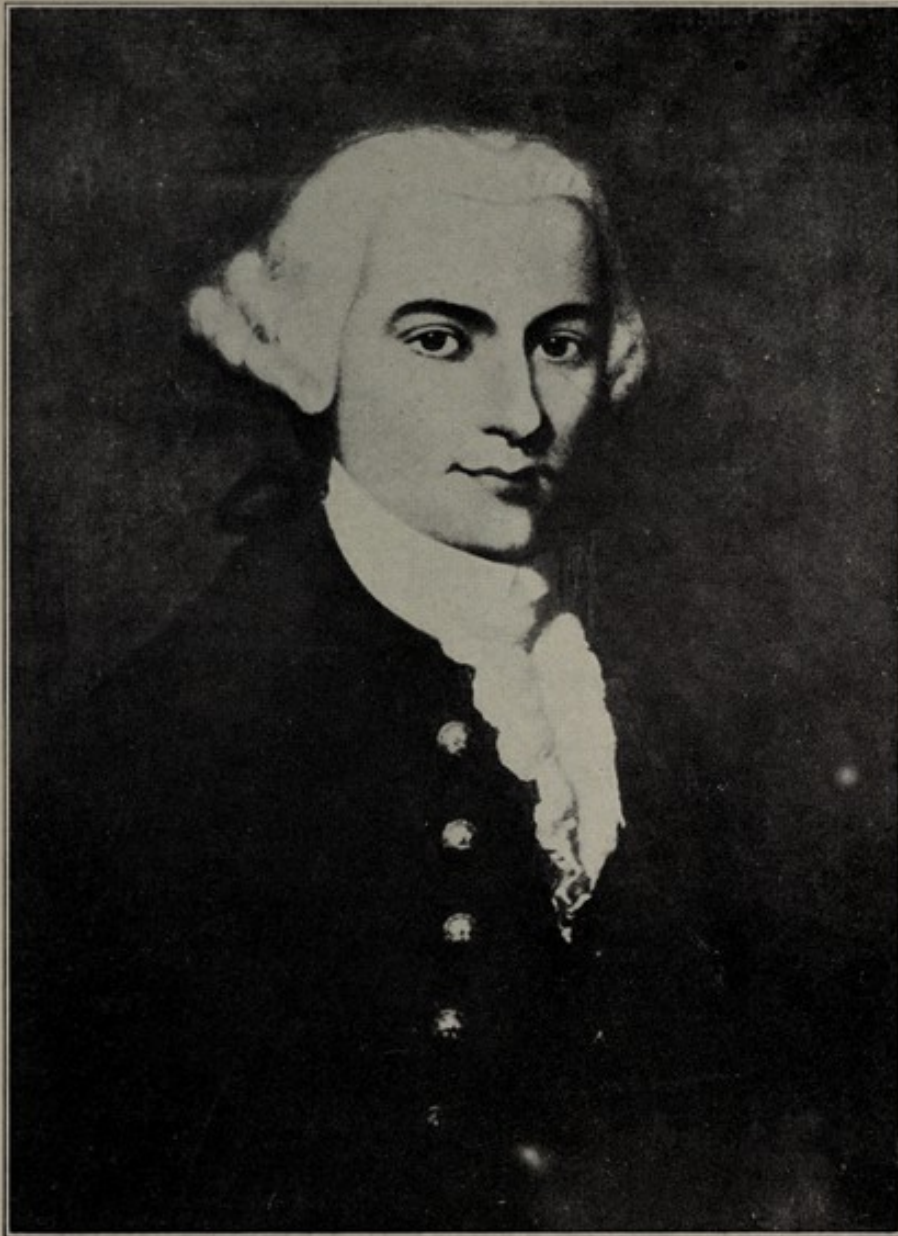
A CHAPTER IN THE HISTORICAL DEVELOPMENT OF
MEDICAL ETHICS

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MADISON, WIS.

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Thomas Percival

1929

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PERCIVAL'S CODE: A CHAPTER IN THE HISTORICAL DEVELOPMENT OF MEDICAL ETHICS *

CHAUNCEY D. LEAKE, PH.D.
MADISON, WIS.

Praesans imperfectum—perfectum, plusquam perfectum futurum.—Grotius.

In tracing the historical development of medical ethics, two main paths of progression are to be noted: The first is concerned with regulations imposed on physicians by outside, and usually civil, authority; and the second with regulations imposed on physicians by physicians themselves. Covering generally the question of fees, and designed to protect at once the interests both of society and of the individual practitioner, the first line of development began with the medical provisions of the celebrated Babylonian Code of Hammurabi (about 2250 B. C.),¹ and culminated with the lengthy fee statutes enacted by the various European municipal authorities² and the American colonial assemblies³ during the seventeenth and first half of the eighteenth centuries. These embodied the principle of the *lex talionis* as late as the medical portions of the Forum Judicium of the Visigoths (about 650 A. D.),⁴ and usually prescribed the qualifications necessary for medical practice (e. g., the medical ordinances of Frederick II in 1224 A. D.),⁵ and the Menu Code of the Hindus, of unknown date.⁶

* Revised from papers read before the Wisconsin Medical History Seminar during the year 1922.

* Especial thanks are due Professor William Snow Miller for the use of the facilities of his library.

1. Harper, R. F.: The Code of Hammurabi, Chicago, 1904.

2. Baas, J. H.: Outlines of the History of Medicine, translated by H. E. Handerson, New York, 1889.

3. Toner, J. M.: Contributions to the Annals of Medical Progress in the United States Before and During the War of Independence, Washington, D. C., 1874.

4. Fort, G. F.: History of Medical Economy During the Middle Ages, New York, 1883.

5. Fort (Footnote 4). Baumer, A.: Die Arztgesetzgebung Kaiser Friedrichs II, Leipzig, 1911.

6. Wise, T. A.: Commentary on the Hindu System of Medicine, Calcutta, 1845.

It is unlikely that any of these regulations were initiated by physicians, being more probably laws formulated to correct extortion and abuses practiced by physicians. The more truly ethical aspect of medicine was established by the Greeks during the period of Athenian ascendancy. It is worthy to note that these people found it unnecessary, as far as we know, to make any laws regulating the practice of medicine, for this was done for them by their own physicians themselves in the famous Oath and Law of Hippocrates. These formed the ethical standard of the medical profession until the publication of Percival's code in 1803,⁷ sufficient testimony to their undying merit.

From the period of Percival's code to the present, most laws relating to medical practice have been instigated by responsible physicians, and all standards of professional morality have been based on his work. It may be said that about the end of the eighteenth century physicians as a whole, apart from the outstanding leaders of former times whose personal professional ethics were unimpeachable, began to justify the trust humanity had for so long placed in them.

After the lapse of more than a century, and with many events tending to focus attention to medical ethics, it may be of interest to examine briefly the character of Thomas Percival, M.D., and his most important contribution.

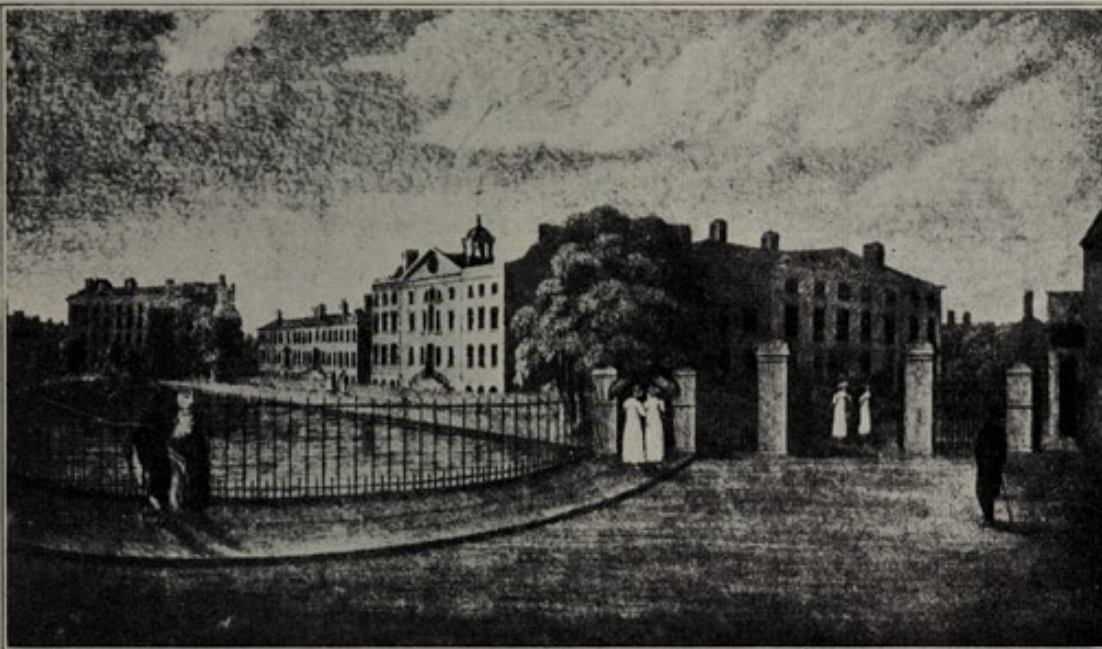
SKETCH OF PERCIVAL'S LIFE

Born Sept. 29, 1740, in Warrington, Lancashire, Thomas Percival was left an orphan when 3 years old, and was raised by an elder sister. When he was at the impressionable age of 10, his uncle, Thomas, a physician, died and bequeathed him a valuable library and a legacy, gifts which persuaded him to study medicine. Always a progressive and independent thinker, he was a dissenter and staunch Unitarian, and at 17 enrolled as the first student in the Warrington Academy, a school for dissenters. His theological beliefs forced him to matriculate at Edinburgh, where in 1761 he began the active study of medicine. Here he became associated with many of the future leaders in medicine, not only of England, but also of the American colonies. He was a personal friend of Hume, and in 1765, the year following his visit to London, he was elected a

7. Percival, Thomas: *Medical Ethics*, Manchester, 1803.

Fellow of the Royal Society because of his "mathematical and philosophical learning." This was a considerable honor for one so young. It is not apparent why he failed to receive his degree at Edinburgh, but in 1765 he went for a year to Leyden, and obtained it there.

Returning to practice at Warrington, Percival married Elizabeth Bassuett, and in 1767 the couple moved to Manchester. Here Percival soon established himself as a leader in medical and intellectual circles. His first publications, "Essays, Medical and Experimental," in 1767 and 1773 attracted favorable attention, and in 1778 he was appointed physician to the famous Manchester



The Manchester Infirmary, showing the north wing, added, 1792-1793.

Infirmary. Because of poor vision and liability to headaches, he resigned this responsible position in 1780, and was at once appointed physician extraordinary, a position which he held until his death. It was through his interest in this institution that his Code of Medical Ethics was formulated.

Percival's contributions to medicine, aside from professional ethics, were of a stimulating nature. In 1770 he made "Proposals for the Establishment of More Accurate and Comprehensive Bills of Mortality in Manchester," arguing for the preparation of tables of christenings, marriages and burials in all churches, to be reported annually to one central office. These tables

were to give the ages and sexes, the dates, and certificates of deaths stating the disease, and were to be signed by reputable attendants. From these statistics Percival expected to ascertain the increase or decrease of particular diseases; the influence of trades, sex, and other factors on longevity; and the influence of seasons and climate on health. With other friends, he actually succeeded in making a statistical examination of the population of Manchester in 1773, the returns of which he communicated to the Royal Society with criticisms and warnings of the errors of his method.

In 1796, Percival became interested in sanitary housing and working conditions, and his influence was considerable in compelling isolation of fever cases and in supervision of the cleanliness of lodging-houses. He apparently was among the first to call attention to the growing evils of factory work, pointing out the insanitary condition of the Manchester cotton mills, and protesting vigorously against the evils of child labor. Brockbank⁸ quotes Alfred's "History of the Factory Movement" as stating that "the question of the factory regulation in Manchester, and the conditions under which factory regulation by Act of Parliament was rendered necessary were, in the resolutions of Dr. Percival, clearly laid down."

In medical treatment, Percival's main contribution was an effort to introduce cod liver oil in debilitation, in undernourishment and in chronic rheumatism and sciatica.

To Percival in a large degree Manchester owes the foundation of the Manchester Literary and Philosophical Society, that distinguished body which sheltered and aided Joule and Dalton. This society was formally organized in 1781, but, according to Brockbank,⁸ "for some years before this time, meetings for 'conversation' on scientific and philosophical subjects used to be held weekly in Percival's house." Percival was president of the organization from 1789 to his death, and contributed nine of the first fifty-five papers.

Percival died, Aug. 30, 1804, and was buried at Warrington. He was survived by several children, one of whom, Edward, a physician, collected and published his works in 1807, in four volumes. The title of this edition is interesting in showing the international esteem

8. Brockbank, E. M.: *The Honorary Medical Staff of the Manchester Infirmary, 1752-1830*, Manchester, 1904.

in which Percival was held: "The works, Literary, Moral, and Medical, of Thomas Percival, M.D., F.R.S., and A.S., F.R.S. and R.M.S. (Edin.), the late President of the Literary and Philosophical Society at Manchester, member of the Medical Societies of London and of Aix en Provence, of the American Academy of Arts, etc., and of the American Philosophical Society at Philadelphia, to which are prefixed memoirs of his life and writings and a selection from his literary correspondence."

From contemporary accounts, Percival was well regarded by the cultured and enlightened of his age, as pointed out by De Quincy in his *Autobiography*; although, as quoted by Brockbank,⁸ De Quincy intimates that his mother, because of her bigoted tendencies, did not like the more tolerant doctor. However, even in that age of exaggerated and quaint eulogy, nothing could surpass the expression of the Rev. William Magee, later Archbishop of Dublin, on the occasion of Percival's death: "He was an Author without vanity, a Philosopher without pride, a Scholar without pedantry, a Student without seclusion, a Moralist without moroseness, a Patriot without faction, and a Christian without guile. The great object of his life was usefulness, and the grand spring of all his actions was Religion."

PERCIVAL'S "MEDICAL ETHICS"

As early as 1775, Percival began writing short moral essays, entitled "A Father's Advice," and "Moral Tales, Tables and Reflections." These were probably designed at first for his own children, but became so popular that they even became translated into French and German. It was natural enough that with this solicitous regard for the ethical standards of those close about him, Percival's attention should be attracted to conditions in his own profession. The marked discrepancy between the professed ideals of the leaders of medicine and the actual conduct of many in the profession has been a matter for satirical comment for ages, and nearly every organized body of physicians from the Greeks on has attempted to formulate and enact at least a passable minimum of personal conduct compatible with ethical ideals. It was Percival's achievement to devise such a code of professional morality that it was susceptible to authoritative

enforcement, and therefore of widespread emulation. Previous attempts, such as that of Paracelsus,⁹ lacked authority because of their vague generalizations and failure to receive respect; or, as in the case of some of the continental organizations,¹⁰ the rules were too strict and bigoted.

That Percival very soon after beginning practice had formulated ideas regarding professional ethics is shown by a letter written in 1771 in which he outlined a system for the "Internal Regulation of Hospitals." As the preface to the first edition of the "Medical Ethics" indicates, he composed in 1792, at the request of the physicians of the infirmary, "A Scheme of Professional Conduct Relative to Hospitals and Other Medical Charities." This became the code of laws under which the infirmary operated. In 1794, this code was printed for private circulation, in order to gather the criticisms of friends. Percival wished to call his work "Medical Jurisprudence," but was persuaded that "Medical Ethics" was a more suitable title. In the copy of the 1794 edition owned by the Manchester Infirmary is a note in Percival's writing, according to Brockbank,⁸ "The completion of the 'Medical Jurisprudence' has been long suspended, and it is uncertain when the undertaking will be resumed. A title page, an introduction, a fifth and sixth section, and an appendix, containing notes and illustrations are wanting to finish this little work. Manchester, March 17, 1794." The fifth section, "On the Powers, Privileges, Honours, and Emoluments of the Faculty," and the sixth, "On the Moral, Religious, and Political Character of Physicians," were never completed.

With the corrections made by friendly criticism, and with the endorsement of a long list of prominent English physicians, among whom was Erasmus Darwin, William Heberden and William Withering, the work was published at Manchester in 1803.

Percival's "Medical Ethics" is a charmingly written book, expressed quite in that leisurely, quaint and scholarly style one associates with a true English gentleman of the old school. Meeting at once with marked success, its wide distribution among all practitioners and medical students was urged by influential physicians. This was done, and it became the standard code

9. Stoddart, A. M.: *The Life of Paracelsus*, London, 1911.

10. Examples may be found in Baas (Footnote 2).

of professional morality enjoined upon all practitioners in the British Empire.

Two other editions were published after Percival's death. The first, in 1827, was edited anonymously, and is interesting because of the editorial notes exposing the medical evils of the time. Attacks are made on the "diploma mongering" Colleges of Physicians of London and Dublin, and on the unworthy character of contemporary physicians. The last edition was issued in 1849 under the editorial supervision of Dr. Greenhill of Oxford. Since then other writers, such as Dr. Robert Saundby,¹¹ have issued texts on medical ethics, none of which either acknowledge any indebtedness to Percival, or show any evidence of improvement on him.

As intimated by the preface, Percival wrote his "Medical Ethics" for the guidance of the elder of two of his sons training for medical practice. The untimely death of this son, and of Percival's wife, caused the delay in its completion. It was dedicated to the other son, Edward Cropper, and although expressed in a manner suggesting that Percival intended it more as a justification for the reputation of a dutiful and affectionate father than as a simple note of dedication to a well beloved and thoroughly understood son, the dedication is worth quoting as an example of the author's literary style and moral tone:

TO E. C. PERCIVAL. Permit me, my dear son, to offer to your acceptance this little Manual of Medical Ethics. In the composition of it, my thoughts were directed towards your late excellent Brother, with the tenderest impulse of paternal love: And not a single moral rule was framed without a secret view to his designation; and an anxious wish that it might influence his future conduct.

To you, who possess, in no inferior degree, my esteem and attachment; who are prosecuting the same studies, and with the same objects; my solitudes are naturally transferred. And I am persuaded, these united considerations will powerfully and permanently operate upon your ingenious mind.

It is the characteristic of a wise man to act on determinate principles; and of a good man to be assured that they are conformable to rectitude and virtue. The relations in which a physician stands to his patients, to his brethren, and to the public, are complicated and multifarious; involving much knowledge of human nature, and extensive moral duties. The study of professional Ethics, therefore, cannot fail to invigorate and enlarge your understanding; whilst the observance

11. Saundby, Robert: *Medical Ethics*, London, 1907.

of the duties which they enjoin, will soften your manners, expand your affections, and form you to that propriety and dignity of conduct, which are essential to the character of a Gentleman. The academical advantages you have enjoyed at Cambridge, and those you now possess in Edinburgh, will qualify you, I trust, for an ample and honourable sphere of action. And I devoutly pray, that the blessing of God may attend all your pursuits; rendering them at once subservient to your own felicity, and the good of your fellow-creatures.

Sensible that I begin to experience the pressure of advancing years, I regard the present publication as the conclusion, in this way, of my professional labours. I may, therefore, without impropriety, claim the privilege of consecrating them to you, as a paternal legacy. And I feel cordial satisfaction in the occasion of thus testifying the esteem and tenderness with which, whilst life subsists, I shall remain,

Your affectionate friend,

THOMAS PERCIVAL.

The work includes a preface and four chapters: the first, "Of Professional Conduct Relative to Hospital or Other Medical Charities"; the second, "Of professional Conduct in Private, or General Practice"; the third, "Of the Conduct of Physicians to Apothecaries"; and fourth, "Of Professional Duties in Certain Cases which Require a Knowledge of Law." To these are appended a discourse on hospital duties, and some twenty-two notes and illustrations concerned with hospital management, caution in practice, temperance of physicians, education, worship, and other pertinent matters. In these notes Percival adopts more of a real literary style, and many of them form delightful and scholarly essays.

The influence of this contribution in the field of medical deontology cannot be overemphasized. It served to arouse all physicians to a sense of their moral obligations, and stimulated great discussion in the profession on the points involved. It was but natural that much opposition should arise against the code as formulated by Percival, but its prompt acceptance by the regular associations and leaders of medicine caused those who acted in disagreement with its tenets to feel outlawed. Along with this weak opposition, imitation of the code by various organizations of physicians followed at once. These had a compelling power at hand in regard to obeying the code, in that disobedience, after proper trial, resulted in expulsion.

INFLUENCE OF PERCIVAL'S ETHICS ON THE MEDICAL PROFESSION OF THE UNITED STATES

Students of ethics generally recognize two broad theories of moral conduct, essentially contradictory in character: the first, having an ideal end, and serving the interests of humanity in general, is usually designated idealism, or rationalism, and is largely Platonic in nature; the second, having a more practical end, and serving the interests of self, is called hedonism, since it implies personal pleasure as the aim of all conduct. From an analysis of the evolution of moral actions, John Stuart Mill, whose altruistic delicacy was shocked by the coarse implications of hedonism, formulated the principle that whatever is useful is good. This is utilitarianism, and, as Robertson¹² points out, "The whole scope of medicine in relation to the public health is based on this aspect of ethics."

In a measure, this is unfortunate, for, as Warner Fite¹³ indicates, utilitarianism is an ineffectual compromise between idealism and hedonism, working out in actual practice along purely hedonistic lines. This is clear enough in the moral aspects of medicine, in which, to many physicians, utilitarianism becomes a placebo to their idealistic consciences and a cloak for their hedonistic conduct.

Nevertheless, when one reviews the principles underlying the moral responsibilities of medical men, as enunciated by physicians themselves, and relates them to the evolution of philosophy and civilization, one feels that medical ethics is not based on utilitarianism, but on idealism. From the Hippocratic Oath to the latest revision of the Principles of Ethics of the American Medical Association, it is implied by all the medico-ethical writers that the ideal ends in the interest of humanity are the real bases for their remarks, and that these must be compromised only as little as possible in the interests of self. Of this righteous spirit, more evident, of course, in the less formal statements of physicians, of which the essays of Osler¹⁴ and Weir Mitchell¹⁵ furnish striking illustrations—of this righteous spirit physicians may be proud. It has won

12. Robertson, W. G. A.: *Medical Conduct and Practice: A Guide to the Ethics of Medicine*, London, 1921.

13. Fite, Warner: *An Introductory Study of Ethics*, New York, 1916.

14. Osler, William: *Aequanimitas, with Other Addresses to Medical Students, Nurses and Practitioners of Medicine*, Ed. 2, London, 1920.

15. Mitchell, S. W.: *Doctor and Patient*, Philadelphia, 1904.

against the pressure of two powerful forces: one, the overwhelming heritage, as James Harvey Robinson¹⁶ puts it, of an animal, child and savage mind, and the other arising from the dangers of the superlatively objective scientific attitude.

Percival's code is idealistic in general, but recognition is made to the hedonistic factor in medical practice due to economic pressure on the individual physician. It is interesting to note how this factor becomes amplified in subsequent revisions of Percival's code made in the United States, where economic pressure was more severe.

The influence of Percival's code in the United States was very great, since it served as a model for all the ethical principles adopted by the various medical organizations of the country, including those of the American Medical Association itself. Previous to the date of Percival's publication, several state medical societies, such as those of New Jersey¹⁷ and Massachusetts, had incorporated in their constitutions or articles of organization many commendable ethical principles, and Benjamin Rush had published a lecture on the duties of a physician.¹⁸ But rather than establishing an authoritative system of medical ethics such as Percival's, these indicated the need for it.

This necessity became acute during the eighteenth-twenties, when the rapid expansion of the nation and the rise of many ill equipped medical schools attracted many unscrupulous persons to a lucrative profession. Dr. Samuel Brown of Transylvania University, Lexington, Ky., felt that he had a solution to offer in the formation of a secret society of the best physicians in the country, in which mutual support and good feeling were to reign, and in which the members were to be bound by a rigid system of ethical rules.¹⁹ This code of the Kappa Lambda Society of Aesculapius was probably devised and in operation by 1820. In 1823 it was published by the Philadelphia Chapter of Kappa

16. Robinson, J. H.: *The Mind in the Making: The Relation of Intelligence to Social Reform*, New York, 1921.

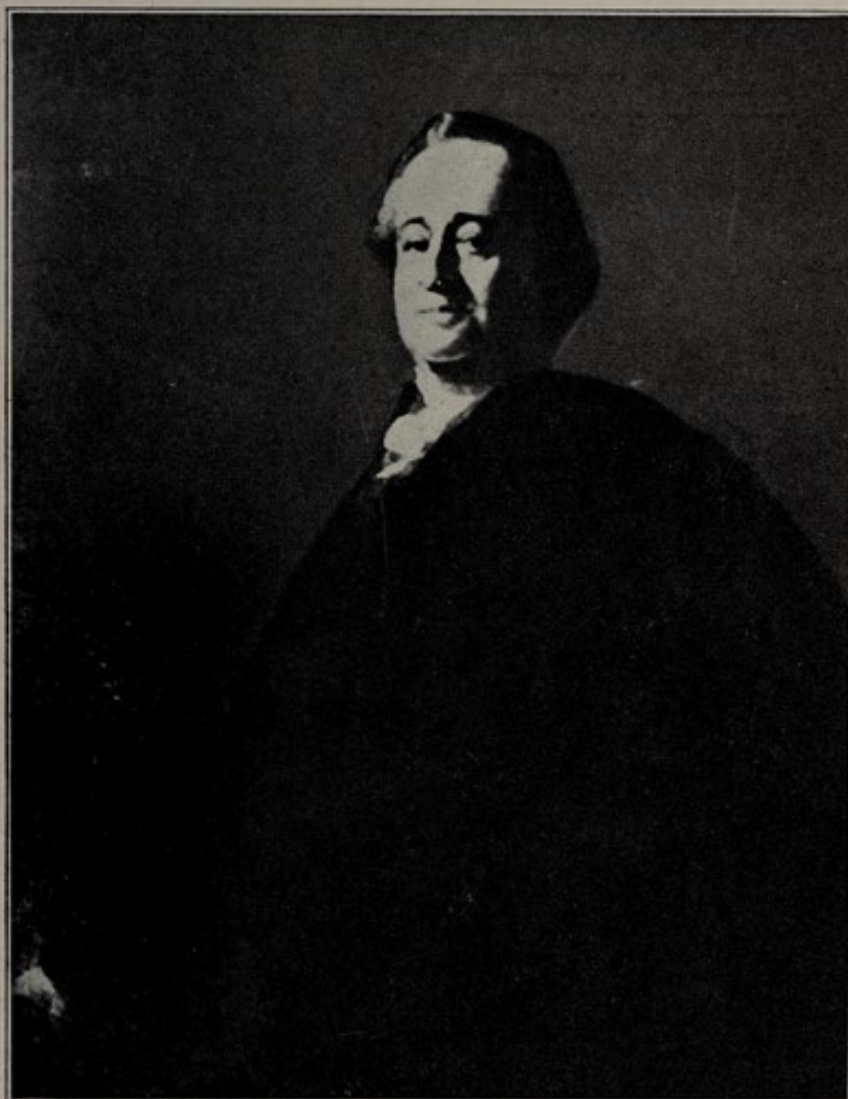
17. *The Rise, Minutes, and Proceedings of the New Jersey Medical Society, Established July 23rd, 1766*, Published by order of the Society, Newark, 1875.

18. Rush, Benjamin: *Medical Inquiries and Observations*, Volume I, Appendix "Containing Observations on the Duties of a Physician, and the Methods of Improving Medicine Accomodated to the Present State of Society and Manners in the United States," Philadelphia, 1794.

19. Leake, C. D.: *What Was Kappa Lambda?* *Annals of Medical History*, Summer 1922, 4, No. 2, p. 192.

Lambda, and was acknowledged to be an abridgment of Percival's Ethics.

In the same year, the New York State Medical Society, undoubtedly activated by the same spirit, adopted the report and code of ethics drawn by a committee composed of James R. Manley, Felix



Samuel Brown, M.D., 1769-1830.

Pascalis and John H. Steele.²⁰ These men made no acknowledgment to Percival; nor did Dr. J. J. Walsh,²¹ in commenting on their labors, refer to their manifest indebtedness to the Englishman. On the contrary,

20. Transactions of the Medical Society of the State of New York from Its Organization in 1807, up to and Including 1831, Albany, 1868, p. 230.

21. Walsh, J. J.: History of the Medical Society of the State of New York in Commemoration of the Centennial of the . . . Society, New York, 1907.

Dr. Walsh made it seem as though the idea of a code of medical ethics originated with these members of the New York State Medical Society, and that no one else had ever thought of such a thing before. While the arrangement is different, and the material more condensed in the case of the New York code, the aphoristic style is the same, the context is very similar, and in several places foot-notes in the New York code refer specifically to Percival's words.

In 1832, the Medico-Chirurgical Society of Baltimore published "A System of Medical Ethics,"²² prefaced by this note:

In the composition of this code of Ethics, free use has been made of Percival's Ethics, the abridgment of the same by the K. L. Society of Philadelphia, Gregory's Lectures on the Duties and Qualifications of a Physician, the Code of Ethics drawn up by the New York State Medical Society, that of the Connecticut Medical Society, Rush's Medical Observations and Inquiries and Lectures, and Ryan's Medical Jurisprudence by Griffith.—This general acknowledgement will render special references unnecessary.

The paramount importance of Percival's Ethics is here clearly enough stated.

Largely through the efforts of Nathan Smith Davis, the American Medical Association, in spite of much opposition, was organized in May 1846, in New York City. The first real business of the national medical organization was transacted the following year in Philadelphia, and it covered two of the matters most interesting in a study of medical ethics, the requirements of a medical education, and the formulation of a code of professional ethics.²³ Dr. J. J. Walsh has attempted to prove that this national code of medical ethics was based directly on the code of the New York State Medical Society. He²¹ says:

The reading of the two codes makes it clear that that of the National Association was founded to a considerable extent on the system of ethics of the New York State Society. This is not surprising if we recall that the American Medical Association originated from the efforts of the State Society of New York. While there has come considerable development in the professional aspect of many duties of physicians in the early quarter of a century that separates the two

22. A System of Medical Ethics Adopted by the Medico-Chirurgical Society of Baltimore, Baltimore, 1832.

23. Davis, N. S.: History of the American Medical Association, Philadelphia, 1855.

MEDICAL ETHICS;

OR, A CODE OF

Institutes and Precepts,

ADAPTED TO THE

PROFESSIONAL CONDUCT

OF

PHYSICIANS AND SURGEONS;

I. In Hospital Practice.

II. In private, or general Practice.

III. In relation to Apothecaries.

IV. In Cases which may require
a knowledge of Law.

To which is added

An Appendix;

containing

A DISCOURSE ON HOSPITAL DUTIES;

ALSO

NOTES AND ILLUSTRATIONS.

BY

THOMAS PERCIVAL, M.D.

F. R. S. AND A. S. LOND. F. R. S. AND R. M. S. EDINB. &c. &c.

Manchester :

PRINTED BY S. RUSSELL,

FOR J. JOHNSON, ST. PAUL'S CHURCH YARD, AND
R. BICKERSTAFF, STRAND, LONDON.

1803.

Title page of the code.

documents, there is no doubt at all about the influence exerted by the original system of ethics, and no ethical document adopted by any other state society had anything like the same influence. This is, of course, all the more interesting in the light of the fact that when the further development of medical ethics was to come after another fifty years, New York was again to be a leader in the evolution.

The note prefaced to the edition of the national code published in Philadelphia in 1848²⁴ indicates that Dr. Walsh's contentions are not true:

Dr. Hays, in reporting the following code of medical ethics to the National Medical Convention, stated that justice required some explanatory remarks should accompany it.

The members of the convention, he observed, would not fail to recognize in parts of it expressions with which they were familiar. On examining a great number of codes of ethics adopted by different societies in the United States, it was found that they were all based on that by Dr. Percival, and that the phrases of this writer were preserved, to a considerable extent, in all of them. Believing that language so often examined and adopted must possess the greatest of merits for such a document as the present, clearness and precision, and having no ambition for the honors of authorship, the committee which prepared this code have followed a similar course, and have carefully preserved the words of Percival wherever they convey the precepts it is wished to inculcate. A few of the sections are in the words of the late Dr. Rush, and one or two sentences are from other writers. But in all cases, wherever it was thought that the language could be made more explicit by changing a word, or even a part of a sentence, this has been unhesitatingly done; and thus there are but few sections which have not undergone some modification; while, for the language of many, and for the arrangement of the whole, the committee must be held exclusively responsible."

Credit is here given in no uncertain terms to Percival; and to the gracelessness of the previous lack of acknowledgment, attention is rather neatly called.

Gregory's "Lectures on the Duties and Qualifications of a Physician" exerted considerable influence on the development of American medical ethics, probably because many of the older leaders had heard them delivered at Edinburgh. But their lack of concrete definiteness put them in the advisory group with Rush's lectures on the same subject rather than in the authoritative position occupied by Percival's code.

24. Code of Ethics of the American Medical Association, Adopted May, 1847, Philadelphia, 1848.

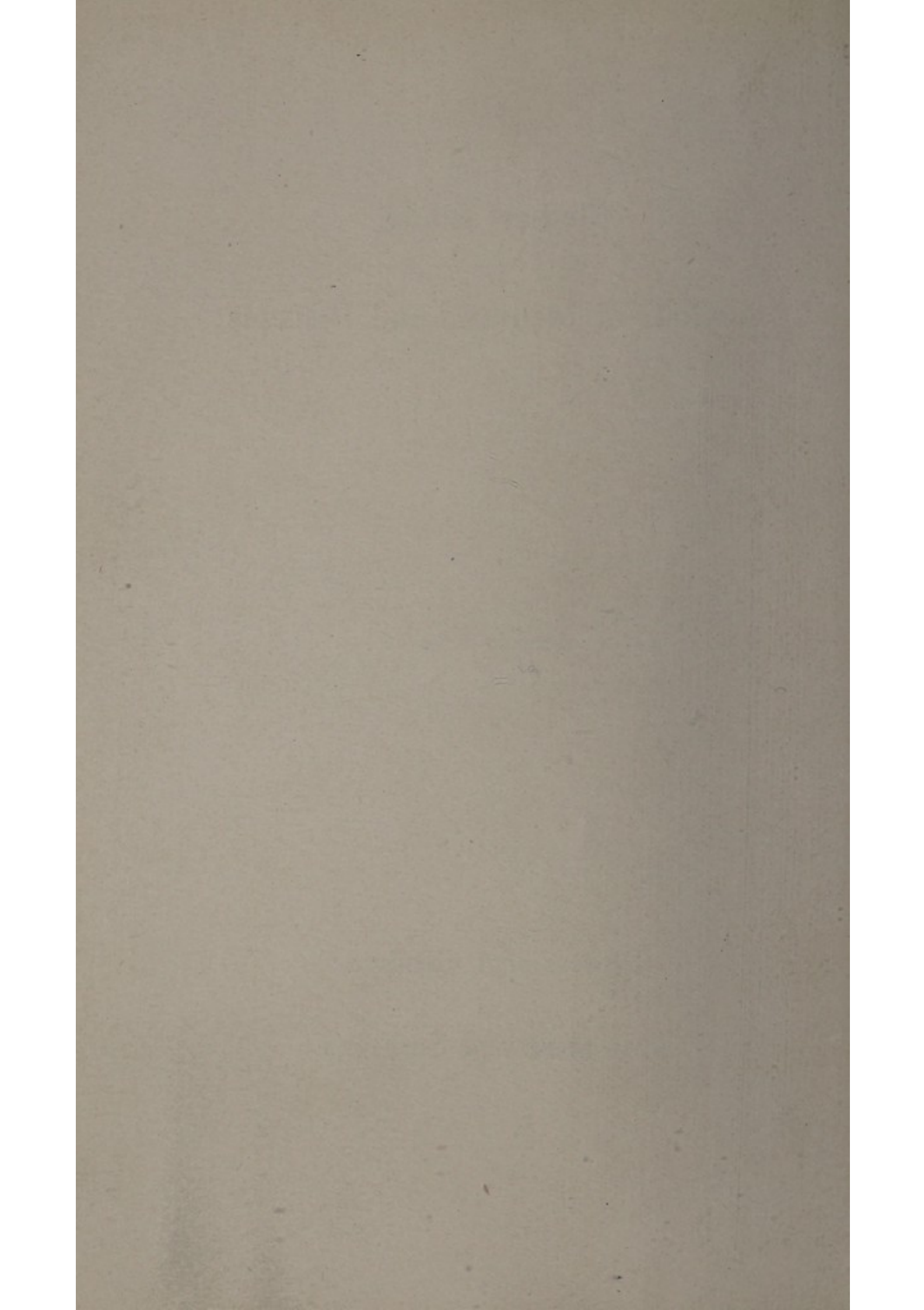
Percival's direct influence on medicine culminated with the announcement by Dr. Hays before the American Medical Association, but it is not too much to believe that his enlightened attitude with regard to public medicine, and his ideals for the guidance of the individual practitioner, are still strong in maintaining the honorable character of the moral aspects of modern medicine, especially in connection with the agitation for more general practice. Percival wrote primarily for the general practitioner, and from the standpoint of one.

NOTE.—On the following pages may be found the text of Percival's *Medical Ethics*. The first edition of 1803 has been carefully followed in this reprinting, with the retention of the italics and capitals used by Percival. Certain typographical errors have been corrected, but the spelling, except in two instances, is the same as the original. Some of the shorter "Notes and Illustrations" are appended to this text of the code, but the "Discourse on Hospital Duties" has been omitted because of its length.

Medical Ethics
or
A Code of Institutes and Precepts

Adapted to the

Professional Conduct
of
Physicians and Surgeons



PREFACE

The first chapter of the following work was composed in the spring of 1792, at the request of the physicians and surgeons of the Manchester Infirmary: And the substance of it constitutes the code of laws, by which the practice of that comprehensible institution is now governed. The author was afterwards induced, by an earnest desire to promote the honour and advancement of his profession, to enlarge the plan of his undertaking, and to frame a general system of MEDICAL ETHICS; that the official conduct, and mutual intercourse of the faculty, might be regulated by precise and acknowledged principles of urbanity and rectitude. Printed copies of the scheme were, therefore, distributed amongst his numerous correspondents; by most of whom it was warmly encouraged, and by many of them was honoured with valuable suggestions for its improvement.

Whilst the author was thus extending his views, and carrying on his work with ardor, he lost the strongest incentive to its prosecution, by the death of a beloved son, who had nearly completed the course of his academical education, and whose talents, acquirements and virtues promised to render him an ornament to the healing art. This melancholy event was followed, not many years afterwards, by a second family loss equally afflictive; and the design has ever since been wholly suspended. The author now resumes it, animated by the hope that it may prove beneficial to another son, who has lately exchanged the pursuits of general science at Cambridge, for the study of medicine at Edinburgh. He feels at the same time impressed with the conviction that the languor of sorrow becomes culpable, when it obstructs the offices of an active vocation. "I hold every man," says Lord Bacon, in the preface of his *Elements of the Common Laws of England*, "a debtor to his profession, from the which as men of course do seek to receive countenance and profit, so ought they of duty to endeavor themselves, by way of amends, to be a help and ornament thereunto. This is performed, in some degree, by the honest and liberal practice of a profession; when men shall carry a respect not to descend into any course that is corrupt and unworthy thereof; and preserve themselves free from the abuses wherewith the same profession is noted to be infected. But much more is this performed, if a man be able to visit and strengthen the roots and foundation of the science itself, thereby not only gracing it in reputation and dignity, but also amplifying it in profession and substance."

It was the author's original intention to have treated of the POWERS, PRIVILEGES, HONOURS AND EMOLUMENTS OF THE FACULTY. But he now conceives that

this would lead him into a field of investigation too wide and digressive, and therefore chooses to confine himself to what more strictly belongs to Medical Ethics.

To these institutes he has annexed an Anniversary Discourse, delivered by the late Rev. Thomas Bassnett Percival, LL.B., before the president and governors of the Infirmary at Liverpool. As it is an address to the gentlemen of the faculty, the officers, the clergy, and the trustees of the charity, on their respective hospital duties, by one competent to the subject from his early studies, it cannot be deemed but sufficiently appropriate to the present work, exclusively of a father's claim to the privilege of its insertion.

The aphoristic form of this code of Medical Ethics, though adapted to such an undertaking, forbids in a great measure all digression, and even precludes the discussion of many interesting points, nearly connected with the subject. SUPPLEMENTARY NOTES AND ILLUSTRATIONS, therefore, are necessary to the completion of the author's plan. And he trusts the candid reader will grant him the liberty of thus stating his opinions more at large, of rectifying misconceptions, to which the brevity essential to the work may give rise, and of correcting whatever subsequent reflection, or the judicious observations of his friends, may discover to be erroneous.

A considerable portion of these sheets was communicated to the Rev. Thomas Gisborne, M.A., whilst engaged in the composition of his "Enquiry Into the Duties of Men," a work that reflects the highest honour on the abilities, and philanthropy of the author; and which may be justly regarded as the most complete system, extant, of Practical Ethics. The chapter concerning physicians contains a reference to these institutes, expressed in the most gratifying terms of friendship. And it treats so largely of the duties of the faculty, as to seem, at first view, to supersede the use of the present manual. But the two publications differ not only in their plan, but in many of their leading objects; and it may be hoped that they will rather illustrate than interfere with each other. The same remarks may be applied to the excellent lectures of Dr. Gregory: Even the STATUTA MORALIA of the college of physicians, whatever merit or authority they possess, are not sufficiently comprehensive for the existing sphere of medical and chirurgical duty. And by the few regulations which they establish, they tacitly sanction the recommendation of a fuller and more adequate code of professional offices.

Copies of the former unfinished impression of this work have been transmitted to the libraries of several Infirmaries, in different parts of the kingdom: And the author has reason to hope that they have contributed to excite attention to the subject of hospital police. Amongst other pleasing proofs of this truth, he refers with peculiar satisfaction to the late

publications of his friends, Sir G. P. Paul, Bart., and Dr. Clark, of Newcastle-upon-Tyne.

This work was originally entitled "Medical Jurisprudence," but some friends having objected to the term "Jurisprudence," it has been changed to "Ethics." According to the definition of Justinian, however, Jurisprudence may be understood to include moral injunctions as well as positive ordinances. *Juris praecepta sunt haec; honeste vivere; alterum non laedere; suum cuique tribuere.* Inst. Justin: Lib. I, p. 3.

Manchester, Feb. 15, 1803.

CHAPTER I

OF PROFESSIONAL CONDUCT, RELATIVE TO HOSPITALS, OR OTHER MEDICAL CHARITIES

I. Hospital physicians and surgeons should minister to the sick, with due impressions of the importance of their office, reflecting that the ease, the health, and the lives of those committed to their charge depend on their skill, attention and fidelity. They should study, also, in their deportment, so to unite *tenderness* with *steadiness*, and *condescension* with *authority*, as to inspire the minds of their patients with gratitude, respect and confidence.

II. The *choice* of a *physician* or *surgeon* cannot be allowed to hospital patients, consistently with the regular and established succession of medical attendance. Yet personal confidence is not less important to the comfort and relief of the sick-poor, than of the rich under similar circumstances. And it would be equally just and humane to inquire into and to indulge their partialities, by occasionally calling into consultation the favorite practitioner. The rectitude and wisdom of this conduct will be still more apparent, when it is recollected that patients in hospitals not unfrequently request their discharge on a deceitful plea of having received relief, and afterwards procure another recommendation, that they may be admitted under the physician or surgeon of their choice. Such practices involve in them a degree of falsehood, produce unnecessary trouble, and may be the occasion of irreparable loss of time in the treatment of diseases.

III. The *feelings* and *emotions* of the patients, under critical circumstances, require to be known and to be attended to, no less than the symptoms of their diseases. Thus, extreme *timidity*, with respect to venaesection, contraindicates its use, in certain cases and constitutions. Even the *prejudices* of the sick are not to be condemned or opposed with harshness. For though silenced by authority, they will operate secretly and forcibly on the mind, creating fear, anxiety and watchfulness.

IV. As misapprehension may magnify real evils or create imaginary ones, no *discussion* concerning the nature of the case should be entered into before the patients, either with the house surgeon, the pupils of the hospitals, or any medical visitor.

V. In the large wards of an infirmary the patients should be interrogated concerning their complaints, in a *tone* of *voice* which cannot be overheard. *Secrecy*, also, when required by peculiar circumstances, should be strictly observed. And females should always be treated with the most scrupulous *delicacy*. To neglect or to sport with their

feelings is cruelty, and every wound thus inflicted tends to produce a callousness of mind, a contempt of decorum, and an insensibility to modesty and virtue. Let these considerations be forcibly and repeatedly urged on the hospital pupils.

VI. The *moral* and *religious* influence of sickness is so favourable to the best interests of men and of society, that it is justly regarded as an important object in the establishment of every hospital. The *institutions* for promoting it should, therefore, be encouraged by the physicians and surgeons, whenever seasonable opportunities occur. And by pointing out these to the officiating clergyman, the sacred offices will be performed with propriety, discrimination, and greater certainty of success. The character of a physician is usually remote either from superstition or enthusiasm. And the aid, which he is now exhorted to give, will tend to their exclusion from the sick wards or the hospital, where their effects have often been known to be not only baneful, but even fatal.

VII. It is one of the circumstances which softens the lot of the poor, that they are exempt from the solitudes attendant on the disposal of property. Yet there are exceptions to this observation. And it may be necessary that an hospital patient, on the bed of sickness and death should be reminded, by some friendly monitor, of the importance of a *last will* and *testament* to his wife, children, or relatives, who otherwise might be deprived of his effects, of his expected prize money, or of some future residuary legacy. This kind office will be best performed by the house surgeon, whose frequent attendance on the sick diminishes their reserve, and entitles him to their familiar confidence. And he will doubtless regard the performance of it as a duty. For whatever is right to be done, and cannot by another be so well done, has the full force of moral and personal obligation.

VIII. The physicians and surgeons should not suffer themselves to be restrained, by parsimonious considerations, from prescribing *wine*, and *drugs* even of *high price*, when required in diseases of extraordinary malignity and danger. The efficacy of every medicine is proportionate to its purity and goodness, and on the degree of these properties, *cæteris paribus*, both the cure of the sick, and the speediness of its accomplishment must depend. But when drugs of inferior quality are employed, it is requisite to administer them in larger doses, and to continue the use of them a longer period of time, circumstances which probably more than counterbalance any savings in their original price. If the case, however, were far otherwise, no economy of a fatal tendency ought to be admitted into institutions founded on principles of the purest beneficence, and which, in this age and country, when well conducted, can never want contributions adequate to their liberal support.

IX. The medical gentlemen of every charitable institution are, in some degree, responsible for, and the guardians of, the honour of each other. No physician or surgeon, therefore, should *reveal* occurrences in the hospital, which may injure the reputation of any one of his colleagues, except under the restriction contained in the succeeding article.

X. No professional charge should be made by a physician or surgeon, either publicly or privately, against any associate, without previously laying the complaint before the gentlemen of the faculty belonging to the institution, that they may judge concerning the reasonableness of its grounds, and the measures to be adopted.

XI. A proper *discrimination* being established in all hospitals between the *medical* and *chirurgical cases*, it should be faithfully adhered to by the physicians and surgeons on the admission of patients.

XII. Whenever cases occur, attended with circumstances not heretofore observed, or in which the ordinary modes of practice have been attempted without success, it is for the public good, and in an especial degree advantageous to the poor (who, being the most numerous class of society, are the greatest beneficiaries of the healing art) that *new remedies* and *new methods* of *chirurgical treatment* should be devised. But in the accomplishment of this salutary purpose, the gentlemen of the faculty should be scrupulously and conscientiously governed by sound reason, just analogy, or well authenticated facts. And no such trials should be instituted without a previous consultation of the physicians or surgeons according to the nature of the case.

XIII. To advance professional improvement, a friendly and unreserved *intercourse* should subsist between the gentlemen of the faculty, with a free communication of whatever is extraordinary or interesting in the course of their hospital practice. And an *account* of every *case* or *operation* which is rare, curious, or instructive, should be drawn up by the physician or surgeon, to whose charge it devolves, and entered in a register kept for the purpose, but open only to the physicians and surgeons of the charity.

XIV. *Hospital registers* usually contain only a simple report of the number of patients admitted and discharged. By adopting a more comprehensive plan, they might be rendered subservient to medical science, and beneficial to mankind. The following sketch is offered, with deference, to the gentlemen of the faculty. Let the register consist of three tables: the first specifying the number of patients admitted, cured, relieved, discharged, or dead; the second the several diseases of the patient, with their events; the third the sexes, ages, and occupations of the patients. The ages should be reduced into classes, and the tables adapted to the four divisions of the year. By such an institution, the increase or decrease of

sickness; the attack, progress and cessation of epidemics; the comparative healthiness of different situations, climates and seasons; the influence of particular trades and manufactures on health and life; with many other curious circumstances, not more interesting to physicians than to the community, would be ascertained with sufficient precision.

XV. By the adoption of the *register*, recommended in the foregoing article, physicians and surgeons would obtain a clearer insight into the comparative success of their hospital and private practice, and would be incited to a diligent investigation of the causes of such difference. In particular diseases it will be found to subsist in a very remarkable degree, and the discretionary power of the physician or surgeon, in the admission of patients, could not be exerted with more justice or humanity than in refusing to consign to lingering suffering, and almost certain death, a numerous class of patients, inadvertently recommended as objects of these charitable institutions. "In judging of diseases, with regard to the propriety of their reception into hospitals," says an excellent writer, "the following general circumstances are to be considered":

"Whether they be capable of speedy relief; because, as it is the intention of charity to relieve as great a number as possible, a quick change of objects is to be wished, and also because the inbred disease of hospitals will almost inevitably creep, in some degree, upon one who continues a long time in them, but will rarely attack one whose stay is short.

"Whether they require in a particular manner the superintendence of skilful persons, either on account of their acute and dangerous nature, or any singularity or intricacy attending them, or erroneous opinions prevailing among the common people concerning their treatment.

"Whether they be contagious or subject in a peculiar degree to taint the air, and generate pestilential diseases.

"Whether a fresh and pure air be peculiarly requisite for their cure, and they be remarkably injured by any vitiation of it."

XVI. But no precautions relative to the reception of patients, who labour under maladies incapable of relief, contagious in their nature, or liable to be aggravated by confinement in an impure atmosphere, can obviate the evils, arising from *close wards*, and the false economy of crowding a number of persons into the least possible space. There are inbred diseases which it is the duty of the physician or surgeon to prevent, as far as lies in his power, by a strict and persevering attention to the whole medical polity of the hospital. This comprehends the discrimination of cases admissible, air, diet, cleanliness, and drugs; each of which articles should be subjected to a rigid scrutiny, at stated periods of time.

XVII. The establishment of a *committee* of the *gentlemen* of the *faculty*, to be held monthly, would tend to facilitate this interesting investigation, and to accomplish the most important objects of it. By the free communication of remarks, various improvements would be suggested; by the regular discussion of them, they would be reduced to a definite and consistent form, and by the authority of united suffrages, they would have full influence over the governors of the charity. The exertions of individuals, however benevolent or judicious, often give rise to jealousy, are opposed by those who have not been consulted, and prove inefficient by wanting the collective energy of numbers.

XVIII. The harmonious intercourse, which has been recommended to the gentlemen of the faculty, will naturally produce *frequent consultations*, viz., of the physicians on medical cases, of the surgeons on chirurgical cases, and of both united in cases of a compound nature, which falling under the department of each, may admit of elucidation by the reciprocal aid of the two professions.

XIX. In consultations on medical cases, the junior physician present should *deliver* his *opinion* first, and the others in the progressive order of their seniority. The same order should be observed in chirurgical cases; and a majority should be decisive in both. But if the numbers be equal, the decision should rest with the physician or surgeon under whose care the patient is placed. No decision, however, should restrain the acting practitioner from making such variations in the mode of treatment, as future contingencies may require, or a farther insight into the nature of the disorder may shew to be expedient.

XX. In consultations on mixed cases, the junior surgeon should *deliver* his *opinion* first, and his brethren afterwards in succession, according to progressive seniority. The junior physician present should deliver his opinion after the senior surgeon, and the other physicians in the order above prescribed.

XXI. In every consultation, the case to be considered should be *concisely stated* by the physician or surgeon who requests the aid of his brethren. The opinions relative to it should be delivered with brevity, agreeably to the preceding arrangement, and the decisions collected in the same order. The order of seniority, among the physicians and surgeons, may be regulated by the dates of their respective appointments in the hospital.

XXII. Due *notice* should be given of a consultation, and no person admitted to it, except the physicians and surgeons of the hospital, and the house surgeon, without the unanimous consent of the gentlemen present. If an examination of the patient be previously necessary, the particular circumstances of danger or difficulty should be carefully concealed from

him, and every just precaution used to guard him from anxiety or alarm.

XXIII. No important *operation* should be determined upon, without a consultation of the physicians and surgeons, and the acquiescence of a majority of them. Twenty-four hours notice should be given of the proposed operation, except in dangerous accidents, or when peculiar circumstances occur, which may render delay hazardous. The presence of a *spectator* should not be allowed during an operation, without the express permission of the operator. All extra-official interference in the management of it should be forbidden. A decorous *silence* ought to be observed. It may be humane and salutary, however, for one of the attending physicians or surgeons to speak occasionally to the patient; to comfort him under his sufferings, and to give him assurance, if consistent with truth, that the operation goes on well, and promises a speedy and successful termination.

As a Hospital is the best school for practical surgery, it would be liberal and beneficial to invite, in rotation, two surgeons of the town, who do not belong to the institution, to be present at each operation.

XXIV. Hospital consultations ought not to be held on Sundays, except in cases of urgent necessity; and on such occasions an hour should be appointed, which does not interfere with attendance on public worship.

XXV. It is an established usage, in some hospitals, to have a *stated day* in the week for the performance of operations. But this may occasion improper delay, or equally unjustifiable anticipation. When several operations are to take place in succession, one patient should not have his mind agitated by the knowledge of the sufferings of another. The surgeon should change his apron, when besmeared, and the table or instruments should be freed from all marks of blood, and every thing that may excite terror.

XXVI. Dispensaries afford the widest sphere for the treatment of diseases, comprehending, not only such as ordinarily occur, but those which are so infectious, malignant and fatal, as to be excluded from admission into Infirmaries. Happily, also, they neither tend to counteract that spirit of independence, which should be sedulously fostered in the poor, nor to preclude the practical exercise of those relative duties, "the charities of father, son and brother," which constitute the strongest moral bonds of society. Being institutions less splendid and expensive than hospitals, they are well adapted to towns of moderate size, and might even be established, without difficulty, in populous country districts. Physicians and surgeons, in such situations, have generally great influence. And it would be truly honourable to exert it in a cause subservient to the interests of medical science, of commerce and of philanthropy.

The duties which devolve on gentlemen of the faculty, engaged in the conduct of Dispensaries, are so nearly similar to those of hospital physicians and surgeons, as to be comprehended under the same professional and moral rules. But greater *authority* and greater *condescension* will be found requisite in domestic attendance on the poor. And human nature must be intimately studied to acquire that full ascendancy over the prejudices, the caprices and the passions of the sick, and of their relatives, which is essential to medical success.

XXVII. Hospitals, appropriated to particular maladies, are established in different places, and claim both the patronage and the aid of the gentlemen of the faculty. To an ASYLUM FOR FEMALE PATIENTS, labouring under SYPHILIS, it is to be lamented that discouragements have been too often and successfully opposed. Yet whoever reflects on the variety of diseases to which the human body is incident, will find that a considerable part of them are derived from immoderate passion, and vicious indulgencies. Sloth, intemperance and irregular desires are the great sources of those evils, which contract the duration, and embitter the enjoyment of life. But humanity, whilst she bewails the vices of mankind, incites us to alleviate the miseries which flow from them. And it may be proved that a LOCK HOSPITAL is an institution founded on the most benevolent principles, consonant to sound policy, and favourable to reformation and to virtue. It provides relief for a painful and loathsome distemper, which contaminates in its progress the innocent as well as the guilty, and extends its baneful influence to future generations. It restores to virtue and to religion those votaries whom pleasure has seduced, or villany betrayed, and who now feel, by sad experience, that ruin, misery and disgrace are the *wages of sin*. Over such objects pity sheds the generous tear; austerity softens into forgiveness, and benevolence expands at the united pleas of frailty, penitence and wretchedness.

No *peculiar rules* of conduct are requisite in the medical attendance on LOCK HOSPITALS. But as these institutions must, from the nature of their object, be in a great measure shut from the inspection of the public, it will behove the faculty to consider themselves as responsible, in an extraordinary degree, for their right government; that the moral, no less than the medical purposes of such establishments, may be fully answered. The strictest decorum should be observed in the conduct towards the female patients; no young pupils should be admitted into the house; every ministering office should be performed by nurses properly instructed, and books adapted to the moral improvement of the patients should be put into their hands, and given them on their discharge. To provide against the danger of urgent want, a small sum of money and decent clothes should at this time be dispensed

to them; and, when practicable, some mode should be pointed out of obtaining a reputable livelihood.

XXVIII. ASYLUMS FOR INSANITY possess accommodations and advantages, of which the poor must, in all circumstances, be destitute, and which no private family, however, opulent, can provide. Of these schemes of benevolence all classes of men may have equal occasion to participate the benefits; for human nature itself becomes the mournful object of such institutions. Other diseases leave man a rational and moral agent, and sometimes improve both the faculties of the head and the affections of the heart. But lunacy subverts the whole rational and moral character, extinguishes every tender charity, and excludes the degraded sufferer from all the enjoyments and advantages of social intercourse. Painful is the office of a physician when he is called upon to minister to such humiliating objects of distress. Yet great must be his felicity when he can render himself instrumental, under providence, in the restoration of reason, and in the renewal of the lost image of God. Let no one, however, promise himself this divine privilege, if he be not deeply skilled in the philosophy of human nature. For though casual success may sometimes be the result of empirical practice, the *medicina mentis* can only be administered with steady efficacy by him, who, to a knowledge of the animal economy, and of the physical causes which regulate or disturb its movements, unites an intimate acquaintance with the laws of association; the control of fancy over judgment; the force of habit; the direction and comparative strength of opposite passions, and the reciprocal strength of opposite passions; and the reciprocal dependencies and relations of the moral and intellectual powers of man.

XXIX. Even thus qualified with the prerequisite attainments, the physician will find that he has a new region of medical science to explore. For it is a circumstance to be regretted, both by the faculty and the public, that the various diseases which are classed under the title of insanity, remain less understood than any others with which mankind are visited. Hospital institutions furnish the best means of acquiring more accurate knowledge of their causes, nature and cure. But this information cannot be attained to any satisfactory extent by the ordinary attention to single and unconnected cases. The synthetic plan should be adopted, and a regular *journal* should be kept of every species of the malady which occurs, arranged under proper heads, with a full detail of its rise, progress and termination, of the remedies administered and of their effects in its several stages. The age, sex, occupations, mode of life and if possible hereditary constitution of each patient should be noted. And, when the event proves fatal, the brain, and other organs affected should be carefully examined, and the appearances on dissection minutely inserted in the journal. A register like this, in the

course of a few years, would afford the most interesting and authentic documents, the want of which, on a late melancholy occasion, was felt and regretted by the whole kingdom.

XXX. Lunatics are, in a great measure, secluded from the observation of those who are interested in their good treatment, and their complaints of ill-usage are so often false or fanciful, as to obtain little credit or attention, even when well founded. The physician, therefore, must feel himself under the strictest obligation of honour, as well as of humanity, to secure to these unhappy sufferers all the tenderness and *indulgence*, compatible with steady and effectual government.

XXXI. Certain cases of *mania* seem to require a *boldness* of *practice* which a young physician of sensibility may feel a reluctance to adopt. On such occasions he must not yield to timidity, but fortify his mind by the councils of his more experienced brethren of the faculty. Yet with this aid, it is more consonant to probity to err on the side of caution than of temerity.

Hospitals for the smallpox, for inoculation, for cancers, etc., etc., are established in different places, but require no professional duties, which are not included under, or deducible from, the precepts already delivered.

CHAPTER II

OF PROFESSIONAL CONDUCT IN PRIVATE. OR GENERAL PRACTICE

I. The *moral rules of conduct*, prescribed towards hospital patients, should be fully adopted in private or general practice. Every case, committed to the charge of a physician or surgeon, should be treated with attention, steadiness and humanity. Reasonable indulgence should be granted to the mental imbecility and caprices of the sick. Secrecy and delicacy, when required by peculiar circumstances, should be strictly observed. And the familiar and confidential intercourse, to which the faculty are admitted in their professional visits, should be used with discretion and with the most scrupulous regard to fidelity and honour.

II. The strictest *temperance* should be deemed incumbent on the faculty, as the practices both of physic and surgery at all times requires the exercise of a clear and vigorous understanding. And on emergencies, for which no professional man should be unprepared, a steady hand, an acute eye, and an unclouded head, may be essential to the well being, and even to the life, of a fellow creature. Philip of Macedon reposed with entire security on the vigilance and attention of his General Parmenio. In his hours of mirth and conviviality he was wont to say, "let us drink, my friends; we may do it with safety, for Parmenio never drinks!" The moral of this story is sufficiently obvious when applied to the faculty, but it should certainly be construed with great limitation by their patients.

III. A physician should not be forward to make gloomy prognostications, because they savor of empiricism, by magnifying the importance of his services in the treatment or cure of the disease. But he should not fail, on proper occasions, to give to the friends of the patient, timely notice of danger, when it really occurs, and even to the patient himself, if absolutely necessary. This office, however, is so peculiarly alarming, when executed by him, that it ought to be declined, whenever it can be assigned to any other person of sufficient judgment and delicacy. For the physician should be the minister of hope and comfort to the sick; that by such cordials to the drooping spirit, he may smooth the bed of death, revive expiring life, and counteract the depressing influence of those maladies which rob the philosopher of fortitude, and the Christian of consolation.

IV. *Officious interference*, in a case under the charge of another, should be carefully avoided. No meddling inquiries should be made concerning the patient; no unnecessary hints given, relative to the nature or treatment of his disorder; nor any selfish conduct pursued, that may directly or indirectly

tend to diminish the trust reposed in the physician or surgeon employed. Yet though the character of a professional busybody, whether from thoughtlessness or craft, is highly reprehensible, there are occasions which not only justify but require a spirited interposition. When artful ignorance grossly imposes on credulity; when neglect puts to hazard an important life; or rashness threatens it with still more imminent danger; a medical neighbor, friend, or relative, apprized of such facts, will justly regard his interference as a duty. But he ought to be careful that the information, on which he acts, is well founded; that his motives are pure and honourable, and that his judgment of the measures pursued is built on experience and practical knowledge, not on speculative or theoretical differences of opinion. The particular circumstances of the case will suggest the most proper mode of conduct. In general, however, a personal and confidential application to the gentlemen of the faculty concerned, should be the first step taken, and afterwards, if necessary, the transaction may be communicated to the patient or to his family.

V. When a physician or surgeon is called to a patient, who has been before under the care of another gentleman of the faculty, a consultation with him should be even proposed, though he may have discontinued his visits. His practice, also, should be treated with candour and justified, so far as probity and truth will permit. For the want of success in the primary treatment of a case, is no impeachment of professional skill or knowledge, and it often serves to throw light on the nature of a disease, and to suggest to the subsequent practitioner more appropriate means of relief.

VI. In large and opulent towns the *distinction* between the *provinces* of *physic* and *surgery* should be steadily maintained. This distinction is sanctioned both by reason and experience. It is founded on the nature and objects of the two professions; on the education and acquirements requisite for their most beneficial and honourable exercise, and tends to promote the complete cultivation and advancement of each. For the division of skill and labour is no less advantageous in the liberal than in the mechanic arts. And both physick and surgery are so comprehensive, and yet so far from perfection, as separately to give full scope to the industry and genius of their respective professors. Experience has fully evinced the benefits of the discrimination recommended, which is established in every well regulated hospital, and is thus expressly authorized by the faculty themselves and by those who have the best opportunities of judging of the proper application of the healing art. No physician or surgeon, therefore, should adopt more than one denomination, or assume any rank or privileges different from those of his order.

VII. *Consultations* should be *promoted* in difficult or protracted cases, as they give rise to confidence, energy, and more enlarged views in practice. On such occasions no rivalry or jealousy should be indulged. Candour, probity and all due respect should be exercised towards the physician or surgeon first engaged. And as he may be presumed to be best acquainted with the patient and with his family, he should deliver all the medical directions agreed upon, though he may not have precedence in seniority or rank. It should be the province, however, of the senior physician, first to propose the necessary questions to the sick, but without excluding his associate from the privilege of making further inquiries, to satisfy himself, or to elucidate the case.

VIII. As circumstances sometimes occur to render a *special consultation* desirable, when the continued attendance of another physician or surgeon might be objectionable to the patient, the gentleman of the faculty, whose assistance is required in such cases, should pay only two or three visits, and sedulously guard against all future unsolicited interference. For this consultation a double gratuity may reasonably be expected from the patient, as it will be found to require an extraordinary portion both of time and attention.

In medical practice, it is not an unfrequent occurrence that a physician is hastily summoned, through the anxiety of the family, or the solicitation of friends, to visit a patient, who is under the regular direction of another physician to whom notice of this call has not been given. Under such circumstances, no change in the treatment of the sick person should be made till a previous consultation with the stated physician has taken place, unless the lateness of the hour precludes meeting or the symptoms of the case are too pressing to admit of delay.

IX. *Theoretical discussions* should be avoided in consultations, as occasioning perplexity and loss of time. For there may be much diversity of opinion, concerning speculative points, with perfect agreement in those modes of practice, which are founded not on hypothesis, but on experience and observation.

X. The rules prescribed for hospital consultation may be adopted in private or general practice. And the *seniority* of a physician may be determined by the period of his public and acknowledged practice as a physician, and that of a surgeon by the period of his practice as a surgeon, in the place where each resides. This arrangement, being clear and obvious, is adapted to remove all grounds of dispute amongst medical gentlemen. And it secures the regular continuance of the order of precedence, established in every town, which might otherwise be liable to troublesome interruptions by new settlers, perhaps not long stationary.

XI. A regular *academical education* furnishes the only presumptive evidence of professional ability, and is so honourable and beneficial, that it gives a just claim to preeminence among physicians, in proportion to the degree in which it has been enjoyed and improved: Yet as it is not indispensably necessary to the attainment of knowledge, skill and experience, they who have really acquired, in a competent measure, such qualifications, without its advantages, should not be fastidiously excluded from the privileges of fellowship. In consultations, especially, as the good of the patient is the sole object in view, and is often dependent on personal confidence, the aid of an intelligent practitioner ought to be received with candour and politeness and his advice adopted, if agreeable to sound judgment and truth.

XII. *Punctuality* should be observed in the visits of the faculty, when they are to hold consultation together. But as this may not always be practicable, the physician or surgeon, who first arrives at the place of appointment, should wait five minutes for his associate before his introduction to the patient, that the unnecessary repetition of questions may be avoided. No visits should be made but in concert, or by mutual agreement. No statement or discussion of the case should take place before the patient or his friends, except in the presence of each of the attending gentlemen of the faculty and by common consent. And no *prognostications* should be delivered which are not the result of previous deliberation and concurrence.

XIII. *Visits* to the sick should not be *unseasonably repeated*; because, when too frequent, they tend to diminish the authority of the physician to produce instability in his practice and to give rise to such occasional indulgences as are subversive of all medical regimen.

Sir William Temple has asserted that "an honest physician is excused for leaving his patient, when he finds the disease growing desperate, and can, by his attendance, expect only to receive his fees, without any hopes or appearance of deserving them." But this allegation is not well founded. For the offices of a physician may continue to be highly useful to the patient and comforting to the relatives around him, even in the last period of a fatal malady; by obviating despair, by alleviating pain and by soothing mental anguish. To decline attendance, under such circumstances would be sacrificing, to fanciful delicacy and mistaken liberality, that moral duty which is independent of, and far superior to, all pecuniary appreciation.

XIV. Whenever a physician or surgeon *officiates* for another who is sick or absent, during any considerable length of time, he should receive the fees accruing from such additional practice. But if this fraternal act be of short duration, it should be gratuitously performed, with an observance

always of the utmost delicacy towards the interest and character of the professional gentlemen, previously connected with the family.

XV. Some general rule should be adopted by the faculty in every town relative to the *pecuniary acknowledgments* of their patient, and it should be deemed a point of honour to adhere to this rule with as much steadiness as varying circumstances will admit. For it is obvious that an average fee, as suited to the general rank of patients, must be an inadequate gratuity from the rich, who often require attendance not absolutely necessary, and yet too large to be expected from that class of citizens who would feel a reluctance in calling for assistance, without making some decent and satisfactory retribution.

But in the consideration of fees, let it ever be remembered, that though mean ones from the affluent are both unjust and degrading, yet the characteristic beneficence of the profession is inconsistent with sordid views and avaricious rapacity. To a young physician it is of great importance to have clear and definite ideas of the ends of his profession; of the means for their attainment, and of the comparative value and dignity of each. Wealth, rank and independence, with all the benefits resulting from them, are the primary ends which he holds in view, and they are interesting, wise and laudable. But knowledge, benevolence and active virtue, the means to be adopted in their acquisition, are of still higher estimation. And he has the privilege and felicity of practicing an art, even more intrinsically excellent in its mediate than in its ultimate objects. The former, therefore, have a claim to uniform preeminence.

XVI. All members of the profession, including apothecaries as well as physicians and surgeons, together with their wives and children, should be attended *gratuitously* by any one or more of the faculty residing near them, whose assistance may be required. For as solicitude obscures the judgment, and is accompanied with timidity and irresolution, medical men, under the pressure of sickness, either as affecting themselves or their families, are peculiarly dependent upon each other. But visits should not be obtruded officiously, as such unasked civility may give rise to embarrassment, or interfere with that choice, on which confidence depends. Distant members of the faculty, when they request attendance, should be expected to defray the charges of travelling. And if their circumstances be affluent, a pecuniary acknowledgment should not be declined. For no obligation ought to be imposed, which the party would rather compensate than contract.

XVII. When a physician attends the wife or child of a member of the faculty, or any person very nearly connected with him, he should manifest peculiar attention to his opinions, and

tenderness even to his prejudices. For the dear and important interests, which the one has at stake, supersede every consideration of rank or seniority in the other; since the mind of a husband, a father, or a friend, may receive a deep and lasting wound, if the disease terminate fatally, from the adoption of means he could not approve, or the rejection of those he wished to be tried. Under such delicate circumstances, however, a conscientious physician will not lightly sacrifice his judgment; but will urge, with proper confidence, the measures he deems to be expedient, before he leaves the final decision concerning them to his more responsible coadjutor.

XVIII. Clergymen, who experience the *res angusta domi*, should be visited gratuitously by the faculty. And this exemption should be an acknowledged general rule, that the feeling of individual obligation may be rendered less oppressive. But such of the clergy as are qualified, either from their stipends or fortunes, to make a reasonable remuneration for medical attendance, are not more privileged than any other order of patients. Military or naval subaltern officers, in narrow circumstances, are also proper objects of professional liberality.

XIX. As the first *consultation by letter* imposes much more trouble and attention than a personal visit, it is reasonable on such an occasion, to expect a gratuity of double the usual amount. And this has long been the established practice of many respectable physicians. But a subsequent epistolary correspondence, on the further treatment of the same disorder, may justly be regarded in the light of ordinary attendance, and may be compensated, as such, according to the circumstances of the case, or of the patient.

XX. Physicians and surgeons are occasionally requested to furnish certificates, justifying the absence of persons who hold situations of honour and trust in the army, the navy, or the civil departments of government. These testimonials, unless under particular circumstances, should be considered as acts due to the public, and therefore not to be compensated by any gratuity. But they should never be given without an accurate and faithful scrutiny of the case; that truth and probity may not be violated, nor the good of the community injured, by the unjust pretenses of its servants. The same conduct is to be observed by medical practitioners, when they are solicited to furnish apologies for non-attendance on juries; or to state the valetudinary incapacity of persons appointed to execute the business of constables, church-wardens, or overseers of the poor. No fear of giving umbrage, no view to present or future emolument, nor any motives of friendship, should incite to a false, or even dubious declaration. For the general weal requiries that every individual, who is

properly qualified, should deem himself obliged to execute, when legally called upon, the juridical and municipal employments of the body politic. And to be accessory, by untruth or prevarication, to the evasion of this duty, is at once a high misdemeanor against social order, and a breach of moral and professional honour.

XXI. The use of *quack medicines* should be discouraged by the faculty, as disgraceful to the profession, injurious to health, and often destructive, even of life. Patients, however, under lingering disorders, are sometimes obstinately bent on having recourse to such as they see advertised, or hear recommended, with a boldness and confidence, which no intelligent physician dares to adopt with respect to the means that he prescribes. In these cases, some indulgence seems to be required to a credulity that is insurmountable. And the patient should neither incur the displeasure of the physician, nor be entirely deserted by him. He may be apprized of the fallacy of his expectations, whilst assured, at the same time, that diligent attention should be paid to the process of the experiment he is so unadvisedly making on himself, and the consequent mischiefs, if any, obviated as timely as possible. Certain active preparations, the nature, composition, and effects of which are well known, ought not to be proscribed as quack medicine.

XXII. No physician or surgeon should dispense a secret *nostrum*, whether it be his invention, or exclusive property. For if it be of real efficacy, the concealment of it is inconsistent with beneficence and professional liberality. And if mystery alone gives it value and importance, such craft implies either disgraceful ignorance, or fraudulent avarice.

XXIII. The *Esprit du Corps* is a principle of action founded in human nature, and when duly regulated, is both rational and laudable. Every man who enters into a fraternity engages, by a tacit compact, not only to submit to the laws, but to promote the honour and interest of the association, so far as they are consistent with morality, and the general good of mankind. A physician, therefore, should cautiously guard against whatever may injure the general respectability of his profession; and should avoid all contumelious representations of the faculty at large; all general charges against their selfishness or improbity; and the indulgence of an affected or jocular scepticism, concerning the efficacy and utility of the healing art.

XXIV. As diversity of opinion and opposition of interest may in the medical, as in other professions, sometimes occasion *controversy*, and even *contention*; whenever such cases unfortunately occur, and cannot be immediately terminated, they should be referred to the arbitration of a sufficient number of physicians or of surgeons, according to the nature of the

dispute; or to the two orders collectively, if belonging both to medicine and surgery. But neither the subject matter of such references, nor the adjudication, should be communicated to the public; as they may be personally injurious to the individuals concerned, and can hardly fail to hurt the general credit of the faculty.

XXV. A wealthy physician should not give advice *gratis* to the affluent; because it is an injury to his professional brethren. The office of physician can never be supported but as a lucrative one; and it is defrauding, in some degree, the common funds for its support, when fees are dispensed with, which might justly be claimed.

XXVI. It frequently happens that a physician, in his incidental communications with the patients of other physicians, or with their friends, may have their cases stated to him in so direct a manner, as not to admit of his declining to pay attention to them. Under such circumstances, his observations should be delivered with the most delicate propriety and reserve. He should not interfere in the curative plans pursued; and should even recommend a steady adherence to them, if they appear to merit approbation.

XXVII. A physician, when visiting a sick person in the country, may be desired to see a neighboring patient, who is under the regular direction of another physician, in consequence of some sudden change or aggravation of symptoms. The conduct to be pursued, on such an occasion, is to give advice adapted to present circumstances; to interfere no farther than is absolutely necessary with the general plan of treatment; to assume no future direction, unless it be expressly desired; and, in this case, to request an immediate consultation with the practitioner antecedently employed.

XXVIII. At the close of every interesting and important case, especially when it hath terminated fatally, a physician should trace back, in calm reflection, all the steps which he had taken in the treatment of it. This review of the origin, progress, and conclusion of the malady; of the whole curative plan pursued; and of the particular operation of the several remedies employed, as well as of the doses and periods of time in which they were administered, will furnish the most authentic documents, on which individual experience can be formed. But it is in a moral view that the practice is here recommended; and it should be performed with the most scrupulous impartiality. Let no self-deception be permitted in the retrospect; and if errors, either of omission or commission, are discovered, it behoves that they should be brought fairly and fully to the mental view. Regrets may follow, but criminality will thus be obviated. For good intentions, and the imperfections of human skill which cannot anticipate the knowledge that events alone disclose, will

sufficiently justify what is past, provided the failure be made conscientiously subservient to future wisdom and rectitude in professional conduct.

XXIX. The opportunities, which a physician not unfrequently enjoys, of promoting and strengthening the good resolutions of his patients, suffering under the consequences of vicious conduct, ought never to be neglected. And his councils, or even remonstrances, will give satisfaction, not disgust, if they be conducted with politeness; and evince a genuine love of virtue, accompanied by a sincere interest in the welfare of the person to whom they are addressed.

XXX. The observance of the sabbath is a duty to which medical men are bound, so far as is compatible with the urgency of the cases under their charge. Visits may often be made with sufficient convenience and benefit, either before the hours of going to church, or during the intervals of public worship. And in many chronic ailments, the sick, together with their attendants, are qualified to participate in the social offices of religion; and should not be induced to forego this important privilege, by the expectation of a call from their physician or surgeon.

XXXI. A physician who is advancing in years, yet unconscious of any decay in his faculties, may occasionally experience some change in the wonted confidence of his friends. Patients, who before trusted solely to his care and skill, may now request that he will join in consultation, perhaps with a younger coadjutor. It behoves him to admit this change without dissatisfaction or fastidiousness, regarding it as no mark of disrespect; but as the exercise of a just and reasonable privilege in those by whom he is employed. The junior practitioner may well be supposed to have more ardour, than he possesses, in the treatment of diseases; to be bolder in the exhibition of new medicines; and disposed to administer old ones in doses of greater efficacy. And this union of enterprize with caution, and of fervour with coolness, may promote the successful management of a difficult and protracted case. Let the medical parties, therefore, be studious to conduct themselves toward each other with candour and impartiality; co-operating, by mutual concessions, in the benevolent discharge of professional duty.

XXXII. The commencement of that period of senescence, when it becomes incumbent on a physician to decline the offices of his profession, it is not easy to ascertain; and the decision on so nice a point must be left to the moral discretion of the individual. For, one grown old in the useful and honourable exercise of the healing art, may continue to enjoy, and justly to enjoy, the unabated confidence of the public. And whilst exempt, in a considerable degree, from the privations and infirmities of age, he is under indispensable obligations to apply his knowledge and experience, in the most efficient way,

to the benefit of mankind. For the possession of powers is a clear indication of the will of our Creator, concerning their practical direction. But in the ordinary course of nature, the bodily and mental vigour must be expected to decay progressively, though perhaps slowly, after the meridian of life is past. As age advances, therefore, a physician should, from time to time, scrutinize impartially the state of his faculties; that he may determine, *bona fide*, the precise degree in which he is qualified to execute the active and multifarious offices of his profession. And whenever he becomes conscious that his memory presents to him, with faintness, those analogies, on which medical reasoning and the treatment of diseases are founded; that diffidence of the measures to be pursued perplexes his judgment; that, from a deficiency in the acuteness of his senses, he finds himself less able to distinguish signs, or to prognosticate events; he should at once resolve, though others perceive not the changes which have taken place, to sacrifice every consideration of fame or fortune, and to retire from the engagements of business. To the surgeon under similar circumstances, this rule of conduct is still more necessary. For the energy of the understanding often subsists much longer than the quickness of eye-sight, delicacy of touch, and steadiness of hand, which are essential to the skilful performance of operations. Let both the physician and surgeon never forget, that their professions are public trusts, properly rendered lucrative whilst they fulfil them; but which they are bound, by honour and probity, to relinquish, as soon as they find themselves unequal to their adequate and faithful execution.

CHAPTER III

OF THE CONDUCT OF PHYSICIANS TOWARDS APOTHECARIES

I. In the present state of physic, in this country, where the profession is properly divided into three distinct branches, a connection peculiarly intimate subsists between the physician and the apothecary; and various obligations necessarily result from it. On the knowledge, skill, and fidelity of the apothecary depend, in a very considerable degree, the reputation, the success, and usefulness of the physician. As these qualities, therefore, justly claim his attention and encouragement, the possessor of them merits his respect and patronage.

II. The apothecary is, in almost every instance, the praecursor of the physician; and being acquainted with the rise and progress of the disease, with the hereditary constitution, habits, and disposition of the patient, he may furnish very important information. It is in general, therefore, expedient, and when health or life are at stake, expediency becomes a moral duty, to confer with the apothecary, before any decisive plan of treatment is adopted; to hear his account of the malady, of the remedies which have been administered, of the effects produced by them, and of his whole experience concerning the *juvantia* and *loedentia* in the case. Nor should the future attendance of the apothecary be superseded by the physician: For if he be a man of honour, judgment, and propriety of behaviour, he will be a most valuable auxiliary through the whole course of the disorder, by his attention to varying symptoms; by the enforcement of medical directions; by obviating misapprehensions in the patient, or his family; by strengthening the authority of the physician; and by being at all times an easy and friendly medium of communication. To subserve these important purposes, the physician should occasionally make his visits in conjunction with the apothecary, and regulate by circumstances the frequency of such interviews. For if they be often repeated, little substantial aid can be expected from the apothecary, because he will have no intelligence to offer which does not fall under the observation of the physician himself; nor any opportunity of executing his *peculiar* trust, without becoming burthensome to the patient by multiplied calls, and unseasonable assiduity.

III. This amicable *intercourse* and *cooperation* of the physician and apothecary, if connected with the *decorum* and attention to *etiquette*, which should always be steadily observed by professional men, will add to the authority of the one, to the respectability of the other, and to the usefulness of both. The patient will find himself the object of watchful and unremitting care, and will experience that he is connected with his physician, not only personally, but by

a sedulous representative and coadjutor. The apothecary will regard the free communication of the physician as a privilege and mean of improvement; he will have a deeper interest in the success of the curative plans pursued; and his honour and reputation will be directly involved in the purity and excellence of the medicines dispensed, and in the skill and care with which they are compounded.

IV. The duty and responsibility of the physician, however, are so intimately connected with these points, that no dependence on the probity of the apothecary should prevent the occasional inspection of the drugs, which he prescribes. In London, the law not only authorizes but enjoins a stated examination of the simple and compound medicines kept in the shops. And the policy that is just and reasonable in the metropolis, must be proportionally so in every provincial town, throughout the kingdom. Nor will any respectable apothecary object to this necessary office, when performed with delicacy, and at seasonable times; since his reputation and emolument will be increased by it, probably in the exact ratio, thus ascertained, of professional merit and integrity.

V. A physician called to visit a patient in the country, should not only be *minute* in his *directions*, but should *communicate* to the apothecary the *particular view*, which he takes of the *case*; that the indications of cure may be afterwards pursued with precision and steadiness; and that the apothecary may use the discretionary power committed to him, with as little deviation as possible from the general plan prescribed. To so valuable a class of men as the country apothecaries, great attention and respect is due. And as they are the guardians of health through large districts, no opportunities should be neglected of promoting their improvement, or contributing to their stock of knowledge, either by the loan of books, the direction of their studies, or by unreserved information on medical subjects. When such occasions present themselves, the maximum of our judicious poet is strictly true, "The worst avarice is that of sense." For practical improvements usually originate in towns, and often remain unknown or disregarded in situations, where gentlemen of the faculty have little intercourse, and where sufficient authority is wanting to sanction innovation.

VI. It has been observed, by a political and moral writer of great authority, that "apothecaries' profit is become a by-word, denoting something uncommonly extravagant. This great apparent profit, however, is frequently no more than the reasonable wages of labour. The skill of an apothecary is a much nicer and more delicate matter than that of any artificer whatever; and the trust which is reposed in him is of much greater importance. He is the physician of the poor in all cases, and of the rich when the distress or danger is not very great. His reward, therefore, ought to be suitable

to his skill and his trust, and it arises generally from the price at which he sells his drugs. But the whole drugs which the best employed apothecary, in a large market town, will sell in a year, may not perhaps cost him above thirty or forty pounds. Though he should sell them, therefore, for three or four hundred, or a thousand per cent. profit, this may frequently be no more than the reasonable wages of his labour charged, in the only way in which he can charge them, upon the price of his drugs."

The statement here given exceeds the emoluments of the generality of apothecaries, in country districts. And a physician, who knows the education, skill, and persevering attention, as well as the sacrifice of ease, health, and sometimes even of life, which this profession requires, should regard it as a duty not to withdraw, from those who exercise it, any sources of reasonable profit, or the honourable means of advancement in fortune. Two practices prevail in some places injurious to the interest of this branch of the faculty, and which ought to be discouraged. One consists in suffering prescriptions to be sent to the druggist, for the sake of a small saving in expense. The other in receiving an annual stipend, usually degrading in its amount, and in the services it imposes, for being consulted on the slighter indispositions to which all families are incident, and which properly fall within the province of the apothecary.

VII. Physicians are sometimes requested to visit the patients of the apothecary, in his absence. Compliance, in such cases, should always be refused, when it is likely to interfere with the consultation of the medical gentleman ordinarily employed by the sick person, or his family. Indeed this practice is so liable to abuse, and requires, in its exercise, so much caution and delicacy, that it would be for the interest and honour of the faculty to have it altogether interdicted. Physicians are the only proper substitutes for physicians; surgeons for surgeons; and apothecaries for apothecaries.

VIII. When the aid of a physician is required, the apothecary to the family is frequently called upon to recommend one. It will then behove him to learn fully whether the patient or his friends have any preference or partiality; and this he ought to consult, if it lead not to an improper choice. For the maxim of Celsus is strictly applicable, on such an occasion; *Ubi par scientia, melior est amicus medicus quam extraneus*. But if the parties concerned be entirely indifferent, the apothecary is bound to decide according to his best judgment, with a conscientious and exclusive regard to the good of the person, for whom he is commissioned to act. It is not even sufficient that he selects the person on whom, in sickness, he reposes his own trust; for in this case friendship justly gives preponderancy; because it may be supposed to excite a degree of zeal and attention, which might overbalance superior science or abilities. Without favour or

regard to any person, family or professional connections, he should recommend the physician whom he conscientiously believes, all circumstances considered, to be best qualified to accomplish the recovery of the patient.

IX. In the country of Norfolk, and in the city of London, benevolent institutions have been lately formed, for providing funds to relieve the widows and children of apothecaries, and occasionally also members of the profession, who become indigent. Such schemes merit the sanction and encouragement of every liberal physician and surgeon. And were they thus extended, their usefulness would be greatly increased, their permanency almost with certainty secured. Medical subscribers, from every part of Great-Britain, should be admitted, if they offer satisfactory testimonials of their qualifications. One comprehensive establishment seems to be more eligible than many on a smaller scale. For it would be conducted with superior dignity, regularity, and efficiency; with fewer obstacles from interest, prejudice, or rivalry; with considerable saving in the aggregate of time, trouble, and expense; with more accuracy in the calculations relative to its funds, and consequently with the utmost practicable extension of its dividends.

CHAPTER IV

OF PROFESSIONAL DUTIES, IN CERTAIN CASES WHICH REQUIRE A KNOWL- EDGE OF LAW

I. Gentlemen of the faculty of physic, by the authority of different parliamentary statutes, enjoy an exemption from serving on inquests or juries; from bearing armour; from being constables or church-wardens; and from all burdensome offices, whether leet or parochial. These privileges are founded on reasons highly honourable to medical men; and should operate as incentives to that diligent and assiduous discharge of professional duty, which the legislature has generously presumed to occupy the time, and to employ the talents of physicians and surgeons, in some of the most important interests of their fellow-citizens. It is perhaps on account of their being thus excused from many civil functions, that Sir William Blackstone, in his learned Commentaries, judges the study of the law to be less essential to them, than to any other class of men. He observes, that "there is no special reason why gentlemen of the faculty of physic should apply themselves to the study of law, unless in common with other gentlemen, and to complete the character of general and extensive knowledge, which this profession, beyond others, has remarkably deserved." But I apprehend it will be found that physicians and surgeons are often called upon to exercise appropriate duties, which require not only a knowledge of the principles of jurisprudence, but of the forms and regulations adopted in our courts of judicature. The truth of this observation will sufficiently appear from the following *brief detail* of some of the principal cases, in which the science of law is of importance to medical practitioners. To enter at large on so comprehensive a subject, would far exceed the bounds of the present undertaking.

II. When a physician attends upon a patient, under circumstances of imminent danger, his counsel may be required about the expediency of a *last will* and *testament*. It behoves him, therefore to know whether, in case of intestacy, the daughters, or younger children of the sick person would be legally entitled to any share of his fortune: Whether the fortune would be equally divided, when such equality would be improper or unjust: Whether diversity of claims and expensive litigations would ensue, without a will, from the nature of the property in question: And whether the creditors of the defunct would, by his neglect, be defrauded of their equitable claims. For it is a culpable deficiency in our laws, that real estates are not subject to the payment of debts by simple contract, unless expressly charged with them by the last will and testament of the proprietor; although credit is

often founded, as Dr. Paley well observes, on the possession of such estates. This acute moralist adds, "He, therefore, who neglects to make the necessary appointments for the payment of his debts, as far as his effects extend, sins in his grave; and if he omits this on purpose to defeat the demands of his creditors, he dies with a deliberate fraud in his heart."

Property is divided by the law into two species, *personal* and *real*; each requiring appropriate modes of transfer or alienation, with which a physician should be well acquainted. It may also be required of him to deliver an opinion, and even a solemn judicial evidence, concerning the *capacity* of his patient to make a *will*, a point sometimes of difficult and nice decision. For various disorders obscure, without perverting, the intellectual faculties. And even in delirium itself there are lucid intervals, when the memory and judgment become sufficiently clear, accurate, and vigorous, for the valid execution of a testament. In such cases the will should commence with the signature of the testator, concluding with it also, if his hand be not, after continued mental exertions, too tremulous for subscription; and it should be made with all possible conciseness, and expedition.

If the patient be surprised by sudden and violent sickness, the law authorizes a *nuncupative will* in the disposal of personality. But to guard against fraud, the testamentary words must be delivered with an explicit intention to bequeath; the will must be made at home, or among the testator's family and friends, unless by unavoidable accident; and also in his last sickness: For if he recover, it is evident that time is given for a written will.

The law excludes from the privilege of making a will *madmen*, *ideots*, persons in their *dotage*, or those who have stupefied their understandings by drunkenness. But there is a high degree of hypochondriacism, which not infrequently falls under the cognizance of a physician, and on which he may be required to decide whether it amounts to mental incapacity for the execution of a last will and testament. To define the precise boundaries of rationality is perhaps impossible; if it be true, according to Shakespear, that "the lunatic, the lover, and the poet are of imagination all compact." But a partially distempered fancy is known to subsist with general intelligence. And a man, like Mr. Simon Browne, believing the extinction of his rational soul by the judgment of God, may uniformly evince, in every other instance, very distinguished intellectual powers, and be capable of directing his concerns, and disposing of his property, with sufficient discretion. To preclude one, so affected, from being a testator, seems inconsistent either with wisdom or justice; especially if the will, which has been made, discover, in its essential parts, no traces of a disturbed imagination or unsound judgment. But whenever false ideas, of a *practical*

kind, are so firmly united as to be constantly and invariably mistaken for truth, we properly denominate this unnatural alliance INSANITY. And if it give rise to a train of subordinate wrong associations, producing incongruity of behaviour, incapacity for the common duties of life, or unconscious deviations from morality and religion, MADNESS has then its commencement.

III. A lunatic, or *non compos mentis*, in the eye of the law, is one who has had understanding, but has lost it by disease, grief, or other accident. The king is the trustee for such unfortunate persons, appointed to protect their property, and to account to them, if they recover, for their revenues; or, after their decease, to their representatives. The Lord Chancellor, therefore, grants a commission to inquire into the state of mind of the insane person; and if he be found *non compos*, he usually commits the care of his person, with a suitable allowance for his maintenance, to some friend, who is then called his committee. The physician, who has been consulted about the case, will doubtless be called upon to deliver an opinion regarding his patient. And before he becomes accessory to his deprivation, as it were, of all legal existence, he will weigh attentively the whole circumstances of the disorder; the original cause of it; the degree in which it subsists, its duration, and probable continuance. For if the malady be not fixed, great, and permanent, this solemn act of law must be deemed expedient, because it cannot be reversed without difficulty. And when insanity has been once formally declared, there may be grounds of apprehension that the party will be consigned to neglect and oblivion. With regard to the waste or alienation of property by the person thus afflicted, little risque is incurred, if he be under the ordinary restraint of a judicious *curator*. For whilst his mind remains in the state of alienation, he is incapable of executing any act with validity, and the next heir, or other person interested, may set it aside, on the plea of his incapacity. But the use of a guardian or committee of a lunatic is chiefly to renew, in his right, under the direction of the court of chancery, any lease for lives or years, and to apply the profits for the benefit of the insane person, of his heirs, or executors.

IV. The law justifies the *beating of a lunatic, in such manner as the circumstances may require*. But it has been before remarked that a physician, who attends an asylum for insanity, is under an obligation of honour as well as of humanity to secure to the unhappy sufferers, committed to his charge, all the tenderness and indulgence compatible with steady and effectual government. And the strait waistcoat, with other improvements in modern practice, now preclude the necessity of coercion by corporal punishment.

V. Houses for the reception of lunatics are subject to strict regulations of law. These regulations refer to the persons

keeping such houses, to the admission of patients into them, and to their inspection by visitors, duly authorized and qualified. If any one conceal more than a single lunatic without a license, he becomes liable to a penalty of five hundred pounds. The licenses in the cities of London and Westminster, or within seven miles of the metropolis, are granted by the college of physicians, who are empowered to elect five of their fellows to act as commissioners for inspecting the lunatic asylums, within their jurisdiction. Houses for the reception of lunatics in the country, are to be licensed by the justices of the peace, during their quarter sessions: And at the time when the license is granted, the magistrates are directed to nominate two of their own body, and also one physician, to visit and inspect such licensed houses. This inspection they are empowered to make as often as they judge it to be expedient, and an allowance is to be granted for the expenses incurred. The keeper of every licensed house is bound, under the penalty of one hundred pounds, not to admit or confine any person as a lunatic, without having a certificate in writing, under the hand and seal of some physician, surgeon, or apothecary, that such person is proper to be received into the house, as being *non compos mentis*. And he is further required, under the same penalty, to give notice of this certificate to the secretary of the commissioners, appointed either by the college of physicians or the magistrates at their quarter sessions. The act of parliament, which establishes these regulations, states this important proviso, "That in all proceedings which shall be had under his Majesty's writ of *Habeas Corpus*, and in all indictments, information and actions, that shall be preferred or brought against any person or persons, for confining or ill-treating any of his Majesty's subjects, in any of the said houses, the parties complained of shall be obliged to justify their proceedings according to the course of the common law, in the same manner as if this act had not been made."

The legal allowance to a medical commissioner, for the visitation and inspection of a lunatic asylum, is fixed by the statute at one guinea. This gratuity, which cannot be regarded as a just compensation for the time and trouble bestowed, it may often be proper to decline. For to a physician of a liberal mind an inadequate pecuniary acknowledgment is felt as a degradation, but he will be amply remunerated by the consciousness of having performed an office, enjoined at once by the laws of humanity and of his country.

VI. In the case of *sudden death*, the law has made provision for examining into the cause of it, by the *Coroner*, an officer appointed for the purpose, who is empowered to summon such evidence as is necessary, for the discharge of his inquisitorial and judicial functions. On these occasions the attendance of a physician or surgeon may often be required, who

should be qualified to give testimony consonant to legal, as well as to medical knowledge. To this end, he must not only be acquainted with the signs of natural death, but also of those which occur, when it is produced by accident or violence. And he should not be a stranger to the several distinctions of homicide, established in our courts of judicature. For the division of this act into *justifiable*, *excusable* and *felonious*, will aid his investigation and give precision to the opinion which he delivers.

VII. When a crime, which the law has adjudged to be capital, is attempted to be committed by force, the resistance of such force, even so as to occasion the death of the offender, is deemed *justifiable homicide*. Mr. Locke, in his Essay on Government, carries this doctrine to a much greater extent, asserting that "all manner of force, without a right, upon a man's person, puts him in a state of war with the aggressor, and of consequence, being in such a state of war, he may lawfully kill him that puts him under this unnatural restraint." But Judge Blackstone considers this conclusion as applicable only to a state of uncivilized nature, and observes that the law of England is too tender of the public peace, too careful of the life of the subject, to adopt so contentious a system; nor will suffer, with impunity, any crime to be *prevented* by death, unless the same, if committed, would also be punished by death.

VIII. With cases of justifiable homicide, however, gentlemen of the faculty are seldom likely to be professionally concerned. But *excusable homicide* may frequently fall under their cognizance, and require their deliberate attention and accurate investigation. It is of two sorts, either *per infortunium*, by misadventure, or *se defendendo*, upon a principle of self-preservation. Death may be the consequence of a lawful act, done without any intention of hurt. Thus if an officer, in the correction of a soldier by the sentence of a court martial, happen to occasion his death, it is only misadventure, the punishment being lawful. But if the correction be unwarrantably severe, either in the manner, the instrument, or the duration of punishment, and death ensue, the offender is at least guilty of manslaughter, and in some circumstances, of murder. A surgeon, therefore, is usually present, when soldiers are chastized with the lash, and on his testimony must depend the justification of the mode and degree of punishment inflicted. When medicines administered to a sick patient, with an honest design, to produce the alleviation of his pain, or cure of his disease, occasion death, this is misadventure, in the view of the law, and the physician or surgeon, who directed them, is not liable to punishment criminally, though a civil action might formerly lie for neglect or ignorance. But it has been holden that such immunity is confined to *regular* physicians and surgeons. Sir

Matthew Hale, however, justly questions the legality of this determination, since physic and salves were in use before licensed physicians and surgeons. "Wherefore he treats the doctrine as apocryphal, and fitted only to qualify and flatter licentiates and doctors in physic; though it may be of use to make people cautious how they meddle too much in so dangerous an employment." The college of physicians, however, within their jurisdiction, which extends seven miles round London, are vested by charter with the power of fine and imprisonment *pro mala praxi*. Yet Dr. Groenvelt, who was cited, in the year 1693, before the Censors of the College, and committed to Newgate, by a warrant from the president, for prescribing *cantharides* in substance, was acquitted on the plea that bad practice must be accompanied with a bad intention, to render it criminal. This prosecution, whilst it ruined the doctor's reputation and injured his fortune so that he is said to have died in want, excited general attention to the remedy, and afterwards established the use of it, though it must be acknowledged that his doses were too bold and hazardous. But whatever be the indulgence of the law towards medical practitioners, they are bound by a higher authority than that of the most solemn statute, not to exercise the healing art without due knowledge, tenderness and discretion. And every rash experiment, every mistake originating from gross inattention, or from that ignorance which necessarily results from defective education, is, in the eye of conscience, a crime both against God and man.

It must frequently devolve on the faculty to decide concerning the nature and effects of blows, strokes, or wounds inflicted, and how far the death of the sufferer is to be ascribed to them, or to some antecedent or subsequent disease. In homicide, also, *se defendendo*, the manner and time of the defense are to be considered. For if the person assaulted fall upon the aggressor, when the fray is over and he is running away, this is revenge and not defense. And though no witness were present, the situation of the wound or of the blow would afford, if in the back of the assailant, presumptive evidence of *felonious homicide*.

IX. This crime, which in atrocity exceeds every other, is considered by the law under the three heads of *suicide*, *manslaughter* and *murder*, concerning each of which the faculty are occasionally obliged to give professional evidence. A *felo de se* is one who has deliberately put an end to his existence, or committed any unlawful malicious act, the immediate consequence of which proved death to himself. To constitute this act a crime, the party must have been of years of discretion, and in the possession of reason. A physician, therefore, may be called upon, by the coroner, to state his opinion of the mental capacity of the defunct. And the law will not authorize the plea, that every melancholic or

hypochondriac fit deprives a man of the power of discerning right from wrong. Even if a lunatic kill himself in a lucid interval, Sir M. Hale affirms that he is a *felo de se*. And the physician who has attended him, is best qualified to judge of the degree, the duration, or periodical seasons of such returns of insanity. But there are cases of temporary distraction, when death may be rushed upon apparently with design, but really from the influence of terror, or the want of that presence of mind, which is necessary to the exercise of judgment, and the discrimination of actual from imaginary evil. Of this kind, the reader will find an affecting instance, related by Dr. Hunter, in the Medical Observations and Inquiries, published by a society of physicians in London.

X. *Manslaughter*. is defined "the unlawful killing of another, without malice, express or implied, which may be either voluntarily, upon a sudden heat, or involuntarily, but in the commission of some unlawful act." Yet though this definition is delivered from Sir Matthew Hale, by the excellent commentator on the laws of England so often quoted, it is not sufficiently precise and comprehensive. For when a person does an act lawful in itself, but which proves fatal to a fellow citizen, because done without due circumspection, it may, according to circumstances, be either misadventure, manslaughter or murder. Thus when a workman kills any one, by flinging down a stone or piece of timber into the street, if the accident be in a country village, where there are few passengers, and if he give warning by calling out to them, it is only misadventure. But if it be in London, or any other populous town, where persons are continually passing, it is manslaughter, though warning be loudly given. And it is murder, if he know of their passing, and yet gives no warning, for this is malice against all mankind.

On the like grounds we may reason concerning the cases of death, occasioned by drugs designed to produce abortion. This purpose is not always unlawful. For the configuration of the pelvis, in some females, is such as to render the birth of a full grown child impossible, or inevitably fatal. But even in such instances, the guilt of manslaughter may be incurred by ignorance of the drastic quality of the medicine prescribed, or want of due caution in the dose administered. And when no moral or salutary end is in view, the simple act itself, if fatal in the issue, falls under the denomination of murder. "If a woman be quick with child, and, by a potion of otherwise, killeth it in her womb, this is a great misprision, yet no murder. But if the child be born alive, and dieth of the potion or otherwise, this is murder." The procuring of abortions was common amongst the Romans, and, it is said, was liable to no penalty before the reigns of Severus and Antonius. Even those princes made it criminal only in the case of a married woman, practising it to defraud

her husband of the comforts of children, from motives of resentment. For the *foetus* being regarded as a portion of the womb of the mother, she was supposed to have an equal and full right over both. This false opinion may have its influence in modern, as well as in ancient times, and false it must be deemed, since no female can be privileged to injure her own bowels, much less the foetus, which is now well known to constitute no part of them. To extinguish the first spark of life is a crime of the same nature, both against our Maker and society, as to destroy an infant, a child, or a man; these regular and successive stages of existence being the ordinances of God, subject alone to His divine will, and appointed by sovereign wisdom and goodness as the exclusive means of preserving the race, and multiplying the enjoyments of mankind. Hence the father of physic, in the oath enjoined on his pupils, which some universities now impose on the candidates for medical degrees, obliged them solemnly to abjure the practice of administering the *πρασός φθόριος*. But in weighing the charge against any person of having procured abortion, the methods employed should be attentively considered by the faculty, as this effect has often been ascribed to causes inadequate to its production. Even the pessary, so sanctimoniously forbidden by Hippocrates, has little of that activity and power which superstition assigned to it.

XI. The law of England guards, with assiduous care, the lives of infants, when endangered by motives which counteract, and too often overbalance, the strong operation of maternal love. In cases of *bastardy*, therefore, it is declared, by a statute passed in the reign of James the first, that "If any woman be delivered of any issue of her body, male or female, which being born alive, should by the laws of this realm be a bastard, and she endeavor privately, either by drowning, or secret burying thereof, or any other way, either by herself, or the procuring of others, so to conceal the death thereof, as that it may not come to light whether it was born alive or not, but be concealed, she shall suffer death, as in case of murder, except she can prove, by one witness at least, that the child was born dead." This law, though humane in its principle, is much too severe in its construction. To give certainty to punishment, by facilitating conviction, is doubtless an essential object of jurisprudence. And it has been well observed that the statute, which made the possession of the implements of coining a capital offense, by constituting such possession complete evidence of guilt, has proved the most effectual mean of enforcing the denunciation of law against this dangerous and tempting crime. But the analogy, which the able moralist has drawn between this ordinance and that relating to bastardy, is not fully conclusive. For possession, in the former case, clearly implies a specific purpose, for which the legislature, with sufficient

wisdom and justice, has provided a specific punishment. Whereas secrecy in the mother, concerning the death of her illegitimate offspring, hardly amounts to the lowest degree of presumptive evidence of felonious homicide. Gentlemen of the faculty have often melancholy experience of the distraction and misery, which females suffer under these unhappy circumstances. And when it becomes their painful office to deliver evidence on such occasions justice and humanity require that they should scrutinize the whole truth, and *nothing extenuate, nor set down aught in malice*. "What is commonly understood to be the murder of a bastard child by the mother," says Dr. Hunter, "if the real circumstances were fully known, would be allowed to be a very different crime in different circumstances. In some (it is to be hoped rare) instances, it is a crime of the very deepest dye. But, as well as I can judge, the greatest number of what are called murders of bastard children, are of a very different kind. The mother has an unconquerable sense of shame, and pants after the preservation of character: So far she is virtuous and amiable. She has not the resolution to meet and avow infamy. In proportion as she loses the hope either of having been mistaken with regard to pregnancy, or of being relieved from her terrors by a fortunate miscarriage, she every day sees her danger greater and nearer, and her mind overwhelmed with terror and despair. In this situation many of these women, who are afterwards accused of murder, would destroy themselves, if they did not know that such an action would infallibly lead to an inquiry, which would proclaim what they are so anxious to conceal. In this perplexity, and meaning nothing less than the murder of the infant, they are meditating different schemes for concealing the death of the child, but are wavering between difficulties on all sides, putting the evil hour off, and trusting too much to chance and fortune. In that state often they are overtaken before they expected; their schemes are frustrated; their distress of body and mind deprives them of all judgment and rational conduct; they are delivered by themselves wherever they happen to retire in their fright or confusion; sometimes dying in the agonies of childbirth, and sometimes being quite exhausted they faint away and become insensible of what is passing; and when they recover a little strength, find that the child, whether still-born or not, is completely lifeless. In such a case, is it to be expected, when it would answer no purpose, that a woman should divulge the secret? Will not the best dispositions of mind urge her to preserve her character? She will therefore hide every appearance of what has happened as well as she can, though if the discovery be made, that conduct will be set down as a proof of her guilt." "Here let us suppose a case, which everybody will allow be very possible. An unmarried woman, becoming pregnant, is striving to conceal her shame,

and laying the best scheme that she can devise, for saving her own life and that of the child, and at the same time concealing the secret, but her plan is at once disconcerted by her being taken ill by herself and delivered of a dead child. If the law punishes such a woman with death for concealing her shame, does it not require more from human nature than weak human nature can bear? In a case so circumstanced, surely the only crime is having been pregnant, which the law does not mean to punish with death, and the attempt to conceal it by fair means should not be punishable with death, as that attempt seems to arise from a principle of virtuous shame."

The observations here quoted have a just claim to attention from the extensive experience which the author possessed, and still more from his intimate knowledge of the female character. Yet, to the moral and political philosopher, Dr. Hunter may appear to have exalted the sense of shame into the principle of virtue, and to have mistaken the great end of penal law, which is not vengeance but the prevention of crimes. The statute, which indeed makes the concealment of the birth of a bastard child full proof of murder, confounds all distinctions of innocence and guilt, as such concealment, whenever practicable, would be the wish and act of all mothers, virtuous or vicious, under the same unhappy predicament. Law, however, which is the guardian and bulwark of the public weal, must maintain a steady, and even rigid watch, over the general tendencies of human actions. And when these are not only clearly understood, but interpreted according to the rules of wisdom and rectitude, that may justly be constituted a civil crime, which, if permitted, might give occasion to atrocious guilt, though in its own nature innocent. The measure of punishment, however, should be proportionate, as nearly as possible, to the temptation to offend, and to the kind and degree of evil produced by the offense. If inadequate to the former it will be nugatory, and if too severe for the latter, it will defeat itself by furnishing a just plea for superseding its execution. A revision of our sanguinary statutes is much wanted, and it would be happy if means could be devised of suppressing the punishment, by obviating the crime, when it is merely positive or municipal. This we have seen accomplished with respect to the coinage of money, by the simple introduction of a standard weight in the payment of gold. And a sagacious legislator might doubtless discover and adopt similar improvements in other branches of penal jurisprudence.

Much observation is required to discriminate between a child still-born, and one that has lived after death only a short space of time. Various appearances, also, both internal and external, may be mistaken for marks of violent death. Even the swimming of the lungs in water, a test on which so much reliance is placed, will on many occasions be found

fallacious. But these are points of professional science, which do not strictly fall under the subject of this section, and the reader is particularly referred to the paper already quoted, and also to the *Elementa Medicinæ Forensis Joh. Fred. Faselii*, or to a valuable epitome of the same work in English by Dr. Farr.

XII. *Duelling* is another species of felony, even though the consequences of it should not prove fatal. And gentlemen of the faculty are peculiarly interested in the knowledge of the laws relating to it, because they are not only liable to be summoned on the trial of the parties, if either or both of them be wounded, but are frequently professional attendants on them in the field of combat. It is astonishing that a practice, which originated in ages of Gothic ignorance, superstition and barbarism, should be continued in the present enlightened period, though condemned by the ordinances of every state, and repugnant to the spirit and precepts of Christianity. Sir Francis Bacon, when attorney-general, in the reign of James I, delivered a charge, before the court of star chamber, touching duels, which gives a clear and animated view of the light in which they were then regarded. "The first motive," he says, "is a false and erroneous imagination of honour and credit, and, therefore, the king, in his proclamation, doth most aptly call them *bewitching duels*. For if one judge of it truly, it is no better than a sorcery, that enchanteth the spirits of young men, and a kind of satanical illusion and apparition of honour against religion, against law, and against moral virtue. Hereunto may be added that men have almost lost the true notion and understanding of fortitude and valour. For fortitude distinguisheth of the grounds of quarrels whether they be just, and not only so, but whether they be worthy, and setteth a better price upon men's lives than to bestow them idly. Nay, it is weakness and disesteem of a man's self, to put a man's life upon such liedger performance. A man's life is not to be trifled away; it is to be offered up and sacrificed to honourable services, public merits, good causes, and noble adventures. It is in expense of blood as it is in expense of money; it is no liberality to make a profusion of money upon every vain occasion, nor no more is it fortitude to make effusion of blood, except the cause be of worth."

The decree of the Star Chamber against Priest and Wright, the objects of Sir Francis Bacon's charge was that they should both be committed to prison; that the former should be fined £500, and the latter 500 marks, and that at the next assizes they should publicly acknowledge their high contempt of, and offense against God, the king's majesty, and his laws, showing themselves penitent for the same. Though this judgment appears to have been founded in wisdom and equity, yet, happily for our country, the court which passed the sentence has been long suppressed, and we are now gov-

erned not by arbitrary will, but by known and fixed laws. Those which subsist against duelling, I shall quote on the authorities of Foster, Blackstone, Hawkins and Burn. "Deliberate duelling, if death ensueth, is in the eye of the law, murder; for duels are generally founded in deep revenge, and though a person should be drawn into a duel, not upon a motive so criminal, but merely upon the punctilio of what the swordsmen falsely call honour, that will not excuse, for he that deliberately seeketh the blood of another upon a private quarrel, acteth in defiance of all laws human and divine." "Express malice is when one, with a sedate deliberate mind and formed design, doth kill another. This takes in the case of deliberate duelling, where both parties meet avowedly with any intent to murder, thinking it their duty as gentlemen, and claiming it as their right, to wanton with their own lives, and those of their fellow creatures, without any warrant or authority from any power either human or divine, but in direct contradiction to the laws both of God and man. And, therefore, the law has justly fixed the crime and punishment of murder on them and on their seconds also. "The law so abhors all duelling in cold blood, that not only the principal who actually kills the other, but also his seconds, are guilty of murder, whether they fought or not. And it is holden that the seconds of the party slain are also guilty as accessaries." From variations in the moral and intellectual character of man, it is impossible to ascertain the precise period, when the passions may be supposed to become cool, after having been violently agitated. Judgment, therefore, must be founded on the circumstances of deliberation, which are delivered in the course of evidence. In many cases it has been determined that death, in consequence of an appoint and meeting, a few hours subsequent to the provocation, is murder.

XIII. Before a surgeon engage professionally to *attend a duellist* to the *field of combat*, it behoves him to consider well, not only how far he is about to countenance a deliberate violation of the duties of morality and religion, but whether, in the construction of law, he may not be deemed an aider and abettor of a crime, which involves in it such turpitude, that death is alike denounced against the principal and the accessory. Does he not voluntarily put himself into a predicament, similar in many essential points to that of the *second*, who is expressly condemned by the legislature of this country? Both are apprised of the purpose to commit an act of felony. Both take an interest in the circumstances attendant upon it. And both are present during the execution, the one to regulate its antecedents, the other to alleviate its consequences. But I suggest these considerations with much diffidence. And though I observe some passages in Sir Michael Foster's Discourse Concerning Accessories, which seem to confirm them; yet it may be proper to

quote the following, apparently adverse, opinion of this excellent judge. "In order to render a person an accomplice and a principal in felony, he must be aiding and abetting at the fact, or ready to afford assistance, if necessary. And therefore if *A* happeneth to be present at a murder, for instance, and taketh no part in it, nor endeavoreth to prevent it, nor apprehendeth the murderer, nor levieth hue and cry after him, this strange behaviour of his, though highly criminal, will not of itself render him either principal or accessory."

But whatever be the objections against the attendance of a surgeon in the field of combat, they cannot be construed to extend to the affording of all possible assistance, to any unfortunate sufferer, in an affair of honour; provided such assistance be not preconcerted, but required as in ordinary accidents or emergencies. For in the offices of the healing art, no discrimination can be made, either of occasions or of characters. And it must be acknowledged that many of the victims of duelling have been men, from their talents and virtues, possessing the justest claim to assiduous and tender attention. That lives of such inestimable value to their friends, to their families, and to the public, should be at the mercy of any profligate rake, who wantonly gives affronts, or idly fancies he receives them, is a great aggravation of the folly, as well as of the guilt of duelling. This reflexion seems to shew the propriety of a change in the penal code respecting it, and that the punishment inflicted should be confined to the aggressor; strict inquisition into the circumstances of the case being previously made by the coroner or some magistrate authorized and bound to exercise this important trust. And he may, with reason, be regarded as the aggressor, who either violates the rules of decorum, by any unprovoked rudeness or insult, or who converts into an offense what was intended only as convivial pleasantry.

XIV. A physician has no special interest in an acquaintance with the statutes relative to duelling. But as he possesses the rank of a gentleman, both by his liberal education and profession, the *law of honour*, if that may be termed a law which is indefinite and arbitrary, has a claim to his serious study and attention. As a philosopher, also, it becomes him to trace its origin, and to investigate the principles on which it is founded. And as a moralist, duty calls upon him to counteract its baneful influence and ascendancy. For, in principle, it is distinct from virtue, and, as a practical rule, it extends only to certain formalities and decorums, of little importance in the transactions of life, and which are spontaneously observed by those who are actuated with the true sense of propriety and rectitude. Genuine honour, in its full extent, may be defined a quick perception and strong feeling of moral obligation, in conjunction with an acute sensibility to shame, reproach or infamy. In different characters, these constituent parts of the principle are found to exist in pro-

portions so diversified, as sometimes to appear almost single and detached. The former always *aids and strengthens virtue*, the latter may occasionally *imitate her actions*, when fashion happily countenances, or high example prompts to rectitude. But being connected, for the most part, with a jealous pride and capricious irritability, it will be more shocked with the *imputation* than with the *commission* of what is wrong. And thus it will constitute that spurious honour, which, by a perversion of the laws of association, put *evil for good and good for evil*, and, under the sanction of a name, perpetrates crimes without remorse and even without ignominy.

XV. *Homicide by poison* is another very important object of medical jurisprudence. When it is the effect of inadvertency, or the want of adequate caution in the use of substances dangerous to health and life, the law regards it as a misdemeanour. When it is the consequence of rashness, of wanton experiment, or of motives unjust though not malicious, it becomes manslaughter. And when the express purpose is to kill, by means of some deleterious drug, it constitutes a most atrocious species of murder. In cases of this nature, the faculty are called upon to give evidence concerning the nature of the poison, the symptoms produced by it, and the actual fatality of its operation. I know not whether the period of this fatal operation be extended, as in the infliction of blows and wounds, to a year and a day. But if it be, the most nice and accurate investigation of the progressive advances of disease and death will be incumbent on the physician or surgeon, who is consulted on the occasion. No subject has given rise to more misconception and superstition than the action of poisons. Numberless substances have been classed as such, which, if not inert, are at least innoxious; and powers have been ascribed to others, far exceeding their real energy. Even Lord Verulam, the great luminary of science, in his charge against the Earl of Sommerset, for the murder of Sir Thomas Overbury, in the tower of London, seems to give credit to the story of Livia, who is said to have poisoned the figs upon the tree which her husband was wont to gather with his own hands. And he seriously states that "Weston chased the poor prisoner with poison after poison, poisoning salts, poisoning meats, poisoning sweetmeats, poisoning medicines and vomits, until at last his body was almost come, by the use of poisons, to the state that Mithridates's body was by the use of treacle and preservatives, that the force of the poisons was blunted upon him. Weston confessing, when he was tried for not dispatching him, that he had given enough to poison twenty men." In this criminal transaction the truth probably was, what has been judiciously suggested by Rapin, that the lieutenant of the tower, refusing to be concerned in the crime, yet not daring to discover it, from the fear of the Viscount Rochester's resentment, seized the victuals, sent from time to time

for the prisoner, and threw them into the house of office. Sir Thomas Overbury, however, fell a victim at last to an empoisoned glyster.

When the particular drug, or other mean employed, can be accurately ascertained, its deleterious qualities should be fully investigated, and these should be cautiously compared with the effects ascribed to it, in the case under consideration. It may often be expedient, also, to examine the body of the sufferer by dissection, and this should be accomplished as expeditiously as possible; that the changes imputed to death may not be confounded with those which are imputed to poison. But on such points reference can alone be made to the knowledge and experience of the practitioner, and to the lights which he may acquire by consulting Faselius, and other works of a similar nature. I shall, therefore, close this article with a few passages of the charge of Mr. Justice Buller to the grand jury, relative to the trial of Captain Donellan, for the murder of Sir Theodosius Boughton, at the Warwick assizes, in March, 1781. "In this case, gentlemen," he says, "you will have two objects to consider; first, whether the deceased did die of *poison*; secondly, whether the person suspected did assist in *administering* the poison. With respect to the first of these considerations, you will, no doubt, *hear the sentiments of those who are skilled in the nature and effects of poison*, which is of various sorts, and most subtile in its operation. From the *information* of such persons you will be able to form an opinion of the effects which *different poisons* have on *different persons*, and also the effects the *same poisons* have on persons of *different habits and constitutions*. If you find he did get his death by poison, the next case is to consider who gave him that poison. Where poison is knowingly given, and death ensues, it is wilful murder, and if one is present when poison is given by another, he is not an accessory, but a principal."

XVI. In all civilized countries, the honour and chastity of the female sex are guarded from violence, by the severest sanctions of law. And this protection is at once humane, just and necessary to social morality. It is consonant to humanity that weakness should be secured against the attacks of brutal strength. It is just that the most sacred of all personal property should be preserved from invasion. And it is essential to morality that licentious passion should be restrained; that modesty should not be wounded; nor the mind contaminated, in some instances, before it is capable of forming adequate conceptions of right and wrong. The crime of *rape*, therefore, subjects the perpetrator to condign punishment by every code of jurisprudence, ancient or modern. Amongst the Jews death was inflicted if the damsel were betrothed to another man: And if not betrothed, a fine, amounting to fifty shekels of silver, was to be paid to her father by him who had *laid hold of the virgin*, and she was

to become his wife. And because *he had humbled her, he might not put her away all his days*: For the privilege of divorce was authorized by the Jewish institutions. The Romans made this offense, capital, superadding the confiscation of goods. Even the carrying-off a woman from her parents or guardians, and cohabiting with her, whether accomplished by force, or with her full consent, were made equally penal with a rape, by an imperial edict. For the Roman law seems to have supposed that women never deviate from virtue, without being seduced by the arts of the other sex. And, therefore, by imposing a powerful restraint on the solicitations of men, they aimed at a more effectual security of the chastity of women. *Nisi etenim eam sollicitaverit, nisi odiosis artibus circumvenerit, non faciet eam velle in tantum dedecus sese proderet.* But the English law, as Judge Blackstone has observed, does not entertain such sublime ideas of the honour of either sex, as to lay the blame of a mutual fault on one only of the transgressors. And it is, therefore, essential to the crime of rape, that the woman's will is violated by the execution. But, by a statute of Queen Elizabeth, if the crime be perpetrated on a female child under the age of *ten* years, the consent or non-consent is immaterial, as she is supposed to be of insufficient judgment. Sir Matthew Hale is even of opinion that such profligacy committed on an infant of *twelve* years, the age of female discretion by common law, either with or without consent, amounts to a rape and felony. But the decisions of the courts have generally been founded on the statute above-mentioned.

A male infant, under the age of fourteen years, is deemed by the law incapable of committing, and therefore cannot be found guilty of a rape, from a presumed imbecility both of body and mind. This detestable crime, being executed in secrecy, and the knowledge of it being confined to the party injured, it is just that her single testimony should be adducible in proof of the fact. Yet the excellent observation of Sir Matthew Hale merits peculiar attention: "It is an accusation," says he, "easy to be made, and harder to be proved, but harder to be defended by the party accused, though innocent." He then relates two extraordinary cases of malicious prosecution for this crime, which had fallen under his own cognizance, and concludes, "I mention these instances that we may be more cautious upon trials of offenses of this nature, wherein the court and jury may, with so much ease, be imposed upon, without great care and vigilance; the heinousness of the offense many times transporting the judge and jury with so much indignation that they are overhastily carried to the conviction of the person accused thereof by the confident testimony of sometimes false and malicious witnesses." Collateral and concurrent circumstances of time and place; appearances of violence on examination, etc., are therefore necessary to be added to the mere affirmative evi-

dence of the prosecutor. And the inspection of a surgeon is often required to ascertain the reality of the alleged violence. On such occasions his testimony should be given with all possible delicacy, as well as with the utmost caution. Even external signs of injury may originate from disease, of which the following examples, which have occurred in Manchester, are adduced on very respectable authorities.

A girl, about 4 years of age, was admitted into the Manchester Infirmary on account of a mortification in the female organs, attended with great soreness and general depression of strength. She had been in bed with a boy, 14 years old, and there was reason to suspect that he had taken criminal liberties with her. The mortification increased and the child died. The boy, therefore, was apprehended and tried at the Lancaster assizes, but was acquitted on sufficient evidence that several instances of a similar disease had appeared near the same period of time in which there was no possibility of injury or guilt. In one of these cases the body was opened after death. The disorder had been a *typhus* fever, accompanied with a modification of the *pudenda*. There was no evident cause of this extraordinary symptom discoverable on inspection. The lumbar glands were of a dark colour, but all the *viscera* were sound.

XVII. Concerning *nuisances*, the investigation and testimony of the faculty may be required whenever they are of a nature offensive by the vapours which they emit, and injurious to the health of individuals or of the community. The law defines any thing that worketh hurt, inconvenience, or damage, to be a nuisance. Thus if a person keep hogs or other noisome animals so near the house of another that the stench incommodes him and renders the air unwholesome, this is a nuisance, because it deprives him of the enjoyments and benefits of his habitation. A smelting house for lead, the smoke of which kills the grass and corn and injures the cattle of a neighbouring proprietor of land, is deemed a nuisance. Dye-houses, tanning-yards, etc., are nuisances, if erected so near a water-course as to corrupt the stream. But a chandler's factory, even when situated in a crowded town, is said to be privileged from action or indictment because candles are regarded as necessities of life. Hawkins, however, questions the authority of this opinion, since the making of candles may be carried on in the country without annoyance. But this is scarcely practicable in a populous neighbourhood: And as Lord Mansfield has adjudged, that in such cases what makes the enjoyment of being and property uncomfortable is, in the view of the law, a nuisance, various works and trades, essential to the happiness and interest of the community, may fall under this construction. But chemistry, mechanics and other arts and sciences furnish methods of diminishing or obviating almost every species of noisome vapour. And there can be no doubt that vitriol works, aqua-

fortis works, marine acid-bleaching works, the singeing of velvets, etc., may be carried on with very little inconvenience to a neighbourhood by means neither difficult nor expensive. The same observation may be applied to the business of the dyer, the fell-monger, the tanner, the butcher and the chandler. And as these with many other disgusting trades are in some degree necessary in large towns, justice and policy require that they should only be prosecuted as nuisances when not conducted in the least offensive mode possible. To guard against arbitrary powers in municipal government and to render the decision and investigation of such points perfectly consistent with the liberty of the subject, the reference should be made to a jury, or at least any individual should be allowed an appeal to one, if he think himself aggrieved.

The frequency of fires in large manufacturing towns makes it expedient that magistrates or commissioners should be authorized to scrutinize rigidly into the causes of them when they occur, to punish neglect or carelessness, as well as malicious intention, and to enforce suitable measures of prevention. The plans, proposed for this last very important purpose, by Mr. Hartley and Lord Stanhope, have been proved to be effectual, and are not expensive. The adoption of them, therefore, or of other means which may hereafter be discovered, should be required, under a heavy penalty, in cases deemed by insurers *doubly hazardous*.

XVIII. It is a complaint made by coroners, magistrates and judges that medical gentlemen are often reluctant in the performance of the offices, required from them as citizens qualified by professional knowledge, to aid the execution of public justice. These offices, it must be confessed, are generally painful, always inconvenient and occasion an interruption to business, of a nature not to be easily appreciated or compensated. But as they admit of no substitution, they are to be regarded as appropriate debts to the community, which neither equity nor patriotism will allow to be cancelled.

When a physician or surgeon is called to give evidence, he should avoid, as much as possible, all obscure and technical terms, and the unnecessary display of medical erudition. He should deliver, also, what he advances in the purest and most delicate language, consistent with the nature of the subject in question. When two or more gentlemen of the faculty are to offer their opinions or testimony, it would sometimes tend to obviate contrariety, if they were to confer freely with each other, before their public examination. Intelligent and honest men, fully acquainted with their respective means of information, are much less likely to differ than when no communication has previously taken place. Several years ago a trial of considerable consequence occurred relative to a large copper work, and two physicians of eminence were summoned to the assizes, to bear testimony

concerning the salubrity or insalubrity of the smoke issuing from the furnaces. The evidence they offered was entirely contradictory. One grounded his testimony on the general presumption that the ores of copper contain arsenic, and consequently that the effluvia, proceeding from the roasting of them, must be poisonous because arsenical. The other had made actual experiments on the ore, employed in the works under prosecution, and on the vapours which it yielded. He was thus furnished with full proof that no arsenic was discoverable in either. But the affirmative prevailed over the negative testimony from the authority of the physician who delivered it, an authority which he probably would not have misapplied if he had been antecedently acquainted with the decisive trials made by his opponent.

XIX. It is the injunction of the law, sanctioned by the solemnity of an oath, that in judicial testimony, *the truth, the whole truth, and nothing but the truth* shall be delivered. A witness, therefore, is under a sacred obligation to use his best endeavours that his mind be clear and collected, unawed by fear and uninfluenced by favour or enmity. But in criminal prosecutions, which affect the life of the person accused, scruples will be apt to arise in one who, by the advantages of a liberal education, has been accustomed to serious reflection, yet has paid no particular attention to the principles of political ethics. It is incumbent, therefore, on gentlemen of the faculty to settle their opinions concerning the right of the civil magistrate to inflict capital punishment, the moral and social ends of such punishment, the limits prescribed to the exercise of the right, and the duty of a citizen to give full efficiency to the laws.

The magistrate's *right* to inflict punishment and the ends of such punishment, though intimately connected, are in their nature distinct. The right is clearly a substitution or transfer of that which belongs to every individual, by the law of nature, viz., instant self-defense and security from future violence or wrong. The ends are more comprehensive, extending not only to complete security against offense, but to the correction and improvement of the offender himself, and to counteract in others the disposition to offend. Penal laws are to be regulated by this standard, and the lenity or severity with which they are executed should, if possible, be exactly proportionate to it. In different circumstances, either personal or public considerations may preponderate: And in cases of great moral atrocity, or when the common weal is essentially injured, all regard to the reformation of a criminal is superseded, and his life is justly forfeited to the good of society. In the participation of the benefits of the social union, he has virtually acceded to its conditions, and the violation of its fundamental articles renders him a rebel and an enemy, to be expelled or destroyed, both for the sake of

security, and as an awful warning to others. When capital punishments are viewed in this light, the most humane and scrupulous witness may consider himself as sacrificing private emotions to public justice and social order, and that he is performing an act at once beneficial to his country and to mankind. For political and moral economy can subsist in no community without the steady execution of wise and salutary laws: And every atrocious act, perpetrated with impunity, operates as a terror to the innocent, a snare to the unwary and an incentive to the flagitious. The criminal, also, who evades the sentence of justice, like one infected with the pestilence, contaminates all whom he approaches. He, therefore, who, from false tenderness or misguided conscience, has prevented conviction by withholding the necessary proofs, is an accessary to all the evils which ensue. The maxim, that *it is better ten villains should be discharged than a single person suffer by a wrong adjudication*, is one of those partial truths which are generally misapplied, because not accurately understood. It is certainly eligible that the rules and the forms of law should be so precise and immutable as not involve the innocent in any decision obtained by corruption or dictated by passion and prejudice, though this should sometimes furnish an outlet for the escape of actual offenders. The plea, also, may have some validity in crimes of a nature chiefly political (with which, however, the faculty can professionally have no concern) such as coining and forgery, or in cases wherein the punishment much exceeds the evil or turpitude of the offense. For Lord Bacon has well observed that "over-great penalties, besides their acerbity, deaden the execution of the law." And when they are discovered to be unjustly inflicted, its authority is impaired, its sanctity dishonoured, and veneration gives place to disgust and abhorrence.

But the dread of *innocent blood being brought upon us*, by explicit and honest testimony, is one of those superstitions which the nurse has taught, and which a liberal education ought to purge from the mind. And if, in the performance of our duty, innocence should unfortunately be involved in the punishment of guilt, we shall assuredly stand acquitted before God and our own consciences. The convict himself, lamentable as his fate must be regarded, may derive consolation before the reflection that, though his sentence be unjust, "he falls for his country, whilst he suffers under the operation of those rules, by the general effect and tendency of which the welfare of the community is maintained and upheld."

XX. When professional testimony is required in cases of such peculiar malignity as to excite general horror and indignation, a virtuous mind, even though scrupulous and timid, is liable to be influenced by too violent impressions, and to

transfer to the accused that dread and aversion which, before conviction, should be confined to the crime and, as much as possible withheld from the supposed offender. If the charge, for instance, be that of parricide, accomplished by poison and accompanied with deliberate malice, ingratitude and cruelty, the investigation should be made with calm and unbiased precision and the testimony delivered with no colouring of passion, nor with any deviation from the *simplicity of truth*. When *circumstantial proofs* are adduced, they should be arranged in the most lucid order, that they may be contrasted and compared in all their various relations with facility and accuracy, and that their weight may be separately and collectively determined in the balance of justice. For, in such evidence, there subsists a regular gradation from the slightest presumption to complete moral certainty. And if the witness possess sufficient information in this branch of philosophical and judicial science, he will always be competent to secure himself and, on many occasions, the court also, from fallacy and error. The Marquis de Beccaria has laid down the following excellent theorems concerning judicial evidence: "When the proofs of a crime are dependent on each other, that is, when the evidence of each witness, taken separately, proves nothing, or when all the proofs are dependent upon one, the number of proofs neither increases nor diminishes the probability of the fact, for the force of the whole is no greater than the force of those on which they depend, and if this fails, they all fall to the ground. When the proofs are independent of each other, the probability of the fact increases in proportion to the number of proofs, for the falsehood of one does not diminish the veracity of another. The proofs of a crime may be divided into two classes, perfect and imperfect. I call those perfect which exclude the possibility of innocence; imperfect, those which do not exclude this possibility. Of the first, one only is sufficient for condemnation, of the second, as many are required as form a perfect proof; that is to say, each of these, separately taken, does not exclude the possibility of innocence; it is nevertheless excluded by their union."

EXTRACTS FROM THE "NOTES AND ILLUSTRATIONS" APPENDED TO
PERCIVAL'S CODE

CAUTION OR TEMERITY IN PRACTICE

It is the observation of an elegant writer on the subject of morals, and applicable to medical practice, that "the best character is that which is not swayed by temper of any kind, but alternately employs enterprise and caution, as each is useful to the particular purpose intended. Such is the excellence which St. Evremond ascribes to Mareschal Turenne, who displayed in every campaign, as he grew older, more temerity in his military enterprises, and being now, from long

experience, perfectly acquainted with every incident in war, he advanced with greater firmness and security in a road so well known to him." Yet it is said of the great Duke of Marlborough that ten years of such uninterrupted and splendid success as no other general could boast of, never betrayed him into a single rash action.

That boldness in medical practice is more frequently the antecedent than the consequence of experience, is a melancholy truth, for it is generally founded either on theoretical dogmas, or on pride which disclaims authority. To the consideration of physicians, who are thus prematurely confident in their own powers, the remark of Lord Verulam may be recommended. "This is well to be weighed, that boldness is ever blind, for it seeth not dangers and inconveniences, therefore it is ill in counsel, good in execution, so that the right use of bold persons is that they never command in chief, but he seconds, and under the direction of others. For in counsel it is good to see dangers and in execution not to see them, except they be very great."

TEMPERANCE OF PHYSICIANS

"Though much has been said, and with some truth, of the good effects of wine in producing rapidity and vivacity of thought, it has scarcely ever been pretended that it favoured the exercise of discrimination and judgment. The only persons in whom it has ever been supposed not to have the very opposite effects, are some gentlemen of the faculty. The ignorant vulgar would think, a priori, that, *caeteris paribus*, a physician who was sober would attend more accurately to the case of his patient and compare and distinguish all circumstances better, and judge more soundly, and prescribe more rationally, than he could do when he was drunk. But some physicians, who should be supposed to know themselves best, and who certainly must have known how they acquitted themselves in those different situations, have boasted that they prescribed as well drunk as sober. In this they could not be mistaken, for, whether we consider the matter physically or logically, their boast amounts precisely to this, that they prescribed no better when they were sober than they did when they were drunk, which is undoubtedly a noble accomplishment, but it is not surely either wonderful or rare."

Tacitus, in his admirable treatise *De Moribus Germanorum*, has stated that those nations—*de reconciliandis invicem inimicis, et jungendis affinitatibus, et adsciscendis principibus, de pace denique ac bello, plerumque ni conviviiis consultant: tamquam nullo magis tempore aut ad simplices cogitationes pateat animus, aut ad magnas incalescat. Gens non astuta nec callida, aperit adhuc secreta pectores licentia loci. Ergo detecta et nuda omnium mens postera die retractatur; et salva utriusque temporis ratio est. Deliberant dum fingere nesciunt: constituunt dum errare non possunt.*

In deliberation it may, on some peculiar occasions, be of importance to break off all former strong associations. A fit of drunkenness accomplishes this fully. Sleep has the same tendency, and hence the proverb, I will sleep upon it. But such deliberation bears no analogy to what is required from a physician, when he is to consider the case of a patient.

"Universal temperance," says Mr. Gisborne, "both in eating and drinking, is particularly incumbent on a physician in every period of his practice, not merely as being essentially requisite to preserve his faculties, in that alert and unclouded state, which may render him equally able at all times to pronounce on the cases which he is called to inspect, but because it is a virtue which he will very frequently find himself obliged to inculcate on his patient, and will inculcate on them with very little effect, if it be not regularly exemplified in his own conduct."

"A PHYSICIAN SHOULD BE THE MINISTER OF HOPE AND
COMFORT TO THE SICK"

Mr. Gisborne, in one of his interesting letters to me on the subject of Medical Ethics, suggests that it would be advisable to add, as far as truth and sincerity will admit. "I know very well," says he, "that the sentence, as it now stands, conveys to you, and was meant by you to convey to others, the same sentiment which it would express after the proposed addition. But if I am not mistaken in my idea, that there are few professional temptations to which medical men are more liable, and frequently from the very best principles, than that of unintentionally using language to the patient and his friends, more encouraging than sincerity would vindicate, on cool reflection. It may be right scrupulously to guard the avenues against such an error."

In the Enquiry Into the Duties of Men the same excellent moralist thus delivers his sentiments more at large. "A professional writer, speaking in a work already quoted, respecting the performance of surgical operations in hospitals, remarks that it may be a salutary as well as an humane act in the attending physician, occasionally to assure the patient that everything goes on well, if that declaration can be made with truth. This restriction, so properly applied to the case in question, may with equal propriety be extended universally to the conduct of a physician, when superintending operations performed, not by the hand of a surgeon, but by nature and medicine. Humanity, we admit, and the welfare of the sick man commonly require that his drooping spirits should be revived by every encouragement and hope, which can be honestly suggested to him. But truth and conscience forbid the physician to cheer him, by giving promises, or raising expectations which are known, or intended to be, delusive. The physician may not be bound, unless expressly called upon, invariably to divulge, at any specific time, his opinion concerning the uncertainty or danger of the case,

but he is invariably bound never to represent the uncertainty or danger as less than he actually believes it to be, and whenever he conveys, directly or indirectly, to the patient or to his family, any impression to that effect, though he may be misled by mistaken tenderness, he is guilty of positive falsehood. He is at liberty to say little, but let that little be true. St. Paul's direction, not to do evil, that good many come, is clear, positive and universal."

Whether this subject be viewed as regarding general morality, or professional duty, it is of high importance; and we may justly presume that it involves considerable difficulty and intricacy, because opposite opinions have been advanced upon it by very distinguished writers. THE ANCIENTS, though sublime in the abstract representations of virtue, are seldom precise and definite in the detail of rules for its observance. Yet in some instances they extend their precepts to particular cases: And Cicero, in the Third Book of his Offices, expressly admits of limitations to the absolute and immutable obligation of fidelity and truth.

The maxim of the poet, also, may be adduced as intended to be comprehensive of the moral laws, by which human conduct is to be governed:

— *Sunt certi denique fines,
Quos ultra citraque nequit consistere rectum.*

The early FATHERS of the Christian church, Origen, Clement, Tertullian, Lactantius, Chrysostom, and various others, till the period of St. Augustine, were latitudinarians on this point. But the holy father last mentioned, if I mistake not, in the warmth of his zeal, declared that he would not utter a lie, though he were assured of gaining Heaven by it. In this declaration there is a fallacy, by which Augustine, probably imposed upon himself. For a lie is always understood to consist in a criminal breach of truth, and therefore under no circumstances can be justified. It is alledged, however, that falsehood may lose the essence of lying, and become even praise-worthy, when the adherence to truth is incompatible with the practice of some other virtue of still higher obligation. This opinion almost the whole body of CIVILIANS adopt, with full confidence of its rectitude. The sentiments of Grotius may be seen at large in the satisfactory detail which he has given of the controversy relating to it.

Puffendorff, who may be regarded as next to this great man in succession as well as authority, delivers the following observations in his Law of Nature and Nations, which are pointedly applicable to the present subjects, yet carried assuredly to a very reprehensible extent: "Since those we talk to may often be in such circumstances, and if we should tell the downright truth of the matter, it would prejudice them, and would incapacitate us for procuring that lawful end we propose to ourselves for their good; we may in these

cases use a fictitious or figurative way of speech, which shall not directly represent to our hearers our real thoughts and intentions: For when a man is desirous, and it is his duty, to do a piece of service, he is not bound to take measures that will certainly render his attempts unsuccessful." "Those are by no means guilty of lying, who, for the better information of children, or other persons not capable of relishing the naked truth, entertain them with fictions and stories: Nor those who invent something that is false, for the sake of a good end, which by the plain truth, they could not have compassed; as, suppose, for protecting an innocent, for appeasing a man in his passion, for comforting the afflicted, for animating the timorous, for persuading a nauseating patient to take his physic, for overcoming an obstinate humour, for making an ill design miscarry."

Several modern ETHICAL WRITERS, of considerable celebrity, have been no less explicit and indulgent on this question. Amongst these, it may suffice to cite the testimony of the late Dr. Francis Hutcheson of Glasgow; of whom it is said by his excellent biographer, that "he abhorred the least appearance of deceit either in word or action." "When in certain affairs," says he, "it is known that men do not conceive it an injury to be deceived, there is no crime in false speech about such matters. No man censures a physician for deceiving a patient too much dejected, by expressing good hopes of him; or by denying that he gives him a proper medicine which he is foolishly prejudiced against: the patient afterwards will not reproach him for it.—Wise men allow this liberty to the physician in whose skill and fidelity they trust: Or, if they do not, there may be a just plea from necessity."—"These pleas of necessity some would exclude by a maxim of late received, We must not do evil that good may come of it. The author of this maxim is not well known. It seems by a passage in St. Paul, that Christians were reviled as teaching that since the mercy and veracity of God were displayed by the obstinate wickedness of the Jews, they should continue in sin, that this good might ensue from it. He rejects the imputation upon his doctrine; and hence some take up the contradictory proposition as a general maxim of great importance in morality. Perhaps it has been a maxim among St. Paul's enemies, as they upbraid him with counteracting it. Be the author who they please, it is of no use in morals, as it is quite vague and undetermined. Must one do nothing for a good purpose, which would have been evil without this reference? It is evil to hazard life without a view to some good; but when it is necessary for a public interest, it is very lovely and honourable. It is criminal to expose a good man to danger for nothing; but it is just even to force him into the greatest dangers for his country. It is criminal to occasion any pains to innocent persons, without a view to some good; but for restoring of health we

reward surgeons for scarifyings, burings, and amputations. But, say they, such actions, done for these ends, are not evil. The maxim only determines that we must not do, for a good end, such actions as are evil even when done for a good end. But this proposition is identic and useless; for who will tell us next, what these actions, sometimes evil, are, which may be done for a good end? and what actions are so evil that they must not be done even for a good end? The maxim will not answer this question; and truly it amounts only to this trifle; you ought not for any good end to do what is evil, or what you ought not to do even for a good end."

Dr. Johnson, who admits of some exception to the Law of Truth, strenuously denies the right of telling a lie to a sick man for fear of alarming him. "You have no business with consequences," says he, "you are to tell the truth. Besides, you are not sure what effect your telling him that he is in danger may have. It may bring his distemper to a crisis, and that may cure him. Of all lying I have the greatest abhorrence of this, because I believe it has been frequently practised on myself."

If the medical reader wishes to investigate this nice and important subject of casuistry, he may consult Grotius de Jure Belli, ac Pacis; Puffendorff; Grove's Ethics; Balguy's Law of Truth; Cambray's Telemachus; Butler; Hutcheson; Paley; and Gisborne. Every practitioner must find himself occasionally in circumstances of very delicate embarrassment, with respect to the contending obligations of veracity and professional duty: And when such trials occur, it will behove him to act on fixed principles of rectitude, derived from previous information, and serious reflection. Perhaps the following brief considerations, by which I have conscientiously endeavoured to govern my own conduct, may afford some aid to his decision.

Moral truth, in a professional view, has two references; one to the party to whom it is delivered, and another to the individual by whom it is uttered. In the first, it is a relative duty, constituting a branch of justice; and may be properly regulated by the divine rule of equity prescribed by our Saviour, to do unto others, as we would, all circumstances duly weighed, they should do unto us. In the second, it is a personal duty, regarding solely the sincerity, the purity, and the probity of the physician himself. To a patient, therefore, perhaps the father of a numerous family, or one whose life is of the highest importance to the community, who makes inquiries which, if faithfully answered, might prove fatal to him, it would be a gross and unfeeling wrong to reveal the truth. His right to it is suspended, and even annihilated; because its beneficial nature being reversed, it would be deeply injurious to himself, to his family, and to the public. And he has the strongest claim, from the trust reposed in his physician, as well as from the common principles of

humanity, to be guarded against whatever would be detrimental to him. In such a situation, therefore, the only point at issue is, whether the practitioner shall sacrifice that delicate sense of veracity, which is so ornamental to, and indeed forms a characteristic excellence of the virtuous man, to this claim of professional justice and social duty. Under such a painful conflict of obligations, a wise and good man must be governed by those which are the most imperious; and will therefore generously relinquish every consideration, referable only to himself. Let him be careful, however, not to do this, but in cases of real emergency, which happily seldom occur; and to guard his mind sedulously against the injury it may sustain by such violations of the native love of truth.

I shall conclude this long note with the two following very interesting biographical facts. The husband of the celebrated Arria, Caecinna Paetus, was very dangerously ill. Her son was also sick at the same time, and died. He was a youth of uncommon accomplishments; and fondly beloved by his parents. Arria prepared and conducted his funeral in such a manner, that her husband remained entirely ignorant of the mournful event which occasioned that solemnity. Paetus often inquired with anxiety, about his son; to whom she cheerfully replied, that he had slept well, and was better. But if her tears, too long restrained, were bursting forth, she instantly retired, to give vent to her grief; and when again composed, returned to Paetus with dry eyes, and a placid countenance, quitting, as it were, all the tender feelings of the mother, at the threshold of her husband's chamber.

Lady Russel's only son, Wriothesley, Duke of Bedford, died of the smallpox in May, 1711, in the thirty-first year of his age. To this affliction succeeded, in November, 1711, the loss of her daughter, the Duchess of Rutland, who died in child-bed. Lady Russell, after seeing her in the coffin, went to her other daughter, married to the Duke of Devonshire, from whom it was necessary to conceal her grief, she being at that time in child-bed also; therefore she assumed a cheerful air, and with astonishing resolution, agreeable to truth, answered her anxious daughter's inquiries with these words: "I have seen your sister out of bed today."

THE PRACTICE OF A PRIOR PHYSICIAN SHOULD
BE TREATED WITH CANDOUR, AND JUSTIFIED
SO FAR AS TRUTH AND PROBITY
WILL PERMIT

Montaigne, in one of his essays, treats, with great humour, of physic and physicians; and makes it a charge against them, that they perpetually direct variations in each others prescriptions. "Whoever saw," says he, "one physician approve of the prescription of another, without taking some-

thing away, or adding something to it? By which they sufficiently betray their act, and make it manifest to us, that they therein more consider their own reputation, and consequently their profit, than their patient's interest.

THEORETICAL DISCUSSIONS SHOULD BE GENERALLY AVOIDED

This rule is not only applicable to consultations, but to any reasonings on the nature of the case, and of the remedies prescribed, either with the patient himself or his friends. It is said by my lamented friend Mr. Seward, in his entertaining anecdotes, that the late Lord Mansfield gave this advice to a military gentleman, who was appointed governor of one of our islands in the West Indies, and who expressed his apprehensions of not being able to discharge his duty as chancellor of his province. "When you decide, never give reasons for your decision. You will in general decide well; yet may give very bad reasons for your judgment."

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The following fact, related in Dr. Johnson's *Life of Addison*, is applicable to the professional conduct of physicians towards their friends. "When Addison was in office (under the Duke of Wharton, as Lord Lieutenant of Ireland) he made a law to himself, as Swift has stated, never to remit his regular fees in civility to his friends. "For," said he, "I may have an hundred friends, and if my fee be two guineas, I shall, by relinquishing my right, lose two hundred guineas, and no friend gain more than two; there is therefore no proportion between the good imparted, and the evil suffered." In recording Mr. Addison's prudential conduct, his probity, with respect to pecuniary acknowledgments, should not be unnoticed. In a letter, relative to the case of Major Dunbar, he says, "And now, Sir, believe me, when I assure you, I never did, nor ever will, on any pretense whatsoever, take more than the stated or customary fees of my office. I might keep the contrary practice concealed from the world, were I capable of it; but I could not from myself; and I hope I shall always fear the reproaches of my own heart, more than those of all mankind."

At a period when empirics and empiricism seem to have prevailed much in Rome, the exorbitant demands of medical practitioners, particularly for certain secret compositions which they dispensed, induced the Emperor Valestinian to ordain, that no individual of the faculty should make an express charge for his attendance on a patient; nor even avail himself of any promise of remuneration during the period of sickness; but that he should rest satisfied with the donative voluntarily offered at the close of his ministration. By the same law, however, the emperor provided that one

practitioner, at least, should be appointed for each of the fourteen sections into which the Roman metropolis was divided, with special privileges, and a competent salary for his services; thus indirectly, yet explicitly acknowledging that a physician has a full claim in equity to his professional emoluments. Is it not reasonable, therefore, to conclude, that what subsisted as a moral right, ought to have been demandable, under proper regulations, as a legal right? For it seems to be the office of law to recognize and enforce that which natural justice recognizes and sanctions.

The Roman advocates were subject to the like restrictions, and from a similar cause. For their rapacity occasioned the revival of the Cincian ordinance—"qua cavetur antiquitas, ne quis ob causam orandam pecuniam donumve accipiat." But Tacitus relates, when the subject was brought into discussion before Claudius Caesar, amongst other arguments in favour of receiving fees, it was forcibly urged, *sublatis studiorum pretiis, etiam studia peritura*; and that, in consequence, the prince "*capiendis pecuniis posuit modum, usque ad dena sestertia, quae egressi repetundarum tenerentur.*"

A precise and invariable *modus*, however, would be injurious both to the barrister and the physician, because the fees of each ought to be measured by the value of his time, the eminence of his character, and by his general rule of practice. This rule, with its antecedents, being well known, a tacit compact is established restrictive on the claims of the practitioner, and binding on the claims of the patient. Law cannot properly, by its ordinances, establish the custom, which will and ought to vary in different situations, and under different circumstances. But a court of judicature, when formally appealed to, seems to be competent to authorize it if just, and to correct it if unjust. Such decisions could not wholly change the honorary nature of fees; because they would continue to be increased, at the discretion of the affluent, according to their liberality and grateful sense of kind attentions; and diminished, at the option of the physician, to those who may, from particular circumstances, require his beneficence.

From the Roman code, the established usage, in different countries of Europe, relative to medical fees, has probably originated. This usage, which constitutes common law, seems to require considerable modification to adapt it to the present state of the profession. For the general body of the faculty, especially in the united kingdoms of Great Britain and Ireland, are held in very high estimation, on account of their liberality, learning, and integrity. And it would be difficult to assign a satisfactory reason why they should be excluded from judicial protection, when the just remuneration of their services is wrongfully withheld. Indeed a medical practitioner, one especially who is settled in a provincial town, or in the country, may have accumulated claims from long-

protracted and often expensive attendance; and his pecuniary acknowledgments may be refused from prejudice, from captiousness, from parsimony, or from dishonesty. Under such circumstances considerations of benevolence, humanity, and gratitude, are wholly set aside: For when disputes arise, they must be suspended or extinguished; and the question at issue, can alone be decided on the principles of commutative justice.

