THE RIGHTS OF A CONSULTANT TO COMPENSATION.

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To the Editor of THE MEDICAL NEWS,

SIR: I am happy to be the medium of giving to the profession the following very important decision of the Orphans' Court of Philadelphia County.

The circumstances of the case were these: In the summer of 1886, a business gentleman of large means, a patient of mine for many years, consulted me about some vague head symptoms. I advised him to give up business altogether for a time and to take a vacation with me. This he declined, as his business was too pressing.

Nothing occurred of any moment until after I had left the city to take my summer vacation. While at Bar Harbor I received a letter from Dr. Albert Fricke, whom the patient consulted in my absence, asking for information and advice. I answered at once. The case took a very serious turn, and within three weeks the patient was dead. During all the time of the sickness, however, a constant consulting correspondence was kept up with me.

One of our large trust companies was the executor of the decedent's estate, and to it I sent my bill.

The residuary legatee of the estate was in Europe at the time of the sickness and death, and of her own knowledge knew nothing whatever of the facts. She came home, and one day the Trust Officer of the Company said to me: "Doctor, I wish you would get the endorsement of Mrs. —— on this bill as correct, and we will pay you." I assented, and called at the house, expect-

ing, if I expected anything, to be received with some expression of thanks for the care which was taken of her brother in his loneliness and extremity, for during his sickness he was living in the house with servants only.

Instead of this, I and the doctors who attended her brother were roundly denounced in unsparing terms, and she positively refused to endorse my bill. I have met with some strange experiences in a doctor's history during my professional life, but never with anything quite equal to this. I understood Judge Ashman to say that a case precisely like this has not been adjudicated before. The reason probably is that the opportunity rarely occurs. The common sense of justice in mankind mostly settles such questions, but here was one of the exceptions. There was nothing for me to do but to bow myself out of the house, and to wait for the adjudication of the case before the Orphans' Court.

At this adjudication, the counsel for the accountant took the ground that Dr. Fricke acted on his own motion in consulting with me; that the patient was well enough when the doctor (Fricke) first saw him to ask, or to insist on his consulting with me if he wished him to do so. To my surprise, the auditing judge decided that as I had shown no contract with the patient I could not recover my bill, and that the attending physician had no authority to employ me. An appeal was immediately taken with the subjoined result, with which I must state the judge first hearing the case was, on review, fully in accord, and the judgment of the bench was unanimous.

The result, I am sure, most people will think is in accordance with public policy, with justice, and with humanity.

WILLIAM HUNT.

PHILADELPHIA, Dec. 5, 1888.

"Sur Exceptions to Adjudication.

"Opinion by ASHMAN, J. December 1, 1888.

"Two principles, so commonly accepted, that they do not require to be vouched by individual authorities, seem to establish the right of the exceptant to recover. One is, that a principal will be bound by those acts of his accredited agent, which are reasonably incident to the full performance of the contract of service; and the other, that he will be bound by the acts of a self-constituted agent where his own neglect or the act of God, has rendered those acts necessary for his self-preservation, or for the well-being of society. The first was an ingredient in every contract of agency, under the civil law, and the second is largely due to modern ideas of humanity, but each has an equal and just claim upon our common sense. The cases of Fenn *v.* Harrison, 3 T. R. 757, Nelson *v.* R. R. Co., 48 N. Y. 498, and Richard *v.* Cartwright, 1 C. & Kir. 328, are strongly illustrative of the first of these rules. One of them decided that a broker, entrusted with a note for discount, may endorse it in the name of his principal; another that a carter employed to deliver a mirror to a common carrier, may sign a release for the shipper and owner, against liability for breakage; and the third, that a foreman, without special authority, may bind his employer, by contracting to deliver certain goods at a designated time.

"The spirit in which this rule is to be expounded should be in unison with the character and relations which the parties have themselves established with each other, and should be liberal just in proportion as those relations become more intimate and involve delicate questions of duty and responsibility. To say that the discretion to act promptly in an emergency, which a patient necessarily gives to his physician, is larger than that which a merchant gives to his drayman, is simply to say that a man will resign more of his own authority to the will of

the person who is to save his life, than to that of the person who is to take care of his trunks. The trust, which includes the power for its exercise with which the patient vests his physician, is often practically unlimited, because it may require to be executed at a time when disease has taken away all ability to restrict it. The patient is not to be left to die, on the plea that during such an interval, no act of his adviser can be valid, for want of his direct approval. Or, the doctor may suspect the presence of an obscure disease, which, if it exists, demands heroic treatment. To communicate the suspicion to the sick man will probably finish him on the spot; may he not solve the doubt by consulting a specialist?

"But the case in hand is not even so problematical as the case which has just been supposed. The decedent, when he first consulted the claimant, was affected with a brain disorder, which culminated in paralysis, and killed him in three weeks. His powers of thought and speech were so far impaired that it was impossible to communicate intelligently with him as to his past symptoms or as to measures for the future. His sole next of kin was a sister, who was travelling in Europe, and his only attendants were servants. His family physician was in New England. The doctor who was called in by the business partner of the decedent, knew nothing of his patient's medical history; and he wrote for information upon that point and for professional advice, to the claimant, who had attended the patient for years, and who at once responded. If the right, in the consulting physician, to compensation for his services, is without legal merit, then the law is a reproach to conscience. That it has not been passed upon hitherto, means nothing; or rather, it means that it has never been questioned, any more than the right of the physician to charge his patient with the drugs he has purchased, or the nurse he has hired for him, when drugs and nursing were indispensable to his recovery.

"The doctrine, however, upon which the claim is now to be adjudicated, has been repeatedly enforced. It is the doctrine of public policy. In its application the courts have held that a parent who leaves his child in the care of a servant, will be liable to the surgeon who dresses a wound received by the child, although the surgeon was called in by the servant, and although the injury was caused by the servant's neglect: Cooper *v.* Phillips, 4 Car. & P. 581. They have also held, that a husband who abandons his wife, or leaves her even with her own consent, is liable for the necessaries which a third party may furnish for her support: Reed *v.* Moore, 5 Car. & P. 200; Harris *v.* Morris, 4 Esp. 41; that the estate of a decedent is liable for the expenses of a funeral provided by a stranger: Rogers *v.* Price, 3 Y. & Jer. 28; and the estate of a lunatic for services rendered in protecting his person or estate, Williams *v.* Wentworth, 5 Beav. 325, Bagster *v.* Earl of Portsmouth, 2 Car. & P. 178, or in supporting his family, Elwyn's Appeal, 17 P. F. Sm. 367. It is not necessary, for the purposes of this argument, that the decedent should answer to the legal definition of a lunatic. If he was so far mentally disabled as to be unfitted for the proper conduct of his affairs, it was sufficient to justify the action of the claimant: Young *v.* Stevens, 48 N. H. 135; Dennett *v.* Dennett, 48 Id. 531. We do not mean to displace the rule of liability from its footing of strict necessity. The burden of proof that in the absence of an express contract, an implied contract has arisen from the exigencies of the case, must always rest upon the claimant. But that burden was fully met in this instance; and we think that the claim should have been allowed.

"The exceptions are therefore sustained."