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Original Communications.

THE DANGERS AND RESPONSIBILITIES OF
A SURGEON.*

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In the case for malpractice, of Patrick Moran vs. Walter Burnham, tried before the Supreme Court in East Cambridge last week, it appeared in evidence that Moran broke his thigh and leg six or seven inches above and below the knee, from the fall of an elevator.

Dr. Burnham was sent for, but not being in town, Dr. Bancroft, who rented a privilege in his office, went and set the limb with the assistance of Dr. Lovejoy. After this was done and the limb put in splints, Dr. Burnham was again sent for, and came as the other two were about to leave the house. Dr. Burnham was requested to take charge of the case, as they had sent for him first. Dr. Burnham replied that he could not do it: first, because the patient was Dr. Bancroft's; and second, that he, Dr. Burnham, had engagements out of the State for two weeks; and third, he was too sick to do any such kind of business for any one. He was then urged to come the next day and help Dr. Bancroft apply some different splints and bandages, which he had not then at hand. To this Dr. Burnham consented, with the request of Dr. Bancroft. The next day urgent business prevented him from going; but early the next morning he went and assisted Dr. Bancroft in putting on different dressings; using great care in readjusting the limb and making accurate measurements. The case was then left in Dr. Bancroft's care, and Dr. Burnham left the city to be absent for one or two weeks on professional engagements. He returned in

* MR. EDITOR.—I have stated the case as briefly as possible and have the points understood; and report it at the earnest request of a number of the faculty, both in this city and in Boston. * * * *

I am very respectfully, &c.,

WALTER BURNHAM, M.D.

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eight days, and at the request of Dr. Bancroft, went to assist him in putting clean bandages upon the limb. Dr. Burnham did not see the patient again for about eight weeks; but the latter was visited by Dr. Bancroft every day for the first month, and every two or three days afterwards. At the end of two and a half months it was found that the fracture of the thigh had not united. Ten days later, Moran was ordered a starch bandage, and to get upon crutches in order to induce an inflammation in the ends of the bones, after which it was intended again to place the limb in confinement with a hope of effecting a union.

Moran then discharged his attendants, and did not try the starch bandage, but threw off all support, called in two other surgeons, at different times, and after about six weeks went to the Massachusetts General Hospital with his limb about three inches short, although no shortening could be detected while he was under Dr. Bancroft's treatment. At the Massachusetts General Hospital an operation was performed, and in two months union was effected.

With these facts in evidence, the court ruled that Dr. Burnham was responsible for the skilful treatment of Dr. Bancroft throughout the whole time, although he notified Moran that he had engagements out of the State, that it was necessary that the greatest skill should be exercised, and refused to take the case for that reason.

The jury found that in Dr. Bancroft's treatment there was no want of skill, and gave a verdict for the defendant.

It is important to consulting surgeons to know how far the Supreme Court holds them responsible for the skill exercised by the attending surgeon in their absence, not only in fractures but other cases.

In this case, had the jury found unskilful treatment, it would have ruined Dr. Burnham, although he did not have any oversight of the case.

[In reply to a note we took the liberty of addressing to his Honor Judge Ames, we received the following reply.—Ed.] :—

[WHOLE No. 2192]

DEAR SIR,—I send you a sketch of the only part of my charge in the recent case of *Moran vs. Burnham*, which can be of any interest to the medical profession.

You will please excuse the delay which has occurred, in furnishing an answer to your communication. I am happy to furnish any information that you care to receive, in cases of this kind, but a pressure of business caused me to lay your letter aside for a time.

The verdict, as I suppose you knew, was in favor of the defendant, and it was, in my opinion, a very proper one upon the evidence. Very truly and respectfully yours,
SETH AMES.

The jury had two questions to consider.

1st, Was Dr. Burnham retained and employed by the plaintiff?

2d, If so, was there any want of proper care and skill on his part, in the management or treatment of the case, by which the plaintiff had suffered damage?

The burden of proof was upon the plaintiff, and in order to be entitled to a verdict, he must make out the affirmative upon both of these questions to the reasonable satisfaction of the jury. (So much of the instructions of the Court as relate to the first question is omitted as not being of any general interest.)

With regard to the second question, the rule which should govern the jury is contained in the following propositions:—

A person who publicly seeks employment, and offers to act, for a compensation, in any trade or profession requiring preparation and skill, is bound, when employed by another so to act, to furnish not only ordinary care and diligence, but also ordinary and reasonable skill in his art or business.

The rule in this respect is precisely the same in the case of a physician or surgeon, as in the case of a lawyer, a carpenter, or a jeweller, &c.

The act of publicly offering to render service as a surgeon, for a compensation, for any person who may choose to employ him as such, is a warranty on the part of the person so offering that he has the proper and necessary skill, and that he will exercise that skill with the proper degree of diligence and attention.

To accept employment in such a case is equivalent to giving an express assurance in words, that he has the proper skill, and will exercise it faithfully.

The surgeon is by no means to be understood as giving a warranty that the patient shall get well, or as promising an absolute

cure, unless he expressly and in terms so stipulates.

Neither is he to be understood as professing extraordinary and unusual skill, or as claiming uncommon personal endowments or acquirements.

All that the law requires of him is ordinary skill in the particular business which he undertakes, and ordinary and reasonable care and attention in the use of that skill.

The term "ordinary skill and care," is to be understood as meaning such as come up to the usual professional standard of the country and the period.

Bearing these suggestions in mind, the jury are to make up their minds upon the alleged malpractice.

The fact that the operation did not prove successful is by no means decisive of the question.

What did the surgeon in this case do that he ought not to have done? what did he leave undone that he ought to have done? In other words, what was the specific mistake, if there were a mistake? what was the specific oversight or omission of which he was guilty?

It being testified that although the leg had been bandaged and kept in splints, in what some of the witnesses described as apparently a proper manner, and for the usual period, the bone had nevertheless failed to unite—the question for the jury to decide would be, "has this failure to unite been proved to their reasonable satisfaction to have been caused by any unskilfulness, carelessness or mismanagement of the attending surgeon? or was it, on the other hand, one of those cases which sometimes, though only rarely, do happen, in which the bones fail to unite, although the treatment of the case has been exactly according to the common practice, and according to the general understanding of proper practice?"

If the evidence offered left the jury in a state of uncertainty on the subject, so that they cannot say that the malpractice is made out reasonably by a preponderance of proof, it would be their duty to find for the defendant.

MR. WILLIAM ADAMS has divided subcutaneously the neck of the thigh bone within the capsular ligament, by means of a fine saw. This is a great triumph of subcutaneous surgery, as the case is doing well.—*Medical Press and Circular*.