

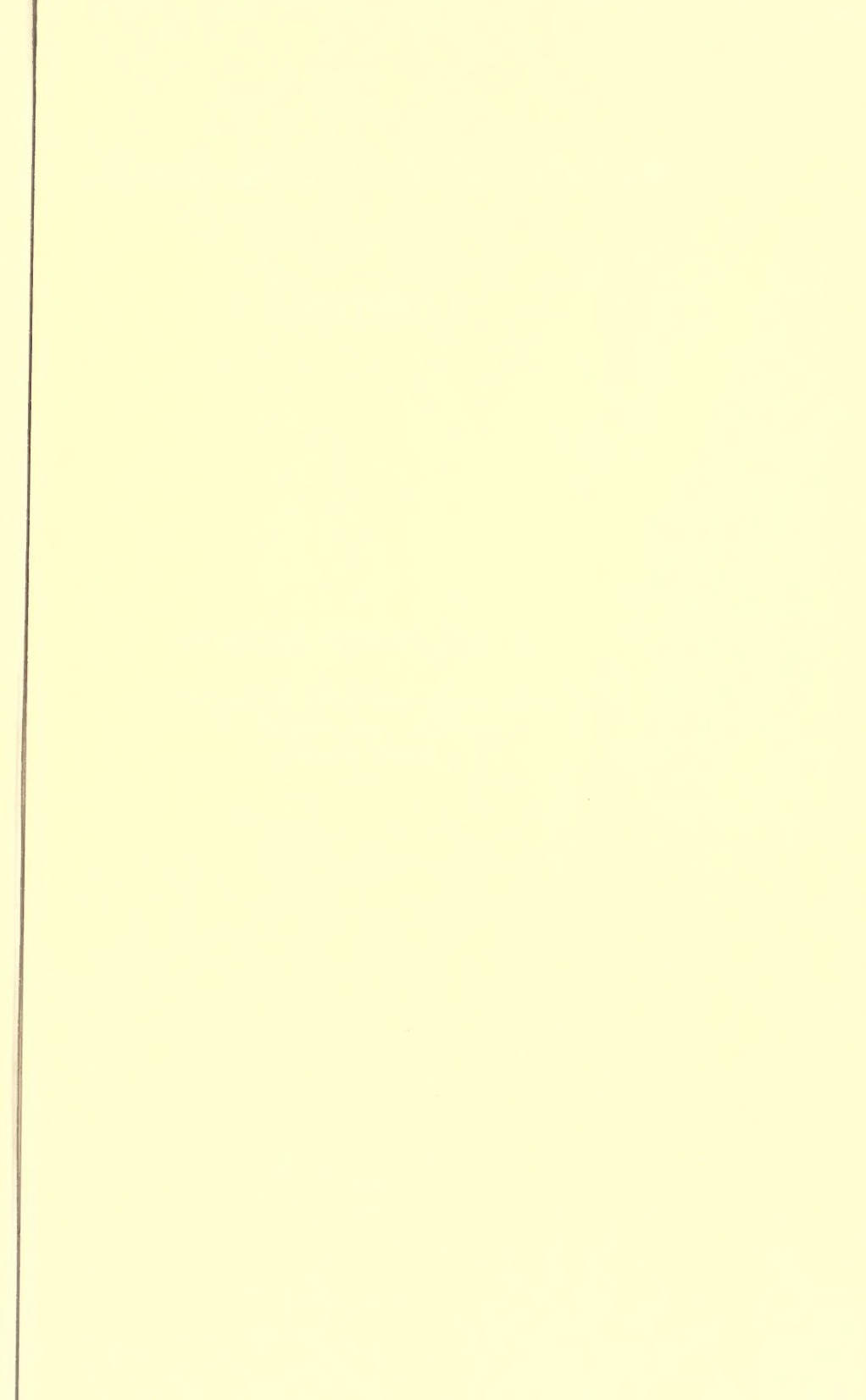
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Ethics and Jurisprudence

for

Dentists

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BY

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in Northwestern University
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PREFACE.

The writer of this book makes but little claim to originality for most of its contents. The "Professional Ethics," the discussion of patents, and some small portions in other parts of the book have been thought out and written without much conscious indebtedness to other writings. The portion on the general subject of ethics is derived chiefly from the "System of Ethics" by Friedrich Paulsen, translated by Frank Thilly, Professor of Philosophy in Cornell University.

The "Jurisprudence" has been derived chiefly from the "Dental Jurisprudence" by William E. Mikell, Professor of Law in the University of Pennsylvania, with some help also from the "Dental Jurisprudence" by Elmer D. Brothers, Professor of Medical and Dental Jurisprudence in the University of Illinois, and from the "Dental Jurisprudence" by William F. Reh-fuss, D. D. S.

It is possible some may think that a disproportionate amount of space has been given to the subject of general ethics. It is the writer's belief, however, that it is worth while for young men preparing themselves for any profession or any business to give some time to a study of the fundamental principles and sanctions of morality, and the powers and dispositions of mind and heart by which the conduct of life should be determined and the rules of duty should be obeyed; in other words, the virtues and duties which characterize good men. Professional ethics can have little authority and command little respect unless it is understood to rest upon the solid foundation of the general principles of morality.

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CHAPTER I.

THE MORAL IDEAL.

The moral obligations and duties which rest upon a man, and which he is expected to assume and acknowledge by reason of his occupation, are as important a part of his education and as worthy of his earnest attention and effort as the sciences and arts by the acquisition of which he seeks to prepare himself for his profession or employment.

Dentistry has developed into a profession independently of the medical profession—that is, by teaching in its own schools, and conferring its own degree instead of teaching in the medical schools and practicing under the medical degree, and this has resulted in the past in a wider separation between the two professions than is desirable or necessary. That dentistry is a branch of the great art of healing is beyond controversy, and the broadening scope and increasing thoroughness with which the medical sciences are being taught in the dental schools is gradually preparing the way for closer relations, a more intelligent coöperation, and greatly increasing cordiality between the two professions. These cordial relations, expressed by consultations together, the reference of suitable cases by members of each profession to those of the other, and the mutual acknowledgment that certain classes of cases belong exclusively to dental practice and other classes of cases exclusively to medical practice, would be impossible if the dental and medical professions did not conform to essentially the same standards of ethical requirements. As a matter of fact, the ethical code of the dental profession has its source, its inspiration, and its authority from that of the medical profession, and the "Principles of Medical Ethics" as acknowledged and promulgated by the American Medical Association are of equal force and obligation for the dental profession, with a few exceptions, perhaps, of matters which relate to things not included in dental practice, and one or two in which dentists are not accustomed to apply the medical rules with strictness.

It is to the medical profession, therefore, that we must look for the origin of our professional ethics, and I cannot introduce our subject better than by reading from an editorial in the *Chicago Tribune* for October 18, 1904:

“THE MEDICAL ETHICAL CODE.

“Doctors are continually heard to say: ‘No, I can’t do that. It’s not professional.’ It is comparatively seldom that such an insistence on a professional code of ethics is noticed in the conversation of lawyers or of engineers or of other followers of specialized callings.

“What is the medical ethical code? What are the principles which a profession, more profuse in its disinterested charities than any other profession in the world, has established for its guidance?

“It was about 2,300 years ago that the practicers of the art of healing began to take an oath emphasizing the responsibilities which the nobility and holiness of that art imposed upon them. Hippocrates, forever to be revered, gave the oath his name. When a Greek physician took the Hippocratic oath and when the graduate of a modern medical school takes it the act is one not only of obligation for himself but of recognition for a great benefactor of mankind.

“Here follows the Hippocratic oath in its essential parts:

“‘I swear by Apollo the physician and by Æsculapius that I will reckon him who taught me this art equally dear to me as my parents, to share my substance with him and relieve his necessities if required, to look on his offspring in the same footing as my brothers, and to teach them this art if they shall wish to learn it. I will follow the system of regimen which, according to my judgment, I consider for the benefit of my patients and abstain from whatever is deleterious. I will give no deadly medicine to any one if asked nor suggest any such counsel. With purity and with holiness I will pass my life and practice my art. Into whatever houses I enter I will go into them for the benefit of the sick and will abstain from every voluntary act of mischief and corruption. Whatever in connection with my professional practice or not in connection with it, I hear or see

in the life of men which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret.'

"No other secular profession has ever reached such a corporate consciousness of duties which it corporately owes to the rest of the world. The Hippocratic oath assumes that simply because a man has learned the art of restoring the sick to health he has passed into a realm in which the rules of personal selfishness are immediately abridged, if not expunged, and in which a new and special attitude toward human life must be taken.

"In modern times the Hippocratic oath has been adapted and expanded till now it appears, as far as Chicago is concerned, in a sixteen-page booklet, entitled 'Principles of Medical Ethics of the American Medical Association.' The chapters of this booklet cover, down to the smallest details, such subjects as 'The Duties of Physicians to Their Patients,' 'The Duties of Physicians to Each Other,' and 'The Duties of the Profession to the Public.'

"It seems that certain Chicago physicians have fallen from their high estate in respect of one of these duties. When a physician falls he falls from so great a height that the spectator cannot but be affected. Robert Louis Stevenson was not far wrong when he spoke of the modern scientific medical man as probably the noblest figure of the age. Except the priest, the physician is the first object of approach in distress. Except the priest, the physician gets deepest of all men into the heart of the community. The brethren of the physicians who have erred in the present matter must now lift their standard higher than ever."

Ethics and morality are synonymous terms and may be defined, comprehensively, as "The science that treats of human actions and mental affections considered as virtuous or vicious, right or wrong," and also the application of this science to the conduct of life; in other words, the art of right living. In these matters, as in most others, the art preceded the science, but nevertheless the chief purpose of understanding the science is to enable us to perfect the art.

Professional ethics considers the character and conduct of professional people with respect to their moral qualities ex-

hibited or exercised in the practice of their profession. The code of ethics is not, as some have seemed to suppose, a set of rules and prescribed modes of procedure adopted and promulgated with sole reference to the purely selfish interests of the profession, but it represents the discovery and application to professional conduct of the fundamental rules of morality.

It is unreasonable to expect that a man's professional conduct will be good if his character and conduct in other respects are bad. We must have a general soundness of character and correctness of life if we expect to stand the tests of time and of special temptations professionally. It is proper, therefore, to consider, as concisely and briefly as we can, some of the more important principles and requirements of ethics before seeking to discover their application to professional conduct.

Text books and treatises on ethics are numerous as well as voluminous, and if we were to take one of them, like Frederick Paulsen's "System of Ethics," for instance, which is a book of 700 large octavo pages, and undertake to acquire a knowledge of its contents, we would need two or three lectures a week for the whole term of school, and much private study by each member of the class, and have no time left for professional ethics, which is the real object we have in view.

You must realize, therefore, that the best I can do for you in the time we can devote to it will be extremely meager and inadequate as a presentation of the great science and art of morality. I hope that it may not seem so unsatisfactory considered merely as an introduction to the subject of professional ethics.

The object of morality is human welfare, and the criterion of character and conduct is the influence for good or evil resulting therefrom. The one whose character produces evil results to himself or others is bad, and acts whose natural and expected results are harmful are evil acts. Conduct resulting beneficially is good, and the best character and conduct is that which produces the greatest good of the highest type and for the longest time.

The most fundamental and important question or problem

of ethics relates to the nature of the moral ideal, the ultimate or highest good, the object of life the accomplishment of which may be considered a sufficient end or result in itself and not merely as a means to some other and more satisfactory attainment. It may as well be acknowledged at once that it is only the nature and characteristics of the moral ideal that we may hope to discover, and not its entire scope and content; for life and the character and conduct which manifest its activities, is progressive and what its final and perfected results may be, no man can now foresee, if, indeed, the progress and development of an immortal spirit shall ever cease.

The best brief statement I have seen is that the moral ideal for man consists in the full development of his life—not the life of one man, but the lives of all men; or rather, perhaps, the moral ideal for any one man is the perfect development and exercise of his own life, and the largest help he may be able to give to promote the same end for all others within the reach of his personal influence. This statement or definition must be taken with due regard for proportionate and relative values, a clear perception that the soul is better than the body, and the growth and use of the intellectual, moral, and spiritual nature is a higher good than the development of the body and the performance of its functions or indulgence of its desires.

As a practical statement of the highest ideal of good, this is necessarily vague, and must mean something different for each individual life, because each has its personal inheritance of powers and possibilities and its own environment and influences which help or hinder its unfolding, and all will differ from and come short of an ideally perfect life. Notwithstanding its vagueness, perhaps even better because of it, this ideal of a life perfectly developed, and normally exercised, and influencing others for good to the extent of its opportunity, should be pictured in the imagination of every boy and girl, every man and woman—a constantly changing, ever expanding goal, the object of endeavor and emulation.

Something needs to be said in this connection about the contention of many of the ethical philosophers that the highest good consists in the feelings of pleasure that life procures. It

is true that pleasure is the normal and usual accompaniment of healthy life and right activity of body or mind. It may even be considered one of the important signs or indications by which we determine that welfare is being accomplished, but it is so far from being the only criterion of welfare and the exclusive object of pursuit that by universal consent the "pleasure seekers" are classed as bad and not good. Pleasure should be subordinated to personal welfare, to the welfare of others, and to the law of right.

It may be urged that the phrase "pleasure seekers" is almost exclusively applied to those who spend their lives in sensual indulgences, and that those who restrict such gratifications still have pleasure as their object, though of a higher and nobler, or at least, of a different sort. This may be a very plausible abstraction to argue about, but practically all good people must often deny or restrict the indulgence of pleasures of all sorts without any conscious expectation that better pleasures, either near or remote, will be substituted for them. All we can say is that they are denied to us, or we deny them to ourselves, for the sake of welfare or a better life. Notwithstanding these limitations and restrictions, it is proper to consider pleasure as an important part of the ideal of good. We may say that the moral ideal has two elements. The primary one may be characterized as worth, or welfare, which we have described as consisting in the full development and exercise of human life. The secondary element is pleasure. To these we might add a third element, beauty, which needs no other justification than the pleasure of beholding it and the indication of perfection it implies. All these expressions—welfare, pleasure, beauty, are somewhat vague because of the nature of the things. Because "A human value, experience or pleasure, cannot be exactly weighed or measured." Also because the development of life and the enlargement of its activities brings into view a wider range of its possible activities and attainments, so that the moral ideal of attainable perfection is larger and higher for some men than others, and seems greater and better to the apprehension of a man or a people as development progresses, and we believe that the evolution or develop-

ment of man, either in his individual character or in society, is yet very far from being completed.

There have been many, both of philosophers and theologians, who have taken the opposite view, namely, that the human race is and has been degenerating instead of developing. Probably this view was almost universal among the early Christians. The basis of it is a belief that originally man fell from a state of moral perfection, since which time he has been tending downward toward final destruction; salvation from evil character or evil destiny in this world or the next having reference to the rescue of individuals, whether in small or great numbers, from the general ruin.

I believe that most thoughtful people, whether scientists or theologians, now take a different view, one in general accord with the theory of development or evolution, or at least a belief that there have been introduced into the world successively higher and more complicated forms of life, and that the evolution or advancement has been characteristic of moral and spiritual life as well as of physical life.

I prefer, myself, to interpret the story of the Garden of Eden as an allegory intended to represent the awakening of man to a consciousness of God, of spiritual life and moral responsibility. Previous to such an awakening the human race was innocent, just as we suppose the lower animals to be, because unconscious of moral quality in conduct.

It must be noticed particularly that this very doctrine of evolution has a double aspect, and gives the pessimists (if we may so call those who believe in the generally increasing wickedness of the human race and their final destruction as a punishment therefor) very substantial ground to stand upon, for the plasticity of life which makes possible a gradual evolution and increasing perfection from generation to generation necessarily implies also the possibility, and what is easily observable in the human race, the very great danger of degeneracy. There seems no reason to doubt that in the long history of life in the world there have been species that have remained stationary or have degenerated instead of contributing anything toward the advancing evolution of life into higher forms, and it is a matter

for easy enough observation that multitudes of individuals, many families, and possibly some nations of men have degenerated to final extinction. History records both the rise and the decline of dynasties, reigning families and nations. Whether the nation has yet appeared that will be found worthy to carry forward continually the development of humanity, or whether it will have to be done by some new nation formed out of such remnants of the old nations as prove worthy of preservation, we can only conjecture and hope. How often the sad story of decline and destruction following upon development and success must be repeated in the future history of nations or families, no man is wise enough to tell. The hope of the world lies in the individuals, the families, the nations and races of men that have and will continue to have, sufficient moral vigor and strenuousness of purpose to carry forward a little, the evolution of individual, and social, and national life, and at last, of all human life—toward a more harmonious and perfect development. Men are not passive in the hands of fate, or providence, or circumstances. They either grow better or worse by the effects of their own choices and activities, and I need only to suggest the supreme importance to each individual that he be morally and spiritually progressive instead of a degenerate.

What the moral ideal may signify to any particular individual depends upon what his understanding and imagination may conceive of the perfections, the knowledge, the power and influence, and variety of activities, and duration of existence which a human being may attain.

The previous history of our morality and theory of life which have been and still continue most influential in the life of the Western nations, divides itself into three periods: "The first embraces the development of the ancient world to its conversion; the second, the Christian development with its two halves, the Christianity of the Old World, and medieval Christianity; the third, the development of modern times which has not yet come to an end." The best ethical philosophy of the ancient world is that of the Greeks, which has also, of all the ancient systems, most influenced the thoughts of the modern western nations.

¹(Paulsen, page 34).

It is impossible for us to take time to give an account of Greek ethics, and I can only quote a few sentences from Paulsen's summary of its main features.

¹"It agrees with the popular Greek view that the highest good consists in the perfection of man as a natural being. Special stress is laid upon the development of the intellectual side. Even the popular conception recognizes the great importance of the intellect for human perfection."

"The philosophers, the specific types of the Greek people, as the prophets are of the Israelites, go still further and make reason the root and crown of all human excellence. For them wisdom or philosophy is both the means and the content of eudæmonia—the former, in so far as it acquaints us with the highest good and regulates practical life to the end of realizing it—the latter, in so far as philosophy, or the scientific contemplation of the universe, is the highest, freest function of human nature, one that is desired solely for its own sake. It is said that Anaxagoras, being once asked for what end he had been born, answered: 'For the contemplation of the sun and moon and heaven, and the order governing the entire universe.' This is really the answer which the entire Greek philosophy, and the Greek mind in general, gives to the question."

"Modern scientific research is, as compared with Greek philosophy, more like labor, often like petty and arduous labor. The physical or historical investigator of our time employs an enormous apparatus of learning and technical skill, collections and instruments, in order to throw light upon some obscure nook of reality. The result of his work may at some time, in some connection or other, assist us somewhat in understanding reality."

But no one now expects to be able to understand all of reality or fully to understand the great order of the universe.

"The Greek philosophers, on the other hand, were happy in the belief that it was possible, and that each one of them would be able to unravel the ultimate mysteries of the universe by pure contemplation. Even Aristotle, the great observer, declares that

¹(System of Ethics, page 58).

of all activities, scientific investigation is in least need of external aids, so convinced is he that the apparatus of research is a purely secondary affair."

On its practical side the Greek ethics or philosophy made much of physical perfection and the pleasures of healthy bodily activities, and of the duties of men to society and to the state. Their games, sports, athletic competitions, etc., had both these ends in view, namely, to develop the full capacity of bodily powers for the sake of the zest and pleasure of living, and also to produce a strong and hardy race of men for the defence of the state in war. Their inculcation of the virtues of courage, temperance, self-control of bodily impulses and desires, and justice in social intercourse and in the administration of law were for the same double purpose. Their ideals of life and standards of conduct had reference to the present earthly life. While the Greeks were not destitute of the hope and expectation of immortality, it would seem that their belief in a future life had very little influence upon either the ideals or the conduct of the present life.

Christianity turned the thoughts and desires of men toward the immortal and spiritual life, whose transcendent value and infinite duration made the bodily and earthly life seem insignificant and worthless by comparison, and whose rewards and punishments became the strongest motives and sanctions for both the ideals and the conduct of the earthly life. The persecutions, the poverty, and often the almost incredible hardships which the early Christians endured, together with the belief, then probably universal among the Christians, that this wicked world was doomed to very speedy destruction, tended still further to a glorification of the heavenly life and a contemptuous disregard of the present, which, indeed, for many of them held very little of comfort or pleasure. There is little room to doubt that the early Christians greatly undervalued the earthly life, and as a consequence gave too little heed to some of its duties and opportunities as well as its perfections and pleasures.

The various orders of monks, nuns, hermits, and other ascetics carried these ideas still further and believed that the physical and earthly life is antagonistic and likely to be destructive

of spiritual life unless constantly suppressed and mortified. These various orders, consecrated to chastity, poverty, and obedience to the authority of the church as expressed in the commands of the priests, bishops, and other officers, and finally of the pope, probably served a useful purpose as a protest against the prevalent self-indulgence, licentiousness and brutality of the times, by showing, in living examples, the capacity of man to put his physical life and bodily impulses under a rigid discipline and control. The ascetics went much further than this and attempted and believed salutary, not merely self-control, and the moderate and temperate satisfaction of natural impulses and desires, but their extinction. They appeared to think pain, hunger, thirst, cold, heat, ridicule, contumely, persecution—everything disagreeable, to be good for a man's soul, in proportion to their severity, so they tortured themselves, and sought to have the food and drink they must take to sustain life as unpalatable and disagreeable as possible, and generally "mortified" and punished themselves in every way they could think of. It seems very strange to us that they should have thought it a deadly sin to commit suicide, but meritorious in the highest degree to kill themselves by inches.

Not all of the celibate orders were to be characterized in this way. Much the larger number were too actively engaged in useful services of various sorts to carry self-punishment to any such extremes, and it was these, whose lives of self-denial and unselfish ministry to the sinful and unfortunate were constantly under observation of the communities in which they lived, who exercised a salutary influence upon the world, while the more extreme of the self-torturers were for the most part secluded from public observation in monasteries and convents and their harmful influence fortunately lessened thereby.

Modern ethics and modern Christianity appreciate both earthly and heavenly, bodily and spiritual values, regarding the physical life as the foundation and the instrument for the use and manifestation of the intellectual and spiritual life during the period of earthly existence. That the physical life should be subordinate and subservient to the intellectual and spiritual life is normal for man, and therefore conducive to the welfare of

both body and soul, while a reversal of this order, making the soul servant of the body first brutalizes, and finally destroys both body and soul. Modern Christianity gives constantly increasing attention and effort to procure a complete and symmetrical development and sound health of physical life, always having the purpose in view that intellectual and spiritual life are thereby promoted and have a better instrument for their expression. Life, whether physical or spiritual, is always confronted by dangers as well as opportunities, and some men are so well content with the perfection of physical life that they neglect and ignore the opportunity it offers them to cultivate the nobler elements of character, and so degenerate instead of develop, from the very submit of physical perfection, which offers them the opportunity and incentive for progressive development of higher and spiritual powers.

Paulsen says (page 157): "Three great truths Christianity has engraven upon the hearts of men.

"The first is: Suffering is an essential phase of human life. The Greeks were familiar with suffering but only as a fact which ought not to be. * * * Christianity has taught us to appreciate suffering; suffering is not merely a brutal fact, but essential to the perfect development of the inner man; suffering withdraws the soul from too complete devotion to the temporal and perishable; it is the antidote to vanity and the love of show; it is, in Christian phrase, the great means of education by which God turns our hearts from the earthly and temporal upwards, to the eternal, to Himself. And so suffering leads to inner peace."

* * *

"The second great truth which Christianity has impressed upon humanity is this: *Sin and guilt are essential phases of human life.* This truth, too, the Greeks did not see, or at least not in its entire force. * * * For Christianity, it is the most serious and the most awful truth that the inclination to evil is deeply rooted in the essence of the natural man. * * * It is an undoubted truth that human nature contains, besides beautiful and good capacities and impulses, inclinations which justify the harsh remark that man is the wicked animal. * * * The ancients were not conscious of the awfulness of the thing; it did

not seem to be incompatible with their demands upon human nature. Christianity has raised the standard; it measures man by the justice and holiness of God, which have become incarnate in Jesus. * * * It is impossible for us to accept evil as complacently as did the Greeks." * * *

"The third great truth which Christianity has impressed upon us is: *The world lives by the vicarious death of the just and innocent.* Whatever system loving theology may have made of it, it remains the profoundest philosophical-historical truth. The nations owe their existence to the willingness of the best and the most unselfish, the strongest and the purest, to offer themselves for sacrifice. Whatever humanity possesses of the highest good, has been achieved by such men, and their reward has been misunderstanding, contempt, exile, and death." * * *

"Joined with these three elements is a fourth: *the longing for the transcendent.* Antiquity was satisfied with the earth; the modern era has never been wholly free from the feeling that the given (present) reality is inadequate. Something of the mood which Christianity introduced into the Occident—the feeling that the real home of the soul is not on earth, that this life is a pilgrimage in a foreign land—constantly confronts us in the poetry and in the life of the modern age, and not only among those who accept the teachings of primitive Christianity, but also among the children of the world. * * * After all this we may say: the mixture, antagonism, and reconciliation of Christian and Greek elements is characteristic of the modern conception of life and the world. There are times when the former, and there are times when the latter preponderate. * * * Indeed, if man were a purely logical being, then he would have to draw the line sharply between these extremes; the affirmation and the negation of this earthly life, Hellenic love of life and Christian yearning for deliverance from all that is transitory, would be regarded by him as contradictory opposites, between which there can be no middle ground. But man is not mere intelligence, his inner life is not a logical mechanism which rejects everything contradictory; he is also and primarily a willing and feeling being, a being that experiences pleasure and pain, hope and fear, love and hate, admiration and contempt. The judgments, too, which he pro-

nounces as such a being, he endeavors to comprehend into a system; thus arise the different conceptions of life, and the interpretations of the world based upon them, the religious systems. The greatest opposition which exists between them is that obtaining between culture-religions or world-affirming religions, and religions of redemption. But extremes do not exclude each other here as in scientific systems. * * * The lines are not so sharply drawn, there is more inconsistency, mixture, approximation,—nay, these are in a certain sense natural and necessary.”
* * *

“In conclusion, let me say a word concerning an *objective* approximation, which becomes apparent when we compare the two types with a third, to which they are both opposed.”

“We may distinguish between three conceptions of a good life, and accordingly between three forms of conduct. The first seeks the good in *sensuous enjoyment*; the second finds it in *the exercise of human spiritual powers in a varied civilization*; the third, at last, transcends the earth and discovers the goal of life in the *blessedness of the hereafter*, which is here enjoyed in anticipation. The first view is, according to the Greek belief, the ideal of the Asiatic *barbarians*; the second, that of the *Greeks*; the third, that of the *Christians*.”

“It is plain that the second and third views make common cause against the first. The rule of reason, the limitation and discipline of the sensuous desires, is demanded by both as the precondition of perfection. So far as that goes, an *ascetic* element is by no means wanting even in Greek morality; it is strongly enough emphasized by Plato, the Stoics, and still more by the later philosophers. Indeed the word “Asceticism” is derived from the Greek language,—it signifies, first of all, the discipline of the animal nature, which was practiced in the gymnasia, and also that of the inner life, which was practiced in the philosopher-schools. * * * Of course, Christianity, with its demand of self-denial and holiness, goes much further than Greek asceticism, which remained more or less a form of self-preservation; the development and exercise of the spiritual powers in philosophy and science formed the positive content of life, for the sake of which the discipline of the senses was demanded.”

“On the other hand, however, we find attempts at a positive treatment of the mundane world in Christianity; among them, for example, the government of human life according to the principle of brotherly love, the perfection of a kingdom of God on earth. The love of neighbor becomes a definite and tangible thing only in case an earthly goal is presupposed, which it is the function of love to assist in attaining.”

It seems to me this is a mistaken limitation, for it is hard to see why it is not just as much the function of the love of neighbor to assist in attaining the goal of life in the blessedness of the hereafter as in the perfection of the earthly life.

Perhaps Paulsen is too much inclined to regard these three ideals of life as antagonistic and exclusive of each other. They are rather successive developments or enlargements of life, and as the Greek ideal did not call for the extinction of the physical and sensuous life, but only for its discipline and subordination to a better use and expression of life, so the Christian ideal does not call for the extinction of either the physical or the intellectual life, but only for the discipline and subordination of both to a better use of life in a disinterested service of humanity, with a perfected moral and spiritual life in both this world and the next as the ultimate object in view. As a matter of fact, established by observation and experience, such a discipline and subordination of the lower powers of life for the benefit of the higher, is good for them. The discipline of the physical life and sensuous pleasures by the Greeks resulted in a greater zest for sensuous pleasures, a better physical development for endurance and service and the preservation of health and life to a greater age than was accomplished by the “outside barbarians” who were supposed to have no better object in life than physical perfections and pleasures. In like manner, the subordination and discipline of the intellectual powers and the pursuits of science, philosophy and art, for the better Christian ideals of service to moral and spiritual ideals and the hopes for immortality, have helped to develop an art, a science, and a philosophy, beneficent in their results and widespread and inclusive as to the numbers benefited, in comparison to which the best attainments of Greek art, science, and philosophy, were no more than a prophecy and a hope.

It is to be remembered that so long as man is progressive (any man, or the race of mankind), the moral ideal is receding and enlarging,—always striven for but never attained. Every good man can comprehend and imagine thoughts, feelings, and motives, knowledge, and skill, and useful services, better than those to which he has attained, and if by and by he shall succeed in reaching his present ideals, his larger life and better activities will bring to his comprehension still better powers and greater usefulness. On the other hand, the moral ideal, the true purpose of living, is realized day by day by every one in proportion as he may accomplish such perfection and health of body and soul as are possible to him and employ his strength and activity in useful service. Therefore, though the chase after the moral ideal in the perfection of life and conduct may never reach its goal, yet is the pursuit neither hopeless nor fruitless, but captures all along the way the richest rewards that human life may receive.

CHAPTER II.

MORAL EVOLUTION, DUTY AND CONSCIENCE.

The object of life is the perfection of life, but this cannot be attained by individuals acting each by himself and for himself alone. He who attempts that, will surely find the truth of the paradox: "He that will save his life shall lose it." Every good life must be used to help all other lives it may influence, toward such perfection and usefulness as may be possible for them, *and personal and individual welfare cannot be attained without such service*. Man is a social being; each must receive much from many others; each should therefore give much to many others.

Scientific men describe the process of evolution as being accomplished by a "survival of the fittest," and I believe some have written about it as though they believed it characterized by a wholly selfish and uncompromising "struggle for life" by each individual against all comers, in which the strongest and best developed survived and were able to develop new organs and functions, or to modify and perfect old ones, and so gradually to adapt themselves more perfectly to their environment or to accommodate themselves to the changes in their environment brought about by the slow progress of the world. By this means, higher and more complicated forms of life were developed out of the lower. Evolution was always accompanied by the elimination of the weak and unfit, and the degeneracy and extinction of many species that proved unable to adapt themselves to the changes taking place in the environment in which they must live.

A disposition is sometimes seen to regard the ideas of service and sacrifice for the good of others, and especially the sympathy and philanthropy which seek to improve or preserve the weak and unfit, as unscientific and of doubtful benefit to the progress of the world, and probably it is necessary to take account of moral and spiritual values in order to make out a case for the preservation of the physically weak and unfit; however, it needs but a moment's reflection to perceive that the "struggle for life" even in its lower forms, is not wholly personal and selfish. The dependence of individuals upon each other, and consequently,

the "struggle for the lives of others" began to show itself long before the advent of man upon the earth. Its first manifestations, of course, are in sexual relations and the care and protection of the young, but in varying forms and degrees of manifestation it has run parallel from the beginning with the struggle for personal and individual life. The highest expression of these two motives or impulses; the egoistic and the altruistic, working in harmonious co-ordination to accomplish a good life, is formulated in the "Golden Rule": "Thou shalt love thy neighbor as thyself," and is as scientific as it is Christian.

The close relations of men in modern society and the vast and exceedingly complex machinery of social, industrial and political affairs, imposing upon every one such numberless and varied duties corresponding to the rights and the needs of others, and making needful so many limitations and restraints upon the exercise of individual freedom and the indulgence of natural impulses, is a comparatively recent development or evolution of that portion of the human race to which we belong, and men are yet very far from the completion of their adaptation to this new environment. In fact, there is nothing upon which all men and women are so well agreed as on the proposition that very many things in social life and relations, in the conduct of business and manufacturing, in the management of political parties and the administration of government, the education of children and youth, and the practice, if not the creeds, of religion, are in need of improvement. When it comes to particular plans for improvement, the agreement ceases, but whenever there is a general agreement that some particular thing can be improved by some definite method, there is immediate hope and usually speedy accomplishment of some real progress.

Scientific men have long been engaged in a patient investigation and study of the laws of God in the physical world, with the most astounding results in the harnessing of the forces of nature in the service of man, exerting greater physical power in useful work than could be done by untold millions of human hands, and by discovering and obeying the laws of life, men have been able in the vegetable and animal world to procure the comparatively rapid evolution or development of primitive or

wild types into forms incomparably better suited to human uses. This is true conspicuously of domestic animals, fruits, vegetables, and grains. Having accomplished so much upon these lower levels, it is reasonable to suppose that similar patient and sincere investigation may lead to the discovery of the laws of social, economic, moral, and spiritual life, and the forces and circumstances that promote or hinder development, and so the intelligence of men, by comprehending the Divine purposes, and methods of operation, may guide or control human affairs in accordance therewith to the accomplishment of a more rapid development than the world has heretofore seen; for men have too often been little better (as respects the *evolution* of life) than passive instruments in the grasp of Divine forces, or at best have been groping almost blindly for the path of progress, and too often at cross purposes with each other and with the Creator.

That men may understand the laws and purposes of God and actively co-operate with Him for their fulfilment, is an old idea in the world as applied to moral and spiritual life and conduct. The New Testament teaches it in direct terms in such passages as these: "We then, as workers together with him, beseech you also that ye receive not the grace of God in vain."—(2 Corinthians vi-1) and "Work out your own salvation * * * for it is God which worketh in you."—Phil. ii, 12-13). It is equally true that men are "Workers together with God" when they discover and apply to beneficent uses the laws and resources of the physical world, the laws and forces of vegetable and animal life and development, or the facts, relations and duties pertaining to economic, social, legal, and moral relations and duties of men.

Similar efforts, by a patient study of facts and relations, with such differences of methods as the nature of the subjects makes necessary, are beginning to be applied to the discovery of the laws and solution of the problems of social, business, economic, moral and spiritual life. Let us hope that in time the useful results may be as astonishing and satisfactory as they have been in the mechanic arts, in the practice of medicine, surgery and dentistry, and many other activities by which the health, comfort, duration, and breadth and scope of human lives have been so greatly increased during the last hundred years.

The first step in such progress, will be a better comprehension of the *rights*, and the *needs* of men and a moral quality, responsive to such comprehension, that will insure respect for human rights, and to the extent of power and opportunity, the supply of human needs. At the present time,—perhaps it has always been so,—the moral quality that leads men to *do* right is lagging behind the comprehension of what *is* right. That is to say, a very large number of people are not doing as well as they know how to do. Here, as everywhere, the difference between good and bad is fairly well understood by everybody in a general way. Good men are careful and scrupulous about the performance of their duty, and less strenuous about maintaining their rights, often yielding them rather than contend for them, especially when they judge that the contention may do more harm to themselves or others than the rights are worth in particular instances. Bad men, on the other hand, are very careless and indifferent about the performance of their duties, but usually very particular and insistent to have their rights respected.

If the time could come when all men were developed to the greatest perfection and efficiency which their natural abilities and their circumstances in life make possible, and these perfected lives were exercised for the benefit of others equally with themselves, all rights would be protected, all duties would be performed, all the needy would be provided for, and the "Millennium" would be here.

Until then, all good people must seek and expect to give more than is due from them, to help carry the burdens and perform the duties neglected by those who ought to do them. It is right for a man to use his life for his own perfection and welfare. It is his duty to use it for the good of those about him, and since we receive far more from others than we can do for ourselves, we should do far more for others than for ourselves, and our lives should be trained and perfected with chief reference to making them as efficient as possible in the service of others. Moral worth is impossible of attainment otherwise. Man *must* serve others if he would ennoble himself; he should ennoble himself that he may serve others.

Although this writer is more largely indebted to "Paulsen's

System of Ethics" than to any other source, it must not be supposed that everything preceding has been derived from Paulsen, either directly or indirectly. Much less has any attempt been made to epitomize the contents of the first four hundred and seventy pages of Paulsen's work. Many things of great interest and importance have been omitted, both respecting the historical development of morality and its fundamental conceptions and questions of principle, and for the most part, conclusions only have been stated without any attempt to outline or reproduce the facts or reasons by which he has fortified his conclusions or opinions. Many subjects have been wholly omitted; for instance, Paulsen has a whole chapter on the "Teleological and formalistic conceptions of the good and the bad." "The former explains the difference between good and bad by the effects which modes of conduct and acts of will naturally produce upon the agent and his surroundings. Acts are called good when they tend to preserve and promote human welfare; bad, when they tend to disturb and destroy it. Formalistic ethics, on the other hand, claims that the concepts good and bad, taken in their moral sense, designate an absolute quality of the will, without any regard to the effects of acts or modes of conduct; that this quality cannot be further explained, but must be accepted as a fact." Paulsen advocates the teleological view.

The chapter on "The highest good" is a discussion of the hedonistic and energistic conceptions. We can only quote a statement of them. He says: "The highest good of an individual as well as of a society consists in the *perfect development and exercise of life*. This, of course, is a purely formal definition, but we cannot make it more specific. It is as impossible to define the perfect life as it is to define a plant or animal species. We can simply give a description of it: this it is the business of the doctrine of virtues and duties to do."

"Before giving a more detailed account of this conception, however, I deem it wise to discuss another view of the nature of the highest good. An influential ethical school contends that welfare or the highest good does not consist in the *objective content of life*, but in the *feeling of pleasure* which life procures; that pleasure is the thing of absolute worth, and that everything

else has value only in so far as it conduces to pleasure. This view is commonly called hedonism; the theory opposed to it we have called energism."

Paulsen's chapter on pessimism opposes the views of the pessimistic philosophers who contend that "Life has no value; or, if it contains valuable elements, their sum is so far exceeded by the worthless ones that the total value falls below zero, and hence, it is better not to live than to live."

We have no time to spare for this question, nor for his next chapter on "The Evil, the Bad, and Theodicy" in which he attempts to justify the existence of evil in the world.

The chapter on "Duty and Conscience" is of more consequence to our purpose. There are forty pages of it and it is difficult to discuss the matter briefly enough and impossible adequately to epitomize his presentation of it.

THE ORIGIN OF THE FEELING OF DUTY.

*The normal human will, whether of the individual or of society, "aims at the preservation and perfection of individual and social life." "Here, however, we seem to be confronted with a contradiction. Good, we may also say in conformity with popular usage, is not what we *will* to do but what we *ought* to do. To do good means to do our duty, and our duty does not (always) seem to coincide with the natural will; hence there is a conflict between *duty* and *inclination*. * * * We call that phase of our nature which opposes inclination and manifests itself in the feeling of obligation and duty, *conscience*." He next examines "the origin of the feeling of duty." "How does obligation arise in the willing being? Whence this conflict between natural inclination and duty? Is it something supernatural, something breaking into the unity of the willing being from without?" "According to the religious view it is: for it, conscience, is the voice of God."

"This notion contains a germ of truth, but it has no value as an explanation. We have no more right to appeal to God as the cause in morals than in physics. Both the natural law and the moral law may point to something beyond them, to something

*Page 340.

transcendent. But we cannot assume the transcendent in order to deduce from it the facts of experience; we must seek for the explanation within the empirical world; and I believe that we can find it there."

I would state this a little differently, and say that we have a perfect right "to appeal to God as the cause" in *both* morals and physics. By observation and experience, by the collection of numberless facts and the making of countless experiments; by the patient construction of theories and formulation of laws which correspond to and are consistent with the observations, experiences, facts and experiments, men have learned very much about the will and laws of God as exerted and illustrated in the material world and in physical life. And it does not seem unreasonable that observation and experience, the recording of facts in sufficient numbers, the making of experiments, and the formulation of theories and laws that correspond to all these, may teach us very much respecting the will and laws of God as exerted and illustrated in the development of moral and spiritual powers in men and their manifestations in life and conduct. It would be as great a mistake, and one of similar kind to suppose that a supernatural revelation is the *only* way in which we can find out anything about the laws of God governing the moral conduct of men, as to suppose that such a revelation is the only way in which we can find out the law of God respecting the atomic weight of oxygen.

THE AUTHORITY OF DUTY.

Paulsen says: *"The authority of duty springs from the relation of the will to custom, or, what amounts to the same, of the individual to society." "By the term 'custom' I mean the acts performed by all the members of a tribe, which correspond to the instincts of animals. The actions of animals are governed by three principles: impulse, instinct, and individual experience. Impulse regulates the vegetative animal functions—nutrition, respiration, reproduction. The term instinct is applied to uniform modes of behavior which solve more complicated problems of animal life, like nest-building, migration, etc. * * * They

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are transmitted by heredity, and practised without knowledge of their purposiveness. They have been characterized as the organic intelligence of the species. In addition to these, the animal also acquires a small measure of individual intelligence through its own experience."

"The same three principles again meet us in man. The instincts undergo the most peculiar transformation,—they appear as customs. The latter resemble the instincts in that they are stereotyped modes of conduct for the teleological solution of complicated life problems as well as in that they are followed without a knowledge of their purposiveness: they represent the intelligence of the race, in which the individual participates. But they differ from instinct; the individual *knows of them*; in obeying them, however, he is not conscious of their purposiveness, but of their existence and obligation. He insists upon their observance by others as well as by himself, formulating them into those universal rules which begin with a "thou shalt" or "thou shalt not." We may therefore define customs as *instincts that have become conscious of themselves*. The difference is, that customs are not, like instincts, inherited organically as natural characteristics, but transmitted by *conscious activity, through education*. Moreover, customs are upheld by the *conscious* action of the community: an animal that does not obey its instincts is left to suffer the natural consequences of its behavior; a man who acts contrary to custom causes a reaction in his surroundings, which may assume many forms, all the way from a scarcely perceptible form of disapproval to extermination."

We have not space for Paulsen's illustrative examples. He goes on to say: "We can now understand why duty does not appear to be rooted in the will of the individual, but seems to be something external to him, something opposing him with absolute authority. *Custom forms the original content of duty*. In the higher stages of development the relation between duty and custom changes; duty gradually assumes a more personal and individual character. But, originally, duty enjoined a life in accordance with custom. * * * Hence we may say: Duty is invested with the *authority of custom*. In it, the will of parents and educators, the will of ancestors, the will of the people,

speak to the individual will. To these highest human authorities, a still higher and final authority, *the authority of the gods*" (or God), "is invariably added. * * * As religion develops, they uniformly become the guardians of custom and law. This triple authority of parents, people, and gods, reveals itself in the sense of duty: it is a feeling of obligation to a higher will, which sets a limit to the inclinations. To be sure, this higher will is not supra-powerful, like one governing by force or fear; it is acknowledged internally by the individual will as one having absolute right to command."

*RELATION BETWEEN DUTY AND INCLINATION.

* * * "Custom as such aims at the preservation and welfare of the collective body. * * * We may also say that custom aims at the preservation and welfare of the individual. And in so far as the individual desires the preservation and welfare of his own life, he desires exactly what custom desires. Indeed, he cannot realize his welfare except as custom prescribes,—on the one hand, because this is the most appropriate means of solving a particular problem of life,—on the other, because departures from custom would produce a conflict between him and the world, which would necessarily react unfavorably upon his individual welfare. Hence, custom and the individual will, duty, and inclination, really affect conduct in the same way. Conflicts between the two are accidental and exceptional. * * * But how does it happen that duty and inclination oppose each other in consciousness, if not uniformly, at least frequently? I believe this may be explained as follows: The individual becomes clearly conscious of custom" (or duty) "only when his inclinations are directed towards something contrary to it. So long as they conform to custom" (or duty), "conscience has nothing to say to him. * * * It may therefore be said that duty uniformly arises as a *limitation of impulses*, whose existence it presupposes; without impulses there would be no duty. It is in its origin essentially negative: *Thou shalt not* is the formula with which custom, law, duty, originally oppose the individual when his impulses go too far. The positive formula does not

read: Thou shalt, but: I will. Only when the natural impulse or will is lacking, does the formula of duty make its appearance, and change the: I will, into the: Thou shalt." * * *

CRITIQUE OF THE KANTIAN VIEW.

"According to Kant, the conflict between inclination and the feeling of duty is essential to morality. An act, in his opinion, has moral worth only when the feeling of duty determines the will, in the absence of all inclinations or in spite of them. Hence, he does not regard it as meritorious to do good from inclination. * * * This view of Kant's called forth the ridicule of Schiller's well-known lines: 'Gladly I serve my friends, but alas! I do it from inclination, hence I am plagued with the doubt that I am not virtuous' (translation) whereupon he receives the following advice: 'Your only resource is to try to despise them, and then to do with aversion that which duty enjoins upon you' (translation). This ridicule, we must confess, is not undeserved. According to Kant's theory, a man's worth depends entirely upon his ability to eliminate inclinations and impulses from his will, and to determine it solely by the feeling of duty. Such a human being, doing his duty solely for duty's sake, is the most wooden manikin ever constructed by a system builder. Nevertheless, there is a germ of truth in the view. The conflict between duty and inclination is not the rule, and the suppression of inclination by the feeling of duty is not the condition of all moral worth. Still, we may say that the true moral character is plainly revealed in such a conflict."

I believe the true view is almost the opposite of Kant's; namely: that the best moral quality is attained by the education, the restraint, and the exercise of inclinations and impulses in such a way that the conflicts between inclination and duty become less and less frequent and finally cease altogether. (Which means by the formation of good *habits* of thought and conduct.)

"The feeling of duty may have prevented much evil in the world, but the beautiful and the good have never sprung from the feeling of duty, but from the living impulses of the heart."

*"Let me add a remark concerning a few other errors of

*Paulsen. Page 355.

the a-prioristic-intuitionistic moral philosophy. It asserts that the laws of duty are axiomatic formulae, which are recognized with immediate and intuitive certainty, like the mathematical axioms. We shall have to concede that the moral laws are immediately and universally recognized as valid propositions. They are nothing but the positive or negative expressions of custom, and every member of the community is conscious of custom, if he has any part in the life of the community. He knows of custom through the countless particular judgments by which others and he himself have approved and disapproved of acts; the certainty with which he immediately decides in individual cases depends upon practice. * * * Finally, it is no less certain that the moral laws arise in consciousness as "categorical imperatives." * * * So far, therefore, intuitionistic ethics asserts facts which cannot be doubted. But it is in error when it goes on to claim that these imperatives are *objectively* groundless, and that the sole business of ethics consists in systematizing the particular commandments and prohibitions. * * * There is unquestionably an objective ground for the existence and validity of the moral laws, which appear in consciousness in the form of absolute commands and prohibitions; their observance is the condition of the welfare of the individual and the species. And it is the business of moral philosophy to discover this ground, just as it is the business of a philosophy of law * * * to prove its teleological necessity by indicating the problems of human collective life which it solves."

*"Another error to which intuitionistic ethics inclines, is the error that conscience invariably reveals to everybody, with *subjective certainty* and *objective infallibility*, what duty demands. Thus Kant contends that 'the commonest intelligence can easily and without hesitation see,' what the moral law requires to be done; or, 'what *duty* is, is plain of itself to everyone; but what is to bring true durable advantage, such as will extend to the whole of one's existence, is always veiled in impenetrable obscurity.' The latter statement is certainly true; but it is certainly not true that no one is ever in doubt as to what duty demands. In many cases, of course, our duty seems perfectly clear immediately, but by no means in all."

*Paulsen, page 357.

It is just here, in the determination of what duty requires, by a careful consideration of all the circumstances within our knowledge, and their relations to our ideal of life and conduct, that conscientious and rightminded people encounter their greatest difficulties, make their successes or failures and show their wisdom or their foolishness. "But," it may be retorted, "this makes all moral questions uncertain, and subjects them to unbridled casuistry. I do not believe it *makes* them uncertain; they *are* uncertain, and will always remain so. The matter is really not so simple as those imagine who hold that an innate power, called practical reason, or conscience, infallibly regulates a man's conduct by subsuming each case under a general rule. The problem surely does not consist merely in deciding given cases according to a ready-made formula."

It is not necessary to repeat Paulsen's discussions and illustrations under this head. To feel doubtful and uncertain as to what duty requires, or as to which of several alternative courses of conduct we ought to follow, is a not very uncommon experience in the lives of most thoughtful and conscientious persons.

CONSCIENCE.

"We defined conscience as the *consciousness of custom* or the *existence of custom in the consciousness of the individual*. The authority with which it speaks is the authority of all those who support and protect custom and law against the particular deviating will: first, the authority of parents and teachers, who impress custom or objective morality upon the soul of the child; then, the authority of the wider circles, which pronounce judgment upon the conduct of the individual by the bestowal of praise and blame, honor and disgrace; further, the authority of the law and the magistracy, which deters the offender by threats and punishments; finally, the authority of the gods, which surrounds custom and law with religious awe. The individual compares his conduct with the standard thus sanctioned and protected, and regulates his individual will according to the universal will, which, after all, is his own general or fundamental will. Hence, arise those emotions which are experienced before the deed as the deterrent or impelling conscience, and after the

deed, as remorse or moral satisfaction. The content of conscience is varied, as varied as the customs themselves, which the different tribes and nations evolve according to their different natures and different conditions of life. The form, however, is universally the same: *a knowledge of a higher will by which the individual will feels itself internally bound.* This higher will, is, in the last analysis, universally regarded as the will of a superhuman, of a divine power."

"Those who interpret conscience as a voice from above, and regard their conception as an explanation of its origin, reject the historical psychological explanation, not only as an unsatisfactory, but even *dangerous* theory; supposing it robs conscience of its sanctity, and hence also destroys its efficacy. * * * I cannot share this view. It does not seem to me that the loss of authority, of conscience, is either a logical consequence or a necessary psychological effect of the anthropological explanation. * * * Why should the moral laws lose their validity because we are convinced that they express the experience gradually acquired by the race in regard to what is wholesome and harmful? On the contrary, what stronger proof can we desire than the hereditary wisdom of a people? In conscience, we have the subjective reflex of the objective natural order of moral life, as it has developed in custom and law; surely, this knowledge cannot destroy the validity or the teleological necessity of the order. * * * Here let me simply say that in my opinion, the time will never come when men will cease to regard the morality and holiness which they have evolved from their innermost being, as derived from the essence of God or the nature of the All-Real. How could these enter into the heart of man were they not rooted in the very nature of things? Is man an anomaly in the universe? * * * Moral laws are not the accidental injunctions of an arbitrary being, but are inherent in the nature of things, in the nature of man. So teleological ethics conceives them; and conscience, it conceives as the reflection of the objective uniformity of moral life in the consciousness of the individual. Hence, it regards conscience as a highly important organ for preserving life, which cannot be destroyed by speculations concern-

ing its origin; any more than the value of language can be impaired by abandoning the old superstitions which explained it as a direct communication from heaven. *Or do the rules of grammar lose their validity as soon as we become convinced that they originated in a human way? Well, then, neither will the moral laws lose their validity. Whoever desires to participate in the intellectual life of his people must speak their language and obey their laws; whoever desires to participate in their moral life, must follow their customs and obey the dictates of his conscience." * * *

"As Sidgwick admirably says: 'For though the imperfection that we find in all the actual conditions of human existence, is ultimately found even in morality itself, still, practically, we are much less concerned with correcting and improving than we are with realizing and enforcing it. The Utilitarian must repudiate altogether the temper of rebellion against established morality, as something purely external and conventional. * * * He must, of course, also repudiate as superstitious, that awe of it as an absolute or divine code which intuitional moralists inculcate. Still, he will naturally contemplate it with reverence and wonder, as a marvelous product of nature, the result of long centuries of growth, showing in many parts the same fine adaptation of means to complex exigencies as the most elaborate structures of physical organisms exhibit: he will handle it with respectful delicacy as a mechanism, constructed of the fluid element of opinions and dispositions; by the indispensable aid of which the actual quantum of human happiness is being produced; a mechanism which no politicians or philosophers could create, yet without which the harder and coarser machinery of positive law could not be permanently maintained, and the life of man would become—as Hobbes forcibly expresses it—'solitary, poor, nasty, brutish, and short.'"

INDIVIDUALIZATION OF CONSCIENCE.

"Conscience is originally the manifestation of custom or objective morality in the consciousness of the individual; it acts

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essentially as an inhibition of particular will impulses which deviate from the normal. But this is not its final and highest form. It exercises a more positive function in that it reflects an ideal of the perfect life. * * * *In its religious and poetical creations every nation produces concrete images of perfection; these take possession of the consciousness of the individual, and fashion his nature and will. He measures himself and his conduct by the ideal. * * * Conscience thus acquires a new meaning: * * * now it measures the actual life by its special ideal. * * * This will not be unrelated to custom; still it may differ widely from the universal conception and mode of life, so widely, indeed, that it may even bring the person into conflict with custom, and that this conflict may not arouse pangs of conscience, but be recognized as a moral necessity. *Objective* morality is now opposed by a *subjective* morality, a higher form, which applies a new standard to things."

"Whenever the personality whose individual ideal brings it into antagonism with the objective morality of the times, and leads to a recasting of moral values, is endowed with remarkable powers of intellect and will, those conflicts arise which form the dramatic climaxes in history. The real heroes of mankind have fought such battles. They rebel against the conventional values, against the ideals, which have become useless and false, against sham and falsehood, against the salt that has lost its savor. They preach new truth, point out new aims and new ideals, which instill new life into the soul and raise it to a higher plane. Jesus fought this fight. He rose above the religion and the customs of his nation; he conceived of a different and higher relation to God than that recognized by his people; and hence, he was not satisfied with the righteousness of his people, with their punctilious and yet scant and self-sufficient fulfillment of the law. So he placed himself and his disciples outside of the law of his people; he broke the Sabbath, he did not fast; he gave them, instead, a new commandment: "Love ye one another." And the established system, the objective righteousness, protested against the revolt, he entered upon the struggle of annihilation which ended in his death. What sustained him in his battles and sufferings

and led him to victory was his firm conviction that he was sent by the Father to proclaim the new kingdom of love and mercy. 'My meat is to do the will of him that sent me.' Thus Jesus has become the eternal prototype of all those who are thirsting after and battling for the kingdom of God, for truth and justice, of all those for whom life, as they find it, has too little force and spirituality,—too little love and freedom,—of all those who from the fullness of their hearts reveal their feelings and thoughts, and are then crucified and burned by the rabble, high and low."

Paulsen has two additional heads in his chapter on duty and conscience. Moral Nihilism; and the answers to some questions suggested by the notion of duty. It does not seem necessary to our purpose to enter into the discussion of either of them.

The individualized conscience, described by Paulsen in the preceding quotations, is the strongest force in the world to promote the moral and spiritual evolution of the human race. Some ideal of character and conduct is clearly perceived or imagined, and henceforth the person endeavors, more or less steadily and consistently, to bring life and conduct into conformity with the ideal, and to persuade others to adopt and to strive after similar ideals. He is no longer content to measure himself for approval or censure against the average conscience, as indicated by the customs and expressed opinions of the society in which he lives. On the contrary, he measures the customary conduct and standards of life by his own ideal. It is true that mistakes are sometimes made and some adopt a personal ideal that is worse instead of better than the average life and conscience of the community in which they live, but this opportunity is inevitable, for the plasticity and freedom of life which make development and growth possible must also allow the possibility of degeneracy and even destruction.

The individualization of conscience and the setting up of ideals and standards for one's self therefore calls for greater wisdom, self control and courage, than simply to adopt the conscience and standards of living prevalent in the society in which one finds himself.

CHAPTER III.

EGOISM AND ALTRUISM, VIRTUE AND HAPPINESS, MORALITY AND RELIGION, FREEDOM OF THE WILL.

*“Acts are called egoistic when their motive is individual weal or woe,—altruistic, when their motive is the weal and woe of others. Some moralists regard these motives as mutually exclusive, and contend that every act is the product of either egoistic or altruistic motives.” * * *

“This view gives rise to two opposing schools. *Pure altruism* sets up the principle: Acts have moral worth only in so far as they are determined by purely altruistic motives. *Pure egoism* asserts: It is not only allowable but morally necessary to make individual welfare the sole end of action.”

The discussion or controversy between these two schools appears to be a waste of time, for *actions* are never *purely* altruistic or egoistic, and it is doubtful if *motives* ever are, though they may sometimes nearly approach it. Paulsen is undoubtedly correct when he says:

*“It is as impossible to distinguish absolutely between egoistic and altruistic acts on the ground of their *motives* as it is to separate them according to their effects. Indeed, it is a somewhat curious notion, this notion that every act must have *one* motive. Nay, just as many causes coöperate in the physical world to produce a movement, so many motives work together to determine the will.* * * * Is the antithesis between egoism and altruism therefore meaningless?” * * *

“I do not, of course, claim that. Cases unquestionably arise, in which individual interests conflict, or seem to conflict, with foreign interests. Acts doubtless occur in which the individual seeks his own advantage at the expense of others' welfare and conversely, there are acts in which individual interests and inclinations are sacrificed for the welfare

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of others, from which it does not necessarily follow that individual welfare, if we take the word in its profoundest meaning, is promoted in the former instance and retarded in the latter. And it cannot be disputed that these facts have great moral significance. The above reflections simply desire to show that the opposition between individual and general welfare, selfish and altruistic motives, is not the rule, but the exception. As a rule, there is harmony in the effects as well as the motives. Life is not such an antagonistic affair as some moralists make it appear: it is not one constant struggle between mine and thine. No human life, perhaps, is wholly free from conflict, but there are many lives in which it plays no prominent part. Persons who enjoy healthy domestic relations and live in well-regulated communities, and pursue honorable and regular callings, do not experience many such conflicts, nor do they by any means believe that the altruistic settlement of such conflicts forms the essential content of their life and determines its moral worth."

A rather important aspect of this question seems to be that unless there has been enough of egoism to develop a personality having strength, wisdom, and moral and spiritual excellence, altruistic motives and conduct will be impossible since there will be no effective personality to exhibit them, and it is really the *surplus* power and resources left over in the development of the person that can be used for altruistic ends. There are two important practical aspects of the matter: First, in a very large proportion of the motives and conduct of life, there is no conflict between egoism and altruism: what is good for others is good for myself. Second, when there *is* conflict between one's own interests and those of others, the greater or more important interest or welfare should decide. We are not always called upon to weigh and measure with cold-blooded indifference and disinterestedness the value of the various interests to be considered, though even this may sometimes be desirable.

The motive power for altruistic actions is in the feelings and sentiments of affection, pity, justice, kindness, philanthropy, patriotism, etc., and usually it is the interests and welfare of those nearest to us that must take precedence, especially those

whom it is generally understood to be our duty to provide for and who are likely to be neglected if we do not. Doubtless, there have been instances, however, in which a service has been rendered for more remote interests of such commanding importance and value as to justify the neglect of interests near at hand, that should ordinarily be of first importance, even such as a provision for one's wife and children.

VIRTUE AND HAPPINESS.

*Paulsen's seventh chapter, on "Virtue and Happiness," proposes two questions: "(1) What influence has virtue upon happiness? (2) What is the effect of happiness upon character?"

"First. The first great and fundamental truth to which all peoples have been led in their reflections upon moral matters is the truth that the good man fares well and the wicked man ill. This conviction, which represents the experiences of the race, is expressed in countless proverbs. * * * The theoretical development of this thought forms the content of Greek moral philosophy. Virtue and happiness are connected, not merely accidentally, through the mediation of the gods, but in the very nature of things. The conception of happiness, however, is spiritualized; not *external* happiness or good fortune, but *internal* happiness, peace and repose of spirit, is directly joined with the exercise of virtue, or follows as its necessary effect. External welfare does not always fall to the lot of the wise and virtuous man; but virtue tends to realize this also; and in case he does not obtain it, he is sure of finding happiness in his own heart. This is also the prevailing sentiment in modern ethics. Hobbs and Spinoza, Leibniz, and Wolff, Shaftesbury and Hume, all attempt to point out the necessary connection between righteousness and welfare. * * * Virtue, welfare, honor, and inner peace go together as well as vice, misery, disgrace, and inner discord. This is especially true of the two extremes: virtue and inner peace, vice and inner discord. The two middle terms of the series are not so constant."

"A pessimistic conception runs parallel with this view of the relation of virtue and happiness which may be called the

optimistic view." According to this view "The evil doer is the very one who fares well; fortune favors him; while the good man fares ill.* * * *Strategy and violence, the latter against the weaker, the former against the stronger, are the means by which men rise and maintain themselves." * * *

"Which of these two views is the correct one? Is the truth of the first overthrown by that of the second? I do not think so. The sporadic pessimistic moods which now and then take possession of every nation and every individual, may perhaps be explained as follows, and reconciled with the optimistic view. It is, of course, an undeniable fact that the good do not always fare well outwardly. A man may become sick, even though he is temperate and prudent, and, conversely, a man who has no regard for his health may remain hale and hearty. An able and honest man may fail in spite of all his exertions, and a scoundrel may accumulate wealth by dishonest means. * * * But the very fact that such occurrences attract so much attention and arouse such indignation seems to indicate that they are not the rule but the exception. * * * These cases would not cause such excitement if they were not contrary to the nature of things. It is the rule that honest labor is a surer road to economic welfare than fraud and dishonesty; that sincerity and truthfulness arouse confidence; that falsehood and deception are poor means of making friends; in short, that virtue is approved before God and man, and that vice is despised and condemned."

"There is, however, an important exception to the last rule: The vicious do not love the virtuous, but hate them. * * * "This explains the awful impulse to lead others into temptation which is so common to vice. So, too, the flatterer and place-hunter hates the honest and truthful man, who goes through life with his head erect; he imagines that the latter watches, sees through, and despises him."

"Should vice ever gain the ascendancy in society, virtue would arouse in most men, if not contempt, at least hatred and aversion. And since the vices cannot make those who possess them agreeable in the sight of men—for virtue is agreeable to

the virtuous, but vice is not esteemed by the vicious, especially not social vice—a feeling of universal hatred would take possession of society.” We would have hell on earth.

*“We reach the conclusion that for the truly good man, for one whose will is completely ruled by virtue, virtuous action is always the greatest blessing, even though it should not bring external happiness, and should prove hard for his sensuous nature. * * * He, however, whose will is not ruled by virtue, who does good from fear or calculation, may feel disappointed, when the outward success which he hoped to realize from his honesty, temperance, and benevolence, does not appear. To such a person, virtue seems to be an unprofitable, or at least uncertain, means of happiness, and he utters pessimistic complaints, holding that the evil doers fare well and the good fare ill. This however, does not mean that he would have been better satisfied if he had reached by crooked means the goal which he complains of having missed by fair means. Hence the fact remains that there is a universal inner relation between virtue and success or prosperity or happiness, while the connection between wickedness and unhappiness is equally necessary.” * * *

“2. *The second question is: *What is the effect of happiness upon character?* By happiness we here mean external happiness: wealth, power, success, fame, honor, health, strength, victory. What effect has the possession or pursuit of these upon character?”

Observation of human affairs has convinced all the more highly civilized nations of the second great fundamental truth that happiness, or prosperity, or good fortune, is a menace to character, and finally also to welfare. We mentioned above, as the first maxim of Greek wisdom, the proposition that the good fare well and the wicked, ill. We may add as the second: Eutuchia” (prosperity, success, good fortune, etc.), “is not identical with eudæmonia” (real welfare and true happiness); “unalloyed happiness is not happiness.”

“Prosperity produces satiety, a fat heart, as the Psalmist says. Such souls are filled with pride, and pride leads to iniquity.

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which calls down upon its head the wrath of God, and destruction. That is, according to the conception of the Greeks, as expressed by their poets and historians, the natural course of events. Only an unusual amount of good sense will enable a man to bear prosperity." * * *

*"Hence we may say that real happiness is a proper mixture of so-called happiness (good fortune) and misfortune. A man's lot is not happy when all his desires are always and fully realized, —but when he obtains a proper share of joy and sorrow, success and failure, plenty and want, struggle and peace, work and rest, and obtains it at the right time. * * * And so we may be permitted to say that life, as we find it, is on the whole adapted to the real needs of human nature; it brings to everyone good and evil days, successes and trials."

It seems rather paradoxical to affirm that virtue tends to produce happiness, success and prosperity, and then to say that these have a tendency to destroy the virtue that produced them. Perhaps it may be explained in part by the fact that prosperity and success put to the test different elements and qualities of character from those previously developed and tested, and offer opportunity and temptation to forms of evil for which there had been little opportunity or inclination previously. It is true, also, that virtue is only one of many factors that must coöperate for the accomplishment of success or happiness, either of external circumstances or inner feelings. It has been said that the virtuous man is sure of inner peace and satisfaction whatever the success or failure of his outward circumstances and this is doubtless true in an important sense, in that he may keep his self-respect and steadiness and continuity of character and disposition, but the man of even perfect virtue (if there be such a man), is liable to have his inner as well as outer peace and satisfaction very much disturbed by such things as poverty, hardship, sickness and death, as they may affect his family or himself, and still more so if one of his children becomes vicious. We all understand that a man's virtue and personal character can-

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not alone preserve him from calamity and misfortune, which is the same thing as saying that virtue alone cannot procure success, prosperity, and happiness. If then, other forces and circumstance have important influence to procure prosperity, it may well be supposed that the peculiar and dangerous temptations that prosperity brings with it, may be attributed more to these other forces and circumstances than to the virtue, which also contributed to the result. It is a general rule that results react favorably upon the forces that produce them, at least in the moral and spiritual realm,—yes,—in the exercise of physical life also. The exercise of strength increases strength, and the success, prosperity and happiness which are the normal result of virtue, react upon character to give stimulus, confidence and courage to virtue.

Another matter to be considered is the fact that the evil influences of prosperity, especially of wealth, are seen oftener and more injuriously in the second and third generations than in the persons who have won prosperity for themselves. Inherited wealth more frequently results in moral injury to its possessor than acquired wealth, always supposing that it was acquired by honorable means.

When considerations such as these and others that may apply are given their due weight, it will be seen that the prosperity and success won by virtuous character and conduct are not especially dangerous to the virtue that won them.

MORALITY AND RELIGION.

In Paulsen's Chapter 8: *"The Relation of Morality to Religion," he attempts to answer the question: "Is there an inner connection—one inherent in the nature of things and therefore indissoluble—between religion and morality, or are they independent of each other, and merely accidentally related?"

"An historical reflection will prepare us for the answer. It is one of the safest propositions of anthropology that a very intimate relation exists between the religion and the morality of a people, at least at a certain stage of its development. The

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customs have the sanction of the gods; the commandments of religion and morality form a unified code of laws; piety and morality are regarded as one and the same thing. Let me simply call to mind the best known example. In the laws of Moses, religious, moral, and legal duties appear as wholly homogeneous parts of one law of God. * * * The fear of God is the foundation of morality; pious and good, godless and bad, are synonymous terms. Christianity and Mohammedanism accept this view. We find it also among the Greeks and Romans, Hindoos and Persians, Egyptians and Assyrians. The entire life of the individual and society is regulated by religion; all the institutions of state and society; all customs and usages which govern the life of the individual, have a religious basis. We note the same connection between religion and morals among the most civilized tribes of all the native peoples of America, among the Mexicans and Peruvians." Paulsen also quotes Waitz, an authority on anthropology, as saying, "There is hardly a more trustworthy sign and a safer criterion of the civilization of a people than the degree in which the demands of a pure morality are supported by their religion and interwoven with their religious life."*

* * * "Morality and religion spring from the same root, *the yearning of the will for perfection*. But that which is a *demand* in morals becomes a *reality* in religion. Perfection is described by morality in abstract formulæ; it is instituted in religion in concrete form as a divine, holy, and blessed life. And, too, morality and religion are seen to be two phases of the same thing in the subject: the individual is moral in so far as his willing and acting strive after perfection; pious, in so far as his feelings, his faith, and his hopes, are inspired with the image of the highest."

"Let us now consider the *effect* of the union of religion and morals. There can hardly be a doubt that the religious sanction of custom and the moral laws has, in a large measure, assisted in the moral discipline of the individual. * * * *The belief in a life after death has been especially influential in*

*(Th. Waitz: Anthropologie der Naturvölker. Vol. 4, 128)

this direction. * * * The fear and the hope of the here-after become powerful protectors of morality.”*

Paulsen goes on with a very long discussion of whether the close relation of morality and religion is essential and permanent or “merely a passing phenomena, peculiar to a particular stage of development. Will the connection be severed in the future? Will there then be a perfect morality without any religiosity?”

“This question was not seriously debated till recently. For centuries nothing seemed more self-evident than the inseparableness of morality and religion.” The question arises by reason of a purely physical conception of the universe, which some have supposed to imply the absence of any moral qualities or values, and to lead, as a logical consequence, to the ignoring of the moral laws. Paulsen does not support this view,—“We shall prefer to say: Whatever may be a man’s notion of the nature of things, the laws of morality are none the less binding upon him; they are not arbitrary prescriptions, the observance of which is advisable from the standpoint of rewards and punishments. They are rather laws of nature in the sense that the welfare of a life depends upon their observance. And the opinions of men in nowise affect them. Hence, if one were to infer from an atheistic materialistic conception, that the laws of morality had no further claim upon him, he would be in error, and would have to bear the consequences of his error. * * * Still, I do not believe that morality and religion are indifferent to each other.”

“There are two views of the world which are radically opposed to each other. The central thought of the one is that the good is an essential element in the world, that reality exists through the good and for the sake of the good. We can call this conception *idealistic*, following Plato’s terminology, who bases the world upon the idea of good. We may also call it *theistic*, if we mean by belief in God the trust that the good is the ground and the goal of the world, or, to use Fichte’s expression, that the world-order is in the last analysis a moral order. * * *

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"Opposed to idealism, we have *materialism*; according to it, the world-principle is in its essence absolutely indifferent to distinctions of value. The atoms and their uniform motions, of which the whole of reality is composed, have originally absolutely nothing to do with the good and the evil, the rational and the irrational."

Paulsen strongly supports the idealistic or theistic conception, and recognizes the close relation and mutual support and assistance of faith in God and conformity to his will which are the essence of religion on the one hand, and the character and conduct of life on the other hand. The chapter is long and no attempt can be made here even to epitomize his argument.

THE FREEDOM OF THE WILL.

*"Let me discriminate, at the outset, between two senses of the word; we may speak of freedom of the will in a *psychological* or in a metaphysical sense. The former means the ability to cause decisions and acts by one's own will (freedom of choice); the latter means that the will or the particular decisions themselves have no cause."

"In popular speech, the term 'free will' is employed solely in the first sense. An act is called free when the will of the agent is its immediate cause: determined, when it is caused by an external force, that is, either directly, by physical compulsion, or indirectly, by threats, misrepresentations, etc. In the latter case, the will is really not the cause of the decision; but here there is a wide range between gentle persuasion and irresistible compulsion, and therefore a corresponding gradual transition from complete freedom to complete determinism."

"That there is psychological freedom has never been doubted. But whether the will can be free in the other sense, is a subject of endless debate."

The question of metaphysical freedom as against fatalism or determinism, is not a practical one as related to the conduct of life and we need not spend any time in vain efforts at a solution of it. "It belongs to philosophizing theology, or scholasticism."

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After a lengthy description of the heredity, the circumstances, conditions and relations that influence one's life and character, he says: "Everyone has an immediate feeling of certainty that he is not moulded into what he is from without, that everything would have happened otherwise if he had willed otherwise. And he is likewise absolutely sure that the future shaping of his life depends upon his will. * * * I could also, and perhaps ought to, says self-consciousness, alter my mode of life, my behavior to others, my character. Is all this an illusion?"

"Certainly not. Self-consciousness does not deceive us. But what does it say? Surely this,—that to the influences which have determined and will continue to determine my life and character, must be added my wishes and inclinations, my convictions and resolutions, and particularly these."

Paulsen goes on in a lengthy discussion of responsibility and accountability, especially their practical aspects in the treatment by society of offenders and criminals. Then he says:

"The expression *freedom of the will* signifies in popular speech a *real, positive property of human nature*. Animals, too, have wills, but we do not attribute free will to them. Wherein does the difference consist?"

"Animals are moved to action by momentary impulses and perceptions. * * * Deliberation, hesitation, and choice exist only in rudimentary forms among the most highly developed animals. Now such processes are characteristic of man. He determines his conduct by resolutions. Resolutions are the result of deliberation; in deliberation several possible courses of action or modes of behavior are compared with the ultimate aims of individual and social life, and chosen accordingly. Man, therefore, is not determined by his *impulses*, but he determines himself by *ideas of ends*. In his purposes, man comprehends his whole life into a unity, as it were, and chooses the particular acts according to their relation to this principle. * * * The unity of practical self-consciousness or conscience, exercises a constant control over the particular processes of inner life, feelings, strivings, acts, thoughts. Well,

this faculty of regulating and determining the particular functions of life by an idea of one's life, is precisely what we mean by free will. Hence, we may also say that a person's acts are free, when he is determined, not by present stimuli and the momentary desires aroused by them, but by ideas of ends and ideals, by duty and conscience; in the former case, he is driven, in the latter alone he acts."

"We may accordingly add that, in a certain sense, the view that the human will is exempt, or forms a kind of conclave in nature, is correct. The animal is a point of transition for natural processes; it is itself a part of nature, determined from without by constantly approaching stimuli and influences. Man, on the other hand, in a certain manner, emancipates himself from the course of nature; he rises above nature and opposes it as a self, he determines it and employs it, is not determined by it; man becomes a *personality*. As such, he is able to put his whole self, his ego, into every phase of his life, and therefore he is *responsible* for every particular act."

"It is apparent that freedom in this sense is not an original endowment of human nature, but an acquired characteristic; it has been acquired by the entire race in the course of history, and must be acquired anew by each individual. The new-born child does not bring with it a ready-made freedom; nay, it is driven like an animal by momentary cravings. But gradually the rational will, supported by education, rises above the natural impulses. This occurs in a different degree in different individuals; some are wholly controlled by these impulses during their entire lives, others acquire such a remarkable control over nature in themselves that they seem to regulate even the smallest details of their lives by rational deliberation, and never do anything or leave anything undone, except by choice. It is to be observed, in this connection, that though it is vulgar and base to give the impulses complete mastery over one's self, yet the complete suppression of them fills us with fear and awe. * * * Man seems to be intended as a mean between an animal and a purely rational being."

"Hence, can a man determine himself by his own will?—

Can he fashion his will by means of his will? Yes and no. Yes, for he undoubtedly has the faculty of educating himself; he can fashion his outer and inner man with conscious purpose, according to his ideal; he can discipline his natural impulses, nay, even suppress them so that they will no longer move him. To be sure, he cannot do this simply by wishing or resolving it; he can do it only by constant practice and by employing appropriate means, in the same way that he acquires bodily skill." * * *

"On the other hand, we shall have to say that this formative principle itself must be native to him; this he cannot give himself by his will, for it is the innermost will itself. * * * We are everywhere confronted with the notion;—The freedom of man means the control of the spirit, the slavery of man means the rule of the animal desires."

"This is the positive significance of the freedom of the will. And ethics should not permit the whimsical attempts of a few metaphysicians to explain freedom of the will as the causelessness of the individual will or volition, to induce her absolutely to reject the so fruitful and necessary concept of free will. Freedom of will means, according to the popular usage of all men, these metaphysicians excepted, the faculty to determine one's life, independently of sensuous impulses and inclinations, by reason and conscience, according to purposes and laws; and that man has such a faculty, that this really constitutes the very essence of man, no one has ever doubted."

CHAPTER IV.

DOCTRINE OF VIRTUES AND DUTIES.

SELF-CONTROL, TEMPERANCE, COURAGE.

Introducing his Book Third, "Doctrine of Virtues and Duties," Paulsen has this quotation:

"I possess three treasures; these I guard and prize highly. The first is the love of humanity; the second, frugality; the third, that I do not presume to be better than any one else. Love of humanity—with this I can be fearless; frugality—therefore I can give to others; freedom from ambition—hence I have no one above me.

"Nowadays we despise love of humanity and are insolent; we despise economy, and are wasteful; we despise modesty and strive to surpass everyone else. These paths lead to death."

Laotsee, Taoteking 67.

(After translation of Noack.)

VIRTUE AND VICES IN GENERAL.*

"The doctrine of duties and the doctrine of virtues are different modes of presenting the same subject matter. The former gives us a system of rules which, as commands or laws, specify the modes of conduct essential to the solution of the problem of life. The doctrine of virtues describes the system of powers by the exercise of which this end is realized. We have already discussed the nature of duty. Let us now add a few words concerning the nature of virtue."

"Virtues may be defined as habits of the will and modes of conduct which tend to promote the welfare of individual and collective life. *Impulses* form their natural basis. Virtues are not inventions of the moralists; they are natural predispositions. Predispositions only, remember; for impulses are not themselves virtues: as impulses they have no moral

*Paulsen. Page 475.

quality. The impulse to eat is not good or bad, but it is the foundation of rational self-preservation. The sexual impulse is not good or bad, but it is the natural basis of the virtues on which family life depends. Compassion or sympathy, the impulse to alleviate the pains of others, is not good or bad, but it is the natural foundation of the virtue of benevolence. Similarly, indignation at wrong and the impulse of revenge form the natural basis of the sense of justice. Moreover, impulses form the permanent basis of the virtues. They cannot, as many moralists are prone to assume, be supplanted by rational reflection. A being like Spinoza's sage, who is determined to action, not by impulse, but by reason alone, does not exist and cannot exist; any more than Kant's dutiful man, whose will is governed solely by respect for the moral law, without impulse and inclination. Such a being would not be a human being, but a phantom."

*"Impulses are fashioned into virtues or moral excellences by *the reason*. We are educated, first, by the reason of others, then by our own reason. Human life begins as a purely impulsive life; the reason is developed slowly and at a late stage. During the long period of youth, the collective reason of the race, as represented by parents, educators and teachers, takes the place of individual reason. Fixed habits are the result of this education; in them the customs of the community become individualized. Acquired habits constitute an extremely important part of moral culture; they obtain control over life and guide it with automatic certainty. The important elementary functions of life, especially, are governed by them. Cleanliness, for example, against which the child at first rebels, becomes a habit, which acts with the regularity of a natural function. Most closely related to it, is shame, which is implanted and established by education, and soon acquires the force and certainty of an instinct. So, too, aversion to falsehood, or politeness to others, becomes a second nature. The formation of such automatic forms of reaction constitutes a primary and important phase

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of moral education. The second stage is the gradual development of the individual's appreciation of moral goods: this is the function of moral instruction. The latter will always have to consist, at first, in the presentation of concrete examples of the good, and provided the proper care is exercised, —of examples of the evil also. After many concrete facts have been handled, the abstract or philosophical treatment of moral concepts will gradually be taken up. Perhaps our public instruction is too cautious in this respect. Our schools, the higher as well as the lower, are afraid of the evil effects of premature abstract instruction in morals, and therefore decide to omit it altogether. I fear that the omission is disastrous. The time is bound to come in the life of every young man when he will begin to inquire into the principles of moral conduct and judgment; and there is danger that, being wholly without guidance he will become the helpless victim of his own crude thoughts or of the sophistry of 'enlightened' companions. Principles and moral instruction are not in themselves necessary to secure correct judgment and action, but they are necessary to protect the individual against inadequate and misleading principles."

"But not only is the individual educated by others, he gradually *learns to educate himself*. The important thing is to learn the great art of governing the inclinations by means of a rational will, one that is determined by principles, to fashion and educate the impulses according to an idea of perfection, which gradually assumes shape. When the child leaves school and the parental home, his education by others practically comes to an end. The most eventful period of his life now begins, the period of incipient moral independence. His previous training is now put to the test; it must show whether it has succeeded in establishing the power of self-government. Not many discover the right path at once; the art of self-government, like everything else, has to be learned. It can be acquired only by constant intercourse with the world; hence there is an instinctive desire at this period of life to come into frequent contact with men and things; these are the years of travel, which follow the years of ap-

prenticeship. At the end of the *Wanderjahre*, between the ages of twenty and thirty, or in some cases not until the close of this period, the inner man has assumed definite and permanent shape. The following years do not possess the dramatic interest of their predecessors, the time of great crises and decisions is past; the exercise of the physical, mental, and moral powers and capacities which have been acquired forms the content of the age of manhood. In old age the powers diminish, life gradually loses itself in reminiscences, and so drifts into the past. Differences in moral types correspond to these four ages of life. Pliant modesty constitutes the inner habit of the well-trained boy; hopeful, optimistic idealism, that of youth; persistent and energetic action, that of the man; the tranquil peace of contemplation, that of old age."

*"This would answer the old question, the discussion of which marked the beginning of Greek moral philosophy: *Can virtue be taught?* We answer with Aristotle: It certainly can: but like all excellences, it must be practiced first of all; hearing others talk about it will not avail. We do not learn to walk and to ride, to teach and to govern, by hearing these things talked of; so it is with virtue. Of course, practice can and must afterwards be supplemented by theoretical instruction; this applies to moral efficiency as well as to physical dexterity and skill. The counsels and teachings of parents and teachers, of spiritual advisers and preachers, may assist the moral development in a most effective way. * * * Of course, mere babble will not avail. Such instruction will prove effective only in case it comes from the proper source, and rests upon a profound knowledge of life, its order, and its laws."

"Virtues are normal powers of the will, tending to preserve and unfold human mental life. *Vices*, on the other hand, are abnormally-developed powers of the will, which tend to destroy individual life and that of the surroundings; or, rather, not really powers of the will at all, if we mean by will the rational human will, but abnormally-developed nat-

ural impulses. Vice always indicates a lack of will; indeed, all evil is, according to the old view, nothing really positive; it does not belong to the essence of the will, but must be defined as a lack of will. * * * The fundamental form of vice is lack of will power to harmonize the impulses; strong natural impulses gain absolute supremacy, while weak ones entirely disappear. When the sympathetic impulse or the instinctive faculty to anticipate in feeling the more remote consequences of acts, is poorly developed, and the defect is not remedied by education and self-government, the habit of selfishness and inconsiderateness arises. Certain impulses may be hypertrophically developed, and may gradually crowd out all the others. So for example, in the case of the alcoholic, the desire for certain stimulants, gradually increases in strength, and all other impulses die out, such as the impulse to work and acquire, the love of knowledge and spiritual activity. The sympathetic feelings and social impulses are likewise weakened and finally extinguished, and with them shame and conscience, which at first reacted against the excesses, disappear. In the same way, life is debauched by other abnormally-developed impulses, by unbridled sexual impulses, by the impulse to acquire and possess property, which is intensified in rapacity and greed, by the love of fame and honor, which degenerates into ambition, etc.; these monopolize all powers and all strivings, and finally render the soul completely insensible to all other interests and considerations." * * *

"*It is customary to distinguish between two kinds of duties: *duties toward self and duties toward others*. The notion of duty toward self has been rejected by some; there can be duties, it is held, only where there are legal rights. It seems to me that this is an unnecessary contraction of the concept. If the individual life has its moral problems to solve, it likewise has its duties. * * * Hence, I shall retain the old classification, reminding the reader, however, that it is not a legitimate division: there are, as was shown above, no acts which affect only the individual or society,

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hence also no duties toward self which are not at the same time duties towards others, and conversely."

"Corresponding to this classification of duties, we may also divide the virtues into two groups: we may call them *individualistic* and *social virtues*. The fundamental form of the former is *self-control*; the fundamental form of the latter *benevolence*. They are rooted in the two fundamental forms of impulsive life: the impulse of self-preservation and the sexual impulse."

SELF CONTROL.

"*The chief purpose of all moral culture is to fashion the rational will so that it may become the regulative principle of the entire sphere of conduct. We call the virtue or excellence which regulates our behavior and conduct by the rational will, independently of momentary feelings, *self-control*. We may also define it as the capacity to govern life by purposes and ideals. It is the fundamental condition of all moral virtues, the fundamental precondition of all human worth, nay, the fundamental characteristic of human nature. Animals are determined by blind impulses, but the specific excellence of man consists in his determining his life by his will; without self-control, no freedom and no personality. The Greeks call the virtue of self-control *healthy-mindedness*. Senseless, foolish, is the man whom fear, anger, and desire, control, causing him to act irrationally and to ruin himself;—*healthy-minded, rational*, on the contrary, is the man who keeps his wits even in difficult situations, and acts in accordance with the law of self-preservation."

"Self-control assumes different phases, corresponding to the different forms of impulsive life. As its two fundamental aspects we may, with the Greek moralists, designate *temperance* and *courage*. Temperance may be defined as the moral power to resist desires attracted by tempting enjoyment, when the gratification of such desires tends to endanger an essential good. Courage is the moral power to resist the natural fear of pain and danger when the preservation of an essential good demands such resistance."

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TEMPERANCE.

*“Temperance or moderation, the ability to resist temptation to sensuous pleasure, is the precondition of humanization. The animal is essentially blind impulse, in the satisfaction of which its life consists. Man, too, is endowed with an animal nature, but its purpose is to serve as the soil for a higher, spiritual life; this soil is prepared by the discipline of the natural impulses. The latter are not to be eradicated, that would mean insensibility and finally death, but their satisfaction is to be so regulated that they not only will not disturb the development of higher life, but rather assist it. The relation is reversed in the opposite habit, *intemperance*, which is not merely a relapse into an animal state: nay, the higher powers and gifts of man are here subordinated to sensuous desire. So in gluttony and the worship of the belly; all the arts of civilization are here employed to excite and satisfy sensuous desires. So pleasure-seeking and also sexual dissipation have drawn into their service an entire industry of exquisite enjoyments.”

“Even the most superficial examination of the facts cannot leave us in doubt as to the value and effects of these two contrary modes of action. Intemperance, dissipation, inordinate love of pleasure, first of all destroy our sense and capacity for higher things; the will and the intellect are exhausted by excesses; finally the sensibility is blunted until at last even the faculty for enjoyment is lost. All passive enjoyments deaden the sensibilities; stronger and more refined excitations are constantly needed to procure feelings of pleasure through the exhausted organ, until at last the chronic state of dullness which is characteristic of the *roué* is reached; the powers of the organism and its irritability are exhausted; nothing is left but the repulsive dregs of life. Temperance has the opposite effect; it makes the entire man healthy and vigorous, capable of action and enjoyment.”

“*This virtue, like all habits, is acquired by experience. The foundation is laid by a good *education*. The best way to

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prevent the growth of excessive desires is to satisfy the natural needs in an appropriate and orderly manner. This can easily be done in a well-regulated household, but is extremely difficult under conditions of luxury as well as of poverty. Perhaps we can still agree with John Locke that an honest farmhouse is the best place for rearing a child. Gradually, the child may be encouraged to give up little things of its own accord; we cannot begin too soon in teaching the child the great art of life: to sacrifice today for tomorrow. The child then educates itself. The sense of honor may be appealed to as an ally against desire. The ability to bear privation with equanimity is so closely related to courage that the boy too sees the connection: it is weak and cowardly to yield to desire. Greek ethics is full of excellent moral advice on this subject. How disgraceful, it says, to be compelled to obey the animal or child in us, which is full of needs and desires; how beautiful and praiseworthy and in keeping with man's dignity, on the other hand, is the freedom and independence which is not disturbed by privation and want! Whoever succumbs to his desires is a slave to objects; they draw him now hither, now thither, through pleasure and fear. * * * These are sentiments which the youth of all ages can understand. When the sense of honor works in the opposite direction, as happens, to a large extent, in our times, the relation is an unnatural one. There are two essential reasons for such perverseness. The first is the wish of the youth to show that he has the means, the second, that he has the power and the courage to indulge himself. The latter motive exercises a particularly strong influence upon the young man. He is afraid of being looked upon as a baby, standing in awe of the rod, or as a "goody-goody" boy, who is afraid of hell and the devil. * * * The satisfaction of his cravings becomes a matter of show. We are ashamed, to use Augustine's expression, of not being shameless." * * *

"The most fruitful method of counteracting the growth of cupidity and the inordinate love of pleasure is to train the individual to *efficient action*. All successful exercise of

natural powers and skill in labor and in play is, as Aristotle teaches, accompanied by pleasure. And this pleasure is superior to the pleasure of passive enjoyment. It can be procured without the sting of desire. It is more independent of external conditions; enjoyment consumes, activity creates commodities. It is intensified by repetition; for while passive pleasure increases the intensity of desire but dulls the faculty of enjoyment, action increases our efficiency; and the greater the skill, the greater the pleasure of exercising it. As in all cases, the better is here the enemy of the good; the pleasure which we derive from action, especially that resulting from play, is the most effective means of suppressing the pleasures of passive enjoyment." * * *

"An ascetic life is characterized by the habitual renunciation of even moderate and legitimate pleasures." Asceticism has undoubtedly performed a useful service in the past as a protest against excessive indulgence, and an example of the power of the human will to suppress and perhaps finally to extinguish the normal impulses and desires, 'for wealth, or material culture; for fame and power, or ideal culture; and finally, of family life, that is, the preservation of the species, or the precondition of all human culture.' Asceticism in its extreme forms has few examples and few advocates in these days. Perhaps it is because there is a general opinion that examples of moderate and appropriate exercise or indulgence of normal impulses and desires will have greater influence for good upon all beholders than either abnormal renunciation or abnormal excesses.

*"*Unpretendingness* or *modesty* is a modification of temperance, its inner form as it were. It is a moderation of desire as such, the moderation of the desire for wealth, and fame, position and pleasure. Unassuming modesty consists in habitually lowering one's pretensions to the level of one's fortunes. Its effect is contentment; and hence it is the safest guide to happiness, just as its opposite, covetousness, or cupidity is the surest means to unhappiness. Everybody is complaining of the rarity of contentment and of the prevalence of discontent. Although the conception of a

past golden age of universal happiness is an optical illusion, the growing discontent among the European peoples of the present is not an illusion. Discontent increases in direct proportion with inordinate desire, for the development of which the conditions are unusually favorable in our age * * * Is there no cure for this disease? We are referred to the church and the restoration of its power. If by this we mean, not external power, but an inner frame of mind, humility and piety, then there can be no doubt that the remedy would prove effective. Perhaps nothing but true inner religiousness can give us perfect peace in regard to earthly things." * * *

*"Again: if you have children help them. There are two ways of looking at life, one of which will certainly make it happy, the other unhappy. The first is the habit of regarding everything good that life yields as surpassing your expectations, and every misfortune as falling below them; the second is the reverse of this. You have it in your power to give your child either mood. Grant all his wishes, give him everything he sees, let him choose what he ought to eat and drink, what he ought to do and to leave undone, remove all obstacles from his path, bear his burdens for him, praise his ability and goodness; in short, be all tenderness and devotion; and you may be sure that he will, upon entering the world, find it hard and niggardly; that he will be discontented and unhappy. If you are unwilling that this should happen, steel your own heart, and do not be afraid of being called an unnatural mother by all educated mothers."

"Not long ago, I witnessed the following little incident: Once there were two little girls, perfectly healthy and cheerful, and blessed with the best of appetites. They went to visit an aunt, who loved them very much, and did everything she could to please them. She used to ask them before each meal what they liked to eat, and when the meal was served, what they preferred to have. Before two weeks had passed, these two little girls no longer enjoyed their food; one of them couldn't eat this, the other couldn't eat that; their plates were always half full, and at the end of every meal they were discontented and in

tears. "How is it," asked the aunt, when the mother of the two girls came to see her, "that things are so different at home?"* "I will tell you," she answered, "At home I never ask them what they want, and never give them as much as they call for."

"Happy the man whom Fate treats in the same way. He that is able to choose each day what to do and what not to do, he that can have as much as he desires to have, will soon tire of life. Hence, be thankful that you do not get everything you ask for; learn to desire, so Marcus Aurelius counsels you, not that things govern themselves according to your wishes, but that your wishes govern themselves according to the things."

COURAGE.

"By the side of *temperance* Greek philosophy places *courage*, the ability to resist painful, dangerous, and terrible impressions by means of a rational will. The former is the normal conduct, in respect of pleasure; the latter, of pain and danger. We may, with Aristotle, define both virtues as a mean between two vices: temperance is the proper mean between insensitiveness to sensuous enjoyment and licentiousness; courage the mean between abject cowardice and blind foolhardiness."

"When an animal finds itself threatened by a hostile attack, we notice one of two things: either the attack rouses fear and impels it to flight; or it produces rage and rouses it to defend itself. The latter behavior is peculiar to beasts of prey, the former to their victims." * * *

"*Both modes of conduct are also found among men. There are men who run away like sheep at the first sign of danger. There are others, on the contrary, who, like beasts of prey, are straightway impelled to blind and ferocious attacks, when threatened or injured. Both modes of conduct are condemned by men, the former as cowardice, the latter as blind rage or foolhardiness. A different kind of behavior is required of man, and that is courage. That man is brave who, when attacked and in peril, neither blindly runs away

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nor rushes into danger, but retaining his composure, carefully and calmly studies the situation, quietly deliberates and decides, and then carries out his resolution firmly and energetically, whether it be resistance and attack, or defence and retreat. Prudence, therefore, constitutes an essential part of valor." * * *

"The origin of this virtue might be explained biologically, as follows: The most dangerous enemy of man is man. In battle with this adversary courage has been acquired; it is the means of defence against the most fearful weapon of attack, the intellect. Against this, neither blind flight nor blind aggression will avail, as is seen in the battle of man with animals. Fear carries the fleeing ones into his net, while rage brings the ferocious ones within range of his sword or gun. Such an enemy can be resisted only by means of the same weapon, the intellect; that is, by courage, by presence of mind in battle." * * *

"*Martial* courage is the first form in which this quality receives recognition, perhaps the very first virtue which wins admiration. Courage is originally *the* virtue, cowardice *the* vice, as the Greek and Roman usage of language attests. And youth has no sincerer regard for any virtue than for stern and shrewd, and especially magnanimous courage." * * *

*"As civilization advances, other forms of resistance came to surpass martial courage in importance. Chief among these I mention what might be called *civil* courage, *independence of thought, characterful self-assertion* against the great pressure exerted by superior and inferior forces. Civilization has the tendency to create relations of dependence; dependence upon men takes the place of dependence upon nature; dependence upon superiors and patrons, friends and fellow-partizans, customers and voters, society and public opinion. Dependence has the tendency to pervert the will; it inclines the individual to accommodate himself, to let things take their course, to obsequiousness, to cowardly self-denial, to falsehood in every form. So the moral duty arises to develop

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the inner power of resistance which calmly and firmly opposes every attempt to subject the individual to established customs and authority, which serves and remains loyal to truth and justice, regardless of whether such conduct brings favor and popularity or disfavor and contempt. To remain true to oneself, that is the aim of such ideal courage. No one can have it, the center of whose life does not lie within himself; whoever makes external things his ultimate goal cannot attain to inner freedom. Spinoza was, in his life and teaching, a great preacher of this doctrine of freedom."

"Another form of courage is perseverance or persistence, the power of the will to accept and continuously to endure all kinds of hardships and exertions, which are necessary to realize one's ends. It is the virtue of the *working* man. Martial courage was the virtue of the heroic age; perseverance is the courage of the industrial age. It is in this virtue that the civilized man so immeasurably surpasses the savage. The savage is capable of great momentary exertions, but not of making a continued effort to overcome the small obstacles in which all work consists. A partial reason for this is his inability to conceive far-reaching aims. Hence, as soon as the momentary pressure of want or of the natural impulse ceases, he yields to the law of inertia, which also governs living bodies."

"The *love of order* may also be regarded as a phase of perseverance, the habit of doing everything with business-like regularity; a very valuable quality, which procures for us freedom and tranquility. The consequence of disorder is confusion, which begets fear and trouble. This is especially true of the tendency to procrastinate. When our work is done we feel at peace, but when we put off our tasks we are constantly fretting about them, and are finally forced to perform them hastily and unsatisfactorily at an inopportune time." * * *

"Patience, too, is related to perseverance. It is the ability to bear pain and suffering without being overcome by them. We may distinguish two aspects of patience: a somewhat passive patience which bears sufferings without complaint

and opposition, and the more active power of the soul, the ability to survive defeats, disappointments, and losses, and to begin life anew. Patience is *feminine* courage. Both forms, especially the former, are more characteristic of women than of men; women not infrequently display a remarkable capacity for enduring pain. This fact is evidently due to the natural difference of the sexes; women are more experienced in all kinds of suffering than men. A man's nature is impelled to attack and defence: hence he finds it more difficult to yield to the inevitable. But active patience, too, the elastic resistance of the soul, is one of the most beautiful and valuable qualities of the woman. It is harder for a man to get up again after he has met with misfortunes. A woman generally finds less difficulty in beginning anew; she soon begins to hope and fear again, to work and strive; she has a more flexible nature. Man's strength is more unbending and brittle. A woman is also better able to battle with long-continued troubles and obstacles; when a man impatiently sinks beneath the load, she retains her equanimity and even her cheerfulness. For that reason, woman is the born guardian of youth, the nurse of the sick, and the counselor of old age."

"Great patience in suffering is the invariable mark of a noble character; courage and perseverance may belong even to a selfish and malicious will. Patient resignation in suffering is a sign that the violent natural impulse to life, which rebels against suffering, has been broken and silenced by a higher will. This is why sufferings which are accepted by the heart and patiently borne are expiatory."

"A third form of self-control is *calmness*, the ability to control, by the rational will, such emotions as result from disturbances in our relations with our fellow men; e. g., anger, vexation, ill-humor. To the lack of this virtue, and to envy and pride, are due most of the disagreeable annoyances which wear out the lives of so many men. Without the ability to overcome the inevitable petty collisions, intercourse with human beings becomes a constant torture."

"'If you are going to bathe,' Epictetus admonishes us, 'place before yourself what happens in the bath; some splash-

ing the water, others pushing against one another, others abusing one another, and some stealing; and then with more safety you will undertake the matter if you say to yourself, "I now intend to bathe, and to maintain my will in a manner conformable to nature." So it is here: when you move into an apartment house, think of what will happen there; the neighbor's dog will bark, his boys will romp around, his daughters will play on the piano; if you cannot endure these things, do not move in, but build yourself a house outside of the city, be it ever so modest. But if you must move in, tell yourself beforehand that you must, and yield to the inevitable."

"Indeed, it is very strange. We know that we must always adapt ourselves to the nature of the things which we desire to subject to our purposes; only when it comes to human beings do we seem to forget it. A stone is in my way. I do not scold it, but walk around it or push it aside. A watch or a machine is out of order; we do not beat it, but inquire into the cause, or hand it over to an expert to mend the defect. But when a human being fails to do our bidding, when a neighbor displeases us, or a friend acts in a manner which we do not consider right, when a pupil does not know his lesson, or the soup does not taste right, we get angry and scold. As though abuse and anger were the panacea for governing human souls! A human soul is of all things in the world the most complicated and most difficult to handle; and hence the art of governing souls is the hardest of all arts. And since it is the most important art for our happiness, it surely deserves to be studied with greater care. The most important thing in this art, however, is the ability to retain one's composure; only calm and prudent investigation will succeed in discovering the causes of the trouble, and not until these have been found can the proper attempts be made to remedy it. However this may be brought about, whether by instruction, example, counsel, encouragement, assistance, admonition, entreaty, threats, punishment—under all circumstances, Bacon's word will hold good that he alone can rule Nature who obeys her. Any one, of course, can get angry

and scold, but this is merely a confession of helplessness, and does not tend to improve matters; nay, it is apt to make them worse. Even where punishment is the proper remedy, it will be all the more effective if administered calmly and firmly."

"The fruit of self-control, which reaches its completion in the virtues of temperance and unpretendingness, courage and perseverance, patience and tranquility, is *inner peace and cheerfulness of mind*. * * * This is not only in itself the greatest part of human happiness, but also the source of real human pleasures. The calm and cheerful soul is capable of the quiet pleasures of reflection: the forms of things are mirrored best in the tranquil lake. The social duties thrive in the contented heart—justice, veracity, tenderness, benevolence, faithfulness; and from these in turn spring the joys which friendship and domestic happiness yield."

"This is the path which leads to self-preservation and welfare. Wisdom is needed to find and follow it. Hence, all peoples praise wisdom as the great guide of life. The royal sage of the Hebrews mingles his praises with those of the Greek philosophers: "Happy is the man that findeth wisdom, and the man that getteth understanding. For the merchandise of it is better than the merchandise of silver, and the gain thereof than fine gold. She is more precious than rubies; and all the things thou canst desire are not to be compared unto her. Length of days is in her right hand; and in her left hand riches and honor. Her ways are ways of pleasantness, and all her paths are peace. She is a tree of life to them that lay hold upon her; and happy is every one that retaineth her. The Lord by wisdom has founded the earth; by understanding hath he established the heavens."*

*Proverbs 111, 13-19.

CHAPTER V.

THE BODILY LIFE—FOOD AND DRINK—HABITATION AND CLOTHING
—REST AND RECREATION.

THE ECONOMIC LIFE—PROFESSION OR VOCATION—FRUGALITY AND
EXTRAVAGANCE.

*“The function of the body is to serve as the *organ and symbol* of the soul. There is no difference of opinion concerning this practical estimate of the two phases of man’s nature. Even the materialist, who regards the soul as a passing function of matter, will accept our proposition; for him, too, the body is the servant of the soul. Every one is likewise agreed as to what constitutes a good servant. To accomplish and endure much and to demand little—these are the qualities which we all consider valuable in a servant. These also determine what is desirable in a body; the healthy, strong, and hardened body endures much and wants little; the sickly, weak, and pampered body does little and makes great demands. Hence follows the rule of duty: Do what is suited to preserve and increase the health and strength of the body; avoid what impairs and weakens it. The other function of the body is to express or symbolize psychical life. Beauty and *grace* are the visible corporeal manifestations of a good and beautiful soul. Grace is acquired beauty; the quiet security of the soul which is master of itself is reflected in quiet, steady and appropriate movements. Hence follows the rule of duty: Educate the body, so that it may appear in this visible world as a pleasing expression of the invisible beauty of the soul.”

“It must be left to dietetics and gymnastics to develop these general formulae into a system of rules. * * * I shall merely touch upon a few phases of the problem.”

“Let us first consider the question of *nutrition*. It is characteristic of human beings to prepare their food artificially and they do it universally with the aid of fire. The use of fire for this purpose plays an important part in the

*Paulsen, page 505.

emancipation of man from nature. Whereas, the animal is limited to the territory producing the plants or animals upon which it feeds, and is itself a product thereof, man has made himself lord of the earth; everywhere he finds what may, with the help of fire, be converted into food. In other respects, also, the use of fire in the preparation of food has exercised an important influence upon the development of human life. Wundt calls attention to the fact that by necessitating the common preparation of certain foods, it at the same time led to their common consumption; to it we owe the origin of the common meal at the hearth. With the meal is connected the sacrificial worship, growing out of the funeral feasts; the hearth becomes the altar. The meal, coming at regular intervals and dividing the day, also leads to the first division of time. The child still receives its first lessons in the discipline of the animal desires by governing its appetite according to the meals."

"Let me add a word or two concerning degeneracy in nourishment. In emancipating himself from the natural guidance of instinct, which controls and likewise preserves the animal, man exposes himself to aberrations. The palate is stimulated by artificially prepared food, and the reception of food excites pleasure even when it is not needed. *Gluttony* and *hoggishness* are universally characterized by the perversion of the organs of nutrition into organs of pleasure. It appears that such abuse never occurs among animals, but that among human beings it is common to all ages and to all peoples. Travelers bring us horrible reports of the coarse forms of gluttony practiced by uncivilized tribes. All of these seem also to have hit upon the manufacture of intoxicating liquors, or to have introduced them into their countries from abroad."

"Everybody knows to what extent the life of modern civilized nations is devastated by *drunkenness*. It seems that the Germanic nations have from time immemorial been more predisposed to this vice than the Romance peoples, which is, perhaps, to be explained by conditions of climate. In certain parts of Germany a considerable part of the male population

is directly ruined by drunkenness, and there is no country in which this vice does not cause the most serious disturbances. The immediate effects of drunkenness are these: the economic life becomes unsettled, family life is neglected and destroyed, the moral-spiritual life is brutalized and debauched. Pauperism, crime, a host of diseases, insanity, suicide, degeneracy of offspring, follow in its melancholy wake."

"The conviction is growing among earnest and thoughtful men that a very serious danger here confronts the future progress of civilized peoples. How shall we meet it?"

Paulsen covers eight pages with a discussion of the drinking and tobacco habits in Germany, and some of the other countries of Northern Europe, and the laws, and the moral and social influences by which it has been sought to diminish the prevalence of these evils.

In this country there has been a constant controversy for sixty years past between the advocates of a total prohibition of the sale of intoxicating liquors and those who advocate a more or less severe control and supervision of such sales, by a high license, the prohibition of selling liquor to minors or drunkards, the closing of saloons at midnight or 1 a. m., as in Chicago, and other restrictive measures. (I believe there are now but few who would openly advocate leaving the sale of liquors as free as that of groceries and meats.) The wisest public policy respecting the liquor traffic will vary in different communities, for the simple reason that the question of what *ought* to be done can only be answered after finding out what *can* be done. The principle of action should be to adopt the most restrictive laws that can be made reasonably effective in administration. This can be helped by an extension of the privilege of local option, which should be allowed in small units of territory, so that a township, a precinct, even a single city block (the two sides of a street between two intersecting streets) should have the power, by a majority vote of the inhabitants, to exclude liquor saloons from that particular territory. Everything should be done that can be done by the enforcement of good laws, for the prevention and control of drunkenness, but the chief depend-

ence for the prevention or reform of bad personal habits of any sort must be upon moral and social influences, and these should always be made as potent as possible by every right thinking man and woman.

A potent social influence for evil in this country is the custom of "treating," which means that each man in the company in succession buys the drinks for all the company, with the implied social pressure, if not a recognized obligation, that each shall drink each time round. If there is a considerable number in the company, excessive drinking is inevitable. It is an absurd custom and all right-minded men should refuse to be governed by it, for it is every man's right and privilege, and also his duty (and is never a breach of really good manners) to control his personal habits in respect to food, drink, and clothing, in conformity with his own needs and welfare. There is another form of treating somewhat prevalent among temperate people to which but little serious objection need be made; this is for one person to invite the company, or several members of it, to go to the bar and drink with him before sitting down to dinner. In this case no one drinks but once and each exercises his own choice as to what he will drink, and may take a whiskey, a cocktail, a beer or ale, or a lemonade or mineral water. This custom takes cognizance of the fact, which ought never to be forgotten, that intoxicating liquors should not be taken except at meal times (if they are to be taken at all). There is another matter of importance concerning the drink habit: It is well known that those who have once been slaves of drink and have freed themselves from such bondage, find it necessary ever afterwards to be strict total abstainers, for the smallest taste of liquor, or sometimes even the smell of it, is liable to awaken the old, uncontrollable thirst. It is, therefore, a most urgent duty of everyone knowing about such people carefully to avoid putting temptation to drink in their way, and if they find such people in places or circumstances subjecting them to temptation, every effort should be made to get them away from it and to support their will power in resisting it.

The injury from the use of either liquor or tobacco is very much greater to growing boys than to mature men. Every boy,

therefore, who wishes to attain his maximum of growth, health, strength and efficiency, should religiously abstain from all sorts of liquors, even from beer and wine, and from all forms of tobacco, at least till he is twenty-one years of age. The consumption in the United States of both liquor and tobacco is enormous and most deplorable. Liquor drinking is undoubtedly far more injurious and destructive in the aggregate than the use of tobacco, but the latter, even if it can be conceded that it is sometimes beneficial to some individuals (which may admit of doubt), must be regarded as doing far more harm than good. Together, the liquor and tobacco habits constitute by far the largest part of the economic, moral, and spiritual *waste* of which our aggregate population is guilty.

HABITATION.

“The dwelling, originally a protection against heat and cold as well as against hostile attacks, has gradually far outgrown its original purpose: the cave, the tent, the hut, the house, the burg, the city—mark the stages of its evolution. Its mission has been enlarged so as to embrace the whole of civilized life. What clothing is to the individual, the domicile is to the family. Within the walls of the house the family finds protection against all kinds of annoyances, and seeks refuge from inquisitive curiosity and insatiate greed. In the home it reveals its character; the occupation, the mode of life and thought of the family are expressed in the form, furniture, and decoration of the house. The memories of the past, both joyful and sorrowful, cling to it, and so the dwelling becomes the necessary framework of the family history. It is no less apparent that the development of great historical institutions is closely connected with the evolution of the home; without the dividing walls of the individual’s own hut, we cannot imagine the separation of the particular families from the original herdlike unity of the horde. The evolution of property rights is doubtless also closely related to the same dividing walls. Moreover, by the side of the human dwelling erected by the individual rises the house of the gods, the temple, which has proved so stimulating to religion and the arts. The temple has also had a great influence, as Wundt remarks, upon

the evolution of the sense of justice. The peace of God made the temple the refuge for fugitives. The temple-peace reacted upon the development of the house-peace: the gods avenged its breach, whether the offense were committed against the host or against the guest. Again, the first notions of international law owed their origin to the reverence the tribes felt for the temples of kindred gods."

"One of the most deplorable results of the recent development of social life is the forced abandonment by larger and larger portions of the population of the dwelling as the permanent home for the particular family, and the crowding together of great masses of people, who are unknown to each other, into the tenement houses of our large cities. * * * It would be a great blessing if the modern means of transportation could be so perfected as again to disperse the crowds of people whom they have poured into the large cities. Many families, who are at present living in crowded tenement houses, to their great injury, could, even now, if they so desired, and ceased regarding a bad habit as a natural necessity, occupy their own homes in the suburbs." * * *

CLOTHING

"The original purpose of clothing was partly to protect, partly to decorate the body and to reveal the importance of the wearer. Its negative object was to conceal the animal portions of the body, leaving only the face, the symbol of the spiritual powers, uncovered. Dress has retained this dual nature in the vicissitudes of historical life. The costume symbolizes rank and office, age and sex, joy and sorrow, temperament and mode of thought, time and people. By means of clothing, the historical and social position of the individual is constantly impressed upon him and his surroundings. Indeed, we may say that dress is so essential that historical life and social order cannot be imagined without it; naked men are unhistorical men. Sameness of exterior marks brutes as unhistorical beings, dissimilarity in dress is the outward manifestation of historical and social beings. Hence, historical changes in the life of nations reveal themselves in changes of costume; try to imagine Luther in a swallow-tail coat and a white cravat, or Goethe with a moustache and a cut-

away, and you will see that dress is as characteristic of man as an historical being as its skin is of the animal. The abolition of the old class distinctions and the leveling tendency of the nineteenth century clearly manifest themselves in the disappearance of class costumes. On the other hand, the dress of the state, the uniform, has become more prominent; distinctions spontaneously created by society are giving way to distinctions made by the state. Furthermore, the uniform is an excellent means of uniforming and controlling the inner man. It compels the wearer to represent the office and to obey orders; he cannot retreat, he must seem to be what the uniform proclaims him to be, and so becomes it. What would an army be without uniforms?"

"The difference between costume and *fashion* consists in this: the latter is an arbitrary invention of particular individuals and lasts only for a short time. Its climax is marked by the complete decline of costume. Fashionable attire differentiates its wearer, makes a 'distinguished' person of him, not so much because it is a sign of taste, wealth or costliness, but because it creates the impression that he is a leader in society or that he stands close enough to the leaders to notice the changes immediately and to keep pace with them; hence, also, the need of rapid changes. Fashion is the feminine form of sport or speculation, and is, like all sport, capricious and tyrannical, stimulating its followers to do their best. The health and welfare of many a woman, the peace and happiness of many a home, are sacrificed to this tyrant without a murmur. Should the psychologist succeed in inventing a process for the transformation of psychical forces—as the physicist has for changing thermal or electrical forces into motion—and should the process ever succeed in converting but one-half of the energy which the women who obey the dictates of fashion expend in destroying their comfort, welfare and freedom, into other forces of self-sacrifice, the invention would presumably produce a greater increase in real happiness among civilized humanity than all the inventions of this century put together."

EXERCISE.

"Another part of dietetics is the *development* and *exercise* of *bodily powers*. Life is, according to Aristotle, action;

the body deteriorates when it cannot act. These powers are exercised in two ways: in play and in work. Work is the exercise of powers for an external end; in play the activity is an end in itself; it has no end outside of itself; it is free activity; while work is constrained or unfree action. Play is especially characteristic of youth. In the life of the adult it is overshadowed by work; but it is not wanting here and cannot be wanting without depriving life of an essential element. A country consisting entirely of fertile cultivated fields would not wholly please us; we should miss the heaths and the forests, the moor and the wilderness; we should miss the poetry of freedom. Nor would a life please us that consisted wholly of useful work; without play it would be without the poetry of freedom."

"It cannot be denied that with the advance of civilization, certain dangers are threatening life from this side. The sphere of play is becoming more and more restricted, and work is growing more monotonous and mechanical. In primitive stages of civilization, work is freer and more varied; it has something of the character and charm of play. That this is true may be seen from the fact that civilized men indulge in hunting and fishing as a kind of play and sport. Agricultural pursuits, too, are quite free and full of change; each season yields new forms of action. The peasant practices a hundred arts; he handles numberless tools and comes in daily contact with a thousand living and lifeless things. The work of the mechanic is not so free; he is tied to his workshop; the circle of his activities is narrow; his work consists rather in the constant repetition of the same performance, which consequently becomes more mechanical. He is not so dependent on nature, upon the weather and the seasons, but more dependent upon human beings." * * *

"The greatest sufferers are the young, and those of the higher classes perhaps suffer most, because they are subjected to such conditions for a greater length of time. The truth that life is movement is especially applicable to the young. Their impulses are directed towards the exercise of bodily powers; they desire to run and to climb, to jump and to dance, to build and to destroy. There is neither room nor opportunity for such action in the 'flat.' Free and unimpeded play is utterly impos-

sible. * * * In polite society the child, instead of playing, is taken out for a stroll by the governess, or goes to the doll bazaar, or attends a children's party. But all these artificial things do not satisfy our children, and inasmuch as their love of movement and exercise cannot be suppressed, they are in the way in the metropolitan household. Under these circumstances, the school proves to be a veritable refuge: there they are taken care of and kept busy for a number of hours each day, and then a few more hours are consumed at home in preparing lessons. Among the upper classes a few more lessons in music and drawing are deemed indispensable, and afterwards a few more hours are devoted to novel-reading and card-playing. And so it happens that young people, from fifteen to twenty years of age, at a time when the body needs most exercise, spend ten, twelve, or fourteen hours sitting down, until the body gradually becomes accustomed to it, and the desire for exercise gives way to a general feeling of torpor. In this way the foundation is laid, during the period of youth, for the ailments by which the members of good society might easily recognize each other in case all the other characteristics should ever disappear: indigestion, nervousness, and near-sightedness. And all the physicians and watering places in the world cannot restore what nature gratuitously bestows upon him who keeps her commandments: namely, a state of healthy exhaustion and a sound sleep, a good appetite and good digestion." * * *

RECREATION.

"In conclusion, let me allude, in a few words, to the opposite of action, to *rest* and recreation. Activity means expenditure of energy; hence nature demands that activity be suspended in order that the loss may be restored. Regular, long periods of rest for the entire psycho-physical system follow the changes of day and night. Jewish tradition has established an additional period of rest in the Sabbath. This is a highly beneficial institution: one that is so interwoven with our life and feelings as to seem like a part of the natural order itself. How was it possible for the Greeks and Romans to live without their Sunday? Finally, during more recent years, it has become customary

for those engaged in the higher pursuits to lay down their work for longer intervals; vacations, which were originally confined to schools, have gradually extended to other circles. The need for them evidently grows as the work becomes more arduous, systematic and monotonous. Hence, it is to be assumed that greater portions of the population will be affected by the custom."

"Periods of rest have a double purpose: first, the restoration of consumed energy; secondly, the exercise of functions not employed in the regular calling. The latter, too, is recreation. Those whose calling makes especial demands upon their mental powers will find recreation in the proper exercise of their bodily powers, in play, in travel, in mechanical activity; those, on the other hand, whose work chiefly calls into play physical forces will find relief in mental activity, in reading. Social pleasures, music, games of all kinds, are excellent means of recreation for all alike."

"A proper balance between work and recreation is an essential condition of health, efficiency, and happiness. An excess on either side is equally dangerous. It is now universally admitted that the development of industrial production has led to an intolerable excess of mechanical work. The efforts of the labor party to shorten the working time merit our entire approval. Work must not make a slave of man, but should enable him not only to acquire commodities, but to develop his powers. He should not be a mere tool, but a personal end in himself. When this becomes impossible, when daily labor leaves only time enough for the necessary animal functions of nutrition and sleep, man's life ceases to be a human life."

A very important part of education consists in the formation of good habits of living. This training should be begun immediately after birth by the regular and proper feeding of the young infant, and a fair amount of wisdom and attention on the part of parents, nurses, and teachers during the formative period of childhood should result, by the time the child is ten or twelve years old, in the establishment of a wholesome routine of bodily habits and functions that will prove a good foundation upon which the youth, between that time and, say, twenty years of age, may consciously acquire such self-control

and wisdom in the ordering of his own life as may pretty well insure health and long life, except as life may be endangered by what may be called accidental diseases or injuries. Good habits of bodily life relate, first, to the character and amount of food taken and the manner of taking it; the latter especially is very important, and meals should be eaten at regular times as nearly as practicable, and food should be thoroughly chewed and mixed with saliva before it is swallowed. (The teachings and example of Horace Fletcher in regard to the manner of eating have benefited a great number of people, and it is much to be desired that the whole population should form such habits as he recommends.)

This fundamental requirement of long-continued good health makes it imperative that a good chewing apparatus should be acquired and preserved, which can only be done in most cases by the faithful coöperation of the dentist and the individual from childhood. It is very important, also, that food be not mixed and contaminated with fermenting or decomposing remnants of food left over in the mouth from previous meals. It is important, moreover, to *abstain from eating except at meal times*. The much too prevalent habits of taking candy, or sweetmeats or almost any sorts of food or drinks that may happen to be convenient (except water, which may be taken freely at almost any time) at any hour of day or night is very injurious and pretty surely brings its punishment sooner or later, though young people are often able to stand a great deal of abuse of this sort without evil effects that they become much conscious of, and when the evil consequences do manifest themselves so as to force attention, such effects are often attributed to the wrong causes.

Next in importance to eating proper food in a proper manner is an abundant supply of pure air and a good habit of breathing it. Filling the lungs to their capacity, repeated a number of times in succession, and several times every day, in pure outdoor air when possible, will do very much to ward off infections of tuberculosis or pneumonia, and to promote the elimination of toxic matters which accumulate in the blood, thus helping to keep the mind awake and alert, and the disposition cheerful. The movements of the diaphragm and abdominal muscles in deep

breathing will also help digestion. The control of a sufficient supply of pure air at the right temperature is not so surely or easily under individual control as are habits of eating and breathing, but most persons can do it at night by opening windows, and when sleeping the temperature can be very much lowered without injury or discomfort. Every one should use such opportunities, influence, or authority as he may possess toward procuring proper ventilation and heating for himself and others with whom he is associated. (This is not the place to discuss *Problems of heating and ventilation.*)

The problem of supplying sufficient moisture in air artificially heated is important, also, and practically rather difficult. If air at a temperature of 70 degrees F. and saturated with moisture be cooled to zero, it will part with a very large proportion of its water, which will be deposited in dew or rain or snow. The capacity of air to absorb moisture is so greatly increased by warming it that even a saturated atmosphere at 20 degrees or lower will be much too dry for wholesome breathing when heated to 70 degrees. The colder it is out of doors, the dryer it will be in the house, and if the cold air, instead of being saturated, has only 60 to 70 per cent of humidity, it becomes correspondingly dryer after being warmed. As a matter of fact, in ordinary houses and offices, etc., heated by steam or hot-water coils, the air all winter is much dryer than the driest air of the western desert plains. It seems pretty certain that the excessive heat and dryness, together with the foulness of the air due to imperfect ventilation, contrasted with the coldness and moisture of the out-of-doors air, are chiefly responsible for the much greater prevalence of colds, catarrhs, influenzas, tonsilitis, grippe, and pneumonia in winter and spring as compared with the summer and autumn. The solution of the problem how to moisten the warmed air sufficiently is not altogether easy, and has in most cases received very little attention. Houses heated by a hot-air furnace usually have a pan of water adjacent to the fire-pot, which may evaporate from two to four gallons a day—which helps some—but is only a fraction of what is needed. The water pan should be much larger, exposing greater evaporating surface, or be close enough to the fire to boil the water.

which would probably increase the evaporation sufficiently. If heating is by steam or hot-water coils, it is still worse, as usually managed. If sufficient water can be boiled, allowing the steam to escape into the rooms, that will solve the difficulty or if a small jet of steam can be allowed to escape from the coils, not more than will be absorbed by the air without condensing in a drip, that would moisten the air.

Cleanliness is, of course, of the utmost importance. The morning bath of cold water is hardening and invigorating for those who react promptly and find it agreeable, but for cleanliness, a bath with warm water and soap is needed, preferably at bedtime.

It is an excellent habit, just before retiring, to wash face, neck, and hands, and to thoroughly clean teeth, mouth, throat, and nose, and to repeat the same on rising in the morning. Such habits of cleanliness are necessary for personal health and comfort. A dentist or physician is so constantly in close proximity to other people that scrupulous personal cleanliness and frequent changes of underclothing are more necessary from a business point of view than for men in many other occupations. And it is very needful that personal linen, office coats, and all towels, napkins, and similar articles about the office should be as nearly immaculate as possible.

A sufficient amount of physical exercise is as necessary for health and long life as personal cleanliness. The daily routine of a dental practice requires a much greater amount and variety of physical exertion than that of a lawyer, a banker, a book-keeper, and many other employments that might be named, but it is not sufficient unless supplemented by regular or occasional exercise of some sort in the open air. Probably the most certain and satisfactory way to get it is in the ordinary routine of living: by walking back and forth to the office or to trains, taking care of the furnace, cutting kindling, shoveling snow, making a garden, cutting the lawn, and the other chores and errands which a man of family is apt to find waiting for him at night or urging him out of bed in the morning. If these are denied to a man, the next best things are active outdoor amusements, like golf, tennis, horseback riding, or "hiking" about with a camera: any-

thing he takes enough interest in that requires active exercise in the open air. If none of these are available, gymnastic exercises done with no other motive than the exercise itself may answer fairly well, but these are better if done in the gymnasium, and the swimming tank, with the added interest and stimulation of comradeship and competition, than if done in solitude at home.

Efficiency and usefulness are very closely related to bodily health and vigor; therefore, the duty to serve one's family and society involves the primary duty to preserve health and strength by every available means, to the end that one may be an efficient instrument for service. Also, the personal satisfactions derived from well-balanced and normal physical powers are very great and are proper objects of desire and endeavor.

THE ECONOMIC LIFE

*"The economic life has its origin in the natural needs which man shares with the brute. When the functions engaged in the satisfaction of these needs are systematized by reason, two institutions arise which form the basis of economic life: labor and property. The accumulation of commodities, which is the original form of property, enables man to free himself from the slavery of monetary needs, to which the animal is subjected. This freedom is the precondition of all real human life; without it there can be no systematic, purposive activity, no mental-historical life. Through it, what remains a natural process in the animal world is raised to the moral sphere." * * * The acquisition and consumption of commodities impose moral duties upon the individual.

"In the more highly developed stages of civilization, labor assumes the form of a calling or profession. *Professional efficiency* and *fidelity to calling* are the virtues peculiar to this field."

"Under healthy conditions, the duties of the calling form the center of one's entire life. The boy practices his future profession in play; the youth leaves the parental home to learn it, and the man devotes his whole energy to it. The vocation determines our essential relations to the external world; it brings us into contact with our colleagues during the periods of work

*Paulsen, Chapter 4, page 529.

and rest; and upon it depends the manner in which we exercise our faculties in play. Hence the calling is the guiding principle in life; it gives it steadiness and purpose."

"The teleological necessity of the calling becomes apparent when we consider the consequences of its lack. Both rich and poor may be without a calling. The individuals without a calling who form the lower fringe of society constitute the *proletariat*. This group is composed of those who have no steady work, but wander from place to place and beg or steal, or otherwise gain their livelihood. Aversion to work, dissipation, drunkenness, recklessness, vanity, are the vices which draw individuals into this group. Moreover, this mode of life is transmitted by heredity; degenerate families raise degenerate offspring." * * *

"Another group of persons who have no calling is formed at the upper fringe of society. I mean the *professional idlers* who live on their interest and absolve themselves of the duty of having a calling. Looked at from the outside, their manner of life differs from that of the other class; seen from within, however, it shows many points of resemblance. Besides, these two classes come into personal contact with each other: they meet in the *demi-monde* and among the gambling fraternity. Both congregate in large cities, both have peculiarly perverse notions of honor, both, above all, are restless in disposition and unsettled in their movements. * * * Nothing is required of the rich idler, so he takes up now one thing, now another, only to abandon it again at the earliest opportunity. The ability to will, which simply means the ability to persevere, even in the face of temporary distractions, is gradually lost when not exercised, and the victim perishes from an incurable softening of the will." * * *

"Man was not designed by nature merely to enjoy, but to work and acquire. However plausible it may at first sight appear, the attempt to live a life of enjoyment merely, has invariably failed. Toil and pleasure, that is an old law of nature; without the former, we cannot obtain the latter." * * *

"Not only do we owe it to ourselves to pursue a serious calling, but likewise to society at large. The man who

refuses to work in some way or other lives at others' expense. This is no less true of one who idly spends his inheritance than of the professional beggar or thief. From the legal point of view, the former consumes what belongs to him and does no wrong; from the moral standpoint, however,—that is, in reality,—he accepts the products of others' labor without making any return; he lives as a parasite at the table of the people, without helping to defray the costs." * * *

"An indirect accumulation and hoarding of products beyond the amount needed for self-consumption is made possible by converting them into money. But inasmuch as money possesses a conventional value only, society has, by adopting the invention tacitly given its consent to the consequences thereof."

"But to this (somewhat imaginary) contract, we might continue, society has, likewise tacitly, added a clause: it shall be valid, only on condition that the person who thus becomes possessed of wealth shall make some return for the surplus which he acquires with the tacit consent of society. A contract assumes that some return be made; otherwise it is a donation; and there is no reason to suppose that society intended to donate anything to anyone, nor has society any right to do so, at least if future generations are to bear the burden. The individual may make such a return by assuming public responsibilities: say, by leading and representing his people in peace and war, by serving as a judge or legislator, by performing the duties of the priestly calling, or by administering the spiritual possessions of a nation in science and art. And it may still be regarded as such a return to systemize and guide economic production,—nay, even to influence consumption in a manner conducive to welfare, by example and encouragement, by public generosity and private beneficence. During the time when the nobility and clergy still were an active power in the body politic, they so conceived and performed their functions. The man who does nothing, ignores the obligations tacitly assumed by accepting property, and therefore, has no right to it, from the moral point of view. * * * The people fully appreciate this fact."

* * *

"The *law* does not execute the judgment of morals, it does not repudiate ownership in property when no return is made, or in case of misuse, and it is probably well that it does not. For it would not only be impossible to formulate the necessary rules and to enforce them, but there would arise a feeling of insecurity in reference to property which would carry greater evils in its train than the most flagrant abuse of property rights in particular instances could effect. In a certain sense however, history realizes the judgment of morality. Whenever the nobility and clergy renounced their obligations and merely retained the corresponding privileges as an inalienable right, things went along in this way for a while, but the day of reckoning came at last, and they were cast off from the social body as useless members or as harmful parasites. Thus history pronounced sentence upon the French nobility in the French Revolution; and the ecclesiastical revolution of the sixteenth century condemned the clergy, who had proved false to their trust. History will not hold the capitalist more sacred than the nobility and the clergy."

* * *

"Whoever consumes rents without making some return or other, is hastening the coming of the judgment. The eighth commandment is never broken with impunity. The law, however, 'Thou shalt not steal,' is merely the negative formula of the positive command. 'By the sweat of thy face shalt thou eat bread.'"

*"Let us cast a glance at the other side of economic life, at the question of consumption. The virtue peculiar to this field is the virtue of *frugality*, or *economy*, the capacity for managing one's affairs according to one's income as well as according to the needs and obligations which grow out of individual conditions and social rank. This virtue, too, we may define, following the Aristotelian principle, as a mean between two faults or vices, *greed* and *prodigality*. The miser saves where he ought to spend, the spendthrift spends lavishly where he ought to save. The good manager is dis-

tinguished from the prodigal by the virtue of frugality, from the miser by the virtue which Kant calls "liberalitas moralis" (in opposition to "liberalitas sumptuosa"): he lives decently himself and is generous to others who need his help."

"Of the two vices, avarice is the most disgraceful, extravagance the more dangerous. Greed characterizes a base nature. The soul in which it has taken root withers and dies; all higher aspirations disappear. The miser at last begrudges himself and others all that is good. Extravagance, on the other hand, may exist in connection with grand aspirations. It is closely allied to a much admired virtue, generosity. The spendthrift always regards himself as a liberal man, and is likewise praised as such by those who profit by his extravagance. Avarice, on the other hand, has no one to sing its praises; nay, even the virtue of which it is a degenerate form, frugality, finds few admirers, especially when practiced by princes and great lords." * * *

*"It is a well known fact that greed is confined almost entirely to old age. * * * All desires diminish as the capacity for enjoyment becomes weaker in old age, while the abstract desire for possession continues strong to the end. Hence, we might, perhaps, regard this process as a strategy of nature to transmit the products of the parent generation to its successors."

"Avarice, therefore, debasing though it be, is not altogether injurious in its effects. The consequences of extravagance, on the other hand, are absolutely destructive to individual as well as to social life. The first consequence of extravagance is a lack of means for the necessaries of life, and the resulting need of exercising strict economy in the wrong place. What the wife wastes on dress and show, must be made up in the home and on the table. What is spent on receptions and sports, on horses and dogs, is deducted from the household allowance. Still more often there is not money enough to meet legitimate expenses: the servants are not properly fed, niggardly wages are paid, public enterprises make vain appeals

for aid. * * * And just as extravagance leads to false economy, it leads to improper methods of acquisition.

The landowner fleeces his tenants and day laborers, the prince his subjects, the physician his patients, the lawyer his clients, the gentleman of leisure takes to gambling, the merchant speculates on the exchange, the tradesman adulterates his goods, the official accepts bribes or fawns upon his superiors for promotion or an increase of salary, the courtier begs for pensions and presents, the author and scholar cater to the popular tastes, the artist tickles the palate of the money bag;—money must be made, money at any price, even at the price of freedom and honor, body and soul.” * * *

*“The most favorable condition for the development of the economic virtues, is, as the old Greek sages already declared, the possession of moderate means; wealth, our own language significantly calls it. Pleasure in acquisition and possession, efficient work, and moderation in the use of commodities, are most common in the middle classes. The “too much” and the “too little” are equally dangerous. *Riches* are dangerous in that they tend to encourage idleness, arrogance, ostentation, and extravagance. Excess, however, begets sorrow and ruin. Especially dangerous is sudden wealth not acquired through labor. The money won in lotteries and stock speculations usually soon goes the way it came, not, however, without first ruining the life of the lucky (unlucky?) winner. Inherited possessions are not so dangerous. A family that has been long accustomed to certain conditions of life develops the power to resist the temptations of riches; the man who inherits the wealth of his ancestors in a certain measure inherits their sense of duty and honor. The feeling that he is destined to do great things serves to counteract the empty feeling of power which easily turns the head of the ‘nouveau riche.’”

“Poverty is equally unfavorable to the development of economic virtues. Inherited poverty deadens the sense of

*Page 540.

ownership. Children reared in utterly destitute families, living from hand to mouth, fail to experience the pleasures of acquisition and ownership. The desire to have more than is required to satisfy daily needs does not manifest itself, or at least remains an idle wish, and never grows into a strong volition. When this state becomes a habit, the individual becomes improvident and reckless, giving no heed to the morrow. Poverty tends to blunt the sense of ownership in another sense; it weakens the person's ability to discriminate between 'mine' and 'thine.' When a man possesses property himself, he appreciates the sacredness of property. When he looks upon the institution of property merely as a barrier, as a protection against him and not also for him, he naturally feels less hesitancy in overleaping it than when he has been accustomed from childhood to regard it as a means of self-defence." * * *

*"The possession of moderate means secures the individual from temptations in either direction. It saves him from the slavery which is the companion of poverty; it gives him the free choice of a profession, without tempting him not to follow any calling whatever. It develops in him a desire for possession, as opposed to the proletarian supineness of poverty. It arouses a pleasure in ownership, as opposed to the arrogance of satiety, which follows upon superabundance. It is plain, the conditions in this regard are not favorable in our age. The marvelous growth of industry and commerce during the nineteenth century, the concomitant development of speculation and the stock exchange system, have enabled particular individuals to accumulate enormous wealth, not infrequently without any merit of their own, which now seeks in vain for rational employment. The consequence is senseless extravagance, a great greed for gain, and an insane mania for gambling. Universal poverty and proletarian misery form the obverse of the picture."

*Page 542.

CHAPTER VI.

THE SPIRITUAL LIFE AND CULTURE

SCIENCE AND ART, HONOR, SELF-KNOWLEDGE

*“By culture we mean the perfect development of spiritual life. It consists in the capacity, acquired by instruction and practice, to take an active part in the spiritual life, first, of a people and ultimately of humanity.”

“We note as the two essential phases in the spiritual life of a people, *knowledge* and the *creative fancy*, *philosophy* and *science*, *art* and *poetry*. Culture, therefore, means for the individual the development of the intellect to the end that he may know the truth, and of the senses and the imagination, that he may comprehend and enjoy the beautiful.” * * *

“Knowledge has a double function. The intellect is, first, the *organ of the will*; its function is to adjust the latter to its environment. As was indicated before, the feeling of pleasure and pain may be regarded as the most primitive form of knowledge. The senses, * * * enable the animal to understand its more remote surroundings and to adapt itself to what is useful or harmful. Sensibility develops into intelligence, which may be defined, in a general way, as the faculty to know from what is given that which is not given. * * *

Man succeeds in discovering the ultimate and constant relations * * * which are expressed in the formulæ which we call laws of nature. The knowledge of them gives him theoretical and practical control of the nature of things: he is able not only to foresee the complex processes, which the animal too, may, in a certain measure, foresee, but also to explain them — that is, to deduce them from their causes, and, in so far as the causes are in his power, to produce them. Thus, the intellect has become the powerful instrument by

which man has made the earth his servant. He has tamed the animals or exterminated them, he has selected and formed the plants which cover the earth, he has compelled the forces of nature to do his bidding. Knowledge is power."

"But knowledge also has another, an immediate value. In the animal it is absolutely subservient to practical needs, in man it becomes free; he takes a *disinterested interest in contemplation*, so to speak. This holds even of sense perception. The eye finds pleasure in forms and colors, the ear, in notes and their rhythmical musical successions; hence arise music and painting. From the same pleasure in the contemplation of things springs philosophy. Philosophy is purely contemplative knowledge. * * * The Socratic school, in which it was first used as a technical term, distinguishes philosophy, as purely theoretical knowledge, from technical knowledge. * * * In this most general sense, philosophy is a universal human function; mythology is its most primitive form; it universally arises as an attempt to comprehend the whole of things into one conception; and to interpret the meaning of the universe and especially of life."

"This estimate of knowledge will furnish us with a standard by which to measure the value of *particular* forms of cognition. We shall say that a particular truth has value in so far as it tends to increase our practical power, and our theoretical insight into the nature of things in general. Knowledge which has no value in either sense, which accomplishes nothing for our technics or for our philosophy, has no value whatever. The proposition * * * Everything that is, is worthy of being known, is not infrequently proclaimed in our age as the highest principle of scientific research. I cannot help regarding this as a meaningless assertion—one, however, that is accepted by many as a convenient means of silencing the question concerning the value of particular investigations. Apparently, however, the true scientist does not adhere to this principle. In spite of the assertion that everything that exists deserves to be known, no historian has ever undertaken to ascertain what such and such a celebrity or "obscurity" has had for breakfast or dinner every day of his life. * * * Nor has any scientist ever attempted to count the grains of

sand on the seashore, and to describe the forms of the separate grains. Why not? Surely because healthy common-sense, if not scientific insight, instinctively recognizes the uselessness of such a task. It must be added, however, that we cannot always tell in advance whether an investigation will yield results which may have some bearing on knowledge in either form or not. In no case, perhaps, has healthy common-sense betrayed such shortsightedness as in its repudiation of scientific research as useless trifling or curiosity."

There appear to be two rather distinct types of men engaged in scientific or philosophical research; those who distinctly and avowedly have some utilitarian end in view, and those who disclaim any such motive, and are sometimes disposed to make the absence of any utilitarian motive the test of true scholarship. Of the first type were the old alchemists, seeking to transmute base metals into gold, Edison, working out the problems of the telephone, the phonograph or the storage battery; and our own Dr. Black determining the physical properties of amalgams, of gold, and the enamel and dentine of natural teeth. Men of the second type are mostly connected with educational institutions, and much good work is being done by some of them. There would seem to be little ground for the assumption of superiority of one class of research workers over the other, for men of the first sort have often spent years of patient work and missed at last the utilitarian end they sought, and on the other hand the most important utilitarian ends have sometimes been accomplished by men who were not seeking for them, and in some instances perhaps did not recognize them when they saw them.

*"The same principle applies when it comes to judging *the value of knowledge for the individual*. Cognitions have no absolute value for the individual, they have value in so far as they do something for him, either by solving his practical life-problems, or by assisting him in his philosophical reflections, or, in other words, in so far as they make him wiser and more prudent. Knowledge which does neither one nor the other, which does not make him either more efficient in his calling or more skillful in contemplation, has no value for

him whatever. If we call the knowledge upon which professional efficiency is based *professional* or *technical education*, and that upon which rests the ability to contemplate, to participate in philosophy, literature, and art, *general culture*, we may say: Only such knowledge is valuable to the individual as either serves to give him professional culture, or intensifies his general culture, or does both."

"And this would give us a principle for the guidance of instruction: Everybody ought to acquire such knowledge as will assist him, on the one hand, in following his special calling to the best possible advantage, and, on the other, in understanding the world from his position in life." * * *

*"That school will be best for the individual which, on the one hand, is suited to his individual talents and tastes, and, on the other, to his future calling and position in life. * * * The principle holds absolutely: Knowledge which the individual cannot utilize, either on account of natural incapacity, or in consequence of his external position, is of absolutely no value to him."

"Yes, we may go further and say it is an evil. This becomes self-evident when the individual is lacking in talent. To know too much for his capacity makes a man not, wiser, but more stupid. We must discriminate between stupidity and ignorance. Ignorance is a lack of knowledge; stupidity is a lack of judgment, and may go with great learning, nay, it may, under certain circumstances, be due to this. A good anecdote is told of the Duke of Wellington. A young man once applied to him for an office. After conversing with him for a while, the Duke refused his application, adding: "Sir, you have received too much education for your brains." * * *

"If a man's inner life is consistently and harmoniously developed, if he has digested and, as it were, converted into organic substance and living force whatever opinions and experiences he has acquired at school and in the world, he is a well-educated man. Not the mass of material, but the inner form is what makes education. Matter without form produces

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semi-education, over-education, pseudo-education, or whatever we may call this degeneration of the soul."

*"Art, like philosophy, is also based, partially at least, on *pure contemplation*. If play is, in distinction from work, the free exercise of powers, and not a means to an external end, while in work an external effect, or product, is desired, art, as well as philosophy, belongs in the category of **play**. All occupation with the fine arts is playful or purposeless exercise of sensuous-spiritual powers." * * *

"Art is also partially rooted in *feeling* and *willing*. Every strong emotion is accompanied by the desire to express and communicate itself. The joys and pangs of love, martial courage and sadness, yearning and reverence, seek and find relief in poetry and song. By the rhythmical-melodious arrangement of words and notes, the feelings themselves are aroused. And so the will and the mood of a people and an age are expressed and objectified in the great creations of epic and dramatic poetry as well as in the creations of the plastic arts and architecture. Gothic art manifests the mood of towering supernaturalism, which contemns and repels the earthly sensuous world,—corporeality with its pleasure and heaviness. In the Renaissance the opposite mood asserts itself; its architecture and fine arts, its costumes, and house-furnishings, its poetry and music, all of them express the determination of the age to abandon itself, with the enthusiasm and exuberance of youth, to the contemplation and enjoyment of everything charming and agreeable, till it seems as if the age felt the need of making up for lost time."

"It is the highest function of art to shape and express the ideals which the spiritual life of a nation creates. The ideal world reaches its highest expression in a supra-mundane superhuman world, in which perfection has absolute reality for faith. Thus art becomes the organ of religion. Its highest function is to realize the innermost cravings of a people, to contemplate its ideas of perfection in concrete forms. So the plastic arts produced concrete representa-

tions of the Greek gods,—glorious figures in which the Greek's ideals of human culture were made visible to him. Similarly Greek poetry gave to the people in its epics and dramas living pictures of divine and human excellences, such as courage, loyalty, devotion, magnanimity, prudence, wisdom, piety. Christian art, too, has performed the same necessary function of converting the realm of faith into a world of concrete intuitions. The entire mediaeval art, architecture, sculpture, painting, music, and poetry, had for its sole object the presentation of the world of Christian faith, in the form which this had assumed in the Germanic mind, to the senses and the entire man."

"We may therefore describe the *effect of art* upon the soul as follows: (1) It exercises our sensuous spiritual powers and so fills our leisure moments with the purest and most beautiful recreation and pleasure. (2) It satisfies and quiets the cravings of the emotions to express themselves, by providing them with the necessary stimulus and affording relief. (3) It raises the soul above the world of work and need, struggle and misery, to a world of freedom and ideals, and purifies it from the dust of base feelings and passions with which the affairs of daily life cover it. The inner uniformity and harmony which constitute the essence of all art also bring uniformity and harmony into the soul. Finally (4) it binds together and unites the members of the nation, nay, all the members of a sphere of civilization; all those who have the same faith and the same ideals. Opinions and interests differ and produce discord; art presents in sensuous symbols the ideals which are cherished by all, and so arouses the feeling, that all are, in the last analysis, of the same mind, that all recognize and adore the same ultimate and highest things." * * *

"If this is a correct description of the nature and effect of art, it follows that it is a universally human function. Art is not something peculiar to a few nations and to a few individuals among them, but all nations have an art to express their emotions, as they have a language to express their ideas. And just as all the members of a people participate in its language,

though not equally, so all of them, in a measure, participate in its art."

HONOR AND LOVE OF HONOR.

*"The love of honor may be regarded as a peculiar modification of the impulse of self-preservation; it aims at the preservation of the self in consciousness, in our own consciousness as well as in that of others. We may call it the *impulse of ideal self-preservation*."

"By honor in the objective sense we mean the opinion which our surroundings have of us. By his character and his acts, every man arouses sentiments in his fellows which represent judgments of value; respect and disrespect, admiration and contempt, reverence and aversion. These feelings express themselves in judgments and are influenced, intensified and harmonized by other feelings, and thus arises something like a general estimate of the value of the particular individual in society: this is his objective honor."

* * *

"There are as many different kinds of honor as there are groups or sets to which a man belongs. As a member of a political community, he has a political honor; it measures his value as a citizen. * * * Besides the political honor, there is special *social* honor. Everybody is a member of society; his value as such is measured by his social honor." * * *

"Within these comprehensive groups there are narrower circles each having its particular form of honor: we speak of the honor of a merchant, the honor of an artist, the honor of an officer, the honor of a student, etc. Its possession signifies that the individual satisfies the special demands that are made upon him by the particular set to which he belongs."

"Collective bodies, too, like individuals, have their honor: a family has its family honor among other families, * * * a profession among other professions, a nation among other nations. The individuals have a share in this collective honor; let an Englishman's honor be what it may among Englishmen; among foreigners he has the honor of an Englishman in general. This collective honor is a highly im-

portant factor in all collective life; it firmly cements the members of a community together. The family honor holds the members of a family together, even after they have lost their love and respect for each other; all of them would have to suffer the disgrace of a single member."

"The significance of honor for human conduct is obvious. * * * As a rule honor is increased by everything that increases the *power* and *influence* of an individual, or, in other words, increases his capacity to help or harm others. We may mention such qualities as strength, skill, courage, military skill; these qualities are pre-eminently honorable in primitive society. * * * Then come wealth, which too means social power; birth and rank, which give power, namely through family connections; and finally, prudence, knowledge of the law, and eloquence, qualities which, with the progress of political development, enable their possessors to attain to higher positions, either as leaders of the people or as officers of the state. The types depicted in the Greek epic are the simplest examples of these different forms of fame and distinction. Achilles stands for strength and courage; Agamemnon, for rank and wealth; Ulysses and Nestor for prudence and eloquence. Finally, the moral excellences also belong, in a certain sense, to the qualities which bring honor and which the love of honor impels us to acquire. Intemperance, dissipation, and extravagance, bring disgrace, at least after they have ruined the person addicted to them, for then the friends who once applauded him forsake him. The opposite modes of behavior, on the other hand, preserve wealth and strength, and so, ultimately at least, lead to honor. Falsehood, on account of its kinship with cowardice, if for no other reason, brings disgrace; likewise, deceit and dishonesty. Veracity, trustworthiness, and uprightness, on the contrary, give one a good name. Thus honor becomes the guardian of morality; the love of honor tends to determine the will to develop, first of all, the self-regarding virtues, and then also to acquire the social virtues, or at least to avoid injustice, falsehood, and crime."

"No detailed account is needed to show the importance of this impulse for the moral education of the race. The de-

velopment of the human virtues in the species: courage, magnanimity, justice, veracity,—the development of higher capacities, economic as well as mental, is hardly conceivable without this constantly acting impulse." * * *

*"The proper attitude of the individual towards honor, the virtue into which the impulse of honor is fashioned, we call the *love of honor*. We may define it as that habit of will and mode of conduct which seeks to gain the *recognition of the virtuous and good by means of honest and virtuous actions*. Perhaps we may characterize it suitably, from two points of view, as *proper pride* and *proper humility*."

"*Pride* (which is not to be confused with haughtiness) is the antithesis of two degenerate forms of the impulse of honor: *vanity* and *ambition*." * * *

The distinction between pride, considered as a virtue, (for the word 'pride' is often misused when vanity, self-conceit, or ambition would be appropriate) and vanity and ambition, is that the two latter seek for admiration, influence, power, etc., as a first consideration, and care little or nothing for the quality of character and conduct except as means by which to attain those ends. Pride, on the contrary, seeks first the character, and conduct, and service, that will merit admiration, honor and power, hoping that such rewards may come, but holding fast to character and service whether they do or not. The virtuously proud man holds himself so far independent of either praise or blame that he will not allow himself to be turned aside from either virtue or duty by either."

"The other antithesis of the love of honor is *proper humility*. Pride manifests itself in the proper acceptance of honor, humility in the proper bestowal of honor."

"Humility is the opposite of *haughtiness*. The haughty man despises others, he treats them condescendingly. By refusing to show them proper respect, he endeavors to keep it for himself, as it were, and so to have an advantage over them. He does not seek converse with men, indeed he ac-

tually shuns it, because he finds that his expectations with respect to honor are not realized, and because he is not willing to satisfy the claims of others. It is evidently for this reason that haughtiness and pride are so easily confused. Haughtiness is, moreover, very commonly connected with servility. The man who treats those whom he regards as his inferiors with brutal haughtiness, crouches before the mighty. He uses all the arts of subservient flattery towards those who are unquestionably richer, more aristocratic, powerful, and influential than he, in order thus to rise on the ladder of rank; he revenges himself on those below him, and it affords him special satisfaction to kick his patron as soon as he has outstripped him. In this way, he gets back his capital with interest."

"Humility, on the other hand, gives everyone the honor which is his due. It rejoices at the merit of others, and is ever ready to recognize ability, to admire excellence, and to reverence goodness. Genuine humility—this is its true sign—and genuine *free-mindedness* go together. The humble, free-minded man bows before what is truly honorable, even when it appears in menial form, and refuses to mere external power what belongs to the venerable alone. It is with pride that he sides with those who are outraged for the sake of truth and justice, and he considers it an honor to suffer disgrace and persecution with them. The word of the judge on the judgment day applies to him: 'I was in prison and ye came unto me.'"

"There are two well-known types: the *servile-minded*, full of haughtiness and baseness and the *free-minded*, full of noble pride and reverence and deep humility. We Germans have an example of a man of the latter type in Freiherr von Stein. 'Humble before God, high-minded, magnanimous towards men, a foe of falsehood and injustice,' so his epitaph characterizes him." * * *

*"With true pride and true humility, true self-esteem finally is joined. The proper estimate of oneself may be defined as a mean between pusillanimity and supercilious-

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ness. Pusillanimity is habitual faint-heartedness in regard to the problems which life sets before us; it weakens our capacity to act and to suffer. Superciliousness springs from underestimating our tasks and overestimating our powers; it regards exertion as superfluous, and so is no less productive of failure than is faint-heartedness. * * * True self-esteem, which marks the efficient man, gives him confidence in his own will and powers, and upon the latter depend security in decision and firmness in execution. * * * The proper estimate of one's own worth, of one's own powers and achievements, *knowledge of self*, constitutes a particularly difficult problem of self-culture. * * * How can we learn to know ourselves? Never by contemplation, but always by action. Try to do your duty, and you will know at once what is in you."* * * *

"Modesty may be defined as the outward form of the love of honor. The modest man shows by his entire behavior that he does not despise the opinion of others, but that he desires to make an effort to gain their esteem. The opposite demeanor is that of the *overbearing* man; his acts proclaim that he does not care what others may think of him. When such conduct is displayed toward especially venerable persons, we call it *insolence* and *impudence*, the sign of a low and servile disposition." * * *

Paulsen's chapter seventh, on suicide is not necessary to the purposes of these writings.

*Goethe's words in his *Sprüche in Prosa*.

CHAPTER VII.

COMPASSION AND BENEVOLENCE.

JUSTICE—MAGNANIMITY.

*“The *sympathetic* feelings and impulses form the natural basis of the social virtues. Such will-impulses are called sympathetic in distinction from idiopathic impulses, which originate directly in the individual—as are aroused in us by transference from others, by a kind of contagion. All feelings have the tendency, though in different degrees, to spread by sympathy, as for example, pleasure and pain, fear and hope, love and hate, contempt and admiration, cheerful exuberance and earnest solemnity. The passions aroused by a speech in a large popular gathering are much more intense than those which arise when the same persons read or hear the same speech separately; it seems as though the feelings were reflected from every feeling-center in the meeting to every other one, and the rays concentrated in each individual as in a burning glass.”

“Not only is the human heart sensitive to sympathetic excitement, it likewise yearns deeply to have its feelings communicated to and reflected from other hearts. When we are happy or in pain, we crave for human beings to reflect our joy or sorrow; when we love or hate, admire or condemn, we strive to diffuse our feelings, and are pained when our surroundings remain indifferent to us. Every strong emotion impels us to utterance; “out of the abundance of the heart the mouth speaketh.”

“Blood-relationship is the naturel starting point of the sympathetic feelings. They manifest themselves most intensely and directly in the relation between mother and child.
* * * From this point sympathy extends to the members of the family, tribe, people, humanity, to all living creatures.”
* * *

"Of all feelings pain seems most capable of arousing sympathy. Language shows this: we have a term for sympathetic pain only, in compassion. No terms have been coined to designate sympathetic pleasure or fear.—It is doubtless true that joy is not so easily transferred by sympathy." * * *

"Happiness may produce in others that peculiar form of pain which is called envy; unhappiness or misfortune, on the contrary may produce in others a malicious pleasure. These are well known phenomena which the pessimistic philosophers love to dwell upon. * * * In the troubles of our good friends, says La Rochefoucauld, there is always something that does not displease us, and with still greater justice may we assert that there is always something in the good fortune of our friends that does not entirely please us. He goes on to say that one should beware of mentioning his good fortune, especially to his less fortunate competitors. On the other hand, if he has met with a misfortune, * * * if he has been hooted as a speaker, or speculated and lost on the exchange, he need not let the fear of paining his good friends hinder him from telling it. He will have no difficulty in finding persons to pity him, but—well,—everybody knows how little we care for the pity of our friends on such occasions."

It is however, a mean and ungenerous nature that finds pleasure in the misfortunes and griefs of others and is pained by their success or good fortune, and I prefer to reverse the above rule and to show our confidence in the love and good will of our friends by telling them freely of our joys, and successes, and prosperity, believing it will give them pleasure without exciting their envy. And on the other hand to avoid paining them by a recital of our griefs, or misfortunes, or difficulties unless they may be able to give us substantial help, or by their sympathy and encouragement may strengthen our courage and patience or inspire us with hope for the future.

*"The sympathetic feelings, and especially compassion, evidently have the same significance for conduct that all feelings

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have: their object is to guide the will in the business of life. Just as idiopathic pain impels the individual to remove the evil or the disturbance which threatens his own life, so compassion tends to determine the will to remove the causes of pain from the lives of others." * * *

"In human life, however, feeling impulses are never adequate guides of action, but require the regulative control of reason, * * * and to be guided by wisdom. The virtue which thus arises, the general fundamental form of the social virtues, may be called 'benevolence' and defined as that habit of the will and mode of conduct which tends to promote the welfare of the surroundings by hindering disturbances and producing favorable conditions of life."

"In benevolence, *compassion* is overshadowed by *well-doing beneficence*. The benevolent and beneficent man prevents or alleviates the sufferings of others without always having to feel compassion himself. Nay, a certain power of resistance is as much a part of benevolence as it is a part of courage to be able to resist idiopathic pain, or a part of temperance to be able to resist the temptations of sense. We do not expect a physician to suffer with the patient all the pains which he witnesses or perhaps causes himself. On the contrary, a certain obduracy on his part is the condition of beneficent action; his compassion would obscure the clearness of his judgment and interfere with the steadiness of his movements. It is well known that physicians do not like to treat their nearest relatives because their pity interferes with their skill. But not only is freedom from pity needed to give the physician greater security in the practice of his art; it also has a directly beneficial influence. The physician enters the sick room and makes his examination and gives his orders with business-like serenity; he does not pity nor lament. His calmness has the most wholesome effect; some of it is communicated to the relatives and the patient. * * * On the other hand, consider the influence of visits from relatives and friends! Frightened by the appearance of the patient and overwhelmed with pity, they break out into

tears and complaints, and so increase his sufferings by their compassion and excitement."

"The same thing happens in other cases. A tender mother doubly suffers the pains which her child feels. If the child fall and hurt himself, she is overcome with pity. The result is that the child now really begins to feel the pain; he does not cry out until he has been pitied, when he regards himself as an object of pity. And the permanent effect of such treatment is a sort of whining nature, which is not a pleasant endowment for life. Another mother, who loves her child just as much, bandages the wound if necessary, diverts the child's attention from the accident; and lo! the pain actually disappears when it is resisted. As a permanent consequence, the child, in a measure, becomes hardened to such things, and so receives the best possible equipment for life that education can give. To love one's children is natural, and neither a virtue nor an art, but to educate children is a great and difficult art, which demands, first of all, the ability to control one's natural tender impulses. We must not let our children know how much we love them says an old wise maxim, which, however, does not suit the sentimentalism and vanity of modern mothers."

It is certainly possible to exercise the self-control and wisdom indicated in the preceding quotation without in the least concealing from our children the ardor and sincerity of our love for them, and this we should strive to accomplish, for the consciousness of the unwavering, wise and self-denying love of its parents is the strongest influence for good that ever comes into the life of a child.

"We may therefore say: Compassion is the natural basis of the social virtue of active benevolence, but it is by no means a virtue itself. * * * Like every phase of impulsive life, it must be educated and disciplined by reason; in the rational will it is both realized and limited,—realized in so far as it attains its end, the furtherance of human welfare, limited in so far as it is prevented from doing harm."

* * *

JUSTICE.

*“We distinguish between two phases of benevolence: a negative phase: not to retard welfare; and a positive phase: to promote welfare. These two phases, regarded as special virtues, give us the virtues of *justice* and *love of neighbor*.”

“Justice, as a moral habit, is the tendency of the will and mode of conduct which refrains from disturbing the lives and interests of others, and, as far as possible, hinders such interference on the part of others. This virtue springs from the individual’s respect for his fellows as ends in themselves and as his coequals. The different spheres of interest may be roughly classified as follows: body and life; the family, or the extended individual life; property, or the totality of the instruments of action; honor, or the ideal of existence; and finally freedom, or the possibility of fashioning one’s life as an end in itself. The law defends these different spheres, thus giving rise to a corresponding number of spheres of rights, each being protected by a prohibition: Thou shalt not kill, commit adultery, steal, bear false witness against the honor of thy neighbor, and interfere with his liberty. To violate the rights, to interfere with the interests of others, is injustice. All injustice is ultimately directed against the life of the neighbor; it is an open avowal that the latter is not an end in itself, having the same value as the individual’s own life. The general formula of the duty of justice may therefore be stated as follows: *Do no wrong yourself, and permit no wrong to be done, so far as lies in your power*; or, expressed positively: *Respect and protect the right*.”

“The first part of this formula: ‘Refrain from doing wrong,’ is the basis of the virtue of rectitude or probity. * * * Justice, in this sense, enjoins limitation of self by submission to a general rule. * * * The child is, at the beginning of its life, naïvely inconsiderate. It has regard only for itself, it does what pleases it, without being seriously concerned about the effect of its behavior upon others. Only gradually does it come to understand that its action

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has consequences not only for itself but for others. Its attention is called to this fact by the reaction caused by its acts in others. It deprives another child of its plaything; that child becomes angry and reacts accordingly. We may note a look of surprise on the face of the first child; only gradually, after experiencing similar treatment from others, does it begin to understand the meaning of this surprise. Its teachers, too, help it to interpret the facts. So the individual gradually acquires the habit of considering the influence of his own conduct upon the interests of others."

* * *

"This is one side of justice; he is a just man who limits his acts so that their consequences will not interfere with the interests of others."

"The other, active, side of justice is the *non-sufferance*, the *warding off of injustice*, first, of the injustice done to others, then also of that done to self.* * * * In a certain measure, it is the easier duty. To suffer wrong inflames us; not only does the wrong which I myself suffer call forth anger and the impulse to revenge, but the wrong which is inflicted upon a third person also arouses in the disinterested spectator a violent emotion, *indignation*, which may be defined as disinterested anger at the injustice suffered by another, and which impels us to take the part of the injured person, and to punish the evildoer for the wrong. In the impulse of retaliation we have the instinctive basis of *public punishment*. In the latter the sympathy of the disinterested party for the victim as against the offender, is systematized and made effective. In punishment the community reacts against the attack made upon one of its members and defeats it."

"*The significance* of justice for human conduct is shown by the effects of injustice. The immediate effect of injustice is that it disturbs or destroys the welfare of the person against whom it is done. There are also indirect and secondary effects. Injustice creates *strife*. The injured person seeks to re-establish his interests at the expense of his opponent, and to revenge himself for the injury suffered. The aggressor in turn defends himself, and so a

state of war arises, which has the tendency to spread to all those who are related either to the victim or the aggressor by ties of friendship or common interests. Another effect inseparable from injustice is that it produces a feeling of *insecurity*, not only in the person who suffers it, but in all those who witness it." * * *

"A condition of insecurity paralyzes life and action wherever it extends. Human conduct differs from that of animals, the conduct of civilized man from that of savages, in that it is connected and systematic; the animal lives in the present, man reckons with the future. But arbitrary interferences on the part of others render all calculations of the future illusory. * * * Injustice, therefore, tends to undermine the foundations of truly human life. A state of war has the same effect; it is necessarily a state of insecurity for all those who actively or passively participate in it. It has the further effect of consuming and paralyzing the powers of the participants, and consequently to that extent, hinders them from solving the problems of individual and social life."

"Justice is, therefore, good because it has the tendency to establish and maintain a state of *security*, the precondition of systematized, i. e., human, activity and *peace*, the precondition of social life." * * *

*"We can now demonstrate the teleological necessity of positive right. Positive right has its place in the state. * * * By placing itself under the protection of might, the right becomes a power in the world. In law, the state formulates the right as the expression of its will, and invests it with its power to overcome the resistance of individuals. * * * The penal right defines the limits of the spheres (of rightful activity) from the negative side; it determines which acts shall be regarded as encroachments or violations and therefore punished. The private right determines them from the positive side; it defines the spheres in family rights and property-rights, within which the individual may move and still enjoy the protection of the state. * * * It is the business of the system of rights, on the one hand, to assist the individual in regulating his conduct

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with respect to others' spheres of action; it saves him the trouble, or at least facilitates the process, of making difficult and complicated computations as to what he may do without injuring the just rights of others. It likewise checks his inclination to do wrong, by threatening evil consequences.

* * * On the other hand it also protects him, within his restricted sphere, against encroachments on the part of others. The system of rights therefore, brings a certain degree of objective justice or legality into the life and conduct of the members of the legal community, and maintains it."

"But why is compulsion exercised here while so many objectionable and pernicious modes of conduct, like intemperance, dissipation, ingratitude, mendacity, do not occasion any interference on the part of the community with the individual? This is due to the specific nature of injustice. The pernicious effects of injustice directly affect the community and its conditions of life. * * * This is the teleological necessity which has impelled every nation to develop a legal order and the technical means for administering the same, and which encourages it constantly to improve the system. All other offenses and vices are dealt with by custom, education, spiritual ministrations, and the personal insight of the individual. By opposing injustice a nation defeats attacks upon the conditions of its own existence." * * *

*"This also explains the right of the community to compel lawful behavior on the part of the individual by force and punishment. It has a right to compel and punish because it has a right to preserve itself. And this right is at the sametime a duty, because self-preservation is the first and almost only duty of the community."

"The explanation of the penal right forms the subject of endless debate. Here as everywhere in practical philosophy we have the two opposing views which we have termed the teleological and intuitional-formalistic. The latter attempts to justify punishment as the immediately necessary, ethical-logical consequence of crime; the former explains it by its effects upon human welfare."

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It is not necessary for us to enter at all into this controversy. The objects that should be sought in the punishment of crimes and offenses against the law are, to prevent future offences by the same person, either by restraining his liberty or inducing him to reform his character, or both; and to warn and dissuade others from committing similar offenses.

*“From this standpoint we can also understand the duty of the individual to coöperate in supporting the positive right and in battling against injustice. * * * This duty is recognized by the state: I am compelled to resist attacks upon the right by serving as a witness, juror, soldier, or official. But the individual is also morally bound to protect against injustice the injured right in general, even when it is not protected by the law. It is the virtue of the *chivalrous* man to defeat by personal intervention, or to call to account before the courts every possible form of injustice that interferes with the right, especially the rights of the defenseless, either by violence, strategy, or temptation. We must, of course, exercise due care in this regard, for injustice and self-caused misery are fond of giving themselves the air of injured innocence.” * * *

“The jurist properly emphasizes the duty to respect and protect others’ as well as our own rights by lawful means, and even by violent means if necessary. The moralist, on the other hand, will insist, with equal propriety, that this duty is not absolute, that the duty to respect and protect the right must be limited and supplemented by the demands of *equity* and *magnanimity*.”

“*Equity* demands that we voluntarily resign claims and acts to which we have an undoubted formal right, so that our own interests may not be advanced at a relatively greater damage to those of others. This is a demand, not of law, but of morality, which, it must not be forgotten, is rooted in the very nature of justice. * * * To insist rigorously on one’s rights would sometimes be violating the very spirit of justice, for justice really demands that the different interests be fairly apportioned, but it cannot, on account of its mechanical nature, wholly adapt itself to the individual cases.

and hence can realize its end only imperfectly. It appeals to the fairmindedness of the interested parties for help, and now and then expressly authorizes the judge to make revisions in the interest of equity."

"*Magnanimity* is the virtue which does not require personal injuries, but overlooks them, and does not embrace the opportunity for revenge, even though it present itself. Christianity goes so far as to demand *love of enemies*: Love him who sins against you, as a brother, and not only bear him no grudge, but forgive him with all your heart, and return good for evil."

"The command of the Gospel seems difficult and almost unnatural. * * * Has not nature herself taught all living creatures to resist attacks so that they may defend themselves and have peace? Certainly, we must admit it; and resistance and resentment, both private and public, are justifiable in their proper place. But they are not in every case the proper means of establishing and ensuring peace, and hence the command, 'Resist every infraction of the law by all lawful means,' cannot have absolute validity. A neighbor insults me with a frivolous remark, or treats me unkindly. Shall I summon him before court? Shall I obtain satisfaction by private means? * * * Would he be more careful in future? Perhaps. But another effect would surely follow: my retaliation would leave a sting in him; he would consider himself the affronted party: 'For such a trifle—on account of a mere word!' he would say. * * * The moment arrives when he can play me a trick or do me a favor, protect me against damage. He makes use of his chance by scornfully reminding me of my former conduct. And now it is my turn again. I simply defended my good rights before; his present treatment of me is an intentional injury: this I shall not forget. And so we move our revenge back and forth, intensifying it as we go, making our enmity deeper each time. Here the 'struggle for the right' did not bring peace, as it should have done, but the bitterest, most pernicious war, sapping the strength of both of us. How different it would have been, had the first act of revenge been

omitted, had the first act of injustice been met with complete, free forgiveness! Perhaps the insulting remark, which inaugurated the war of revenge, might have formed the starting point of a lasting friendship. * * * My forgiveness and his acceptance of the same are guarantees of our mutual good will. Thus, to speak with the Apostle, evil has been overcome with good. There is no grander and more beautiful art than this; Jesus does not forget it in the beatitudes: 'Blessed are the peacemakers.'

"Spinoza furnishes us with the psychological formula for it: 'Hatred is increased by hatred, and can, on the other hand, be destroyed by love. Hatred which is completely vanquished by love passes into love; and love is then greater than if hatred had not preceded it. Hence, 'the wise man endeavors, so far as he can, to render back love and kindness for other men's hatred, anger, and contempt.' And with a warmth not usual to him the mathematical judge of human affairs adds: "He who chooses to avenge wrongs with hatred is assuredly wretched. But he who strives to conquer hatred with love, fights his battle in joy and confidence; he withstands many as easily as one, and has very little need of fortune's aid. Those whom he vanquishes yield joyfully, not through failure, but through increase of their powers."

*"If, then, both modes of conduct are justifiable, the question arises: How are we to *limit the command of forgiveness and the command of retaliation?* When is the former, when the latter, in place? It will not be hard to give a general answer: That form of conduct is always appropriate and dutiful which in each case tends to realize the ultimate end, the avoidance of further injustice and promotion of lasting peace. If to forget and to forgive were the means of hindering theft and of preserving the institution of property, we should undoubtedly make exclusive use of this means. If retaliation and punishment were the sole and surest means of making him peaceful and kind who treats us impolitely, unkindly and uncivilly, we should also know what to do. The trouble is, different cases require different treatment, and it

will often be impossible to determine with certainty what is the most effective, and hence, most appropriate method of procedure in a particular instance. It certainly cannot be indicated by moral philosophy in universal propositions or categorical imperatives. Only experienced moral tact, which takes into account all the concrete circumstances, can discover the proper course to pursue in each particular case, which, however, does not exclude the possibility of error. Moral philosophy can perhaps merely indicate the general points of view from which each case must be considered. We may mention the following: (1.) Forgiveness is possible when the offence is directed against a *particular person*; punishment is necessary when the offence is directed not so much against a particular person as against *custom and law in general*. Theft, for example, is not a crime against the particular person as such, but against the owner as such, hence, against the institution of property. * * * (2.) It is a fact that we are apt to be reconciled and inclined to forgiveness by *remorse*. And justly so. Remorse is a sign that the offence was not the expression of the offender's permanent will,—that it was the result of error, accident, haste, or carelessness. If no attention is paid to his remorse, if we react by punishing him or taking revenge, a revulsion of feeling is likely to ensue. His remorse vanishes, he has expiated his wrong, nay, he is apt to feel that he has more than expiated it, and he now has, instead of a debt to pay, a claim which he will take up as soon as opportunity offers. * * * When, however, remorse is lacking, when a conscious and stubborn will, when impudent malice, commits the wrong and boasts of it and rejoices in its iniquity, punishment is necessary to terrify and to break the wicked will; perhaps the nature of the will may even be transformed in this way. * * * The criminal authorities too, endeavor to take these things into account, but they cannot, in the very nature of things, easily adjust themselves to the particular circumstances, and to this is due the inadequacy of public punishment as compared with that employed in education. It necessarily somewhat re-

sembles the mechanical process of nature, which does not consider the intention, but merely the objective facts. Then, again, the judge as a rule, has no means of testing the genuineness of remorse." * * *

"The third item is the following: Wherever persons live together in permanent relations, as husband and wife, brother and sister, inmates of the same house, relatives, neighbors, etc., the command of Jesus, not to forgive your brother seven times, but seventy times seven, will be especially in place. Slight collisions are always inevitable where persons live close together. Whoever insists upon his rights in every instance, makes life intolerable for himself and his surroundings. A certain measure of toleration is an absolute precondition of peaceful intercourse. "Be not righteous overmuch," the word of the Preacher, applies here; that is, be careful to give everyone his just dues, but do not always rigorously insist upon your own rights. And also remember the ninth commandment and the interpretation put upon it: Speak well of thy neighbor and turn all things to good! To good! This is excellent advice. Your brother is close and rather fond of money,—say he is economical and a good manager; he has a tendency to express his views somewhat strongly and without regard for the feelings of others,—say he is sincere and loves the truth; he is fonder of enjoyment and social pleasures than you deem necessary,—say he is cheerful and light-hearted. The man who cannot see the good in things, who always looks at them from the worst side, who is constantly finding fault, cannot live with men, and will do well to avoid contact with them as much as possible." * * *

"The Principle of Rights. * * * The question now arises: According to what principle is the line to be drawn which separates the spheres of the different members of a legal community from each other? * * * The system of rights * * * limits the activity or the liberty of each individual to a particular sphere, and at the same time defends him in this against the encroachments of others."

"The principle of equality seems to suggest itself as the most immediate and natural principle: Each man shall count

for one; the interests of each man are as important as those of every other one. This is the principle with which the advocates of natural rights antagonized the positive and historical system of law prevailing in the seventeenth and eighteenth centuries. Starting from the hypothesis of the natural equality of individuals they demanded equal rights for all. The conclusion would be correct if the premises were true." * * * "Positive law has, however, never acknowledged this principle of the absolute equality of all individuals; and even the upholders of natural rights have always accepted certain restrictions as self-evident. There never has been equality of rights between adults and children, and it has never been demanded."

There has never been equality of legal rights of men and women, though in most of the countries of Europe and in America very many of the inequalities have been removed.

"The principle which seems, on the whole, to have governed the development of positive right may be thus stated: The spheres of rights of the different members of the legal community are staked off according to the spheres of action corresponding to their natures and powers. Equality of rights extends as far as there is general natural equality; corresponding to the great and essential differences inherent in the nature of things, we have differences in rights."

Incongruity between Law and Morals.*

"If the fullest and freest development and exercise of human powers and capacities is the highest good of human life, the legal order may, according to the above, be defined as a mechanism in the service of the good, whose function it is to harmonize many individual forces, with the least expenditure of energy, or to balance many partially crossing spheres of interest, with the least injury to those interests. The more perfectly a positive legal order accomplishes this result, the more closely it realizes the purposes of the law, or what ethics demands and expects of the law."

"But the legal system can never absolutely realize this end. It lies in the nature of a mechanism to act mechanic-

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ally, that is, according to general laws, and not according to the requirements of a particular case. The legal system acts in the same way: individual cases are decided according to general rules. * * * The reason for this is obvious: only when there are general rules or laws, can the individual know and do the right with certainty and ease, and only in this way, too, can the law be protected against the arbitrariness of those administering it. * * * The safety of the law depends upon its uniformity. The legal order here resembles the natural order. * * * The uniformity of the process of nature is teleologically necessary for us as acting and knowing beings; and the uniformity of law is necessary for the same reason."

"But this very uniformity of nature is fatal to our purposes in particular instances. * * * There are no exceptions to the law of gravitation,—and our body universally obeys it, like everything else. At times, however, it causes injury and death. Precisely the same may be said of the legal order: as a rule it tends to preserve and produce what is by nature right, but cases occur in which, owing to its necessary mechanical operation, the moral law is violated and broken by the positive law. * * * The law protects contracts which were made in legitimate business, without regard to whether their provisions still conform to justice or not. Owing to unforeseen circumstances, things may so have changed as to cause the ruin of one of the contracting parties should the contract now be carried out, perhaps without substantially benefiting the other party. The law is not concerned about that. * * * It proceeds on the assumption that everybody always acts with a complete knowledge of the law and with a full understanding of his interests, an indispensable hypothesis which, however, as we all know, is false."

"The same is true of criminal law. It embraces under the same formula two acts which are, subjectively or morally considered, infinitely different from each other. Murder is the intentional killing of a man with malice aforethought, and is punishable with death. This definition includes the

open and honest killing of a dishonorable and base scoundrel who has ruined the honor and happiness of my family through some dastardly act, without having rendered himself amenable to the criminal law, as well as the most heinous deed of the poisoner and assassin. It is true, the criminal law attempts to make itself more elastic where the discrepancy is greatest, in order to adapt itself to the individual case: the discretionary powers of the judge in reference to the punishment to be inflicted, the consideration of extenuating circumstances, and the possibility of pardon are means to this end. But it is clear that these safeguards are not sufficient to counteract the errors caused by the mechanical operation of the law." * * *

"Absolute adaptation of the law to the particular instance is possible only when the law appears in the form of a personal will, as is the case in home education." (But few parents are wise enough to make the law of their personal will adaptable very closely to the requirements of each instance of home discipline or administration.) From what has preceded, it is apparent that it may sometimes be morally right to do what is forbidden by the law. We may go farther and say that it sometimes becomes a high moral duty to perform some important service for individuals or the public, that is forbidden by the law, and then to take the consequences in prosecution and punishment if that should follow. This happens oftenest of course, in the case of bad laws, but may happen even when the law is good in its usual application.

"* * * More frequent and more important is the other case: it may be legally possible to do what is morally impossible; a man may be guilty of the most serious violations of the moral duty of justice and yet remain strictly within the limits of the law."

"The positive law defines, we may say, only a part of the actual right. The mechanical nature of the legal order makes such a limitation necessary. * * * Hence, the legal order confines itself to enforcing that minimum of righteous acts without which human social life would not be possible.

It thereby, of course, leaves a wide margin for injuries and the unjust assertion of individual interests at the expense of those of others. It does not enforce the payment of a just wage, but simply of the stipulated one; it does not punish the delivery of goods inferior to those the contract calls for, but only fraud; it does not compel a man to give to everyone the honor that is due him, but merely punishes affronts. A general survey of all the spheres of rights will bring out this discrepancy between the demands of the law and the demands of morality."

"The legal spheres correspond to the great spheres of action or the circles of interests, for the protection of which the legal order exists. The first and narrowest of these is that which we may embrace under the heading, 'Body and Life. Encroachments upon this domain are made by homicide, disfigurement, assault, and all attacks upon life and health. * * * If we mean by encroachments upon this domain only physical assaults, then the law seems to leave no room for infractions. In fact, however, every hurt is directed against body and life, and so boundless opportunity is offered for unpunishable offences against others: such as causing them annoyance, arousing their anger or grief, exploiting and defrauding them."

"A second sphere of interests is bounded by the family, the expanded individual life. Encroachments upon this domain are made by adultery, abduction, substitution of children, seduction, and similar crimes. The more pronounced and tangible forms of such offences are reached by the criminal law; the more subtle forms of disturbing the peace of the home and the family: tale-bearing, intriguing,—by which husbands are estranged from their wives and parents from their children, do not come within the reach of the law."

"A third sphere of interest is defined by 'Property,' which includes the sum-total of external means of self-preservation and voluntary action. Encroachments upon this field are made by * * * all such offences as come under the head of crimes against property. Here again the criminal law cannot reach the more subtle methods by which property is illegitimately acquired at others' expense. In spite of the efforts of the law to punish

the offenders, the inventive genius of the lower and higher criminal classes always outwits the law."

"As a fourth sphere of interests, may be mentioned, 'Honor' or ideal self-preservation. Encroachments upon this domain are made by insults, false reports, slander. In these cases, much more than in the preceding ones, the criminal law can reach only the more flagrant and careless, but not the more subtle and shrewd violations, which are not the less injurious. There are a thousand anonymous, indirect, undiscoverable ways of blasting a man's reputation for which a penal formula never can be found."

"The fifth sphere of interests is the *free exercise of volition*. Attacks upon the liberty of others are made by kidnapping, illegal arrest, compulsion, threats. Breaches of domestic peace may also be placed in this list. * * * No one enjoys freedom in the full sense of the term whose life and strength are utilized merely as means to others' ends. Hence, whoever uses men in this way, or attempts to reduce them to such a state or to keep them in it, acts contrary to the law of justice, which demands that the freedom of others be respected."

"Finally, we may also add a sixth sphere of interest, which is closely connected with the fourth and fifth, the *spiritual life*, which expresses itself in convictions, views, beliefs, religion, morality, and habits of life. Persecutions, aspersions, open or concealed signs of contempt, scornful neglect, importunate attempts at conversion, are some of the forms of interference with this field. The inner state which tends to such forms of injustice, we are in the habit of calling *intolerance*. It has its natural roots partly in man's dependence and need of society, the gregarious instinct, partly in his arrogance and the conceited belief in his own infallibility." * * * "The opposite habit of mind is called '*toleration*,' *liberality of mind* would perhaps be a more appropriate term. A liberal education shows itself in the ability to understand what is strange and different. It is acquired only by frequent contact with the extraordinary, be it personal, literary, or historical. In narrow spheres the mind remains narrow; nations, classes, scholastic sects, religious communities, which live for themselves and scarcely come in contact with the customs and opinions of others, are universally conspicuous for their intolerance."

“This is a field in which the law is most powerless. It can reach violations only when they can be construed as libels, which is not always the case. And yet such offenses may cause serious injury. * * * The law is powerless against them. Nevertheless, toleration is not a favor, but a right; morally, every one has the right to demand that we do not interfere with his habits, his convictions, and his thoughts, if he is determined to adhere to them; and it is a duty to respect this right, provided, of course, the individual's behavior does not violate the rights of others. I have the right to win over others to my ways of thinking and acting, only by example and by means of persuasion, and in the latter case I must respect the rights of others to their own opinions. The difficulty arises with the question: To what extent have tastes, habits, assertions, opinions, of which we cannot morally approve, a claim to toleration, that is, to what extent shall we concede them equal rights? It is obvious that I have not the right to censure or express my contempt for every statement which cannot be justified morally, or which does violence to my moral sense or taste. And it is equally obvious that I am not bound in duty to allow everything to pass without contradiction: it may be in the highest measure justifiable to express my contempt openly. Here again no formula can be given which will enable us to decide each particular case. We must leave it to tact to discover what is proper under these circumstances.”

CHAPTER VIII.

LOVE THY NEIGHBOR.

SELFISHNESS, LOVE.

LIMITATIONS, CHARITY.

VERACITY.

LIE OF NECESSITY.

PROMULGATE THE TRUTH, MARTYRDOM FOR TRUTH.

*“Beside justice, the negative side of benevolence, we have love of neighbor, the complementary, positive side. We may define it as that habit of will and mode of conduct which assists those in want, and strives to promote the welfare of others by active sympathy. It is the great commandment of Christianity. In the last judgment man’s worth will be measured by this standard. “Then shall the King say unto them on his right hand,—I was an hungered, and ye gave me meat: I was thirsty, and ye gave me drink: I was a stranger, and ye took me in: naked, and ye clothed me: I was sick, and ye visited me: I was in prison, and ye came unto me.’ Three times more these works of mercy are enumerated,—a sermon powerful in its grand simplicity.”

“The commandment is so simple and clear that no doubt can arise as to its meaning.” * * * Questions and difficulties arise when we seek to obey the command in every day living. If every opportunity to help others, with time or money, were to be accepted, most people would soon be without money for their own needs or the needs of their families, and without time for their own affairs. It is evident therefore, that there are practical limitations to the services to be rendered to one’s neighbors.

“(1) The duty to care for the welfare of others is limited first, by the duties that grow out of one’s own life. The individual’s first duty is to develop and exercise the capacities and powers which are given him, and to make his own life beautiful and good. His own individual life is the field which it is his special mission to cultivate. For this work he is especially fitted by natural inclination and insight. In the last analysis

every man knows what is good for him better than anybody else. * * * And so we shall be obliged to say: Each person does the most for himself and others when he makes the most of himself." * * *

"We cannot question the validity of the universal proposition. The difficulty lies in its application to concrete conditions. * * * This cannot be decided by the general formula of duty, but only by a consideration of the concrete circumstances; it will ultimately be decided not by the reason but by the heart. And, as a rule, we shall feel inclined to applaud the man who obeys his heart more than his reason in these things. We admire the heroism of a woman who resolves to follow her husband into solitudes, into exile, or into imprisonment. We respect the sister of charity who sacrifices her life and gives up everything to nurse strangers upon their sick-beds during the long weary days and nights. We say it is altogether possible that such a nature develops and exercises the gifts with which it is endowed—a warm heart, a skillful and tender hand, a consoling courage—most perfectly in such a calling, and so realizes the fullest and most beautiful form of life possible. But—what is good for one is not good for all."

"(2) The duty of caring for the welfare of my neighbor must be limited in another way; I must guard against destroying his independence, * * * for self-reliance is a general precondition of a healthy and normal life. The object of all help is, after all, to make help superfluous. * * * In education we have an example of the most comprehensive and deliberative care for others. It is governed solely by the consideration that we must train the pupil so that he can take care of himself." * * *

"(3) There is, finally, a third restriction, or rather narrower determination, of the universal duty of love of neighbor: that made necessary by our special duties toward special neighbors. Every man is related to persons who have special claims upon his benevolence and active sympathy—to children and parents, relatives and friends, servants and laborers, neighbors and inmates of the same house. His strength and possessions belong to these first of all." * * *

“By these special conditions, the virtue of charity or love of neighbor is confined to a fixed channel, as it were, through which it flows as a permanent stream and fructifies its banks. Here, too, everybody knows with some degree of certainty what is good for those nearest to him, but it is much more difficult and often impossible to tell how to help strangers. And here, too, we must think of the collective bodies to which the individual belongs. The community and the nation have legitimate claims upon him, and their permanent charitable institutions supply him with a safe channel in which to exercise his sympathy with others’ welfare.”

“The formula of the love of neighbor: care for the welfare of others, must therefore be limited and supplemented as follows: In so far as this can be done without neglecting the problems of your own life, without violating the special duties which arise from your special relations to individuals and collective bodies, and, finally, without weakening the self-reliance of others.”

*“Common sense, by beneficence, means above all, so-called almsgiving, and popular opinion is to this day somewhat inclined to regard almsgiving as absolutely meritorious. * * * Moral philosophy cannot subscribe to this view, except to a very limited extent. Promiscuous almsgiving perhaps results in more evil than good. * * * If a beggar’s life is not a good life, then almsgiving, which promotes beggary, is not beneficence. * * * If the flooding of a country with beggars is a plague, it is evidently an offense against the welfare of the country to encourage the thing. To be sure, the prohibition of mendicancy and almsgiving ought simply to be the other side of organized public charity, which finds work for the unemployed and helps those in need. * * * A particularly deplorable form of almsgiving has been developed of recent years: the charity-craze. Misfortune, poverty, and misery are made the pretexts for entertainments of all kinds, such as concerts, theatrical performances, balls, bazaars—at which elegant and beautiful ladies bargain,

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play, and flirt with elegant and rich gentlemen, all for sweet charity's sake. I must confess that this union of amusement and 'charity' seems to me an extremely sad sign of the times. This playing with distress shows how insensitive certain social classes have become to the seriousness and wretchedness of life." * * *

"*The opposite of love of neighbor is heartless selfishness, which seeks its own advantage, regardless of others or even at the expense of others. The intensification of it is *malice*, which takes pleasure in the distress and sufferings of others even without advantage to self. As *cruelty* it causes physical or mental sufferings, simply in order to feed upon them."

"This habit does not commonly express itself in those brutal attacks upon the persons and interests of others which the criminal law pursues, but in the thousand little inconsiderate, malicious acts which are observed in our daily intercourse with men. * * * A field in which cold-heartedness and malice are particularly common is the habit of sitting in judgment upon one's neighbor. Everything that the latter says or does is misconstrued and spitefully exposed to the ridicule and ill-will of his fellows. An evil or a base motive is always imputed to him, his prosperity is attributed to evil means, his misfortune is regarded as his own doing." * * *

"It is this base tendency in human nature which the Gospel attacks with such zeal. Even if your opinion is correct, it is not your mission to sit in judgment upon your neighbor. He is not accountable to you, but to God, and in His sight you are no less guilty than he. Hence, 'Judge not, that ye be not judged; condemn not, that ye be not condemned.'"

"The opposite of unfeelingness is Love, as Paul describes it: 'It suffereth long and is kind, envieth not, and vaunteth not itself, is not puffed up, doth not behave itself unseemly, seeketh not her own, is not easily provoked, thinketh no evil,

rejoiceth not in iniquity, but rejoiceth in the truth; beareth all things, believeth all things, hopeth all things, endureth all things.' ”

“The thirteenth chapter of Corinthians has been called the Song of Love. Perhaps we may more properly call it the simplest description of love in its most modest form, * * * which does nothing extraordinary and grand and sensational * * * but simply consists in taking and bearing the neighbor as he is, which does not court favors from him but meets him every day with the same or greater kindness. This is the real, true love of neighbor, and when it enters a house it brings happiness, not the great happiness of which people speak, but the little work-a-day happiness, the true happiness. And this love and happiness as gladly abides in modest homes as in proud palaces, or much rather; at any rate it desires to dwell in modest hearts alone, not in haughty and covetous souls.”

“* * * The immediate effect of active benevolence is that it lightens, elevates, and promotes the life of him upon whom it is bestowed.* It also inspires him with courage and confidence for the future. It at the same time fills him with kindly feelings, not only toward the benefactor, but towards the whole world; charity wants to be passed along, to go from hand to hand, without end. * * * Active benevolence, however, also enriches and blesses the life of him who practices it. We are not made poorer by giving, says an old proverb: (‘There is that scattereth and yet increaseth; and there is that withholdeth more than is meet, but it tendeth to poverty.’—Proverbs 11:24.) Certainly not, we are made richer, if not in outward, at least in inner blessings.”* * * *

“And the reverse is also true. There is no surer way to unhappiness than a selfish heart. * * * Benevolence brings peace and joy; selfishness arouses enmity and unhappiness; love is life; selfishness, death.”

Paulsen’s discussion of gratitude, and its opposite, ingratitude, and love of home, of country and humanity, are interesting but are too long for quotation and not readily epitomized.

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CHAPTER IX.

VERACITY.

“Veracity may be regarded as a form of benevolence; it is benevolence manifested in the communication of thoughts.”*

“We may, as in the case of benevolence, distinguish two phases of veracity: a negative side and a positive side. The former, corresponding to justice, is expressed by the formula of duty: Thou shalt not lie; the latter, corresponding to love of neighbor, is expressed by the formula of duty: Serve thy neighbor with the truth.”

“Let us first discuss the negative side.” “To lie, as we are accustomed to define it, means willingly and wittingly to tell an untruth in order to deceive others. Perhaps it will not be unnecessary to make the definition a little narrower by taking account of the fact that falsehood sometimes shelters itself behind formal excuses. In the first place, of course, words, be they spoken or written, are not essential to falsehood. We can lie without words, by acts and gestures, or even by keeping silent. An absent one is slandered in your presence; you know that what is said is not true, but you have not the courage to contradict it; * * * so you are silent, or smile knowingly. That is lying. Or you wish an evil report concerning a third party to be circulated, but you are not willing to shoulder the responsibility, and so you begin: ‘Have you heard what is being said of so-and-so?’ The newspapers, as well as gossiping women, are in the habit of lying in this way: ‘It is said * * *’; ‘In circles which are usually well informed it is rumored.’”

“Equivocation is another favorite trick of the liar. L. Schmidt gives a few examples from Greek life: The Locrians made a compact with the Sicilians, and swore that they would keep it as long as they trod the same earth and car-

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ried their heads upon their shoulders. Previously, however, they had put earth in their shoes, and had placed garlic heads upon their shoulders under their garments."

"Another favorite mode of procedure, developed to an art by politicians and historians, is to let the facts themselves lie. In discussing one side of a question, an historian chooses the most venomous speeches and deeds of its extreme supporters, and the criticisms and self-reproaches of the moderate wing; in presenting the other side, he selects the most satisfactory tenets, the most commendable or tolerable acts of its friends. Thus, by skillfully selecting and arranging, we can make anything out of everything. This, too, is the method of the reviewer who does not like a book; he tears out a handful of phrases or sentences, surrounds them abundantly with quotation marks, occasionally inserts a word or two, and places the stuffed monster before the eyes of the reader, thereby arousing his righteous indignation. There is no absurdity that cannot be drawn from a book in this way. A particularly favorite trick of recent years is to lie by arranging the figures. Figures do not lie, it is said; this is not true; they will prove whatever is expected of them."

* * *

"All these things, then, come under the head of falsehood: To lie means to influence others to accept views which you do not regard as true yourself, by means of speech or silence, by simulation or dissimulation, and by the selection and arrangement of facts."

"Why is lying wrong? Intuitional ethics answers with common sense: Because it is inherently wrong and disgraceful. Kant reckons veracity among the duties to self: he regards falsehood as the abandonment of one's dignity as a man, and places it on a level with suicide: as the latter destroys the physical life, so the former destroys moral life."

"This view is well fitted for the practical-rhetorical treatment of the subject. Indeed, Kant is often an admirable moral preacher. But it is the business of moral philosophy to discover the objective ground of morality * * * in the effects which falsehood naturally tends to leave upon the

conduct of human life. They are not hard to find. Falsehood directly injures the deceived party in so far as false ideas lead to false acts. As a rule, this is the purpose of the lie. Thus falsehood is a means of injustice, and therefore shares in the judgment pronounced upon the latter. But falsehood has a specific effect besides. So far as it can, it destroys faith and confidence among men, and consequently undermines human social life—the foundation of all real human, of all mental historical, life. And this explains its particular reprehensibility. We may illustrate the influence of falsehood by counterfeiting. * * * The existence of spurious coin brings the good money into disrepute. Should spurious coins become so numerous as to make it necessary to test every piece before accepting it, this would be equivalent to the abolition of money as such, for its purpose is to relieve the individual of the necessity of testing its value. Lies invalidate the truth, and the outcome is universal distrust and isolation. * * * When the liar loses the confidence of others, he also loses confidence in them; it is psychologically necessary for the man who lies to expect others to do the same. There can be no doubt that this dual distrust is not a favorable condition of life: like a poisoned stratum of air, it envelops a life and excludes it from fellowship with human beings; the honest and sincere men, especially, are repelled, for they cannot breathe an atmosphere of falsehood and distrust.” * * *

“Hence, it follows from the very nature of falsehood that it poisons speech, undermines confidence, destroys collective life, and so attacks the very fibers of human existence.”

“Another factor helps to make the lie still more reprehensible; it is a sign of *cowardice*. It steals upon its victim, instead of vanquishing him in open battle. A brave man will not lie. The accusation of falsehood always carries with it the charge of cowardice, hence it wounds a man more deeply than almost any other charge. ‘You lie’ means at the same time: ‘You are a cowardly knave.’”

“Everything that makes the lie despicable and base is included in calumny.’ We might rhetorically define it as

the murderous attack of the assassin upon the ideal self of another. In 'Othello' Shakespeare portrays the natural history of calumny with awful faithfulness and cruelty. Iago strangles the innocent wife by the hands of her husband. Had Iago killed Desdemona with his own hand and robbed her as a pirate, he would have been an honest man beside the real Iago. The fact that he cannot even be called to account before a human judge makes the matter all the worse—for what did he do but act in good faith in calling Othello's attention to the dangers threatening his honor?"

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"Moreover, we must not forget that two persons are always necessary to make a slander possible. Just as the thief needs the receiver of stolen goods, the caluminator needs a person to accept his words and to put them in circulation. And just as stealing would be impossible on the large scale without receivers of stolen goods, the business of calumny would be impossible if there were not so many to delight in it and encourage it." * * *

"Another modified form of the lie is flattery.* It is so repulsive because it creeps in under the guise of friendship to defraud its victim. However, here again two people are necessary: one to do the flattering and one who allows himself to be flattered. As a plaster draws blisters, so self-conceit provokes flattery. Hypocrisy is a form of flattery. Religious hypocrisy used to be common. * * * The effect of hypocrisy is the same as that of all lying: as forgery makes us suspect the genuine, hypocrisy brings religion into hatred and contempt. Hence, all truly religious natures hate hypocrisy and all sincere persons hate assumed 'orthodoxy' like death."

"Falsehood raised to the highest power is perjury. It is the lie accompanied by the formal and solemn assurance that it is the truth. Perjury has everywhere and always been regarded as one of the greatest crimes, as a sign of extreme viciousness and baseness. We can defend ourselves against violence by violence, strategy, we meet with strategy: these

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are the means of war, which may be followed by an honorable peace after the matter has been fought out. But perjury cuts off all possibility of a return of friendship. There is no defence, no weapon against perjury; helplessly and with a feeling of horror, man appeals to the gods when he has been deceived by perjury, to punish such an enormous crime."

* * *

"The Lie of Necessity.* A problem that has given the moralists the greatest trouble is the lie of necessity. Is deception under all circumstances morally wrong, or can conditions arise under which it is permissible or even morally necessary?"

"In our actual judgments and actions, we experience no difficulty in answering this question; everybody acknowledges the possibility of the 'necessary lie.' There is not a physician in the whole world who does not at times give deceptive answers to the questions of his patients, who does not arouse hopes which he does not share. He does not reproach himself for doing so; neither do others blame him. Indeed everybody does the same thing under similar circumstances. * * * Fire broke out during a performance in a theatre in Zurich. When the stage manager discovered it, he appeared before the scenes and announced that, owing to the sudden illness of an actor, the performance would have to be suspended. The theatre was emptied without any trouble, and then burned to the ground. Will anyone dare to condemn this happy idea as a lie? * * *"

"Only among moral philosophers do we still find persons who regard the matter as serious. Kant declares: Falseness, that is, intentional untruthfulness, is under all circumstances, 'by its mere form, a crime of man against his own person, and a baseness which must make a man despicable in his own eyes.' When a man misdirects a murderer in search of his victim, and dexterously turns him into the hands of the police, we cannot excuse him: he has told a lie; he has therefore forfeited his dignity as a man! And Fichte once said, with his usual rhetorical fanaticism, 'I would not break

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my word even to save humanity.' Let us apply this principle in practice. Suppose that I had promised some one to call for him at five o'clock for a walk, and that on my way to his house, I saw a child fall into the river. If I followed Fichte, I should say to myself: 'If you pull it out, you will have to go home and change your clothes, which will make it impossible for you to keep your engagement; hence you must hurry on, sorry though you may be.' Or would it be right for me to assume that my friend would give his consent in such a case, and, acting on this belief, to break my engagement?" Whether the friend would consent or not, the obligation to save the child is paramount to the obligation to keep the appointment.

"Practice not only contradicts the theory here, but is even theoretically correct in its opposition to these theorists. It may be that the lie of necessity does not fit into the system of a moralist, but that merely proves the inability of his system to comprehend moral things. A teleological ethics finds no difficulty in explaining the phenomenon in question."

"Intentional deception is objectively reprehensible, as was shown above, because it tends to destroy confidence, and thus lead to the disintegration of the social organism. In cases where this effect cannot possibly occur, owing to the very nature of things, it is not reprehensible. Let us take an example. No relation of confidence can be destroyed by deceiving a burglar, because absolutely none exists, neither a special relation, nor a universally-human one. In so far and so long as such lawbreakers follow their calling, they stand outside of the pale of confidence, and thereby forfeit all claims to the truth, nor will they expect to receive it."

"The case is somewhat similar in war. * * * Deception is one of the rules of war: everybody practices it and expects the enemy to do the same. The rules, however, apply only to the game. Whenever in war an individual comes in contact with another individual not as a foe but as a human being, then the universal rule of human intercourse again demands its rights. The same is true whenever the game of war is temporarily suspended by mutual agreement: to break

an armistice, to ambush the bearer of a flag of truce, is disgraceful and dishonorable." * * *

"Another case which may make intentional deception permissible or necessary is the inability of the other party to understand or to bear the truth.* It may, for example, under circumstances, have a quieting effect upon insane persons to enter into their delusions. It is often necessary to accommodate oneself to the weak-minded. This is true of old people who have grown weak-minded; they have lost the faculty of seeing and judging things in their true relations, but not the faculty of becoming excited by occasionally misinterpreting them. We are compelled, for example, to make certain arrangements contrary to the wishes of our old parents. Is it right to conceal our plans, or to deny them? It is a hard thing to do; it seems like a breach of old confidential relations. And yet every one will at times decide to pursue such a course, and justly so, for what good would it do to tell them? * * * The case is different in our intercourse with children; and here we are often too ready to have recourse to the most convenient form of deception that happens to present itself. The deception persists in memory; when the intelligence develops and recognizes it as such, it may afterwards seriously undermine the child's faith. Besides, another escape is always at hand; we can refuse to answer the child's questions by saying: 'You do not understand these things yet,' or, 'They do not concern you.' It would, however, be wholly impossible to treat old people in this way, even if it were proper."

"But, some one might ask in troubled tones, where, then, shall we draw the line? The transition to childish old age is a gradual one. Where may one begin to deceive? And if I may deceive a weak-minded person, then why not a stupid blockhead? And where shall this end? And who is to decide how to classify the individuals in question? Only one answer can be made to such questions. Such fixed boundaries do not exist in morals. The law draws hard and fast, and therefore arbitrary,

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lines, while morality has everywhere to do with gradual transitions. The particular case must necessarily be decided by the individual's own insight and conscience, and with a view to the concrete conditions. Morality cannot give him a scheme which shall enable him to settle the matter with mechanical certainty. It can merely indicate the general points of view from which the decision is to be rendered." * * *

"To the same category belong the conventional half-truths and untruths of social intercourse.* We welcome a visitor who comes at an inopportune time; at the end of a letter we assure a man whom we do not know, or whom we look upon as a thorough villain, of our high esteem. The necessity and justification for this lies in the fact that smooth and peaceful intercourse is not possible among men as they are constituted, without the exercise of some constraint. The customary politeness is the oil which prevents, so far as possible, the creaking and pulling of the machine. The angels in heaven do not need it. Where there are no inner discords and outer obstacles, perfect openness is possible; human beings as they are constituted cannot endure it. * * * Of course, where is the boundary between necessary politeness and repulsive flattery and falsehood? No system of morals can draw the line; moral tact alone must decide. And the thing is not without its dangers. A person who lives much in society easily forms the habit of lying, his conscience gradually becomes seared; it becomes second nature and finally a necessity for him to lie. We are therefore ready to suspect a man who exhibits great skill in the art of polite speech. We are more apt to trust one who is somewhat awkward and backward in speaking conventional untruths."

"Hence, our conclusion would be: Be truthful; this holds unconditionally; but 'speak the truth,' does not hold unconditionally."

"How shall we account for this strange 'rigorism' of the moralists, which is everywhere contradicted by life? Are they perhaps influenced by the curious notion that the 'stricter' their systems, the better it will be for the morality of mankind?"

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It almost seems so. If our moral systems, they seem to think, leave the smallest loophole for falsehood, man's inclination to lie will gradually enlarge it, and he will always find an excuse for not speaking the truth. * * * We feel the need, in the face of our constant danger, of emphasizing to ourselves and to others, often in the strongest terms, the value of truthfulness and the disgrace of lying and of trifling with the truth." * * *

"We turn now to the positive side of veracity.* It corresponds to love of neighbor, and is expressed in the formula of duty: Serve thy neighbor with the truth. Since the conduct of man is, to a considerable extent, dependent upon ideas, true ideas are of prime importance to his welfare. The universal duty of love of neighbor, therefore, includes the duty to assist one's neighbor in ridding himself of false ideas and of acquiring true ones."

"This phase of the question has been too much neglected by moralists, a fact which accounts for their meager treatment of veracity and also explains their inability to do justice to the lie of necessity. Whoever lives a life of truth in the main, will have no trouble in settling the question of deception whenever it may become necessary or expedient. But the person whose truthfulness consists solely in refraining from telling lies, will be afraid of totally destroying his reputation in case he should ever happen to say what is not true. Such purely negative veracity is, of course, a rather paltry thing; it easily degenerates into the mere art of avoiding direct falsehood. Had the disciples of Christ, after the death of the Master, merely refused to deny Him directly, had they returned to their former callings, and obeying the commands of the authorities and the dictates of prudence, locked up the memories of the past in their own hearts, had they in pursuance of the maxim that it is not our duty to say everything we believe, carefully evaded every discussion of their experiences, they certainly would have escaped the reproach of falsehood, but they would surely never have become what they now are: witnesses of the truth, whose testimony is shaping the destiny of the centuries."

"Positive veracity, which first gives to negative veracity its

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real meaning and value, manifests itself, first, in the personal intercourse with individuals, where it assumes the form of advice, instruction, admonition, and correction; secondly, in the public communication of the truth, where it takes the form of research, teaching, and preaching."

"According to the first form, it is my duty to help the individual whom I find in search of the right path, or following the wrong path, according to my better lights. This duty, too, must be qualified. Just as the duty of love of neighbor cannot mean that every one is to offer his aid to everybody he meets, the duty of veracity cannot mean that we are at all times to instruct and advise people, to admonish and set them right. * * * The duty to instruct and set right presupposes two things; first, that I am myself sure of the right path; secondly, that the interested party is inclined to profit by my advice. We are essentially governed by these considerations in our actual practice. I see a stranger in the mountains turning into a road that leads nowhere; I do not hesitate to call to him and to direct him. When, on the other hand, I find a person on the point of embarking upon a mercantile or literary venture, which I regard as sure to fail, I seriously deliberate before advising him. If the man is a stranger to me I let him alone. I do not know enough of his situation, his powers, his resources, to know what he can do; nor can I assume that he has confidence enough in my judgment to accept my advice: Perhaps it would simply confuse him or anger him." * * *

"The ability to judge where and when it is proper to aid others with advice and instruction may be called 'discretion.' The opposite, 'indiscretion,' the inability to keep from advising and instructing people, is a quality that will make a person disliked by his fellows sooner than anything else, especially when it appears in young men. It is particularly necessary for one to be on one's guard when it comes to reprimanding or blaming people. Uncalled-for blame angers a man and strengthens him in his perverseness. The habit of finding fault and speaking evil is a real vice. Here the purpose is not to serve the neighbor with the truth, but to flatter one's self-love and vanity. The Gospel does not warn us so earnestly against fault-finding for

nothing. Insinuating itself into our hearts in the guise of sincerity and love of truth, this habit becomes a soul-destroying vice. It extinguishes brotherly love. * * * It prevents us from being true to ourselves; the man who is always beholding the mote that is in his brother's eye, at last cannot see the beam that is in his own eye. Hence, the rule is: Speak of evil only when the good is promoted thereby; and, for the rest, turn all good things to good."

"The other phase of the problem, the public communication of the truth, demands a somewhat more elaborate treatment. To know the truth as a whole, as contained in philosophy and science, is not a function of the individual mind as such; a people, or, in the last analysis, humanity, is the bearer of the truth, the individual shares in it as the member of a people. The little fraction which he possesses, he possesses as the heir of the past; he thinks with the logical and metaphysical categories which the popular mind has developed in the course of thousands of years, and has incorporated into grammatical forms. He sees things through the ideas and notions which his age places at his disposal, he labors upon the solution of problems which it suggests to him. On the other hand, it is no less true that the collective mind exercises the functions only through individual minds as its organs."

"Here a notable difference may be observed; individuals do not stand in the same relation to this function. The masses always participate in the truth in a rather receptive, passive manner, while nature chooses only a few distinguished minds as bearers and increasers of knowledge. If we designate the latter with the old term of clergy (*clerus*), which includes all leaders of the people, its investigators and teachers, its thinkers and poets, we may say: The public communication of the truth is the true life calling of the *clerus*, and veracity is the specific duty, as it were, the professional virtue of the clericus."

"But we may again distinguish two phases in this virtue: we may call them sincerity and the love of truth. The former is the universal and elementary virtue of the clericus: it consists in this, that he simply and clearly, conscientiously and faithfully, employs the truth in teaching and preaching, in theory

and in practice. It is the fundamental precondition of his power to do good in so far as the latter depends upon the confidence which the laymen have in him. But confidence is gained only by simplicity and sincerity of heart and intellect. Inquisitive love of truth, on the other hand, is the special duty of the true investigator and pathfinder; it is the passionate impulse which incites the historical or natural-scientific investigator to discover new facts and to penetrate more deeply into their relations. It is the impulse which, urging the thinker constantly to test the established views and theories, is forever on its guard against error even in the form of established opinions. It is the love of truth which inspires the poet and thinker who seeks to comprehend and express the secret meaning of life and the universe in new thoughts and symbols. It is the love of truth, finally, which impels the great leaders of mankind, the prophets and reformers, to discover new untrodden paths of life. * * * They are restrained by no authority, by no prejudice, be it ever so sacred; they follow the light which burns in their hearts."

"The love of truth finds its highest expression in martyrdom. We should expect the nations to turn to their great leaders and pathfinders in thankful admiration. And so they do, but it is only after their death that mortal men are reckoned among the gods.* Martyrdom is the great purifier by which humanity tests the genuineness of new truths; it is the narrow portal through which heroes pass into immortality. This has been the method of humanity from times immemorial, and it is not hard to see the historical necessity of this fact, which is so surprising at first sight."

"Let me first try to show the psychological necessity.

The conceptions and truths of a people become—and that is their true function—the basis of its institutions, of the state and the law, of the church and the school. All kinds of arts and practices depend upon our views and ideas of the nature of things and of men, their relations to each other and the universe. * * * Hence, it follows that every attempt at a radical change in views is regarded as a menace

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to the entire life; the weakening of the theoretical foundations will result in the shattering of all the institutions founded upon them. And this is not an illusion. All great revolutions in the world of institutions had as their starting point revolutions in the world of thoughts. * * * The long series of revolutions which fill the pages of modern history are the after-effects of the changes in the world of ideas which, after the fifteenth century, undermined the medieval conception of the universe which had been systematized in the dogmas of the church. The great historical and geographical, cosmical and physical discoveries, which were made in surprising numbers in the neighborhood of the sixteenth century, first made possible the ecclesiastical revolutions, then the economical and political revolutions, which since then have shaken Germany, England, and France, and which have not yet come to an end. Wherever, however, the world of thought remains stable, as was the case in China, the world of institutions persists in its old forms."

It is natural, therefore, since the welfare of a people depends upon the stability and trustworthiness of its institutions, that the church, the state, and society in general, should resist and persecute the promulgation of any new truths that threaten to undermine the authority or change the organization or the activities of the church, the government, or of society. It usually happens, therefore, that those who promulgate revolutionary ideas meet with persecutions in varying forms, and sometimes martyrdom. It is usual for all sorts of agitators and would-be innovators, when repudiated by their contemporaries, to appeal to posterity, but the appeal is not always sustained. A great proportion of those who proclaim doctrines or ideas which they think will overturn or transform existing institutions or customs are correctly judged by their contemporaries, who repudiate them, and posterity, instead of adopting their ideas, will forget them altogether. It is right that society should resist changes in institutions and customs, and the beliefs upon which they are founded until the truth of new ideas is well established and until the changes in institutions or usages founded upon them may be fairly

expected to promote the welfare of mankind better than those which they replace.

"Thus, the attitude of mankind to new truths is psychologically necessary.* But it is also teleologically."

"Historical life is evidently not possible without fixed and permanent institutions; they are the means by which collective reason determines and governs the life of the individual. The many, we might say, somewhat modifying a remark of Heraclitus, although they believe they are living according to their own insight, are in reality governed by the common reason. * * * Permanent conceptions are the preconditions of permanent institutions. Hence, in order that historical life may be possible, it is necessary that the thoughts become fixed and take firm root in the minds of men, and offer resistance to new thoughts which seek to push them out. Perhaps they cannot be established firmly enough, at first, without a transcendent sanction. This would explain the teleological necessity of a religious metaphysic, which we actually find everywhere, as the original foundation of the faith and life of a people, of its morals and laws, and which usually offers such great resistance to the introduction of new truths, Nay, we can manifestly form no conception whatever of a mental historical life in which we should not have to battle for the truth against error and prejudice; of what would it consist? Without friction, no motion. * * * Owing to this beneficent arrangement, the spiritual leadership of humanity is finally reserved for men of great, earnest, and unselfish hearts." * * *

"I shall close this entire discussion with a consideration of the question: Does the duty of communicating truth universally demand the destruction of error wherever and in whatever form it may appear? It is one of the great controversies which have always moved mankind. We may define it as the controversy between the will and the intellect, between the practical and speculative sides of human nature. The will, turned towards self-preservation, demands, as was shown above, stability of institutions, and therefore also of

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the conceptions upon which they are grounded. The spiritual and temporal authorities, which we may term the representatives of the will in history, therefore always incline to demand that certain things be fixed once and for all, which criticism should not be permitted to disturb. The intellect, on the contrary, refuses to close the debate; to hinder the continuation of the investigation means for it the perpetuation of error. The end of all research is the absolute accommodation of knowledge to reality. But this goal is infinitely remote, and hence the attempt better to adapt the conceptual system to reality must be constantly renewed. Nor are the fundamental principles excepted; they, too, must be subjected to progressive changes, if only for the reason that the constant extension and intensification of particular knowledge ultimately demands a rearrangement of the facts."

"The antagonism between these two tendencies, formulated as a conflict of principles, turns upon the question: Is truth under all circumstances good and error harmful? Or may the preservation of error at times be necessary, and its destruction harmful? The politicians, if we may designate the representatives of the will by this term, affirm the latter; the philosophers, the representatives of the intellect, the former question."

"If the question is asked absolutely and universally, it will be impossible to answer it otherwise than with the philosophers: Truth is good; error harmful. Since things do not govern themselves according to our opinions, we must govern our opinions according to things. Things, says Bishop Buller, are what they are, and their effects will be what they are; why should we wish to deceive ourselves?" * * *

"On the other hand, it seems to be impossible to deny that the destruction of an erroneous idea does not, under all circumstances, promote the welfare of him who harbors it. Hence an inadequate idea may be better than none at all; and the conditions may be such as to make it possible to undermine the false conception without establishing the true one." * * *

This indicates the key to the situation, the attempt to

remove erroneous conceptions or beliefs should be conditioned upon the likelihood of being able to substitute truer conceptions or beliefs, that will prove a better guide for life and conduct.

“From this point of view the controversy between the politicians and the philosophers, it seems to me, may be settled.”

“The philosophers are right in this: No limits are to be set to research. Whatever new thoughts (that are true) a nation produces, will be suitable and good for it. * * * The investigator, as such, can therefore be concerned with no other question than this: What is true? * * * The scientific writer has but one concern: *How shall I most clearly and definitely present the things as I see them? Whoever allows himself to be governed by considerations and purposes of a different kind, whoever is thinking, first and last, how he may please this man and avoid displeasing that one, does not serve the truth, and therefore the truth also despises him. Truth gives herself only to him who seeks for her alone.” * * *

“So far the philosophers are right. The politicians, on the other hand, are right in this, that when it comes to imparting knowledge by instruction, which is designed for particular persons, we must be guided not only by a regard for the subject but by a regard for the person. This consideration may prevent the teacher from saying everything he thinks, and from saying what he thinks just as he thinks it in his own mind. We do not tell the simplest experience to two different persons in the same way; we take into account the person, and govern our narrative and voice, the selection and arrangement of the facts, accordingly. How could we speak of greater things, how could we speak of God and the world, to persons of different age, education, inclinations, and views in the same words? It is the same history of mankind which is taught in the grade school, in the high school and the university; and yet how different must be the

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method of treatment in order that it may be good, instructive and edifying in each place. The same also applies to ultimate principles. The world is one and the same, and so is the truth; but it cannot reflect the same countenance in every mirror."

PART SECOND.
PROFESSIONAL ETHICS.
CHAPTER X.

ETHICS OF BUSINESS, OF EMPLOYMENT, OF PROFESSIONS.

All men, whether they will or no, and whether they acknowledge it or not, are as surely under dominion of moral laws as of physical laws and the consequences resulting from obedience or disobedience are as sure to follow in the one case as in the other. No human being, therefore, who has intelligence enough to be responsible for his acts is free from the obligation to *be* good and to *do* right. It is the province of ethics to discover the principles upon which a good character may be formed, and to describe the rules and methods by which right conduct may be guided. The preceding chapters have attempted to do this, in a brief and imperfect way. It remains now to apply these principles and rules to the special circumstances, relations and obligations of professional life, and to discover and describe, if we can, how these may differ from the duties and obligations resting upon men in other walks of life. It ought to be recognized as a rule of ethics, or morality that every man and woman having sufficient health and mental capacity, should be engaged in some employment or service useful to society; and in choosing a profession or business or trade which one expects to follow for a livelihood, the question is fundamental whether those persons who are served or influenced will be benefited by it or harmed by it. Probably most people choose their employment with little thought of anything except the prospect of gaining a livelihood by it, and whether it will be suitable to their abilities and congenial to their tastes; and fortunately, most of the employments that are open to the choice of young people are more or less useful as well as remunerative. Such employments as are injurious or useless ought not to be thought respectable.

The duty to follow some useful calling is no respecter

of persons, but rests upon the rich and the poor, the high and the lowly, the learned and the unlearned, the wise and the foolish, the strong and the weak, upon men and women. There should be no exceptions except for disability.

The most important ethical requirement in every business transaction is that all the parties to it are benefited by it. Any business, like gambling and perhaps some forms of speculation, that does not admit of benefit to both parties in the transaction, is not a legitimate business and the following of it cannot be defended on grounds of morality.

In ordinary transactions of buying and selling the parties are usually supposed to meet on equal terms, each able to look out for his own interest. It is required of the seller to tell the truth about what he sells and the best standards of business morality as well as the best business policy lead the seller to interest himself in his customer's point of view, the use he can make of his purchase, whether this article or some other will best serve his needs, and other matters that make him satisfied with his purchase and so become a continuing customer. In the relations of employer and workmen or the merchant and his clerks, the human element comes in with more importance than with the seller and buyer, and the employer has far greater responsibility for the welfare of his employes. His duty is not accomplished by paying them so much money for so much work, but he should provide them a safe place to work, in pure air and wholesome circumstances, with necessary conveniences for personal comfort and cleanliness, and should take an interest in their health, pleasure and general welfare. Not all employers do these things, in fact so many neglect them that it has been found necessary to enact laws making specific requirements for many of them. It has been slowly penetrating into the minds of men that the physical health and moral welfare of men and women are more important than the profits of business. However, in business and manufacturing, the health and welfare of employes is not the first or primary consideration; the object of the shoe manufacturer, for instance, is to make shoes, and if he did not desire

to make shoes he would not hire any men at all, nor assume any interest or responsibility for their health and welfare; he does not make shoes in order that he may provide for the welfare of the people he employs, but he employs them and takes good care of them in order that he may make shoes. Generally, in all business or manufacturing or agriculture, the matters of importance and chief consideration are the things produced or manufactured, or bought and sold. It is true that those engaged in all these pursuits may, and should, make their employments and business relations minister to the higher levels of life in moral and spiritual development and expression, and these are the best and most important fruits of living, to be won individually in whatever circumstance or conditions in life men find themselves. So far as business itself is concerned the commodities produced and distributed are the things of primary importance.

In such professions as medicine and dentistry the human element comes to the front and becomes of primary and chief importance. The practice of medicine and dentistry consists in personal services to supply personal needs, and the matter of making something and selling something takes a subordinate and comparatively insignificant place. It is true there is a business side to dentistry and medicine and there is a bargain and sale of professional services, but the difference between selling professional services and selling commodities, or even one's time in some mechanical or routine employment is so great that different terms are used to describe them. We sell commodities, or time in ordinary employments, for a *price*. We perform a professional service for a *fee*. When you make a gold filling, or make a crown or bridge you charge a fee for your services, you do not sell the crown or bridge for a price.

The interests intrusted to practitioners of medicine and dentistry are of the utmost importance, involving personal symmetry and beauty, comfort and health, not infrequently life itself. It is not surprising therefore that the community should expect, and the professions should seek to maintain in their ranks, a higher standard of fitness and training, a

better education, greater general intelligence, and above all, a higher standard of moral excellence and more scrupulous conscientiousness than is expected or exacted from other classes.

The relation of a dentist and his patient is not that of a seller and buyer, nor that of employer and employe. It is a *trust*, confided to the dentist by his patient, who entrusts his future comfort, beauty, health, not infrequently the prolongation of life itself, to the knowledge, skill, good judgment, sincerity, honesty and disinterestedness of the dentist. The patient does not come as a buyer seeking to purchase something the dentist has to sell, so much money for a set of teeth or a gold crown or filling; nor as an employer seeking to hire a man to do a job of work; so much money for cleaning teeth, (prophylactic operation) treating an abscess, or removing a pulp and filling a root. The patient expects to receive, and the dentist should insist upon giving, something more than the mere technical skill and craftsmanship that enables him to do the work. Professional knowledge and skill implies more than technical knowledge and skill. It means the ability to understand present conditions, past history and future probabilities or results, and such knowledge, experience and judgment as enable a man to advise and frequently to dictate what should be done; and this is a very different matter from the mere technical skill to do it. This is what makes the dentist's work a professional service instead of mechanical or artistic work, and this is what makes it worthy a professional fee instead of wages for work or a price for something made.

A price is supposed to bear some pretty definite relation to the cost of purchase or manufacture, with the added expense of carrying it in stock and making the sale, and some suitable percentage of profit added; and wages or salary have a similar rather definite relation to time consumed and the knowledge, experience and ability of the person employed. There is much greater flexibility about fees, and several additional elements come into the determination of them. The primary basis for a fee is the same as for a price or wages, namely the cost of production, the time consumed and the knowledge, skill and

judgment required for the service, but a fee can be influenced to a much greater extent by the art, the knowledge and skill, but especially by the judgment and wisdom, and reputation for success, than can a wage or a price, and more important still in determining a fee is the importance of the service, the risks attending it, the amount of benefit that may follow from success and the extent of injury that may result from failure. Added to all this is the ability or inability of the recipient to pay for the service. These considerations serve to make professional fees exceedingly variable, both as regards the men who receive them and the people who pay them.

In the case of a lawyer, the amount of pecuniary interests at stake has more to do with the amount of his fees than any other one thing. It is conceivable that a lawyer might at different times have two cases involving similar points of law and procedure and taking similar amounts of time, in one of which one hundred dollars was at stake and in the other half a million dollars, and he might receive twenty-five dollars for one case and a thousand dollars or more for the other. No salaried man or wage earner could ever hope to get such different amounts for similar services. These considerations will indicate the objections against charging for professional services by the hour. A good many dentists have not got away very much from the mechanic's point of view, and profess to charge their patients in strict relation to the time spent. Many years ago a well-known man, in a paper before the American Dental Association or in one of the principal dental journals, said that for operations of filling teeth he charged three dollars an hour for the time spent in preparing the cavities and finishing the work and seven dollars an hour for the time spent in introducing the gold, the inference being that the additional charge would pay for the gold he was using.

Another man told how he had an hour-glass which he set going on his operating table when he seated his patient in the chair and turned down upon its side if he were interrupted during the sitting by the need to see other patients or attend to other matters. In this way his patients were able

to see that he did not charge them for anytime he did not give them. In dentistry, time is the most important of the circumstances which determine the fee, but it should never be allowed to constitute the only thing that determines it. In the practice of medicine and surgery, time has a much smaller influence in determining fees. A doctor in a place where the standard fee for a house visit is two dollars, charges that amount whether he is in the house five minutes or a whole hour, and a surgeon whose fee for removing an appendix is three hundred dollars and it usually takes half an hour, does not charge six hundred dollars if it happens to take an hour.

The difference between a fee and wages or price is not merely arbitrary, a means by which certain classes of men seek to make a distinction where there is no difference, but the word fee is applied to a different kind of service, and implies different standards of estimation or determination.

CHAPTER XI.

PROFESSIONAL ADVERTISING—WINNING A PRACTICE—DUTIES TO PATIENTS.

The attitude of the dental, medical and legal professions toward advertising is based upon the differences I have been trying to explain between professional services and business, manufacturing and agricultural employments.

A man may advertise things, commodities, with the utmost freedom if he does not misrepresent them, but there is almost universal opinion in the professions of dentistry, medicine, law, and some others, that the public paid advertisement of personal qualifications or character, professional ability, fees for services, etc., etc., is improper, in bad taste, and not consistent with personal self-respect or professional dignity. A man may advertise his professional occupation and the location of his office, but can scarcely go beyond that. There are some men in both the dental and medical professions who are impatient under these restrictions and fail to comprehend the reasonableness and necessity of them, because they have no clear idea of the difference between the professions and commercial or manufacturing pursuits.

So deeply rooted and universal among professional men is the conviction that public advertising of the commercial sort is inconsistent with professional self-respect that nothing else will so quickly and certainly cause a man to be ostracised by his professional associates and cut off from all professional societies. Moreover, the advertisements themselves are so commonly untruthful or misleading and the practice they represent so often incompetent and unscrupulous that advertising has come to be looked upon as the badge of quackery by the community as well as by the profession, and the man who descends to it must expect to find the better classes of people shunning him. That is to say, such advertising is quite as sure to repel the most desirable patients as it is to attract a less desirable class of people.

It is important that you understand the distinctions and differences I have tried to make clear, and that you pass over from the attitude and standpoint of workmen, technicians, or even artists, to that of professional men, and take upon yourselves the additional responsibilities and duties of professional men, associate yourselves with professional men in places where you live and practice, and make your patients respect you and treat you as professional men and not merely as workmen whom they can hire to do a job. The importance of these discriminations and of cultivating the professional instead of the commercial spirit is greater than you can at present fully realize.

The conventional rules in regard to signs and announcements are matters of etiquette rather than ethics. "In New York it would be deemed unbecoming to insert card with residence and office hours; or notice of removal in a medical journal, much more in a newspaper, etc., but in some other cities such notices are not considered improper."

"In Paris a professional doorplate is a deviation from propriety. In New York a modest doorplate or sign is the rule."

The above conventions or fashions apply primarily to physicians, but most dentists conform to them with equal strictness.

In some of the smaller towns it is not uncommon for the professional men; lawyers, physicians and dentists, to keep their professional cards standing in the local newspaper. This may often be done more with a view to give loyal support to the town paper than for any benefit that may be expected from the advertisement.

In view of the restrictions which the codes of ethics impose upon advertising, I am sure the question often arises in the minds of young men how they may make their professional ability known to a sufficient number of people to win a living practice. It must be said that it is likely to take time. A practice, like many other things, is not born full grown, but must have time in which to develop. There are many influences that may help that are perfectly proper and

allowable by the code of ethics, and consistent with professional and gentlemanly conduct. First in importance is the skill and wisdom with which the few patients that may come are treated. Second in importance, though usually first in immediate results, is the favorable impression made by the personality of the young man, both upon his patients and all those whom he meets in any of the circumstances and relations of life. It is contemptible to "work for business" a man's church, or lodge, or club, and a man who does so is pretty likely to be recognized and meet the contempt he deserves. A man should join a church or lodge or club for the sake of promoting the ends for which such organizations are maintained. If he does that the acquaintances and friendships so acquired will inevitably react favorably upon his business and it is perfectly right that business should be benefited in that way. As a practical fact, most young men of good professional ability and attractive personality do find these two sets of influences sufficient to develop their practice as fast as is good for them. If a good opportunity can be found, a good way of beginning practice is to go into the office of some established practitioner as his assistant. It will give the opportunity to get those first few patients that are to act as drummers (if we may use such a term) for his future practice; but it gives opportunity to observe and absorb very much that will be to his advantage, about the arrangement and conduct of an office, the management of patients, the keeping of records and accounts and collection of bills, and numberless other things which help to make a practice efficient, successful and easy, and of which little can possibly be learned in a dental school. The custom of a pupilage before entering the dental school is obsolete, but the desirability of spending some time in close contact with some wise and experienced man is as great as ever it was, and after graduation is a much better time to do it than before entering dental school.

Much help in winning a practice may come from having the office well located, thoroughly equipped for the best services and for all probable emergencies, conveniently arranged

for doing work without loss of time, in good taste and attractive in appearance, above all things scrupulously clean. There should be arrangements for the comfort and convenience of patients, and they should be seated in the operating chair so as to be comfortable, and to permit physical and nervous or mental relaxation instead of tension.

The primary object in the practice of dentistry, that for which the profession of dentistry exists, is the welfare of the patients committed to our care. This is paramount and if other duties and obligations conflict with this one they should yield to a greater extent than this one. A different object of practice has been proposed by some and pursued by many, namely: "Get the money"; and a very well known man in a paper before a great dental society characterized the ethical attitude which makes the duty to patients paramount over selfish considerations as "bunk." Of course, it is necessary for the dentist to get money for his services and unless he gets enough of it to provide comfortably for himself and his family, and keep his office in first class condition, and meet the social and public expenses that necessarily fall to his share, he cannot give his patients the best possible service as he ought. A man's interests and those of his patients are not antagonistic but mutual. What is good for one is good for both. It is a question of relation and comparison. As soon as a man's skill and success make him independent enough to do so he should establish a standard of fees high enough to allow him to serve some of his patients, who are needy, for fees much less than his standard. When a patient is examined and the service needed is planned and arranged for, the attitude of the dentist should not be to obtain the patient's consent to the plan by which he can get the most money for the easiest service, but it should be "how can I render the best services to this patient that he can afford, or, if well to do, can be induced to pay for, and I can afford to render." That is what I mean by putting the welfare of the patient first and the interest of the dentist second.

Patients will often require instruction, advice and persuasion as to the treatment they need, sometimes several al-

ternative methods of treatment will present themselves to your mind as practicable, and it may require full consultation with the patient in addition to your own study of the mouth before determining on the wisest course to be pursued, for although you ought to be a far better judge than the patient as to the conditions present, the future prospects and the most desirable plan to pursue, the information the patient may give as to financial ability, the command of time and opportunity, and the past history of particular teeth or of the mouth generally, may prove of indispensable assistance in determining what is practicable and can be wisely undertaken.

Professional, and still more, financial success depend almost as much upon a man's manners and bearing and conversation with his patients, as upon his knowledge and skill. This works more or less injustice sometimes to those who have given their best efforts to perfecting themselves in their profession and have neglected to cultivate the pleasing manners and facility of intelligent conversation, the tact and quick apprehension of fitness and appropriateness to time and circumstances, which are the current coin of society. It is not surprising that a man's personality should make a stronger impression upon his patient than his professional skill, for people are usually good judges of personal appearance, manners and conversation, and very poor judges of the quality of professional services.

Almost all patients and especially all children should be carefully instructed in the care they ought to take of their teeth and mouths. Such directions should be plain and specific, and care should be taken to require nothing that should be impracticable for them in the special circumstances in which they live. It is usually necessary to show them how to handle the tooth brush and floss silk, and they should be told what tooth powders, pastes and mouth washes, etc., to use, if any. Many people and all children should be urgently persuaded to chew their food thoroughly, and to use plenty of food that is hard enough to require chewing. Chewing gum would be useful if it could be restricted to a half hour after meals and the gum is not too much contaminated by flavoring and condiments. Many children have their temporary teeth so much decayed that it hurts

to chew on them and they acquire a habit of eating without chewing which persists later after they get permanent teeth which they might use. Many other children are fed so exclusively on soft food that they have little occasion to use the muscles of mastication with any strength or vigor, and thus it happens that many children go to the orthodontist and many who do not go ought to, for little other reason besides the fact that the muscles of mastication have never been used enough to perform their normal function in the growth and development of the face and jaws.

The object to be kept in view and never lost sight of, in the case of each individual patient is the preservation of the teeth and mouth in as nearly perfect health as possible, and both the dentist and his patient should use their best efforts for its accomplishment.

Be sure to have your patients understand that your professional services are the chief element of value in your fees. "No trouble to show goods" is a maxim of trade only. You are not selling goods and "consultations and examinations free" is the brand of a quack. I believe that carpenters, masons and builders often consult about jobs and make estimates without charging for the service if they do not get the contracts. Physicians and lawyers seldom do that, and dentists should not any oftener than physicians. If a patient is seated in your chair and you make an examination and consult about what is needed to be done, charge a fee for it, whether you do anything more for that patient or not. For heaven's sake, don't let anyone who ever comes into your office acquire there any suspicion that she can go round to a dozen offices and get an examination and an estimate of cost from each one and never pay a cent to any of them. Such a custom is lamentably common in some places.

Magnify the professional aspects of your services and make your patients pay you fully as well for removing deposits, prophylactic treatments, removal of pulps and filling root canals, treating diseased teeth and gums, etc., as for fillings, inlays, crowns, bridges and sets of teeth, and in all these latter operations put the emphasis on the professional services rendered and not on the labor and material.

CHAPTER XII.

THE DUTY OF THE DENTIST TO OTHER DENTISTS AND TO THE DENTAL PROFESSION. PAPERS READ AT SOCIETY MEETINGS. FEES.

The code of ethics requires that all reputable practitioners are to be upheld and defended in every possible way with their patients and the public, save only when the welfare of a patient makes it unavoidable to condemn an operation that has been made or some mode of practice that has been advocated. There will occasionally arise awkward discrepancies between your opinions of certain cases and the opinions of some other man whom a patient may quote to you, which may prove irreconcilable and may require tact and a careful speech and manner to avoid injustice to the other man. You will often be very liable to form unjust opinions of the skill and honesty of other practitioners, especially in the first years of practice before your observations of the patients in your own care have extended over a long enough time to make you realize the great number and variety of causes that may shorten the durability of operations or cause them to fail, besides the want of skill and thoroughness in making them. You must remember, too, that operations of other men which you find defective or useless may have been made under difficulties too great to be overcome and of which the present appearance and behavior of the patient give no indication.

The code of ethics of the Illinois State Dental Society says (Section 4), "One dentist should not disparage the services of another to a patient. Criticism of work which is apparently defective may be unjust through lack of knowledge of the conditions under which the work was performed. The duty of the dentist is to remedy any defect without comment."

Patients will sometimes complain to you of the treatment they have received at the hands of some other dentist, and in a large proportion of cases you will have the pleasure to make such explanations as will (or ought to) restore their good opinion of

him, and show them that the unsatisfactory result is a misfortune instead of a fault, or that it may be due to their own neglect.

There is no safety for you as regards the treatment of other practitioners unless kindness and charitableness are rooted in your character and find constant illustration in your conduct. Patients will hold you in higher esteem if they find you careful of the good name and professional reputation of others. Selfish and envious men are tempted to disparage others in the hope to exalt themselves in the minds of their patients; the effect being usually the reverse, or it may be only serving to lower the patient's estimation of the entire profession.

There may be cases brought to your notice occasionally in which incompetence or dishonesty are so surely apparent as to admit of no excuse or palliation. Usually it is wisest to pass them in silence, but you are under no obligations to do so if the welfare of your patient, or of other patients, or the community, may be promoted by expressing your opinion of him in plain terms. Dishonesty has no claims upon your charity or forbearance, to restrain you from warning others who might become its victims.

Patients who come to you because their regular dentist is absent or sick or for any reason is inaccessible, require especially careful treatment. Nothing should be done for them beyond what is strictly necessary for their welfare till they can return to their own dentist, and particular watchfulness should be exercised not to discredit or excite suspicion of anything that has been done for them. Of course fees may be taken for what is done, though it is common for many men to perform trifling services without a fee, as a courtesy to the other dentist. The courtesy, however, is more to the patient than to the other dentist, for if you take no fee for what you do, neither does the other man. A good rule is to treat such patients as you would your own patients. If the service is such that you would do it without a fee for one of your own patients, then charge no fee to another. If the service is such that you would charge a fee to one of your own patients, then charge a fee to the patient of another dentist.

It is not necessary, if it were possible, to give many rules in detail for the treatment of other dentists. The basis for them

all is justice and kindness, having regard to both the patient and dentist and those qualities of character acting freely will be nearer right than if we attempt to follow arbitrary rules. The same general rule holds good for the patients of other dentists as for your own: the patient's good is the first consideration.

The dental profession of the present day has fallen heir to a great accumulation of professional knowledge, skill and experience, as well as a vast number of ingenious instruments, appliances and apparatus, the free use of which makes us all large debtors to our profession, both to the living and the dead, whose efforts, observations, studies, successes and failures have gradually established the standards of practice for the present generation.

How can this large debt be discharged? The first thing to say is that it cannot be discharged. The benefits have been freely given and freely received. No man may hope to give to his profession as much as he has received from it. No children do as much for parents (if the parents are everything they ought to be) as the parents have done for them. The only way that debt can be discharged is by giving to the next generation a similar care, instruction, guidance and affection. No generation of men can add so much to the permanent possessions of the world as they have received from their long lines of ancestors. What is required of each generation is that it use its heritage received from the past wisely, without wasting it, and also add its own contribution to the permanent possessions of the world instead of consuming everything it receives and produces for its own use and pleasure. The best acknowledgement and the highest honor a man can pay to his predecessors in the profession is to make himself as well qualified as possible to discharge its duties, and to conduct his practice upon the highest level of ability and disinterestedness. The man who does his whole duty to his patients has gone more than half way in the discharge of his duty to his profession, but this is not enough. The profession would degenerate very rapidly if every man isolated himself in his own practice, read no professional books or journals and did not cooperate in any way with his

professional brethren. It is indispensable that you belong to one or more dental societies, attend their meetings and interest yourself in their affairs. You must take and read several dental journals. One is not enough. The time has long passed when every paper of importance read anywhere was published in all the journals. They now do very little reprinting from each other except in the form of digests and brief extracts. The *Cosmos*, *The Review*, *The Items of Interest*, *The Digest* and the *Dental Summary and Oral Hygiene* are any of them likely sometimes to have articles you cannot well afford to miss but would miss unless you take the journals that publish them. You cannot ignore dental journals and dental societies for five years without becoming a "back number" in your profession. And probably you would not have the least idea that you were behind the times. It is very bad policy to have your patients give you the first information you have of new things and new methods of practice that are being brought into use.

PAPERS READ BEFORE DENTAL SOCIETIES.

Papers to be read before dental societies or published in the journals should be considered of importance enough to give time for their preparation, and careful study and thought sufficient to make them as good as your ability and resources for information will permit. A man ought to think himself disgraced who comes before a dental society and says that he was unable to make any preparation for his paper and had to write it within the last few days before the meeting, or on the way coming there, and therefore could not send copies of it to the men who have been appointed to discuss it. An exception must of course be made in the case of a man who, from a few notes, gives an extemporaneous lecture about matters which he has made a close study for fifteen or twenty years.

Direct quotations should always be in quotation marks, and usually, though not always, the authorship should be indicated in the reading, and if thoughts or ideas have been consciously received from known sources credit should be given even though the phraseology is not quoted. Papers

read before societies become the property of the societies before whom they are read, unless the author stipulates to retain the ownership. If a man reads the same paper before some other society he should do so by the permission of the society that first heard it, and the right of publication goes with the ownership of the paper. It sometimes happens that several societies, occasionally many societies, desire to hear some important paper and I believe that men often read such papers in several places without going through the formality of asking permission from the society that first heard it. Probably they do so on the presumption that there would not be the least likelihood that permission would be refused, but the society that first heard the paper has the exclusive right to publish it. Some men in such cases rewrite their papers and make changes sufficient to destroy the identity, and then, of course, the new paper is published by the society before which it is read.

If an invitation to read a paper or take part in a discussion before a dental society is accepted, every reasonable effort should be made to keep the appointment. If unforeseen circumstances arise that make it quite impossible to do so, immediate notice should be sent to the proper officer of the society, and if practicable, the paper should be prepared and sent to the meeting so that it may be read by some one instead of the author. The same duty to fulfil the engagement applies with equal force to those who accept invitations to appear as operators or demonstrators in a clinic. In a list of fifty or sixty clinicians there are usually several who fail to appear and neglect to send any word of explanation or apology. Such men justify the suspicion that their only motive in accepting the appointment was to obtain the notoriety of having their names published in the announcement of the meeting and feel no sense of obligation to fulfil their promise. It would be proper if the society were to call such men to account for unethical conduct and punish them in some suitable way unless they were able to give a satisfactory explanation and apology. The executive and administrative officers of a society should consider it their duty to

attend its meetings, and should make much greater efforts to do so than is to be required of the unofficial members.

FEES.

The ethical requirements in respect to fees, so far as stated in the code of ethics of the National Dental Association are found in Article II section 4, as follows: "When general rules have been adopted by members of the profession practicing in the same localities in relation to fees, it is unprofessional and dishonorable to depart from those rules, except when variation of circumstance requires it. And it is ever to be regarded as unprofessional to warrant operations as an inducement to patronage."

No maximum fee bill should ever be adopted by any society, but I am convinced that in many localities the incomes of all the dentists could be somewhat increased and, what is of much more importance, the average excellence of operations would be raised, by an agreement among all the dentists in the town or neighborhood upon a minimum scale of fees considerably higher than the average fees the men are getting now. It seems pretty evident that in many places men are getting incomes too small for their education and their abilities, and in order to get these inadequate incomes they are obliged to hurry through too many operations in a day to have it possible to make them as well as they should. If the standard of average excellence of dental operations in any community can be raised it will be worth far more to that community than the increased amount of money they will have to pay for them. No minimum fee bill should prevent any man from doing charity work for needy persons to the extent that he can afford and is willing, as occasion may arise, but it is right to exercise some care not to be imposed upon by persons not really needy. It is rather mortifying to find, after cutting a bill heavily to some one you suppose to be needy, that they have been round to half a dozen offices to find out who they could get down to the lowest figure. One remedy for "shopping" is for every dentist to charge such a fee for examinations and consultations that such people will be unwilling to pay it to half a dozen different

men. Your standard of fees should be high enough so that when you are busy in a fairly good practice (good in the number of patients) you can take time enough for each operation to do it the best you are able to, and can have a reasonable amount of time for charity work, enough to keep your office in first class shape, well furnished and cared for, above all things, clean, and equipped with everything needful for the most perfect operations and the most efficient service, provide for your family in at least moderate comfort, educate your children, give something to a few of the calls for charity and philanthropy, and provide for your old age.

CHAPTER XIII.

COMMISSIONS AND SPLIT FEES—CODES OF ETHICS.

The Principles of Medical Ethics, article VI, section 3, is as follows: "It is detrimental to the public good and degrading to the profession, and therefore unprofessional, to give or receive a commission. It is also unprofessional to divide a fee for medical advice or surgical treatment, unless the patient or his next friend is fully informed as to the terms of the transaction."

"The patient should be made to realize that a proper fee should be paid the family physician for the service he renders in determining the surgical or medical treatment suited to the condition, and in advising concerning those best qualified to render any special service that may be required by the patient."

The Code of Ethics of the Illinois State Dental Society, section 3, has this to say about commissions: "It is unprofessional for dentists to pay or accept commissions on fees for professional services, or on prescriptions or other articles supplied to patients by pharmacists or others."

There is some reason to fear that some men of otherwise reputable standing do not observe these rules with strictness. It has been intimated that some surgeons ask the physician who brings them a patient to assist in the operation, and while the assistance may be only nominal, it furnishes the excuse for splitting the fee, and more than one extracting specialist and more than one orthodontist in the beginning of his special practice has sought to induce other dentists to refer patients to him by offering them some certain percentage of the fees he received from such patients. Such transactions have been defended with some show of plausibility, for the dentist or physician who recommends a patient to go to some particular specialist, whose skill and wisdom he knows, performs a real service to his patient, and the more so if he goes with the patient to the specialist and consults with him about the case,

and in the latter case, especially, he is entitled to render his own bill to the patient for such services. He also renders a real service to the specialist, for he wins the patient for him and in many cases is the real salesman of the specialist's services (if such an expression may be allowed in regard to such a transaction), instead of the specialist having to win the patient himself, as he would have to do if the patient came of his own initiative solely. One fundamental objection to commissions and split-fees is that usually neither of the parties feels at all willing to have the patient know anything about it. The only honorable and straightforward course is for each to render his own bill to the person who is expected to pay it. This leaves the general practitioner and the specialist quite free each to set his own estimate of value upon the service he has rendered to the patient. If it is objected that the specialist's fees are usually much greater than those of the general practitioner, and patients are often less willing to pay the physician or dentist a proper fee for his services in advising and sending them to the specialist than they are to pay the specialist's large fee for making the operation, it must be replied that an honorable man ought not to wish a fee for which he is unwilling to render a bill. And if it is further objected that the general practitioner has rendered to the specialist a service of real value and importance, for which he receives no pecuniary reward, it is answered that a fee or commission paid under such circumstances subjects the practitioner to the temptation to send patients where he can get the best commission instead of where they can get the best treatment, and if he is not in the least influenced by such a consideration, he will surely fall under the suspicion of it, and he can better afford to do without the commission. The right way is to charge a proper fee for consultation and advice, and if time and money are spent in going with the patient to the specialist, charge a fee and expenses for that, but so far as the mere telling the patient what specialist to go to, call it an act of good will and neighborliness and let it go at that. You would not listen very patiently to a patient who came and asked you to pay him a commission for sending you a

patient, and the case would not be so very different from what it would be for you to ask a commission for sending a patient to a specialist, or, if we put it the other way and say that it is the new patient who is served or benefited by the man who tells him what dentist to go to, you never heard of a man who was asked if he could recommend a good dentist replying: "If you will give me a couple of dollars I will tell you of a first class dentist." The truth is, a great many important services are done, and must be done, without any payment for them in money.

*Resolution (preceded by a long preamble—six "Whereases") offered by Dr. H. J. McKellops and adopted by the American Dental Association, 1880:

"Resolved, That this Association discountenance in a formal and emphatic manner the pernicious practice of members of the profession, but more especially those holding high positions in our schools, of allowing their names to appear in advertisements as indorsing either any special material or compound for filling teeth or any therapeutic agent whatsoever."

Dr. McKellops sent to the secretary's desk a dental journal containing the advertisement of a material for filling teeth, with the recommendations of seven professors in dental colleges attached.

Dr. Buckingham, in discussion, said he had refused to give recommendation if the formula was unknown to him.

Dr. Morgan said: "Regular physicians are not found to recommend an article in this way. * * * If a physician knows an article or preparation to be good, the pages of the medical journals are open to him. The whole matter appears to be in direct violation of the code of dental ethics. It is no matter if the components and methods of preparing are generally known, the tendency of the practice of giving testimonials of this character is held to be to lower the dignity of the profession."

The unwritten Law of Dental Ethics read before American Dental Association, 1880. Cosmos, 1880, page 639. Last paragraph but one:

*Cosmos, 1880, p. 538.

“What I am urging is the creation of a goal towards which we shall press. In our personal relations that goal is the cultivation of mutual consideration; in professional work, the highest good of those committed to our care; in professional conversation, the clear expression of positive ideas; in professional life, the maintenance of personal honor; in professional study, the securing of valuable information; in society relations, the devotion of one’s best energies to the promotion of the general good; in the labor of scientific research, the exercise of that calm, persistent, wise discrimination that digs and tests, that gathers and sifts, so that golden grain and not weightless chaff may be the product.”

CODE OF ETHICS OF THE AMERICAN MEDICAL ASSOCIATION.

FLINT’S COMMENTARY—INTRODUCTION

“In various points of view, the practice of medicine when contrasted with other pursuits, is peculiar. The medical practitioner does not deal with facts and laws having the exactness of those pertaining to physics. In employing means for certain ends, he cannot calculate results with mathematical precision. The problems of disease * * * offer a wide scope for the exercise of judgment in the practical application of medical knowledge. It is by no means easy in all cases for the practitioner himself to judge correctly of the results of his practice, and for those not versed in the study of disease it is an impossibility; hence he is often blamed undeservedly, and as often, perhaps, he receives praise not strictly his due. People cannot judge with certainty of the merits of a physician by the character of his work.”

“Hence the choice of a family doctor is often determined by other circumstances than his knowledge and skill. * * * In no other profession or calling are extrinsic means available for competition to the same extent as in the practice of medicine (or dentistry) and in no other pursuits are the opportunities so great for ungenerous and unscrupulous advantages. Under these circumstances it is not to be wondered at that physicians (and dentists) are peculiarly sensitive respecting their professional relations and rival practitioners. * * *

"It is, perhaps, a common impression that the objects of a code of ethics have exclusive reference to the interests of the profession. So far from this, the objects are of far more importance to the public welfare than to physicians. The truth of this will be apparent to all who read the code.
* * *"

"Prior to 1847 the codes of medical ethics which existed in this country were instituted in State or local societies, and in many, probably in most of the States of the Union there were none. At the convention which resulted in the organization of the American Medical Association in 1847 a committee of which Dr. Isaac Hays was chairman, were instructed to report a code of ethics. The code which they reported was adopted unanimously and has since been recognized as the national code throughout this country. In his report Dr. Hays says: '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 prepared by Dr. Thomas Percival (of England) and published in 1803, and the phrases of this writer were preserved to a considerable extent in all of them. Percival's code was prepared for a son who was about to engage in medical practice, and who died before its publication. It was dedicated to another son who was studying medicine.'"

"The following is quoted from this dedication: 'The relations in which the physician stands to his patients, to his brethren and 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, while the observance 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.'"

ARTICLE 1, SECS. 1 AND 2.

Sec. 2. "The physician does not compromise his self-respect by submitting patiently to rudeness, or even to in-

sults from a sick patient, to which he would be by no means bound to submit quietly if the patient were well.

"The ethical rule is not, at least to the same extent, applicable to the friends of patients, but allowance is often to be made for the disturbance of mind arising from anxiety and apprehension. * * *

"On the part of the physician (or dentist) it is a gross impropriety to require the forbearance of his sick patients and their friends. * * * Roughness and lack of courtesy are inexcusable, and brutality toward patients or their friends is a grievous offence against the medical (or dental) profession. It is especially reprehensible toward hospital or infirmary or charity patients, because they have not the privilege to change their physician (or dentist) if dissatisfied with him, hence it is taking a mean advantage not to treat such patients with attention and humanity."

"The binding force of secrecy as regards all information obtained in connection with professional relations, whenever it is desired, or desirable on the part of the patients or their friends * * * is not sufficiently appreciated by many members of the medical profession and still less by the public. * * * A more judicious reserve than is now practiced by not a few physicians would soon lead to a better understanding of the ethical duty of secrecy on the part of the public, * * * but the ground is by no means to be taken that nothing is to be communicated to friends, acquaintances or the public respecting cases of disease. It would be simply absurd to take this ground. The condition of the patient in respect of danger and, in some instances, the probable duration of disease, may properly be made known. * * * In respect of the knowledge of criminal acts the physician is not to play the part of a detective or informer. * * * A criminal has a right to medical services in sickness."

"In England the law makes the divulging of professional secrets compulsory when called upon as a witness in court. The law in France recognizes the obligations of secrecy."

CODE OF ETHICS OF THE ILLINOIS STATE DENTAL SOCIETY.
ADOPTED MAY, 1909.

Section 1. In his dealings with patients and with the profession, the conduct of the dentist should be in accordance with the Golden Rule, both in its letter and its spirit.

Sec. 2. It is unprofessional for a dentist to advertise by handbills, posters, circulars, cards, signs, or in newspapers or other publications, calling attention to special methods of practice, or claiming excellence over other practitioners, or to use display advertisements of any kind. This does not exclude a practitioner from using professional cards of suitable size, with name, titles, address and telephone number printed in modest type, nor having the same character of card in a newspaper. Neither does it prevent a practitioner who confines himself to a specialty from merely announcing his specialty on his professional card.

Sec. 3. It is unprofessional for dentists to pay or accept commissions on fees for professional services, or on prescriptions or other articles supplied to patients by pharmacists or others.

Sec. 4. One dentist should not disparage the services of another to a patient. Criticism of work which is apparently defective may be unjust through lack of knowledge of the conditions under which the work was performed. The duty of the dentist is to remedy any defect without comment.

Sec. 5. If a dentist is consulted in an emergency by the patient of another practitioner who is temporarily absent from his office, the duty of the dentist so consulted is to relieve the patient of any immediate disability by temporary service only, and then refer the patient back to the regular dentist.

Sec. 6. When a dentist is called in consultation by a fellow-practitioner he should hold the discussions in the consultation as confidential, and under no circumstances should he accept charge of the case without the request of the dentist who has been attending it.

Sec. 7. The dentist should be morally, mentally and physically clean, and honest in all his dealings with his fellow-

men, as comports with the dignity of a cultured and professional gentleman.

CODE OF ETHICS OF THE NATIONAL DENTAL
ASSOCIATION.

ARTICLE I.

THE DUTIES OF THE PROFESSION TO THEIR PATIENTS.

Section 1. The dentist should be ever ready to respond to the wants of his patrons, and should fully recognize the obligations involved in the discharge of his duties toward them. As they are in most cases unable to correctly estimate the character of his operations, his own sense of right must guarantee faithfulness in their performance. His manner should be firm, yet kind and sympathizing, so as to gain the respect and confidence of his patients; and even the simplest case committed to his care should receive that attention which is due to operations performed on living sensitive tissue.

Sec. 2. It is not to be expected that the patient will possess a very extended or a very accurate knowledge of professional matters. The dentist should make due allowance for this, patiently explaining many things which may seem quite clear to himself, thus endeavoring to educate the public mind so that it will properly appreciate the beneficent efforts of our profession. He should encourage no false hopes by promising success when, in the nature of the case, there is uncertainty.

Sec. 3. The dentist should be temperate in all things, keeping both mind and body in the best possible health, that his patients may have the benefit of that clearness of judgment and skill which is their right.

ARTICLE II.

MAINTAINING PROFESSIONAL CHARACTER.

Section 1. A member of the dental profession is bound to maintain its honor, to labor earnestly to extend its sphere

of usefulness. He should avoid everything in language and conduct calculated to dishonor his profession, and should ever manifest a due respect for his brethren. The young should show special respect to their seniors; the aged special encouragement to their juniors.

Sec. 2. It is unprofessional to resort to public advertisements, cards, handbills, posters or signs, calling attention to peculiar styles of work, lowness of prices, special modes of operating; or to claim superiority over neighboring practitioners; to publish reports of cases or certificates in the public prints; to circulate or recommend nostrums; or to perform any other similar acts. But nothing in this section shall be so construed as to imply that it is unprofessional for dentists to announce in the public prints, or by cards, simply their names, occupation and place of business, or, in the same manner, to announce their removal, absence from, or return to business, or to issue to their patients appointment cards having a fee bill for professional services thereon.

Sec. 3. When consulted by the patient of another practitioner, the dentist should guard against inquiries or hints disparaging to the family dentist, or calculated to weaken the patient's confidence in him; and if the interests of the patient will not be endangered thereby, the case should be temporarily treated, and referred back to the family dentist.

Sec. 4. When general rules shall have been adopted by members of the profession practicing in the same localities in relation to fees, it is unprofessional and dishonorable to depart from those rules, except when variation of circumstances requires it. And it is ever to be regarded as unprofessional to warrant operations as an inducement to patronage.

ARTICLE III.

CONSULTATION.

Consultations should be promoted in difficult or protracted cases, as they give rise to confidence, energy, and broader views in practice. In consultations, that courtesy and just dealing which is the right of all should be especially observed.

ARTICLE IV.

THE RELATIVE DUTIES OF DENTISTS AND PHYSICIANS.

Dental surgery is a specialty in medical science. Physicians and dentists should both bear this in mind. The dentist is professionally limited to diseases of the dental organs and adjacent parts. With these he should be more familiar than the general practitioner is expected to be; and while he recognizes the broader knowledge of the physician in regard to diseases of the general system, the latter is under equal obligations to respect his higher attainments in his specialty.

ARTICLE V.

THE MUTUAL DUTIES OF THE PROFESSION AND THE PUBLIC.

Dentists are frequent witnesses, and at the same time the best judges, of the impositions perpetrated by quacks, and it is their duty to enlighten and warn the public in regard to them. For this and many other benefits conferred by the competent and honorable dentist, the profession is entitled to the confidence and respect of the public, who should always discriminate in favor of the true man of science and integrity against the empiric and imposter. The public has no right to tax the time and talents of the profession in examinations, prescriptions, or in any way without proper remuneration.

PATENTS.

The medical code of ethics expressly declares that it is unprofessional for any practitioner of medicine to hold a patent on any surgical instruments or appliances, or upon any medicine or pharmaceutical preparation. It is believed that no similar clause is to be found in any code of dental ethics hitherto adopted by any dental society. There has been strenuous effort, however, on the part of some to hold the dental profession to the same rule. The argument in favor of it is that anything used for the healing of the sick or the cure of deformities and the replacement or restoration of lost members is so important to the welfare of humanity that its use should not be restricted or its price increased by a patent monopoly. It is true that the benefits of the healing art in all its branches and applications should be available as nearly as possible to the whole population, but no one objects to the custom of individual practitioners receiving compensation from the individual patients whom they serve, and it is difficult to discover any ethical principle which does not apply with equal force to the man who, through the invention of some valuable instrument or appliance or apparatus, or the development and introduction of some better process or mode of procedure serves all patients by helping all practitioners to become more efficient.

Such patents as those upon automatic mallets, dental chairs, dental engines, fountain cuspidors, Donaldson broaches and almost innumerable other articles have encountered no appreciable objection or opposition from the dental profession so long as the price of the purchased article included the compensation to the inventor, or the owner of the patent; but when the owner of a patent has sought to collect money directly for the use of an invention, as for instance, the oppressive yearly license fee collected by the Goodyear Dental Vulcanite Co., the similar one attempted by the Crown & Bridge Co., and the moderate single fee demanded by Dr. Taggart for the use of his inventions during the whole term

of his patents, the profession has shown intense antagonism and much irritation and bitterness toward such patents and the owners of them. It is probable that in the case of Dr. Taggart, whose great services to the profession few or none have seriously questioned, the opposition is due, in part at least, to the attitude and habit of mind carried over from the experiences with the Vulcanite Company and the Crown Company, both of which the profession generally regarded as little better than robbers. In the case of the Goodyear Dental Vulcanite Co. it was universally believed that the Cummings patent was not valid and that Cummings was not the inventor or originator of the process of making artificial teeth on rubber plates, and nobody had any reason to suppose that any of the vast sum of money collected from the dentists ever benefited anyone who had ever rendered any service to the dental profession or the patients they served. The same things were true of the Crown and Bridge Co., except that their attempts to collect royalties or licenses were prevented by the Dental Protective Association under the leadership of Dr. J. N. Crouse.

It has been sought to make a distinction between patents for things that can be manufactured and sold to the dentists and patents upon things to be made by the dentist for individual patients, like crowns, bridges and inlays, and these latter have been called "process patents." Dr. Crouse used to say that all patents are "process patents," and he was pretty nearly right, for the first-class named above are patents upon the "process" of making hundreds or thousands of like things in a shop or factory, while the latter class of patents are for making hundreds or thousands of similar things which are not alike, but each adapted to an individual place or use. Whether it is practicable to frame a law which will discriminate clearly enough these different uses of invented processes to grant patents upon one class and refuse them to the other class, or whether it would be good public policy to do so if it could be done, I will not attempt to affirm or deny. This much appears to be plain enough, however, that so long as the United States grants these so-called "process patents"

and upholds them in the courts it is futile and foolish to ignore or resist a patent solely on this ground. If there is a probability that a patent has been granted to some one who was not the real inventor, or if for a process or article in such common use before the patent was applied for as to be public property, in other words if there is doubt about the validity of the patent, of course it is the privilege of any man or association of men to test the validity of the patent in the courts.

In the "Principles of Medical Ethics," chapter second, article first, section five reads as follows, "Patents and perquisites.—It is unprofessional to receive remuneration from patents for surgical instruments or medicines; to accept rebates on prescriptions or surgical appliances, or perquisites from attendants who aid in the care of patients." There can be no reasonable doubt about the impropriety of accepting rebates or prequisites (which has been discussed in another place).

As regards patents there would seem to be room for honest differences of opinion. It is difficult to say upon what moral grounds a man can be denied any remuneration, except what may accrue in his own personal practice; for a discovery or improvement he may make in the practice of medicine, whether it be some new instrument or appliance, or some new medicine. It is true that sentiments of philanthropy and also professional duty would dictate that the benefits of improvements and discoveries be as widely diffused at as little cost as possible, but in some cases this can better be done by a monopoly in the manufacture. For instance, in the case of many instruments and remedies it will be easy for one manufacturing plant to supply the whole demand. It is evident therefore that if two, or perhaps half a dozen different parties incur the expense of providing similar manufacturing facilities, the price of the product must be increased if they are all to get a fair profit on their cost of manufacture; besides which the pressure of competition offers the temptation to cheapen the product by deteriorating its quality. Some one has got to manufacture these things and it seems hardly reasonable that the men who originated them should be the

only ones who are forbidden to profit by giving to the manufacture such supervision as may insure their perfection.

Whether the foregoing considerations can be considered sound or not, it is nevertheless undoubtedly true that the great body of the medical profession are steadfastly loyal to the restrictions laid down in their "Principles of Medical Ethics," in respect to patents, and remedies the ingredients or mode of manufacture of which are kept secret. Probably this loyalty rests not so much upon grounds of strict justice and equity as upon motives of philanthropy and humanity, for there is no other class of men who respond so freely and generously, both individually and collectively, to the appeal of the suffering and the needy as do the physicians, and they take the attitude, and dentists should also, that everything within reason that they can do for the advancement or success of their profession is due from them in acknowledgment of what they have received from their profession.

A vast fund of knowledge, skill and experience has been accumulated by the medical profession through hundreds of years,—and by the dental profession also, though it is far less ancient,—and all these acquirements are freely available to the present generation, the only limitation being the individual capacity to acquire and use it. Having received so great a gift it would be shameful for any man to seek to exploit the giver financially for any return benefits he might be able to confer.

When a man has made such great personal sacrifices in conferring some great benefit upon his profession and humanity as to impoverish himself and his family there ought to be some provision by which he can be rewarded and taken care of, but it is scarcely possible to have any rule or law applicable to human affairs that will not work some injustice or hardship in a few instances, and it is believed that the exploiting for gain of every new thing in the practice of medicine, as is done, rightly enough, in industrial and commercial affairs, would work so much inconvenience, hardship, and actual damage to life and health as would far outweigh the occasional

injustice and hardship to a few individuals that are caused by the present rule.

The absence from the codes of dental ethics of any prohibition similar to that in the "Principles of Medical Ethics" leaves the dental profession freer, and we may, and should by force of public opinion establish as firmly as possible the custom of the medical profession in respect to patents, while we are also free to recognize the propriety, in rare instances, for some man who has made great sacrifices, and conferred great benefits, to compel from a reluctant profession by means of a patent some adequate remuneration for great services.

CHAPTER XIV.

PRINCIPLES OF MEDICAL ETHICS OF THE AMERICAN MEDICAL ASSOCIATION.*

CHAPTER I.

THE DUTIES OF PHYSICIANS TO THEIR PATIENTS. THE PHYSICIAN'S RESPONSIBILITY.

Section 1.—A profession has for its prime object the service it can render to humanity; reward or financial gain should be a subordinate consideration. The practice of medicine is a profession. In choosing this profession an individual assumes an obligation to conduct himself in accord with its ideals.

PATIENCE, DELICACY AND SECRECY.

Sec. 2.—Patience and delicacy should characterize all the acts of a physician. The confidences concerning individual or domestic life entrusted by a patient to a physician, and the defects of disposition or flaws of character observed in patients during medical attendance should be held as a trust and should never be revealed except when imperatively required by the laws of the state. There are occasions, however, when a physician must determine whether or not his duty to society requires him to take definite action to protect a healthy individual from becoming infected, because the physician has knowledge, obtained through the confidences entrusted to him as a physician, of a communicable disease to which the healthy individual is about to be exposed. In such a case, the physician should act as he would desire another to act toward one of his own family under like circumstances. Before he determines his course, the physician should know the civil law of his commonwealth concerning privileged communications.

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PROGNOSIS.

Sec. 3.—A physician should give timely notice of dangerous manifestations of the disease to the friends of the patient. He should neither exaggerate nor minimize the gravity of the patient's condition. He should assure himself that the patient or his friends have such knowledge of the patient's condition as will serve the best interests of the patient and the family.

PATIENTS MUST NOT BE NEGLECTED.

Sec. 4.—A physician is free to choose whom he will serve. He should, however, always respond to any request for his assistance in an emergency or whenever temperate public opinion expects the service. Once having undertaken a case, a physician should not abandon or neglect the patient because the disease is deemed incurable; nor should he withdraw from the case for any reason until a sufficient notice of a desire to be released has been given the patient or his friends to make it possible for them to secure another medical attendant.

CHAPTER II.

THE DUTIES OF PHYSICIANS TO EACH OTHER AND TO THE
PROFESSION AT LARGE.

ARTICLE I.—DUTIES TO THE PROFESSION.

UPHOLD HONOR OF PROFESSION.

Section. 1.—The obligation assumed on entering the profession requires the physician to comport himself as a gentleman and demands that he use every honorable means to uphold the dignity and honor of his vocation, to exalt its standards and to extend its sphere of usefulness. A physician should not base his practice on an exclusive dogma or sectarian system, for "sects are implacable despots; to accept their thralldom is to take away all liberty from one's actions and thought." (Nicon, father of Galen.)

DUTY OF MEDICAL SOCIETIES.

Sec. 2.—In order that the dignity and honor of the medical profession may be upheld, its standards exalted, its sphere of

usefulness extended, and the advancement of medical science promoted, a physician should associate himself with medical societies and contribute his time, energy and means in order that these societies may represent the ideals of the profession.

DEPORTMENT.

Sec. 3.—A physician should be “an upright man, instructed in the art of healing.” Consequently, he must keep himself pure in character and conform to a high standard of morals, and must be diligent and conscientious in his studies. “He should also be modest, sober, patient, prompt to do his whole duty without anxiety; pious without going so far as superstition, conducting himself with propriety in his profession and in all the actions of his life.” (Hippocrates.)

ADVERTISING.

Sec. 4.—Solicitation of patients by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unprofessional. It is equally unprofessional to procure patients by indirection through solicitors or agents of any kind, (as) *or* by indirect advertisement, or by furnishing or inspiring newspaper or *magazine* comments concerning cases in which the physician has been or is concerned. All other like self-laudations defy the traditions and lower the tone of any profession and so are intolerable. The most worthy and effective advertisement possible, even for a young physician, and especially with his brother physicians, is the establishment of a well-merited reputation for professional ability and fidelity. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper. As implied, it is unprofessional to disregard local customs and offend recognized ideals in publishing or circulating such cards.

It is unprofessional to promise radical cures; to boast of cures and secret methods of treatment or remedies; to exhibit certificates of skill or of success in the treatment of diseases; or to employ any methods to gain the attention of the public for the purpose of obtaining patients.

PATENTS AND PERQUISITES

Sec. 5.—It is unprofessional to receive remuneration from patents for surgical instruments or medicines; to accept rebates on prescriptions or surgical appliances, or perquisites from attendants who aid in the care of patients.

MEDICAL LAWS—SECRET REMEDIES.

Sec. 6.—It is unprofessional for a physician to assist unqualified persons to evade legal restrictions governing the practice of medicine; it is equally unethical to prescribe or dispense secret medicines or other secret remedial agents, or manufacture or promote their use in any way.

SAFEGUARDING THE PROFESSION.

Sec. 7.—Physicians should expose without fear or favor, before the proper medical or legal tribunals, corrupt or dishonest conduct of members of the profession. Every physician should aid in safeguarding the profession against the admission to its ranks of those who are unfit or unqualified because deficient either in moral character or education.

ARTICLE II.—PROFESSIONAL SERVICES OF PHYSICIANS
TO EACH OTHER.

PHYSICIANS DEPENDENT ON EACH OTHER.

Section 1.—Experience teaches that it is unwise for a physician to treat members of his own family or himself. Consequently, a physician should always cheerfully and gratuitously respond with his professional services to the call of any physician practicing in his vicinity, or of the immediate family dependents of physicians.

COMPENSATION FOR EXPENSES.

Sec. 2.—When a physician from a distance is called on to advise another physician or one of his family dependents, and the physician to whom the service is rendered is in easy financial circumstances, a compensation that will at least meet the traveling expenses of the visiting physician should be proffered. When

such a service requires an absence from the accustomed field of professional work of the visitor that might reasonably be expected to entail a pecuniary loss, such loss should, in part at least, be provided for in the compensation offered.

ONE PHYSICIAN TO TAKE CHARGE.

Sec. 3.—When a physician or a member of his dependent family is seriously ill, he or his family should select a physician from among his neighboring colleagues to take charge of the case. Other physicians may be associated in the care of the patient as consultants.

ARTICLE III.—DUTIES OF PHYSICIAN IN CONSULTATIONS.

CONSULTATIONS SHOULD BE REQUESTED.

Section 1.—In serious illness, especially in doubtful or difficult conditions, the physician should request consultation.

CONSULTATION FOR PATIENT'S BENEFIT.

Sec. 2.—In every consultation, the benefit to be derived by the patient is of first importance. All the physicians interested in the case should be frank and candid with the patient and his family. There never is occasion for insincerity, rivalry or envy and these should never be permitted between consultants.

PUNCTUALITY.

Sec. 3.—It is the duty of a physician, particularly in the instance of a consultation, to be punctual in attendance. When, however, the consultant or the physician in charge is unavoidably delayed, the one who first arrives should wait for the other for a reasonable time, after which the consultation should be considered postponed. When the consultant has come from a distance, or when for any reason it will be difficult to meet the physician in charge at another time, or if the case is urgent, or if it be the desire of the patient, he may examine the patient and mail his written opinion, or see that it is delivered under seal, to the physician in charge. Under these conditions, the consultant's conduct must be especially tactful; he must remem-

ber that he is framing an opinion without the aid of the physician who has observed the course of the disease.

PATIENT REFERRED TO SPECIALIST.

Sec. 4.—When a patient is sent to one specially skilled in the care of the condition from which he is thought to be suffering, and for any reason it is impracticable for the physician in charge of the case to accompany the patient, the physician in charge should send to the consultant by mail, or in the care of the patient, under seal, a history of the case, together with the physician's opinion and an outline of the treatment, or so much of this as may possibly be of service to the consultant; and as soon as possible after the case has been seen and studied, the consultant should address the physician in charge and advise him of the results of the consultant's investigation of the case. Both these opinions are confidential and must be so regarded by the consultant and by the physician in charge.

DISCUSSIONS IN CONSULTATION.

Sec. 5.—After the physicians called in consultation have completed their investigations of the case, they may meet by themselves to discuss conditions and determine the course to be followed in the treatment of the patient. No statement or discussion of the case should take place before the patient or friends, except in the presence of all the physicians attending, or by their common consent; and no opinions or prognostications should be delivered as a result of the deliberations of the consultants, which have not been concurred in by the consultants at their conference.

ATTENDING PHYSICIAN RESPONSIBLE.

Sec. 6.—The physician in attendance is in charge of the case and is responsible for the treatment of the patient. Consequently, he may prescribe for the patient at any time and is privileged to vary the mode of treatment outlined and agreed on at a consultation whenever, in his opinion, such a change is warranted. However, at the next consultation, he should state his reasons for departing from the course decided on at the previous conference. When an emergency occurs during the absence of the

attending physician, a consultant may provide for the emergency and the subsequent care of the patient until the arrival of the physician in charge, but should do no more than this without the consent of the physician in charge.

CONFLICT OF OPINION.

Sec. 7.—Should the attending physician and the consultant find it impossible to agree in their views of a case another consultant should be called to the conference or the first consultant should withdraw. However, since the consultant was employed by the patient in order that his opinion might be obtained, he should be permitted to state the result of his study of the case to the patient, or his next friend in the presence of the physician in charge.

CONSULTANT AND ATTENDANT.

Sec. 8.—When a physician has attended a case as a consultant, he should not become the attendant of the patient during that illness except with the consent of the physician who was in charge at the time of the consultation.

ARTICLE IV.—DUTIES OF PHYSICIANS IN CASES OF INTERFERENCE.

CRITICISM TO BE AVOIDED.

Section 1.—The physician, in his intercourse with a patient under the care of another physician, should observe the strictest caution and reserve; should give no disingenuous hints relative to the nature and treatment of the patient's disorder; nor should the course of conduct of the physician, directly or indirectly, tend to diminish the trust reposed in the attending physician.

SOCIAL CALLS ON PATIENT OF ANOTHER PHYSICIAN.

Sec. 2.—A physician should avoid making social calls on those who are under the professional care of other physicians without the knowledge and consent of the attendant. Should such a friendly visit be made, there should be no inquiry relative to the nature of the disease or comment upon the treatment of

the case, but the conversation should be on subjects other than the physical condition of the patient.

SERVICES TO PATIENT OF ANOTHER PHYSICIAN.

Sec. 3.—A physician should never take charge of or prescribe for a patient who is under the care of another physician, except in an emergency, until after the other physician has relinquished the case or has been properly dismissed.

CRITICISM TO BE AVOIDED.

Sec. 4.—When a physician does succeed another physician in the charge of a case, he should not make comments on or insinuations regarding the practice of the one who preceded him. Such comments or insinuations tend to lower the esteem of the patient for the medical profession and so react against the critic.

EMERGENCY CASES.

Sec. 5.—When a physician is called in an emergency and finds that he has been sent for because the family attendant is not at hand, or when a physician is asked to see another physician's patient because of an aggravation of the disease, he should provide only for the patient's immediate need and should withdraw from the case on the arrival of the family physician after he has reported the condition found and the treatment administered.

WHEN SEVERAL PHYSICIANS ARE SUMMONED.

Sec. 6.—When several physicians have been summoned in a case of sudden illness or of accident, the first to arrive should be considered the physician in charge. However, as soon as the exigencies of the case permit, or on the arrival of the acknowledged family attendant or the physician the patient desires to serve him, the first physician should withdraw in favor of the chosen attendant; should the patient or his family wish some one other than the physician known to be the family physician to take charge of the case the patient should advise the family physician of his desire. When, because of sudden illness or accident, a patient is taken to a hospital, the patient should be returned to the care of his known family physician as soon as the condition

of the patient and the circumstances of the case warrant this transfer.

A COLLEAGUE'S PATIENT.

Sec. 7.—When a physician is requested by a colleague to care for a patient during his temporary absence, or when, because of an emergency, he is asked to see a patient of a colleague, the physician should treat the patient in the same manner and with the same delicacy as he would have one of his own patients cared for under similar circumstances. The patient should be returned to the care of the attending physician as soon as possible.

RELINQUISHING PATIENT TO REGULAR ATTENDANT.

Sec. 8.—When a physician is called to the patient of another physician during the enforced absence of that physician, the patient should be relinquished on the return of the latter.

SUBSTITUTING IN OBSTETRIC WORK.

Sec. 9.—When a physician attends a woman in labor in the absence of another who has been engaged to attend, such physician should resign the patient to the one first engaged, upon his arrival; the physician is entitled to compensation for the professional services he may have rendered.

ARTICLE V.—DIFFERENCES BETWEEN PHYSICIANS. ARBITRATION.

Section 1.—Whenever there arises between physicians a grave difference of opinion which cannot be promptly adjusted, the dispute should be referred for arbitration to a committee of impartial physicians, preferably the Board of Censors of a component county society of the American Medical Association.

ARTICLE VI.—COMPENSATION.

LIMITS OF GRATUITOUS SERVICE.

Section 1.—The poverty of a patient and the mutual professional obligation of physicians should command the gratuitous services of a physician. But institutions endowed by societies, and organizations for mutual benefit, or for accident, sickness

and life insurance, or for analogous purposes, should be accorded no such privileges.

CONTRACT PRACTICE.

Sec. 2.—It is unprofessional for a physician to dispose of his services under conditions that make it impossible to render adequate service to his patient or which interfere with reasonable competition among the physicians of a community. To do this is detrimental to the public and to the individual physician, and lowers the dignity of the profession.

SECRET DIVISION OF FEES CONDEMNED.

Sec. 3.—It is detrimental to the public good and degrading to the profession, and therefore unprofessional, to give or to receive a commission. It is also unprofessional to divide a fee for medical advice or surgical treatment, unless the patient or his next friend is fully informed as to the terms of the transaction. The patient should be made to realize that a proper fee should be paid the family physician for the service he renders in determining the surgical or medical treatment suited to the condition, and in advising concerning those best qualified to render any special service that may be required by the patient.

CHAPTER III.

THE DUTIES OF THE PROFESSION TO THE PUBLIC.

PHYSICIANS AS CITIZENS.

Section 1.—Physicians, as good citizens and because their professional training specially qualifies them to render this service, should give advice concerning the public health of the community. They should bear their full part in enforcing its laws and sustaining the institutions that advance the interests of humanity. They should co-operate especially with the proper authorities in the administration of sanitary laws and regulations. They should be ready to counsel the public on subjects relating to sanitary police, public hygiene and legal medicine.

PHYSICIANS SHOULD ENLIGHTEN PUBLIC—DUTIES IN EPIDEMICS.

Sec. 2.—Physicians, especially those engaged in public health work, should enlighten the public regarding quarantine regula-

tions; on the location, arrangement and dietaries of hospitals, asylums, schools, prisons and similar institutions; and concerning measures for the prevention of epidemic and contagious diseases. When an epidemic prevails, a physician must continue his labors for the alleviation of suffering people, without regard to the risk to his own health or life or to financial return. At all times, it is the duty of the physician to notify the properly constituted public health authorities of every case of communicable disease under his care, in accordance with the laws, rules and regulations of the health authorities of the locality in which the patient is.

PUBLIC WARNED.

Sec. 3.—Physicians should warn the public against the devices practiced and the false pretensions made by charlatans which may cause injury to health and loss of life.

PHARMACISTS.

Sec. 4.—By legitimate patronage, physicians should recognize and promote the profession of pharmacy; but any pharmacist, unless he be qualified as a physician, who assumes to prescribe for the sick, should be denied such countenance and support. Moreover, whenever a druggist or pharmacist dispenses deteriorated or adulterated drugs, or substitutes one remedy for another designated in a prescription, he thereby forfeits all claims to the favorable consideration of the public and physicians.

CONCLUSION.

While the foregoing statements express in a general way the duty of the physician to his patients, to other members of the profession and to the profession at large, as well as of the profession to the public, it is not to be supposed that they cover the whole field of medical ethics, or that the physician is not under many duties and obligations besides these herein set forth. In a word, it is incumbent on the physician that under all conditions, his bearing toward patients, the public, and fellow practitioner should be characterized by a gentlemanly deportment and that he constantly should behave toward others as he desires them to deal with him. Finally, these principles are primarily

for the good of the public, and their enforcement should be conducted in such a manner as shall deserve and receive the endorsement of the community.

PART THIRD.
DENTAL JURISPRUDENCE.
CHAPTER XV.

THE STATUS OF THE DENTIST—THE RIGHT TO PRACTICE—POWER
OF THE STATE TO REGULATE PRACTICE—RELATION BETWEEN
DENTIST AND PATIENT.

¹“Perhaps a legal definition of Dentistry has not yet been formulated. The statutes of some states imply that dentistry is a branch of medicine or surgery. Thus the statute of Michigan regulating the practice of medicine or surgery provides: ‘from practicing medicine or surgery (*except dentistry*).’ The definitions in some statutes of ‘practice of medicine’ are broad enough to include the practice of dentistry and vice versa. Thus the act of 1882 of Mississippi, section 20, provides that the words ‘practice of medicine’ shall mean to suggest, recommend, prescribe or direct for the use of any person, any drug, medicine, appliance, or other agency, whether material or not material, for the cure, relief, or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture or other bodily injury, or any deformity.’” It is plain that this definition is broad enough to cover the whole field of dentistry.

²“The Mississippi Court of Errors and Appeals has held that dentistry is a department of the medical art. In *Whitcomb v. Reid*,³ the question before the court was whether a dentist’s instruments were exempt from execution under a statute exempting the ‘tools of a mechanic necessary for carrying on his trade.’” The Court said: ‘We do not think that this provision can be extended to the description of instruments in question. A dentist cannot be properly denominated a mechanic.’ It is true that the practice of his art requires the use of instruments for manual operation, and that much of it consists in manual operation; but it also involves a knowledge of the physiology of the teeth, which cannot be acquired but by a proper

¹Mikell, p. 17, Chap 1.

²Mikell, page 18.

³31 Miss. — 567 (1856).

course of study; and this is taught by learned treatises on the subject, and as a distinct, though limited, department of the medical art in institutions established for the purpose. It requires both science and skill and if such persons could be included in the denomination of mechanics because their pursuit required the use of mechanical instruments and skill in manual operation, the same reason would include general surgeons under the same denomination, because the practice of their profession depends, in a great degree, upon similar instruments and operative skill.

“Nor could such a pursuit properly be said to be a ‘trade.’ That term is defined to denote the ‘business or occupation’ which a person has learned, and which he carries on for procuring subsistence, or for profit—particularly a mechanical employment, distinguished from the liberal arts and learned professions and from agriculture.’ (Webster’s Dictionary.) It is manifest that a pursuit requiring a correct knowledge of the anatomy and physiology of a part of the human body as well as mechanical skill in the use of the necessary instruments, could not be properly denominated a ‘trade.’”

“There are a few decisions that dentistry is not a branch or department of medicine or surgery. In *State v. Fisher*,² (Missouri) this conclusion is reached by a bare majority of four judges to three; * * * on the question whether the relator, a dental surgeon, was exempt from jury duty under the laws of Missouri. The statutes provided that persons actually exercising the functions of a practitioner of medicine were exempt. The majority of the Court after pointing out the rule of law that ‘privileges and exceptions are not favored in the law,’ held that the relator was not a ‘practitioner of medicine and surgery in any of their departments.’”

“Of course it does not follow that because dentistry is a branch or department of medicine or surgery, that a dentist is necessarily a ‘surgeon’ or ‘physician’ within the meaning of the statutes using those terms. It must depend in each case on the intent of the legislature.”

³Case of DeFrance on question of being allowed to tes-

¹Page 19.

²119 Mo., 344 (1893).

³104 Mich., 563 (1895).

tify as to communications made to him by a patient. A statute forbade a surgeon or physician from so testifying. The court held the act did not apply to a dentist.

“The Supreme Court of Michigan has drawn a distinction between the mechanical and scientific work of a dentist. In *Maxon v. Perrott*¹ the court, in holding that a dentist’s instruments were exempt from execution under a statute exempting ‘mechanical tools’ said: ‘A dentist is in one sense a professional man, but in another sense his calling is mainly mechanical, and the tools he employs are used in mechanical operations. * * * Of late, however, as the physiology of the human system has become better understood, and the relations of its various parts and their mutual dependence are more clearly recognized, dentistry has made great progress as a science, and its practitioners claim, with much justice, to be classed among the learned professions. It is, nevertheless, true that the operations of the dentist are still for the most part mechanical, and, so far as tools are employed, they are purely so; and we could not exclude these tools from the exemptions which the statute makes without confining the construction of the statute within limits not justified by the words employed. The ordinary meaning of ‘mechanical tools’ it is plain, will include those in question, and there is nothing in the context which will justify us in saying that the legislative design would exclude them.’”

“Indeed the courts are more concerned in trying to do justice and to interpret the legislation well than in making nice distinctions between ‘professions’ and ‘trades’ and ‘arts’ and ‘sciences.’ They have not hesitated, when justice seemed to demand it, to hold that the practice of medicine was a ‘trade’ and a physician a ‘tradesman.’” (The question was on a claim for interest on a bill for services, the statute providing that accounts of ‘merchants, tradesmen and mechanics’ should have interest.)

²“The word ‘tradesman’ does not, perhaps, ordinarily cover physicians; but they have a trade, an art, a mystery.

¹17 Mich., 332 (1868).

²47 Ga., 121 (1872).

They usually give it a more dignified name, to wit, profession. One of the definitions of trade given by Webster is 'the business a man has learned by which he earns his livelihood.' And this at last, is the point of the word."

It will be noticed that one decision quoted refuses to exempt the instruments of a dentist from execution for debt under a statute exempting "the tools of a mechanic necessary for carrying on his trade," while another decision, in another state holds a dentist's instruments exempt from execution under a statute exempting "mechanical tools." Contradictory decisions like these, of course, leave the legal questions to which they refer in uncertainty, but they have really but little relation to what would constitute a legal definition of dentistry.

A good many of the dental laws of the different states, attempt a definition of dental practice for the purposes of the law in each case. That of the Illinois law is a fair type. "Section 5. Any person shall be regarded as practicing dentistry or dental surgery within the meaning of this act, who shall treat, or profess to treat any of the diseases or lesions of human teeth or jaws, or extract teeth or shall prepare and fill cavities in human teeth, or correct the malpositions of teeth, or supply artificial teeth as substitutes for natural teeth: *Provided*, that nothing in this act shall be so construed as to prevent regularly licensed physicians or surgeons from extracting teeth." This does not specifically provide for other cases in which the field of the physician or surgeon may overlap that of the dentist, as may sometimes be the case in diseases and surgical operations upon the jaws, the mucous membrane of the mouth, cases of ranula, etc. The Maryland statute is more comprehensive, using the word "mouth" instead of "teeth and jaws." "Section 10. Every person shall be said to be practicing dentistry, within the meaning of this act, who shall, for a fee, salary or other compensation, paid either to himself or to someone else for services rendered, perform operations or parts of operations of any kind pertaining to the mouth, treat diseases or lesions of the human teeth or jaws, or correct malpositions thereof."

Using the word "mouth" instead of "teeth and jaws" enlarges the field in which dentistry and medicine or surgery may overlap each other, but this is provided for in a subsequent section by the broad provision, "nothing in this article shall be so construed as to interfere with the rights and privileges of resident physicians and surgeons, etc."

As a matter of fact, and in a broad definition, it is beyond question that dentistry is a branch of the healing art, a specialty of medical and surgical practice, but in popular speech, for the purposes of the law, and in methods and institutions of education Dentistry is a separate profession from that of medicine and surgery.

THE RIGHT TO PRACTICE DENTISTRY—POWER OF THE STATE TO
REGULATE PRACTICE.

"The state has the right to regulate the practice of dentistry within its borders, and to prescribe such reasonable conditions as a prerequisite to practice as are calculated to exclude from the profession those who are unfitted to discharge its duties."¹

"In England, Parliament, being supreme, may prescribe what conditions it pleases as a prerequisite to the right to practice. In the United States the right to practice is regulated by the State Legislatures, and while their power to prescribe conditions is large, it is limited by and must be exercised in conformity with the constitution of the State and of the Federal Government. As said by the court in *Wilkins v. State*:² "The courts must take judicial knowledge that it (the dental profession) is a profession requiring skill, * * * and that one unskilled in the profession may injure the person who employs him. As this is so, then, the Legislature may prescribe the qualifications of those permitted to practice that profession. * * * As it has plenary power of the whole subject, it alone must be the judge of what is wise and expedient, both as to the qualifications required and as to the method of ascertaining those qualifications. The court cannot exercise any supervisory power over the Legis-

¹State ex rel Smith v. Dental Examiners, 31 Wash., 492 (1903).

²113 Ind., 514 (1887).

lature as long as it keeps within the limits of the constitution." It is within those limits, "if the regulations and conditions it prescribes are adopted in good faith, and they operate equally upon all who may desire to practice, and who possess the required qualifications, and if they are adapted to the legislative purpose of promoting the health and welfare of the people by excluding from the practice those who are ignorant and incapable."¹ * * *

"The requirement of a diploma as a condition of the right to practice does not render the law unconstitutional."²

"Nor does the fact that it requires the possession of a diploma, as a condition of being allowed to practice, by those not practicing in the State at the time the law was enacted, while allowing those persons to practice without a diploma who were practicing in the State at the time the law was enacted, render the law unconstitutional as conflicting with Section 2, Art. IV, of the Federal Constitution providing: 'The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several states,' or with Section 1 of the Fourteenth Amendment of the Constitution providing: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.'"³

It is not necessary to quote the whole of Mikell's second chapter. All the important provisions of the various dental laws have been abundantly sustained by the courts. We may specify; the requirement of those in practice to be registered within a specified time after the passage of the law, providing for the appointment of the State Board of Examiners by the State Dental Association. The requirement that all those desiring to practice shall pass examination, and making it a misdemeanor to practice without a license from the Board of Examiners. The requirement that legal practitioners, if they remove to another state must be examined and licensed by the Board of Examiners of the state to which

¹State v. Creditor, 44 Kansas, 565 (1890).

²State v. Vandersluis, 42 Minn., 129 (1889).

State v. McIntosh, 250 Mo., 589 (1907).

³Ibid.

they remove. The provision excepting "from the operation of the law students of dentistry during the period of enrollment in a dental college in the state."

"The statute, however, to be constitutional, must not impose special restrictions or burdens on, or grant special privileges to some persons over others engaged in the same profession under the same circumstances. Under this rule it has been held that a statute providing that no person should practice dentistry without having obtained a degree from some college, or a license from the State Dental Society, and imposing a certain fee, but exempting persons who have resided and practiced the profession in the town or city of their present place of residence, for a specified time, was unconstitutional as unduly discriminating between persons of the same class."¹

"A statute is not unconstitutional which requires good character as a condition to the right to practice, or which lodges the power to determine the person's moral fitness in a legally constituted body of men learned in the profession."²

"REQUIREMENTS OF STATUTES REGULATING PRACTICE."

1. In General.—Statutes vary in the conditions they impose on the right to practice dentistry. The most usual form of statute provides as a requisite to the right to engage in practice: (1) The possession of a diploma; (2) The passing of a satisfactory examination; (3) Proof of good moral character; (4) Receipt of a license from the Board of Examiners; (5) Registry of the license with the proper officer; (6) Payment of a stated fee. Some statutes do not require the passing of an examination if the applicant possesses a degree; others do not require a degree if the applicant passes a satisfactory examination."

"LICENSE TO PRACTICE. POWERS OF THE DENTAL BOARD."

2. Under this head it is not necessary to quote Mikell in detail. Of course the powers of the dental board are conferred and limited by the law in each state. The courts have usually been liberal in their interpretation of the dental and medical laws, and the dental and medical boards have large powers and much

¹State v. Hinman, (N. H.) 18 Atl., 194 (1889).

²See State v. State Medical Board, 32 Minn., 324 (1884).

discretion. I will make a few quotations. "The functions of the Dental Board in granting or refusing a license is in whole or in part quasi-judicial, involving investigation, judgment and discretion, therefore an action for damages will not lie against such board for refusing to grant, or for revoking a license wrongfully, if in so doing they acted without malice."¹

"Where the law provides that the possession of a diploma of a 'reputable dental college,' or a 'college in good standing,' shall be a requisite to the issuance of a license by the board, the board has power to decide what is and what is not a reputable college, or a college in good standing, and whether the college whose diploma the applicant holds is or is not such a college."²

* * *

"The determination by the board of the question whether or not a dental school is a 'reputable' school or a school 'in good standing' is final, and will not be reviewed by the courts unless the board is clearly shown to have abused its discretion in the matter, or to have been guilty of arbitrary, oppressive or malevolent conduct."* * *

"A board of dental examiners may make any reasonable rules and regulations they see fit by which to determine whether or not a dental school is 'reputable' or in 'good standing.' They cannot delegate the right to decide whether a college is reputable or not to a dental organization beyond the limits of the State. Thus in *Dental Examiners v. People*,³ the board of examiners refused to issue a license to an applicant until his application was approved by the National Association of Dental Examiners, an association composed for the most part of persons living outside of the state. The State board having been shown to have been otherwise satisfied with the reputability of the college of which the applicant held a degree, the court granted a writ of mandamus to compel the State board to issue the license."

"As the board, however, has power, when no rules are prescribed by statute for determining the reputability of a college,

¹People v. Dental Examiners, 110 Ill., 180 (1884); State v. Chittenden, 127 Wis., 468 (1906).

²People v. Dental Examiners, 110 Ill., 180 (1884).

³123 Ill., 227 (1887).

to make any reasonable rules to determine this question, the fact that a State board adopts the rules of a dental organization outside of the state, and is in large part governed by its recommendations in determining the reputability of colleges, is no ground for the interference of the court, when it appears that the board was not absolutely bound by the rules of the foreign association, but could, in their discretion require more or less of a college than the foreign association demanded."¹

"When the statute makes it a prerequisite to the right to a license that the applicant shall be of good moral character, and provides that on proof of conviction of a misdemeanor a license granted shall be canceled, the board of examiners may refuse to grant a license to a person who has been convicted of practicing dentistry in the State without a license."²

"3. Registration—After the dentist has obtained his license from the dental board, the next step required by the law is the registration of such license. The language of the statutes providing for registration is not identical. Some statutes provide that the licenses shall be registered within sixty days from the issuance thereof, some within thirty days, and others are silent as to the time within which registration shall take place."

When no time for registration is mentioned in the law it is wise to presume that the license is to be registered before beginning practice, and to act accordingly.

"The statutes vary, likewise, in their provisions as to the place where, and the officer with whom the license must be registered. Some provide that it shall be registered in the county in which the holder expects to practice; some require it to be registered with the judge of probate, others with the clerk of the county."

"Some require separate registration in each county in which the holder of the license intends to practice; and provide for duplicate, etc., registration. It is not clear always from the wording of some of the statutes, nor do the decisions

¹Williams v. Dental Examiners, 93 Tenn., 619 (1894).

²See Battles v. Board of Registry in Dentistry, 16 R. I., 372 (1888).

make it any clearer, whether, under the statute, the license, once registered in the proper place, entitles the holder to practice anywhere in the State, or whether the license must be registered anew in each county where the holder does any dental work. The statutes generally provide that if the license is not registered within the time prescribed, the license shall be forfeited. Statutes containing this provision usually provide that a duplicate may be obtained, in some cases with and in others without an additional fee. * * * In view of the uncertainty of the law in this regard under the phraseology of many of the statutes, and the serious consequences involved in its breach, a dentist should always register in each county where he does any dental work, unless the statute clearly provides that registry in one place entitles him to practice anywhere in the State."

"4. Revocation of License—Most of the statutes regulating the practice of dentistry provide for revocation of the dentist's license. In some of the statutes the grounds on which the license may be revoked are specifically set out in the statute."

"In others the grounds of revocation are not set out in detail, but it is provided generally that it may be revoked for dishonorable or unprofessional conduct. Under similar statutes in relation to physicians, it has been held in the United States that 'unprofessional' means 'dishonorable,' and does not refer to matters of professional ethics only; and that a mere breach of professional ethics, such as advertising, etc., is not ground for revoking a license."¹

"* * * In some states such statutes have been held to be unconstitutional and void for uncertainty."² * * *

"Some statutes provide that the license to practice may be revoked for 'fraud, deceit, or misrepresentation' in the practice of dentistry. Such a statute, it has been held, is not invalid for uncertainty." * * *

"A license once granted cannot be revoked without an

¹See *State v. State Medical Examining Board*, 32 Minn., 324 (1884).

²*Czarra v. Board of Medical Supervisors*, 25 App. Cas. (D. C.) 443 (1905).

opportunity given the holder, by timely notice, to appear and defend himself against the charges preferred against him.

“But the decision of the board, after a proper hearing, that the dentist is guilty of professional misconduct is not reviewable by a court, at least if there is any evidence on which the Dental Board could reasonably hold that the dentist had been guilty of such conduct.”¹

“5. Effect of Fulfillment of Requirements—If the applicant for the right to practice dentistry has fulfilled the legal requirements, he is entitled to practice, and it is immaterial, as far as his right to practice is concerned, how well he has met the tests prescribed by the law. The ability shown by him, however, in meeting these tests may subsequently become of great importance to him. In the case of *Wilkins v. Ferrell*,² (Texas) a dentist was sued by a patient for malpractice. The dentist had offered evidences to prove his skill and learning in his profession. The plaintiff thereupon offered to prove by two members of the board of dental examiners that the defendant, when he was examined for his license a year previous, was unable to answer questions propounded to him in anatomy, physiology and chemistry; that he could not explain what the superior and inferior maxillary bones were, and said, in treating an exposed pulp, he ‘would kill the damn thing’; that he could not tell the number of bones in the head or skull, and could not name the nerves in the head and face. The defendant objected to the court’s allowing this evidence to go to the jury. The court, however, admitted it and, on appeal, the supreme court held that the lower court was right.”*

RELATION BETWEEN THE DENTIST AND HIS PATIENT.

TIME AT WHICH THE RELATION COMMENCES.

“The mere opening of the dentist’s office for practice, or the display of his name-plate does not create any duty on the part of the dentist or impose any obligation upon him to

¹Hill v. Clifford, Eg. (1907) and others.

²10 Tex. Civ. App., 231 (1895).

*Page 39.

accept patients. He is no more required to accept any person who comes to him as a patient than is a physician.¹

"It is not until he accepts a person as a patient that his duties and the corresponding obligations arise."²

THE CONTRACT OF EMPLOYMENT.

The relation between the dentist and his patient is, in general, in the nature of a contract between them. This contract may be written or oral, expressed or implied; and in our law there is no special sanctity or obligation to written contracts over oral ones, and implied contracts are as binding between the parties as expressed ones. The greatest advantage of a written contract is that its terms are more easily proven, and there is less opportunity for variance of understanding, forgetfulness, or misrepresentation.

The nature of a contract for services makes it subject to the implied condition that both of the parties shall be in such a state of health as to be able to fulfill their contract at the appointed time.³ If too ill to keep an appointment, therefore, a patient must be excused. Likewise, the dentist, if too ill to work, the patient, however, in that case may go to another dentist if necessary or if he chooses to do so.

"2. Contracts Required to be in Writing.—By force of a statute passed in England in 1677, known as the Statute of Frauds and Perjuries, because it was intended to prevent the commission of frauds and perjuries, certain contracts unless in writing could not be enforced at law unless there had been part payment under them, etc.

"The statute provided that 'no contract for the sale of any goods, wares and merchandises for the price of ten pounds sterling or upward, shall be allowed to be good except the buyer shall accept part of the goods sold and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of said bargain be made and signed by the parties

¹Becker v. Jamski, 15 N. Y. Suppl., 675 (1891).

²Huky v. Eddingfield, 156 Ind., 416 (1900).

³Powell v. Newell, 95 Minn., 406 (1894).

to be charged by such contract, or their agents thereto lawfully authorized.' This statute is still in force in England and a substantially similar statute is in force in all the American States except Alabama, Arizona, Delaware, Illinois, Kansas, Kentucky, Louisiana, New Mexico, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Tennessee, Virginia and West Virginia. In the other states, where the statute is in force, the amount prescribed by the statute varies in the different states."

Probably the only application this statute would have in dental practice is in relation to artificial teeth and the decisions in the different cases and in different states do not agree.

"In the case of *Lee v. Griffin*,¹ the plaintiff, a dentist, in pursuance of an oral order from his patient, prepared a model for her mouth and made for her two sets of false teeth. After the teeth were finished and she was notified of the fact, she died before she could have the teeth fitted. The dentist sued her estate through her executor for £21, the compensation she had agreed to pay for the teeth. If this transaction was a 'sale' of teeth by the dentist, then since the contract had not been put in writing, he was not entitled to recover under the statutes. If it was, on the other hand, a contract to do a certain piece of work, to perform certain services, then the plaintiff was entitled to recover, for the statute only applies to 'sales.'

"The court held the transaction to be a 'sale' and refused to allow a recovery. The court laid down the following test of when a transaction is a sale, and required to be in writing: 'If the contract be such that, when carried out, it would result in the sale of chattel,' it is a sale; 'but if the result of the contract is that the party has done work and labor which ends in nothing that can become the subject of a sale,' the party can recover whether the contract is in writing or not. The rule of this case has been adopted in Canada and Missouri.² Tests different from the above and differing from each other have been adopted in the different American

¹Eng., Best and Smith, 272.

²Williston, Sales, Sec. 54.

States. It is believed that under none of them except in Missouri, would a contract by a dentist to make a set of teeth be required to be in writing. * * *

In any case, "If the teeth were received and accepted by the patient, or if all or part of the price had been paid,¹ the contract would be binding though not in writing."

"Even when in the above cases the contract must be in writing, all the terms of the contract need not appear in the writing. It is sufficient if the names of the parties, the price and the substance of the agreement appear in the writing, and it is signed by the party who is being sued. * * *"

"Another contract that the law will not enforce unless it is in writing, is the contract of one person to answer for the debt or default of another."

If a patient is sent to a dentist by a person who promises to pay the bill such promise must be in writing unless the patient is one for whose support the one sending is legally responsible, as a wife, child or ward.

"3. Express Contracts.—The dentist may enter into an express contract with his patient. Such contracts are becoming more common than formerly." An express contract is made when the terms of it are expressed and agreed upon between the parties. It is usually for certain specified operations or services to be performed, and for a specified fee, or, in many cases, a minimum and a maximum fee may be named, in view of the fact that the worth of many operations cannot be known by the dentist beforehand except approximately. Such contracts may be, but need not be in writing unless it be of the sort required by law to be in writing, as described previously. Of course a dentist must fulfil such contracts in accordance to the terms of them, no matter how much of extra or unexpected time or trouble may be required.

"4. Implied Contracts.—Most contracts between dentists and their patients are not express, but are so-called implied contracts. The patient seats himself in the dentist's chair, the dentist examines his teeth, makes notes of what

¹Some states require this payment to be at the time the contract is made if payment is relied on to make the contract valid.

work is needed, informs the patient of the extent of such work more or less perfunctorily, and proceeds to perform the necessary work without informing the patient of the length of time necessary to complete it, the nature of the materials he proposes to use, how skillfully he will perform it, whether it will have the desired result, how long it will last, what he will charge for it or when payment will be due. In such a case as this where one or more of the terms of the contract are not expressly agreed on by the parties, the law implies a contract between them. * * *

Implied contracts involve similar obligations upon both parties as express contracts, and may be legally enforced. Rehfus gives this rule of law in regard to them.

"The presumption in regard to implied contracts is that agreements and stipulations are supposed to have been made between the parties such as fair and honest men ought to have made under like circumstances."

"5. Delegation of the Contract.—It is a general rule of law that a contract to perform personal services cannot be delegated to another by the person contracting to perform them."

Of course it can be done by the consent of the parties.

"6. Contracts Made or to be Performed on Sunday.—Since 1677 in England, and now generally in this country, work done in a person's ordinary business or calling is forbidden by statute, and contracts therefor are unenforceable. An exception is, however, that if the work done be a 'work of necessity,' the person performing the work may recover for his services. It has been held by the courts that the work of a physician in healing the sick was a work of necessity."

Some dental work would undoubtedly be so regarded, but the larger part of ordinary dental services probably not. Services rendered to relieve pain, or to prevent harm likely to happen by a delay till the next day would be "work of necessity."

GIFTS BY PATIENT TO DENTIST.

"The relation between the dentist and patient, like that between physician and patient, is a confidential one. It has

been held, however, that there is nothing in the latter relation that forbids the acceptance of a gift by the physician from his patient. The same rule would apply in the case of a gift by the patient to his dentist."

LIABILITY OF PATIENT TO DENTIST.

Mikell goes minutely into detail under each of the headings of this chapter. A briefer statement or short quotations will answer our purpose in most instances.

LIABILITY FOR BREACH OF CONTRACT.

If a patient fail to fulfil his contract with the dentist, (whether it be an express contract or an implied contract) he is liable for such damages as the dentist may suffer in consequence. If the breach of contract is a failure to pay the bill the amount of liability is the price agreed upon, or if there were no express contract then the amount of the bill rendered if it be reasonable, and in case of a law-suit, the reasonableness of a bill is always for the jury to determine, upon the evidence submitted to them, "and they may take into consideration the ability of the practitioner and his standing in the profession."¹

*"In some jurisdictions it is held that the financial ability of the patient should be considered in estimating the worth of the services."²

"In other jurisdictions a contrary rule obtains."³

A breach of contract may relate to other matters than compensation, oftenest, probably, to a failure to keep appointments. In these cases the dentist has a rightful claim for the amount of damage he has sustained. He cannot claim pay for the work he would have done, for he has not done the work. If he is idle in consequence during the appointed time he may claim the amount he would have charged if the patient had kept the appointment. If he is employed for an equal compensation he may not charge anything, for he has

¹Heintz v. Cooper (Cal.), 47 Pac., 360 (1896).

*Mikell, p. 52.

²Succession of Haley, 5 La. Ann., 840 (1898).

³Robinson v. Campbell, 47 Iowa, 625 (1878).

suffered no loss. If he is employed for a less remuneration than he would have received he may charge the difference. The most satisfactory plan is to announce on the appointment card that if appointments are not kept a reasonable charge will be made unless notice is received the day before; or, unless timely notice has been given; or a definite sum may be named. That would eliminate all controversy as to what the lost time was worth or what the dentist did with it.

Rehfuss cites two cases of claims for missed appointments, both of which were allowed. The first that of Dr. D. D. Smith of Philadelphia, Magistrate's Court No. 9, July 11, 1891. The patient desired the roots of some teeth be filled with gold, which the doctor refused, deeming it impractical in that case, whereupon the patient left the chair, and also failed to keep a subsequent appointment which had been made. In the other case, "A dentist brought suit against a lady in a Chicago court in 1875. The plaintiff charged that the defendant made a series of appointments with him and failed to keep them. His claim was for eighty dollars, charging at the rate of two dollars and fifty cents per hour. The plaintiff secured judgment for the whole amount. Rehfuss refers in this case to the Dental Cosmos, Vol. XIX, p. 110.

CHAPTER XVI.

LIABILITY FOR COMPENSATION—WIVES, MINORS, PARENTS, GUARDIANS, ETC.—FOR BREACH OF CONTRACT.

The most important part of this subject has been already covered under the previous head.

If a patient has just ground to suppose the services of the dentist are to be gratuitous, of course no claim for compensation can afterwards be made. The legal question is stated by the court in *Prince v. McRae*,¹ "Whether the plaintiff's services shall be deemed a gratuity or constitute a claim for compensation must be determined by the common understanding of both parties. If they were intended to be and were accepted as a gift or act of benevolence, they cannot, at the election of the plaintiff, create a legal obligation to pay. But their character is not controlled by the unexpressed and revocable intentions of the plaintiff."

"A dentist has no authority to call in a consulting dentist (or physician) without the consent of the patient."

If, however, the patient receives the services of the consultant without objection, or requests or consents that he be called, he is of course liable for the consultation fee.

"If the dentist call in another dentist or a physician to assist him, as to administer ether, or the like, without the request of the patient, the dentist is in the first instance liable to such assistant for his services."²

In such case, however, he can carry over the charge to the patient in his own bill for services.

2. What Persons are Liable—Liability of Infants.

"In general the contract of an infant, i. e., a person under twenty-one years of age is not binding. The law, however, has made an exception to the rule in the case of necessities. If an infant not living at home under the care and support of his parents, makes a contract for what the law considers

¹84 N. C., 674 (1881).

²*Fitzgerald v. Hanson*, 16 Montana, 474 (1895).

a necessary, the infant is bound by such contract, and having obtained the benefit of it must pay for it."

The preceding has practical application chiefly to minors having money or property of their own or to claims against them after they become of age for services rendered during their minority. There is some confusion and diversity of authorities as to the power of a minor living at home to make contracts for himself. In one case cited a minor was sued for services and it was shown that he lived at home and paid his wages to his father, who was very poor and wholly unable to pay the bill. It was held that the father was the only one against whom a claim for payment could be made. Two decisions or authorities state the two views.

"In *Murphy v. Holmes*¹ the Supreme Court of New York states that rule as follows: 'The theory upon which an infant is made liable for necessaries is that they have been furnished and were necessary, and that the person standing in the relation of parent has not the ability to respond for the amount thereof. Where they have such ability, no liability can attach to the infant.'

And "*Tyler*² states the rule thus: 'An infant when at home under the care of his father, and supported by him, cannot be made liable for necessaries.'

LIABILITY OF PARENT.

Brothers, in his book,³ states it in this way: "At common law the liability of a father for the support, maintenance and education of his minor child, while recognized, was not well defined and amounted to little more than an imperfect unenforceable obligation. The duty was always conceded, but the manner of its discharge was exclusively within the discretion of the parent. The party who voluntarily supplied the wants of a minor had no legal claims against the parent, and all that he did in this respect was at his own risk, unless he had the express promise of the father to remunerate him,

¹87 App. Div. N. Y. (1903), 73.

²*Infancy and Coverture*, 2nd Ed., 108.

³*Dental Jurisprudence*, by E. B. Brothers, p. 100.

or the circumstances were such that a promise of that character would reasonably be implied. In the absence of special legislation, this obligation remains the same as at common law, and the general rule prevails that where a person furnishes necessaries to a minor without authority from the parent, he does so at his peril and, in order to recover from the parent, he must show by a preponderance of the evidence either an express authority or circumstances from which such authority may be implied. The parent is to be the judge of the wants of his child and of his ability to supply them, and the extent to which he shall respond to this obligation and when no express authority has been given to the child to bind the parent, it devolves upon the party supplying such necessities to show the neglect or refusal of the parent to provide the same."

Mikell¹ states the same conclusion in fewer words: "In order to hold a parent liable for dental services rendered to his minor child, there must be shown either an express contract by the father to pay for such services, or circumstances from which a contract by the father can be inferred.' "

In most cases when minor children come to the dentist without either parent accompanying them, they are to be regarded as the "special agents" of the parent for making the necessary contract for services (either express or implied contracts).

Brothers² states it in this way: "Where the child has authority to bind the parent it is usually in the nature of a special agency, and the party dealing with the minor is bound to know the extent of that authority."

Mikell cites this case in illustration: "In *Dumser v. Underwood*,³ *Underwood*, a dentist, sued *Dumser* for \$19.00 for dental services performed for *Dumser's* minor daughter. The daughter had informed her father that her teeth needed attention, whereupon he told her to go to *Dr. Whedon*, the family dentist, and ask him to examine her teeth and make

¹Mikell's Dental Jurisprudence, p. 57.

²Brothers' Dental Jurisprudence, p. 101.

³168 Ill. App., 121 (1896).

an estimate of the cost of the work. This she did and reported to her father that the cost as estimated by Dr. Whedon would be \$10.00. The father then told her to have Dr. Whedon do the work. The daughter, however, went instead to Dr. Underwood, who did the work, for which he charged \$19.00. It was admitted that \$19.00 was a reasonable sum for the work. On the refusal of the father to pay, Underwood sued him for the amount of his bill. The court having ruled that the work was not a 'necessary,' Underwood next contended that as Dumser had given his daughter authority to have dental work performed, he had made her his agent to procure such work, and was therefore liable for the cost of the same. The court said: 'It is insisted that the permission, thus delegated, clothed her with such apparent authority as to render him liable although she acted contrary to his private instructions.

"This contention loses sight of the distinction between general and special agencies.

"The agency in this case was special, viz., to have the work done by Dr. Whedon. A special agent is one authorized to do a specific act in respect to which his power is limited. A party dealing with him is bound, at his peril, to ascertain the extent of his authority.'"

"LIABILITY OF HUSBAND—FOR SERVICES BEFORE MARRIAGE.

"Before 1870, in England, when a woman married, all her property became the property of her husband. The effect of this was that the wife could not be liable for any debts contracted by her before marriage, for after she became a wife she had no property with which to pay them. As, however, the husband on the marriage became the owner of what property the wife owned before marriage, the law held him responsible for all debts, including debts for dental services, contracted by her before her marriage."¹

"In 1870 the first 'Married Woman's Property Act' was passed by the British Parliament. This statute was amended by the Act of 1874, and in 1882 these two acts were super-

¹Blackstone, Comm., bk. 1, chap. 15, p. 443.

seded by the Act of 1882. This act radically changed the law existing before 1870. It first enacted that thereafter the wife, on marriage, should continue to hold all the property that belonged to her at her marriage or that should devolve on her after her marriage, and then provided that thereafter not only should the wife herself be liable for all debts contracted by her before her marriage to the extent of her separate property, but limited the liability of the husband for such ante-nuptial debts of the wife to such property as he acquired through his wife."¹

"Similar statutes are in force in the United States, but as they differ in their terms, no general rule can be laid down as to the effect of their provisions or the extent of a married woman's liability for her contracts, and it is impossible in a work of this character to attempt to treat the subject for each State in the Union. * * *

"For Services During Marriage—Previous to the enactment of the statutes above mentioned, a wife was no more liable generally for contracts made by her during the continuance of her married state than by contracts made by her before her marriage. But while the husband was liable for all her debts contracted before marriage, he was not liable for all debts contracted by her after marriage, but only for debts contracted by her when acting as his agent, or under an authority from him, express or implied. The Married Woman's Property Acts have in general changed the law so as to render the wife herself liable for contracts made by her on her own account during the marriage, but have not altered the liability of the husband. He remains liable on contracts made by her when, and only when, she is acting as his agent in making the contract."

"The agency of the wife may be shown in the same way as the agency of any other person; by actual authority, by a ratification of the contract, or by a recognition of similar contracts made by her. The most usual cases of such agency is in contracts made by the wife for necessaries. If the

¹Smith on Contracts, 337; McQueen's Husband & Wife, 71.

parties are living together, the law invests her at the marriage with an irrevocable agency to pledge his credit for whatever is necessary to her maintenance, unless he provides other means. * * *

“For Services During Separation—If the husband and wife are not living together the presumption is that she has no authority to bind him even for necessaries. To hold her husband liable in such case, it must be shown that her absence from her husband was for some cause that would justify her absence, i. e., that it was not due to fault on her part.”

Mikell has several pages of citations of cases in illustration of these propositions, and a few other minor points which it is not necessary to quote further.

“Liability of Third Persons—The liability arising from the family relation of one member of the family to pay for services rendered to another does not extend beyond the cases of father and child and husband and wife. A brother is not liable, as such, for services rendered to a brother, even though the brother for whom the services were performed was insane at the time,¹ nor a son-in-law for the services performed for his mother-in-law.”

“Liability of Employer—An employer, as such, is not liable to pay for dental services rendered to his employe or servant.” Unless he has expressly agreed to pay for them or has paid for services previously rendered for the same person.

“Liability of County or State—For Services to Paupers, etc.—There are in most, if not all, of our states, laws making it the duty of the proper county officers to secure medical attendance for the paupers and the insane of the county, and to persons confined in jails and prisons, at the expense of the county or the State. Medical attendance has been held to include surgical service,² and there can be no doubt that such statutes would be construed to include at least such dental services as were necessary for the health of the paupers, and that the dentist performing such services could recover against the county for the same. If

¹Smith v. Watson, 14 Vt., 332 (1842).

²Clinton Co. v. Ramsey, 30 Ill. App., 577 (1886).

his compensation was not fixed by his contract with the proper officers, he should recover the reasonable value of his services."¹

"In order to recover against the county, however, the dentist must show that the person at whose request he performed the services was authorized by law to charge the county for payment for the services rendered."²

"If, however, an officer of the county engage for such services without the requisite authority to bind the county, he is himself personally liable to the dentist for the value of the services."³

"For Services at Coroner's Inquest—A coroner has authority to pledge the county of which he is an officer for the compensation for all auxiliary services which are necessary to the proper execution of his office, and which he could by no other means command."

It would be seldom that a dentist would be called for any other services than as a witness. Oftenest, perhaps, as an expert witness to assist in an identification by means of the teeth, and his compensation in such cases would be in the nature of witness fees. The fees of an expert witness should be, but are not always, greater than those of a common witness.

"3. Liability for Services of Unlicensed Dentist—It seems that to entitle the dentist to recover compensation for his services, he must show affirmatively his compliance with the law regulating the practice of dentistry. His right to practice will not be presumed, even from the fact that he has been practicing for a long time."⁴

Some dental laws expressly provide that illegal practitioners cannot recover for their services, while others only state that it shall be unlawful to practice until certain specified requirements have been fulfilled. The difference is immaterial; in neither case can an illegal or unlicensed practitioner collect for his services by a suit at law. If a bill is contested

¹See *Tucker v. Virginia*, 4 Nev., 20 (1868).

²*Bay v. Cook*, 22 N. J., L. 343 (1850).

³*Ibid.*

⁴See *North Chicago St. Ry. v. Cotton*, 140 Ill., 486 (1892).

on this ground, in most States the burden of proving that the dentist is legally disqualified is upon the patient. "Some States, however, hold that since the possession of a license is a matter peculiarly within the knowledge of the person claiming to possess it, the burden of proving such possession is on the dentist."¹

These are the essential matters. Mikell cites a number of cases and mentions a number of details covering more than three pages.

"4. Effect of Malpractice on Liability—In a suit by a dentist for remuneration for services rendered, the patient may successfully defend by showing that in rendering the services for which compensation is demanded, the dentist was guilty of malpractice."²

"In some states it is held that if the patient proves facts which amount to malpractice in the services for which remuneration is claimed, the defense is complete and goes to the whole claim, and that the dentist can recover no part of his charges, but forfeits all right to compensation.³ In other States, however, it is held that though in an action to recover for services the patient may defend on the ground of malpractice in rendering the services, that proof of malpractice will only be conclusive so as to prevent recovery of the whole claim if the malpractice was such as to render the services useless, or to make the damage suffered by the patient equal to or greater than the value of the services or the amount due under the contract; if the injury done to the patient is not equal to the value of the services or the amount due under the contract, the dentist should recover the difference."⁴

"5. When Compensation Is Due—When the contract between the dentist and his patient provides a definite date for payment for the dentist's services, payment is, of course,

¹Dow v. Haley, 30 N. J. L., 354 (7863); Cooper v. Griffin, 13 Ind. App., 212 (1895); Adams v. Stuart, 5 Harr. Del., 144 (1849).

²Brukman v. Kursheedt, 84 N. Y. Supp., 575 (1903).

³Abbott v. Mayfield, 8 Kan. App., 387 (1899); Patten v. Wiggin.

⁴Whitesell v. Hill, 101 Iowa, 629 (1897); Schofen v. Baldwin, 83 Hun. N. Y., 234 (1894); Piper v. Menifee, 12 B. Mon. Ky., 465 (1851). 51 Me., 594 (1862).

due on that date, and on demand for payment and refusal thereof, suit for payment may begin immediately."

"If no time for payment is fixed by the parties, the law implies that the patient has promised to pay as soon as the services are performed."

"Where it is the custom to send bills at certain times, as monthly or quarterly, if the patient knows of such custom, and the circumstances show that it was understood by the parties that the patient was not to pay until such time arrived, he cannot be sued until such time. The mere fact, however, that it is the custom of the dentist to send bills to his patients at certain intervals, as monthly or quarterly, will not be construed as an agreement with the patient to extend credit to him until the customary time of sending bills has arrived. In the absence of other circumstances showing an agreement to postpone payment, the dentist may demand payment as soon as the service is rendered. * * *"

"6. Interest on Claim—Where interest is allowed generally on accounts, it seems that the dentist is entitled to interest on his claim for services from the time such claim became due."

In the case cited the "statute of the State provided that: "Accounts of merchants, tradesmen and mechanics, which by custom become due at the end of the year, should bear interest." The court held that "while the statute did not mention physicians, yet they were clearly within the equity of the statute. * * * * The reasoning of the court would, of course, make the act applicable to the account of a dentist."¹

"7. Evidence to Establish Liability—There is a general rule of law that the evidence brought before the court to establish a claim must be the best evidence of which the case, in its nature, is susceptible. By this rule is meant that no evidence shall be received by the court which is merely substitutionary in its nature, so long as the original evidence can be produced."

"This rule has nothing to do with the *amount* of evidence

¹47 Ga., 121 (1872).

necessary to establish the claim; nor does it prevent the introduction of merely weaker instead of stronger proofs."

"There is a general exception to this rule, viz.: that if the production of the best or primary evidence is not within the power of the party, he may introduce secondary evidence to prove his claim. It follows from the rule and the exception that if the contract between the dentist and the patient is a written one, as in some cases it must be, to be enforceable, and as in any case it may be, the written contract must itself be produced or its absence accounted for or the dentist cannot recover on the contract as such. If the contract is in possession of the patient, notice to produce it must be given him; if it is lost, proof of the loss must first be given."

"If the non-production of the writing is properly accounted for, oral evidence of its terms may be introduced to prove the claim."

"If the existence of the writing itself be disputed, as where the dentist sues on a contract which, under the statute of frauds must be in writing, and the patient denies that it was ever put in writing, the writing itself must be produced; oral evidence cannot be offered as a substitute for it, even after an effort to prove its loss."*

When a dentist is suing for compensation for services, it may often be difficult or impossible for him to swear to the various items of the services, the times when rendered and the charges for each, without reference to his books of account. "At first sight, his books of account might seem to be the best evidence possible to prove his claim. It must be remembered, however, that the law has to deal with the dishonest, the careless, as well as the methodical, and to frame its rules so as to do justice in the majority of cases; these books are kept by the dentist himself and not even seen by the patient; the dentist may be dishonest and make any entry he pleases; he may be careless and make an error in his entry; he may make it some time after the service is rendered and from his imperfect memory of what the service was and its value. It

*See Greenleaf Evidence. secs. 82 to 88.

is evidence made by himself, for himself. These and other considerations have, to some extent, governed the courts in framing rules as to the admissibility of books of account in evidence."

"In the first place, it may be said that books of account may be used in court for two purposes: (1) Merely to refresh the mind of the dentist while he is testifying as to the services and charges of which they contain a record; (2) As evidence themselves to prove the claim. The general rule is that books of account may be used by the witness merely to assist his memory, in any event, provided, after inspecting it, he can testify to the facts from his own recollection, and providing the writing was made either at the time the service for which suit was brought was performed, or shortly afterward."¹

"When the books of account are used not merely to refresh the memory of the witness, but are sought to be introduced as evidence of the claim itself, the rules of the several States are not uniform as to their admissibility. In general it may be said, however, that the books may be so used when it is shown that the book is a book of original entries; that the entries were made at the time the services were rendered and by the person whose duty it was at the time to make them; that true and honest accounts were kept; that the entry was reasonably specific and particular."²

Dentists usually keep a personal record of operations and other services for each individual patient, but if the books of record and account are to be used in court it is desirable, in addition to the name of the patient, to have also the name of the father, or husband, or other person who is expected to pay the bill, if it is not to be collected from the patient individually. Dentists are in the habit of using figures, letters or a diagram to represent the several teeth, and sometimes they use arbitrary signs or marks to designate the various operations upon them or the replacement of lost teeth by

¹Greenleaf Evidence, sec. 438.

²Greenleaf Evidence, sec. 118; also Wigmore Evidence, secs 1546 to 1562.

artificial substitutes. If records and accounts are to be used in court, the system of marks and signs should be as simple as possible, and at any rate easily understood by a jury upon proper explanation.

"8. Statute of Limitations—Statutes exist generally providing that if claims are not sued on within a certain time fixed by the statute after they become due, no suit can be maintained to enforce them. The general statute applicable to other simple contracts applies, it has been held, to contracts of physicians (except in Louisiana, where there is a special statute governing contracts of physicians and attorneys)¹ and would, therefore, be held to apply to contracts of dentists, likewise. The period of limitation differs so greatly in different states that no general statement of the law can be given here. A distinction must be made, however, in the different kinds of contracts a dentist may make. As we have seen, certain contracts of the dentist have been held to be contracts of sale, e. g., a contract to make a set of false teeth, while other contracts are contracts for services. In most States contracts for sale and contracts for services are governed by different statutes, the time within which suit must be brought being different in the two cases.* * *

"The time prescribed by the statutes begins to run against the claim from the day the claim accrues, i. e., from the day on which payment of the claim could be legally demanded.
* * *

"In general, both in England and in the United States, if the patient makes a new unconditional promise to pay the debt, either while the statute is running against the claim, or even after the time fixed by the statute has actually expired, the cause of action will revive and the right to sue be extended for a further period equal to the time prescribed by the statute for bringing the suit in the first instance. So an acknowledgment of the debt, from which a promise to pay will be implied, will have a like effect, as will likewise a conditional promise to pay, if accompanied by a sufficient showing that the condition on which the promise was made to depend has

¹25 cvc., 1032.

been performed. A partial payment of the debt by the patient will, in most jurisdictions, have the same effect, and the date of such payment mark the time from which such statute of limitation begins to run anew."¹

LIABILITY OF DENTIST TO PATIENT FOR BREACH OF CONTRACT.

A contract, whether express or implied, between the dentist and his patient means that both parties assume obligations and duties, and a failure of performance by either party may entitle the other party to compensation for such actual injury or loss as he may have suffered in consequence. If there is agreement or contract for a series of operations or other services, the dentist must complete the services agreed upon, and if without good cause he refuses to do so, he becomes liable for damages, but the patient must go to another dentist, if there is one available, to complete the treatment or he can recover no damages, and ordinarily in such a case the damage would only be the difference between the compensation agreed upon and that actually paid to the dentist who completed the work.

Under ordinary circumstances it is the right or privilege of a patient to terminate the services of a physician or dentist by notifying him that he is no longer required, and paying his bill. A dentist or physician must have the corresponding privilege or right to terminate his service by giving his patient sufficient notice to employ someone else. If there is a definite agreement, either orally or in writing, the terms of it must be fulfilled, whatever they may be.

FAILURE TO USE PROPER MATERIALS.

If the nature of the materials to be used for any operations, or in making crowns, bridges or sets of artificial teeth is specified beforehand, of course the dentist may not substitute other and different materials, even though they be as good or better. If he does so he is liable to lose all compensation for his services, and may have to pay damages besides. The same considerations apply to the quality of the material used.

¹25 Cyc., 1325 to 1370.

If nothing is specified as to the nature or quality of the materials to be used, the dentist must use such as are suitable for the work to be done and the circumstances of the case; such as a reasonably skillful dentist would use.

FAILURE TO COMPLETE WORK IN TIME.

"If the dentist expressly agreed to perform the work undertaken in a specific time, he is bound by his promise, and will be liable to his patient in damages for breach of contract." This may involve entire loss of compensation for his services, and damages besides.

"The liability of the dentist for the loss of the value of his services, in addition to damages, is confined to cases where time is of the 'essence of the contract,' as the legal expression is. That is, where the time within which the service is to be performed is an important element of the contract, and is so understood by both parties. The mere fact that a time is fixed, as if the dentist should say: 'I will have this finished for you by Friday next,' or 'it will not take more than three weeks,' will not render the dentist liable for the loss of the value of his work, or for damages if the work is not completed at the time mentioned."

"It is believed that the liability of the dentist for the total loss of the value of his services in addition to damages is confined to cases where, for the patient's purposes, the work is practically valueless to him unless completed within the time specified, or where the work is of such a character that the patient can refuse to accept or enjoy the benefits of it."

If time is of the "essence of the contract" in the case of a crown or bridge or artificial teeth, if not ready at the time specified the patient may refuse to accept them, and may have a claim for damages also, but if he accepts the work he must pay for it, though he may offset the damage he has suffered against the bill, and if greater than the bill, the dentist would have to pay the balance instead of the patient.

"Meaning of the Word 'About.'—Frequently the dentist does not make a definite promise to complete the work for the patient by a certain date, but informs the patient that

it will take 'about' such and such a time." Ordinarily in such cases a considerable variation from the time mentioned would not affect the obligations or duties of either party, but if there were a close relation of the time consumed and the amount of the bill it might become "necessary to determine what the word 'about' signifies. Since the very object the dentist has in using the word is to guard against binding himself to finish the work at a definite date, it is plain that his promise to finish the work in 'about,' say two months, will not render him liable for breach of contract if he fails to complete it in exactly two months; nor in such a case will the patient necessarily be justified in refusing to pay him for such services, after the two months have expired, as may be necessary to complete the work." If however, the work consumed three or fourth months, there might arise, under certain circumstances, a question for a jury to decide, whether the word "about" could be stretched so far.

BREACH OF WARRANTY OF CURE.

It is unwise and professionally improper for dentists and physicians to warrant cures, or the success or durability of operations, or artificial substitutes for lost teeth, and the law does not recognize any such obligation or duty on their part: But if any dentist or physician is so foolish as to warrant his work, the law will require him to make good his warranty. "The rule 'no cure, no pay,' governs only where there is an express agreement to that effect' says the court in *Bronson v. Hoffman*.¹ All that the law requires of him is that he treat the patient in a reasonably skillful manner and with due care. * * *

"* * * In *Wilkins v. Ferrell*² a dentist was sued for malpractice in extracting a tooth, whereby the patient's jaw-bone was fractured. On the trial the dentist's counsel asked the trial court to instruct the jury that 'a dentist never insures the result and simply engages that he possesses a reasonable degree of skill, such as is ordinarily possessed by

¹7 Hun. N. Y., 674 (1876).

²*Wilkins v. Ferrell* (Texas), 30 S. W., 450 (1895).

the profession generally, and to exercise that skill with reasonable care and diligence.' The trial court refused to give this instruction, and the appellate court held that the instructions asked for correctly stated the law, and should have been given, and a verdict having been found against the dentist, the court reversed the judgment and ordered a new trial."

"There is no legal objection to a dentist and his patient entering into a contract that the patient is not to pay the dentist anything for his services unless he dentist effect a cure." A self respecting professional man, should, however, never make such a contract unless the circumstances are peculiar and unusual.

"Sometimes a dentist promises to make a plate that will 'please' or be 'satisfactory' to the patient. That this is a very rash promise to make all courts are agreed. All courts however, are not agreed as to the standard required by such a warranty."

Some hold that the patient is the sole judge whether the work "pleases" or is "satisfactory" and "if he is not satisfied for any cause, no matter how whimsical, the dentist cannot recover for his services. These courts leave it to the jury to say whether the work is satisfactory to the patient or not. * * *

"Other courts have treated such promises more leniently, and hold that if the work *ought* to be satisfactory to the patient the dentist may recover whether the work *is* satisfactory or not."

Such controversies should very seldom arise between a dentist and his patient, and very few of those that do arise should be allowed to get into court.

A dentist should use every endeavor possible to make his work right, and if it really is right, it will be very seldom indeed that a patient cannot be convinced of it. A patient should be made to understand, also, if they express dissatisfaction after the utmost endeavors, that "if a set of teeth is good enough to keep and to use, it is good enough to pay for."

CHAPTER XVII.

LIABILITY OF DENTIST TO PATIENT FOR MALPRACTICE*—FOR INFECTING A PATIENT—FOR OPERATING WITHOUT CONSENT—DAMAGES—STATUTE OF LIMITATIONS—DEFINITION OF MALPRACTICE.

"Malpractice, in law, as applied to physicians and surgeons, means generally professional misconduct toward a patient which is considered reprehensible either because immoral in itself, or because contrary to law or expressly forbidden by the law. In a more specific sense, it means bad, wrong, or injudicious treatment of a patient professionally and in respect to the particular disease or injury, resulting in injury, unnecessary suffering, or death to the patient, and proceeding from ignorance, carelessness, want of proper professional skill, disregard of established rules or principles, neglect, or a malicious or criminal intent."¹

"This definition of malpractice applies to dentists, the courts in suits against dentists for malpractice, applying the same principles as in the case of physicians and surgeons."²

Injury to the patient is an essential feature of legal malpractice. No matter how unskillful, incompetent, or careless a dentist may be, he is not guilty of malpractice from a legal point of view unless the patient suffers injury. It is true, however, that unskillful, incompetent, or negligent operating usually does injure the patient. The point is that in suits for malpractice the injury must be affirmatively proven, and also the neglect or failure of professional duty.

TIME AT WHICH LIABILITY COMMENCES.

"The liability for malpractice is founded on the duty the practitioner owes to the patient. If that relation has not subsisted no liability is incurred. Therefore a dentist is not

*Mikell, p. 102.

¹Black's Law Dict. (2nd. Ed.), 751.

²See *McCracken v. Smathers*, 122 N. C., 799 (1898).

liable for malpractice in refusing to treat a patient, even though no other dentist is available and the case is urgent."¹

The case cited by Mikell is an extreme one. A patient, alarmingly ill, sent for the doctor who had been the family physician, and the messenger explained that the case was urgent, that no other physician could be procured in time, and tendered his fee. The doctor had no other patient requiring immediate attention, but he refused to go. The patient died, supposedly for want of the assistance the doctor might have given, and the administrator brought suit "for \$10,000.00 damages in wrongfully causing the death of his intestate. The trial court dismissed the suit, and the administrator appealed." The Supreme Court affirmed the judgment of the trial court and declared that a physician is under no legal obligation to accept and treat a patient, that the license of the state to practice medicine is permissive and not compulsory, and that the "counsel's analogies, drawn from the obligations to the public on the part of innkeepers, common carriers, and the like, are beside the mark."

It is a well established legal proposition that a physician or dentist may refuse to accept a patient for treatment, for any reason, or for no reason at all, except his personal preference or choice. If, however, a patient is accepted and treatment begun or promised, it must be continued as long as necessary unless he is dismissed by the patient or he notifies the patient that he will discontinue treatment and gives sufficient time in which he may procure the services of someone else.

LACK OF SKILL OR CARE GIVING RISE TO LIABILITY.

"1. In General.—In determining the degree of care and skill which the physician, surgeon and dentist must exercise in order to escape liability for damages that the patient may suffer from his treatment, the courts are not entirely agreed. All the courts hold that the practitioner cannot be held liable by showing that he did not exercise the highest degree of care and skill possible.² All agree that to fasten such liability

¹Hurley v. Eddingfield, 156 Ind., 416 (1900).

²See Simonds v. Henry, 39 Me., 155 (1855).

upon him, it is not necessary to show that he was grossly negligent in a given case. It is certain that he must have treated the patient 'negligently' in order to be liable, and that if he exercised 'reasonable' care and skill, he is not liable."

"The negligence which renders a dentist liable in an action for malpractice is simply a failure to perform the duty which he, as a professional man, owes to his patient. This duty is usually expressed in the formula; a physician, surgeon or dentist is required to possess and exercise that degree of skill and learning ordinarily possessed and exercised by the members of his profession in good standing, practicing in similar localities; and it is his duty to use reasonable care and diligence in the exercise of his skill and the application of his learning, and to act according to his best judgment."

"2. Effect of Locality.—In determining the degree of skill and care that must be exercised by the practitioner, some courts lay down the rule that he is required to use only such care and skill as is ordinarily exercised by practitioners in the *particular* locality or neighborhood in which he practices."¹

"Other courts hold that the practitioner must exercise such care and skill as is exercised by those practicing, not in the same but in similar localities generally."

In the case cited by Mikell; McCracken v. Smathers,² the court refused to instruct in accordance with the first of the above rules. In affirming the judgment of the lower court, the Supreme Court stated the second rule as follows: "The degree of care and skill required is that possessed and exercised by the ordinary members of his profession. It need not be the highest skill and knowledge known to the profession, but it must be such as is ordinarily possessed by the average of the profession. It cannot be measured simply by the profession *in the neighborhood*, as the standard of measurement would be entirely too variable and uncertain. 'Neighborhood' might be construed into a very limited area and is generally so understood among our people. It might con-

¹Wood v. Wyeth, 106 N. Y. App. Du., 21 (1905); Mullen v. Flauders, 73 Vt., 95 (1900); Force v. Gregory, 63 Conn., 167 (1893).

²122 N. C., 799 (1898).

tain but few dentists, in sparsely settled sections, perhaps only one or two. Both might be men of very inferior qualifications, and to say that they might set themselves up as the standard of a learned profession and prove the standing of each by the ability of the other, would be equally unjust to the profession and to its patients. * * *

“3. Effect of the State of the Science.—Manifestly, when judging of the degree of care and skill exercised by the practitioner, regard must be had to the state of the science of dentistry at the time the treatment alleged to be negligent was given, and such is the doctrine of the cases.”

The rule is not closely defined, as, indeed, it cannot be. It does not require that a man attend a graduate school of dentistry every few years in order to keep posted upon everything new that is introduced or adopted by the best and most advanced men of the profession, nor does it require that he buy and read every new book or everything that is published in all the dental journals, nor that he attend a certain number of dental society meetings. But if he never does any of these things that fact would be likely to have great weight in the minds of a court and jury in case he were accused of negligence.

“4. Effect of Established Methods of Treatment.—It is generally agreed that practitioners are bound by what is universally settled in the profession, and when an established practice or a particular mode of treatment has been followed for a long time and is upheld by the consensus of opinion among the members of the profession, any departure therefrom is evidence of negligence sufficient to render the dentist liable for malpractice, if injury results.”¹

This rule, like the preceding one, cannot be closely defined nor strictly applied. On the one hand it is not intended to prevent all progress of the profession by the introduction of new modes of treatment or new methods of practice. But it is intended to prevent the reckless experimenting upon patients.

¹ See *Patten v. Wiggen*, 51 Me., 594 (1862); *Carpenter v. Blake*, 60 Barb. N. Y., 488 (1871).

Whenever a man wishes to make an operation or apply a mode of treatment not in common use by the profession, he should obtain the consent of his patient. A man cannot experiment upon his patient without liability if injury results.

"The rule protects the community against reckless experiments, while it admits the adoption of new remedies and modes of treatment, only when their benefits have been demonstrated, or when, from the necessity of the case, the surgeon or physician must be left to the exercise of his own skill and experience."

"If it is shown that some practitioners have abandoned the established mode of treatment, and applied a new mode, and found it to succeed as well or better than the established one, it is not negligent to resort to the system thus practically tested. But before the new practice can be used, to shield the practitioner from the charge of malpractice, it must appear that the cases in which it was tested were substantially the same as the case at bar, and that the treatment resorted to has been successful in a sufficient number of instances to establish satisfactorily the propriety and safety of adopting it. The practitioner cannot try experiments on his patient."¹

"The dentist is not liable for malpractice in not following the established method of treatment, if the condition of the patient was such that this method of treatment would have resulted in injury to the patient."²

"5. Where Services are Gratuitous.—The rule was formerly laid down that the practitioner, when his services were rendered gratuitously was liable for gross negligence only.³ Later authorities deny this, and lay down the rule that when one assumes to be a dentist and acts as such the fact that he did not charge for his services will not affect the rule as to the degree of skill and care required of him.⁴ He is still liable for any injury resulting to the patient from lack of ordinary care and skill."

¹ *Carpenter v. Blake*, 60 Barb. N. Y., 488 (1871).

² *Hallam v. Mean*, 82 Ills., 379 (1876).

³ *Shearman & Redfield on Neg.*, 2nd Ed., sec. 604.

⁴ *Peck v. Hutchinson*, 88 Iowa, 320 (1893).

"Liability for Insufficient or Wrong Diagnosis.—If through negligence or the want of ordinary skill, care or diligence, the practitioner fails to make such a sufficient examination as would enable him to correctly diagnosticate the case, he is guilty of malpractice and liable for any damages resulting therefrom. * * *"¹

"It is said that an erroneous diagnosis alone, not followed by improper treatment does not render the practitioner liable for malpractice."²

"In that case, however, the erroneous diagnosis did not result in injury to the patient, as the treatment followed was equally proper whether the injury was as diagnosticated or as claimed by the patient."

The rule means that if injury results from a wrong diagnosis either by determining a wrong course of treatment or no treatment at all, the dentist would be liable for malpractice unless ordinary care and skill were used.

"Liability for Advising Erroneous Treatment.—A dentist is liable in a suit for malpractice not only when he negligently performs work he has undertaken, but for advising a certain course of treatment, operation, extraction, etc., if, in his opinion, or in the opinion of a dentist of reasonable skill, such treatment is unnecessary and unreasonable, and results in injury to the patient, even though the actual treatment were skillfully administered; for when the patient submits his case to the dentist he has a right to rely on the knowledge of the dentist as to the proper course of treatment, and his good faith in advising the proper course, as well as his skill in performing the actual work. Even though the patient does not expressly ask the dentist's advice as to the proper treatment in the particular case, but merely requests the dentist to perform a certain work, say to extract a tooth, it is the duty of the dentist if, in his opinion, extraction is unnecessary, to advise the patient to that effect, and the patient would have the right, in the absence of contrary advice by the dentist to assume that the dentist considered the operation proper."³

¹114 Ky., 20 (1902).

²Tomer v. Aiken, 126 Iowa, 114 (1904).

³Gramm v. Bocuer, 56 Ind., 497 (1877).

"If, however, the dentist advises the patient that the operation is unnecessary and improper, if the patient—at least if the patient be of mature years and sound mind—insists on the operation, and the dentist thereupon performs it, doing the work skillfully, the dentist is not liable to the patient for any damage sought on the ground that the operation was improper and injurious."

The right thing to do in such a case is to refuse to make an improper or injurious operation no matter how urgently the patient may desire it. Even the knowledge that the patient will go to someone else who will do it, will not justify a man in his own estimation for doing a patient injury.

"Liability for Erroneous Prescription.—The care and skill required of the dentist is not confined to his acts in actually treating the patient. The same care is required of him by the law in writing prescriptions. If through negligence or ignorance in writing a prescription the patient suffers damage, the dentist is liable therefor in a civil action."¹

(If the injury were serious enough he would be liable in a criminal action also.)

"Liability for Omission to Give Instructions.—It is the duty of the dentist not only to use proper care and skill in the actual work done by him for the patient, but to give proper instructions to the patient as to the care or use of his teeth or mouth, so far as such instructions are necessary to obtain the result desired from the treatment. A failure to give any instruction when such instruction should be given, or the giving of erroneous instructions will, if injury result, render the dentist liable for malpractice. * * *"²

"Liability for Abandonment of Patient.—It has been decided many times by the courts that the physician who undertakes the treatment of an ill person, renders himself liable in damages if, without the patient's consent, or notice to the patient, he prematurely abandons the case."

Mikell has several pages under this head but the matters of chief importance may be stated in a brief quotation.

¹ Murdock v. Walker, 43 Ill. App., 590 (1892).

² See Beck v. The German Klinik, 78 Iowa, 696 (1889).

"The obligation of the dentist is only to continue to treat the patient unless (1) he notify the patient that he does not propose to continue his attendance, in time for the patient to secure the services of another dentist; or (2) unless the patient consents to the discontinuance of the treatment; or (3) the condition of the patient is such as to no longer require treatment."

Each of these three propositions is elaborated and fortified by quotations from court decisions, but nothing of much importance is added to their meaning.

"Liability for Communication of Disease to Patient.—It is the duty of the practitioner while treating his patient, to use reasonable care and employ reasonable skill not to communicate infectious or contagious diseases to the patient. This rule applies not only to the communication of a disease from which the practitioner himself is suffering, but also to the communication by the practitioner from one patient to another. If a dentist, knowing he has such disease, allows the patient to visit him without apprising the patient of the danger, and without taking proper precautions on his own part, and communicates the disease to the patient, he is liable to the patient for any damage the latter suffers thereby."¹

"Not only is he liable for damages resulting from thus communicating a disease from which he suffers, but he is also liable if he negligently transmits a disease from one patient to another, as where having treated one patient known to him to have an infectious or contagious disease, he proceeds to treat another patient without warning such patient, and without taking proper precautions against the communication of the disease."

"The same rule applies whether the transmission of the disease was effected through the medium of the practitioner himself, or by the use of infected instruments."

"Liability for Improper Use of Anesthetics.—In the use of anesthetics, as in the treatment itself, the dentist is liable for any injury, due to lack of proper care and skill, the patient may suffer. If the particular anesthetic used was such as would not have been used by a reasonably skillful and careful practitioner, or if

¹ See *Piper v. Manifee*, 12 B. Monroe, Ky., 465 (1851).

it was administered negligently either as to quantity or the length of time during which it was used, malpractice may be inferred.¹ It was further held in the case last cited, that the dentist in using an anesthetic is only bound to look to natural and probable effects, that he is not answerable for negligence for results arising from the peculiar temperament or condition of the patient, of which he had no knowledge. This doctrine would seem to need qualification. It being established at the present day that certain anesthetics are dangerous to persons suffering from certain diseases, it would seem incumbent on the dentist to use reasonable care and skill to discover whether the patient had such disease before administering the anesthetic, and to abstain from using it if it would be dangerous."

²"Where the administration of an anesthetic is necessary or advisable for professional purposes, and objection to its administration not appearing or being discoverable by careful and skillful diagnosis, he is not liable for resulting damages unless at least two facts co-exist, namely:

1. That he was guilty of negligence in reference to the administration of the anesthetic; and

2 That the injury of which the patient complains was the result of this negligence in the use of the anesthetic."

"The negligence in the administration of the anesthetic may have consisted in administering it without sufficient preliminary examination, or in administering an unfit and unsuitable drug, or in the unskillful or careless manner of administration, or in the excessive amount given."³

"Extreme Responsibility in Fact.—In dealing with anesthetics, the practitioner must know that he is using instrumentalities that are dangerous and deadly, and his care must be in proportion to the risk involved to his patient. His responsibility begins with the examination preceding the administration of the drug and carelessness resulting in the determination to use the same when clearly it should not have been given will make him liable in malpractice for resulting injuries and, possibly, for manslaughter, where the consequences are death. He cannot

¹ Bogle v. Winslow, 5 Phila., 136 (1863).

² Dental Jurisprudence by E. D. Brothers, p. 63-64.

³ Bogle v. Winslow, 5 Phila., 136-139.

trifle with the health or life of his patient and not shoulder the responsibility."¹

"Liability for Treating Patient Without Consent.—Every person has the right to the inviolability of his person. This right forbids anyone, dentist, physician, surgeon or other as a general rule, to do any act involving the physical touching of the patient, without the patient's consent. 'The patient must be final arbiter as to whether he shall take his chances with an operation, or take his chances of living without it. * * * Consent, therefore, of an individual must be expressly or impliedly given before a surgeon may have a right to operate.'"²

"If the practitioner operates without the consent of the patient when he is in a condition to be consulted, he is liable in damages in an action for assault and battery, no matter how imperative the practitioner may deem the operation."⁴

The cases cited were in medical or surgical practice. In dentistry it will very seldom happen that urgent necessity for an immediate operation will arise when the patient is in such condition as to make it impossible to consult him. It may happen when extracting teeth under an anesthetic, and consent should be obtained beforehand for such operation as may be necessary.

"Consent of Relatives.—If the patient himself is of the age of discretion, it would seem that his consent is sufficient. It has been held in *State v. Housekeeper*⁵ that if a married woman consents to an operation on herself, it is not necessary to obtain the consent of her husband also. Writers are not agreed, however, whether in the case of young children, or persons *non compos mentis* the consent of the parent or guardian is necessary to justify a practitioner in performing an operation.⁶ It has been held in one case that the consent of the father is not necessary to justify an operation on a child, aged seventeen years.⁷ Certainly such consent should be secured whenever possible, and

¹*State v. Baldwin*, 36 Kan., 1.

²Mikell p. 124.

³Kinkead, Torts, sec. 375; *State v. Housekeeper*, 70 Md., 162 (1888)

⁴*State v. Housekeeper*, 70 Md., 162 (1888).

⁵70 Md. 162 (1888).

⁶See 1 Kinkead, Torts, sec. 376.

⁷*Bakker v. Welch*, 144 Mich., 632 (1906).

the practitioner should never operate without such consent except in extreme cases and when he is prepared to take the consequences of a possible suit."

"Consent Presumed.—The consent of the patient to a particular act of the dentist need not be express. Such consent may be presumed if the facts warrant it, and a consent to the greater included a consent to the less if the less is included in the greater. Under our law Shylock would have been entitled to draw the blood necessary to taking the pound of flesh, if the contract for the pound of flesh had been valid. If a patient consents to have a tooth drawn, his consent will cover the necessary laceration of the gum and consequent spilling of blood. A consent to the extraction of a specifically designated tooth, however, is not a consent to the pulling of another tooth, either instead of or in addition to the tooth indicated. This is true though the necessity for pulling the second tooth was greater than for pulling the first, and though that necessity was not discovered until the patient was under the influence of an anesthetic and hence unable to be consulted as to the extraction of the second tooth."

Under such circumstances a dentist should do what he found indispensably necessary, and take his chances. But the proper way is to have the terms of consent cover what may be found necessary, instead of only some specific thing.

"Consent may be presumed not only to what is necessary in the actual performance of the operation consented to, but to the extension of the operation, or even to the performance of another operation if the facts warrant the inference of consent. Whether they do warrant it is a question for the jury to decide."

Effect of Admission of Lack of Skill.—So far as malpractice cases are concerned, a short quotation from Mikell under this head will suffice.

"If, when consulted, the dentist makes known to the patient his lack of knowledge and skill, or the patient is in any way fully aware of it, the latter cannot complain of the lack of that which he knew did not exist."¹

Liability for Malpractice of Others.—

"1. Assistant.—The dentist is liable for malpractice not only

¹Lorenz v. Jackson, 88 Hun. N. Y., 200 (1895).

for his own negligence, but for the negligent treatment of an assistant over whose actions in the premises the dentist has dominion and control; or for such treatment by a person who, under the circumstances, a reasonably prudent person would be justified in believing was aiding the dentist in his professional work; or who was held out to the public as his assistant; if the patient relying on such representations presented himself at the dentist's office for treatment, and submitted himself to a dentist in defendant's office, relying upon the defendant and not upon the individual who, in fact, treated him as the responsible head of the business."¹

"2. Partner.—A dentist is liable for the malpractice of his partner. It is immaterial whether the partner alone treated the patient, or whether he was treated jointly by both partners, or whether the defendant first treated the patient skillfully and his partner later, in the same, or another case, treated him unskillfully or negligently."²

"The doctrine is thus expressed by Simpson, C. J., in *Hyrne v. Erwin*:³ 'In a partnership the parties associated are, in one sense, agents of each other, and the act of one within the scope of the partnership or business is the act of each and all, as fully as if each was present and participating in all that is done. And each guarantees that within the scope of the common business reasonable care, diligence and skill shall be displayed by the one in charge. * * *'"

"3. Substitute.—While a dentist is liable for injury caused by the malpractice of his assistant, or partner, he is not liable for the malpractice of another dentist whom he has recommended to the patient, the latter being in independent practice, and having no business connection with the former, and not being employed by the former as his agent."⁴

"4. Druggist.—The dentist is not liable for the negligence of a druggist, over whom he has no control in filling a prescription."⁵

¹*Wilkins v. Ferrell*, 10 Tex. Civ. App., 231 (1895).

²*Whittaker v. Collins*, 34 Minn., 299 (1885).

³23 S. C., 226 (1885).

⁴*Myers v. Holborn*, 58 N. J. L., 193 (1895).

⁵*Stretton v. Holmes*, 19 Ont., 286 (1889).

"He is, however, liable for his own negligence in giving a wrong prescription, and if he has negligently given a wrong prescription, he is not excused by the fact that the druggist was also negligent in filling the prescription, if the prescription was filled as written."¹

"Effect of Contributory Negligence of Patient.—It is the duty of the patient to co-operate with his professional adviser, and to conform to proper and necessary treatment, and if he will not, or under the pressure of pain cannot, his neglect is his own wrong or misfortune, for which he has no right to hold the practitioner responsible."²

"If, therefore, the patient disobeys the reasonable instructions of the dentist, he cannot recover damages even though the dentist did not exercise proper skill and care, if the patient's disobedience directly contributed to produce the injury. * * *"³

"It is not sufficient to bar recovery that the patient was negligent, if his negligence only aggravated the effects due to the malpractice of the dentist, but did not bring them about or conduce to them; such negligence of the patient merely goes to mitigate the damages he can recover, not to bar a recovery."⁴

"Effect of Recovery of Fee.—In some states recovery by the dentist in a suit at law for his services, bars an action by the patient for malpractice founded on the same services. The reason for this rule is that the patient, in the suit against him for the dentist's fee, might have defended in whole or in part, by showing that in rendering the services sued for, the dentist had been guilty of malpractice. If he omits to set up his defence and a recovery is had against him, he cannot afterward litigate the question of malpractice."⁵

"In other states it is held that the above rule applied only when, in a suit by the dentist for his fees, the patient appears and bases his defence on the ground that in rendering the

¹Murdock v. Walker, 43 Ill. App., 590 (1891).

²Shearman and Redfield, Neg. 2nd Ed., sec. 615.

³Hibbard v. Thompson, 109 Map., 286 (1872).

⁴McCracker v. Smathers, 122 N. C., 799 (1898).

⁵Bellinger v. Craigne, 31 Barb. N. Y., 534 (1860); Ely v. Wilber, 49 N. J. L., 685 (1887).

services, the dentist was guilty of malpractice. If the patient does not appear in answer to the suit for services, or appearing, defends on some other ground than that of malpractice of the dentist, he is not barred from subsequently suing the dentist for malpractice."¹

The reason assigned for the latter view is that "the plaintiff's claim for damages resulting from malpractice constitutes a separate and independent cause of action," and besides that it might be unfair to compel the patient to present his claim for damages in a justice's court, where the amount in litigation is limited to \$200.00.

"Proof of Malpractice.—When a patient has brought suit against a dentist for malpractice, the burden of proof is on the patient. To establish his case he must prove: (1) The duty of the dentist to treat him properly, i. e., that the relation of patient and dentist subsisted between them; (2) That the dentist neglected his duty; (3) That the patient suffered injury; (4) That the injury was caused by the negligence of the dentist. It is not sufficient to prove that he has not benefited by the treatment, the dentist does not, in the absence of express agreement, undertake that his treatment will be beneficial. Nor can he recover by showing merely that his condition was worse after treatment than before; the dentist does not undertake that it shall be better. He only undertakes that he will treat the patient with ordinary skill, care and diligence. If he does this he is not ordinarily liable for the result."

"While the burden of proving negligence is on the plaintiff, he is not required to prove it beyond a reasonable doubt, as in the case where the negligence is made the basis of a prosecution by the state, but only by a preponderance of the evidence."²

"From the nature of the charge against the dentist, generally speaking, proof of his negligence can be made only by expert witnesses. * * *³ Negligence cannot be presumed."

¹See Bigelow, Estoppel (2nd Ed.) 98; Goble v. Dillon, 86 Ind., 327 (1882); Resseguie v. Byers, 52 Wis., 650 (1881).

²Wood v. Wyeth, 106 N. Y. App. Div., 21 (1905).

³46 Kan., 78 (1891).

"The question whether a surgical operation has been unskillfully performed or not is one of science, and is to be determined by the testimony of skillful surgeons as to their opinion, founded either wholly on an examination of the part operated upon, or partly on such examination and partly on information derived from the patient; or partly on such examination, partly on such information and partly on facts conceded or proved at the trial. McClelland Civil Malpractice, 304. * * *

"The injury may be of such a nature, however, as itself to show negligence, at least *prima facie*. In such a case the burden of disproving negligence is on the dentist. In *Shockley v. Tusker*¹ the patient was severely burned by X-Rays while undergoing treatment for appendicitis. In an action against the surgeon for malpractice, the court said: 'We think the fact that plaintiff was severely burned is some evidence in itself that the treatment was improper.'"

"When sued for malpractice the dentist should go to the trial prepared both by his own knowledge and the evidence of experts to disprove the charge of negligence. Many verdicts have gone against practitioners for lack of this precaution. * * *

"Damages for Malpractice.—The damages recoverable in an action against a dentist for malpractice may be: (1) Nominal; (2) Compensatory; or (3) Punitive. Nominal damages are awarded by the jury where negligence of the dentist has been proved but it is impossible to distinguish between the consequences of the malpractice and the consequences of the trouble the dentist was treating. Nominal damages are usually computed at six cents."²

"Compensatory damages are damages designed to compensate the patient for the injury suffered by the maltreatment of the dentist. They are measured by the loss or injury to the plaintiff directly and naturally resulting from the dentist's fault or negligence, not alone by such loss or injury as an ordinary man might have expected would follow from the negligence."³

¹127 Iowa, 456 (1905).

²*Becker v. Janiski*, 15 N. Y. Supp., 675 (1891).

³*Challis v. Lake*, 71 N. H., 90 (1901).

"In estimating the damages suffered by the patient, the jury should take into consideration all the circumstances of the case, the pecuniary loss, resulting from inability to labor, the bodily and mental suffering, loss of time, actual expenses incurred by the patient, the ephemeral or permanent character of the injury, and the circumstances of the injured party and award the patient such a sum of money as will compensate him for what he has suffered, or will suffer as the result of the dentist's treatment."¹

"Punitive or exemplary damages are given by way, not only of compensation to the patient, but of punishment to the dentist. The jury may properly award them when the dentist in treating his patient has been guilty of gross negligence amounting to reckless indifference, or where the manner of treatment shows an evil motive toward the patient."

If a dentist is so unfortunate as to be sued for malpractice he should seek carefully to find if there has been any contributory negligence on the part of the patient, either in a failure strictly to follow instructions, or to take such care as a person of good sense ought to take in the circumstances, and he should insist also upon a careful discrimination between the harm caused by the disease or injury itself (for which, of course, no claim can be made) and the pain or injury caused by fault of the dentist. And he will need to call in some of his friends as expert witnesses to testify to his general character, ability and skill, as well as to his treatment of the case in question.

"Statute of Limitations.—In some states there are statutes of limitation expressly applicable to actions for malpractice. In those states, if the patient does not bring suit within the time prescribed by the statute he cannot, of course, recover. In most states there is no statute expressly applicable to actions for malpractice. In these states, however, there are statutes of limitations applying to actions for breach of contract and sometimes a different statute applying to actions of tort. As a patient may ground his suit for malpractice either on the breach of the contract of the dentist to treat him

¹330 Cyc., 1590.

with care and skill, or may ground it on negligence, what period of limitation will apply will depend on the remedy chosen by the plaintiff. The statutes of the different states vary in the length of time they prescribe within which the action must be brought."

CHAPTER XVIII.

LIABILITY OF THE DENTIST TO THE STATE—LIABILITY FOR ILLEGAL PRACTICE—THE DENTIST AS A WITNESS—PRIVILEGED COMMUNICATIONS—EXPERT TESTIMONY—IDENTIFYING THE DEAD—JURY DUTY.

"1. In General.—The statutes regulating the practice of dentistry usually provide that it shall be a misdemeanor to practice dentistry without complying with the provisions of the statutes as to license, registry, etc. Under these statutes it is immaterial how well qualified a person is to practice from the point of view of the profession; if he has not strictly complied with the law of the state in which he attempts to practice, he is liable to criminal prosecution, and payment of a fine ranging from twenty to five hundred dollars, and in some cases to both fine and imprisonment."

"By the statutes of some states not only is the person practicing liable to the punishment provided by law if he fails to register his license when and where he begins to practice, but he is likewise liable if he afterwards removes into another county of the same state and there practices, or if, while still practicing where he is registered, he practices in any other county."¹

Most of the statutes make some provision for the practice necessary by students in obtaining their professional education.

Some, like that of Illinois, restrict such practice positively to the dental school, others allow it under the personal supervision of a preceptor, in his office, and at least one state allows this during the interval between sessions of the dental school.

Under this general head of liability for illegal practice Mikell elaborates through six pages. It is not necessary for us to go into all those minute details of all the different possibilities of

¹The Illinois law requires registry in each county in which one practices.

illegal practice. "2. Liability for practicing under a false pretence. * * * Some statutes make it an indictable offence for an unqualified person to use the title 'dentist' or 'dental practitioner' or any 'name, title, addition or description implying that he is registered, or that he is a person qualified to practice dentistry.'" The Illinois law makes practicing under an assumed name one of the grounds for refusing a license or revoking a license. It is not necessary to go into the details under this head which occupy two pages of Mikell's book.

"3. Liability for Practicing After Revocation of License.—The statutes, as a rule, provide for the revocation of the license in certain events. As we have seen elsewhere a license once granted cannot be revoked without opportunity to the holder to be heard in his own defense."

"While the statutes generally make it a crime to practice without first obtaining a license or certificate, they do not generally, in terms, provide that one whose license has been revoked shall be guilty of a crime if after revocation he knowingly continues to practice. It would seem in reason, however, that such person should be in the same position as though he never had had a license. Under a rule of the criminal law, however, that penal statutes shall be strictly construed, that is, construed in favor of one accused of a crime, it has been held that when the statute did not in terms make it a criminal offence to practice after a license has been revoked, such practice was not indictable."¹

This construction apparently stultifies the clauses in most of the laws providing for the revocation of licenses under certain conditions; and it would seem desirable to amend the laws by specifying what consequences shall follow the revocation of licenses.

"4. Burden of Proving Right to Practice.—Where a statute makes it an indictable offence to practice without having complied with the requirements of the statute, the burden of proving that the accused has complied with such requirements is generally on the accused."²

¹77 Cal. 164 (1888); *Williams v. People*, 17 Ill. App., 274 (1885).

²*People v. Fulda*, 52 Hun, N. Y., 65 (1889); *Williams v. People*, 20 Ill. App., 92 (1886).

"5. Construction of Statute.—On a prosecution for practicing without compliance with the requirements of the statute, the statute will be strictly construed in favor of the defendant, and if the facts of the case do not bring it clearly within the terms of the statute, he cannot be convicted."¹

"6. Statute of Limitation.—In some states a prosecution for illegally practicing dentistry is barred if not brought within a certain time after the act or acts relied on as constituting the practice were done. Where such statutes are in force, the burden of proving that the offence was done within the time prescribed by the statute is on the prosecution."²

"ASSAULT AND BATTERY."

"Assault and Battery consists in any unlawful touching of the person of another, and is a crime. If a dentist should without the consent of the patient, pull a tooth, or perform any other operation on the patient, he would be liable, not only for a civil suit for damages, as we have seen, but also to an indictment for this crime. A dentist should always, therefore, inform the patient what he proposes to do before operating, and procure the patient's consent thereto. Such consent may be general or specific. If the patient puts himself into the hands of the dentist, telling the dentist to do whatever may be necessary, this will amount to a consent by the patient to any act of the dentist which in his honest and *bona fide* judgment is necessary."

"If, however, the consent of the patient is to a specific act, say to the pulling of a certain tooth, and the dentist should deliberately pull another tooth, the dentist would be guilty of assault and battery. Nor would it be any defence that the extraction of the tooth pulled was necessary to the welfare of the patient. If the tooth extracted was pulled, not deliberately, but by mistake, then whether the dentist would be liable for assault and battery would depend on the question whether the mistake was an honest one, and one that a cautious and skillful dentist would have made under the circumstances. If it were, the dentist would not be guilty; but if the mistake were due to negligence it seems that the dentist would be guilty. If the tooth wrongfully pulled were a

¹Robinson v. People, 23 Col. 123 (1876).

²State v. Newton, Wash., 81 Pac., 1002 (1905).

front tooth, the dentist would be guilty of the graver crime of mayhem. Mayhem being defined as the violently depriving another of the use of such of his members as may render him less able, in fighting, either to defend himself or annoy his adversary."¹

"RAPE."

"There have been a number of accusations of rape brought against dentists. Rape is the carnal knowledge of a woman by a man by force and without her consent. It has long been decided that intercourse with a woman while she is unconscious is by force and without her consent, and therefore rape."²

"As said many years ago by a great judge, rape is the crime of all others of which it is easiest to accuse and which it is most difficult to disprove. Add to this that on a charge of this crime the sympathies of a jury are always strongly on the side of the woman, that the punishment on conviction is very severe, and that even if the charge is disproved, the defendant's reputation is seriously injured and his business destroyed, it is readily seen that precautions should be taken against even a charge of the crime. If possible, the dentist should always, when treating a woman, have some one in his office other than himself and his patient. He should never, on any account, place a female patient under the influence of an anesthetic without a third person, preferably a woman, present during the whole time the patient is under the influence of the drug, for it a well known fact that one of the effects of anesthetics is to induce hallucinations of a sexual character."

HOMICIDE.

"* * * If the patient should die as the result of negligence on the part of the dentist, the dentist may find himself involved in a charge of manslaughter."

"Manslaughter is committed in causing the death of a person by negligence. The negligence may consist either in doing an act or in omitting to do an act. No intent to cause the injury, no ill will to the person injured, not even an actual knowledge that death is likely to result from the act or omission is neces-

¹Blackstone, *Conn.*, 203.

²Payne v. State, 40 Tex., Cr. R., 202 (1889).

sary to constitute the crime. If the death of the patient was the result of the negligence of the dentist, his inattention or ignorance, he is guilty of manslaughter. By the weight of authority the same rules apply whether the dentist is practicing with or without authority of law."

"A dentist is not guilty of manslaughter merely because a patient dies from his act in performing an operation or administering an anesthetic, if it is done in good faith, even though the dentist made a mistake or did not possess the highest skill. The act or omission must be negligent to make him guilty. As to just what degree of negligence is necessary, the courts are not agreed. It is usually declared that it must be gross negligence."

PRACTICING ON SUNDAY.

"We have seen in treating of contracts that it is generally forbidden to labor on Sunday, and that contracts for work on that day are void. Many statutes not only make contracts made on Sunday void, but also make it a criminal offence to work on that day. Under these statutes a dentist is as liable to indictment as anyone else, unless he can bring himself within the exceptions usually made in the statute as to works of necessity."

"THE DENTIST AS A WITNESS."

"SECURING ATTENDANCE."

"Ever since the statute of Elizabeth enacted in 1562-63, it has been recognized as fundamental that the public has a right to every man's evidence in a civil suit pending in a court of law, and since 1701 that they have the same right in a criminal suit.² The dentist is not excepted from this rule and he, like any other citizen, is bound to attend the trial of any case in court when properly summoned thereto to testify, like any other witness, to facts of simple observation of eye and ear. To this end a process called a subpoena is issued from the court and served on the witness ordering him to appear at a certain court on a certain day to testify what he knows in a cause between certain parties, and to attend the court for that purpose until discharged. The service should be made a reasonable time before

¹See 2 Bishop, *New Criminal Law*, sec. 664.

²4 Wigmore, *Ev.*, sec. 2190.

the day specified for his attendance, and the witness is usually not held in default unless the service of the process conforms to these requirements."¹

"Sometimes expert testimony is as necessary as that of ordinary witnesses. The following quotation from C. J. Biddle in *Dills v. State* expresses the point of view of the State as regards both common and expert testimony.* 'The administration of justice is the highest duty and crowning excellence of a State, and without the power to compel a witness to testify, this duty would be embarrassed and this great public good unattained. And in this we can perceive no difference whether a witness is called as an expert or as to ordinary facts. In judicial trials justice demands the truth as to facts in all departments of human knowledge, and the State has the right to compel witnesses to appear and testify concerning all matters within their knowledge belonging to human affairs wherein their testimony is not prohibited by law.'"

Theoretically an expert may be compelled to appear and testify, but practically he will rarely be forced to do so unless he is willing. Partly because an unwilling expert witness is less likely to prove valuable and partly because it is easier to find another expert who will be willing. A man should refuse to give expert testimony if he feels that he has too little theoretical knowledge or practical experience in the particular matters in question to enable him to be of use in the promotion of justice in the case.

EXCUSES FOR NON-ATTENDANCE.

"The dentist, like other witnesses, is excused from attending on court if he cannot do so without direct and serious danger to his health or to his family's welfare. In rare cases a witness has been excused from attendance where the distance to be traveled was great, the interruption to his business considerable, and his testimony not very important. The general rule is well expressed by Cowen, J., in *People v. Davis*:² 'The process of

¹ Wigmore, *Ev.*, sec. 2199.

*Mikell p. 156.

²15 Wend. (N. Y.) 602, 608 (1836). (Quoted in Wigmore *Ev.*, sec. 2204.)

the subpoena demands great and extraordinary efforts on the part of the witness to obey. It commands him expressly to lay aside his business and excuses. * * * It is not denied that serious sickness in his family, such as would prevent a prudent father or husband from leaving home on his own important business, would save him from the imputation of a contempt and, perhaps, from an action. But such a case ought clearly to be shown to the court. Above all, where the summons allows him full time, he should struggle to get ready as he would to go abroad on his own pressing business. If inevitably disappointed, after exhausting every reasonable expedient, he ought certainly be excused from the payment of a penalty which presupposes some neglect at least.'"*

WITNESS FEES.

"The statute of Elizabeth provided, and ever since that statute it has been required, that the witness be tendered in advance of the trial, and at the time of the serving of the subpoena, the amount of the expense to which he will be put in attending the trial, and on demand of such payment, at the time of service of process, and refused, the witness is not bound to attend."¹

If he does attend, however, he cannot refuse to testify because his expenses have not been paid. "This law of the tender of expenses in civil suits differs in the different states. Generally the statutes provide for the tender of expenses for one day's attendance and for travel one or both ways. In criminal cases by statute in most jurisdictions, neither the prosecution nor the accused is required to tender the witness' expenses in advance."²

Expenses, in the preceding paragraphs include one day's pay, or witness fee, and the same rules apply to the expert witness as to the non-expert, except that as to the amount of the fee demandable by the expert witness there is much difference of opinion.

"It is contended on the one side—chiefly by the experts themselves—that they should not be required to attend and testify on tender of a fee equal only in amount to that de-

*Mikell p. 157.

¹Wigmore Ev., sec. 2203. Mikell p. 158.

²Wigmore Ev., sec. 2201. Mikell p. 158.

mandable by non-expert witnesses. It is contended that the professional experience and knowledge of the expert are his individual property, and that neither the public nor an individual has a right to compel him to bestow them without adequate compensation in addition to the fee paid the non-expert witness," etc. Mikell quotes a court decision in "Buchman v. State"¹ upholding this view and then quotes Professor Wigmore in opposition to it, as follows:

"The grounds upon which it may be concluded that no different privileges should be established for expert witnesses than for others may be summarized as follows: (1) The expert is not asked to render professional services as a physician or chemist or engineer, he is asked merely, as other witnesses are, to testify what he knows or believes. (2) The hardship upon the professional man who loses his day's fees of fifty or one hundred or more dollars is no greater relatively than that upon the storekeeper or the mechanic who loses his day's earnings of two or ten dollars; each loses his all for the day; moreover, though the recoupment of the witness fee of one or two dollars is relatively greater for the mechanic, yet his risk of losing continued employment by enforced absence is greater than for the professional man and more than equalizes the hardship to him. (3) It is only by accident and not by premeditation or deliberate resolve with reference to the litigation, that either has become desirable as a source of evidence; neither the expert in blood stains nor the bystander at a murder has expressly put himself in the way of qualifying as a witness, so that no claim based on a special dedication of services for the case can be predicated of one rather than the other. (4) The practical difficulty of discriminating between various kinds of experts and their earnings, and between that testimony which they give as such and that which they give as ordinary observers, would be serious, and would introduce confusion and quibbling into the law. (5) Finally, so far as concerns the policy of doing whatever should attract and not deter desirable witnesses. No one will ever refrain from entering a professional calling because of the fear of having to spend his time gratuitously at trials; and yet an ordinary person is often

¹59 Ind., 1 (1877). Mikell p. 158-160.

deterred from observing (or disclosing his observation) a street accident or the like, because of the apprehension of being summoned as a witness; so that the latter sort, if either, should be the one to be encouraged by special compensation.'” Professor Wigmore adds: ‘It has therefore been generally held that an expert witness is not entitled to demand additional compensation, other than the ordinary witness fees, before attending the testimony on the stand.’”¹

“While, generally, the expert witness cannot demand before testifying, in the absence of a statute, the tender of compensation in amount above that of the non-expert witness, statutes have been passed in some states providing for the payment of additional compensation to expert witnesses. These statutes commonly provide that the amount of such fees shall be fixed by the court.”²

If it is necessary for an expert to do any work preliminary to his appearance in court, as for instance, to make a post-mortem, or to examine or dissect a jaw, or make a chemical analysis, he may demand a professional fee for such work.

Sometimes the opinion of an expert is required upon facts or opinions brought out in the trial through other testimony than his own, which requires his attendance at a part or all of the trial besides the giving of his own testimony. When this is demanded of him he may refuse absolutely, or may require extra compensation for it.

“While in most jurisdictions in the United States the expert witness cannot demand extra compensation as a witness, it is the practice in all important cases to pay him additional compensation, and such payment is not regarded as against the policy of the law.”

The above paragraph indicates the best practical solution of the question. An expert witness should have an understanding beforehand with the party in whose behalf he is to testify, as to the special compensation he is to receive.

“A promise to pay an expert witness for giving testimony on the condition that his testimony leads to a determination of

¹4 Wigmore Ev., sec. 2203.

²Ibid.

the suit in favor of the person making the promise is against public policy and void."¹

PRIVILEGED COMMUNICATIONS.

"Confidential communications between attorney and client, priest and penitent, physician and patient, and husband and wife, sometimes relate to matters which then are, or subsequently become the subject of judicial inquiry. When, by law, these communications are excluded from disclosure in evidence they are termed *privileged communications*. When the disclosure of such communications is forbidden by the law, it is upon grounds of public policy on the presumption that 'greater mischief would probably result from requiring or permitting their admission than from wholly rejecting them.'"²

Under the common law communications between an attorney and his client only were "privileged." Other privileged communications are so only by statute law, and in most of the states such laws have been passed relating to communications between patient and physician for professional purposes, between priest and penitent in confessional, and between husband and wife. Mikell says "it is believed that there is not as yet any statute expressly forbidding dentists, *eo nomine*, to testify as to information acquired by them in their professional capacity." Dentists will therefore not be excused from testifying unless the courts hold them to be included under the general terms, "physicians and surgeons," as used in the statutes. Judging from decisions in other matters it seems likely that some courts will so include them and others would not. Mikell says he has only been able to find one case in point, "People v. DeFrance."³ In this case the dentist was required to testify and the Supreme Court upheld the lower court, and stated the reasons for it at some length. Mikell urges several objections against this decision and evidently believes that as regards privileged communications dentists should be included with physicians and surgeons. It is desirable that the laws be amended to include dentists which would end all uncertainty about it.

¹Pollak v. Gregory, 9 Bosw. (N. Y.) 116 (1861). Mikell p. 163.

²Brothers Dental Jurisprudence. p. 165-166.

³104 Mich., 563 (1895).

EXPERT TESTIMONY.

"1. In General.—Ordinarily a witness testifying in a case must confine his testimony to facts, he is not allowed to state his opinion or judgment from other facts as premises; the jury are as capable as he of forming their opinion. When, however, due to the special knowledge or special qualifications of a witness, his opinion will add something valuable which the jury have not and cannot otherwise obtain from a rehearsal of the facts, such opinion will be received in evidence."¹

"'Experts' are persons examined as witnesses in a cause, who testify in regard to some professional or technical matter arising in the case, and who are permitted to give their opinions as to such matter on account of their special training, skill, or familiarity with it."²

"The dentist is an expert witness within the definition, and therefore may be called upon to give expert as well as ordinary evidence. * * * The position of an expert witness is much more difficult than that of the ordinary witness. The latter testifies to facts he has seen. If he testifies truthfully the worst he can be convicted of is that of making a mistake in what he thought he saw. The former testifies to his professional opinion. His opinion is the result of his knowledge of the learning of his chosen profession, or that learning plus his observation of the dental facts involved in the given case. If he is convicted of error in his testimony it shows either a lack of learning in the profession in which he claims to be an expert, or a lack of care, or ignorance in the observation of the dental facts on which his opinion is based. In either case his reputation as a dentist suffers; not to speak of the humiliation he undergoes at the time."

When a dentist is called upon to give expert testimony he should inform himself particularly about the matters he is expected to prove by his testimony, and he should investigate and study with the greatest care all of the facts upon which his opinion is to be based, and should consult as fully as possible the available authorities on the subject, so that if counsel asks

¹See 1 Wigmore Ev., sec. 557.

²Black, Law Dict. (2nd. ed.) 466.

him if such and such an authority does not hold a different opinion than his own, he may not be taken by surprise and unprepared to answer.

He should remember that other experts of equal or greater knowledge and experience may be called by the other side, and that the lawyers of both sides may have studied the case and the authorities so carefully as to show an unexpected amount of technical knowledge in the dentist's own field, and every effort will be made to confuse him or induce him to contradict himself. An expert witness naturally feels reluctant to appear ignorant about anything pertaining to the professional matter upon which he is called to give testimony, but it is far better to confess ignorance than to pretend to knowledge or experience he does not possess, or to guess at answers he is not sure about. The cross examination is pretty sure to expose any weak points or uncertainties in his testimony, and "the only hope the witness can entertain of withstanding these attacks, lies in his having told the simple truth, without exaggeration, evasion or reservation, in a simple straightforward manner after thorough preparation."

A witness should avoid as far as possible, the use of technical words, the meaning of which the jury may not understand.

Taylor¹ relates a case in which, on a trial for assault, a surgeon in giving his evidence testified that, on examining the prosecutor, he found him suffering "from a severe contusion of the integuments under the left orbit, with great extravasation of blood and ecchymosis in the surrounding cellular tissue, which was in a tumefied state, and that there was considerable abrasion of the cuticle." Judge: "You mean, I suppose, that the man had a black eye." Witness: "Yes." Judge: "Then why not say so at once."

"Use of Books.—In England and in the great majority of states in this Union, medical books are not admissible in evidence to show the opinion of their authors."²

¹Medical Jurisprudence, 52.

²Contra Iowa and Alabama; See *State v. Winter*, 72 Iowa, 627 (1887); *Stoudemuir v. Williamson*, 29 Ala., 558 (1857).

A man's opinion may be formed or adopted from those expressed in books, but it must be his own opinion he testifies to and not that of the books. If, however, a witness has referred to some book as the authority for his opinion the book may be read in court for the purpose of contradicting the witness.

Probably the most important cases in which dental expert witnesses are called are for the purpose of identifying the dead who have been mutilated or disfigured or burned so as to make identification otherwise difficult or impossible. The correspondence of the teeth and the operations upon them with the records of the dentist who has had charge of them has in a considerable number of cases infallibly established identity when all other means had failed. A number of Chicago dentists accomplished this for some of the victims of the fire in the Iroquois Theatre who were otherwise unrecognizable.

A very important and well known instance of this sort of testimony occurred in the early fifties in the Webster-Parkman murder trial. Professor Webster (of the chemical department of Harvard University) had killed Mr. Parkman, his landlord, probably in a fit of anger, under some provocation, and had consumed the body and clothes in his laboratory furnace, in the ashes of which were afterward found a lump of gold, some carved blocks of porcelain teeth and some fragments of bones, among them part of the lower jaw. Dr. Keep, the dentist who had made the teeth, had preserved the model, marked with Mr. Parkman's name. The carved blocks fitted this model and Dr. Keep was able positively to identify them as the ones he had carved for Mr. Parkman, and set on gold plates, the gold being melted in the furnace. The testimony of Dr. Keep was one of the strongest links in the chain of evidence which convicted Professor Webster, who afterward confessed the murder.

Rehfuss in his *Dental Jurisprudence* gives several other interesting examples of expert testimony for identification by means of the teeth.

LIABILITY OF THE DENTIST TO JURY DUTY.

"The statutes of some states contain a provision, expressly excusing dentists from serving on juries. * * * The exemption is a privilege, however, not a disqualification, and if a dentist

who has been drawn on a jury chooses to serve he cannot be rejected by the parties to the suit merely because of his exemption."¹

Physicians are generally exempt by statute and in the states where there is no statute specially exempting dentists they would be required to serve unless the courts were to class dentists, for this purpose, with the medical profession. An increasing number of courts seem disposed to do this, but Mikell says "the question has arisen once under such a statute in *State v. Fisher*."² In this case the Supreme Court of Missouri by a bare majority, four to three, refused to exempt dentists under the statute exempting a "person exercising the functions of a * * * practitioner of medicine." Mikell quotes at length the decision of the majority of the court and also the dissenting opinion of the minority.

Efforts should be made to have specific enactments passed in the states that have not yet done so, though it must be admitted that since the exemption is made for the benefit of the public and not for the benefit of the profession, there is much less urgent reason for it in the case of dentists than in the case of physicians.

¹24 Cyc., 208.

²119 Mo., 344 (1893).

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