

vice to be rendered—for example, the care and skill exercised by the blacksmith are less than that shown by the watchmaker, while that of the physician or surgeon, who deals with human life and limb, is much greater than either. But while ordinary skill and care are imperatively demanded from the medical man, extraordinary skill is neither required nor expected, as few practitioners would be able to attain to it, and the majority of patients would be utterly unable to pay for such assistance.

The criterion of skill is wisely adjusted to the average proficiency of medical men, and the law chooses that middle course which experience has shown to be best calculated to protect the public and keep the profession up to a certain standard, by holding them responsible without imposing on them unreasonable and excessive burdens. The physician or surgeon is liable for injuries resulting from his want of ordinary care and skill, because his position before the public implies that he is possessed of these qualifications, and this is the case even where the services are rendered gratuitously, as at an hospital or dispensary, whether specially retained or not.

A mistaken opinion regarding the nature of the disease or its proper mode of treatment is not conclusive evidence of the want of due skill, but it must be shown that the error arose from a want of that ordinary skill and average proficiency to which we have above alluded. A medical man is not to be pronounced incompetent because he exhibits less skill than some of his more gifted and experienced conferees. The law fairly recognizing the diversity of talent among medical practitioners only requires that he shall be possessed of sufficient skill to treat disease with reasonable success.

In determining whether a physician or surgeon has exercised ordinary skill in the treatment of a patient, the advanced state of the profession at the time must be taken into consideration. A medical man is in duty bound to keep pace with the most important inventions and discoveries in medical and surgical science, for he cannot be held blameless if he continues to use means and appliances that have been discarded or superseded by more suitable ones. The progress of medicine and surgery has been very marked in recent years, and the tendency to conservative surgery very great. These circumstances tend to raise the standard of proficiency among medical men at the present time, so that what may have been good practice five or six years ago may be considered as the very opposite at present. In cases of alleged malpractice, the standard of ordinary skill would be that of the recog-