

make any such contention. On the other hand there is the precedent of the universal practice among physicians in all countries justifying the course pursued by Dr. Toombs. It was shown to the court that in our own hospitals typhoid fever patients were admitted into the common wards, that this also is the practice in all the large hospitals of Europe and America, and that typhoid fever unlike scarlet fever, small-pox, &c., was not directly contagious. To the unprofessional or rather the non-medical mind this distinction is not understood, and hence the error underlying the judge's decision. Again, the judge's allusion to the law as to a person making a representation to another is entirely beside the mark, because the doctor need have made no representation whatever, in the first instance. The owner of the house had no right to demand such information. I need not here seriously deny the right of the owner of the house to oppose the right of the physician to enter if he saw fit; the right to choose his medical adviser being that of the humblest boarder or tenant. All the owner could do would be, in the event of such physician being obnoxious to him, to ask such boarder to seek other quarters, and that at his peril, if removal would prove dangerous. Neither the owner or any other person has any right whatever to insist on being informed by the attending physician of the nature of such a boarder's disease, provided that it is not communicable and dangerous to others. To make my meaning plain, the doctor has the right which has been acknowledged since the time of Hippocrates to refuse to divulge the nature of any patient's disease, but if, in the meantime, a dangerous contagious disease were to develop, his refusal in the first instance would not exonerate him in refusing to give the necessary information to others interested. Neither conversely would his complaisance, in the first instance, in imparting information upon the appearance of any other new disease, provided always, that with proper precautions, no danger occurred to others. The evidence of the medical experts examined in this case showed that their practice had been to notify the nurse or attendant and to instruct her as to the precautions necessary, and that having done so they considered their duties ended. Dr. Toombs having followed this practice showed that he had used ordinary medical skill and prudence. Why should the doctor have made any further communication to a third party? Is it to relieve himself of

responsibility in the event of negligence on the part of the nurse? Is the doctor responsible? If an answer be given in the affirmative, then in the event, which sometimes happens, of a nurse injuring the patient or any other person by the wrong use of the medicines in her care, the doctor would be responsible, which would be absurd. In this case it was attempted to prove that the nurse failed to make a proper disposal of the excreta, but denied by her. Be this as it may the proof of the charge would have been immaterial, inasmuch as the proper disinfection of the excreta in the room would have rendered them perfectly innocuous, no matter how disposed of subsequently in the yard. But if negligence had been satisfactorily proved against the nurse surely the plaintiff's action would lie against the patient, who was the husband of the nurse, and not against the doctor. Again, the doctor's evidence, corroborated by two other witnesses, was to the effect that he had warned the plaintiff of the unsanitary state of his, (the plaintiff's,) yard, previous to the arrival of the patient. Coffin, that he had told the plaintiff it would result in fever or sickness in his family. The judge in reviewing the evidence insisted that this was an additional reason why the doctor should have notified the "owner" of the development of fever in his patient. That because a man chooses to keep dirty premises and that because he has been warned by a physician of the danger consequent thereupon and that in the event of an outbreak of fever the doctor's liabilities to damages are thus increased, surpasses, I freely admit, my comprehension. As to the judge's contention that the "owner" as well as the nurse should have been notified, I would ask: Is it in order that the former should have an opportunity to superintend the disinfection of the excreta? or is it that he should be in a position to prevent members of his family from going in and out of the sick room? The judge may think this latter a very necessary precaution, but his opinions, of great weight in legal matters, no doubt, have not equal weight in matters medical, and are not borne out by the facts, and his whole reasoning is faulty inasmuch as it implies that typhoid fever is a contagious fever. Once more, if the doctor is bound to inform the head of each household in case of many tenants occupying one large tenement? Or again, many families have joint use of one yard in common, as often happens in this city. Is the doctor, notwithstanding that