

gence, that the statement he made to Seller was true at the time he made it, and that as no contract existed between him and Seller he was not obliged to inform Seller of the change in Coffin's complaint."

"Judge Alley's decision was based upon the rule of law that whenever one person is by circumstances placed in such a position with regard to another that every one of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances, he would cause danger or injury to the person or property of the other, *a duty arises to use ordinary care and skill to avoid such danger.*"

"Applying this principle to the case Judge Alley said that while Coffin was sick as a visitor in the plaintiff's house and the defendant was attending him, the plaintiff and defendant had equal rights to go in and out of the house. The plaintiff had the right, as owner of the house, to oppose the right of the defendant to enter there if he saw fit; and hence a duty was cast upon the defendant to exercise care towards the plaintiff in the discharge of his duty towards his patient. A medical man should use more than ordinary care. The law demands greater care when a person has or professes to have skill, and when the laws deems it for the public good to demand a greater amount of care. As to the contention that Dr. Toombs's statement that Coffin had liver and stomach complaint was true at the time it was made, Judge Alley quoted the law as follows:

"If a person make a representation to another with a reasonable belief in its truth, but afterwards discover it to be false, and after discovering his error suffer the other party to continue in error and to act upon the faith of the representation, it, from the time of the discovery of the truth, becomes a fraudulent mis-representation, although it was not so originally."

"The principles here laid down were supported by reference to a large number of legal authorities. Judge Alley has, evidently, given the case a great deal of attention and care, as well as legal knowledge and acumen, and the soundness of his decision against the doctor will, we think, be admitted by all." This summary is mis leading as to the facts, containing several mis-statements: *first*, "that while in the house of William Seller, at Mount Stewart, John Coffin, of this city, fell ill," the fact being that John Coffin "fell ill" in Charlottetown and was treated there

by one of the city physicians for the space of 14 days for disease other than typhoid; that he afterwards went up to St. Peter's Bay and was there treated by Dr. Toombs for the same illness for 6 days; that he subsequently removed to the plaintiff's house at Mount Stewart, and that he developed typhoid fever after 10 day's residence there, or in all about 28 days from the commencement of his illness. *Second mis-statement*, "it transpired in the course of time that the disease was typhoid fever." This is a gross mis-representation of the fact as my former statement will make clear. *Third*, "the consequence being that several of his family 'took the fever'." This is begging the question as I shall presently endeavor to prove. It also purports to give the grounds upon which the judge based his decision. These grounds I will also briefly comment upon. It was given in evidence that so soon as the doctor had discovered that typhoid fever had developed he gave the nurse to understand the nature of the diseases, and also full and explicit directions for the disinfection of the excreta. After the lapse of 3 weeks Dr. Toombs was called upon to attend a child of Seller's, whom he found suffering from fever, and from the symptoms and conditions then present, and described in court by the doctor, it was clear that the case was well advanced into the third week. The evidence of the father of the child was to the effect that the patient had been pining during that period, thus showing that the outbreak of the fever was simultaneous or almost so in the case of Dr. Toombs's patient and the plaintiff's child.

In answer to the judge's argument and to show the incorrectness of his decision let me say that while there is no statute casting upon the doctor the duty of informing a person in Mr. Seller's position, of the nature of his patient's ailment, neither has there been as I believe a case in which it has been decided that (in a case of typhoid fever, I mean) a doctor is bound to impart any information to third parties as to the disease for which his patient was under treatment. No such case was, I understand, quoted by the judge. The absence of such a precedent alone is, to my mind, a strong argument against the soundness of the decision. Surely if doctors have always been liable for damages in similar circumstances, a case would have arisen in which the party claiming to have been "damnified," as the lawyers term it, would have asserted his rights. But so far as it appears Mr. Seller is the first man to