

WHO SHOULD PAY THE DOCTOR?

urgent he may have been, and whatever opinions the physician may have formed as to his liability, he would not have been chargeable without an express promise to pay, as, for instance, in the case of an inn-keeper, or any other individual whose guest may receive the aid of medical service. A different principle, the Court considered, would be very pernicious, as but very few would be willing to run the risk of calling in the aid of a physician where the patient was a stranger or of doubtful ability to pay. This was in 1835: (*Boyd v. Sappington*, 6 Watts, 247.) And, in Vermont, one brother took another, who was insane, to a private lunatic asylum and asked that he (the insane one) might be taken in and cared for. This was done. In course of time the doctor sued the sane one for his bill, but the Court would not aid him in the matter, saying, "He is not liable unless he promised to pay." (*Smith v. Watson*, 14 Vt. 332.)

In the case of Mr. Dodge, above referred to, the Court said, "He might very readily have screened himself from all liability, by simply writing the memorandum on a blank card, or by adding to that which he wrote on his own card something that would have apprised the doctor of the fact that he acted in the matter for Mrs. Jones, as her agent."

The reporter did not approve of this decision, and so appended the following graphic note: "Let us see how this thing works. We will take as an illustration an almost everyday occurrence arising in the country. A. B. is taken suddenly and seriously ill in the night time, and sends to his neighbour, C. D., living in the next house to his, to have him go after the doctor as soon as he can, for he is in great pain and distress. C. D. jumps out of bed without hesitation, and hastily dresses himself, and goes out to his barn and takes a horse from the stable, and not waiting to put on a saddle or bridle, jumps on to the horse with the halter only, puts him at full speed for the doctor's office, some two or three miles distant. On arriving there he

finds the doctor absent from home, but his clerk is there, and C. D. at once says, "Tell the doctor to call on A. B., who has been taken suddenly sick; tell him to come as soon as possible." In accordance with this message the doctor calls upon A. B., and prescribes for and attends him professionally for several days. After a reasonable time the doctor sends in his bill to A. B., and it not being paid as soon as the doctor desires, he calls on C. D. and requests him to pay the bill. C. D., with perfect astonishment, asks why he is to pay. The doctor informs him that he made himself liable to pay the bill because, when he delivered the message, he did not tell the clerk that he came for the doctor by the request of A. B., nor that he acted as agent of A. B. in delivering his message. Well, says C. D., the fact was I did go at the request of A. B., and merely acted as his agent in delivering the message, and I will swear to these facts if necessary. The doctor insists that it will do him no good if he should give such testimony, for the law is settled on that point, as just such a case has recently been decided in New York under just such a state of facts, where the jury, in the Justice Court, found a verdict for the doctor for the amount of his bill; and, on appeal by the defendant to the general term of the New York Common Pleas, that Court unanimously sustained the verdict of the jury, and affirmed the judgment of the Court below. Well, says C. D., "If that is the law I think I will wait awhile before I go after a doctor again as an act of neighbourly kindness." This case was decided as late as March, 1873.

A wife has implied authority to bind her husband for reasonable expense incurred in obtaining medicines and medical attendance during illness; but this implied authority is put an end to if she commits adultery while living apart from her husband, and there has been no subsequent condonation; or, if she leaves her husband's home of her own accord, and without sufficient reason, and the fact