for his distinct negligence and the separate injury occasioned thereby. The patient may also, while he is under treatment, injure himself by his own carelessness; yet he may recover of the physician if he carelessly or unskilfully treats him afterward, and thus does him a distinct injury. In such cases the plaintiff's fault does not directly contribute to produce the injury sued for.'

"In *Geiselman* v. *Scott*, 25 Ohio St. 86, it was held that if the patient neglects to obey the reasonable instructions of the surgeon, and thereby contributes to the injury complained of, he cannot recover for such injury; but the information given by a surgeon to his patient concerning the nature of his malady is a circumstance that should be considered in determining whether the patient in disobeying the instructions of the surgeon was guilty of contributory negligence or not.

"In *McCandless* v. *McWha*, 22 Penn. St. 261, Woodward, J., said: 'Nothing can be more clear than that it is the duty of the patient to co-operate with his professional adviser, and to conform to the necessary prescriptions; but 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 his surgeon responsible. No man can take advantage of his own wrong or charge his misfortunes to the account of another.'

"If the patient is insane, and so incapable of co-operating with the physician, contributory negligence is not imputable. *People* v. *New York Hospital*, 3 Abb. N. C. 229. And this inability the physician is bound to take into account.

"If the physician has injured the patient by his negligence, the refusal of the patient or his custodians to allow an experiment by another physician to repair the injury, is not contributory negligence unless they had reasonable assurance of the success of the experiment. *Chamberlin* v. *Morgan*, 68 Penn. St. 168. The court said: 'Is it the duty of a person who has been injured by the malpractice of a physician or surgeon to make any experiment which may be suggested to him, however plausible it may appear? A man who is not himself a physician, and cannot be expected to know any thing upon the subject, cannot be himself a judge of such matters. It is very reasonable for the father of Hattie Morgan to say when Dr. Richardson proposed to put her under the influence of an anæsthetic and attempt to reduce the limb, 'that so long as she was improving so fast as she had done since he came home, he should not have it disturbed.' Had Dr. Chamberlin proposed this experiment there might be some reason to hold that he should have the opportunity of redeeming his mistake, or even if he had called in Dr. Richardson to act on his behalf. Mr. Morgan merely called in Dr. Richardson to examine his daughter's arm and give his opinion about it. That did not oblige him to adopt his advice, or to incur the hazard and expense of another operation. He owed no such duty to Dr. Chamberlin. It was offered to prove that the injury could then have been reduced. But how was Mr. Morgan or Hattie to have known this? Had the experiment failed, it might well have been urged that as she was improving she ought to have been let alone, and that Dr. Chamberlin was relieved from all responsibility by the case having been taken out of his hands."—*Albany Law Journal*.

## NOTES OF CASES.

### COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 15, 1881.

DORION, C. J., MONK, CROSS, BABY, J J.

LOW v. THE MONTREAL TELEGRAPH COMPANY *et al.*

*Pleading—Rejection of plea on motion.*

*Leave will be granted to appeal from an interlocutory judgment dismissing upon motion a demurrer and a special plea filed by the defendants.*

The action was instituted by the plaintiff as a shareholder in the Montreal Telegraph Company, to set aside an agreement entered into between that Company and the Great North Western Telegraph Company, as being *ultra vires;* to restrain the Montreal Telegraph Company from acting further upon it; and to compel the Great North Western Telegraph Company to render to the Montreal Telegraph Company an account of all it had received under the provisions of the agreement.

The defendants demurred to the action upon the ground, amongst others, that the conclusions taken by the plaintiff were conclusions such as could not by law be taken in an ordinary suit or action by one shareholder in a cor-