XIII. Our article may be appropriately concluded by some brief criticisms on the argumenta ab inconvenienti by which certain judges have undertaken to justify the present limitations of the range of responsibility. In that class of cases in which a person loses a benefit intended for him owing to the negligence of a professional man in carrying out the instructions of another party, the doctrine that the loser of the benefit cannot claim damages for such negligence has been defended on the ground that to allow such an action would lead to the result that a disappointed legatee might sue the testator's solicitor for negligence in not causing the will to be duly signed and attested, though he might be an entire stranger both to the solicitor and the testator (*a*). Here under the circumstances supposed, the solicitor could not be called to account by his employer, who, by hypothesis, would be dead when the delinquency bore its fruits, nor by the representatives of the decedent, who would obviously be profited rather than damaged by the negligence which invalided the legacy. The argument, therefore, was simply an attempt to justify the refusal of a right of action to the only person who could shew actual damage by adducing a similar case in which the professional man would also escape scot-free if he could not be sued by the person injured. Surely a very neat and convincing piece of logic! The reasoning here employed is, as we have already pointed out, wholly inconsistent with that which is used to sustain the right of a patient to sue a medical man not retained by him (VII. ante).

In another class of cases great reliance has been placed upon an argument of a similar stamp, viz., that it would be unjust, after a contractor for the supply of some article of commerce has done everything to the satisfaction of his employer, to allow the transaction to be reopened by one not privy to it. The credit, such as it is, of first promulgating this theory is apparently due to the judge whose fertile imagination clinched the doctrine of the servant's assumption of the risks of his employment by reasoning of a like sort (*b*) In *Winterbottom* v. *Wright* (*c*) where it was held that a manufacturer who had furnished the Postmaster-General with a coach, for which another person supplied the drivers and

(*a*) *Robertson* v. *Fleming* (1861) 4 Macq. 167.

(*b*) See *Priestley* v. *Fowler* (1837) 3 M. & W. 1.

(*c*) 10 M. & W. (1842) 109.