functions would seem naturally to place th m in a similar category, is held not to be liable to a person whom his negligence may collate.ily injure (*d*). Whether any other occupations are public within the meaning of the rule is doubtful, as the books suggest no diagnostic mark by which they can be identified (*e*).

It would seem that this doctrine as to public duties, though depending historically upon considerations of social expediency, might also be referred to the principle of an invitation implied from the nature of the occupations of which such duties are an incident (*f*). But any speculations in this direction would be purely theoretical.

(B). Apothecaries or surgeons are liable for the unskillful treatment of their patients, although they were employed by other parties (*g*).

The conceptions which underlie this rule would seem to be analogous in some respects to those which are apparent in (A), but the foundation actually assigned for it by the courts, is that, under any other doc rine, the defendant would virtually evade all liability, since, in the nature of the case, only the patient could prove actual damage—at all events where no loss of services is involved. This reason is interesting, as it dimly suggests the existence of a great principle, which, if admitted as a determinative factor in this class of cases, would plainly aid us greatly in putting the limits of responsibility upon a more rational basis. If such inconsistencies were not so common in English law, one might well feel some surprise that a doctor should be held responsible in this ground to a person not privy to the contract of employment, while, in other cases of professional services rendered under precisely similar conditions, the immunity of the defendant being equally inevitable unless the stranger to the contract for whose benefit it was made is permitted to sue, this consideration is not only not allowed the

(*d*) *Simpson* v. *Thomson*, 3 App. Cas. 279 (p. 289).

(*e*) One of the grounds assigned in the United States for holding telegraph companies (see IV. ante), is that by the statutes which authorize them to do business they are required to send messages for anyone who may apply and without any und preference, are therefore virtually public agents or servants in the same sense carriers. *Ellis* v. *American Tel. Co.*, 95 Mass. 231. Another view is that they are actually common carriers: Shearm & Redf. on Negl. (5th ed.) secs. 534, 535.

(*f*) See such cases as *Marshall* v. *York, &c., Ry. Co.*, *Austin* v. *Great Western R. Co*, and *Dalyell* v. *Tyrer*, cited in note (*b*), supra.

(*g*) *Pippin* v. *Shephard* (1822), 11 Price 400; *Gladwell* v. *Steggall* (1839) 8 Scott 60; 5 N.C. 733.