

This action was brought by Daniel S. Hamilton against Drs. Squire, Wey and Smith; for damages alleged to have been sustained by the Plaintiff in consequence of a surgical operation performed upon his knee by the defendants. The operation consisted in the removal of a loose or floating cartilage from the knee-joint by means of what is known among surgical writers as the *valvular mode of incision*. Inflammation of the joint ensued, its disorganization followed, and the ultimate result was a stiff knee; the limb being slightly flexed and bowed laterally, in consequence of destruction of the articular cartilages, and the expanded extremities of the bones entering into the composition of the joint, on its inner side. Damage was claimed to the amount of \$5,000. After a protracted trial, the case was submitted to the jury, in the following charge by Judge Campbell. The jury failed to agree, standing one for plaintiff, and eleven for the defendants.

GENTLEMEN OF THE JURY,—Every person who enters a learned profession, whether the law or surgery, undertakes to bring to it the exercise of a reasonable, fair and competent degree of skill.

Invariable success does not attend professional men, any more than those engaged in other pursuits. Indeed, success must with them sometimes depend on other instrumentalities than mere skill. Courts and juries are fallible and may err, and the best advice and labor of counsel in the law may be in vain; and habits of life unknown, and hereditary diseases, and neglect of directions, and carelessness of nurses, may defeat the labors of the most skilful surgeon. Both the lawyer and surgeon, when they undertake professional business, agree to be responsible for the want of ordinary care—such care as ordinarily prudent men bestow upon their business. This is the responsibility which the law imposes upon them. But it is said the professional man is also bound to use his best judgment, and that judgment should be an enlightened one. This is true; but in cases where there is great difference of opinion among the most skilful and experienced as to surgery, where the most eminent men in the profession differ as to the methods of performing operations, the surgeon who possesses the necessary qualifications will not be held responsible for errors of judgment. He will be chargeable with error only when such error arises from want of reasonable, ordinary skill and diligence, especially if the general character of the operation and treatment has been honest and intelligent.

Making an application of these general principles :—

- 1st. Was this a proper operation under the circumstances of the case?
- 2d. Was it proper without the bandage or compression?*
- 3d. Was the valvular method a proper one?
- 4th. Was the place where the cartilage was taken out a proper one?
- 5th. Was the after-treatment proper?

To all these questions some of the most eminent surgeons in the State, and I may say among the most eminent in the United States, have given you an affirmative answer. Others, on the part of the plaintiff, who may be equally intelligent, but who have not had equal experience, answer in the negative. Now in such a case, where there is such difference of opinion, and certainly with the experienced men in the defendant's favor, they should not be held liable for an error of judgment, even if you should be of the opinion that they did err.

The operation being thus, for the purposes of this suit, warrantable, and the method, place and treatment proper, was the operation performed, and the after-treatment continued, with reasonable skill and care—such skill and care as would be required at the hands of prudent, competent surgeons.

Now, the contract of a surgeon is not to warrant a cure, except such contract be expressly made. He contracts to exercise his best skill, care and attention. In this particular

* Dr. March, Dr. Markoe and Dr. French, the three surgeons who have operated for the removal of loose cartilages, all unite in saying that the operation is warranted without resort to the bandage.