Provided that a medical practitioner shall not be required to notify a case of measles or German measles . . . and shall not be paid a fee for so doing

(*a*) If he has reasonable grounds for supposing that the case has already been notified under these regulations;

(*b*) If the case is notifiable or has been notified by a medical practitioner under the Infectious Disease (Notification) Act, 1889, Section 55 of the Public Health (London) Act, 1891, or under the provisions of any local Act or order made thereunder;

(*c*) If a case of the disease which he is attending, whether measles or German measles, has to his knowledge occurred in the same household or institution, and been notified within the period of two months immediately preceding the date on which he first becomes aware of the disease in the case he is attending; or

(*d*) If the case is being treated in a hospital for infectious diseases.

Article VIII provides for the payment of fees to the medical practitioner notifying a case under the regulations—2s. 6d. in respect of a private practice case, and 1s. if the case occurs in the practitioner's practice as medical officer of any public body or institution.

It will therefore be seen, on comparing the respective provisions of the Infectious Disease (Notification) Act and Measles Regulations which we have quoted, that whilst the Act imposes upon every medical practitioner in attendance upon a case, say, of scarlet fever, the duty of notifying the medical officer of health whether the case has already been notified or not, the measles regulations do not require a medical practitioner attending a case of measles to notify the medical officer of health "if he has reasonable grounds for supposing that the case has already been notified." The Local Government Board has stated that it is advised that if more than one medical practitioner is attending on or called in to visit a patient suffering from, say, scarlet fever, each practitioner is bound, under the Infectious Disease (Notification) Act, to send a certificate, and is entitled to the prescribed fee of 2s. 6d. or 1s., as the case may be, for such notification. On the other hand, a doctor called in to attend a case of measles upon which another doctor has previously been in attendance would be under no duty to notify if he had reasonable grounds for supposing that the case had already been notified; and, indeed, there being no duty upon him to notify the case, it would seem that if he nevertheless notified the medical officer he would be entitled to no fee for such notification, and the same result follows if a doctor has reasonable grounds for supposing that a case has already been notified by the patient's parent or guardian.

The position is perhaps best understood by taking a concrete case. Suppose, for instance, a woman writes to the M.O.H. that she suspects that her child is suffering from measles, and that the M.O.H. visits the house and finds that the child is suffering from measles, and in that way receives a notification of the case. Later, the woman calls in a medical man, but says nothing to him about the visit of the M.O.H.; he diagnoses the case and notifies the M.O.H. accordingly. The doctor's position is clear. He had no reasonable grounds for supposing that the case had already been notified and was therefore under a duty to notify. He is entitled to receive his fee. Even though the M.O.H. was himself also engaged in private practice, he would not appear to be entitled to any fee because the duty he performed was incidental to his appointment as M.O.H. and not otherwise.

Again, a doctor is called in to a case of measles; there is something which should show that another doctor has been previously in attendance on the case; that would, unless he were told that the doctor previously in attendance had not in fact notified the case, no doubt be held to relieve him of the duty of notifying, and, if he did notify, would disentitle him from receiving a fee.

In reading the two illustrations we have given it should be borne in mind that "notification" means "notification after diagnosis," and therefore a mere statement of suspicion is not a notification.

This distinction between the notification under the Act and that under the measles regulations is, no doubt, designedly made with a view to economy, but we cannot help feeling that it is one which may very well defeat the whole purpose of the regulations, which were made in order to enable the authorities to obtain control over two infectious diseases which were not previously notifiable.

THE DUTIES OF MEDICAL PRACTITIONERS IN CASES OF CRIMINAL ABORTION.

THE question as to how far a medical man, who obtains in his professional capacity knowledge of the commission of a criminal offence, is under a duty as a citizen to give information to the police authorities and so set the criminal law in motion, is one which has great interest for the medical profession.

It is manifest that as a standing rule applicable to the vast majority of cases it is of the very highest importance that professional confidence should be respected and held inviolate. Probably the case of most frequent occurrence is that of the medical man called in to attend upon a woman upon whom he comes to the conclusion an illegal operation has been performed, and in this case, at any rate, it is now safe to say that the doctor is under no obligation to, and indeed should not, divulge the information which he has obtained in his professional capacity.

In order to explain how the point has now arisen we must go back to 1896, when the late Lord Brampton (better known as Mr. Justice Hawkins), in charging a grand jury, said:

I doubt very much whether a doctor called in to assist a woman, not in procuring an abortion, for that in itself is a crime, but for the purpose of attending her and giving her medical advice, could be justified in reporting the facts to the Public Prosecutor. Such action would be a monstrous cruelty. . . . There might be cases when it is the obvious duty of a medical man to speak out, and it would be a monstrous thing for a medical man to screen a person going to him with a wound which it might be supposed had been inflicted in the course of a deadly struggle.

Lord Brampton's remarks were brought to the notice of the Royal College of Physicians of London, and in the result it obtained the joint legal opinion of Sir Edward Clarke and Mr. Horace Avory; the latter was then in practice at the junior Bar, but has since been raised to the Bench. They advised that a medical practitioner was not liable to be indicted for misprision of felony (an offence which is practically obsolete) merely because he does not give information in a case where he suspects that criminal abortion has been practised. There the matter rested until the close of 1914, when at the Birmingham Assizes in December Mr. Justice Avory had to deal with a case of an alleged illegal operation upon a woman on whom three successive doctors had been in attendance. None of these doctors had given information to the police, and, in consequence, there was no evidence upon which a jury could convict the prisoner who was charged with having performed the illegal operation. In charging the grand jury, the judge made the following observations:

Under circumstances like those in the present case, I cannot doubt that it is the duty of the medical man to communicate with the police or with the authorities in order that one or other of those steps may be taken for the purpose of assisting in the administration of justice. No one would wish to see disturbed the confidential relation which exists, and which must exist between the medical man and his patient, in order that the medical man may properly discharge his duty towards his patient, but there are cases, and it appears to me that this is one, where the desire to preserve that confidence must be subordinated to the duty which is cast upon every good citizen to assist in the investigation of a serious crime such as is here imputed to this woman. In consequence of no information having been given, it appears to me that there is no evidence whatever upon which this woman can properly be put upon her trial.

I have been moved to make these observations because it has been brought to my notice that an opinion to which I was a party some twenty years ago, when I was at the Bar, has been either misunderstood or misrepresented in a textbook of medical ethics, and I am anxious to remove any such misunderstanding if it exists. It may be the moral duty of the medical man, even in cases where the patient is not dying, or not likely to recover, to communicate with the authorities when he sees good reason to believe that a criminal offence has been committed. However that may be, I cannot doubt that in such a case as the present, where the woman is, in the opinion of the medical man, likely to die, and, therefore, her evidence likely to be lost, that it is his duty; and some one of these gentlemen ought to have done it in this case.

Mr. Justice Avory was therefore insisting that, professional secrecy notwithstanding, medical men are under the same moral duty as other citizens of the State in all cases in which they become aware of the commission of a criminal offence, to give information to the authorities.

In this, as we have seen, he differed from the late Lord Brampton.

These remarks were brought to the attention of the Council of the British Medical Association, and, after full consideration of the matter in consultation with the solicitor to the Association, a deputation was appointed to confer with the Lord Chief Justice on the question raised. This deputation was received by the Lord Chief Justice on May 3rd, 1915, and the Attorney-General and Public Prosecutor were also present. It was then ascertained:

(*a*) That it is desired by the authorities that information should be given to them by medical men in attendance upon a woman suffering from the effects of abortion brought about by artificial intervention.

(*b*) That the circumstances under which it was desired that this communication should be made were the subject of the following three limitations:

(1) That the medical man was of opinion either from his examination of the patient and/or from some communication that she may have made to him that abortion had been attempted or had been procured by artificial intervention.

(2) That he was of opinion either from his observations of and/or from a communication made to him by his patient that such artificial intervention had been attempted by some third party other than the patient herself, and

(3) That the medical man was of opinion that his patient, due to such artificial intervention, was likely to die, and that there was no hope of her ultimate recovery.

Upon this the Council made the following observations in its report to the Annual Representative Meeting, 1915:

> The Council understands that whereas Solicitors and Barristers have an absolute privilege of protection in regard to statements made to them in their professional capacity involving matters of criminal import or otherwise, no other class of persons is accorded such legal protection by State authority or Act of Parliament, although in the case of ministers of religion such protection is universally observed and recognized by custom in the Courts.
>
> There is, however, no such universally recognized protection attaching to medical men in respect of statements made to them by a patient; in fact there is a considerable conflict of authority upon the subject.
>
> The Council is advised that no obligation rests upon a medical practitioner to disclose the confidences of his patient without the patient's consent, and suggests that if the State desires to set up such an obligation it should at the very least preface such an endeavour by affording to the practitioner protection from any legal consequences that may result from his action. Without any desire to claim the right to refuse to make such disclosures in obedience to the order of a Court of Justice, the Council, after hearing the report of the Deputation received by the Lord Chief Justice on May 3rd, 1915, has decided to adhere to the following Resolutions which it passed on January 27th, 1915:
>
> That the Council is of opinion that a medical practitioner should not under any circumstances disclose voluntarily, without the patient's consent, information which he has obtained from that patient in the exercise of his professional duties.
>
> That the Council is advised that the State has no right to claim that an obligation rests upon a medical practitioner to disclose voluntarily information which he has obtained in the exercise of his professional duties.

The matter has also been taken up by the Royal College of Physicians of London. The College passed certain resolutions last July. It was subsequently considered advisable to obtain an opinion from Mr. R. D. Muir on the legal advice appended to the resolutions, which were finally adopted in the following form after they had been submitted to the Public Prosecutor for his approval. The resolutions of the College and the advice it has received are in the following terms:

Resolutions concerning the Duties of Medical Practitioners in Relation to Cases of Criminal Abortion, adopted by the Royal College of Physicians of London on January 27th, 1916.

The College is of opinion—

1. That a moral obligation rests upon every medical practitioner to respect the confidence of his patient; and that without her consent he is not justified in disclosing information obtained in the course of his professional attendance on her.
2. That every medical practitioner who is convinced that criminal abortion has been practised on his patient should urge her, especially when she is likely to die, to make a statement which may be taken as evidence against the person who has performed the operation, provided always that her chances of recovery are not thereby prejudiced.
3. That in the event of her refusal to make such a statement, he is under no legal obligation (so the College is advised) to take further action, but he should continue to attend the patient to the best of his ability.
4. That before taking any action which may lead to legal proceedings, a medical practitioner will be wise to obtain the best medical and legal advice available, both to ensure that the patient's statement may have value as legal evidence, and to safeguard his own interests, since in the present state of the law there is no certainty that he will be protected against subsequent litigation.
5. That if the patient should die, he should refuse to give a certificate of the cause of death, and should communicate with the coroner.

The College has been advised to the following effect:

1. That the medical practitioner is under no legal obligation either to urge the patient to make a statement, or, if she refuses to do so, to take any further action.
2. That when a patient who is dangerously ill consents to give evidence, her statement may be taken in one of the following ways:

(*a*) A magistrate may visit her to receive her deposition on oath or affirmation. Even if criminal proceedings have not already been instituted, her deposition will be admissible in evidence in the event of her death, provided that reasonable written notice of the intention to take her statement was served on the accused person, and he or his legal adviser had full opportunity of cross-examining.

(*b*) If the patient has an unqualified belief that she will shortly die, and only in these circumstances, her dying declaration will be admissible. Such a declaration may be made to the medical practitioner, or to any other person. It need not be in writing, and if reduced into writing it need not be signed by the patient nor witnessed by any other person, though it is desirable that both should be done, or that, if the patient is unable to sign, she should make her mark. If possible, the declaration should be in the actual words of the patient, and if questions are put, the questions and answers should both be given, but this is not essential. If the declaration cannot there and then be reduced into writing, it is desirable that the person to whom it is made should make a complete note of it as soon as possible.

The position may therefore be summarized shortly:

1. Any one who, knowing of the commission of a criminal offence, attempts to conceal his knowledge from the authorities may himself be guilty of the offence of misprision of felony—an offence, however, which is practically obsolete.
2. An ordinary citizen, not being a barrister or solicitor, is under a moral duty to inform the authorities when he has knowledge of the commission of a criminal offence.
3. A medical man, however, is under no such moral duty where his knowledge is obtained in his professional capacity, so far, at any rate, as the offence of abortion is concerned.

THE United States Census Bureau estimates that the death-rate for 1914 in the registration areas of the country was 13.6 per 1,000, being the lowest rate recorded. The returns cover about 67 per cent. of the population, and are considered trustworthy. The death-rate of New York City had fallen 25.8 per cent., that of San Francisco 23.6 per cent., and that of other large cities showed a considerable lowering of mortality.

THE annual report of the Glasgow Eye Infirmary states that the directors have been confronted with two difficulties—the increase in the cost of supplies and the depletion of the medical staff. In addition to the general increase in the price of food, there has been difficulty in respect of drugs. The drugs indispensable in ophthalmic surgery, the report states, are mostly of foreign origin, and are now only obtainable at greatly enhanced prices, which range from five to twenty times the prices existing before the war. The charges under this heading would have been considerably heavier but for the fact that drugs are not now supplied by the infirmary to patients insured under the National Health Insurance Act.