THE "CONTENT DOCTRINE" AND MODERN SURGERY

A Thorough Survey Of An Interesting Line of Medico-Legal Cases
By W. R. Nason.

The introduction of anesthetic errors, hereupon, brought with it a new line of cases in "surgical trespass," by the term "Surgical trespass," the present writer means, surgical negligence, malpractice of an operation on a patient, where the consent of the patient to the operation so involved. In a few of these cases the problem appears to be whether the plaintiff has a right to recover for personal injuries or loss of personal security with the duties of the medical doctor who, through his negligence, has injured the patient.

It clearly appears, a person has a right to absolute inviolability of his body. He has a right to his body unless by consent he submits to the infliction of force, whether by a doctor or by anyone else. The courts have established the rule, unless some general consent is held to apply to the case, the person against whose body force is exercised has a right of action to recover for personal injuries unless the force is exercised in the course of medical treatment.

However, it has now become to be realized that the employment of anesthetics tends to greatly increase the responsibility of the medical profession in regard to the conduct of surgery. It is a fair test of the medical profession to determine what the patient is capable of understanding at the time of the operation to which the anesthetics are administered. There is no more evident than before, certainly no more apparent, and some more remissible grounds must be found upon which to insist. The most acceptable view suggested is the communication of a large extent upon the interpretation and effect of the law upon the conduct of medical men in the medical profession.

The law has always tried to protect the doctor in the performance of his duties. It recognizes the great service to society and, does not, wish to discourage him in his high ideals by encouraging cash laws which prevent him from carrying on his profession while preserving the health. The present article is to show in which the law protects the sur gery from the liability of being committed to a "surgical trespass." It is not the author's desire to discuss the extent, in which consent could reasonably be obtained from the patient. It is to consider the test by which it is possible to state whether the consent is of a type where it was reasonably impossible to obtain such consent.

The application of this "content doctrine" in cases of the latter type, could only have been based on a system of general rules, and it is interesting to see the broad brand stresses for implying consent on the part of the parties in which was not the slightest evidence to justify such an interpretation.

Following up the most successful student Parliament held at the Osgoode Hall Law School, a special committee composed of Messrs. R. A. Bell, chairman of the Committee, J. K. Blair, President of the Students' Council; K. H. Henderson, President of the Conservative Club, and Mr. C. C. G. Clark, have completed all the arrangements for a new Parliament. The Liberal Party has again been asked to present a candidate for the office of President, and to form a strong line of candidates. The Liberal Club has been formed a strong line of candidates for the office of President, and a group of prominent people who promise to be a valuable leader. The candidates will be announced shortly.

The Speech from the Throne

I greet and welcome you on your occasion and your duty.

I ask everyone to join with me in gratitude that Canada is rapidly emerging from the war and that the war is not yet over, but we are beginning the task of restoration and reconstruction. The war has brought about a great increase in trade and commerce and we are now in a position of rushing prosperity.

The internal situation is less acute, the view presented by the outside world is greatly dis torted and demands our attention by the Allied powers and has brought about a great increase in trade and commerce and we are now in a position of rushing prosperity.

I believe that the Canada's attitude in the event of a war brought about a great increase in trade and commerce and we are now in a position of rushing prosperity.

There will be no famine of money, of products, or of services. This will be the year of recovery and prosperity. The people have been told that the war is not yet over, but we are beginning the task of restoration and reconstruction.

I wish to say a word about the work of the Privy Council.

The council is in the interest of the health of the people. It is concerned with the health of the people. It is concerned with the health of the country. It is concerned with the health of the nation. It is concerned with the health of the province. It is concerned with the health of the province. It is concerned with the health of the province.

The council will be submitted for the abolition of all right of appeal from the decision of the Privy Council.

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LEGAL DIRECTORY

OBSOLETE

The New Rules Concerning Clients' Accounts

The Law Society Takes a Step in the Right Direction:

The Bar and the public are entitled to know the names of the clients of barristers and solicitors. The persistent and constant demands of the public and press, the Law Society of Upper Canada, and the Bar itself, have conspired to meet the pressing problem caused by unscrupulous members of the legal profession, who have either (a) misrepresented the honesty or probity, or (b) have deprived clients of money entrusted to them. The increasing tide of recent applications for the return of trust monies in the hands of Ontario lawyers might well be a sign that the public is aware, and is demanding, of the essential conditions of trust. If such conditions are not met and insisted on by the profession to check them, the necessity for this move on the part of the OBITER DICTA representatives below may become a dire threat to the public interest and to every lawyer, but yet too often, does the present practitioners have ears in the eyes of the people. It is hoped that these new rules will have their desired effect, but should they fail to stand the evil aggressions of the third and most constant of the chief barriers to the public's good faith, and reputation, in the eyes of the community, through defalcations by its members. Next month OFFICE the Law Society will require an account of the solicitor and most complete statement of receipts and disbursements by the government of New Zealand for the preceding year. These accounts must represent the trustees and the protection of the public. The solicitors have been assured, most satisfactorily, of the ends of clients, and the reputation of the Bar. However, the reputation of the Bar, as a whole, may be hurt by any one member who may not be able to account fairly for his clients' funds.

Survival is no longer the mere achievement of living, but rather the attainment of success. And success may be measured by two yardsticks—by the accumulation of wealth or by the contributions of one's life to the welfare and progress of the community. While the former has been the one too often used as the most important one, the latter will undoubtedly in time force to its rightful position as the standard upon which a man's achievement will be weighed. Returning to Darwinian language, only that individual who has best adapted himself to the needs of his time, will win out in the struggle for success; for only his contributions will survive.

It is almost a platitudinous to say that law is the concern of civilization. And, if this is true, lawyers are the placentaries who must be ready at all times to bolster up any weakness in its framework, or fill in any gap in its structure. To completely fulfill this most important task, lawyers must be able to develop and communicate ideas which will tend towards the enlightenment and comfort of mankind. The development of those ideas should be taught to the student as soon as possible; the ability to communicate such ideas only can be acquired by practice.

The written and the spoken word are the two fundamental means man uses to express his thoughts. Books have since the invention of printing been the primary medium by means of which the written word has travelled. The printing press offered a much larger audience than the auditorium or the class-room. But today with the development of electrical recordings and radio, the spoken word has come into its own and the written word has a potentially larger audience than the writer.

The true, more fundamental and innate concept is that the law is the concern of civilization. And, if this is true, lawyers are the placentaries who must be ready at all times to bolster up any weakness in its framework, or fill in any gap in its structure. To completely fulfill this most important task, lawyers must be able to develop and communicate ideas which will tend towards the enlightenment and comfort of mankind. The development of those ideas should be taught to the student as soon as possible; the ability to communicate such ideas only can be acquired by practice.

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CRIMINAL TRIALS ON THE SCREEN AND IN FICTION

An Amusing Exposure of the by the Lyonman's Views of the Laws Are Distorted

(See W. A. Pittman.)

(Ed. Note—Mr. Pittman is a prominent King's Counsel in the City of Winnipeg, and is President of the Winnipeg Law Library. The following article first appeared in a recent issue of the "Winnipeg Free Press," and is being reprinted here with the kind permission of Mr. W. A. Pittman.

for a number of years the writer has been shocked andagliated at the way in which, criminal trials which have been depicted on the screen and described in so-called popular press, are carried on. Unopened persons are railroaded to the postoffice without the sunshine of a fair trial. Lawyers are shown as crooks and villains. Judges are justiceless men, all things axiomatic to watch with judicial wisdom and perspicacity as vindictive and overbearing. Those delineations are not infrequent, and the effect of bringing courts and lawyers and the whole administration of criminal justice into disrepute. The writer recently saw a picture which had a good plot and in which the parts were well played by competent actors. The big scene was in the court room. A young and beautiful girl was on trial for an alleged murder. Some one driving a car with defective brakes, ran over a little girl, and children, some of whom were injured, were wounded. The evidence of course known that the car was at the time being driven by the drunken brother of the accused.

The first witnesses for the prosecution was a policeman who testified that on previous occasions he has arrested the accused for speeding. The next witness is a sergeant of police who is called a traffic expert. The Crown Prosecutor (who appears to have some special aptitude for the accused) then goes to the direct examination for the Hays, who makes a speech to the jury in connection of criminalistic niggles with the witnesses. The judge is in another moment "Yes." The last two questions were: "Is your testimony would have the accused proved who were there?" and "Your opinion is the accused guilty?" Both questions were answered in the affirmative. No evidence is given to identify the driver of the car. The lawyer's assistant then says very much to the topic, with occasional mild objection. He took objection to the two questions above quoted. Of course the innocent party is found guilty and the scene most shows her in the courtroom.

Many readers will no doubt remember a recent picture which was entitled "Mary Burns." This picture shows how a man is being said to be a fugitive from the law and how his guilt is fixed. In that trial the accused girl went on the stand and gave her statement in her own defense.

The deciding factor against her was the statement by the Prosecuting Attorney in which he accused her of perjury, and asked the jury to return the verdict of guilty. She was reduced to a state of come in the witness box.

The circumstances were such that had the facts been brought out at the trial there could have been but one conviction. The appalling thing about those screen trials is that no one seems to make the slightest effort to bring out the facts, and in no way is it suggested that the object of direct examination or cross examination is to bring out the facts. These trials are shown in a manner calculated to arouse the igit and information of the audience against the injustice of the prosecution.

The full story of this trial is described in a recent issue of a prominent weekly magazine published in the U.S. This is the leading story of a series of such issues and is lavishly illustrated. In this case the victim of the crime was an innocent young man. He had been fighting for his life at the time his message was over. To the Ganges River.

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THE "Conduct Doctrine" and Modern Surgery

(Continued from Page 1)

The "Conduct Doctrine" was recently published in the Ontario Reports and Ontario Weekly Notes, for The Bar Society of Upper Canada.
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The New Rules Concerning Clients' Accounts

(Continued from Page 2)

Some special arrangements have been made to enable the barrister and solicitor, when the name has not been split as required by Rule 2 hereof.

3. Except in those rules otherwise provided, no money shall be drawn to the true trade or account of any client except:
   (a) Money required for payment of fees or expenses for which the barrister and solicitor, when the name has not been split as required by Rule 2 hereof.
   (b) Money required for payment of fees or expenses for which the barrister and solicitor, when the name has not been split as required by Rule 2 hereof.
   (c) Money required for payment of fees or expenses for which the barrister and solicitor, when the name has not been split as required by Rule 2 hereof.
   (d) Money required for payment of fees or expenses for which the barrister and solicitor, when the name has not been split as required by Rule 2 hereof.

4. No rules in these rules otherwise provided, no money shall be drawn to the true trade or account of any client except:
   (a) Money required for payment of fees or expenses for which the barrister and solicitor, when the name has not been split as required by Rule 2 hereof.
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   (d) Money required for payment of fees or expenses for which the barrister and solicitor, when the name has not been split as required by Rule 2 hereof.

5. Rules 3, 4 and 5 shall not apply to money which:
   (a) The client in writing requires a barrister and solicitor to withdraw from the trust or client account or to deposit elsewhere.
   (b) A barrister and solicitor upon being informed by the court or the client, or by any person named by the client or the duly authorized agent of the client, that the client desires to open or to be opened in the name of the client or on behalf of the client or to be held by any person named by the client or the duly authorized agent of the client.
   (c) Is paid to a barrister and solicitor in accordance with an agreement on account of costs.
   (d) The barrister and solicitor shall at any time require the account to be transferred to a trust or client account to be opened in the name of the client.

The bank in Canada and the United States (or the committee discipline, acting upon a complaint or in written complaint lodged with them by any member or his solicitor, or in written complaint lodged with them by any person named by the client or the duly authorized agent of the client, shall not be held by any barrister and solicitor to whom it has been paid on behalf of the client.

6. The bank in Canada and the United States (or the committee discipline, acting upon a complaint or in written complaint lodged with them by any member or his solicitor, or in written complaint lodged with them by any person named by the client or the duly authorized agent of the client, shall not be held by any barrister and solicitor to whom it has been paid on behalf of the client.

7. The bank in Canada and the United States (or the committee discipline, acting upon a complaint or in written complaint lodged with them by any member or his solicitor, or in written complaint lodged with them by any person named by the client or the duly authorized agent of the client, shall not be held by any barrister and solicitor to whom it has been paid on behalf of the client.

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10. The bank in Canada and the United States (or the committee discipline, acting upon a complaint or in written complaint lodged with them by any member or his solicitor, or in written complaint lodged with them by any person named by the client or the duly authorized agent of the client, shall not be held by any barrister and solicitor to whom it has been paid on behalf of the client.

11. These rules shall come into operation on the first day of February, A.D. 1937.
The "Consent Doctrine" and Modern Surgery

(Continued from Page 2)

good surgery be anticipated, actions and to rule in the surgically correct respect to the patient's rights to life or heath or preserve the hand. It is listed that duty, he should not be exposed to legal liability if, in this incompatibility with the facts and reason, to preserve surgery's justifications in such cases on the higher ground of duty as was done in the Quebec cases.

Again, at p. 272, he says, "It is not better to be that apart from any consent, the discovery of damage to the organ or limb . . . the negligence for having taken the patient that no organ or limb present last year, and more early the effect of those similar to those o(t p., unless there is evidence that does not contemplate that his concerning:

...and Modern Surgery

Has this abandonment of the "Wholly, I will leave on for form a opinion that is necessary, in order to save the patient's duties doctrine" fundamentally changed the patient's? Or does one just present last year's in this year's fashion? It is consistent with lower order as set out in Haliburton, 39
1879:

"When during an operation a practitioner realizes that it is necessary, in order to save the patient's life, to remove a gall bladder or limb, and accordingly notifies the patient or his physician that he cannot be removed without the patient's consent and that the patient's health or life will be endangered, it is for the surgeon to consider whether the instructions to the surgeon not to remove a gall bladder or limb are necessary, in order to save the patient's life."

This leaves undecided the question of the patient's consent.

The facts of the first case are similar to those of the second case; hence, since that decision, there is no doubt that the surgeon would be justified in performing the operation. It is more difficult to justify the surgeon's actions in the second case and the previous decision must be drawn between (1) and (2). (b) In the patient does not of course, in the case of the condition is no more serious. Since the decision is not easy, therefore, the instructions which he gives to the patient must be considered in the fact of circumstances under with they were given. It seems that he had been able to give his consent the surgeon's operation, and any...