Germany is said to be again negotiating for the purchase of the Danish West Indies, but a lively protest is being made in Congress on behalf of the late lamented Monroe Doctrine. Isn't this calling upon a cadaver for assistance?

Charles Emory Smith, former Postmaster-General, protests indignantly against the charges of Mr. Tulloch and the approval of those charges by the President's commission. In reply to his fuming Mr. Bonaparte, the head of the commission, merely says, "Mr. Smith has made his record."

Mrs. Julia Mitchell, a lady about 80 years old, was burned to death at her home. It seems she had gotten up to start a fire, and it is thought that her clothing became ignited in that way and burned so rapidly that she could not put it out. As she was all alone, it appears she got the water pail and poured water over herself in an effort to extinguish the flames. When she was found by some friend soon after the accident she was lying on the floor with the water pail by her side and the floor wet around her. She was rather eccentric and insisted on living in her own cottage by herself rather than stay with friends.

Platt and Odell bow respectfully when they accidentally meet, but they do not embrace.

TEAGUE VS. SCHAUB.

(Supreme Court of North Carolina. November 21, 1893.)

CONTRACT—DEFINITENESS—VALIDITY.

1. A written contract between physicians in partnership that one shall make application for a hospital course, and, if he gets an appointment, release their entire practice to the other, but, if he does not get the appointment, "or the field is not larger than now," he will locate elsewhere, unless a new contract is made, is void for indefiniteness.

Walker and Douglass, JJ., dissenting.

Appeal from Superior Court, Person County; W. R. Allen, Judge.

Action by R. J. Teague against O. P. Schaub. From a judgment in favor defendant, plaintiff appeals. Affirmed.

Kitchin & Carlton, for appellant. Boone, Bryant & Biggs, W. T. Bradsher, and J. S. Merritt, for appellee.

MONTGOMERY, J. The plaintiff, R. J. Teague, brought this action to enjoin the defendant, O. P. Schaub, permanently from practicing medicine in the town of Roxboro and the territory adjacent thereto, for damages arising on an alleged breach of contract in which the defendant had agreed not to practice medicine in Roxboro and the adjacent territory, and for an amount alleged to be due by the defendant for money collected by the defendant belonging to the plaintiff and defendant as partners in the practice of medicine. In the case on appeal it appears that all other matters in the action had been settled except those pertaining to the defendant's right to practice medicine in Roxboro and the plaintiff's claim for the defendant's practicing there contrary to his agreement, and that these depended upon the construction of the agreement set out in paragraph 2 of the complaint. His honor was of the opinion that the contract alleged in the contract was indefinite as to territory and could not be aided by 'extrinsic' evidence. That part of paragraph 2 of the case necessary to be referred to is as follows: "We, the undersigned, agree to continue the practice of medicine under the firm name of Teague & Schaub until December 1, 1901, Doctor Teague to receive 60 per cent. and Dr. Schaub 40 per cent. of collections for work done in general practice, except such time as Dr. Schaub shall have entire charge of such practice, then Dr. Schaub shall receive 75 per cent. of collections for work done during such time. Some time in December, 1901, Dr. Schaub agrees to take a review course and make application for a hospital course. If said Dr. Schaub gets appointment in a hospital, he then releases the entire practice to Dr. Teague. If he (Schaub) does not get the appointment in hospital or the field is not larger then than now, said Schaub will locate elsewhere unless a new contract is made.' On the back of the agreement the following was written: "Dr. T. further agrees to leave the field open to Dr. Schaub's entire care for a period of from 3 to 4 months. R. J. Teague. O. P. Schaub. Roxboro, N. C., April 4."

We concur in the view taken by his honor. This case does not present that of a professional man selling out his good will and practice to another for a valuable consideration. It is an attempt on the part of the plaintiff to force the defendant to leave the town of Roxboro, and thereby to get rid of his competition, under the provisions of the contract which we have recited. The defendant did not agree to leave Roxboro or the territory in which he actually practiced if he did not get the appointment in hospital, but that he would leave if he did not get the appointment and in case the field should not be larger than when he made the contract. We cannot tell whether that word "field" meant the receipts from the practice, the number of patients, or the extent of territory. It is indefinite in all three aspects, and we see no way of enforcing the contract. The word "Roxboro," written on the back of the contract, so far as the matter before us is concerned under the case on appeal, means no more than that the contract was signed at that place.

No error.

From the above opinion Judges Walker and Douglass dissenting.

WALKER, J. (dissenting.) This was an action to restrain defendant from practicing medicine in the town of Roxboro, and to recover damages for a breach of contract under and by virtue of which the plaintiff claimed the right to have the defendant enjoined. It is necessary to an understanding of the matter involved that the entire contract should be set out. It is as follows: "We the undersigned, agree to continue the practice of medicine under the firm name of Teague & Schaub until December 1, 1901, Dr. Teague to receive 60 per cent. and Dr. Schaub 40 per cent. of collections for work done in general practice, except such time as Dr. Schaub shall have entire charge of said practice, then Dr. Schaub shall receive 75 per cent. of collections for work done during such time. Some time in December, 1901, Dr. Schaub agrees to take a review course and make application for a hospital course. If said Dr. Schaub gets appointment in a hospital he then releases the entire practice to Dr. Teague. If he (Schaub) does not get the appointment in hospital or the field is not larger then than now said Schaub will locate elsewhere unless a new contract is made. It is furthermore agreed that if Dr. Schaub cannot secure an appointment by June 1, 1902, he remains here until that time and if a contract between Teague and Schaub cannot be agreed upon by themselves, they shall refer the matter to three men, one to be appointed by each of us, the third to be selected by the other two referees, and said Teague and Schaub shall abide by the decision. If Dr. Schaub remains here after taking hospital course until June 1, he is to receive 45 per cent. of the collections for work done in general practice during such time. Roxboro, N. C., April 3, 1901. R. J. Teague O. P. Schaub.' And thereafter they amended it by adding on the back thereof the following: "Dr. T. further agrees to leave the field open to Dr. Schaub's entire care for a period of from two to four months. R. J. Teague. O. P. Schaub. Roxboro, N. C., April 4." It was agreed in the court below that all matters in controversy between the parties had been settled, and that only one question is presented to the court for its consideration, namely, whether "the contract is void because of indefiniteness as to the territory," and the court below, upon the submission to it of this single question, held "that the said contract, in so far as it relates to the right to restrain the defendant, is void for indefiniteness as to the territory, and cannot be aided by extrinsic evidence," and the plaintiff's prayer for said relief was thereupon denied.

The court below did not pass upon any question relating to the consideration of the contract, so as to determine whether there was a consideration sufficient to support it, nor did that court take the view that this suit was an attempt on the part of the plaintiff to force the defendant to leave the town of Roxboro, and thereby to get rid of his competition under the provisions of the contract," which have been recited. There is nothing on the face of the contract, as I think, to justify the conclusion either that there was any such intent or purpose on the part of the plaintiff in bringing this action, or that the contract is not founded upon a valuable consideration. If these matters were in controversy between the parties, the plaintiff clearly had the right to be heard by a jury, and to bring forward his evidence for the purpose of showing what the real facts of the case were.

The plaintiff's contention is that the defendant was in a measure his beneficiary, and that he, by reason of the plaintiff's kinnness to him, having gained an advantage, now seeks to retain it, and make use of it to the plaintiff's detriment in the community where the plaintiff had established a lucrative practice, and which, to advance defendant's interest and improve his then embarrassed condition, he had generously shared with him, the latter thereby acquiring the benefit of the practice ready to hand. It would be inequitable and against good conscience, as the law views the relation of the parties so established, to enable the defendant thus to deal with the plaintiff. Those matters surely ought not to be considered upon an appeal from a judgment which, by agreement of the parties, presented but one question, which arose solely upon a consideration of the contract itself, and which necessarily, by the form of its submission to the court, deprived the plaintiff of the opportunity of disclosing the facts bearing upon matters not involved in that question. The plaintiff should not be condemned before he is heard, and we should not consider and decide a matter which the parties have not seen fit to present to us. If I am permitted to refer to to the pleadings for the purpose of showing the true nature of the controversy between the parites, I do not hesitate to say that there is abundant allegation on the part of the plaintiff, which, if sustained by proof, would have shown that there was a valuable and adequate consideration, and that this suit was brought in good faith. If the plaintiff's allegations are true, he had been a benefactor of the defendant, and had extended aid and assistance to him when he most needed it. This court decides against the plaintiff a question as one of law which must, in its very nature, involve a finding of facts which do not appear on the face of the contract.

If the plaintiff had supposed that the only question submitted to the court by the agreement of the parties involved in its decision the matter as to the consideration of the contract and the object in bringing the suit, he perhaps would not have entered into the stipulation with the defendant; and I do not think we should undertake to decide questions which the parties have not called upon us to pass upon, and which will at least place one of the parties at a disadvantage. I am not aware of any rule of law to the effect that the consideration of a contract which is not required to be in writing shall be expressed in the writing. My understanding is that it may be shown dehors the contract by moral evidence, and that the defendant therefore cannot avail himself of a want of consideration, unless that fact appears affirmatively in the contract itself. It seems to me that by a proper construction of the contract and the examination of the facts stated in the pleadings, this appeal does present the case of a professional man selling out his interest in the business of the firm for a valuable consideration, coupled with a covenant on his part to refrain from practicing his profession within a well defined territory. This brings us to the consideration of the very question upon which the case was decided in the court below. In the second clause of the contract there is the following stipulation: "It is furthermore agreed that, if Dr. Schaub cannot secure an appointment by June 1, 1902, he remains here until that time." Then follows the provision for the arbitration of their differences if the parties themselves cannot make an agreement. It is then further provided that, "if Dr. Schaub remains here after taking the hospital course until June 1, he is to receive 45 per cent. of the collections for work done in general practice during such time." The contract is dated at Roxboro, N. C., April 3, 1901, and signed by the parties. The writing on the back of the contract, which is quoted in the opinion of the court, is also dated at Roxboro. The question to be determined is, to what does the adverb "here" refer? We are told by the lexicographers that the proper definition of the word "here," when used as an adverb, is "in the place or region where the person speaking is; on this spot, or in this locality." If this be its true meaning and significance, how can it be doubted for a moment that when it was used in the contract the parties referred to Roxboro? Besides, the plaintiff alleged in his complaint, and the defendant admits in his answer that at the time the contract was executed the parties practiced medicine in Roxboro under the firm name of Teague & Schaub, and it is to be fairly inferred from the pleading

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