et al., 163 Mass 289, 39 N. E. 1020 (for breach of an agreement to send samples to plaintiff, defendant's salesman, to use in securing orders for defendants' goods, defendants having reserved the right to reject any orders the plaintiff might have received).

F. W. F., '27.

DAMAGES—PERSONAL INJURIES—GRATUITOUS NURSING.—*Corum v. Davis*, 130 A. 448 (N. J. 1925).

This was an action for personal injuries, brought by a married woman, with her husband joining a claim per quod. The husband remained away from work two weeks to nurse his wife, and claimed, as an item of damages, the amount of his wages during that period. The trial court allowed a recovery of this item. The appellate court held that the lower court did not err in instructing the jury that the husband could recover for his loss of wages while nursing his wife. The propriety of an instruction must be tested by the facts of the particular case (citing *State v. Egan*, 84 N. J. L. 701, 87 A. 455), and the court took judicial notice of the fact that a trained nurse could not have been hired for less than the amount of the husband's wages, remarking that, if the husband had been earning greatly in excess of the salary of a nurse for that period, the trial court probably would not have given the instruction it did.

Without this explanation, the decision would seem to be directly contrary to the weight of authority, being supported only by *Pullman Palace Car Co. v. Smith*, 79 Tex. 468, 14 S. W. 993, 23 A. S. R. 356, 13 L. R. A. 215; while the following cases hold that the damages recoverable for nursing by a member of the injured person's family are the reasonable value of such services as a nurse, and not the amount lost by abstaining from other employment: *Hazard Powder Co. v. Volger*, 7 C. C. A. 130, 58 F. 152, 12 U. S. App. 665; *Town of Salida v. McKinna*, 16 Colo. 523, 27 P. 810; *Dormer v. Alcatraz Paving Co.*, 16 Pa. Super. Ct. 407; *Barnes v. Keene*, 132 N. Y. 13, 29 N. E. 1090; *Ft. Worth & D. C. Ry. Co. v. Kennedy*, 12 Tex. Civ. A. 654, 35 S. W. 335, holds that the time lost by a husband in nursing his wife is an element of damages in an action for her injury, but states no basis of computing the value of the time lost.

If the instant case is regarded as deciding only that a husband may recover for his services in nursing his wife injured by defendant, the reasonable value of such services and no more, it is in accord

with numerous authorities. Recovery was allowed for the reasonable value of nursing by members of the injured person's family, though the service was rendered gratuitously, in *Indianapolis & E. Ry. Co. v. Bennett,* 39 Ind. App. 141, 79 N. E. 389; *Lake Erie & W. R. Co. v. Johnson* (Ind.) 133 N. E. 732; *Crouse v. Chicago & N. W. Ry. Co.,* 102 Wis. 196, 78 N. W. 446; *Selleck v. City of Janesville,* 104 Wis. 570, 80 N. W. 944, 47 L. R. A. 691, 76 A. S. R. 892; *Beringer v. Dubuque St. Ry. Co.,* 118 Iowa 135, 91 N. W. 931; *Johnson v. St. Paul & W. Coal Co.,* 131 Wis. 627, 111 N. W. 722; *Strand v. Grinnell Automobile Garage Co. et al.,* 136 Iowa 68, 113 N. W. 488; *Wells v. Minneapolis Baseball & Athletic Assn.,* 122 Minn. 327, 142 N. W. 706, 46 L. R. A. (N. S.) 606; *Adams v. Bucyrus Co.,* 155 Wis. 70, 143 N. W. 1027; *Lewark et al. v. Parkinson,* 73 Kan. 553, 85 P. 601, 5 L. R. A. (N. S.) 1069; *Birmingham Ry., Light & Power Co. v. Chastain,* 158 Ala. 421, 48 So. 85; *Birmingham Ry., Light & Power Co. v. Baker,* 161 Ala. 135, 49 So. 755, 135 A. S. R. 118; *Bryan v. Stewart,* 194 Ala. 353, 70 So. 123; *Missouri, K. & T. Ry. Co. of Texas v. Holman,* 15 Tex. Civ. A. 16, 39 S. W. 130. In *Simone v. Rhode Island Co.,* 28 R. I. 186, 66 Atl. 202, 9 L. R. A. (N. S.) 740, it was held that a parent suing for injuries to a minor child could recover for nursing the child to the extent that the services exceeded the ordinary services a parent is bound to render a minor child. In *Kendall v. City of Albia,* 73 Iowa 241, 34 N. W. 833, it was held no defense to a claim for money paid a nurse that plaintiff had a family capable of caring for him. According to *Kimball v. Northern Electric Co.,* 159 Cal. 225, 113 P. 156, the mere fact that plaintiff was nursed by his mother did not remove the presumption of his obligation to pay her, she being a professional nurse. The case of *St. Louis Southwestern Ry. Co. of Texas v. Gregory* (Tex.), 73 S. W. 28, allowed plaintiff, a physician, to recover the reasonable value of his services in treating his child injured by defendant, but not for his loss of patronage during that time. Cases in which recovery was allowed for the value of gratuitous nursing or medical attendance by persons other than members of the injured person's family, are: *Varnham v. City of Council Bluffs,* 52 Iowa 698, 3 N. W. 792 (physician did not press payment of his bill); *City of Indianapolis v. Gaston,* 58 Ind. 224 (evidence of custom of physicians to treat one another gratuitously excluded); *Pennsylvania Co. v. Marion,* 104 Ind. 239, 3, N. E. 874 (services of nurses and physicians offered without charge); *Brosnan et al. v. Sweetser,* 127 Ind. 1, 26 N. E. 555; *The D. S. Gregory and the George Washington,* 2 Ben. 226, 7 Fed. Cas. 1122,

and in *Klein v. Thompson,* 19 Ohio St. 569, plaintiff recovered the amount of a surgeon's bill, though it was paid by others without his request. But in some states, including Missouri, not even the reasonable value of gratuitous nursing and medical attendance can be recovered by the plaintiff in a personal injury action. *Morris v. Grand Ave. Ry. Co.,* 144 Mo. 500, 46 S. W. 170; *Gibney v. St. Louis Transit Co.,* 204 Mo. 704, 103 S. W. 43; *Baldwin v. Kansas City Rys. Co.* (Mo. App.), 218 S. W. 955; *Chicago, B. & Q. R. Co. vs. Johnson,* 24 Ill. App. 468; *Goodhart v. Pennsylvania R. Co.,* 177 Pa. St. 1, 35 A. 191. It is worthy of notice, also, that the rule that the injured party may recover for nursing gratuitously rendered has been held not to apply to actions under a Workmen's Compensation Act, in *City of Milwaukee v. Miller et al.* (Wis.), 144 N. W. 188. F. W. F., '27.

INSURANCE—OTHER INSURANCE—INTEREST.—*Dietzel et al. v. Patron's Mutual Fire Insurance Co. of Michigan,* 205 N. W. 149 (Supreme Court of Michigan, Oct. 1, 1925).

Herbert and Ferdinand Dietzel, owners of a large farm, made mention in their application to the defendant company for a $19,600 fire insurance policy of $5,000 policies carried by the Flint Company on the interest of each, it being expected that they would both be cancelled. Shortly thereafter the Flint Company was requested in writing to cancel the two policies, but through some mistake only the policy issued to Herbert was cancelled. A fire loss having been sustained, the Flint Company paid the loss on articles not covered by the defendant company's policy, the defendant company paid the other loss, and the plaintiffs assigned their claim against the Flint Company to the defendant company. Thereafter, the defendant company issued a policy for $3,900 to the brothers, who represented in their application that they did not carry any other insurance. All of the policies had pro rata clauses. A little over a year later plaintiffs claimed a loss of $6,375.12 from another fire, but the defendant company sought to adjust this loss at $3,657.10; and the plaintiffs gave notice of an appeal to a board of arbitration, which made an award of $2,022.59, which the defendant company tendered to the plaintiffs. This reduction was made because the arbitrators learned that the policy of the Flint Company, issued to Ferdinand, had not been cancelled, and insisted upon prorating the insurance; although