

Analogous cases appear in another field of equity. Despite the general rule that equity will not specifically enforce contracts for the conduct of operations requiring time, special knowledge, skill and personal oversight, specific performance of such contracts has been granted where the public welfare was involved. Pomeroy, *Specific Performance of Contracts* (3rd ed. 1926) sec. 23; *Joy v. St. Louis* (1890) 138 U. S. 1; *Union Pacific Ry. Co. v. Chicago, Rock Island & Pacific Ry. Co.* (1896) 163 U. S. 564; *Municipal Gas Co. v. Lone Star Gas Co.* (Tex. Civil App. 1924) 259 S. W. 684; *Edison Illuminating Co. v. Eastern Pennsylvania Power Co.* (1916) 253 Pa. 457, 98 Atl 652. In these cases, as in the principal case, the interest of the public helped to give to the complainant what ordinarily would not be granted him.

A. J. G., '36.

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PHYSICIANS AND SURGEONS—REASONABLE COMPENSATION—WEALTH OF PATIENT.—Plaintiff-surgeon rendered valuable services to the minor daughter of the defendant at the defendant's request. Plaintiff made seventy-two professional calls on the patient, gave her ten treatments, performed two paracenteses, participated in five consultations and performed a very difficult and dangerous mastoid operation. Plaintiff then rendered a bill for \$2,400 which the defendant refused to pay and this suit was brought. At trial plaintiff introduced testimony to show that the reasonable charge for services should be based in part on the wealth of the patient and in a life saving operation should be 10% of the net annual income. The defendant objected to this testimony but the court refused to strike it out. *Held*, reversible error, notwithstanding the fact that no evidence was introduced as to the defendant's wealth or annual income. *Scholz v. Mackay et ux.* (Mo. App. 1934) 75 S. W. (2) 605.

The decision of the court was placed squarely on the authority of *Morrell v. Lawrence* (1907) 203 Mo. 363, 101 S. W. 571, where it was emphatically said "He (physician) is entitled to a verdict for the reasonable value of his services, although the defendant be a poor man. He is not entitled to a verdict for more than the reasonable value of his services, although the defendant may be a man of great wealth. The jury in a case of this kind have no concern with the defendant's ability to satisfy the judgment." This position was affirmed in the case of *Glenn v. Thompson* (Mo. App. 1932-33) 45 S. W. (2d) 948, 61 S. W. (2d) 210. Accord, *Robinson v. Campbell* (1878) 47 Iowa 625. The Missouri authorities, however, make one, somewhat tenuous, distinction; in cases where the defendant has introduced evidence that the plaintiff has charged other patients smaller fees for similar services, the plaintiff in rebuttal may show that these fees were made less than reasonable because of the patient's poverty, and may then show defendant's ability to pay, solely for the purpose of proving that he is not entitled to similar indulgence. The practical wisdom of such an exception may be questioned.

The majority of the courts in other jurisdictions, however, hold that the wealth of the patient and his ability to pay is a factor to be taken into consideration by the jury in fixing a reasonable charge, most holding that

the wealth and ability to pay directly affects the reasonableness of the compensation. *Schoenberg v. Rose* (1914) 145 N. Y. Supp. 831; *Pfeiffer v. Dyer* (1929) 295 Pa. 306, 145 Atl. 284; *Bouzigat's Succession* (1925) 159 La. 853, 106 So. 328; *Caulk v. Anderson* (1931) 120 Tex. 253, 37 S. W. (2) 1008; *Mount v. Riechers* (1932) 140 Oregon 267, 13 Pac. (2) 335; *Zumwalt v. Schwartz* (Cal. 1931) 297 Pac. 608; *Houda v. McDonald* (1930) 159 Wash. 561, 294 Pac. 249. Other courts qualify the effect of the patient's wealth as a factor by holding that it can be taken into consideration by the jury only if it was a factor in the minds of the parties at the time of the rendition of the services. Thus it has been said that the value of the estate is inadmissible where there is no evidence of a recognized usage so long established as to become a fixed custom to graduate professional charges with reference to the financial condition of the person for whom the services were rendered, so that it might be considered that the services were rendered and accepted in contemplation of such custom. *Morrisett v. Wood* (1899) 123 Ala. 384, 26 So. 307. It has also been held that evidence of the patient's wealth was not admissible in an emergency case where the patient was unconscious from accident at the time of the rendition of the services, on the ground that the wealth of the patient could not be within the contemplation of the parties when one of them was unconscious. *Cotnam v. Wisdom* (1907) 83 Ark. 601, 104 S. W. 164. The majority view is perhaps the better where as a matter of common practice the members of the medical profession tend not to regulate their charges by any fixed standard but rather to graduate them in accordance with the financial condition of the patient. The social desirability of such a practice may not be above doubt; nevertheless, in fixing the implied terms of the contract, its existence cannot be overlooked.

J. D. Y., '36.