*The Rights of the Ex-Service Man and Woman*¹¹ is primarily a handbook for the use of those in need of information for practical purposes. As such it may be recommended; it is comprehensive in scope, accurate in detail, and adequately indexed. Mr. SHERREN has, however, adopted the historical form, and in doing so has given his work a more general interest, as it affords a concise review of the genesis and evolution of a sense of social responsibility unique in history, and its practical issue in the development of an extraordinarily complete system of administrative machinery. The preface, by Mr. C. A. McCurdy, M.P., serves to focus attention on the main features of that development.

The eighth edition of Professor JOSEPH's textbook of venereal diseases¹² gives a good account of current German practice in the symptomatology, diagnosis, and treatment of syphilis, soft sore and gonorrhoea. It is a practical work, not too long, but rather badly illustrated. If anyone in this country thinks of ordering it he should ascertain beforehand what he will be asked to pay.

Erratum.—We regret that, through a clerical error, it was stated in a footnote to our review of Emerson's *Clinical Diagnosis* last week (p. 18), that the publishers of this work are William Heinemann (Medical Books), Ltd., whereas the publishers in fact are J. B. Lippincott Company, Philadelphia and London.

¹¹ *The Rights of the Ex-Service Man and Woman*. By W. Sherren. With an introduction by the Right. Hon. C. A. McCurdy, K.C., M.P. London: L. J. Gooding. 1921. (Demy 8vo, pp. 111. 6d.)

¹² *Lehrbuch der Geschlechtskrankheiten für Aerzte und Studierende*. By M. Joseph. Eighth edition. Leipzig: G. Thieme. 1921. (Sup. roy. 8vo, pp. 217; 54 figures, 1 plate. M.54; bound, M.68.)

MEDICAL AND SURGICAL APPLIANCES.

Instrument for the Treatment of Haemorrhoids by Suture.

DR. JAMES MACMUNN (London, E.C.) writes: To cause a wound to heal by first intention rather than by the slow method of granulation (ligature method) is sure y more surgical, and it is chiefly to ensure quick union and to guard against sepsis that I wish to bring the present method for the treatment of haemorrhoids by suture into notice. The forceps illustrated is a modification of Ricard's phimosi forceps, but the slot is much smaller, allowing only the passage of a small domestic needle. It is also open at the end. A is an enlarged section showing how the tissues are com-

pressed above and below the slot for suture. The forceps is clamped on the pile in the gut axis and the pile lifted well into the blades by a pile forceps before clamping. The pile is then cut off and the suture, anointed with bipp, is used as shown in the lower part of the illustration; B embraces the pile supplying artery. Very little sustaining power is required by the suture to keep the tissues together; they are pressed into apposition and bipp is rubbed over the part. The instrument is made for me from my model by the Holborn Surgical Instrument Company.

A Self-Retaining Vaginal Retractor.

MR. B. K. TENISON COLLINS (Cardiff) writes: This retractor has been designed to dispense with side retractors held by assistants. It can be used by itself or in conjunction with an Auvar speculum.

When in position with the spring above, the blades lie parallel and do not squeeze out. It is quite out of the way of the operator, and gives a good view of the cervix and vaginal fornices. It protects the vaginal walls, is cheap to make, easy to clean, has no loose pieces, sharp angles or points, and takes up little room in the instrument bag. I have used it now for some time, and find it very useful. It has been made

for me by Mr. Staniforth, of Cardiff, to whom I wish to express my thanks.

THE new number of the *Journal of Obstetrics and Gynaecology of the British Empire* is a double number—autumn and winter, 1921 (Manchester: Sherratt and Hughes, 24s. net). It is almost wholly devoted to a series of papers on Caesarean section. We hope to refer to the issue at length on some future occasion.

PROFESSIONAL SECRECY AND MEDICAL EVIDENCE.

BY

WILLIAM A. BREND, M.D.LOND.,

Lecturer on Forensic Medicine, Charing Cross Hospital Medical School.

THE ruling, first given by Lord Mansfield at the trial of the Duchess of Kingston for bigamy in 1776, and at later dates repeated by other judges, that a medical man has no privilege to avoid giving evidence on the ground that his knowledge was gained in the practice of his profession, has ever since been accepted by the medical profession as the law on this subject. The issue, however, by the Ministry of Health of the Public Health (Venereal Diseases) Regulations in 1916 has led to some questioning of the hitherto recognized ruling. These regulations were made under the powers conferred on the Local Government Board by the Public Health Acts of 1875 and 1896, and the Public Health (Prevention and Treatment of Disease) Act of 1913, which authorize the Board to make, alter, and revoke regulations with a view to the treatment of persons suffering from cholera or any other infectious disease, and to make regulations for the provision of medical aid and for guarding against the spread of the disease. Article 22 of the Venereal Diseases Regulations runs as follows:

"All information obtained in regard to any person treated under a scheme approved in pursuance of this article shall be regarded as confidential."

The suggestion that this regulation affected the law relating to professional secrecy in the witness box was first made in the case of *Garner v. Garner* in January, 1920. This was an undefended divorce case in which the petitioner desired to call evidence that she had suffered from venereal disease. She had been treated under a Venereal Diseases Scheme, and before giving evidence the medical witness called the attention of the judge to the obligation of secrecy which was imposed upon him. Mr. Justice McCardie said that in a court of justice there were even higher considerations than those which prevailed with regard to the position of medical men, and he ruled that the witness must answer the questions put to him.

The point again arose in the Divorce Court in a case heard before Mr. Justice Horridge in June, 1921. The medical witness in this case stated that he and other medical men had undertaken duties at the clinic on the distinct understanding that professional secrecy as to what happened there would be observed, and referred to Article II (2) of the Public Health (V.D.) Regulations quoted above. The judge replied that the Ministry had no powers which affected the jurisdiction of the courts, and required the witness to give evidence.

The question was fully discussed at the Annual Representative Meeting of the British Medical Association, and on July 15th, 1921, the following resolution was passed:

"That the Association use all its power to support a member of the British Medical Association who refuses to divulge without the patient's consent information obtained in the exercise of his professional duties, except where it is already provided by Act of Parliament that he must do so."

Lord Dawson gave notice to call attention, in the House of Lords on July 27th, "to recent rulings as to the privilege of medical men with regard to evidence in courts of justice, and to move that the matter be referred to a Select Committee of the two Houses of Parliament." At the request of the Government, he agreed at the last moment to postpone the motion. At the time of writing, the notice of motion still remains on the Order paper of the House of Lords, but no opportunity of moving has occurred.

It may be stated at once that there is no doubt that the rulings given by Mr. Justice McCardie and Mr. Justice Horridge are sound law, and that the regulations issued by the Ministry of Health do not override or modify the law of evidence. This is in conformity with the general principle that when in an Act of Parliament the details of any procedure are left to be settled by regulations made by an administrative authority, it is implied that these regulations must be in conformity with the principles laid down in the Act or in other Acts, or established at Common Law. In so far as any regulations made by the administering authority infringe the law, they are *ultra vires* and of no effect. In the actual instance there is no reason to suppose that those who framed Article II (2) of the Regulations did intend that

it should apply to medical evidence in the witness box. The word "privilege" is not used, and it must be assumed that if the Local Government Board had intended to upset a recognized legal principle it would have made its position clear. On the other hand, the apparent comprehensiveness of the regulation fully justified the medical witnesses in making protest before giving evidence.

The view that privilege should exist between doctor and patient in the witness box is one which at first sight is likely to commend itself to medical men, imbued as they are with the lofty ethical traditions which govern the question of professional secrecy. Nevertheless, the recognition of such privilege would be a startling innovation in English law, and there are difficulties and objections to it which only present themselves on careful consideration of the question. Before noting these it may be useful to examine the procedure adopted in certain foreign countries and the experience gained therefrom.

The Law in the United States of America.

In America the law varies from State to State, and in about one-half of the jurisdictions professional privilege to varying degrees has been established between physician and patient. The following are instances of the State laws:

Arizona.—"A physician or surgeon cannot be examined without the consent of his patient as to any communication made by his patient with reference to any physical or supposed physical disease, or any knowledge obtained by personal examination of such patient; provided that if a person offer himself as a witness and voluntarily testify with reference to such communications, that is to be deemed a consent to the examination of such physician or surgeon."

Arkansas.—"No person authorized to practise physic or surgery shall be compelled to disclose any information which he may have acquired from his patient while attending him in a professional character, and which information was necessary to enable him to prescribe as a physician or do any act for him as a surgeon."

California.—"A licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient—but this subdivision does not apply in an action between physician or surgeon and his patient in which the treatment of the patient by the physician or surgeon is in issue; and provided that in an action brought under Sections 376 and 377 (for death by wrongful act) a physician or surgeon is competent to testify as to the cause of death of the deceased."

New York.—"No person duly authorized to practise physic or surgery shall be required to disclose any information which he may have acquired in attending a patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician or to enable him to do any act for him as a surgeon; provided a presiding judge of a superior court may compel such disclosure if, in his opinion, the same is necessary to a proper administration of justice."

Pennsylvania.—"No person in any civil case shall be allowed to disclose any information which he acquired . . . which shall tend to blacken the character of the patient, without his consent."

It will be seen from the foregoing that there are considerable differences in the various States, and that the privilege is more comprehensive in some than in others. We need not examine in detail the practical effects of the legislation in each State. It is sufficient to say that commentators on American law and experience do not find that the States in which medical professional privilege does not exist are at any disadvantage as compared with those where privilege has been admitted, and they consider that in the latter the system has often led to serious abuses militating against the administration of justice. Wigmore, for instance, says:

"Certain it is that the practical employment of the privilege has come to mean little but the suppression of useful truth—truth which ought to have been disclosed and would never have been suppressed for the sake of any inherent repugnancy in the medical facts involved. Nine-tenths of the litigation in which the privilege is invoked consist of actions on policies of life insurance, where the deceased's misrepresentations of his health are involved; actions for corporal injuries, where the extent of the plaintiff's injury is at issue; and testamentary actions where the testator's mental capacity is disputed. In all of these the medical testimony is absolutely needed for the purpose of learning the truth. In none of them is there any reason for the party to conceal the facts except to perpetrate a wrong on the opponent."

The Law in France.

In France, Article 378 of the Penal Code provides as follows:

"Physicians, surgeons, and others concerned with health, such as pharmaceutical chemists, midwives, and other persons, the recipients by their position or profession of secrets which have been confided to them, who, except when the law requires them

to give information, have revealed these secrets, will be punished with imprisonment from a year to six months and a fine of 100 to 500 francs."

As in this country, the law definitely requires from medical men certain professional information, such as declarations of birth or of infectious diseases, which, in the interests of the community, should be known, and in the discharge of these obligations medical men are protected by the words "except when the law requires them to give information." It is interesting to note, incidentally, that in regard to syphilis the law goes further than in this country, and that in some cases where there is risk of infection the medical man is not only absolved from secrecy, but is required to give warning to persons specially exposed to the risk. For instance, if, after attending a syphilitic infant, a medical man failed to warn a nurse of the danger, and she contracted the disease, she would be entitled to bring an action against him.

The extent to which the giving of medical evidence is regarded as one of the exceptions to the general principle depends upon certain conditions. Article 80. of the *Code d'Instruction Criminelle* requires any person summoned to appear as a witness to attend and give evidence, and a doctor, as any other citizen, is bound by this obligation. The conflict which accordingly arose between these two obligations was dealt with by a judgement of the Court de Cassation in 1845 in the following terms:

"Whereas every citizen is bound to assist the ends of justice when interrogated as a witness, no one, whatever his profession, is completely relieved of this obligation; it is not sufficient for a member of one of the professions bound to secrecy by Article 378 to claim as an excuse for not giving evidence that it was in the exercise of his profession that the material on which he is to be interrogated has come to his knowledge; but it is otherwise when the material has been confided to him under the seal of secrecy, to which he is bound in consequence of his profession."

Under this judgement, accordingly, the medical man was only relieved of the obligation of giving evidence in reference to facts which had been confided to him under the seal of secrecy, and not in reference to facts which had come to his knowledge through the exercise of his profession.

Subsequent decisions have helped to make clear what are to be regarded as facts communicated under the seal of secrecy. In 1853 a medical man, when called upon to give evidence on matters which had come to his knowledge in the exercise of his profession, replied: "I consider as confidential the reports which have brought to my knowledge the facts on which you interrogate me. I cannot therefore reply to your question." This reply was accepted.

The formula: "I consider as confidential" has been held to safeguard all the interests of the patient. To require the medical witness to state formally that there has been a confidential communication would be equivalent to stating that there has been an important secret to hide. As a matter of fact, it is now admitted that a doctor, in order to preserve silence, is under no necessity of invoking confidence. The facts which he learns by the exercise of his profession are secret by their nature.

In 1885 the Court de Cassation expressed the view that information which had been confided under the seal of secrecy, or, in default of this condition, were secrets by their nature, and the knowledge of them had been acquired by the witness in the exercise of his profession, fell within the scope of Article 378. Finally, in 1899 the Court de Cassation, in a case in which a life insurance company demanded the cancelling of a policy on the ground that the assured suffered from a malady which he had not declared, absolved a medical witness from giving evidence in the following words: "Since the fact, secret in its nature, on which Dr. X. had been called to depose, could only have come to his knowledge by reason of the treatment which he had given to his patient, he was for this reason forbidden to reveal it."

It is of interest to note that secrecy is obligatory even when the person concerned has authorized the medical man to speak. A judgement of the Court of Montpellier in 1827 lays down:

"The obligation of secrecy continues to exist even where he whom the facts concern, and who has confided them to another, demands the revelation; for the obligation prescribed by Article 378 is established in the general interest. It is only by this means (*à ce prix*) that professions, the exercise of which concerns the whole community, can secure the necessary confidence and consideration."

The court show themselves very severe in this matter. Even revelation by a medical man in the witness box of a fact which is no longer secret may still be an offence.

For instance, Dr. X. had given a certificate for placing a lunatic in an asylum. Some years later the patient, who had recovered and had been released, was seeking a divorce. Dr. X.

was called as a witness, and read and commented upon his certificate. He was convicted of a breach of professional secrecy, although the state of insanity of the husband was not a secret, since he had been confined in an asylum, and could only have been so confined under a medical certificate.

It is true that the Presidents of the Cours d'Assises do not appear always to have regarded the question in the same manner.

For example, in 1906, the President said to a medical man who refused to speak: "There is one case in which professional secrecy ought not to prevent you from speaking; it is when you, a medical man, have discovered indications of a crime." In the same year, in a case of poisoning brought before the Cours d'Assises of the Gironde, medical practitioners and consultants had refused to reply to questions put to them, even after their patient had absolved them from professional secrecy. They were severely criticized by the President, and even threatened with proceedings.

In spite of these utterances, however, it may be regarded as recognized that in France medical men can, without fear of proceedings, refuse to give evidence on matters which have come to their knowledge in the exercise of their profession. The right to maintain secrecy does not, however, exempt a medical man from appearing when he is summoned to give evidence. He can even be required to take the oath, and is absolved by declaring afterwards that the facts are such as cannot be revealed by him. In one case where a medical man refused to take the oath a fine of 100 francs was imposed.

The Essentials of Privilege.

In English law privilege is only admitted between solicitor or counsel and client. It has been stated to exist in regard to communications in the nature of confessions made to ministers of religion by members of their congregations, and particularly statements made to Roman Catholic priests in the confessional. This, however, is not the case, but in the very few instances in which the question has been raised in the courts the presiding judge has not pressed the witness to reveal the confidences made to him.

It is an established principle of English law that every member of the community must assist justice to attain its ends, and the law has only recognized privilege in the witness box where very strong reason for it exists. The legal view is that the following four fundamental conditions must be fulfilled before a privilege can be established:

- (1) Communications must originate in a confidence that they will not be disclosed;
- (2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties;
- (3) The relation must be one which, in the opinion of the community, ought to be sedulously fostered;
- (4) The injury that would result to the relation by disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.

Brief consideration will show that, as regards information gained by the physician in the exercise of his profession, none of these conditions are fulfilled. With reference to (1), it is obvious that, as regards the vast majority of the communications made by patients to physicians, such as the details of the malady, state of health, effect of treatment, etc., a patient is not particularly concerned that secrecy should be observed. Nor can it be said that the absence of privilege in this country has prevented a full and satisfactory relationship between physician and patient. There is no reason to suppose that the community wishes to establish privilege between physician and patient. The experience of other countries has shown that the extremely small number of cases in which the patient gains an advantage by the existence of professional privilege do not counter-balance the injury to the whole community which arises from the fact that privilege enables material to be concealed, knowledge of which would promote the ends of justice. The argument that because privilege is recognized between solicitor and client, it should also be admitted between doctor and patient, is unsound, for it is obvious that the whole relationship between solicitor and client would fall to the ground if the client did not know that his statements would be kept secret. If privilege between solicitor and client did not exist, all that would be necessary for prosecutor, plaintiff, or defendant to do, would be to put the solicitor for the opposite party in the box and examine him on what had passed between him and his client. In this matter, accordingly, there is no analogy between the medical and the legal professions.

Conclusion.

To sum up, then, while it is admitted that under the present system in rare instances hardship to the patient

arises, and the medical man is placed in a position of embarrassment, it is not clear that the recognition of medical privilege in the witness box would be of advantage to the community as a whole. The experience of other countries shows that the privilege is often an avenue for the perpetration of an injustice, and its existence in this country would not be in accordance with the principles and traditions of English law.

MEDICAL TERMS IN THE VERNACULAR AND IN DIALECTS.

I.

AGNAILS OR HANGNAILS.

AGNAIL or hangnail is the term which in the vernacular is given to the troublesome little sliver or shred of separated skin which is found occasionally at the base of the nail in the neighbourhood of the quick. It is both sore and painful; the soreness is due to the raw tissue left by the separation of the epidermis, whilst the pain is caused by the tug which happens when the little cutaneous slip is caught by any passing object where it is still attached to the surface. Both these discomforts are soon removed by cutting the shred close off, and painting the spot with some tincture of iodine. To the operating surgeon who has to keep his hands fit, and to the manicure who has to make other people's hands beautiful, these hangnails are a matter of some moment: for the irritation they cause is out of all proportion to their size; they are always unseemly; and, in the case of persons who use their hands much in contact with infective materials, they may be actually dangerous.

Agnail is a sort of chameleon among words: it appears in ordinary vernacular English both as agnail and hangnail, whilst in the dialects it has the forms of angnail, angernail, nangnail, gnangnail, nengnail, nagnail (that is, an agnail), and thangnail (that is, th'agnail). Besides varying in appearance, it is also rich in synonyms, some of which reveal a certain grim or caustic humour in their construction. Thus, in Cumberland, Staffordshire, and other counties it is called a "back-friend," the word being used, one must suppose, in the sense of secret enemy. Wright, in the *English Dialect Dictionary*, gives an illuminating quotation in the words: "He had a troublesome 'back-friend' or 'agnail,' at which he often bit." Another expressive name is "step-mother's blessing," which speaks, so to say, for itself. "Idle-wart," "idle-welt," "idle-wheel," and "idle-back" are Lincolnshire and Northamptonshire synonyms which seem to hint a belief that these painful little tags of skin appear upon the fingers of the lazy. This use of the word "idle" brings back to memory the "idle worms," said humorously to grow in the fingers of people averse from work; and Shakespeare was probably thinking of them when (in *Romeo and Juliet*, I, iv, 64-66) he spoke of Queen Mab's wagoner as—

"a small grey-coated gnat,
Not half as big as a round little worm
Prick'd from the lazy finger of a maid."

"Fan-nail" is yet another Northamptonshire synonym, the little sliver being compared to a fan, or perhaps carrying the sense of fang or claw in it. "Nail-hag" is either a synonym or merely "agnail" inverted; "rag-nail," employed in the north of Ireland, explains itself.

The Scots equivalent is "anger-nail," but this is really a corruption of angnail devised to give a plausible meaning to the word, for in the North "to anger" signifies not only to irritate but also to inflame, and so the idea is conveyed of a nail which has become inflamed and sore. There is here, and perhaps also in "rag-nail," a perversion of the original word "agnail" by pseudo-etymology; and this change has occurred several other times in connexion with this same term. There is thus revealed a curious chapter in the history of word-forms.

To begin with, agnail is the Old English "ang-naegl," which comes from "ang," meaning compressed and therefore painful (one thinks of our everyday expression "anguish," with, however, quite a different etymology), and "naegl," a nail. Only the "nail" here intended is not that of a finger or toe (*unguis*) but a nail of iron (*clavus*). In complete accordance with this derivation, which goes back to the Old High German, the Frisian, and the Gothic, agnail had originally the meaning of a corn on the foot. Sir James Murray, in the *New English Dictionary*, gave illustrative quotations of agnail as "corn" ranging from 950 to 1783; but it is now obsolete. Not so, however, in the dialects: for