

SECOND DIVISIONAL COURT.

DECEMBER 10TH, 1915.

***LAVERE v. SMITH'S FALLS PUBLIC HOSPITAL.**

Negligence—Injury to Patient in Hospital—Carelessness of Nurse—Public Charitable Institution—Corporate Body—Contract with Patient—Contract to Nurse—Liability—Respondeat Superior—Damages.

Appeal by the plaintiff from the judgment of BRITTON, J., 34 O.L.R. 216, 8 O.W.N. 548.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

J. A. Hutcheson, K.C., for the appellant.

G. H. Watson, K.C., for the defendants, respondent.

RIDDELL, J., read an elaborate opinion, in which he stated that there was no possible doubt that the burn of which the plaintiff complained was caused by an overheated brick being placed against her foot when she was unconscious; that this was done by the nurse in charge; and that the act was improper. The sole question was, whether the defendants, an incorporated body conducting a public hospital, were liable for the act of the nurse.

The learned Judge made an exhaustive review of the cases, English, Irish, Scottish, American, and Canadian. He then said that from all the cases it was plain that once the "trust fund theory" was got rid of—and it was conceded that it had now no footing in our law—the case was reduced to the question, what did the defendants undertake to do? If only to supply a nurse, then supplying a nurse selected with due care is enough; if to nurse, then, the nurse doing that which the defendants undertook to do, they were responsible for her negligence, as in contract—respondeat superior. Here the contract expressly included the nursing of the plaintiff.

The plaintiff's damages should be assessed at \$900.

The learned Judge added the following explanatory statements:—

(1) The Court proceeds on the ground of an express contract to nurse, and expresses no opinion as to the law in the ordinary case of a patient entering the hospital without such contract.