

gentleman, a gentleman of the medical profession, and what would in an ordinary individual be but mere negligence would in his case, no doubt, be gross negligence. Had he done that which the nurse testifies he did, it would in my judgment have been gross negligence. Whether I would be obliged to say that the injury which the plaintiff sustained was the natural effect of that negligence is another question and one which I need not determine. What I have now to find is whether the plaintiff has affirmatively shown that there was negligence on the part of the defendant in occasioning the injury of which he complains.

I am unable to find upon the evidence that the nurse's statement is accurate. She is, I think, quite mistaken as to the direction proceeding from the defendant in regard to the filling of the pad. I am satisfied that she has confused that which he said in regard to sterilizing his instruments, with that which he said in regard to filling the pad. I have no manner of doubt that if the doctor had said to any experienced nurse that she was to fill that pad with *boiling water* it would at once have struck her as an extraordinary thing, and one calling for some explanation. Nothing of that sort took place. It was a thing that could not have been done by Dr. Bruce, unless through a slip of the tongue. He never meant that she should do that which she did. So that the probabilities are altogether against the story of the nurse. And the direct testimony very greatly preponderates in favor of the defendant. We have Dr. Bruce's own statement, which is worthy of at least as much credence as that of the nurse. No doubt everyone is naturally prejudiced in his own favor in a case of this kind, and Dr. Bruce's action in saving himself against a charge of negligence is to some extent affected by his interest. On the other hand, the nurse is saving herself from a charge of negligence, and probably an action for the recovery of damages. They stand upon an equal footing as far as that is concerned. Then there is the testimony of the other two medical gentlemen, who say that the nurse is mistaken. Upon the whole I find that the direction to fill the pad with *boiling water* was *not* given, but the direction was given to fill it as if it were a hot water bottle, and if that be so, the plaintiff's case seems to me to fall to the ground. I cannot find any negligence in Dr. Bruce having under the circumstances assumed that the nurse would perform her duties properly. I cannot think that upon this branch of the case anything like a case is made out for the plaintiff. It is not contended that liability arose by reason of any relationship of master and servant having existed between the defendant and the nurse. The facts would not support any such contention. There was no such relationship.