

dividual be but mere negligence would in his case, no doubt, be gross negligence. Had he done that which the nurse testifies that he did, it would, in my judgment, have been gross negligence. Whether I should be obliged to say that the injury which 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 plaintiff has affirmatively shewn that there was negligence on the part of defendant 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 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 favour of defendant. We have Dr. Bruce's own statement, which is worthy of at least as much credence as that of the nurse. No doubt every one is naturally prejudiced in his own favour in a case of this kind, and Dr. Bruce's action in saving himself against a charge of negligence may be to some extent affected by his interest. On the other hand, the nurse is saving herself from a charge of negligence, and possibly 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, 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 plaintiff. It is not contended that liability arose by reason of any relationship of master and servant having existed between defendant and the nurse. The facts would not support any such contention. There was no such relationship.