examined gratuitously under an anæsthetic; there was no bargain of any kind expressed. Mr. Lockwood, a consulting surgeon attached to the hospital, examined him, but through some carelessness Hillyer's arm was allowed to come into contact with a hot water tin and was badly burned, and also bruised in some way. He sued the hospital, but his action was dismissed by Grantham, J. In appeal the decision of the trial Judge was affirmed. Ferwell, L. J., expressly approves Glavin v. R. I. Hospital (to be considered later) and holds that the doctors were not at all the servants of the board but "all professional men employed by the defendants to exercise their profession . . . . according to their own discretion . . . in no way under the orders or bound to obey the directions of the defendants." "It is true that the corporation has power to dismiss them, but it has this power not because they are its servants but because of its control of the hospital where their services are rendered."

The learned Lord Justice considers the nurses to be on a different footing, and assumes that they are the servants of the corporation; but he says: "Although they are such servants for general purposes they are not so for the purposes of operations and examinations by the medical officers . . . . as soon as the door of the theatre or operating room has closed on them for the purposes of an operation (in which term I include examination by the surgeon) they cease to be under the orders of the defendants . . . . . the nurses . . . assisting at an operation cease for the time being to be the servants of the defendants, inasmuch as they take their orders during that period from the operating surgeon alone." Then he says: "The contract of the hospital is not to nurse during the operation, but to supply nurses . . I take the test applied (in Hall v. Lees) by Lord Collins, then Master of the Rolls: 'They are not put in his place to do an act which he intended to do for himself.' The nurses . . . are not put in the place of the hospital to do work which the governors of the hospital intended to do themselves because they had not undertaken to operate or assist in operating . . ."

Kennedy, L. J., while holding the defendants not liable, does appear to hold that the hospital "by the admission of the patient to enjoy in the hospital the gratuitous benefit of its care" does not undertake that the nurses shall use proper care; but this is far from saying that in an express agreement for nursing, the contract is only to supply a competent nurse.

Cozens-Hardy, M. R., agrees in the result.

It will be seen that this case does not carry us further when considered in relation to its facts; one Lord Justice confines his remarks to the operating room, while the remarks of the other are made on the case of a person coming to a hospital solely to be examined (and consequently not expecting to be out of the operating theatre or to receive nursing) without any special contract. The expressions so made use of are not intended to be an exposition of the whole law and are not to be taken literally in a case wholly different in its facts.

The duties of the nurse when the default occurred in the present case were not to assist the surgeon "in matters of professional skill" but to "perform domestic duties in the way of seeing that the bed was right," "with everything in order," as the Matron swears.

I find nothing helpful in the cases referred to in Taylor's Medical Jurisprudence, 6th Ed., Vol. 1, pp. 87 sqq.

The Irish cases are not helpful. In Dunbar v. Guardians Ardee Union (1897),