

denied by defendant and the other two medical men who were present, who all said that the nurse had been directed to place the instruments in boiling water and to fill the Kelly pad with *hot water* in the same way as a hot water bottle. A number of surgeons were called by defendant, who all agreed in saying that when an operation is to be performed aseptically it would be gross negligence for the operating surgeon to touch anything which had not been sterilized, that it is his duty to sterilize his hands with great care, and thereafter to touch nothing which had not been itself sterilized. They all agreed that the proper heat of water to put in a hot water bottle is a matter of familiar knowledge amongst nurses, that that is a matter which they are carefully taught in hospitals, that it would be impossible for the operating surgeon to attend to the details, and that he must trust to the knowledge of trained nurses. One of the witnesses, Dr. Bingham, said, "If I cannot trust my nurse, I must give up aseptic surgery."

Amongst the witnesses examined were Drs. Bingham, Ross, J. Caven, Cameron, Lawson, and Hall; and there was no evidence at variance with the above. It was further proved that it is a matter of the utmost importance in an operation such as this was, viz., strangulation of the intestine advanced to the gangrenous stage, that not a moment should be lost, and that the hope of recovery is practically in the inverse ratio to the length of time taken in the operation.

There had been a charge on the pleadings that the defendant had not been skilful in the operation which was actually performed, but this was practically abandoned; and all the medical witnesses stated that the operation could not have been more carefully or skilfully performed.

T. J. Blain, Brampton, for plaintiff.

W. R. Riddell, K.C., and W. Mulock jun., for defendant.

Perionowsky v. Freeman, 4 F. & F. 977, and Town v. Archer, 4 O. L. R. 383, and the cases therein cited, were referred to.

MEREDITH, J.—Plaintiff sustained a very painful injury, and one which has caused him some loss. These facts do not necessarily entitle him to relief from defendant. In order to have damages in this action he must satisfy the Court that defendant has been guilty of some actionable negligence. Defendant is a skilled gentleman, a gentleman of the medical profession, and what would in an ordinary in-