the baths . . . the usual hospital practice . . . a surgeon no more knew what was a fit temperature of hot water for a bath than a nurse who was necessarily quite familiar with it." The patient sued the medical men; but it was proved that they had no control over the nurses as to appointment or dismissal and therefore the relationship of master and servant did not exist, and as the Lord Chief Justice Sir Alexander Cockburn said, they "would not be liable for the negligence of the nurses unless near enough to be aware of it and to prevent it." The defendant had a verdict.

In that case the Hospital Board were not sued, and there is no suggestion anywhere in the case that the Board would not have been liable if they had been sued. No doubt it satisfactorily decides that had the plaintiff here sued Dr. Gray instead of the Hospital, she could not have succeeded; but it decides nothing more.

In Hall v. Lees, 1904, 2 K. B. 602, an association called the Oldham Nursing Association was formed to supply aid and instruction in skilled nursing by nurses located in Oldham. It appointed nurses and paid their salaries, making charges for the services of their nurses to those who were supplied with them. A patient who had to undergo a serious operation was supplied with two nurses by the Association, one or other of whom negligently applied a hot bottle to her when still insensible from the anæsthetic, and burned her severely. The Association was sued, but the action was dismissed. The Master of the Rolls in giving judgment puts the case in a nutshell, pp. 610, 611: "The question, therefore, is whether under the circumstances of the case and having regard to the rules and regulations of the Association and the other documents, the contract is to nurse the patient or only to supply a nurse to the patient." The learned Master of the Rolls after discussing the rules and regulations etc., comes to the conclusion, p. 614: "the correct view of the contract is that the Association merely undertook to supply competent nurses who were to be under the orders of the patient's medical man and not the servants of the Association for the purpose of nursing the patient . . when the Association sent the nurses I do not think they were sending them to do in their place that which they had themselves undertaken to do. They never undertook . . . to nurse the female plaintiff but only to supply a competent nurse for that purpose." Stirling, L. J., says, p. 615: "The question broadly stated is whether the Association contracted to nurse the female plaintiff or merely to supply properly qualified nurses for that purpose." He thinks that there was no power in the Association to interfere with the nurse once supplied in "her duties in nursing the patient as between her and the employer." Mathew, L. J., puts his decision squarely on the ground that "the plaintiffs (i. e. the patient and her husband) were the nurses' employers for the purpose of nursing the patient" (p. 618). The Court was unanimous and the action was dismissed.

It seems to me that the *ratio decidendi* of the case just cited is conclusive of the present. The test is, did the defendants undertake to nurse or did they undertake only to supply a nurse? The Matron herself says that the $9.00 paid per week was to include nursing; and this concludes the defendants from denying that they contracted to nurse the patient.

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Hillyer v. Governor etc. St. Bartholomew's Hospital, 1909, 2 K. B. 820, is another case much relied on by the defendants. Hillyer, a medical man, entered St. Bartholomew's Hospital in London solely for the purpose of being