

fill that pad with boiling water, it would have struck her as an extraordinary thing and one calling for some explanation. . . it was a thing that could not have been done by Dr. B. unless through a slip of the tongue."

Of course, a surgeon could not shield himself from the results of an improper order. He has at the operation table no more right to make a slip of the tongue than a slip of the knife, and must guard against both equally.

But granted that an order is a real order of the medical man, a nurse is justified in obeying it unless it is plainly dangerous; and not being guilty of negligence herself, she cannot by so acting render her employers liable for damages for her acting in accordance with such an order.

Here the facts do not bring the nurse into such a condition.

Where a patient is or has recently been under an anæsthetic, there is a standing order in all hospitals to keep the bed warm. "It is," says the Matron, "a standing order to warm the bed"; this is taught by "the doctors originally training the nurses." The nurse under whose charge the patient is, attends to the heating of the bed and to the heating of bricks if bricks are used for that purpose. It was the duty of the nurse "when she was told that she had charge of the room where the patient was . . . to see that the bed was properly warmed," and "the doctor would not give her any direct order." If then the doctor finds the bed not such as he thinks it should be, he may give such orders as he sees fit, and these orders must be obeyed, but he does not ordinarily inspect the bed. As I have heard it said by a very eminent surgeon: "If I cannot trust my nurse I must give up surgery."

My learned brother at the trial put it quite accurately as follows:

"His Lordship: That narrows it to this extent, it is the duty of the nurse in the first place to do as suggested to her, in seeing that the bed is properly warmed for the patient, and then if the doctor comes in, it may be his duty to see if it is overheated or underheated, and give his directions in regard to that, but in the absence of any directions in regard to that, it stands that it is the nurse's duty."

There is much evidence, more or less loose, about the nurses being under the doctor's orders and the like, but the above fairly represents the result of the evidence taken as a whole.

In the present case the operating surgeon assisted in placing the patient in her bed after the operation, but took it for granted that the bed was properly heated, made no inquiries and gave no orders—and indeed such was the usual course; "they (the doctors) consider them (the nurses) all right, competent."

It cannot, therefore, be successfully contended that the nurse in placing as she did an overheated brick to the foot of the patient was following the doctor's orders; and it is quite clear that he knew nothing about what she did and that he gave no directions of any kind.

The main contention of the defendants is that they are not liable for the negligent act of the nurse, and many cases are cited in support of that proposition.

The first English case in point of time relied upon is *Perionowsky v. Freeman* (1866), 4 F. & F. 977. There the plaintiff came into St. George's Hospital in London suffering with a disease which required a warm hip bath, which was ordered by the surgeons. The nurses gave him a hip bath hot, too hot, so hot that he was severely scalded, but the surgeons were not near to give specific directions. They followed the usual course, "gave their directions that patients were to have hot baths and left it to the nurses to see to