

Whether such refusal is reasonable or not is a question to be decided upon all the circumstances of the case." This rule was not questioned by the Divisional Court or the Court of Appeal; 25 O. L. R. 137; 27 O. L. R. 122.

Dr. Reddick, her own physician, who had attended her before and after being in the hospital, cannot do more than say the operation might do good and might do harm. He does not seem to have advised it. In these circumstances it cannot be said that the condition of the patient is due to unreasonable refusal to undergo the operation. Were I permitted to draw on my own experience I could tell of a patient who refused to allow his arm to be amputated—the surgeon advising the operation but saying he could not be quite certain that it would do good. The patient made an excellent recovery, with the arm almost as useful as before.

Doctor Reddick's prognosis I give in his own words:

"Q. Has she recovered yet?

A. No.

Q. What is your opinion as to whether she will ever recover?

A. Very doubtful, to my mind, that she won't always be a sufferer more or less—perhaps get some better."

Little evidence is given of pecuniary damage. Perhaps most of such damage is that of the plaintiff's husband, who is not a party to this action, and whom we must leave to bring his own action if so advised.

But the pain and disability, past, present and future, call for a substantial assessment of damages; and with every regard for the defendants' position as a most estimable charity, I think the sum of \$900 cannot be regarded as excessive.

The appeal should be allowed with costs, and judgment entered for the plaintiff for the sum of \$900 and costs.

It may not be amiss to add a few statements:

(1) We proceed on the ground of an express contract to nurse, and express no opinion as to the law in the ordinary case of a patient entering the hospital without such contract.

(2) As a corollary of the above (while we think an implied contract has the same effect as an express contract in the same terms) we express no opinion as to the contract implied from a patient entering a hospital.

(3) We express no opinion as to what the result would have been had the negligence occurred in the operating theatre.

(4) None of the cases in any of the jurisdictions expresses any doubt that, whether the hospital is or is not, the nurse is liable for her own negligence in a civil action in tort; in some cases also criminally for an assault, simple or aggravated, and in fatal cases for manslaughter.

(5) There is no hardship in the present decision. The hospital can protect itself as was done in *Hall v. Lees* and in some of the American cases.

