

"The only case in our courts of which I am aware did not go further than the trial court. If the law was there correctly laid down—and I think it was—it would be conclusive of the present case in favor of the plaintiff. It is, however, not binding upon us; and it is not necessary in the present case to go so far as was done in that case.

In *Everton v. Western Hospital*, there was no special contract, the patient being admitted in the usual way to the Western Hospital, Toronto. He was a somewhat dissipated individual, and was suffering from pneumonia. He was placed in a ward on the top flat of the hospital building, about twenty-five feet from the ground, which at the time was frozen hard.

The nurse on duty was proved to be very careful, skilful and conscientious. She had been in the ward, looked at the patient carefully and found him quite quiet and apparently asleep. She then went out quietly into the hall to do something, but was still near the patient. Unfortunately, after this visit by the nurse, he got out of bed and made for the window, which he opened. He was going out head-foremost when the nurse rushed in and seized him by the nightdress; unfortunately it gave way, or she lost her hold. He sustained a fracture of the skull, and died, February 14th, 1903. The wife brought action, and the case was tried before Mr. Justice Britton and a jury at the Toronto jury sittings. A verdict of \$250 was awarded the plaintiff against the hospital. There was no appeal.

After all the cases it is plain that once the "trust fund theory" is got rid of—and it is conceded that it has now no footing in our law—the case is reduced to the question, What did the defendants undertake to do? If only to supply a nurse, then supplying a nurse selected with due care is enough; if to nurse, then, the nurse doing that which the defendants undertook to do, they are responsible for her negligence as in contract—*respondeat superior*.

I am of opinion that the plaintiff should succeed.

The only question remaining is as to the amount of damages to be awarded.

The patient who should have left the hospital in two weeks was forced to remain seven; she was then unable to walk and had to be carried out of the hospital; for more than four weeks she sat in a chair, and when she put her foot to the ground the leg would swell so as to require bandaging; a consultation of doctors resulted in the advice to return to the hospital, she being then just able to hobble, putting a little weight on the toe; she remained in the hospital nearly two months, slightly improving, but not permitted to put weight on the foot; even