

Several questions were submitted to the jury, most of which were not now of importance. Questions 6, 7, and 8 and the answers thereto were as follows:—

6. Was the defendant notified early enough on the 2nd December to permit his attending in time to render the plaintiff effective professional aid? A. Yes.

7. Did the notice which the defendant received justify him in believing that he would be in time if he reached the plaintiff at 8.30 p.m. A. No.

8. Was the defendant negligent in not attending? A. Yes.

There was no evidence which justified the answer to question 7.

The plaintiff was wrong in her contention that when a professional man undertakes to attend a case of this description he thereby undertakes to drop all other matters in hand to attend the patient instantaneously, upon receiving a notification. He must, having regard to all the circumstances, act reasonably. The first message received did not indicate any urgency. It was a request for him to call some time during the evening, and the message received from the husband did not then indicate any extreme urgency. The defendant had other patients who had some claim upon his time and attention. In view of the information he had, it could not possibly be said that he acted negligently or unreasonably.

The contract was with the husband—the action was by the wife. She could not sue on the contract, and her claim must be based upon tort. Had there been actual misfeasance in anything done to the plaintiff, she could recover for the tort—but an action for damages for failure to attend must be based on a breach of contract to attend.

The assessment of so large a sum as \$500 for damages indicated that the jury failed to understand the matter before them, or else acted perversely. There was no evidence to shew that the plaintiff suffered any greater pain by reason of the failure of the defendant to attend. Obviously no action would lie concerning the death of the child, for that was not shewn to have been occasioned by the defendant's non-attendance.

Further, the action was not brought under the Fatal Accidents Act.

The verdict and judgment should be set aside and the action should be dismissed.

*Appeal allowed.*