

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 enquiries 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, however, 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.”

His Lordship then examines the cases in England, and shows that there the true test is declared to be whether the defendants undertook to supply nursing or only the nurse—if the defendants' contract was only to supply a nurse to do the nursing they were not liable if they had used due care in selecting a nurse. Moreover, the defendants would not be liable in the English law if the negligence of the nurse took place in the operating room. “As soon as the door of the theatre or operating room has closed on them for the purposes of an operation, or an examination, the nurses cease to be under the orders of the defendants inasmuch as they take their orders during that period from the operating or examining surgeon alone.”

The Irish cases relieving hospitals from responsibility are shown to depend on the statutes governing Ireland, while the Scottish cases refer only to the negligence of the surgeon, for which the hospital was considered not to be liable.

In many of the American States the theory of the law was that a hospital conducted or a charity supported in whole or in part by contributions, public or private, and not intended to make a profit, is charged with a trust for all its money and property, and therefore can not be sued so as to take away any of its property from its intended purpose. This is the law of Massachusetts, Pennsylvania, Michigan, Ohio, Maryland and (at least in the absence of a special contract) New York. Rhode Island also has come round to that doctrine by the effect of an express law. The latest American case cited was during the present year in Alabama. There the court held that the hospital was responsible to the fullest extent for the negligence of its nurses.

The same law is laid down in British Columbia.

His Lordship then proceeds thus: