prove the nurse not to be such, a jury might infer that this act of negligence was attributable to her inexperience and lack of skill. A new trial was ordered. On the new trial the plaintiff had a verdict for $10,000.00 but the trial Judge refused to charge the jury that the defendants were not bound to assign to the plaintiff the best nurse in the hospital but only a nurse ordinarily well trained and ordinarily competent and skilful; and the unfortunate plaintiff, the flesh on whose leg had been "literally cooked to the bone," had to have another trial; 65 App. Div. 64. This time the trial Judge made another mistake by ruling out evidence and the verdict of $19,420.00 was set aside (1903), 78 App. Div. 317. I do not find any report of the next trial if there was one. Perhaps the plaintiff died or despaired of a trial without the Judge making a mistake or possibly the hospital paid up. At all events there is nothing in that case of use in the present. It was not a contract for nursing which was in question there but a contract to supply a particular kind of nurse.

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[At this point a portion of the judgment, the omission of which is made necessary by lack of space, sets forth that the "trust fund" theory, which exempts hospitals from liability for the acts of its servants, is in force in Pennsylvania, Ohio, Maryland, and Michigan.]

The most recent American case I have seen is one which eluded the vigilance of the diligent counsel but was quoted and discussed during the argument. It is in the Supreme Court of Alabama, Tucker v. Mobile Infirmary Ass'n (1915), 68 Sou. Rep. 4, which if I may say so without presumption contains a very valuable discussion of the law. There the plaintiff alleged that she went into the defendants' hospital and the "defendant undertook and promised to properly nurse and care for plaintiff preparatory to and during a surgical operation . . and thereafter until she had sufficiently recovered to leave" it; that "by reason of the negligence of one of the nurses employed by the defendant . . . after she had been operated on . . . plaintiff was badly scalded with boiling water both internally and externally." The defendant pleaded that it was a charitable institution, not operated for profit, having no stock and no stockholders, and exercised due care in the selection and retention of the nurse complained of and had no notice or knowledge of her incompetency. To this the plaintiff demurred; the demurrers were overruled, and the plaintiff appealed to the Supreme Court. The Court, Anderson, C. J., Gardner, McClellan, Sayre, Somerville and Thomas, JJ., (Mayfield, J., dissenting) held (1) that there was no difference between the case of a patient with an express and an implied contract, citing Duncan v. St. Luke Hospital, 113 App. Div. 68; (2) that a charitable hospital is in no higher position than any other corporation in respect of liability for the negligence of its servants, the "charitable trusts" theory, though supported by a great weight of authority in the American Courts, being untenable. The demurrers then were allowed. Most of the cases of moment are cited, and many discussed, in the very able judgment of Gardner, J. (speaking for the majority of the Court) and Mayfield, J. dissenting. I unreservedly approve the conclusions of the majority of the Court.

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In Everton v. Western Hospital (an Ontario case), there was no special contract, the patient being admitted in the usual way to the Western Hospital, Toronto. He was a somewhat dissipated person, and was suffering from pneumonia. He was placed in a ward on the top flat