

(2) While an implied contract would have the same effect as an express contract in the same terms, the Court expresses no opinion as to the contract implied from a patient entering a hospital.

(3) The Court expresses 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 the nurse herself 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 defendants can protect themselves as in *Hall v. Lees*, [1904] 2 K.B. 602, and in some of the American cases.

FALCONBRIDGE, C.J.K.B., and LATCHFORD and KELLY, JJ., agreed in the result, each reading a judgment.

*Appeal allowed with costs; and judgment to be entered for the plaintiff for \$900 and costs.*

SECOND DIVISIONAL COURT.

DECEMBER 10TH, 1915.

\*WILLS v. FORD.

*Contract—Brokers—Loan of Company-shares—Action for Return and Damages—Defence—Offer to Return and Refusal to Accept—Money Deposited with Lender as Security—Price of Shares—Rise in Value.*

The plaintiff, a member of the Standard Stock Exchange, Toronto, being the holder of some shares of Dome Mines stock, the defendant Ford, also a member of the Exchange, on the 8th July, 1914, "borrowed" 400 shares at \$9 per share, and on the 20th July, 1914, 350 shares at \$9.50, i.e., he put up in the plaintiff's hands as security \$3,600 and \$3,325. Of the 750 shares, 500 were returned. The plaintiff, alleging that he had demanded the remainder and been refused, brought this action for the return of the 250 shares, an account, and special damages. The defendant Doucette, by an arrangement, had taken the defendant Ford's place in the contract.