

there is any exaggeration or imposition as to the present physical condition of the plaintiff. Her appearance and manner put her case beyond fair controversy upon that point. The principal struggle in the case was over the question as to whether or not the plaintiff was bound, after her injuries were received, to submit herself to an operation of a serious character, which she was advised to undergo, and which eminent physicians regard as accompanied by comparatively slight risk of fatal issue.....It may be said that the evidence of physicians and surgeons in the case makes the conclusion justifiable that a surgical operation would probably bring large or complete relief to the plaintiff from her existing physical troubles. The operation referred to is one of comparatively recent date, and perhaps it may be said that the professional judgment in regard to it, and the best method of performing it, is not as yet absolutely settled. In any event, it is a serious operation, from which any person, and particularly a woman of sensitive and nervous organization, would naturally shrink. Possibly it may be regarded as true that the overwhelming probability would be in favor of the operation being successful, and yet it can hardly be claimed that there would be no risk of serious consequences and even death following the operation. The plaintiff has been unwilling to submit to it, and it was contended on behalf of the defendant that, under such circumstances, her rightful claim against the company was, in any event, greatly reduced. The trial judge declined to take such a view of the case. The jury was instructed, in substance, that if they believed that a surgical operation would bring relief to the plaintiff, and that it was of such a character that a person of ordinary prudence and regard for herself ought to submit to the same, that then they should consider the plaintiff as having been under a duty to submit to the operation in order to bring relief from her physical ills. It may be that this instruction was quite as favorable to the defendant as justice or a true view of the case would justify. We are not disposed to go to any greater length. It does not seem to us reasonable that where one has been hurt by the negligence of another, we should hold him or her bound in law to undergo a serious and critical surgical operation, which would necessarily be attended with some risk of failure and of death. Some regard must be had to the instinctive human shrinking from such experiences. A person must be permitted to exercise a liberty of choice, under such