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Editorial.

SURGEONS AND SPONGES.

The case of *Byrne v. Thorne*, in which a patient, Mrs. Byrne, brought an action against Miss May Thorne, M.D., to recover damages for alleged negligence in performing a surgical operation, which was heard in Mr. Justice Bruce's Court, involved points of extreme interest and importance to nurses. The essential facts were that Dr. Thorne operated on the patient for an abdominal tumour, and at a subsequent operation at the Sussex County Hospital it was found that a mattress sponge had been left in the abdominal cavity.

During the hearing of the case Dr. Thorne pleaded that she was not responsible for any negligence, as she had asked Mrs. Palmer, the nurse, if she had counted the sponges and if they were all right, and Mrs. Palmer replied that she had counted them and that they were all right.

Mr. Dickens, K.C., in summing up the case for the defendant, said that the first question for the jury to consider was the personal negligence of the defendant, the second was the personal negligence of Mrs. Palmer, the third was what was the contract between plaintiff and defendant. Did Mrs. Palmer contract to do the duties of a nurse and to count the sponges? Did the defendant contract to supply the nurse? A breach of his legal duty by reason of inattention and want of proper care and skill constituted negligence on the part of a medical practitioner. After reviewing the evidence, he contended that, so far as the defendant was concerned, the charge of negligence had fallen to the ground.

In regard to Mrs. Palmer, what were the relative positions of the defendant and Mrs. Palmer? Nurses were highly trained women, and were highly trusted, and must be trusted. The head nurse was a highly-trained woman, whose whole duty was to count the sponges. The surgeon did not enter into any contract with the nurse, nor did he control her. Was it

a want of care and skill for the surgeon not to check the counting of the sponges? It was impossible to say the surgeon was unskilful when she only did what a number of surgeons did.

For the plaintiff, Mr. Clavell Salter, K.C., urged that in a critical operation the surgeon was selected, above all things, for his care and skill; that the counting of the sponges was a vital part of the operation. The important question was not whether the surgeon had to count the sponges, but whether he was responsible for the way it was done. When it was conceded that it was a vital part of the operation, it was a thing the surgeon contracted to do or to see properly done. If the surgeon wished the nurse to count, let her count, and if he wished her to count unchecked, then let her count at the risk of the surgeon. In fairness, and as a matter of law, if a surgeon put in sponges, it was impossible for him to say he was not responsible for the counting.

Mr. Justice Bruce, after summing up, put the following questions to the jury:—

(1) Was the defendant guilty of a want of due and reasonable care in regard to the counting, or superintending the counting, of the sponges? (2) Was Mrs. Palmer, the Matron of the Home, employed by the defendant to act as her assistant during the operation? (3) Was Mrs. Palmer guilty of negligence in the counting of the sponges? (4) Was the counting of the sponges a vital part of the operation the defendant undertook to perform or see performed? (5) Was Mrs. Palmer under the control of the defendant during the operation?

The jury answered the first question in the affirmative; but added that they were of opinion that the operation was very skilfully performed, an opinion in which the judge coincided. They answered all the other questions in the affirmative, and ultimately assessed the damages at £25.

The important points in connection with the case are: that the public contract with a Registered Medical Practitioner for the skilful

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