

Legal Matters.

HALL v. LEES AND OTHERS.

In the Court of Appeal, before the Master of the Rolls, Lord Justice Stirling, and Lord Justice Mathew.

This was an application by the defendants for judgment or a new trial in an action tried before Mr. Justice Jelf and a special jury at Manchester Assizes, in November, 1903.

The action was brought by Mr. Harry Hall, of Oldham, and his wife against the members of the House Committee of the Oldham Nursing Association to recover damages for personal injuries sustained by Mrs. Hall by reason of negligence for which it was alleged the defendants were responsible.

The plaintiffs alleged that it was part of the business of the Oldham Nursing Association to supply trained nurses for reward for the purpose of nursing persons during sickness and assisting at operations, and that all the nurses so supplied were engaged by the defendants, and all contracts for the supply of such trained nurses were entered into with the defendants. The plaintiffs further alleged that in March, 1902, Mrs. Hall was about to undergo a surgical operation, and the defendants, at the request of the plaintiffs and for reward, supplied two trained nurses to attend Mrs. Hall during the operation and to nurse her afterwards until her recovery, and that the nurses, while Mrs. Hall was unconscious under chloroform, negligently placed and left hot-water bottles in contact with her body, in consequence of which she was severely burnt and injured. The defendants pleaded that they did not undertake to nurse Mrs. Hall, but only to find and supply her with two nurses of reasonable skill and competence to assist her at and after the operation, and to be throughout their attendance on her subject to the control and directions of the surgeons employed by the plaintiffs. Further, they pleaded that the nurses supplied by them were skilful and competent, and they (the defendants) had no power or control over them as servants, agents, or otherwise, or over their work while they were attending on Mrs. Hall. It appeared that the Association was a voluntary Association of persons who had undertaken the work of supplying trained nurses to persons in need of them within the district of Oldham. The wages of the nurses were paid by the Association, and the charge usually made by the Association where a nurse was sent to attend a case at a private house was two guineas a week.

At the trial, the learned Judge left two questions to the jury. The first question was: Was the injury to Mrs. Hall caused by negligence on the part of the nurses or either of them? Their answer was, Yes. The second question was: Did the Association undertake to nurse Mrs. Hall through the agency of the two nurses as their servants, or

only to procure for her the services of two nurses? The jury answered that the Association undertook to nurse her through the agency of the nurses as their servants. They assessed the damages, at £300. The learned Judge directed judgment to be entered for the plaintiffs for that amount. It was now contended on behalf of the defendants in support of the application for judgment or a new trial that, on the admitted evidence, the second finding of the jury could not be supported. There was no undertaking or contract on the part of the defendants to perform the work of nursing, but simply an undertaking to supply trained certificated hospital nurses. If any of the defendants had presented themselves at the house of a patient and tried to exercise any control over the nursing, that would have been not a performance of the contract, but a breach of it. They had no right to interfere in any of the details of the nursing. Secondly, even if they had contracted to nurse the patient, they had, in fact, no control over the work of nursing, which was entirely under the control of the doctor, and, therefore, they were under no liability. The following cases were cited:—*Rourke v. White Moss Colliery Company* (2 C.P.D., 205), *Donovan v. Laing* ([1893] 1 Q.B., 629). On the part of the plaintiffs it was contended that the relation of master and servant was clearly established between the Association and the nurses. The Association paid the nurses, they exercised a general control over them, and they had the power of dismissing them. They were, therefore, liable for the nurses' negligence.

Mr. Montague Lush, K.C., Mr. T. F. Byrne, and Mr. Arthur Page appeared for the defendants; Mr. Pickford, K.C., and Mr. W. Ambrose Jones for the plaintiffs.

The Master of the Rolls, giving judgment on the 15th inst., said that this was an interesting case and one of some public importance, for it had to do with a state of things which was very common, and in which the community at large was concerned. The defendants were the House Committee of an association of persons who from philanthropic motives had organised a system by which they supplied skilled nurses to attend surgical operations and other cases of sickness. They did this for persons who could not afford to pay for the attendance of nurses, and also for persons who could pay. The nurses were selected by them, and they took great care to get competent nurses. They paid them regular salaries, and in this way they were able to keep at their disposal a number of nurses of whose qualifications they were assured. In the present case, the applicant for a nurse was a person who was able to pay. He required a nurse to attend his wife, who had to undergo a serious operation. The application was made personally by the doctor who was attending the patient. He asked for a particular nurse, with whose capability he was acquainted, but he

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