

continued up to the time of the trial. The plaintiff further testified that the defendant admitted that the condition was his fault. There was also testimony by an expert to the effect that in an ordinary case, cutting or stitching through, as alleged by the plaintiff, would be a matter of carelessness. The further testimony of the plaintiff bearing directly on this point was to the effect that just before the second operation, when the defendant was asked by the plaintiff the cause of her condition, he replied: "I don't know. I can't account for it, unless I stitched into a blind fistula and didn't know it." The court thinks this evidence afforded a basis from which the jury reasonably might infer that the defendant was negligent; that there was no error in submitting the case to the jury.

It was urged that the trial court erred in refusing to sustain the defendant's instructions in the nature of demurrers offered at the close of the plaintiff's case, and again at the close of the defendant's evidence, and at the close of all the evidence. In passing on the ruling of the court on the defendant's demurrer to the plaintiff's evidence, the evidence of the defendant should be disregarded and only that tending to make a *prima facie* case for the plaintiff considered. It was insisted that the plaintiff was not entitled to go to the jury without direct and positive evidence of the defendant's negligence. Such is not the rule. A demurrer to evidence is sustainable only in the absence of material testimony or reasonable inference.

The plaintiff obtained a judgment for \$5,000 damages, but that is reversed and the cause remanded for a new trial on account of remarks made by the court throughout the trial, which were strongly prejudicial to the defendant.

Inference of Negligence in Repair of Perineum

(*Stratton v. Barnum (Mo.)*, 263 S. W. R. 476)

The Kansas City (Mo.) Court of Appeals says that the defendant performed on the plaintiff, a married woman who was suffering from a lacerated perineum, Emmett's modified operation, which was described by experts as a standard method. While he was denuding the tissues he encountered a blind fistula, put a purse-string suture around it, and pushed it into the rectum. He then proceeded with the operation, raising the floor of the vagina and taking the necessary stitches. A few days later infection set in, where the blind fistula was found, and caused a complete fistula, which did not respond to treatment, while an attempt to remedy the trouble by another operation was unsuccessful. In the plaintiff's petition it was alleged that through the defendant's negligence and unskillfulness, the rectum or colon of the plaintiff was torn, cut, lacerated or punctured, causing a hole or opening between the rectum and vagina, or between the rectum and just outside and below the vagina, which hole had since remained open; that the defendant had negligently and unskillfully operated for the purpose of healing the opening, and had failed, and had negligently and unskillfully treated the opening. The plaintiff testified that the first suffering that she experienced after coming from under the anesthetic was from severe pains and misery in the rectum, which continued until the fourth day thereafter, when the painful pulling in the rectum gave way; that in a short time an enema was given, and she noticed that the water was passing through the opening caused by the breaking loose of the stitches between the rectum and the vagina; that the movements from the bowels came through the opening, and she had no control over the gas; and that this condition had