

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. HO64 OF 1976

BETWEEN	JOYCE HIND	PLAINTIFF
AND	WALTER CRAIG, M.D.	FIRST DEFENDANT
AND	UNIVERSITY HOSPITAL BOARD OF MANAGEMENT	SECOND DEFENDANT

Hugh Levy Jnr. and Anthony Pearson for Plaintiff

Dr. Lloyd Barnett and Dr. Adolph Edwards for First Defendant

Dennis Goffe for Second Defendant

Tried - May 3, 4, 5, 1982.

Coram: Wolfe J.

On the 5th May 1982 Judgment was entered in this action for the First and Second Defendants against the Plaintiff with costs to be taxed if not agreed. At that time I promised to put my reasons in writing and I now do so.

The Plaintiff was a housewife aged 63 years when the cause of action arose in 1974. She was being treated by one Dr. Humphries for hypertension and had to be admitted to the Nutall Memorial Hospital. She had been referred to Dr. Humphries by her family physician Dr. Roland Richmond. Prior to her discharge from the Nutall Memorial Hospital on the 7th June 1974 Dr. Humphries informed her that he was making arrangements for her to have an Angiogram done at the University Hospital, Mona. An Angiogram briefly explained, is an X-ray photograph demonstrating the course of blood vessels (arteries or veins) after injection into them of a radio-opaque substance. On this particular instance the Plaintiff was to have a left carotid angiogram. This process involved the making of an entry into one of the femoral arteries followed by the insertion of a catheter which would be pushed up into the Aorta and then turned to the left carotid artery which is situated in the region of the neck.

On the 25th June 1974 the Plaintiff arrived at the University Hospital to have the procedure effected. Upon her arrival she did not see Dr. Craig, the First named Defendant, who was slated to perform the operation, but she was instructed by a nurse to undress and she was given a gown in which to clothe herself. This she did. She was then taken to the X-ray room and placed on a table at which time Dr. Craig arrived. The Plaintiff stated that neither Dr. Craig nor the nurse explained to her what was involved. She could^{not}/recall whether or not Dr. Craig was masked and gloved. However Dr. Craig himself stated that he was not masked but that he was gloved. The surgical procedure was performed under local anaesthetic, which meant that the patient remained awake during the performance. Under cross examination by Dr. Barnett, the Plaintiff said that although she was fully awake during the operation she was unable to see what the Doctor was doing, she "could only feel the movement of the instruments in his hand".

Upon completion of the procedure she was made to walk from the X-ray room back to the cubicle, where she dressed herself. From the cubicle she was transported in a wheel chair to her husband's car which had been waiting outside. From the University Hospital she was transported to Nutall Memorial Hospital where she was admitted overnight to recuperate and was discharged therefrom on the 26th June 1982.

The Plaintiff testified that her pubic hair was not shaved in preparation for the surgical procedure. The relevance of this piece of evidence will be significantly appreciated when the question of negligence is discussed.

In September 1974 the Plaintiff and her husband decided to spend a vacation in the United States of America. Before so doing the Plaintiff sought the advice of her family physician Dr. Richmond and he gave her the green light for her trip abroad.

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It is therefore reasonable to assume that up to this point in time the procedure performed by Dr. Craig had not manifested any ill effects. On the 4th September 1974 the Plaintiff and her husband left Jamaica for Miami. On arrival in Miami the Plaintiff developed terrible pains in the right groin where the incision was made, her right great toe became swollen and she noticed a red patch on the said toe. She felt very chilly and had no energy.

On 5th September she left Miami for New York where she consulted Dr. Goldman who examined her thoroughly and caused her to be admitted to the Montifore Hospital immediately where she underwent surgery.

The Plaintiff outlined in detail the preparation she underwent prior to surgery and I shall set out the detailed description given by her, as it contrasts with the preparation she received at the University Hospital and because the contrasting style of preparation was a string in the Plaintiff's bow as she sought to establish negligence in the First Named Defendant. The Plaintiff asserted that on the night prior to surgery she was shaved by a nurse, who removed her pubic hair also the hair on her legs, groin and stomach. Her skin was wiped with a solution and she was bandaged around the area of her stomach and a stocking was placed on her left leg up to her groin. This operation was performed on her left leg. Post operatively she was ordered to keep her left leg out stretched for a period of twenty four hours without bending it. A second operation was performed on her right side some eight to nine days after the first and the same preparatory methods were employed as in the case of the first operation. The Plaintiff had three operations in all. She remained in hospital until November when she was discharged. The cost of hospitalization was astronomical approximately US\$17,000.00 as opposed to J\$33.00 at the University Hospital.

Arising out of the facts outlined the Plaintiff commenced an action on the 6th day of May, 1976 against the Defendants to

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recover damages for negligence and breach of contract. The amended Statement of Claim is set out hereunder.

- "1. The First named Defendant is a Medical Practitioner who at all material times was employed as such at a Hospital run by the Second named Defendant.
2. The Second named Defendant at all material times maintained a Hospital known as the University Hospital of the West Indies at Mona in the Parish of Saint Andrew.
3. The Plaintiff was at all material times a patient in the said Hospital.
4. On or about the 23rd June, 1974, the First named Defendant acting as the Agent and/or Servant of the Second named Defendant performed an Operation on the Plaintiff by making an incision in the right femoral artery in the area of the right groin.
5. Within a few days of the said Operation the Plaintiff became ill as a result of an infection in the area of the operation in the right groin.
6. As a result of the negligence herein before pleaded the Plaintiff became ill and had to seek further Medical attention in the United States.
7. By reason of the matters aforesaid the Plaintiff suffered pain, injury, loss and damage.
8. The Plaintiff will further rely on the matters set forth in paragraph 4 and 5 hereof as evidence of negligence.

PARTICULARS OF NEGLIGENCE
OF THE FIRST NAMED DEFENDANT

- (1) Using an unsterilised or inadequately sterilised Needle and/or Guide Wire on the Plaintiff
- (2) Failure to see, or to see to it that the said Catheter and/or Guide Wire were sterilised or properly sterilised.
- (3) Failure to have the Plaintiff shaved and/or properly prepared for the said Operation.
- (4) Failure to use gloves and/or masks or to see to it that the attending nurse used gloves and/or masks.
- (5) Failure to take any or any adequate post operational precautions.

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- (6) Failure to advise the Plaintiff as to what if any, post operational precautions should be taken.

PARTICULARS OF NEGLIGENCE
AGAINST THE SECOND NAMED DEFENDANT

- (a) Employing an unskilful Medical Practitioner to attend to the Plaintiff.
- (b) Failing to see that the First named Defendant performed his duties in a skilful manner.
- (c) The Plaintiff will rely on the Particulars of Negligence pleaded against the First named Defendant as evidence of negligence of the Second named Defendant.
- (d) The First named Defendant was unskilful and/or negligent in the performance of the said Operation.

PARTICULARS OF PAIN AND INJURY
AS A RESULT OF THE OPERATION

60 days Hospitalisation due to illness
Infected femoral aneurysm
High temperature

PARTICULARS OF SPECIAL DAMAGES

Hospital bills	US\$ 11,533. 24
Surgery	2,000. 00
Anesthesia	275. 00
Hemaology	50. 00
Medical	1,666. 00
Extra Return Fare	200. 00
Room Rent - 9 weeks	360. 00
Transportation to Hospital	<u>200. 00</u>
	\$16,384. 24

AND THE PLAINTIFF CLAIMS DAMAGES.

SETTLED
D.A. SCHARSCHMIDT

HUGH LEVY, JNR.
ATTORNEY-AT-LAW FOR THE PLAINTIFF.

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In support of her claim the Plaintiff called two witnesses in the persons of her husband Rudolph Hind and Dr. Roland Richmond her family physician.

Before adverting to the evidence of these two witnesses, having already outlined the Plaintiff's evidence in chief, I propose to deal with her evidence under cross examination.

When cross examined by Dr. Barnett for the First Defendant the Plaintiff admitted that subsequent to the operation at the University Hospital and up to the time of her departure from Jamaica in September 1974 she experienced no adverse effects from the procedure performed by Dr. Craig. Indeed the green light given to her by Dr. Richmond to proceed on her vacation to the United States of America supports this frank admission by the Plaintiff. She further admitted that subsequent to the operation she developed a urinary tract infection for which she was treated by Dr. Richmond. However no evidence was adduced to show at what period after the operation this malady developed. She denied that any area of her body was shaved prior to the operation.

Mr. Goffe for the Second Defendant subjected the Plaintiff to a lengthy and thorough cross examination designed to show that if in fact the Plaintiff had contracted an infection, such an infection was not attributable to the negligence of the Defendants. I do not propose to refer to the details of that exercise because as it turned out on the evidence it was an exercise in futility. It is my view that no evidence was produced to substantiate the allegation that the Plaintiff's subsequent illness which occurred in the United States of America was due to an infection and that such an infection was caused by the negligence of the Defendants or even attributable to the procedure performed by Dr. Craig. I intend to elaborate upon this observation during the course of this judgment.

Rudolph Hind the Plaintiff's husband asserted that on the day in question he conveyed his wife to University Hospital and

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accompanied her into the area of the X-ray room. While they waited in that section of the building Dr. Craig arrived and introduced himself to them and informed them that he would be performing the procedure, whereupon Dr. Craig instructed the nurse on duty to have the Plaintiff change her clothes. This having been done the Plaintiff was taken into another room, the X-ray room. Thereupon he entered Dr. Craig's Office and seated himself to await the completion of the procedure. While there a nurse and a young man entered the office and removed from Dr. Craig's bottom desk drawer a catheter. The young man showed it to the nurse who told him that it "was the wrong one". A second catheter was removed from the said drawer whereupon the nurse advised that it "was the wrong size". A third catheter was taken from the drawer and met the approval of the nurse who along with the young man left Dr. Craig's office bearing the catheter to the X-ray room. He further stated that the nurse was gloved but unmasked. The young man had on neither mask nor glove but was dressed in a green outfit. Mr. Hind remained in Dr. Craig's office for a while after they departed from Dr. Craig's Office and then either out of curiosity or anxiety for his wife's predicament he walked across the passage and peeped through a glass window in the door of the X-ray room where he saw his wife lying on a table with Dr. Craig standing beside her. He could see only the back of Dr. Craig and was unable to say if Dr. Craig was wearing gloves. He was however positive that the doctor was not wearing a mask. His evidence concerning the mask is supported by Dr. Craig himself who said that he wore no mask during the procedure. Upon completion of the procedure he conveyed his wife from the University Hospital to the Nutall Memorial Hospital where she was admitted and discharged on the following day. He further supported his wife's testimony as to her illness in the United States of America.

Dr. Roland Richmond told the Court of having referred the Plaintiff to Dr. Humphries for treatment and subsequently treating

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her for the urinary tract infection. Thereafter he indulged the Court in a dissertation on the infection known as Pseudomonas. I must say I found the exposition quite interesting but it proved unhelpful to the Plaintiff as no nexus was established to show that the Plaintiff had suffered an attack of Psuedomonas.

That was the evidence adduced on behalf of the Plaintiff.

The first named Defendant Walter Craig testified that he was a Medical Practitioner and that he attended Princeton University graduating with a degree in biology which was followed by Medical School training at Tulane University in New Orleans, Lousiana.

Upon graduating from Medical School he served his internship at the Welford Hall Medical Centre in Texas and thereafter he served as a flight surgeon in the United States Air Force. Following his tour of duty in the Air Force which ended in 1972, he entered the University of Florida from 1972 - 5 where he was trained in diagnostic radiology. Since graduating from the University of Florida in 1975 he has been engaged in the private practice of diagnostic radiology. He was Board certified by the American Board of Radiology in 1975. He stated that he was the author of an article which was published in a journal called Paediatric Radiology. This article deals with how to perform angiography on very young children. In the field of Diagnostic Radiology he had worked at the University of Florida Teaching Hospital, Veterans' Administration Hospital, Gainesville, Florida, St. Vincents' Medical Centre, Jacksonville, Florida, and Halifax Hospital in Daytona Beach Florida.

In 1976 he was assigned to the University of the West Indies Hospital as a member of the Pilot Project Hope, having completed several hundreds of angiographic procedures. His assignment at the University of the West Indies Hospital involved specifically the teaching of angiography. He asserted that the procedures which were established at the University Hospital were very similar

to those used at the University of Florida and were of the highest quality.

This is indeed an impressive catalogue of qualifications and work experience which the Plaintiff did not seek to challenge, and which is of importance when the court comes to consider the allegation of negligence against the Second Named Defendant, to wit, "that it employed an unskilful medical Practitioner to attend to the Plaintiff".

Dr. Craig gave detailed evidence of the manner in which he performed the procedure upon the Plaintiff in particular he testified that the pubic hair of the Plaintiff was shaved prior to the procedure being performed. He contended that it was unnecessary to shave the whole pubic area as what was really required was to create a sterile field for insertion of the needle into the artery. He further testified that all equipment used in the procedure was adequately sterilized.

Question of Negligence re First Named Defendant.

The allegations of negligence against the First Named Defendant may be summarized as follows:

- (a) Using or causing to be used an unsterilized or inadequately sterilized catheter and/or needle and or Guide wire on the Plaintiff.
- (b) Failure to have the Plaintiff shaved and/or properly prepared for the procedure.
- (c) Failure to use gloves and/or masks or to see to it that the attending nurses used gloves and/or masks.
- (d) Failure by the First Defendant to take any or any adequate post operational precautions or to advise the Plaintiff as to what if any post operational precautions should be taken.

It is an elementary principle of law that "He who alleges must prove".

The first hurdle which the Plaintiff had to clear was to establish that her subsequent illness resulted from the procedure performed by Dr. Craig. In this regard the Plaintiff failed miserably. There was no evidence from which such a finding could have been made. There was no nexus established between the surgery performed by Dr. Craig and the Plaintiff's subsequent illness. The Court was left to grope in the dark and to infer from non existing evidence the cause of the Plaintiff's subsequent condition. It may be a timely reminder to state that inferences are only drawn from proved facts. On the evidence adduced the cause of the Plaintiff's illness, following the procedure performed by Dr. Craig, must be listed as an unsolved mystery. I make bold to say that even if every allegation of negligence made against the First Named Defendant had been established it would have been difficult if not impossible to infer from such evidence that the Plaintiff's subsequent condition was due to the negligence of the First Named Defendant, having regard to the lapse of time between the procedure which was performed at the University Hospital on the 25th June 1974 and her illness which occurred in Florida on the 4th September 1974.

I accept the evidence of Dr. Craig that all equipment used was properly and adequately sterilized and I find that in the performance of the procedure he acted in accordance with the general and approved practice for such a procedure.

See Marshall v. Lindsey C.C.

1935 1 K.B. 516, 540

per Maugham L.J.

approved by H.L. in Whiteford v. Hunter [1950]

W.N. 553.

The fact that the preparations for surgery in the United States differed from that done by Dr. Craig is not in itself evidence of negligence.

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A medical man "is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art ... merely because there was a body of opinion who would take a contrary view".

See Bolam v. Friern Hospital Management Committee
[1958] 1 W.L.R. 582, 587.

I therefore hold, that for the reasons above that the Plaintiff has failed to establish negligence on the First Named Defendant.

The Plaintiff's case against the Second Named suffers the same fate as that against the First Named Defendant. The case against the Second Named Defendant was based on the alleged negligence of the First Named Defendant and who, as already indicated, has been absolved of any negligence in the discharge of the duty of care which he owed to the Plaintiff.

On the basis of the Foregoing Judgment was entered for the Defendants against the Plaintiff with costs to be taxed if not agreed.