

QUEEN'S BENCH DIVISION

BARNETT v CHELSEA AND KENSINGTON HOSPITAL MANAGEMENT COMMITTEE [1969] 1 QB 428

November 8 1967

Full text

FACTS At a hospital casualty department, provided and run by the defendants, three fellow night-watchmen presented themselves, complaining to a nurse on duty that they had been vomiting for three hours after drinking tea. The nurse reported their complaints by telephone to the duty medical casualty officer, who thereupon instructed her to tell the men to go home to bed and call in their own doctors. That she did. The men then left, and, about five hours later, one of them died from poisoning by arsenic which had been introduced into the tea; he might have died from the poisoning even if he had been admitted to the hospital wards and treated with all care five hours before his death.

NIELD J:

... It remains to consider whether it is shown that the deceased's death was caused by this negligence or whether, as the defendants have said, the deceased must have died in any event.

In his concluding submission, counsel for the plaintiff submitted that [the casualty officer] should have examined the deceased and, had he done so, he would have caused tests to be made which would have indicated the treatment required and that, since the defendants were at fault in these respects, therefore the onus of proof passed to the defendants to show that the appropriate treatment would have failed, and authorities were cited to me. I find myself unable to accept this argument and I am of the view that the onus of proof remains on the plaintiff... However, were it otherwise and the onus did pass to the defendants, then I would find that they have discharged it, as I would proceed to show.

There has been put before me a timetable which, I think, is of much

importance. The deceased attended at the casualty department at 8.05 or 8.10 a.m. If [the casualty officer] had got up and dressed and come to see the three men and examined them and decided to admit them, the deceased (and Dr L agreed with this) could not have been in bed in a ward before 11 a.m. I accept Dr G's evidence that an intravenous drip would not have been set up before 12 noon, and if potassium loss was suspected, it could not have been discovered until 12.30. Dr L, dealing with this, said 'If [the deceased] had not been treated until after 12 noon the chances of survival were not good'.

Without going in detail into the considerable volume of technical evidence which has been put before me, it seems to me to be the case that when death results from arsenical poisoning it is brought about by two conditions; on the one hand dehydration and on the other disturbance of the enzyme processes. If the principal condition is one of enzyme disturbance - as I am of the view that it was here - then the only method of treatment which is likely to succeed is the use of the specific or antidote which is commonly called BAL.

Dr G said this in the course of his evidence:

'The only way to deal with this is to use the specific BAL. I see no reasonable prospect of the deceased being given BAL before the time at which he died,' and at a later point in his evidence: 'I feel that even if fluid loss had been discovered death would have been caused by the enzyme disturbance. Death might have occurred later'.

I regard that evidence as very moderate, and that it might be a true assessment of the situation to say that there was no chance of BAL being administered before the death of the deceased. For these reasons, I find that the plaintiff has failed to establish, on the grounds of probability, that the defendants' negligence caused the death of the deceased.

Full text

NIELD J:

At the outset of my judgment in this case I propose to indicate the general

conclusions which I have reached. I do so for two reasons: the first, so that those who are most nearly interested are not required to wait throughout a lengthy judgment to know what my decision is; the second, so that counsel may consider whether or no further argument is needed before judgment is finally entered.

My conclusions are: that the plaintiff, Mrs. Bessie Irene Barnett, has failed to establish, on the balance of probabilities, that the death of the deceased, William Patrick Barnett, resulted from the negligence of the defendants, the Chelsea and Kensington Hospital Management Committee, my view being that had all care been taken, still the deceased must have died. But my further conclusions are that the defendants' casualty officer was negligent in failing to see and examine the deceased, and that, had he done so, his duty would have been to admit the deceased to the ward and to have treated him or caused him to be treated.

The plaintiff is the widow of the deceased, who died on January 1, 1966, from arsenical poisoning, and she is also the administratrix of his estate. She claims damages on behalf of herself and two of her children as dependants of the deceased and also on behalf of his estate. The defendants were at all material times responsible for the management of St. Stephen's Hospital, Chelsea.

[His Lordship stated the facts, stated that the point had been made that the watchmen might have called in the college doctor instead of going to the hospital, commented that they could not be in any way blamed for not calling him in since they would not know the terms of his appointment by the college and might well have hesitated before disturbing him at an early hour, commented further that the inference was that some person with murderous intent had introduced arsenic into the tea, and continued:]

The plaintiff's case is pleaded in this way:

'The said death was due to the negligence of the defendants by their servants or agents in not diagnosing or treating the deceased's condition.'

It is put on behalf of the plaintiff that the defendants should have inferred that the deceased was suffering, or might be suffering, from poisoning;

that they failed to investigate or diagnose the deceased's condition when he presented himself at the hospital; that they failed to treat him for poisoning, and they so failed having knowledge of the history of vomiting.

I turn to consider the nature of the duty which the law imposes upon persons in the position of the defendants and their servants and agents. The authorities deal in the main with the duties of doctors, surgeons, consultants, nurses and staff when a person is treated either by a doctor at his surgery or the patient's home or when the patient is treated in or at a hospital.

In *Cassidy v. Ministry of Health* Denning L.J. dealt with the duties of hospital authorities and said :

‘In my opinion authorities who run a hospital, be they local authorities, government boards, or any other corporation, are in law under the self-same duty as the humblest doctor; whenever they accept a patient for treatment, they must use reasonable care and skill to cure him of his ailment. The hospital authorities cannot, of course, do it by themselves; they have no ears to listen through the stethoscope, and no hands to hold the surgeon's knife. They must do it by the staff which they employ; and if their staff are negligent in giving the treatment, they are just as liable for that negligence as is anyone else who employs others to do his duties for him. What possible difference in law, I ask, can there be between hospital authorities who accept a patient for treatment, and railway or shipping authorities who accept a passenger for carriage? None whatever. Once they undertake the task they come under a duty to use care in the doing of it, and that is so whether they do it for reward or not.’

Here the problem is different and no authority bearing directly upon it has been cited to me. It is to determine the duty of those who provide and run a casualty department when a person presents himself at that department complaining of illness or injury and before he is treated and received into the hospital wards.

This is not a case of a casualty department which closes its doors and says that no patients can be received. The three watchmen entered the defendants' hospital without hindrance, they made complaints to the

nurse who received them and she in turn passed those complaints on to the medical casualty officer and he sent a message through the nurse purporting to advise the three men. Is there, on those facts, shown to be created a relationship between the three watchmen and the hospital staff such as gives rise to a duty of care in the defendants which they owe to the three men?

In *Donoghue v. Stevenson*, Lord Atkin referred to *Le Lievre v. Gold* when A. L. Smith L.J. said:

‘The decision of *Heaven v. Pender* was founded upon the principle, that a duty to take care did arise when the person or property of one was in such proximity to the person or property of another that, if due care was not taken, damage might be done by the one to the other.’ I think that this sufficiently states the truth if proximity be not confined to mere physical proximity, but be used, as I think it is intended, to extend to such close and direct relations that the act complained of directly affects a person whom the person alleged to be bound to take care would know would be directly affected by his careless act.’

In my judgment, there was here such a close and direct relationship between the hospital and the watchmen that there was imposed upon the hospital a duty of care which they owed to the watchmen. Thus I have no doubt that Nurse Corbett and the medical casualty officer were under a duty to the deceased to exercise that skill and care which is to be expected of persons in such positions acting reasonably, or, as it is, I think very helpfully, put by the learned author of *Winfield on Torts*, 7th ed. (1963), p. 183:

‘Where anyone is engaged in a transaction in which he holds himself out as having professional skill, the law expects him to show the average amount of competence associated with the proper discharge of the duties of that profession, trade or calling, and if he falls short of that and injures someone in consequence, he is not behaving reasonably.’

And the author proceeds to give a warning that the rule must be applied with some care to see that too high a degree of skill is not demanded, and he gives the example: ‘a passer-by who renders emergency first-aid after

an accident is not required to show the skill of a qualified surgeon.’

Let me say at this stage that there is no complaint against Nurse Corbett that she failed in her duty.

There are two main questions here: Has the plaintiff established, on the balance of probabilities, (1) that the medical casualty officer was negligent, and, if so, (2) that such negligence caused the death of the deceased?

The first of those questions can be divided into four other questions. (1) Should the doctor have seen the deceased? (2) Should he have examined the deceased? (3) Should he have admitted the deceased to the wards? and (4) should he have treated or caused to be treated the deceased? The first two of those four questions can be answered together.

It is not, in my judgment, the case that a casualty officer must always see the caller at his department. Casualty departments are misused from time to time. If the receptionist, for example, discovers that the visitor is already attending his own doctor and merely wants a second opinion, or if the caller has a small cut which the nurse can perfectly well dress herself, then the casualty officer need not be called. However, apart from such things as this, I find the opinion of the witness Dr. Sydney Lockett entirely acceptable. He said - and I give his words as nearly as I can, not having had a shorthand writer:

‘In my view, the duty of a casualty officer is in general to see and examine all patients who come to the casualty department of the hospital.’ - He then cited some exceptions such as I have stated. - ‘When a nurse is told that three men have been vomiting having drunk tea and have abdominal pains her duty is to report it, and she should report accurately to the doctor. The first step she should take to deal with the matter is to take a history’ - and the doctor put it most emphatically in this way - ‘I cannot conceive that after a history of vomiting for three hours a doctor would leave the matter to a nurse, however experienced the nurse.’

Without doubt the casualty officer should have seen and examined the deceased. His failure to do either cannot be described as an excusable

error as has been submitted. It was negligence. It is unfortunate that he was himself at the time a tired and unwell doctor, but there was no one else to do that which it was his duty to do. Having examined the deceased I think the first and provisional diagnosis would have been one of food poisoning.

The third question is, should he have admitted the deceased to the wards? It is sufficient to say that I accept Dr. Lockett's opinion that, having regard to all the circumstances, it was the casualty officer's duty to have admitted him.

The fourth question is, should the casualty officer have treated the deceased or caused him to be treated? and it is the case that, once admitted, the deceased's case could have gone to the medical registrar or to others if such was the desire. The immediate purpose of admission would be for observation and diagnosis. No one who has listened to the evidence can doubt that arsenical poisoning is extremely difficult to diagnose. Professor Camps accepted some figures put to him which were that, out of 6,000 deaths between 1955 and 1965 from poisoning, only five were due to arsenical poisoning. Again, that 3,000,000 or 4,000,000 people are admitted to about 5,000 hospitals in the course of a year and only 60 were cases of arsenical poisoning or potassium loss.

I conclude that after a period of observation and after taking the patient's blood pressure and subjecting him to other general tests, and upon a reconsideration of the history, in particular the fact that vomiting had occurred within 20 minutes of drinking the tea and also finding loss of fluid, the doctor would have rejected the provisional diagnosis of food or staphylococcal poisoning and have decided that it might well have been a case of metallic poisoning. In any event, I am satisfied that the deceased's condition of dehydration and severe malaise was such that intravenous treatment should have been given. Further, I think it would have become plain that it was necessary to test a specimen of the deceased's blood and in the end to send certain other specimens away for analysis to discover what poison it was which was causing the deceased's condition.

Thus it is that I find that under all four headings the defendants were negligent and in breach of their duty in that they or their servants or

agents did not see and did not examine and did not admit and did not treat the deceased.

It remains to consider whether it is shown that the deceased's death was caused by that negligence or whether, as the defendants have said, the deceased must have died in any event. In his concluding submission Mr. Pain submitted that the casualty officer should have examined the deceased and had he done so he would have caused tests to be made which would have indicated the treatment required and that, since the defendants were at fault in these respects, therefore the onus of proof passed to the defendants to show that the appropriate treatment would have failed, and authorities were cited to me. I find myself unable to accept that argument, and I am of the view that the onus of proof remains upon the plaintiff, and I have in mind (without quoting it) the decision cited by Mr. Wilmers in *Bonnington Castings Ltd. v. Wardlaw*. However, were it otherwise and the onus did pass to the defendants, then I would find that they have discharged it, as I would proceed to show.

There has been put before me a timetable which I think is of much importance. The deceased attended at the casualty department at five or 10 minutes past eight in the morning. If the casualty officer had got up and dressed and come to see the three men and examined them and decided to admit them, the deceased (and Dr. Lockett agreed with this) could not have been in bed in a ward before 11 a.m. I accept Dr. Goulding's evidence that an intravenous drip would not have been set up before 12 noon, and if potassium loss was suspected it could not have been discovered until 12.30 p.m. Dr. Lockett, dealing with this, said: 'If this man had not been treated until after 12 noon the chances of survival were not good.'

Without going in detail into the considerable volume of technical evidence which has been put before me, it seems to me to be the case that when death results from arsenical poisoning it is brought about by two conditions; on the one hand dehydration and on the other disturbance of the enzyme processes. If the principal condition is one of enzyme disturbance - as I am of the view it was here - then the only method of treatment which is likely to succeed is the use of the specific antidote which is commonly called B.A.L. Dr. Goulding said in the course of his

evidence:

‘The only way to deal with this is to use the specific B.A.L. I see no reasonable prospect of the deceased being given B.A.L. before the time at which he died’ - and at a later point in his evidence - ‘I feel that even if fluid loss had been discovered death would have been caused by the enzyme disturbance. Death might have occurred later.’

I regard that evidence as very moderate, and it might be a true assessment of the situation to say that there was no chance of B.A.L. being administered before the death of the deceased.

For those reasons, I find that the plaintiff has failed to establish, on the balance of probabilities, that the defendants’ negligence caused the death of the deceased.