

60, 1934

In the Privy Council.

No. 19 of 1934.

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APPELLANT'S CASE.

ON APPEAL FROM THE COURT OF APPEAL FOR THE PROVINCE OF BRITISH COLUMBIA.

BETWEEN

VANCOUVER GENERAL HOSPITAL (Defendant) *Appellant*

AND

ANNABELLE MCDANIEL an Infant, by MATHEW G.
MCDANIEL her next friend and the said MATHEW
G. MCDANIEL (Plaintiffs) - - - Respondents.

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CASE FOR THE APPELLANT.

Record.

1. This is an Appeal from the Judgment of the Court of Appeal of British Columbia dated the 6th June, 1933, affirming by a majority (dissentiente McPhillips, J.A.) the Judgment of Fisher, J., in the Supreme Court of British Columbia dated the 13th January, 1933, whereby it was ordered that the Infant Respondent and the Respondent Mathew G. McDaniel should recover against the Appellant the sums of \$5,000.00 and \$545.00 respectively and costs. p. 182. pp. 182-3.

2. The sum of \$5,000.00 represents damages on account of personal disfigurement caused to the Infant Respondent as a result of smallpox and the sum of \$545.00 represents medical expenses incurred by her father the Respondent Mathew G. McDaniel and general damages. These sums were awarded on the ground that the Appellant negligently caused the Infant Respondent to contract smallpox while she was a patient suffering from diphtheria in the Appellant's Infectious Diseases Hospital in Vancouver during the period from the 17th January to the 3rd February, 1932. Smallpox did not actually break out on the Infant Respondent until about the 12th February after she had left the Hospital but the incubation period p. 64, l. 33.

Record. for smallpox is from ten to fourteen days and it therefore must be assumed that she contracted the infection at a date when she was still in the Hospital. No dispute arises on this Appeal as to the amount of the damages awarded.

3. This Appeal involves two principal questions :—

(1) Whether the Infant Respondent contracted smallpox as a result of infection (technically described as “ cross-infection ”) from other patients who had been placed in the Infectious Diseases Hospital suffering from smallpox.

(2) Whether, if so, this was due to the negligence of the Appellant. 10

A further question arises :—

(3) Whether the failure of the Respondent Mathew G. McDaniel to procure the vaccination of the Infant Respondent is not a circumstance which disentitles the Respondents from obtaining damages from the Appellant.

4. All three questions were decided in favour of the Respondents. The issue which was dealt with at the greatest length in the judgments under appeal was that of negligence and this issue was decided against the Appellant upon the ground (shortly stated) that the system adopted by the Appellant for the prevention of cross-infection was inadequate for the purpose. It was not alleged that the Appellant or its staff had been negligent in working the system. 20

The Appellant's submission on this part of the case (shortly stated) is and was that the system in question was adopted on the recommendation of its medical advisers, is in accordance with modern hospital practice, and is regarded by expert medical opinion as safe. The evidence upon these matters is, in the submission of the Appellant, conclusive and indeed is not questioned by the judgments under appeal which decided that in spite of these facts the Appellant was guilty of negligence because, as was held, the system had proved defective in practice on this occasion. 30

The system in question is known as the “ Unit ” or “ Consolidated ” system and under it the necessary isolation of patients suffering from infectious diseases including smallpox is effected by a careful technique of washing and sterilisation of persons or objects who or which have been directly or indirectly in contact with the patients. By this means the necessity of placing patients in separate buildings (as used to be done under the old practice in case of smallpox) is avoided.

5. The Appellant is a corporation incorporated by the Vancouver General Hospital Act (Chapter 69 Statutes of British Columbia 1902).

- 6.** On the 17th January, 1932, the Infant Respondent, being at that date nine years of age, on the application of her physician, Doctor Kennedy, was admitted into the Appellant's building known as the Infectious Diseases Hospital suffering from diphtheria. This is a building beside the Appellant's main administration building and was erected in or about the year 1927 for the purpose of treating infectious diseases generally. The Infant Respondent was placed in a separate room on the third floor. Record.
p. 9, l. 12
et seq.
p. 1, l. 20.
p. 81, l. 20,
l. 43.
p. 42, ll.
38-40.
- 7.** The Infant Respondent was admitted as a paying patient at the rate of \$2.50 a day. This entailed that she received medical attendance from her own Doctor, Doctor Kennedy, and nursing attendance from the nursing staff of the Infectious Diseases Hospital. p. 44,
ll. 40-44.
- 8.** At the time of the Infant Respondent's entry into the Infectious Diseases Hospital smallpox had broken out in the City of Vancouver. Doctor Kennedy was aware of this and he also knew that smallpox cases had been treated in the Infectious Diseases Hospital in the past. p. 142, l. 3.
p. 16,
ll. 18-33.
- 9.** On the 17th January there were no smallpox cases in the building but a case was admitted and placed on the third floor on the 18th January. On the 21st January another case was brought in and placed in a room adjoining that of the Infant Respondent. By the 28th January a total of three cases had been admitted and four more were brought in on the 29th January. All of them were placed in rooms on the third floor. p. 42, l. 24.
p. 42, l. 33.
p. 43, l. 1.
p. 43, l. 6.
p. 43, l. 9.
p. 43, l. 12.
p. 50,
ll. 1-2.
- 10.** On the 28th or 29th January Doctor Kennedy learnt for the first time that smallpox cases were being treated on the third floor having received his information from the Infant Respondent's mother. As a result of representations by him the Infant Respondent was moved, on the 29th January, into a room on the second floor of the building. No smallpox cases were treated on this floor during the relevant period. p. 9, l. 31,
l. 42.
p. 51, l. 24.
p. 50, l. 2.
- 11.** On the 3rd February, 1932, the Infant Respondent was discharged from the Infectious Diseases Hospital. On or about the 12th February she was diagnosed by Doctor Kennedy as suffering from smallpox. p. 10, l. 41.
p. 11, l. 2.
- 12.** The Appellant does not dispute that during the period from 17th January, to 29th January (I) patients suffering from smallpox were placed on the same floor and in one case in a room adjoining that of the Infant Respondent (II) nurses who attended these smallpox patients also attended her (III) there was no separate kitchen for the food and dishes of the smallpox patients. But, as the Appellant submits, the evidence establishes that its procedure in this respect governed as it was by proper regulations as to sterilisation and avoidance of contact, was in accordance with accepted modern hospital practice and is a normal feature of that

Record. particular system of treating and isolating infectious diseases in operation at the Infectious Diseases Hospital and other up-to-date hospitals in Canada and the United States.

13. The Appellant's evidence with respect to this system and its operation during the material period is substantially as follows :

p. 105, l. 28
et seq.
p. 111, l. 3
et seq.
p. 111, l. 11.
p. 105, l. 38.

(A) The Infectious Diseases Hospital was erected in or about the year 1927 as a building specially designed for treating infectious diseases generally. It was erected in pursuance of a report made to the Appellant's Board following on the investigations of a deputation from the Appellant and the Vancouver City Council ¹⁰ which in the year 1925 visited Oakland, San Francisco, Los Angeles and Portland (all in the United States of America) for the purpose of studying the systems of treating infectious diseases in operation at the hospitals in those cities. This deputation included Doctor Bell who was the Appellant's Superintendent at the time and Doctor Underhill who was then the Medical Health Officer for the City of Vancouver.

p. 105, l. 42.
p. 110, l. 41.

p. 59, l. 40.

(B) The system of treating and isolating infectious diseases for which the building was designed is known as the "Unit" or "Consolidated" System in contrast to the older "Pavilion" ²⁰ system. Under the old system smallpox is treated in a separate building but under the "Unit" System infectious diseases (including smallpox) are treated in one general isolation building, the patients being placed in separate rooms or in cubicles or occasionally in open wards side by side. With reference to smallpox, Doctor MacEachern Associate Director of the American College of Surgeons and Director of Hospital Activities who, in the year 1931, inspected the Infectious Diseases Hospital in the course of his duties stated in evidence "It was the old custom of having smallpox treated in separate pavilions but those pavilions are being closed up more ³⁰ and more and smallpox treated more and more in the general isolation building. That is the general prevailing custom." This evidence was confirmed by the other medical witnesses called on behalf of the Appellant.

p. 61, l. 11.
p. 61, l. 15.
p. 58, l. 16.
p. 62, l. 12.
p. 66, l. 28.

p. 61, l. 38.

The Third floor of the Infectious Diseases Hospital consists of a number of separate single bed-rooms with an eight bed ward at each end. A plan is contained in a folder at the end of the Record.

p. 113, l. 23.

p. 123, l. 31.
p. 110, l. 5.
p. 119, l. 43.
p. 117, l. 20.

(C) Smallpox as such was treated in the Infectious Diseases Hospital from about the end of the year 1930 onwards when the City of Vancouver's separate smallpox isolation hospital was ⁴⁰ discontinued. During that period there had been no epidemic but a few separate cases had been treated.

(D) As already stated, under the "Unit" system isolation is effected by a technique of washing and sterilisation of persons and objects who or which have been directly or indirectly in contact with the patients. The Rules on this subject in operation at the Infectious Diseases Hospital during the material period are contained in Exhibits 3, 5 and 6 in the Record.

Record.
p. 60, l. 12
et seq.
pp. 186-193.
p. 111, l. 34.
p. 112, l. 24.
p. 113,
ll. 19-22.

(E) It will be seen that these Rules do not envisage a separate kitchen for any class of patient. Isolation in this respect is effected by a provision for sterilisation of the dishes and other utensils immediately after they have been used by the patients. This sterilisation was performed at the Infectious Diseases Hospital by a specially trained maid. There was a kitchen on each floor of the building. There was no suggestion that the provisions for sterilisation had not been properly carried out.

p. 193, l. 5.

p. 84,
ll. 38-41.
p. 45, l. 14.

(F) A staff of eight graduate nurses, ten student nurses, three orderlies, two maids and one cleaner was in attendance on each floor of the Infectious Diseases Hospital. But maids did not enter the patients' rooms and orderlies did not attend children. Therefore apart from Hospital Officials and House Doctors and cleaners the only members of the Appellant's staff who in fact came into the Infant Respondent's room and also attended smallpox patients on either the third or the fourth floor were the nurses. The nurses were under the control of Miss Fairlie, the Appellant's Director of Nursing, who acted under Doctor Haywood the Superintendent.

p. 44, l. 33.

p. 52, l. 11.
p. 93, l. 15.

p. 69, l. 43.
p. 66, l. 39.
p. 67, l. 1.

(G) Miss Fairlie gave evidence to the effect that the staff at the Infectious Diseases Hospital was efficient and well-trained. Neither Doctor Haywood nor Miss Fairlie came across any case of an infraction of the Hospital discipline and Rules. Doctor Wylde and Doctor Norine the Internes or House Physicians on duty during the material period stated in evidence that whenever they visited the Infant Respondent they had always observed the technique required by the rules for persons entering patients' rooms.

p. 69, l. 44.
p. 117, l. 20.
p. 73, l. 31.
p. 132, l. 19.
p. 133, l. 8.

(H) With respect to the possibility of air-borne transmission of smallpox Doctor MacEachern stated that he could not see that there was very much danger of this except in "a very filthy place where particles of dirt were carried around."

p. 65, l. 33.

(I) The Appellant's medical witnesses (Doctor MacEachern, Doctor Bell, Doctor Underhill, Doctor Haywood, Doctor Carder the Epidemiologist to the City of Vancouver and Doctor McIntosh, the Medical Health Officer for the City of Vancouver) all gave evidence to the effect that the system and technique of isolation in operation at the Infectious Diseases Hospital during the material period was in accordance with accepted modern Hospital practice.

p. 58.
p. 110,
p. 104,
p. 115.
p. 123.
p. 133.
p. 62, l. 39, l. 45.
p. 106, l. 30, l. 34.
p. 112, l. 7, l. 22.

Record.
 p. 116, l. 37.
 p. 117, l. 18.
 p. 124, l. 36, l. 41.
 p. 134, l. 13, l. 14.
 p. 62, l. 40, l. 46.

They specifically approved as satisfactory the placing of smallpox patients in rooms adjoining those of other patients and allowing nurses who had attended smallpox patients to attend to other patients provided the proper precautions were taken. Doctor MacEachern stated in evidence that this was "accepted practice."

p. 8, l. 31.
 p. 17, l. 2.
 p. 11, l. 13.
 p. 12, l. 14.
 p. 135, l. 20.
 p. 150, l. 30.
 p. 151, l. 4.

14. The only medical witness called for the Respondents was Doctor Kennedy a physician in general practice in Vancouver, who believed in a separate isolation building for smallpox cases and considered that the Appellant's system exposed patients to undue risk. There were however certain passages in a text book called "Preventive Medicine and Hygiene" 10 by Milton J. Rosenau which, while they sanctioned treatment of smallpox in the general isolation building of a Hospital, recommend segregation of nurses and a separate kitchen for smallpox patients. This text book was cited by Doctor McIntosh one of the Appellant's witnesses.

15. It is respectfully submitted by the Appellant that in the matter of selecting the proper system of treating and isolating infectious diseases a hospital is under the duty of obtaining and acting on the advice of its medical advisers and that if it does so, it cannot be held to be negligent for having operated the system so advised. It is further submitted that the evidence, summarised above, establishes that the Appellant fully discharged 20 this duty in that it maintained at the Infectious Diseases Hospital with a properly trained staff a well-recognised and extensively practised system of isolation recommended to it by its medical advisers and regarded by qualified medical opinion as safe and satisfactory and that therefore the Appellant has not been negligent towards the Respondents even if (contrary to the Appellant's respectful contention) the proper inference to be drawn from the facts of this case is that the Infant Respondent contracted smallpox as a result of the defects of that System. In the Appellant's contention it is immaterial that other medical opinion may prefer some other System.

16. The Appellant does not however admit that the Infant Respondent 30 did contract smallpox by cross-infection. A total of about 40 cases of smallpox were treated in the Infectious Diseases Hospital during the epidemic and a number of cases of cross-infection did occur. In fact Doctor Haywood and Miss Forrest who considered that, excluding the Infant Respondent about seven cases of cross-infection had occurred, considered that the Respondent's case was also one of cross-infection. Doctor Carder however who visited the Hospital daily as staff-physician was not prepared to agree with this and stated in evidence that the infection might have been brought in from outside. Doctor McIntosh stated in evidence that four cases had developed in the Appellant's general ward which could only 40 be attributed to infection brought in from outside by doctors or visitors.

p. 117, l. 41.
 p. 46, l. 38.
 p. 53, ll. 1-28.
 p. 118, l. 8.
 p. 124,
 ll. 13, 14.
 p. 127, l. 27.
 p. 128, l. 7.
 p. 143, l. 20.

- 17.** While the Infant Respondent was in the Infectious Diseases Hospital, Doctor Kennedy visited her daily and, in the Appellant's submission, he may have brought infection in with him from outside notwithstanding the fact that, as he stated in evidence, he had not treated a smallpox case for over a year. Further, the Infant Respondent's mother who visited her on visiting days and was only allowed to look at her through the glass door of her room admitted that she had, apparently on two occasions, opened her door. Record.
p. 10, l. 13.
p. 10, l. 32.
p. 36, l. 44.
p. 37, l. 1.
p. 38,
ll. 28-30.
p. 46,
ll. 7-18.
- 18.** It was common ground that while contact direct or indirect plays an important part in the transmission of smallpox the precise means by which the infection is transmitted has not yet been ascertained by medical science. It is respectfully submitted by the Appellant that the Infant Respondent may have become infected in some entirely unknown manner and that in any event the facts admit of too many possibilities to justify any conclusion as to how infection took place. p. 11, l. 43.
p. 64, l. 7,
l. 11.
- 19.** A further question arises out of the fact that the Infant Respondent had never been vaccinated when she was admitted into the Infectious Diseases Hospital. It is not entirely clear at what date the Appellant's officials became aware of this, since the House Doctor who examined the Infant Respondent on admission did not definitely ascertain whether or not she had been vaccinated. Doctor Kennedy however stated that subsequently on or about the date of her transfer to the second floor an Interne raised the question of vaccinating her and he replied, "Well, I suppose it should be done." Doctor Kennedy intimated in his evidence that the desirability of vaccinating the Infant Respondent while she was suffering from diphtheria was questionable. But according to the evidence of Mrs. McDaniel vaccination was forbidden by the Respondent Mathew G. McDaniel on the 28th or 29th January, 1932, on the ground that it was dangerous to vaccinate somebody who might already have become infected with smallpox. p. 21, l. 20.

p. 131, l. 22
et seq.
p. 132,
ll. 1-4.
p. 24,
ll. 8-21.

p. 24, ll. 1-8.
p. 37,
ll. 28-41.
p. 41,
ll. 35-40.
- 20.** Doctor Carder stated in his evidence that if the Infant Respondent had been vaccinated on the 27th, 28th or 29th January, this would have prevented her from catching smallpox and that there had been no smallpox patient in the Hospital who had been successfully vaccinated within fifteen years previously to his admission. According to the evidence of Doctor McIntosh, who stated that safe vaccination of the child was possible up to the 3rd February, nothing but vaccination had checked the epidemic. p. 125, l. 23.

p. 153, l. 30.

p. 141, l. 14.
p. 143, l. 7.
p. 143, l. 11,
ll. 41-48.
- 21.** The Appellant respectfully submits that the failure of the Respondent Mathew G. McDaniel to procure the vaccination of the Infant Respondent was an act of contributory negligence which in any event disentitles the Respondents from obtaining damages.

Record.
p. 1.

22. By their Writ issued on the 23rd May, 1932, the Respondents claimed damages on the ground that the Appellant by its lack of care had caused the Infant Respondent to contract smallpox.

pp. 1-2.

23. By their Statement of Claim of the same date as the Writ the Respondents alleged (paragraph 5) that "one or more patients suffering from smallpox was or were through the negligence and want of care of the Defendant and its servants, improperly placed and maintained in the ward or portion of the said hospital occupied by the Infant Plaintiff, thereby unduly and wrongfully exposing the Infant Plaintiff to contagion by reason of which the Infant Plaintiff " contracted smallpox. By paragraphs 6, 7 and 8 of the Statement of Claim they alleged that the Respondent Mathew G. McDaniel had incurred expenses to a total of \$445.00 and had suffered inconvenience from the quarantining of his house and that the Infant Respondent had suffered damages from disfigurement. By paragraph 9 the Respondent Mathew G. McDaniel claimed the sum of \$445.00 and general damages and the Infant Respondent claimed damages. 10

p. 3.

24. By a demand for particulars dated the 25th May, 1932, the Appellant demanded (inter alia) "2. As to paragraph 5 [of the Statement of Claim] (A) particulars of the negligence and want of care charged against the Defendant and its servants " and " (B) particulars of the allegation that the Infant Plaintiff was unduly and wrongfully exposed to contagion." 20

p. 4.

25. By the Respondent's Answer dated the 27th May, 1932, it was stated: "In answer to demands . . . 2 (A) and 2 (B) the Plaintiffs say: The negligence and want of due care of the Defendant and its servants and the undue and improper exposure of the Infant Plaintiff to the contagion of smallpox consisted of placing the Infant Plaintiff and causing her to remain in too close proximity to another patient or other patients suffering from smallpox and that the nurses, orderlies and attendants in the employ of the Defendant, after waiting upon, attending or serving such smallpox patients or doing work or rendering services to such smallpox patients . . . came into contact with, waited upon and served the Infant Plaintiff, thereby causing the Infant Plaintiff to contract the disease of smallpox." 30

pp. 5-7.

26. The Appellant's Defence was delivered on the 30th June, 1932. Paragraphs 3 to 12 of the Defence contain denials of the allegations of the Statement of Claim. In paragraphs 17 to 22 the Appellant alleged the modern and approved character of the technique of treating infectious diseases at the Infectious Diseases Hospital and the efficiency of the Hospital Staff. By paragraph 23 it was alleged that the Infant Respondent's injury, if any, was not caused by the negligence of Appellant or its servants but arose from the susceptibility of the Infant Respondent to contract smallpox owing to her not having been vaccinated within three years prior to the 7th February, 1932. Paragraphs 24 and 25 contain pleas of a cause beyond the control of the Appellant and inevitable accident. 40

27. In the course of the hearing of the trial on the 12th January, 1933, Counsel for the Appellant stated that the nurses, sweepers and maids attendant on the third floor of the Infectious Diseases Hospital were in Court but that since the Respondents' Statement of Claim did not allege negligence on the part of the Appellant's employees and on the assumption that the Respondents did not intend to ask for an amendment he did not propose to call them. Counsel for the Respondents then intimated that he did not propose to ask for an amendment and these witnesses were not called. Record.
p. 141,
li. 20-36.

28. The Action was heard by Mr. Justice Fisher in the Supreme Court of British Columbia on the 11th, 12th and 13th January, 1933. The learned Judge delivered oral judgment at the conclusion of the argument on the 13th January, 1933. He found as a fact that the Infant Respondent had contracted smallpox by cross-infection and that the Appellant had caused her to contract it by placing her in too close proximity to other patients who were suffering from smallpox and by allowing nurses in the Appellant's employ after having attended smallpox patients to attend the Infant Respondent, the magnitude of the risk being increased by the fact that the Infant Respondent was not vaccinated and was weakened by diphtheria. He held that these acts of the Appellant unduly exposed the Infant Respondent to risk and constituted negligence on the Appellant's part. He stated that he accepted Doctor Kennedy's view that after the 28th January 1932 vaccination was undesirable and held that there was no contributory negligence. pp. 157-161.
p. 159, l. 31
et seq.
p. 161, l. 1.
p. 160, l. 33
et seq.
p. 161, l. 17.

29. By the order of the Court dated the 13th January, 1933, it was ordered that the Infant Respondent and the Respondent Mathew G. McDaniel should recover against the Appellant the sum of \$5,000.00 and \$545.00 respectively and their costs. pp. 162-3.

30. On 13th February, 1933, the Appellant gave notice of Appeal from the judgment of the learned Judge and the Appeal was heard by the Court of Appeal (MacDonald, C.J., and Archer Martin, McPhillips and M. A. MacDonald, J.J.A.) on the 30th and 31st March, 1933. pp. 164-166.

31. The learned Chief Justice and Archer Martin and M. A. MacDonald, J.J.A., were in favour of dismissing the Appeal and McPhillips, J.A., of allowing it. The Appeal was accordingly dismissed with costs by Order of the Court of Appeal dated the 6th June, 1933, on which day the judgments of the Court were delivered. p. 182.

32. The learned Chief Justice stated that he had no hesitation in saying that the Appellant had been negligent and that this negligence was the proximate cause of the Respondent's injury. He gave the following (amongst other) reasons for his judgment: (1) Knowing the unvaccinated condition of the Infant Respondent the Appellant took no other means to protect her than those furnished by regulations which the Appellant did p. 168, l. 20.
pp. 167-168:
p. 167, l. 25.

- Record.
p. 168, l. 3.
p. 168, l. 4.
- not know to be efficient. (2) The Appellant's system had been disclosed to be 20 per cent. inefficient. (3) Rosenau's text book "Preventive Medicine and Hygiene" recommended isolation of nurses and his views had been confirmed by the Appellant's medical witnesses.
- p. 168, l. 17.
- He referred to eight cases of infection as having occurred and stated that this fact almost tempted him to say *res ipsa loquitur* but that some of the factors giving that maxim application to the facts of the present case were wanting. The learned Chief Justice did not deal with the question of contributory negligence.
- p. 134, l. 14.
- 33.** The Appellant respectfully points out that Rosenau's text book was in fact referred to by only one of the Appellant's witnesses Doctor McIntosh and that Doctor McIntosh specifically approved as satisfactory the practice of allowing one staff of nurses to attend both smallpox and other patients.
- p. 169.
- 34.** Archer Martin, J.A., delivered a short judgment in which he stated that in his opinion upon the facts as found by the learned Judge in the Court below the right conclusion in law had been reached.
- pp. 174-181.
p. 175, l. 30.
- p. 177, l. 12.
p. 178, l. 19.
- p. 178, l. 26.
- p. 179, l. 20.
p. 179, l. 23.
- p. 179, l. 44.
p. 180, l. 5.
- 35.** M. A. MacDonald, J.A., in the course of his judgment said that it was impossible to interfere with the finding of the trial Judge that cross-infection had occurred. The Court of Appeal was not in the same position as the trial Judge but was restricted to the question whether there was reasonable evidence to support the Judgment. Smallpox was admittedly a very contagious disease and the learned Judge was at liberty to find that a system of isolation should have regard to the possibility of failure on the part of attendants to take all necessary precautions. Rosenau's text book recommended isolation of nurses and separate kitchens—with this view Doctor McIntosh, having cited the book, must be assumed to agree. There had been failure to follow a system approved by medical authority in two important aspects. He said "My conclusion is that, whatever view one might form at the trial of the action, when the trial Judge found that the failure to segregate nurses was negligence and in addition we find from the evidence failure to maintain a separate kitchen we cannot interfere." He held that, the Appellant having admitted the Infant Respondent unvaccinated, the omission so to vaccinate her had no bearing on the question of liability.
- pp. 169-174.
- 36.** McPhillips, J.A., was in favour of allowing the Appeal. He gave the following (amongst other) reasons for his judgment:—
- p. 171, l. 39.
- (1) There were so many possible sources of infection that it would be most dangerous to come to the conclusion by mere inference that the Infant Respondent had become infected by being in the same building as smallpox patients.

(2) The learned Judge ought to have accepted the Appellant's evidence that the most recognised mode of arrangement of patients in the most advanced and up-to-date hospitals was the separate room or cubicle system. Record.
p. 171, l. 19.

(3) The hospital must be carried on upon some system and that system must be determined by the best medical opinion. The hospital in the present case had been built, arranged, staffed and equipped under the best medical opinion obtainable and it could not therefore be said that there was negligence in any particular. p. 172, l. 18.

10 **37.** The Appellant submits that the Appeal ought to be allowed and the judgments of the trial Judge and the Court of Appeal ought to be reversed and this action dismissed with costs for the following (amongst other)

REASONS.

(1) BECAUSE the facts of this case do not justify the inference that the Infant Respondent contracted smallpox by cross-infection from other patients who had been placed in the Appellant's Infectious Diseases Hospital suffering from smallpox.

20 (2) BECAUSE the Appellant adopted and carried out a well-recognised and widely practised system of isolation, recommended to it by its medical advisers and regarded by competent medical opinion as satisfactory, and, in the absence of any allegation or proof of carelessness on the part of the Appellant's servants in carrying out that system the Appellant cannot be held to have committed any breach of contract or act of negligence.

30 (3) BECAUSE the failure of the Respondent Mathew G. McDaniel to procure the vaccination of the Infant Respondent constitutes an omission and act of contributory negligence which disentitles the Respondents from obtaining damages.

(4) BECAUSE the reasons given by McPhillips, J.A., in his dissenting judgment were right.

WILFRID GREENE.

G. C. DUNBAR.

In the Privy Council.

No. 19 of 1934.

*On Appeal from the Court of Appeal for the
Province of British Columbia.*

BETWEEN

VANCOUVER GENERAL
HOSPITAL (Defendant) *Appellant*

AND

ANNABELLE McDANIEL
an Infant, by MATHEW G.
McDANIEL her next friend
and the said MATHEW
G. McDANIEL (Plaintiffs) *Respondents.*

CASE FOR THE APPELLANT.

BLAKE & REDDEN,
17 Victoria Street, S.W.1.

Q. And where did you graduate? A. Queen's University, 1908.

Mr. Reid: Which? A. Queen's

Mr. Reid: Just a little louder—when did you say? A. 1908.

Mr. MacInnes: Q. And how long have you been practising in Vancouver? A. Twenty-three years approximately since 1909.

Q. Now, on January of this year—or of last year, 1932, Doctor, you were the physician attending the family of Matthew G. McDaniel, the Plaintiff in this action? A. Yes.

Q. You had been, as a matter of fact, their physician for some years? A. Yes.

Q. And what did you do with regard to any member of the family of Mr. McDaniel on the 17th of January of last year? A. Oh, I think I visited Annie McDaniel— or went to see the McDaniels and went to see Annie on January 16th and took a swab of her throat and finding that a positive swab for diphtheria I sent it to the V. G. H. on the 17th where I visited her on all the ensuing days up to the time she went home. I think she left the hospital on February 3rd.

Q. Yes, I think that is common ground. Now, it is common ground that she was placed in room 314 on the third floor of the infectious disease branch of the V. G. H.? A. I cannot swear to the number of the room. I know the room where it was located, but I cannot swear to the number.

Q. Now, when that child went in there what knowledge did you have of there being any smallpox in the hospital? A. None whatever.

Q. None whatever. When did you first know, if you did learn, that smallpox cases were being treated on the same floor of the hospital? A. Mrs. McDaniel, I think it was, 'phoned me about it.

Q. You cannot say what she 'phoned you—but by reason— A. No, but she 'phoned me to the effect that there was smallpox there.

Q. You cannot tell what she said. But by reason of the message you received from the McDaniels, either Mr. or Mrs. or someone, what did you do? A. I made enquiries.

Q. From whom? A. From the hospital authorities. I made inquiries to know whether there was smallpox being treated there.

The Court: What day—on or about? A. Well, I would imagine it would be a matter of a day before she was transferred. I think she was transferred to a new room. I think it would be on the day before—either on that day or the day before.

Mr. Reid: Q. Do you agree, Mr. Gibson, that was the date of the transfer—the 29th?

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Mr. Gibson: Yes.

Mr. MacInnes: My learned friend agrees that the transfer was made on the 29th of January.

Q. Now, having received a message from the McDaniels you made inquiries at the hospital with regard to what, Doctor? A. With regard to the presence of smallpox in the hospital, and I found that there was smallpox on that floor, and I immediately requested the change of this patient of mine to some different floor or room.

Q. Why, Doctor? What did you think? A. Because of the possibility of infection due to the proximity of these cases of smallpox.

Q. Yes. Now, during the time—I presume you visited the McDaniels child daily from the 17th of January up to the date of her discharge? A. Yes, I visited her on the 17th, 18th, 19th, 20th, 21st and 22nd—well, up to February 1st and 2nd, but I did not see her on the 3rd, the day she came home.

Mr. Reid: It would be shorter to give us the days you did not see her? A. Well, there was only one day.

Mr. MacInnes: Q. Now, in attending this child in the hospital, what routine did you go through with regard to the infectious part of the disease? A. I donned a gown in the hall before going in to see her and I made it a point to make it absolutely necessary not to touch her or anything about the room—anything in the room and then I removed my gown and washed my hands and put the door open like that and was in the hall.

Q. Now, what was the object of these precautions, Doctor? A. To provide against the possibility of the transmission of that disease to anyone else or to possibly bring anything else in.

Q. During the period you were working on this child, were you exposed in any way to your knowledge to smallpox or infection from smallpox? A. I hadn't had a case of smallpox for over a year previous to that and I haven't had one since.

Q. Now, what do you say as to the possibility that has been suggested that you might have carried infection in to the child during your attendance on her at the hospital? A. I don't see how I could convey a disease that I wasn't in contact with in any way.

Q. Well, now, were you called in later to see the patient Annabelle McDaniel after she left the hospital? A. She left there on February 3rd and I visited her home on February 11th.

Q. That would be on Thursday, I think? A. Well, I don't remember the day, but I visited her home and Anna was very sick, and I was satisfied she was developing smallpox and I vaccinated the balance of the family on that day.

Q. On the 11th? A. On the 11th.

Q. Now, what about your preliminary diagnosis of the case? How did that turn out? A. It was correct. The next day it was beyond all doubt—the rash was appearing—on the 12th day—by the 13th—or that was the third day it was so marked that anyone could tell.

Q. Now, what would you say, Doctor, would be the effect upon patients in an infectious disease hospital on the third floor, who were not infected with smallpox, of introducing amongst them a gradually increasing number of smallpox patients virulently affected with the disease? A. It would be increasing cross infection.

Q. What sort of risk would such conduct create for such patients? A. I think it was an undue hazard and was exposing them unduly.

Q. Exposing them unduly. Now, if several patients virulently affected with smallpox were allocated to rooms on the third floor of this I. D. H. whilst the Plaintiff was there, and the Plaintiff was waited on and served and attended by the same members of the hospital staff, who were at the same time waiting and serving and attending the smallpox patients, and the Plaintiff within fifteen days developed smallpox, what would you say as to the origin of her infection or as to the origin of the smallpox infection? A. I would say that was cross infection owing to the proximity of those cases.

Q. Now, what is the effect or the result of direct contact with a smallpox patient, with a person who is not infected with the disease? A. Well, direct contact means a grave possibility of contracting the disease if you have not been vaccinated recently.

Q. And what about contact with persons or things which have come from or been about a patient suffering from smallpox.

Mr. Reid: Well, now, is that in your pleadings?

Mr. MacInnes: Yes.

Mr. Reid: There are two points you have raised here, proximity and joint attendance or nurses.

Mr. MacInnes: Yes.

Mr. Reid: I submit that does not come within your pleadings.

Mr. MacInnes: It is in the particulars, my lord.

The Court: I have them on page 8.

Mr. MacInnes: Page 8 of my brief—it will be probably the same, my lord. (Reading same.)

Mr. MacInnes: Q. What do you say about the risk of spreading contagion in that way, Doctor? A. We don't know exactly how smallpox is transmitted, but we have always believed that contact, either direct or indirect, was responsible for the spread of the disease.

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Q. Now, what do you mean by the words "direct" and "indirect"—what is the distinction between direct and indirect contact? A. Direct contact might be by a person coming like I, unvaccinated, to attend a patient, and contracting the disease by direct contact; and indirect contact might be by things or articles commonly used by the patient—clothing or other things, which might come in contact with the party.

Q. Now, what about persons who have been waiting on a smallpox patient, and carrying the disease with them? A. Yes, I suppose under the same heading—it is really the clothing, or 10 the things they wear that might convey it.

Q. And that would be, I take it, one of the indirect methods or indirect contact? A. Yes.

Q. What do you say as to the danger of permitting nurses, cleaners, doctors and others to wait upon, serve and attend smallpox patients and other patients indiscriminately as a part of their daily duty? A. I don't think it is hardly fair to a patient.

Mr. Reid: What is that again? A. I don't think it is fair to a patient.

Mr. MacInnes: Q. Now, would it be likely in your opinion, 20 that a staff of eighteen or twenty attendants, in daily service could be expected to serve a number of smallpox patients and other patients indiscriminately without inducing cross infection? A. It is unlikely.

Q. What effect would it have on the risk to other patients if the attendants on smallpox patients had been confined to that service alone and not been allowed to wait on or attend other patients? A. It would have reduced the hazard or the possibility of cross-infection.

Q. What effect would it have on the risk or danger of cross 30 infection from smallpox if the smallpox patients had been kept on a floor separate from other patients? A. It would be better still. It would minimize the possibility of transmission of the disease.

Q. What effect would it have on the risk of cross infection from smallpox if a patient on the third floor, say, had been separated from the rest of the floor used for smallpox patients only? A. If there was a separate service, and it were separated, it would bring out the idea we have of isolation. Isolation means— 40 isolation means separating from anything else, and if those cases were isolated, the more they were isolated, the safer they would be and anything that would constitute separate service and so on would naturally decrease the hazard of cross infection.

Q. In other words, I take it, Doctor, that the idea of isolation is to break the contact, direct or indirect? A. That is the object.

Q. Now, you have seen Annabelle McDaniel since? A. Yes.

Q. She is in the court room down here, is she not? A. Yes.

Q. Would you stand up, Annabelle? That is the girl? A. Yes.

Q. What do you say, Doctor, as to the permanency of the smallpox scars on her face? A. They are permanent. They are a permanent disfigurement.

The Court: Would you just indicate, Doctor? Will the little girl come up while the doctor is here?

10 Mr. MacInnes: I am going to produce her, my lord. Annabelle, will you come up here, please. You know the doctor.

The Witness: Here is the disfigurement.

The Court: I cannot see, Doctor.

The Witness: In this region around here and on the lip and on the forehead.

The Court: And she gets it here on the nose, and on the right side of the face? A. Yes, right and left both. They coalesce. That is, they run together and those are marks to be seen clearly—permanent marks on the lip there.

20 Mr. MacInnes: Q. And what about the forehead and the other side of the face, Doctor? A. Well, there isn't much difference in the two sides of the face. They are very similar—the two sides of the face. The cheeks and around the mouth isn't so bad—the cheeks and forehead, it isn't so very bad but there are permanent scars which will remain as long as life remains.

The Court: The marks on the left side? A. Well, you can see the marks.

30 Q. And there is a little red mark there, but that is something else? A. No, that isn't anything. But those were bright purplish red at one time and they have faded out, as they do, as time goes on but there were scars made. They are scars in the skin like a wound and they are permanent.

The Court: You might come up beside me a little, Annabelle.

Mr. MacInnes: Will you just go up to the judge.

The Court: Just come slowly.

40 Mr. MacInnes: I would suggest to put her on the other side where the light is on her face. You have to get the light right in order to see her. Will you stand back a little and walk over there.

The Court: Yes, stand back a little and walk over there and then walk towards me and walk around behind the chair. Very well, thank you. Now as time goes on, with a young girl like that, wouldn't the marks tend to become less noticeable? A. They will remain, but they may very slightly decrease. But this is now some months after and they are still there and those will remain much the same. The only difference time will make is as the skin

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gets older and harsher, by comparison, as she gets older those will be less noticeable as an old woman than they will be as a young girl, because the skin gets leathery as one gets older.

Mr. Reid: What is that? A. They will be less noticeable—as an old woman, because the skin gets leathery, but when the skin is fresh and soft they will be more marked and they will remain plain.

Mr. MacInnes: Q. What were your charges, Doctor, for the attendance on the smallpox case? A. I have forgotten the bill. 10

Q. Well, I have a bill from you of \$100.

The Court: Did you continue to treat the little girl at her home then, or where, for the smallpox case? A. I treated her for the smallpox at her home altogether. It was a severe case and I treated her at her home for that, but I treated her at the hospital for the diphtheria, but she contracted the smallpox some days after coming home, within the limit prescribed, as generally accepted for contact or for the contraction of the disease.

The Court: Well, you haven't given me that date yet. A. Well, that is embodied in the dates. It is embodied in the dates 20 from the 3rd to the 11th.

Q. Within what period would it arise after contact? A. It is commonly supposed to be roughly around about fourteen days.

Q. I mean, that wasn't the period that you had given me before. You hadn't given me that before, had you? A. No.

The Court: Very well.

Mr. MacInnes: The Plaintiff says your charge was \$100, Doctor is that correct? A. Yes, that is right. I rendered a bill.

Q. I don't happen to have the bill? A. Well, that is my impression—\$100. 30

Q. Has that been paid? A. It has been partly paid. I could not tell you whether it has all been paid or not, but I think the greater part of it has been paid.

CROSS-EXAMINATION BY MR. REID:

Q. Your practice, Doctor, I believe, since you graduated has been all in Vancouver? A. Yes.

Q. Have you ever taken the trouble to visit other infectious diseases hospitals in any of the other large cities? A. No, I haven't.

Q. You haven't. You haven't been, for instance, in Minneapolis or San Francisco or Oakland? A. I have been in Minneapolis and many places, but I wasn't in the infectious disease hospital. 40

Q. That is what I mean? A. No.

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Q. And you haven't made any particular study of the construction and operation of infectious diseases hospitals? A. Yes, I have. I have gained a knowledge of that from a friend of mine, who had travelled considerably and studied along those lines in connection with other hospitals and I have made a casual study of it, but not a special study.

Q. For instance, you have not investigated within the last ten years the infectious disease hospitals, for instance, in Portland, San Francisco, or Oakland or Los Angeles? A. No, nor in
10 Copenhagen.

Q. That is unnecessary, Doctor. I am talking of the ones within our own easy range. I don't know whether you mean that as serious or not.

The Court: Perhaps the doctor will withdraw that remark.

The Witness: Yes, I will withdraw that if you don't like it.

Mr. Reid: Q. I am trying to be serious, Doctor, and I am not asking any of these things for fun. Now, the old system here in the cases of smallpox was a system of segregation—in the city
20 for smallpox patients, isn't that right? A. You are telling me that or asking me the question?

Q. I am asking you if that is correct? A. I believe so.

The Court: What is that?

Mr. Reid: A policy of segregation. The city had a separate building for that sort of disease, is that right, Doctor? A. Yes.

Q. Now, do you remember when the building was built which is now what we call the infectious diseases hospital, of the Vancouver General Hospital? A. Yes.

Q. You were practising here at the time? A. Yes.

Q. And you know a great deal of trouble was taken in getting the latest developments in medical science with respect to that building? A. Well, I don't know—I wasn't on the building committee, but I presume they tried to incorporate the most recent modern ideas of construction for the building.

Q. Do you remember them sending Dr. Underhill down to the big cities along the coast to make a particular study of the situation? A. No.

Q. Or Alderman Rogers. You knew Alderman Rogers, didn't you? A. I know of him, but I didn't know anything about
40 that.

Q. You didn't know anything about that? A. No.

Q. And you know Dr. Bell, he was the superintendent of the Vancouver General Hospital at that time? A. I have met him, yes.

Q. And do you know of his going down— A. No.

Q. Or do you know anything about the reports that were given to the city and the Board of Health and to the General

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Hospital before it was constructed? A. No, that would be more for the benefit of the hospital—I don't know about that.

Q. But as a practising physician in the city you would be interested in those things? A. Well, we were not informed of those things, except what information might stray through the press regarding it.

Q. There was no information given you at the hospital? A. No.

Q. Did you make any inquiries? A. No, no, most assuredly not.

Q. Do you know—you have been familiar with this building since it has been opened? A. Yes.

Q. And you have had a great number of patients in there? A. I wouldn't say a great number. I have had patients from time to time.

Q. Have you ever had a smallpox patient in there? A. No, never—except this case.

Q. You knew there had been smallpox patients in that hospital? A. I had heard that. One of the nurses told me.

Q. Now, when did you first learn that there was smallpox in the city, in February, 1932? A. I suppose whatever time it appeared in the press.

Q. Don't the health officers post up in the doctor's room in the Vancouver General Hospital a list of infectious diseases in the city? A. He might.

Q. And that is put up every week? A. He might do that.

Q. And the doctors see it there? A. Well, they might and they might not.

Q. Did you see it there? A. I don't recall.

Q. Don't you remember both in the press, and from conversations with physicians during the month of January '32 that it was notorious that there was a certain amount of smallpox in the city? A. Oh, yes.

Q. And you knew that the Vancouver General Hospital had no special place in which to treat those patients other than the I. D. H.? A. I didn't know anything of the kind.

Q. Did they have any other place? A. As to how they were treating them, I didn't know anything about where they contemplated treating them or how.

Q. Did you know of any other building in which they could treat those patients other than the I. D. H.? A. We had formerly—when we did attend them, attended them at the infectious diseases hospital out at Grandview.

Q. Well, you knew it had been torn down? A. Well if they had abolished that, it never occurred to me that they had provided anything to take its place.

- Q. You don't know anything about the treatment of all infectious diseases in one building by the hospital? A. The first information I received of that was when I heard that they were treating them all in that building there; the idea prevailing previously, and existing, in spite of recent teachings in my mind is that isolation to be isolation ought to be a separate building provided.
- Q. Yes, that is your personal opinion? A. Well, that is borne out by the past results that they have had in times past.
- 10 Q. But you know, I presume, a very large school of thought in the medical profession which believes in treating them in one building? A. I am not responsible for other people's beliefs.
- Q. I am not asking about your responsibility; I am asking you if you know that? A. I don't know what the medical profession may believe. I am only speaking of my own belief.
- Q. I am not asking you for your belief. You are a disciple apparently of the old school of segregation for smallpox? A. Yes, I am.
- 20 Q. Well, that is all right. But what I am pointing out to you, and I think it is only fair, Dr. Kennedy—I want to know if it isn't a fact to your knowledge that there is a large school of medical thought which believes in treating all the infectious diseases in one building with the proper technique? A. That is an approximately recent innovation.
- Q. It is within the last ten years? A. It is less than that.
- Q. Do you know a Dr. Richardson of Rhode Island and about the cubicle system of treating infectious diseases? A. No.
- Q. Do you know a Dr. Broderick at Oakland, California? A. No.
- 30 Q. Do you know Dr. McEachern? A. Dr. Malcolm McEachern?
- Q. Dr. McEachern who was superintendent here of the hospital for a number of years? A. Yes.
- Q. What is his position now—do you know his position? A. A travelling salesman for various hospitals.
- Q. A travelling salesman—you don't mean that, Doctor? A. I do pretty nearly.
- Q. Well, would you confine yourself to serious facts without trying to make jokes?
- 40 Mr. MacInnes: I object to that remark. My learned friend has asked him the question and he has answered it.
- The Court: Well, go on.
- Mr. Reid: What is his position? A. He has something to do with the American Hospital Association and he travels on behalf of the standardization of hospitals.
- The Court: It will be quite easy to get an explanation from somebody else concerning his position.

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Mr. Reid: Oh, yes, certainly.

Q. Would you consider him to be an authority on hospitals—
infectious hospitals? A. Infectious hospitals?

Q. Yes? A. I don't know that I would take my gospel
from him, no.

Q. Well, now, there is a distinction between your taking
your gospel and considering him to be an authority on hospitals.
Would you consider him an authority on infectious hospitals?

A. He would have the opportunity of acquiring the latest ideas
concerning them by reason of his travels.

The Court: Are you asking him his opinion of Dr. Mc-
Eachern?

Mr. Reid: I am asking for his personal opinion of Dr. Mc-
Eachern.

The Court: I am not so sure you can do it in that way, Mr.
Reid. I have had occasion to follow up the authorities on that
in previous cases. Of course, you may invite opinions—that is,
you might put before him a text-book and ask him if he would
consider that to be an authority and it may be questions may be
asked him along those lines.

Mr. Reid: Q. Now, Dr. McEachern says without reserve
that building is the best he knows of in the United States or
Canada?

Mr. MacInnes: I object to the question. I don't care where
Dr. McEachern says about it.

The Court: Just a moment. The authorities are quite clear
and if necessary we can have them brought here as to what cross-
examination will permit. For instance, the doctor can be faced
with books of authority and I think he can be faced with other
opinions which may not be before him, but that a hypothetical
question can be formed in this way—if such and such a person
says so and so, what is your opinion on it. It has not been proved
that Dr. McEachern has said that, so perhaps the question should
be put in a hypothetical form.

Mr. MacInnes: But that is my objection, my lord. Dr. Mc-
Eachern was examined and his statements are here on oath some-
where. He has been examined before the trial.

The Court: There is something in that. You might just
frame the question along the other line and put it hypothetically.

Mr. Reid: Q. If Dr. McEachern says that the building—
the Infectious Disease Hospital in Vancouver, belonging to the
Vancouver General Hospital, is the best he knows of in the Unit-
ed States or Canada, would you agree with him?

The Court: Now, I am not so sure that this witness has to
express his opinion about that. That is a question of fact. If
he does agree, wouldn't that be a matter of opinion?

Mr. Reid: Well, I was trying to get his opinion on the evidence or on statements made by Dr. McEachern.

Mr. MacInnes: The witness isn't obliged to answer that, my lord.

The Court: I didn't know how far Mr. Reid was going in saying—

Mr. Reid: I have changed the question to exactly the form in which my learned friend said he wanted it put and now he doesn't want it in his own form.

10 The Court: The doctor might express an opinion as one of the school of medical thought that he has referred to and he might give his opinion as to the practice followed in the hospital and then if he wishes to make a comparison and express an opinion on which it is based, but I don't know that this witness would be obliged to do that.

Mr. Reid: Q. What do you say about the building known as the Infectious Diseases Hospital? A. It is looked upon as a good building. You mean substantially in the structure of it?

20 Q. I mean as an infectious disease hospital? A. It incorporates the later ideas of keeping people from visiting them. It would be considered a good hospital.

Q. And run according to the latest medical practice? A. Well, I don't know anything about that.

Q. You don't know anything about that? A. No, I wouldn't answer that.

Q. Now, you visited this child there—or rather before I get to that: You know the technique required by the hospital authorities for people working or visiting in that building? A. No, I don't. That isn't set forth to us.

30 Q. Did you not know that a copy of those regulations are posted in every ward of that building? A. Are they for the doctor's perusal? I think they are for the attendants' perusal and they are not studied by us. We presume that the attendants of the hospital look after all that detail.

Q. Did you ever read them? A. No.

Q. You knew they were there—did you ever ask to see them? A. No, I am not obliged to. As I remarked before, they are for the attendants and not for us.

40 Q. Now, when you went there visiting this patient, you knew there was smallpox in the city? A. When I went visiting?

Q. When you were visiting Annabelle McDaniel, you knew there was smallpox in the city? A. No.

Q. Didn't you know on the 13th of January that there was smallpox in the city? A. I did not know that there was smallpox being treated in the hospital until I received a message from an outside source that they were treating cases there and I didn't believe it.

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Q. That isn't the question I asked you at all. (Asking reporter to read question) A. I got that question wrong. Yes, I knew there was smallpox in the city.

Q. How early did you know there was smallpox in the city? A. I couldn't give you the exact date, but I presume from the time it became general knowledge.

Q. And I believe you said we don't know how smallpox is carried? A. I don't believe anyone can answer that better than to say the general knowledge today is that it is carried by contact direct and indirect. 10

Q. And if there is no contact direct or indirect, is there any chance of infection from smallpox? A. Proximity—we don't know—if you were very near a case it might be possible you might contract the disease. We do know you would be very much safer if you were a considerable distance away from them.

Q. Now, a person might contract the infection in a street car or in a crowd of people on the street? A. Possibly.

Q. In other words, it is pretty hard to tell just where the line of demarcation of infection by the smallpox germ begins or ends, isn't that right? A. I think that is generally accepted. 20

Q. You think that is generally accepted knowledge? A. I think so.

Q. And you went in there to visit this patient every day? A. Yes.

Q. And you were travelling around town considerably? A. Yes.

Q. And the very fact of anyone going in there, especially from the outside, increases the possibility of infection? A. The possibility—you are intimating that I might possibly have conveyed the infection to her, and I reiterate that I was not treating smallpox cases, and hadn't seen a case for over a year, and wasn't coming in contact with them, and therefore could not transmit a disease that I had not come in contact with. 30

Q. If I understood you—I am not saying it was intentional, or due to any negligence on your part— A. I understand.

Q. —but I say simply in going around the city and mixing in crowds, when there is smallpox in the city, raises the possibility of anyone getting something on their clothes or from another person in some way which might convey infection to another? A. The idea of associating with something that might have come in contact with the patient, and transmitted that to somebody else, that is a step further in science than we are prepared to go. 40

Q. That is exactly it, doctor? A. You can't tell—nobody can tell that, and I wasn't treating a case for smallpox at that time.

Q. I understand that? A. And I wasn't—

The Court: Let him finish—I want light on this.

The Witness: And I wasn't treating a case for possibly a year.

Mr. Reid: You have told me that. Were you going on to say something further? A. And there would be no possibility of my conveying trouble to a patient when I hadn't come in contact with it.

Q. I don't know if I followed your last answer. You might read that for me.

10 (Reporter reads answer).

Q. You might enlarge on that? A. I have never had that case brought up—a smallpox patient and something coming in contact with him from another person—and from this person conveyed to another. We usually understand it has something to do with a patient giving it to this particular patient—giving it, say, to a patient that may not be vaccinated. We are not familiar with anything except clothing, of course—clothing or something coming in direct contact with the patient—having clothing or a book sent to someone who has not been vaccinated.

20 Q. Was this child vaccinated? A. No.

Q. Why? A. The older children of that family were vaccinated some years ago, and this grew up later—there was no smallpox scare at that time, and it is generally admitted that the more recent vaccination is, the more force it has, and so there had been no recent smallpox scare, up to that time, these children had grown up in the meantime, and they had been vaccinated some time ago, and the younger child was caught—the one who was not vaccinated, and she developed this condition, and had gone into the hospital before the smallpox scare had assumed a pro-
30 portion sufficient for us to vaccinate all and sundry.

Q. Wasn't there a smallpox scare in '29? A. We had mild sporadic cases occurring from time to time, but it hadn't assumed a condition where it was a general warning to people. Besides you vaccinate the people that you should vaccinate, and then others grow up and as time elapses those constitute a menace—

Q. Isn't it a fact that there is liable to be sporadic cases of smallpox in the city at any time? A. I believe so.

Q. And you are vaccinating children right along? A. Yes, I believe in vaccination.

40 Q. And this child wasn't vaccinated? A. No, for a reason, I say.

Q. And you, knowing that smallpox was prevalent in the City at that time, put that child in the hospital without vaccinating her? A. Yes, but I did not know that there was smallpox being treated in the hospital.

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Q. But you could easily have surmised that smallpox patients would be there? A. No, I had no reason to believe that there were smallpox patients there.

Q. Now, if somebody on the third floor got smallpox, or on the fourth floor, as well as on the third floor, would you say that that was due to proximity again? A. Well, I am not dealing with that.

Q. Eh? A. I am not dealing with that.

Q. You are not dealing with that? A. No.

Q. Well, would that make any difference in your opinion 10
about proximity causing this trouble or this infection? A. The closer the case, the greater the danger.

Q. Is the germ of smallpox air borne? A. We don't know that.

Q. Just to change it up, I understand you to say that you have never been in any other hospital where infectious diseases were treated as they are in this hospital? A. No.

Q. And any of the other diseases that are treated there are quite infectious. That is what a hospital is for, is it not? A. 20
Scarlet fever, for instance, yes.

Q. And chickenpox? A. Yes, mild forms.

Q. And measles? A. These are milder infections.

Q. Yes, but they are infectious, and they have to be taken seriously as anything else? A. No.

Q. How about diphtheria? A. Diphtheria, we are more particular about diphtheria, and more particular about scarlet fever than chickenpox and measles.

Q. But you knew that those other diseases were being treated in that Infectious Hospital from year to year? A. I knew that they had cases of erysipelas, and I knew that they had cases 30
of scarlet fever there.

Q. And of diphtheria? A. Yes.

Q. And you put that child in there because she had diphtheria? A. Yes.

Q. And you put her where you thought she would be safe from giving infection to somebody else? A. Yes, we put in there any case that is diphtheretic—that is why I sent her to the hospital, and she just had an ordinary case of diphtheria.

Q. And what was her temperature at the time you sent her there? A. I don't know. 40

Q. Have you her chart here? A. No. I don't know what it ran, but the child might have been very sick indeed and the temperature might not indicate how severe the case was.

Q. Well, diphtheria is infectious? A. Yes.

Q. And you have to observe the usual technique there in order to prevent the transmission of that.

The Court: Yes, I think the doctor has already said that.

The Witness: Diphtheria, it is usually agreed that it is transmitted if a person coughs or expectorates or anything like that. Any of that coming upon you directly transmits the disease. We have no such idea in connection with smallpox. We don't know whether it is in the fluvia deject, or how it is, or how it is contracted; but we do know if you don't stay in front of a patient with diphtheria and let them cough in your face you have very considerably decreased the possibility of your contracting the disease personally. They are different in that way.

10 Mr. Reid: Q. I know they are different diseases, but you have to preserve a strict technique or system to keep diphtheria from diphtheretic patients or from other patients in the hospital?

A. Yes.

Q. And have you ever had any trouble with their technique up there? A. I have had no cases of cross infection before. Of course, the number of cases I have treated in there have not been great at any time. I wasn't a staff man—just a general practitioner with an occasional case.

20 Q. Did you see the chart of the temperatures of the girl during her stay in the hospital—while she was there? A. Yes, I believe I would look at that each morning.

Q. What would that indicate? A. A falling temperature.

Q. What was the temperature on the 17th? A. 101.2 I think.

Q. That is, on the 17th of January? A. Yes—point two.

Q. And the highest on the 18th? A. Would be 101.1.

Q. And it would go down—from the highest on the 19th?

A. It dropped down to normal—below normal—that is to sub-
30 normal temperature.

Q. And then it went up to normal on the 19th? A. No, that isn't normal there—below normal—her temperature ran along below normal—

Q. Until the 20th? A. Yes.

Q. And then from the 20th on? A. —as a result of giving some—

Q. Just a moment. From the 20th it is below normal? A. When you give antitoxin to these patients you might get a drop in temperature. You get the temperature falling very frequently.

40 Mr. MacInnes: Are you going to put that in now. You have cross-examined on it and it has to go in.

Mr. Reid: I have only examined on two pages of it, but I have no objection to putting it in.

Mr. MacInnes: That is the hospital record of the Plaintiff.

Mr. Reid: Yes.

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Mr. Reid: Q. Now, there could have been no objection to the vaccination of that child when her temperature was going along normally? A. Well, she had already had considerable anti-toxin and while it is true she could have been vaccinated, then the question comes up whether the introduction of vaccination at a time like that might cause an upset—that ordinarily would not make any difference to her, but it might make a difference to her in her state of health at that time. But it was mentioned. Vaccination was mentioned.

Q. When? A. In the hospital. 10

Q. When she was there? A. Yes, I mentioned vaccination in the hospital.

Q. At what time? A. I could not tell you when, but somewhere along during the course of treatment—most likely when this necessity arose for moving her—when I discovered they were moving her and that would be in the last day or two that she was in the building.

Q. And who did you have your conversation with about the vaccination? A. I believe it was with an interne who asked “What about vaccinating her?” and I remarked, “Well, I suppose it should be done.” 20

Q. And you didn't do it? A. I didn't do it.

Q. Didn't you know along from the 18th to the 26th and 27th, didn't you know that there was smallpox patients in there? A. I didn't know until the 28th or 29th—I wouldn't be sure about that.

Q. Was it Mrs. McDaniel who first told you about the smallpox patients being there? A. Yes.

Q. You did not know that of your own knowledge? A. No, I had no knowledge of it. I didn't dream of such a thing. 30

Q. Do you know the superintendent of nurses there? A. Yes.

Q. The superintendent of nurses—Miss Fairley? A. No, I don't know her.

Q. Do you know Miss Forrest? A. I know Miss Forrest.

Q. What do you say about her competency? A. She is a splendid woman.

Q. A splendid woman and how about her qualifications for her job and her position? A. I think she must know her business or they would not have selected her. 40

Q. You have no reason to believe she isn't competent? A. I have every reason to believe she is.

The Court: That is Miss—

Mr. Reid: Miss Forrest.

Q. Did you have any smallpox patients during that epidemic? A. None but this one.

The Court: What is that? A. None but this one.

The Court: Very well.

Mr. Reid: Q. Did you have any chicken pox or measles cases during those days? A. No.

Q. What were you doing—you were travelling around in the city from place to place during January, were you not? A. I was going to the hospital, in my auto, and to my office and from the office, in my auto, back to my home.

The Court: Q. And you were engaged in general practice?
10 A. In general practice.

Mr. Reid: Q. Now, what is your real objection to the allegation against the hospital? Was it a case of improper technique or a breach of technique? A. How should I know, I cannot answer that question.

Q. You cannot answer that question. Just a moment, please. Did you make any investigation after the child was removed to the second storey? She was moved to the second or fourth storey, I believe? A. The second, I think it was, downstairs she was moved.

20 Q. Well, did you make any investigations as to whether the same nurses were attending her that were attending the other patients? A. No, because they are different on the different floors.

Q. They are different on the different floors? A. Yes, they are different on the different floors.

Q. But the nurses on one floor go indiscriminately to the various rooms? A. I believe that has been the practice.

Q. And they have to preserve a strict technique in doing so, such as you yourself say you did when you went in there? A.
30 They are supposed to do so, yes.

Q. Do you know by whom that technique was worked out?
A. No.

Q. Do you know Dr. Seymour? A. Yes.

Q. He was there for quite a while? A. Yes.

Q. And he was a competent medical man? A. He wasn't in practice. I have no means of judging him.

Q. You have no means of judging him? A. He might be a good executive, but I don't think he is in practice.

The Court: Well, just answer the question.

40 RE-DIRECT EXAMINATION BY MR. MACINNES:

Q. I have just a couple of questions.

Mr. Reid: Oh, just a minute, pardon me again.

CROSS-EXAMINATION CONTINUED BY MR. REID:

Q. You were there when Dr. McEachern was the superintendent? A. Yes.

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Q. And your opinion of him was that he was a good competent medical man? A. A good administrator.
 Q. And you know Dr. Bell? A. Yes.
 Q. And Dr. Seymour? A. Yes.
 Q. And the superintendent of nurses, Miss Ellis? A. I knew her to see her.
 Q. You knew her to see her. Did you know Miss Fairley?
 A. Just to see only.
 Q. You had nothing to do with her? A. No.
 Q. What do you say as to the competence of these people to properly administer the hospital? A. I am in no position to judge them. 10
 Q. You are in no position to judge them whatsoever? A. No.

RE-DIRECT EXAMINATION BY MR. MACINNES:

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Q. When you heard from Mrs. McDaniel on the 28th or 29th of February that there were smallpox patients on the third floor, how did that affect you, Doctor? A. I told her I didn't believe it.
 Mr. Reid: I don't think that is proper evidence. I didn't ask him anything about that. 20

The Court: I disallow the question.

Mr. MacInnes: Q. Now, where does smallpox rank among contagious diseases and as to danger of infection and contagion?
 A. I think if I had to say anything I would say the top of the list—near the top of the list, I would think.

Q. That is all, thank you.

(Witness aside).

Proceedings at
 Trial

Mr. MacInnes: I am now going to read the discovery of Dr. Haywood, my lord. Dr. Haywood is the superintendent of the hospital and he was examined for discovery. There were two, my lord, Miss Forrest and Dr. Haywood. Now, my lord, wouldn't it be easier for me to give you the questions I intend to read and then read them subsequently? 30

The Court: Yes.

Mr. MacInnes: Questions 1 to 2; question 6; 13 to 17; 30 to 46; 49 to 53; 57 to 58; 68 to 71; question 76; questions 81 to 84; 86 to 87; 90 to 92; 97 to 99; 105; 115; 122 to 123.

Mr. Reid: Hold on, I think 116 should go in there.

Mr. MacInnes: You can object when I am reading them. Questions 125 to 126; 132 to 144; 151 to 159; 163, 169. 40

Mr. Reid: 163 to 169?

Mr. MacInnes: No questions 163 and 169. Question 181.

The Court: Is that alone?

Mr. MacInnes: 163 alone. 169 alone. 181 alone, 187 alone, 196 to 199, 201 to 202; and 210 alone.

- Mr. Reid: Well, of course, I shall have a chance later to object. I object to 210 anyway.
- Mr. MacInnes: Yes. (Reading questions). Questions 1 to 3.
- The Court: 1 to 2 I had. Did you give me 1 to 3?
- Mr. MacInnes: 1 to 3. Question 6. (Reading). Questions 13 to 17—
- The Court: You only read to 15.
- Mr. MacInnes: I missed that. (Reading same). It doesn't add very much to it. Questions 30 to 46, my lord. (Reading). Questions 49 to 53. (Reading) Questions 57 and 58. (Reading). Questions 68 to 71. (Reading). Question 76. (Reading). Questions 81 to 84—leaving out that first remark. (Reading). Questions 86 to 87.
- Mr. Reid: I think 85 should go in.
- The Court: I direct that should go in.
- Mr. MacInnes: But it is not put in by me as an admission in any way.
- The Court: And I direct 85 to be read.
- Mr. MacInnes: (Reading same). Questions 86 to 87. (Reading). Questions 90 to 92. (Reading). Questions 97 to 99. (Reading). Question 105. (Reading). Questions 115. (Reading).
- Mr. Reid: I think question 116 should go in. Questions 116 and 117.
- Mr. MacInnes: I don't think it has anything to do with the circulation of the people back, from room to room. There is a lot of cross-examination, my lord, with regard to equipment. My learned friend refers to 115 and 116. And it is merely with regard to equipment. And there has been questions asked about equipment.
- The Court: I think I shall direct questions 116 and 117 to go in. (Reading same).
- Mr. MacInnes: Questions 122 to 123. (Reading).
- Mr. Reid: That question 124 should be read because it shows they went in there, in their natural condition and they were sterilized as soon as they came back from the patient's room.
- Mr. MacInnes: It has nothing to do with the other. My submission is this: As to what they do with them is a different proposition entirely.
- The Court: Yes, but I might get a wrong impression in that way and I am sure you don't wish me to.
- Mr. MacInnes: No, I don't wish it. What it amounts to is this—I may be wrong in my theory, but I will put it in and read it the same as I would read Dr. Haywood's evidence from beginning to end, if my learned friend would not get up and say, "oh, well, he put it in as part of his case."

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The Court: Where I am directing it to be read, you are not putting it in as part of your case, but sometimes when I get it piecemeal it is confusing to me and I shall direct 124 to go in.

Mr. MacInnes: You direct it to be put in.

The Court: You might read it.

Mr. MacInnes: Very well. (Reading same). Questions 122 to 123—

Mr. Reid: No, you mean questions 132 to 133.

Mr. MacInnes: Questions 132 to 134, yes.

Mr. Reid: I want it noted in evidence as to what happened after this child took infection is no evidence of any negligence before. I can get your lordship authorities on that. I think you have had it before you. 10

Mr. MacInnes: (Continuing reading). It is questions 132 to 144. And questions 151 to 159. (Reading). Question 163 (Reading). Question 169. (Reading). Question 181. (Reading). Question 187. (Reading).

Mr. Reid: I think question 188 should go in with that.

The Court: Very well, I direct that to go in. Did you read question 188? 20

Mr. MacInnes: That was directed by your lordship. (Reading same). Questions 196 to 199. (Reading). Questions 201 and 202. (Reading).

Mr. Reid: And question 203.

Mr. MacInnes: Question 210.

Mr. Reid: I ask your lordship to put in 203.

The Court: It seems responsive and I direct 203 to be read.

Mr. MacInnes: Question 210.

The Court: Just a moment, please.

Mr. Reid: It comes to the same thing—evidence of change in technique is no evidence of negligence and it is objected to on that ground. 30

The Court: Very well, Mr. MacInnes.

Mr. MacInnes: Question 210. (Reading same). On the 4th of January your lordship made an order permitting the examination of a second officer of the Association.

Mr. Reid: Miss Forrest.

Mr. MacInnes: Yes. Do I file that order or simply refer to it? 40

Mr. Reid: I am not taking any objection to that.

Mr. MacInnes: This examination which was held on the 6th of January, 1933, pursuant to order—

The Court: My order was what date in January?

Mr. MacInnes: The 4th of January.

The Court: Very well.

Mr. MacInnes: The questions I propose to read, my lord, are questions 1 to 2; question 6 to 8; 12 to 16; 22 to 28; 30 to 36; 50 to 65; 66 to 70.

The Court: You go from 50 to what?

Mr. MacInnes: It might be put as 50 to 70. I didn't notice that.

The Court: Very well.

Mr. MacInnes: Questions 81 to 87; questions 100 to 101; 106 to 112, 115 to 123; 127 to 133; 211 to 232; 240 alone; 250 alone.

10 Mr. Reid: What?

Mr. MacInnes: 240; 250 and questions 259 to 262. (Reading). Questions 1 to 2, questions 6 to 8; 12 to 16; questions 22 to 28; 30 to 36.

Mr. Reid: Well, now that is only half the information in connection with the rooms and is absolutely misleading unless you read it down to question 42.

Mr. MacInnes: All right, I have no objection to it on the same ruling.

20 The Court: Very well, I will direct you to read down to question 42.

Mr. MacInnes: (Reading same). Questions 50 to 65 (reading); 66 to 70 (reading).

Mr. Reid: Is that the one I have already put in?

Mr. MacInnes: Yes, I will come to that.

Mr. Reid: It might be noted that it is the one that has been already marked.

Mr. MacInnes: That is the one that is already in as exhibit 1.

Mr. Reid: Well, 71 seems to have some variation of that.

30 The Court: Well, now, counsel should be able to agree—where is that document—that is exhibit 1—let me see it. Counsel should not have to trouble me about it.

Mr. MacInnes: Who put that on or where it came from nobody knows. You see I proceed to ask—you can see Mr. Gibson objects on the ground that Miss Forrest is not responsible for that—that isn't her writing and I don't think she should be asked that.

Mr. Reid: My learned friend will concede this. There is a question mark opposite that vaccination "Not vaccinated." That is all.

40 The Court: Let me see the document.

Mr. MacInnes: Questions 81 to 87 (Reading).

The Court: Are you asking for question 71 to be put in?

Mr. Reid: No, having your attention called to that fact, I am not insisting on it.

Mr. MacInnes: Questions 81 to 87. (Reading).

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The Court: Just a moment, please. Very well. Questions 81 to 87. Now, I will put that in—if my learned friend wishes the history of Mrs. Payne, similar to exhibit 1.

Mr. Reid: We have no interest in it.

Mr. MacInnes: I wish it for cross-examination and my friend is entitled to put it in if he wishes it. Questions 100 to 101. (Reading). Questions 106 to 112. (Reading). Questions 115 to 123 (Reading). Questions 127 to 133.

Mr. Reid: Pardon me, I think 125 should go in. The orderlies are mentioned. 10

Mr. MacInnes: I have no objection to that. If it goes in as Dr. Haywood said to show the orderlies were not supposed to visit the rooms of the women or children patients, unless they were called in specially by the doctor or nurse.

The Court: You begin at 127 then. You had better just state how far you are reading.

Mr. MacInnes: I have read to question 132. I did ask for 133, but I see it was objected to. (Continuing reading). Now, I think the next one is 211, my lord. Questions 211 to 232. (Reading). Question 240. 20

Mr. Reid: That only refers to the McDaniel child. You have to put in 238.

The Court: You must make it clear what that refers to, if it isn't clear from what you have already put in. Just a moment. You ended at 232.

Mr. MacInnes: I was asking about the cross infection and then there were a series of objections to giving me any information along the line I was asking for.

The Court: Well, this cross infection means the cross infection of the McDaniel child, doesn't it? 30

Mr. MacInnes: Question 238—no, I don't think so, my lord, if you will go back.

The Court: If there is any doubt about it, you will be good enough to put in the questions and answers that refer to it.

Mr. MacInnes: I am quite willing to read through from question 232 which was dealing with the question of cross-infection generally—and when it began and the time of it.

The Court: Want to be clear, Mr. Reid, as to whether or not the cross infection referred to in question 240 is the cross infection of the McDaniel child. 40

Mr. MacInnes: Now, my lord, with regard to that, if you recollect I was dealing with the cases of cross infection—question 233. (Reading same).

The Court: Well, just a minute, you are reading now something you did not put in.

Mr. MacInnes: I am not putting those in as evidence, but you will see all the way along my question refers to cross infection generally, and if you take question 237—

The Court: Where is that?

Mr. MacInnes: Questions 237 and 238.

The Court: Is there any doubt about it?

Mr. Reid: Yes, if you look at question 241, you will see it is her cross infection—that is what the answers were given on any-way.

10 Mr. MacInnes: I do not say that it is very material. If there was a general investigation, it would apply to the theory, I presume.

Mr. Reid: You see what Miss Forrest says—when she says here, “I don’t remember any special investigation being made as to her cross infection—” she understood that she was talking about the McDaniel child.

The Court: Well, of course, some of the questions immediately up above were objected to apparently by Mr. Gibson. Are you asking for them to be read?

20 Mr. Reid: No, I am only asking for 238 and 241.

Mr. MacInnes: Well, I think 237 would have to go in to make it appear right.

The Court: Well, then, would question 241 make it clear?

Mr. MacInnes: Well, the point that my learned friend is raising as to whether it is special or general, you would have to put in questions 237, 238 and 239.

Mr. Reid: 237 is only a duplication of 238.

The Court: I will direct 241 to be put in.

Mr. Reid: Well, 238 is in, isn’t it, my lord?

30 Mr. MacInnes: Question 251.

The Court: Of course, I see a difficulty about reading, or directing questions to be read to which objection was taken. If those objections had not been made I would be inclined to think I would get a better idea of what the answer to question 240 meant, by putting in all the questions. It might be only fair to let me have it all, but perhaps Mr. MacInnes would object.

Mr. MacInnes: I don’t mind your lordship reading the entire cross examination from beginning to the end as long as I am not fixed with putting in my own case.

40 The Court: No, but those questions were objected to and I hesitate directing them to be read if they are not otherwise admissible.

Mr. Reid: I suggest questions 238 and 241 show what 239 means and I have no objection to it, but it is only a duplication of 238.

The Court: It would almost seem from 241 she is speaking of the cross infection of the McDaniel child.

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Mr. MacInnes: That might very well be, but I do not suppose it makes any difference.

The Court: That is another matter I am not concerned with at present.

Mr. MacInnes: It wasn't a special incident. It was one of the whole group.

The Court: Then I direct 238 to be read.

Mr. MacInnes: Very well. (Reads same). Question 251 (Reading). Questions 259 to 262. (Reading).

The Court: We will adjourn now until 2.30.

10

(COURT ADJOURNED AT 1 P.M. UNTIL 2.30 P.M.).

MARY BELL McDANIEL, a witness called on behalf of the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MACINNES:

Q. Mrs. McDaniel, you are the wife of Matthew G. McDaniel, one of the Plaintiffs in this action? A. Yes.

Q. And the mother of Annabelle McDaniel, the other Plaintiff? A. Yes.

Q. And do you remember when Annabelle was taken to the hospital on the 17th of January suffering from diphtheria? A. 20 Yes.

Q. What were the visiting days at the hospital? A. Wednesdays, Saturdays and Sundays.

Q. And she was taken in, I believe, on Sunday the 17th? A. Yes.

Q. You visited her every visiting day? A. Yes.

Q. That is, Wednesday the 21st and Saturday the 23rd and Sunday the 24th. Now, what happened on Wednesday, the 28th, when you were visiting your child there? A. That is the day I discovered that there was a patient next door, in the adjoining 30 room, with smallpox.

Q. You discovered that there was a patient in the adjoining room—that is, in 316, I take it— A. Yes.

Q. —with smallpox? A. Yes.

Q. Having learned that, Mrs. McDaniel, what did you do? A. I came down to the office and I spoke to Miss Forrest.

Q. I beg your pardon? A. I came down to the office and I complained about having a smallpox patient so near my child.

Q. Well, do you know Miss Forrest? A. Yes.

Q. You knew her to see her? A. Yes.

40

Q. And you know it was Miss Forrest you were speaking to? A. Yes.

Q. What time of the day was this, Mrs. McDaniel? A. It was—I stayed with her—I stayed up until it was closing time.

- Q. Now, what were the visiting hours? A. I think it was from half past two or—yes I think from half past two until four.
- Q. So you had a limited time for visiting? A. Yes.
- Q. And at the close of your visit you went down to the office and saw Miss Forrest and complained about this smallpox case being in the adjoining room? A. Yes.
- The Court: I have that.
- Mr. McInnes: Q. What did Miss Forrest say? A. She said, "How do you know she has smallpox?" And I said, "I saw her." And she said, "Well, there are lots of diseases that look like smallpox that isn't smallpox."
- Q. Yes, and did the youngster— A. And I said, "Well, I know this is smallpox."
- Q. Yes, now, did anything else take place? A. She asked me if my child was vaccinated and I told her no.
- Q. You told her no. What did you do further about this? A. I came right home then and I 'phoned Dr. Kennedy.
- Q. Now, the next visiting day was Saturday— A. Yes.
- Q. —before she left? A. Yes.
- Q. And where was Annabelle then when you visited her? A. I found her downstairs on the lower floor.
- Q. That would be on the second floor? A. Yes.
- Q. Annabelle was taken home, I believe, on Wednesday the 3rd of February? A. Yes.
- The Court: How did you come to see the other patient? A. Well, I could see her just through the door—through the window.
- Q. You were not visiting her? A. Oh, no, I wasn't visiting her.
- Mr. McInnes: I think my learned friend will agree with this. In the Infectious Hospital here there is a large panelled window of plate glass, intended for those visiting to see through—like a window for the purpose of allowing visitors to see the patient—those visiting.
- Mr. Gibson: What do you call visiting?
- Mr. MacInnes: For the purpose of seeing in anyhow—that was in each of the rooms.
- Q. Now, Annabelle came home Wednesday the 3rd of February? A. Yes.
- Q. What happened the following day? A. Well, she was quite well until about then and she started to complain about pains.
- Q. Pains where? A. In her shoulder at first and then it was from headache.
- Q. Now, what was her condition on Tuesday? A. Well, as far as I can remember, she was complaining about pains in her back.

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- Q. And on Wednesday what happened? A. Wednesday she was quite sick.
- Q. And then what did you do? A. Well, I was told, of course, that it would be the reaction from the diphtheria.
- Q. And you expected it would be the reaction? A. Yes.
- Q. Now, what did you do on Wednesday? A. Well, it was on Thursday I called in Dr. Kennedy.
- Q. That would be on Thursday the 11th? A. Yes.
- Q. And what did it turn out that the trouble was? A. Well, he came right up to the house and he asked me—
- Q. You cannot tell what he said to you? A. Well, he came up to the house.
- Q. And then what was done after he was there and had seen Annabelle? A. I think it was then he vaccinated us all.
- Q. That is, he vaccinated the rest of the household? A. Yes.
- Q. And what was done with regard to your household? A. Well, I don't think there was anything done that night, but the next day I think we were quarantined.
- Q. The next day, that would be the 12th you were quarantined? A. Yes.
- Q. And how long did that quarantine keep up? A. I forget the date, but I think it was the 23rd of March.
- Q. Now, during this time what was Annabelle's condition? A. Oh, well, she was very sick of course.
- Q. With smallpox? A. Yes.
- Q. And what did that necessitate on the part of you and your husband? A. Well, I don't know, I couldn't tell you all it necessitated.
- Q. Well, what did you do? A. Well, of course, we had a nurse—we had a nurse for fifteen days—and then I nursed her at night—well, we took turns, myself and the nurse.
- Q. Yes, you and the nurse took turns. Was this a registered trained nurse you had? A. Yes.
- Q. A regular trained nurse? A. Yes.
- Q. And you spared the nurse by doing half of the nursing? A. Yes, she took the day shift and I took the night shift.
- Q. Now, how long did you have the trained nurse in there? A. Fifteen days.
- Q. When did you get her in, Mrs. McDaniel? Do you remember with regard to Dr. Kennedy pronouncing it smallpox? A. It was either Friday or Saturday night.
- Q. And it was within a day or two of that? A. Yes.
- Q. And after the trained nurse left, who did the work of looking after the child? A. Myself and my husband.

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Q. Now, during the time that this contact was on, what steps were taken with regard to the prevention of contagion in the house and what kind of work did that necessitate? A. Oh, we used all kinds of lysol and that was about all we could do.

Q. As prescribed by the doctor, I presume? A. Yes.

Q. And what about the clothing and the bedding and that sort of thing? A. We washed and boiled that every day.

Q. That was washed and boiled every day? A. Yes.

Q. And what was the amount of work that that entailed on you? A. Oh, there was an awful lot of work, of course. We worked hard.

Q. Now, how has Annabelle been since? You say the quarantine was maintained until some time past the middle of March? A. Yes.

Q. And what about her schooling? A. Well, she didn't go to school for the rest of the term.

Q. She didn't go to school for the rest of the term. Now, how has she been since that? A. Well, she is—

Q. I mean as compared to her condition before? A. Well, of course, it took her a long time to get strong and I don't know that she is as strong as she was before.

The Court: She is going to school now, is she? A. Yes.

Mr. MacInnes: Q. Did you make arrangements for the payment of her nurse or did Mr. McDaniel? A. Oh, Mr. McDaniel did that.

Q. Now, prior to—or at least when Annabelle came home, what was the condition of her face, was she marked? A. When she came home?

Q. When she came home from the hospital on the 3rd of February? A. Oh, no, she looked quite normal.

Q. Quite normal? A. Yes.

CROSS-EXAMINATION BY MR. GIBSON:

Q. You have other children, Mrs. McDaniel? A. Yes.

Q. Have they ever had infectious diseases? A. Well, there were four of them, and three of the others had scarlet fever.

Q. Were they nursed at home or were they sent to the hospital for that? A. They were nursed at home.

Q. Did you ever have any child in the hospital before? A. No.

Q. Who suggested that Annabelle should go to the hospital, the doctor? A. The doctor, yes.

Q. Did he give you any reason for having her go to the hospital? A. Well, he thought it was the safest place for her.

Q. Did he tell you it was a good hospital? A. I beg your pardon.

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- Q. Did he tell you it was a good hospital? A. Yes.
- Q. And was specially designed for the purpose of treating infectious diseases? A. Well, he didn't say that.
- Q. Did you go there with your child at the time? A. Yes.
- Q. And you saw about the arrangements for her? A. Well, I didn't see where she was put that day. I wasn't allowed to.
- Q. But you saw that she was put in a separate room by herself? A. Yes.
- Q. Was the system explained to you at all? Did you inquire into the system? A. No, but I took it for granted, it being an isolation hospital that everything was—
- Q. —everything was all right? A. Yes.
- Q. And you knew, I presume, that there were other patients in the other rooms along the corridor? A. Yes.
- Q. Because as you walk along the corridor you can see into each room, can't you? A. Yes.
- Q. And those other patients, of course, must have been suffering from some infectious disease, isn't that so? A. Yes.
- Q. So you were quite aware that there were other patients suffering from other infectious diseases in the hospital? A. Yes. 20
- Q. You didn't suppose all the patients in the hospital had diphtheria, did you? A. No, I knew they didn't.
- Q. And you didn't make any objection to your child being put in the hospital and treated there? A. Well, no—well, I didn't like to see her go there and I told Dr. Kennedy, but Dr. Kennedy believed so much in the hospital he thought it was better—and he gave me to understand it was such a wonderful institution.
- Q. Yes, and after you went and saw it, you quite agreed with him, didn't you—that is, what appeared to you to be? A. Well, 30 I didn't like to see the rooms with so many different diseases, so close together, I didn't see how they could escape being infected.
- Q. Did you ever say anything to anybody about that? A. Well, I suppose I spoke to someone at home about it and I think I did to some of the nurses, too.
- Q. Well, you visited there as often as you were allowed to visit, did you? A. Yes.
- Q. And the visitors are allowed to remain in the corridor only, are they not? A. Yes.
- Q. And were you aware that you should not go into the 40 room? A. Yes, I was.
- Q. Did you ever go into your daughter's room? A. No.
- Q. Did you ever open the door of your daughter's room? A. I did when she was distressed and she was crying and I wanted to tell her she was coming home with me the next day and I only opened the door a few inches to tell her she was going to be taken home.

Q. When she was on the third floor did you open the door?

A. Perhaps I did, maybe an inch or two.

Q. Although you were aware that it was against the rules?

A. Well, the rest were doing it? I don't think it was the rule there as far as I could see.

Q. Weren't you told not to open the door? A. I don't remember being told that, but I think the rules were posted up.

Q. But you wouldn't say you weren't told? A. I don't remember. I knew we were not allowed to go into the room.

10 Q. What day did you say it was that you learned of the smallpox patient being in the adjoining room? Do you remember what day it was? A. Well, I couldn't say. I thought she went in about a week or so before, but I don't know whether she was or not. Of course, it all depends on the days I visited there. She wasn't very long there when I noticed the smallpox patient.

The Court: Well, the date of her removal is common ground, isn't it?

Mr. Gibson: Yes, the 29th.

The Court: Is it common ground this was the day before?

20 Mr. Gibson: What do you say about that? A. She was removed the day after I made the complaint.

Q. Now, you had no objection to vaccination? A. No.

Q. In fact your other children have been vaccinated? A. Yes.

Q. And was the question of vaccinating Annabelle discussed at all? A. Yes, but we were afraid it was too late then.

Q. Who was afraid it was too late? A. Well, we were and so was the doctor.

30 Q. Dr. Kennedy? A. We didn't know, but she had already contracted the disease.

Q. She had what? A. She might have already had the germ in her system and it was too late then to vaccinate her.

Q. You took that up with Dr. Kennedy? A. Yes.

Q. You spoke of that at the time of removing her? A. Yes.

Q. And did he give that as a reason for not doing it? A. Well, we read it in the papers that one patient had died for being vaccinated after having contracted the disease.

40 Q. Well, did Dr. Kennedy decide not to vaccinate her for that reason? A. Yes, that was the reason because we did not know if she already had the germ in her system and perhaps it would be too late.

Q. Now, you say she wasn't well on the Monday, but you did not call in Dr. Kennedy until Thursday? A. She wasn't what you would call sick.

Q. That is, it wasn't until—you didn't call the doctor in—
A. Until she did take sick.

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Q. That is, you did not think the symptoms were at all serious? A. No.

Q. Then were you aware that you could have had her nursed in the hospital? A. Yes, but we would not send her back there.

Q. You would not send her back there? A. No.

Q. Didn't you think it was a suitable place for to nurse smallpox? A. No, never again.

Q. Did I understand you to say, Mrs. McDaniel, at the time you discussed the question of vaccination with Dr. Kennedy was when you suggested that she should be removed to another room? 10
 A. Yes. That is when Dr. Kennedy discovered there was smallpox next to her in the adjoining room.

Q. Well, you claim really to have discovered it? A. Yes.

Q. And you discussed it? A. My husband and I discussed it.

Q. You and your husband discussed it? A. My husband and Dr. Kennedy and I discussed it.

Q. That is the same day you discovered it? A. Yes. Well, of course, Dr. Kennedy could not believe that there could have been a smallpox patient next to her and it was after he found that 20
 out he discussed the question of vaccinating her with my husband.

Q. But it was the same day that she was removed, was it?
 A. Yes, I think it was. I think she was removed that night.

Q. She was removed that night and the discussion about vaccination would take place on the 29th? A. I guess so.

RE-DIRECT EXAMINATION BY MR. MACINNES:

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Q. Now, you say on one occasion, or at least on one occasion you opened a crack in the door to talk to Annabelle? A. Yes.

Q. That was the day before she came home? A. Yes.

Q. Did you at any time, from the time she went into that 30
 hospital until she came out, touch her? A. No.

Q. And that was the nearest approach that you were to her?
 A. Yes, that was.

Q. That is all, thank you.

(Witness aside).

MATTHEW G. McDANIEL, one of the Plaintiffs herein, being first duly sworn, testified as follows:

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 Direct Exam.

DIRECT EXAMINATION BY MR. MACINNES:

Q. Mr. McDaniel, you are the Plaintiff in this action and the father of Annabelle McDaniel, your co-plaintiff? A. Yes. 40

Q. What is your occupation? A. Customs employee.

Q. In Vancouver here? A. Yes, sir.

Q. While Annabelle was in the hospital, Mr. McDaniel, did you go to see her? A. No, I never went near the institution.

Q. When did you learn that she had smallpox? A. It was one evening after I came home from visiting—which would be Wednesday—whatever date that was, the 28th or 29th of February.

Q. Yes, Wednesday would be the 28th and Thursday the 29th? A. Well, it would be Wednesday the 28th.

The Court: That would not be the day you learned she had smallpox.

10 Mr. MacInnes: No, I asked you when did you first learn that she actually had smallpox? A. Oh, it was after she had been home a couple of days.

The Court: Just be careful, Mr. McDaniel, and try to listen carefully to the question.

Mr. McInnes: Q. Well, when it was discovered she had smallpox, at home, what was done? A. The doctor was called in—Dr. Kennedy was called in.

Q. And what happened then to you and to your household?

A. Well, the next day after he was called in, as far as I can re-
20 member, the house was quarantined.

Q. The house was quarantined? A. Yes.

Q. And what about you? A. I was quarantined with it.

Q. You were quarantined in the house? A. Yes.

Q. Now, what did you do then with regard to attending on Annabelle? What attendants did you supply for her during her illness from smallpox? A. Well, I helped my wife and the nurse in anything I might be called upon to do.

Q. Well, who got the nurse? A. Well, it was decided between my wife and myself we would have a night nurse.

30 Q. And you had a nurse named Miss Arkan? A. Yes.

Q. A trained nurse? A. Yes.

Q. What did you have to pay her? A. \$10 a shift.

Q. That meant practically a shift of 24 hours? A. No, she wasn't on duty twenty-four hours.

Q. No, but she had a shift of 10 hours? A. Yes.

Q. And how long was she there? A. 15 days.

Q. And how much have you paid her? A. \$135.

Q. You still owe her \$15. A. That is a fact.

40 Mr. MacInnes: Here is the bill, but I don't suppose it is evidence.

The Court: Is that item to be substituted for the \$300 or is there something else to be added?

Mr. MacInnes: Q. I see in this Statement of Claim you gave instructions to charge \$300 for the cost of nursing? A. Yes.

Q. And it was \$150 you paid to Miss Arkan? A. \$135.

Q. Well, it was \$150 you owed her; and you will pay her the rest in time? A. Yes.

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Q. And how did you make up the other \$150? A. For my wife's services, in being actually on the job.

Q. That hasn't been paid up? A. No.

Q. But that is the way the \$300 has been computed? A. Yes.

The Court: I have that.

Mr. MacInnes: Q. Dr. Kennedy's bill for attendance on the child is how much? A. \$100.

Q. And how much of that is paid? A. It is partly paid.

Q. What is the balance? A. I think \$50 or \$60, I am not sure. 10

Q. Now, when Annabelle went into the hospital, was she a patient there? A. Yes.

Q. She was a paying patient? A. Yes, she was charged up at \$2.50 a day.

Q. And this is the bill you got from the hospital? A. Yes.

Q. And you paid \$30 on account of that bill? A. Yes, there is a balance due.

Q. That is a balance of \$12.50 claimed. You might mark that.

(STATEMENT OF ACCOUNT MARKED EXHIBIT 20
 No. 2).

Q. Now, what was done in the way of sterilizing the clothes and apparatus used in the child's room while she was at home?
 A. They were boiled and disinfected every day.

Q. Who did that? A. I did.

Q. Where did you do it? A. At home.

Q. In the basement? A. Yes.

Q. What did you use for disinfecting? A. For cleaning—lysol I guess it was.

Q. Now, I see in your particulars you paid out for medicine and supplies \$15? A. That is a very moderate estimate and figure, too. 30

Q. You mean it is a very low estimate? A. Yes.

Q. You didn't keep track of it? A. No, I didn't itemize it at all.

Q. There is an item of \$15 for extra light and fuel? A. Also what I consider to be a very low charge.

Q. Why very low? A. Because the fire wasn't out for six weeks, nor the lights turned off.

Q. By reason of what? A. Of the child's sickness. 40

Q. Now, you charge \$15 for the nurse's board. When she was there, where did she board? A. There.

Q. And do you consider \$15 a fair estimate for that? A. Yes, I do.

The Court: Then you would be off work, too, Mr. McDaniel?

A. My hearing is kind of bad, sir.

Q. Well, you heard Mr. MacInnes all right? A. Yes, just by listening with my right ear, but the other isn't very good. I have been a victim of the Great War your lordship.

Q. You were off work yourself on account of this matter for how long? A. Well, we are allowed under the rulings of the Department five weeks, through being quarantined and are under salary.

Q. And you didn't suffer any loss? A. We didn't suffer any from that.

10 Q. You were very fortunate in that respect—or perhaps fortunate is hardly the term.

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CROSS-EXAMINATION BY MR. GIBSON:

Q. You say you never went near the hospital? A. I never did.

Q. You have never been in the building? A. I have.

Q. You have been in the hospital? A. Yes.

Q. You have been in it since Annabelle left? A. I cannot say that I have.

Q. But you have been in the isolation hospital, have you not?

20 A. No; I never have been in it.

Q. You have never been in it? A. No.

Q. And you don't know how good it is? A. I know how rotten it is. That is my answer to that question. It has been well proven to me.

Q. You knew there was smallpox in the city at the time your child was sent to the hospital? A. It had not broke out to the knowledge of the public at that time.

Q. Well, what your wife said is true that Annabelle was sent to the hospital on the recommendation of Dr. Kennedy? A. Yes.

30 Q. And then afterwards your wife on finding out about the smallpox patients were being nursed in the hospital, took that subject up with you and Dr. Kennedy? A. After she discovered on a visiting day that my child was lying in an adjoining room to a smallpox patient.

Q. And then you and Dr. Kennedy discussed the question of vaccination, is that right? A. I then notified Dr. Kennedy over the 'phone and he suggested vaccination and I said, "No, vaccination is a dangerous thing, after having already contracted the disease."

40 Q. You decided that question? A. Yes.

Q. You didn't leave it to Dr. Kennedy to decide? A. No, sir.

(Witness aside).

Mr. MacInnes: My lord, I have the infant Plaintiff here. There is no evidence that she can give as far as I am concerned,

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unless my friend wishes to cross-examine her and I tender her for cross-examination.

The Court: What do you say?

Mr. MacInnes: I am not holding her back and I will produce her for cross-examination if he wants to ask any questions.

Mr. Reid: If our doctors want to produce her, they will produce her.

Mr. MacInnes: That is our case.

EXTRACTS EXAMINATION FOR DISCOVERY

ALFRED KIMBALL HAYWOOD

10

1. Q. Doctor, you are the Medical Superintendent, is it—
 A. General Superintendent.
2. Q. —of the Vancouver General Hospital? A. Yes.
3. Q. How long have you been in that position? A. Since November 1st, 1930.
6. Q. Your work covers the superintending of the Infectious Diseases Building in question? A. The whole group of buildings known as the Vancouver General Hospital.
 * * *
13. Q. How many patients suffering from smallpox were there is in this building say, from the 1st of January on the greatest number at any time? A. Oh, I could not tell you that.
14. Q. Approximately? A. Oh, 15 to 20.
15. Q. The exact number is not material. What would be the number of smallpox patients in that building by the 17th of January, the middle of January? A. None.
16. Q. None had been admitted prior to that? A. No, not this year.
17. Q. This year, I mean? A. No.
 * * *
30. Q. Whenever a case would come in it would be put wherever it was convenient? A. Yes.
31. Q. On the 18th of January, 1932, that was the first this year? A. The first smallpox.
32. Q. How many patients were admitted then? A. One.
33. Q. Where was that patient placed in the Isolation Hospital, with respect to the McDaniel child, the Plaintiff here? A. In room 308.
34. Q. 300 indicates the floor? A. The Third Floor, I.D.H.
 * * *
35. Q. The floors in that hospital are divided by corridors down the middle? A. Yes.
36. Q. The even numbers on one side and the odd numbers on the other? A. I judge so. Yes, it looks as if the even numbers were on one side and the odd numbers on the other.

30

40

37. Q. When was the next smallpox patient admitted? A. RECORD
January 21st.
38. Mrs. Caine? A. Yes. *In the Supreme Court of British Columbia*
39. Q. Where was she allotted? A. 316.
40. Q. That is the room adjoining 314 where the Plaintiff was? A. That is the next room. Plaintiffs' Case
41. Q. That is the adjoining room? A. Yes. Extracts
42. Q. Have you lists of the patients that came in after that? I do not want the names? A. The next one was Mrs. Donald, she came in on January 28th and was put in 317. Examination for Discovery
43. And the next one? I am not concerned past February 3rd. A. There were four of them came on the 29th. A. K.
44. Q. Yes, where were they placed? A. 314, 306, two in 306, and two in 314. Haywood
45. Q. All on that same floor? A. All on that same floor. Jan. 11, 1933
46. Q. And any more? A. Two on January 30th went into 304, and one February 1st went to 321, and one on February 3rd, at 6.35 p.m. was put in 314. (Cont'd)
- * * *
- 20 49. Q. So that the system was to segregate these smallpox patients on the 3rd floor? A. As much as we could.
50. Q. Now, the Plaintiff Annabelle McDaniel was admitted to the hospital on the 17th of January? A. Yes.
51. Q. Suffering from diphtheria? A. Yes.
52. Q. And there were no symptoms of infection from smallpox at that time? A. Not that we knew of.
53. Q. And the records show that? A. Yes.
- * * *
- 30 57. Q. On admission on the 17th she was placed in room 314? A. Yes.
58. Q. At that time there was no smallpox? A. No. She was put in 314. Yes, 314, that is correct.
- * * *
68. Q. And Mrs. Caine's admission was on the 21st of January, on Wednesday the 21st and her trouble was clearly diagnosed as smallpox? A. So far as I know.
69. Q. That is what her records show? A. Oh, yes, yes.
70. Q. Who has the allocating of the patients to their respective rooms, whose business is it? A. I would think Miss Forrest's.
- 40 71. Q. In the scope of her duties? A. Yes.
- * * *
76. Q. Smallpox is very contagious, Doctor, is it not, or infectious? A. Infectious. It is liable to be passed from one to the other.
- * * *

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79. Q. Is smallpox described as a disease of spontaneous origin, or is it transmitted? A. I could not tell you that. My job is hospital administration. I have never practiced medicine.

80. Q. You have never practiced medicine? A. No.

81. Q. So I need not ask you about these sort of things? The infectious diseases are kept in a building by themselves under your system in the hospital? A. Yes.

82. Q. And that is because of the danger from infection from them? A. Yes, and it enables us to have everybody in the building conscious of the fact because there are strict regulations. 10
 It is for that purpose.

83. Q. You have strict regulations governing the course of conduct of the attendants and nurses in that building? A. I think so.

84. Q. And the necessity for that, Doctor, is the ready transmissibility of these infectious diseases? A. From the employees.

85. Q. That is, an employee will transmit the disease as quickly as an outsider, if he is not careful? A. Yes, it is very difficult to control the outsiders. 20

86. Q. And you do try to control the employees of the hospital in every way possible? A. Yes.

87. Q. Recognizing the ready transmissibility of infectious diseases? A. Yes.

* * *

90. Q. Getting down to January of 1932, from the 17th on, from the 17th of January, to the 3rd of February, can you give me any idea of the number of attendants in that building? A. Yes, eight graduate nurses, that is, on this one floor that we are talking of. 30

91. Q. You are talking of the 3rd floor? A. Yes, because they did not have contact one with another.

92. Q. The floors are kept separate? A. Yes, eight graduate nurses, ten student nurses, three orderlies, two maids, one cleaner, two resident doctors who would be for the whole building. Then there would be Miss Forrest who would have divided duties on that floor, and the number of doctors would depend on the number of patients, a private patient would have a private doctor.

* * *

97. Q. Now, then, I see that the McDaniel child was put in 40
 at \$2.50 a day on the admission card? A. Yes.

98. Q. That rate means the services of nurses would be the general nurses on the floor? A. Yes.

99. Q. And not a special or private nurse? A. No.

* * *

105. Q. It may be that. I asked her that. It would be

part of the cleaner's duties, who is a man, to go in and out of that room on his regular round of duty? A. Yes.

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115. Q. Now, the nurses, of course, come from room to room too, in the course of their duties? A. Yes.

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116. Q. And they would have their thermometers and swab sticks and basins and various appliances that they are using from time to time with different patients. A. Yes, but each patient has its own outfit. Each one has its own room and equipment.

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10 117. Q. So that they did not carry such equipment from one room to the other? A. No.

122. Q. The dishes and equipment for feeding the patients, are they individual, for the rooms? A. No.

123. Q. They come from the kitchen? A. There is a kitchen on each floor.

124. Q. And it is part of the routine that they be sterilized? A. They are sterilized as soon as they come back from the patient's room.

20 125. Q. What about cleaning apparatus, brooms, brushes and mops, and other cleaning apparatus? A. At that time the cleaning apparatus—I could not answer that. I don't know. Miss Forrest will have to answer that.

126. Q. Don't you know as a matter of fact there was no segregation or separation of the cleaning apparatus at that time? A. I don't know whether there was or not, but I know when the whole floor became predominant with smallpox cases they had cleaning apparatus for each room. I imagine that was a later date than this.

30 132. Q. But you do think that later on when the number of smallpox patients on this floor increased, that there was a separate set of cleaning utensils for each room? A. Yes.

133. Q. The inference from that, Doctor, would be that in the early stages when the McDaniel girl was there from the 17th January on, they would be using the one set of equipment? A. We always had for those other eleven patients without any cross-infection. It was taken for granted that the technique was sufficient.

40 134. Q. And subsequent experience induced you to make the improvement by supplying separate equipment for each room? A. No, the virulence of the disease did. This was the most virulent epidemic we ever had in the City.

135. Q. Do you tell me doctor—perhaps this is medical, but could you tell me if there was any reason why either of the resident doctors should have used a needle on the McDaniel child's stomach, on the side here? A. To make a blood test, if they used

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one. That is done with every patient in every part of the hospital. That is part of the routine treatment.

136. Q. Is that the place? A. Some people do it on the arm, some on the finger, some on the lobe of the ear. I could not tell you why they would do it there.

137. Q. Now, doctor, the patients are allowed a certain limited amount of visitors? A. Not in the room. They are not supposed to go in the room. They can go in the corridor and speak through the glass.

138. Q. And visit through the closed glass windows? A. 10
 Yes.

139. Q. And that is for the prevention and spread of contagion? A. Yes.

140. Q. That is regulated by rules? A. Yes, unfortunately it is not carried out by people we are trying to regulate.

141. Q. Did you know of any violation on the part of the McDaniels in this? A. Yes.

142. Q. When was this? A. I could not tell you. Miss Forrest could.

143. Q. What steps do you take so far as the nurses and 20
 attendants and hospital staff are concerned to prevent the spread of contagion? A. Well, when the staff come on duty they change their clothes and put on a uniform. When they go into a patient's room they open the door which has a contrivance on it, so that they do not have to use their hands, but use their arm, and they put a gown on.

144. Q. In the room? A. Yes. They administer to the patient's wants, and then they take the gown off and wash their hands thoroughly.

* * *

30

151. Q. Now, if there was any failure on the part of the nurses or attendants to observe the regulations, the danger of that would be cross-infection, of course? A. It would. That would be one of the dangers.

152. Q. Did you have cross-infection in there in January of 1932? A. Yes.

153. Q. You did have cross-infection? A. Yes.

154. Q. Several cases? A. Yes.

155. Q. One a Jap baby? A. Yes.

156. Q. Died? A. Yes.

40

157. Q. One the Duff child? A. Yes.

158. Q. And the third one was the McDaniel child? A. I don't know whether it was the third or not. I don't know what order they came in.

159. Q. It was one of the three? A. Yes.

* * *

163. Q. One of the most likely sources of cross-infection would be an unobservance of some of the regulations? A. Yes.

* * *

169. Q. An outbreak of cross-infection would be a warning to the authorities to check up on the working of the system, wouldn't it? A. Yes.

* * *

181. Q. If cross-infection did occur in your I.D.H. would it not be a reasonable inference that there may have been a defect or breakdown in the operation of your system? A. Yes, there may have been. That might have been one of the reasons.

* * *

187. Q. Would it be an unfair inference to draw that the reasonable possibility of infection was cross-infection through a breakdown of the system? A. It might be one of the reasons.

188. Q. It would not be unreasonable to infer that? A. No, it would not be unreasonable to infer other reasons might have caused it.

* * *

20 196. Q. Does the Vancouver General Hospital get grants from the Provincial Government? A. Yes.

197. Annually? A. Yes.

198. Q. And has been since you have been there? A. Yes.

199. Q. 1930, '31 and '32? A. Yes.

* * *

201. Q. What notice was given in the I.D.H. that you were bringing in smallpox patients to floor three? A. Notice to whom?

202. Q. To the medical profession or to the public? A. I don't know of any notice.

30 203. Q. No notice at all? A. Except that the hospital reported to the proper authorities.

* * *

210. Q. Let me get this clearly, late on in January, 1932 the system was adopted of individual cleaning appliances for individual rooms? A. That is one of the changes that was made.

Vancouver, B.C.,
January 6th, 1933.

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In the Supreme
Court of British
Columbia

Plaintiffs'
Case
Extracts
Examination
for Discovery
E. M.
Forrest
Jan. 11, 1933

EXAMINATION OF ELLA MAUD FORREST, AN
EMPLOYEE OF THE DEFENDANT FOR DISCOVERY
PURSUANT TO ORDER HEREIN

J. A. MACINNES, ESQ.,
J. G. GIBSON, ESQ.,

appearing for the Plaintiffs.
appearing for the Defendant.

ELLA MAUD FORREST, Sworn.

EXAMINED BY MR. MACINNES:

1. Q. Miss Forrest, you are the superintendent of the In- 10
fectious Diseases Hospital? A. Supervisor.

2. Q. That is, you are in charge of that building, a branch
of the Vancouver General Hospital? A. Yes.

* * *

6. Q. What are your duties in that position as supervisor
of that building? A. Supervision of the nursing and the house-
keeping.

7. Q. And the administration of the building as a hospital?
A. Yes, the carrying out of the administration.

8. Q. Of course the rules and regulations are handed down 20
to you from the proper authorities, but it is your business to see
that these are carried out in that building? A. Yes.

* * *

12. Q. How long have you been in charge of the I.D.H. in
Vancouver? A. Ever since it was opened six years ago.

13. Q. In 1927? A. And before that in the old building.

14. Q. The old system was the pavilion system, was it? A.
Yes.

15. Q. A building for each separate class of infectious
disease? A. Yes. 30

16. Q. And the present building is a combination? A. Yes.

* * *

22. Q. When did you take in the first smallpox patient in
1932? A. January 17th, I think, 18th.

23. Q. The 18th, Dr. Haywood said? A. Yes, it is hard to re-
member the dates.

24. Q. The McDaniel child, I think it is common ground,
was admitted on the 17th? A. Yes.

25. Q. I think on Dr. Haywood's examination he said that
the first patient came in on the 18th. Who allocates the rooms 40
to the incoming patients? A. That is done through me or my
department. We do not allocate the patients to our building.

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26. Q. No, I mean on a patient being allocated to your building, that patient then comes under your direct control? A. Yes.
26. Q. I take it you then allocate that patient to some room in your building? A. Yes, unless there is a special request from a doctor for a special room.
28. Q. In the absence of any special request, you allocate the room? A. Yes.
- * * *
- 10 30. Q. On the 18th of January this year were there any floors vacant and unoccupied by patients? A. In 1932?
31. Q. Yes, last year, the year 1932? A. There was one floor unoccupied by patients.
32. Q. To be perfectly clear about that, that was a regular hospital floor? A. Yes.
33. Q. Equipped the same as the other floors? A. A floor containing only nine rooms.
34. Q. Which floor is that? A. The first floor.
- 20 35. Q. The ground floor? A. Yes, almost the basement, that is the first floor in the basement.
36. Q. Is the basement the one you mean as having nine rooms? A. Yes.
37. Q. That was unoccupied in January? A. Unoccupied by patients. It was occupied by internes.
38. Q. Just what does that mean, Miss Forrest? A. The house doctors, the resident doctors.
39. Q. You mean that they had their living quarters there? A. Yes.
- 30 40. Q. Was it not intended for hospital use? A. I do not know what it was intended for. They were there, and are still there.
41. Q. It has never been used as a hospital? A. No.
42. Q. Never used for a hospital floor? A. No.
- * * *
50. Q. Now, what were the regulations with regard to segregating smallpox patients from the others? A. No different regulations.
51. Q. You treat them all alike? A. Yes.
52. Q. Indiscriminately? A. Yes.
- 40 53. Q. Now, during January and the early part of February, 1932, during the epidemic there were quite a number of patients admitted, suffering from smallpox? A. Yes.
54. Q. Where were they allocated to? A. Patients admitted with smallpox to the third floor.
55. Q. Were placed in the third floor? A. Yes.
56. Q. And if they were suffering from smallpox at the time of admission they were segregated on the third floor that is

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right, isn't it? A. They were admitted to the third floor.

57. Q. And not admitted to any other floor? A. No.

58. Q. Were there any smallpox patients admitted to any other floor at any time during January or February of 1932? A. Not definitely diagnosed as smallpox.

59. Q. If they were known to be smallpox they would be put on the third floor? A. On the third floor.

60. Q. And if the disease developed on any other floor with any patients, they were immediately transferred to floor three? A. Yes. 10

61. Q. The purpose of that being what, Miss Forrest? A. Well, convenience.

62. Q. Any question of safety? A. No, not necessarily.

63. Q. Any question of segregating the disease to prevent the spread of contagion? A. No, not necessarily.

64. Q. Why do you qualify that by "not necessarily"? A. Well, it is more convenient to take care of the same type of patient on one floor.

65. Q. Is it purely a matter of convenience? A. Largely. 20

Mr. MacInnes: You have the records there, Mr. Gibson, those admission records—I do not know what you call them.

Mr. Gibson: You mean the McDaniel child? (Producing).

Mr. MacInnes: 66. Q. Yes, I will show you this file of documents. What do they call this in the hospital? A. It is the medical history.

67. Q. Of the patient from the time of reception until discharge—as long as the patient is in the hospital? A. Yes.

68. Q. That is the medical history of the Plaintiff, Anna-belle McDaniel? A. Yes. 30

(DOCUMENT MARKED "A" FOR IDENTIFICATION).

Mr. MacInnes: Have you the other one, Mr. Gibson? Mrs. Payne?

Mr. Gibson: (Produces).

Mr. MacInnes: 69: Q. This document, Exhibit "A," Miss Forrest shows that on admission the hospital authorities were made aware of the fact that the McDaniel child was not vaccinated? A. This shows that? 40

70. Q. Does it not? Just look at it and see? A. Yes, it says here "Not Vaccinated."

81. Q. I show you the card with the history of Mrs. Payne.

She was admitted apparently on the 21st of January, and diagnosed as smallpox, is that not right? A. Yes.

82. Q. And she was placed and allocated to Room 316? A. Yes, I think that is the room that she went in.

83. Q. Isn't it there somewhere? A. We don't usually put down the number of the room on the chart.

84. Q. Isn't it there somewhere? A. Not on the medical history. I don't think, as a matter of fact—it seldom appears anywhere on the chart.

10 85. Q. Now, Room 316 is the room immediately adjoining 314? A. Yes.

86. Q. And 314 is the room that was occupied by the McDaniel child? A. Yes.

87. Q. Neither Mrs. Payne nor the McDaniel child had any matter of choice in the selection of the rooms to which they were respectively allocated? A. No, not as I remember. There is sometimes a choice if they ask for it.

* * *

100. Q. Did you have any complaints from Dr. Kennedy?
20 A. Dr. Kennedy came and asked me, if I remember, if I could remove the child, as her mother had been complaining to him. I think I can remember Dr. Kennedy asking me that.

101. Q. Do you remember what he said? A. No.

* * *

106. Q. As a result of Dr. Kennedy complaining, what was done? A. The patient was transferred to I.D.H. 2.

107. Q. That is the second floor? A. Yes.

108. Q. Do you know when that transfer was made? A. On the 29th.

30 109. Q. The 27th? A. No, pardon me, on the 29th of January about eight o'clock in the evening.

110. Q. You say the 29th of January? A. Yes.

111. Q. Dr. Haywood said it was the 27th. Whether he is right I do not know? A. It is there. It is on her record.

112. Q. Exhibit "A" would show that? A. If that is what you call it. "January 29th, eight p.m. transferred to I.D.H. 2."

* * *

115. Q. On the 17th of January, to the 3rd of February, what was the staff? A. I do not remember. It is down on the
40 record, and that is correct.

116. Q. Dr. Haywood said there were eight graduate nurses? A. That is correct.

117. Q. Ten student nurses, three orderlies, two maids, one cleaner? A. Yes.

118. Q. Two resident doctors and the supervisor being over the whole building? A. Yes.

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119. Q. This was the staff on the third floor, he informed us? A. Yes.
120. Q. There would be a similar staff on each other floor, operating separately? A. Yes.
121. Q. Was that a large number to have on the third floor, the eight graduate nurses, and ten student nurses? A. No, it would be usual.
122. Q. That would be the usual staff? A. Yes.
123. Q. Now, that staff circulated through all the rooms indiscriminately as their duties called them to each room, did they not? A. Yes, no, maids never went to the patients' rooms. 10

* * *

125. Q. And I think Dr. Haywood had another exception, that the orderlies were not supposed to go in the women's rooms? A. Yes, unless requested by a nurse.

* * *

127. Q. The resident doctors made their rounds twice a day? A. Yes.
128. Q. And oftener, if called on, and it was your business to go back and forward as and when occasion called for it? A. Yes. 20
129. Q. Did you have regular visits, a routine round of visits to make, or did you go as occasion called? A. I see all the patients at least once a day.
130. Q. And you visited each room at least once a day? A. Yes.
131. Q. To see that everything was going correctly? A. Yes.
132. Q. Now, that was the system in vogue in early January, 1932? A. Yes. 30

* * *

211. Q. Now, in January and February, 1932, did you have any cross-infection from smallpox? A. I think we did in February.
212. Q. How many cases? A. I don't just know how many in February.
213. Q. Did you have any in January? A. No.
214. Q. When would it begin? A. I think in February.
215. Q. What part of February? A. I don't remember the date of the first cross-infection. 40
216. Q. The cross-infection that you did have was smallpox? A. Yes.
217. Q. It was smallpox that invaded the other rooms some way or another? A. Yes.
218. Q. It was not cross-infection of any other disease? A. Not at that time.

219. Q. I think Dr. Haywood said there were three or four cases of cross-infection at that time? A. I cannot remember how many occurred in February.
220. Q. There was a Jap child? A. A Chinese child, that was in March?
221. Q. And a child named Duff? A. Yes.
222. Q. Do you remember any others? A. Yes, there was a Carson child. That child was in I.D.H. 4.
223. Q. Any others? A. Yes, there was an Ian Fortune.
- 10 224. Q. That is the boy's name? A. Yes, he was not on the third floor.
225. Q. No, he was— A. On the 4th floor. The Duff child was discharged, and came back with it.
226. Q. And the Chinese child? A. I.D.H. 4.
227. Q. Any others besides these you have named? A. There was a Mr. Albers.
228. Q. Where was he? A. I.D.H. 3.
229. Q. Any others? A. Mr. Reynolds, I.D.H. 3.
230. Q. Is that all? A. No, I don't think that is all, but
- 20 I cannot remember any more, the names of them.
231. Q. And the McDaniel's child; she was on 3? A. Yes, she was on 3.
232. Q. Now, when was the earliest of these cross-infection cases? A. I don't remember who was the first.
238. Q. Did you make any investigation as to cross-infection of the McDaniel child? A. I don't remember any special thing.
- * * *
240. Q. Can you give any theory as to the cause of this
- 30 cross-infection? A. No.
241. Q. What investigations did you make as to the cause of it? A. I do not remember any special investigations being made about the cause of her cross-infection.
- * * *
250. Q. Explain what you mean by that, "not necessarily?"
- A. Well, cross-infection might occur in some way not related to hospital technique.
251. Q. Did the cross-infection here originate in some way not connected with the hospital technique? A. I don't know.
- 40 * * *
259. Q. The hospital authorities, you and those in charge, relied upon the technique to prevent cross-infection, didn't you?
- A. Yes.
260. Q. And when your technique failed to prevent cross-infection, what investigations did you make? A. I don't think I know just what you mean. Do you mean what other possibilities occurred to us?

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261. Q. No, what investigation did you make as to the cause of the infection? A. Well, I don't remember that we made any special investigations. We could not understand how it occurred.

262. Q. And you simply wondered at it, and let it go at that, is that what you mean? A. We could not decide how it occurred.

DEFENCE

Mr. Reid: I submit that there is no case and ask that the action be dismissed.

Mr. MacInnes: Are you going to rest on that?

Mr. Reid: I will argue it if necessary.

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Mr. MacInnes: He cannot take two chances, he has either to bring evidence or ask for a nonsuit.

The Court: You may go on.

Mr. Reid: In this action there has been no evidence adduced which shows the cause of the infection which the child suffered from and it is the duty of the Plaintiffs to prove their case. And I submit all they have given any evidence of is simply the position of the room in which the child was, in connection with other rooms and the fact that the nurses went from room to room under the system carried on in the hospital and the only expert evidence if you can call it that, that has been given, is that of Dr. Kennedy and you will remember that at the last I asked him if this consisted of an insufficient technique or a breach of the technique and he said he did not know. There has been no evidence from people who are acquainted with the working of modern infectious disease hospitals to the effect that the technique was not in accordance with the highest medical standard or hospital management generally. There is not a scintilla of evidence to that effect. The evidence was that this hospital is here and it has a building for infectious diseases presided over by a lady whom Dr. Kennedy speaks of in the highest terms; and this patient was treated in accordance with the technique afforded by that hospital; and if the technique is wrong it surely lies with the Plaintiff to show how that was wrong according to the standard of hospital work generally. He says he thinks there should be an isolation hospital and there are other schools of medical thought who do not believe in the necessity of isolation as we had it here in years gone by. There is not a scintilla of evidence that the technique of our hospital was broken down in any way or that there was any negligence on the part of the nurses. They did not even plead that, and if they had pleaded that and proven it that the nurses were negligent in carrying out the technique there probably would have been liability on the hospital for the negligence of their nurses. Now, as far as the technique is concerned, that technique may not prevent infection. We are not insurers against any such thing in an infectious diseases hospital. We could not be insurers in the nature of things. And

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in asking you to refuse my motion, it would appear as if your lordship were to say our technique was improper in some form without any evidence to that effect. I take it that in an institution of this kind and under the circumstances of this hospital being as it was an infectious diseases hospital, that the presumption, if any, should be that they have treated it in the ordinary way or in the ordinary approved way of hospital treatment and that being so it behooves them to prove something of that nature. Now, it is to be remarked that there seems to be no case of this kind, in English law—

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10 Mr. Gibson: Any reported case.

Mr. Reid: There is the rule of medical men—dental surgeons, veterinary surgeons and that—a rule that they are bound to exercise ordinary professional care, but there is no evidence here that the hospital authorities did not use ordinary professional care. And so the rule of liability as applicable to a druggist does not apply here. (Reads authority).

I submit here there should have been some person called on behalf of the Plaintiff—some doctor who is acquainted with the administration of infectious diseases hospitals to show that this
 20 hospital was not carried on according to a reasonable standard of infectious diseases hospitals. What is the evidence of Dr. Kennedy? He is a general practitioner who has practised no where but in Vancouver. He has never seen any of these modern infectious diseases hospitals. And he admits the question of infection from germs of smallpox is not even understood at the present time. Does that prove that our hospital is not carrying on its business with that reasonable care as is carried on in a business of this kind? We are not insurers. We are only bound to take the reasonable care of professional people in that line of business.

30 I have found a case in the American courts which I wish to lay before you to show the amount of care required in cases of this kind. This was a case where a woman in a Texas hospital contracted smallpox under very much the same circumstances. Some details, of course, are different. You can never get two cases exactly alike in their facts and the head note reads—it is in 173 South Western Reported, at page 639.

Mr. MacInnes: What is the case?

Mr. Reid: *Jones v. Sisters of Charity*. The head note reads as follows. (Reading same).

40 And I wish to draw your lordship's attention to the law as laid down by the learned chief justice in that case—after having recited the facts.

Mr. MacInnes: What page?

Mr. Reid: Page 640: "We cannot see how the Sisters can be held negligent for doing that which the most eminent medical authorities regarded as safe." There is no evidence here to show

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that the authorities did not regard that as safe. (Continuing reading).

That is the only case where I have found any such claim made against a hospital for the contracting of smallpox and under that ruling, which is not binding on the court, but which in the absence of a Canadian authority I consider is worthy of consideration.

Now, I have not been able to get this book from the library—evidently somebody has got it out, but I think the rule as laid down in the case of the *Metropolitan Railway v. Jackson* (1877) 47 L.J. Q.B. 303 see p. 306, 3 Appeal Cases, 193, at page 206, is applicable 10 here. (Reading same).

“...The neglect of precaution should be shown and the particulars thereof.”—

Otherwise what am I going to do? Bring evidence here to prove everything has been done, and prove the negative?

Now, there are two sets of facts or three that apply to that.

First, there is the evidence of Mrs. McDaniel of her finding out about this smallpox patient and then, secondly, there is the visit of the physician and he has been going around town on his lawful errands or business and he goes in there to visit her every 20 day and then comes the two main ones. The first is that our technique, in the face of the virulence of this particular disease, did not measure up to absolute prevention. If we are bound to have our technique perfected to that extent, we have to be wiser than any other hospital authority—if we are liable and are held to be insurers—and if we are insurers we are put in a position much more difficult than that of any other medical professional man—either in the healing line, dental, veterinary or anything of that sort.

What would my friend say if I brought an action of misfeasance against Dr. Kennedy and all I could prove was that he 30 attended this patient and the patient died. We attended this patient and she got smallpox. She might have got it because she wasn't vaccinated or because we could not see far enough into the future and we would have had to have known much more about the prevalence of the smallpox germ than Dr. Kennedy knew or does know today according to his own admission—or there must have been a breach in the technique; and my learned friend has not alleged that and consequently I am not going to labor it at all. But he does not allege our nurses were negligent and consequently 40 he comes back, either through Dr. Kennedy, or some failure on our part to see into the future that we have not had a technique which has been as perfect as it should have been, but there is no evidence to show that it is any worse than any other infectious diseases hospital in the country.

Now, this is the *Metropolitan Railway vs. Jackson* case, my lord, and it is quoted at page 159 of Beven on Negligence and the quotation from that case is put in here. (Reading same).

Now, Dr. Kennedy says that nurses go in there—and so did he go in there. The child had to be attended to. The place had to be kept clean and the child had to be fed and I think we can fairly presume that the nurses and the cleaners took the same precaution in going in and out of that room as Dr. Kennedy did; and if Dr. Kennedy was not the cause of the infection, is there any more reason to believe that these other people were the cause of it?

They say they were kept too close together. Now, my friend has put in evidence which is to the effect that patients on the upper
10 floor of that building not only at a distance from these patients on the lower floor—but patients on the upper floor entirely got the infection. Does that show that the nearness of the patient to this smallpox patient was necessarily the cause of the infection?

I submit the evidence shows this, that we had an infectious diseases hospital carried on there by qualified persons and we do not need to go any further—by persons qualified to carry it on, under good regulations. They carry that on and in the case of a virulent attack of smallpox, possibly the technique was not quite as good as it might have been, but it has not been proven that it is
20 one iota, or one point below the ordinary standard of care which is taken in public hospitals in connection with infectious diseases.

The Court: The motion for dismissal is refused.

Mr. Reid: I beg your pardon, my lord.

The Court: Motion for dismissal is refused.

Mr. Reid: I am first going to give the evidence of Dr. Malcolm McEachern. Does my learned friend want an affidavit that Dr. McEachern is not here?

Mr. MacInnes: No, I will accept that statement. Dr. McEachern as I understand it was merely visiting her and I presume
30 he is not here now.

Mr. Reid: No, he is not here. I only wish he were.

Mr. MacInnes: Perhaps you do.

Mr. Reid: I will read the evidence of Dr. Malcolm McEachern, which was taken pursuant to the order made therein on the 25th day of November, 1932.

(Reading direct examination of Dr. Malcolm T. McEachern).

Mr. Gibson: Do you wish to put in the cross-examination and read it?

Mr. MacInnes: Yes, my learned friend has asked me to read
40 the cross-examination of Dr. McEachern.

(Reading same).

Mr. Gibson: When Mr. Reid was reading I noticed an obvious misprint in question 21.

Mr. MacInnes: I noticed plenty of misprints, but I read what I thought was correct.

Mr. Gibson: There is one which says that food was sent from a sterile engine—and it should be from a sterile kitchen.

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The word "engine" should be "kitchen." Will you accept my explanation of that?

Mr. MacInnes: Surely. You are sure it wasn't "System?"

Mr. Gibson: No.

Mr. Reid: I will call Miss Fairley.

EXAMINATION OF MALCOLM T. McEACHERN,
 A WITNESS ON BEHALF OF THE DEFENDANT,
 PURSUANT TO THE ORDER MADE HEREIN ON
 THE 25th DAY OF NOVEMBER, 1932

J. A. MACINNES, ESQ., appearing for the Plaintiffs. 10
 J. G. GIBSON, ESQ., appearing for the Defendant.

MALCOLM T. McEACHERN, Sworn.

DIRECT EXAMINATION BY MR. GIBSON:

1. Q. You are Malcolm T. McEachern, Doctor? A. Yes, sir.

2. Q. What is your present position? A. My present position is associate director of the American College of Surgeons, and director of hospital activities.

3. Q. And where do you reside? A. Chicago.

4. Q. You are, as a matter of fact, a duly qualified physi- 20
 cian and surgeon and you were so qualified in Canada? A. Yes, sir, British Columbia, and Ontario.

Mr. McInnes: 5. Q. I suppose that stands for the present? A. Yes.

Mr. Gibson: 6. Q. When did you graduate? A. 1910.

7. Q. From what college or university? A. McGill University Medical College.

8. Q. And subsequent to that what did you do? A. I was interne at the Royal Victoria Hospital, Montreal for a few months, locum tenum for a while, and then I was medical superintendent 30
 of the Montreal Maternity for almost three years, and then I went to Vancouver as the general superintendent of the Vancouver General Hospital, where I remained for nine years. Following that I took up my present job, working at half time for one year while I was director general for the Victorian Order of Nurses for Canada, at the conclusion of which I took up my present job full time.

9. Q. And now will you just tell us briefly what your present work is for the American College of Surgeons. What is the American College of Surgeons? A. The American College of 40
 Surgeons is an international organization of 11,000 outstanding surgeons banded together to improve hospitalization, surgery and medical practice generally.

10. Q. And what is the name given to your position? A. I am associate director of that organization and director of hospital activities. I have the hospital division.

11. Q. What does your work comprise? A. My main chief work is a survey, an annual survey of all hospitals with 25 beds and over in the United States and Canada, excluding mental and tuberculosis hospitals, which we take only upon request. We make an annual survey of these hospitals to estimate, to determine their set-up, and their service or the care of the patients, their procedure, their technique, their results.

12. Q. In both the United States and Canada? A. Yes.

13. Q. Give me some idea of the number of the hospitals? A. We have this year 3,464.

14. Q. How many? A. 3,464 under survey, which I do, of course, through a field staff, and with my own efforts as far as I can, I cannot cover them all.

15. Q. Have you, during your career, given any particular attention to infectious diseases, and the method of treatment? A. In my work I have to give particular attention to infectious diseases and other general diseases in my work of hospital standardization and medical service. I have to pay particular attention to infectious diseases.

16. Q. Does that include the method of treatment of infectious diseases? A. Yes, physical set-up and procedures, case records and results.

17. Q. Could you give us some idea whether there has been a change or improvement in methods of treating infectious diseases during the period covered by your experience? A. There have been a great deal of improvement in the treatment of infectious diseases in the last 15 or 20 years, commencing around, well, 1918, 1920; well, the last 12 or 15 years. I would say particularly in the last 12 or 15 years.

18. Q. Could you go into that a little, and just explain in what way? A. Well, of course there has been a great deal of public health, prophylactic measures carried out, but as far as hospitalization is concerned there has been an improvement in the physical set-ups for the hospitalization and technique and procedures.

19. Q. You might explain what the older methods were? A. Well, before, we took our disease in separate pavilions or separate hospitals, in a sense, units, and that was in vogue for a number of years, and more recently there has developed the unit system or the consolidated system where infectious diseases are treated in one building in cubicles or rooms set up for that purpose. Instead of separate pavilions we have one pavilion or one building, housing, perhaps, all the infectious diseases by the cubicle system.

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20. Q. For how long has that system been practiced or studied? A. Well, about '18, '19 or '20, it was discussed and carried out by Dr. Richardson in Rhode Island City Hospitals and it is conceded to him the privilege of introducing that system. Of course with this method of cubicles or separate rooms there has been an improvement of technique in the sense of running water available, readily available, sometimes in the room, sometimes right outside the door where the person attending the case can wash in soap and water after handling each case, and there is a system of using gowns around these cases. 10

21. Q. Can you tell us what is the system which has the approval of the highest medical authority? A. Well, the cubicle system or the keeping of the patients in separate rooms, with running water and the individualizing of the technique in that room as far as possible, that is, keeping all the things that the patient requires such as bed pans, urinals and medication for that patient, and treatment right in the one room. Now, the attendants, the nurses coming on duty they generally sleep in the same home as the other nurses, and go to the classes, the same classes, and eat with them, and on coming to the infectious building, change their gown and their shoes, put on another gown, and as they enter the cubicle they open the door without handling the knob, instead of having knobs on the door there is a contrivance which they handle with their elbow and do not have to handle the knobs. And then they gown themselves, they put on a gown and go in the room and attend to their patient, take off their gown, thoroughly wash—scrub their hands before they go to the next patient, and a new gown when they go to the next patient. The food is sent from a sterile kitchen through the window, generally, and is sent in to the patient and all the dishes from that patient are sterilized on their return, go to a separate room, and are sterilized before they are used again; the linen generally soaked in a strong antiseptic solution or put through a sterilizer before being sent to the laundry. The rooms are washed down with soap and water, and the furniture scrubbed, and the mattresses and pillows and blankets sterilized and the room properly aired and sunlight used as much as possible to let as much air and light into the room as possible. That system is regarded as the most desirable and best in practice today, and is acceptable by all authorities. 20 30

22. Q. You referred a moment ago to cubicles and another time you referred to rooms. Do you draw distinction between a cubicle and a room? Explain that? A. Yes, a cubicle is really where we have a partition starting six or eight inches from the floor and going up seven or eight feet, not to the ceiling, with a door of course, and usually with a great deal of glass. 40

23. Q. Dividing, that is, part of a larger room? A. Yes, that is taking a large ward and dividing it up by these permanent

screens so that there is usually six or eight inches from the floor, and up seven or eight feet. When I say a room I mean it is built right from the floor to the ceiling. It may have a good deal of glass in it so that the patient is always visible.

24. Q. What is the object of this special arrangement of the partitions or walls and of this nursing technique? A. Well, it is to prevent cross-infection being carried, infection being carried from one patient to another.

25. Q. Do I understand that in such a hospital as you have described different infectious diseases are treated on the same floor and side by side? A. Side by side on the same floor.

26. Q. Or even in the same ward where you have the cubicle system? A. Yes, even in the same ward with the cubicle system, and even in the Richardson Hospital on Rhode Island in the open ward without cubicles certain diseases at certain stages.

27. Q. Are treated side by side? A. Yes.

28. Q. What are some of the infectious diseases, the common infectious diseases which are treated in this way? A. Measles, scarlet fever, diphtheria, chicken pox, anterior poliomyelitis, or in other words, infantile paralysis, acute cerebral spinal meningitis, which we speak of popularly as meningitis, smallpox. I have seen leprosy treated in the same manner, and we are now apt, more apt to isolate erysipelas, the bronchial pneumonias, typhoid fever. I would like to qualify that bronchial pneumonia by calling it the influenza type of pneumonia like we had during the epidemic, which we might describe as bronchial pneumonia. Those generally are the diseases which are kept isolated.

29. Q. By isolation I take it, in view of what you have said, in either a different building, or in different wards from the general run of diseases? A. They are kept in a different pavilion or unit from the general run of diseases.

30. Q. But they might be side by side? A. They may be side by side in cubicles or rooms.

31. Q. And is any difference made with respect to smallpox or any of the other diseases you have mentioned? A. No, I don't know of any particular difference that is made in connection with any of those diseases. It is true that smallpox was segregated in separate pavilions. It was the old custom of having smallpox treated in separate pavilions, but those pavilions are being closed up more and more and smallpox treated more and more in the general isolation building. That is the general prevailing custom.

32. Q. Have those precautions been found by experience to be sufficient? A. Yes.

33. Q. To prevent cross-infection? A. Yes, very, very satisfactory. Our results today are probably much better—our results today are just as good and better than in the old pavilion style where they were in a separate building.

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34. Q. What is your personal opinion Doctor, with regard to the practice you have described, the method you have described of treating those diseases, I mean particularly with reference to treating them side by side? A. Well, my personal opinion is that it is the modern method, the best method we know of at the present time that has proved satisfactory. It is an accepted practice, and a very satisfactory practice, and successful in its results.

35. Q. You know the infectious diseases hospital which is a department of the Vancouver General Hospital? A. I do. I helped to—

36. Q. You have been in the building? A. Yes, sir.

37. Q. Recently? A. Yes, sir.

38. Q. It was built since you were superintendent of the hospital, I believe? A. It has been built since, but it was being talked about during my regime. We had plans for that for a considerable time.

39. Q. Do you know the technique that is employed in the building? A. Yes, sir.

40. Q. The nursing technique? A. Yes, sir,

41. Q. What do you say of the building known as the infectious diseases hospital in Vancouver? A. The building in itself is most modern. In fact, without reservation I say it is the best I know of in the United States or Canada, the plant and the set-up for infectious diseases; I am familiar with most of them in both countries, and I don't know of any that is more complete or modern.

42. Q. In saying that have you reference to the question of cross-infection? A. Yes, and the care of the patient.

43. Q. What about the nursing technique? A. The nursing technique is the accepted practice. I don't see how it can be improved upon. It has the advantage over other hospitals inasmuch as the nurse has running water in the room, for the nurse and the doctor, whereas in most of our practice today that is out in the hall and in common use by several cubicles, and here we have an individual set-up for each patient. The nursing technique has been excellent and well supervised.

44. Q. In this case it is alleged that a smallpox patient was placed in a room adjoining that occupied by the Plaintiff. What would you say about that procedure? A. Well, I would say that was quite an accepted procedure in the modern method of handling infectious diseases, quite an acceptable procedure. Well, that is all.

45. Q. Then it is further alleged that the same nurses, orderlies and attendants waited on the smallpox patients and also on the Plaintiff. What do you say about that? A. That is quite an accepted procedure too, a quite satisfactory arrangement, and is carried out in all modern systems.

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46. Q. Do I understand that under the older system of treating infectious diseases it was found that patients who had one disease sometimes contracted a different infectious disease? A. Yes, sir.

47. Q. What is that generally called? A. Generally called cross-infection.

48. Q. Has the modern system absolutely eliminated that? A. No.

49. Q. Now, supposing that a patient comes in to a hospital with one infectious disease and afterwards it is found to have another infectious disease; in your opinion would that be due to cross-infection? A. Not necessarily.

50. Q. You might explain that, doctor? A. Well, by cross-infection we mean the carrying of infection by doctors and attendants from one patient having the disease to another patient that has not got the disease at that time, but is given the disease through such contact. Now, that would be a true cross-infection, but a patient might be infected, another disease interposed upon another by infection carried to that patient through the attending doctor from outside, from some source outside; the doctor himself or the nurse herself or the patient may be carriers of any infectious disease and not develop it. The person may carry any of those infectious diseases and not develop it themselves, but transmit it to others whose lowered resistance might take it on, or the disease might be lurking in the system, infectious germs until such time as a person's resistance gets sufficiently low to develop it, so the case may be infected from other sources besides the patient who has the disease actively. Personally I don't believe that we have so many cross-infections as may be stated in the two or three percent incidence. I believe many of them are straight infections through other sources.

51. Q. Referring to this building known as the infectious diseases hospital in Vancouver, what would you say; is it designed and equipped in accordance with modern hospital practice? A. Yes, sir.

52. Q. And is the technique employed in connection with the nursing and other services in that hospital in accordance with the most approved hospital practice? A. Absolutely.

Mr. Gibson: Your witness.

40 CROSS-EXAMINATION BY MR. MACINNES:

53. Q. Doctor, is there any difference in the use of the word "contagious" and "infectious?" A. Well, technically speaking no, but in practice when we say contagious we mean that it is less easily transmitted than infectious; that infectious is more readily transmitted; for instance syphilis and gonorrhoea we would say are contagious by contact.

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54. Q. Is that the difference? A. It is a matter of degree. They are used synonymously, and used differently. Personally I use it differently, it means a less degree of transmission. In speaking of infectious diseases we use the word "infectious" because they are more readily transmitted.

55. Q. Now, speaking about smallpox, how is that transmitted? A. Well, the cause of the disease and the methods of transmission are not sufficiently well-known to medical science to answer that question.

56. Q. Are not sufficiently known? A. No.

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57. Q. This, however, is, I think, generally accepted, that close contact with the diseased patient is dangerous? A. You mean with any disease?

58. Q. Yes, and particularly with smallpox? A. Well, yes. Yes. There is a provision in smallpox, though—well, yes, I know what you mean; close contact is dangerous, yes.

59. Q. And that is what lies at the basis of quarantine? A. Yes.

60. Q. When you discover a case? A. Yes.

61. Q. The first thing to do is to quarantine every person who has been in contact with that case, is that right? A. Yes.

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62. Q. That quarantine is kept up for the period of incubation, which is attributable to the disease? A. Well, in smallpox, I don't believe they quarantine people around the City. They vaccinate them and let them go and keep them under observation. Diphtheria—they give the toxin, an antitoxin, and let the contacts go. Now, quarantine has been very much modified in the last few years by the development of vaccines, you know.

63. Q. We are now talking about the theory. I understand from my client in this case that he and his household were strictly quarantined on the development of this disease in the child. That is a matter of civic regulation, is it not? A. Yes.

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64. Q. What is the incubation period of smallpox? A. 10 to 14 days, some cases longer, some shorter, the average is 10 to 14.

65. Q. Now, the system that you explained to my learned friend Mr. Gibson, as adopted in all good hospitals, and particularly adopted in the Vancouver General Hospital, is all aimed at the prevention of contagion? A. Yes.

66. Q. And this very careful set of rules and regulations is all based on the theory that there is danger of contagion in contact? A. Yes, sir.

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67. Q. Now, any person taken to or consigning a patient to the Vancouver General Hospital would have a right to expect the best system, would he not? A. Yes.

68. Q. And from what you tell me they naturally should not be disappointed. A system however good, is dependent however upon those who carry it out, is it not? A. No, any system

may break down with other conditions outside of their control.

69. Q. Any system that is dependent upon human agency carried out is liable to the errors and weaknesses of human nature?

A. Well, I would think perhaps you must make yourself clear on this, that the system, no matter how perfectly it is carried out, may be broken down by outside influences over which the system has no control. I mentioned that before. But this is the best system known to medical science.

70. Q. And the strength of the system depends upon the accuracy with which the system is carried out by those administering it? A. Oh, yes.

71. Q. If you have careless administration your system falls? A. Oh, yes, your system would fall with careless administration unquestionably.

72. Q. In this particular case, Doctor, you happen to know from your examination there and from information furnished you that the portion of the hospital into which the McDaniels' child was placed was not the cubicle system, but the private room system? A. Yes.

20 73. Q. Where the rooms were separate? A. Yes.

74. Q. It would seem to me from a layman's point of view doctor, that the separate room system would be even more safe, if you can put it that way, than the cubicle system? A. It is a much better system.

75. Q. Well, what I cannot understand, perhaps you can explain it, Doctor, is your approval of the separate room as being a safer proposition than the cubicle—do I understand that the openings at the floor and at the ceiling in the cubicle system are more apt to allow contagion to spread than the solid wall? A. No, Mr. MacInnes, the main thing is the trouble with the kiddies and children in the next cubicle shoving things over that or under in to the other person, passing magazines or papers. It is a matter of keeping the infected kiddies or patients apart. I cannot see that there is very much danger of air borne contamination. There might be if you were running a very filthy place where particles of dirt were carried around, but that is not common in the hospital.

76. Q. You mean there must be some physical agent to carry the germs of the disease that is carried? A. Yes, where you have places side by side they are passing things back and forth as a matter of kindness to each other, and that is a very great danger, and they throw things over and under. That is why I approve of the room system more than the cubicle; from the standpoint of segregating the infection, probably the cubicle would be quite safe, reasonably safe, as safe as we can make it.

77. Q. The object in having the attendants you speak of, the doctors, nurses, orderlies and so on, change their clothing and

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refrain from opening the door by the knob and those other precautions, washing and that sort of thing, are all to prevent germs being carried from one room or cubicle to another? A. Part of modern procedure, modern practice.

78. Q. Is the dependence of the medical authorities upon the system and the procedure such as to allow orderlies and nurses and doctors to pass from one room or cubicle to another? A. After they follow out the procedure.

79. Q. They depend on the system? A. Yes.

80. Q. It is quite proper under the system the system being observed to pass freely from one compartment to another? A. Yes, is necessary. I would not say freely, because that means sociability and so forth; all business purposes.

81. Q. On business purposes, I mean? A. It is true.

82. Q. Without the observance of the rules and regulations as to washing, change of attire, and the other regulations, the passage from one room to another would be a dangerous proposition? A. Yes, that should not be allowed.

83. Q. That is all, thanks—just one question. You have not seen the McDaniel child, and you don't know anything about the particulars of this particular case? A. No, I don't know anything more.

84. Q. You are talking about the general system of the Hospital? A. Oh, yes, the general system, the procedure and general system of the institution, the physical set-up.

85. Q. You were not in charge, you were not inspecting the place during January, February and March of this year? A. No, we had our inspection previous to that. We had a very careful inspection made of that institution one year previous.

86. Q. Your testimony throughout, doctor, has been general, without specific reference to this particular case? A. Well, I don't know the details of this case.

(Concluded)

G. M. Fairley
Direct Exam.

GRACE MITCHELL FAIRLEY, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. REID:

Q. I want you to speak out loudly, Miss Fairley, so we can all hear you. What is your position at the Vancouver General Hospital? A. Director of nursing.

- Q. Under the superintendent? A. Under the superintendent.
- Q. Dr. Haywood? A. Yes.
- Q. Now, what is your experience in nursing? Where did you graduate? A. Swansea General Hospital.
- Q. What year? A. 1905.
- Q. And then where were you?
- Mr. MacInnes: Is that the Vancouver General Hospital?
- 10 A. No, Swansea.
- Mr. Reid: In England? A. Yes.
- Q. And then where were you after that? A. In the Swansea District Hospital.
- Q. From 1905 to 1908, was it? A. Yes.
- Q. And from 1908 to 1909? A. I was night supervisor in the Oldham Infirmary.
- Q. And from 1909 to 1912? A. Assistant superintendent of the Infectious Diseases Department in Glasgow.
- Q. And from 1912 to 1918? A. Superintendent of the Alexandra Hospital in Montreal in the infectious diseases hospital.
- 20 Q. And from 1918 to 1924? A. Superintendent of the Hamilton General Hospital.
- Q. And from 1924 to 1929? A. I was in the London Hospital.
- Q. And from that time until to date? A. Superintendent of nurses in the Vancouver General Hospital.
- Q. And from 1912 to 1918 I think you said you were in charge of the— A. Isolation Hospital.
- Q. That is of the Alexandra Hospital in Montreal? A.
- 30 Yes.
- Q. And what do you say about the system of the Vancouver General Hospital—that is, in connection with the infectious diseases hospital? A. As to its—
- Q. As to its capability and as to its proper caring for patients of that kind according to the approved general practice of hospitals? A. I think it is more approved and has proven that it is a satisfactory system.
- Q. What was the system adopted in Montreal? A. A similar system. When I went there first there were open wards and
- 40 cubicles and later it was entirely cubicles.
- Q. Well, you mean at first the walls were not cubicled? A. The walls were not cubicled at the time I went there.
- Q. That is, they were not solid from the floor to the ceiling?
- A. No.
- Q. Then later they made them solid from the floor to the ceiling, did they? A. They cubicled them—that was the system

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as described in Dr. McEachern's paper. There were certain wards with certain rooms laid off—

Q. And here they are all single rooms? A. All single rooms.

Q. Well, do you know anything about the technique of these infectious diseases hospitals? A. Yes.

Q. Where is that kept? A. I don't understand the question, where is it kept?

Q. Perhaps that isn't the word I should use. A. You mean the theory of the technique? 10

Q. Yes? A. It is kept in a book known as the standing order book on every floor of the hospital.

Q. And how many are kept in the infectious diseases hospital? A. One on each floor.

Q. Now, I believe there are certain pages in this book, 37 to 41, which contain the rules in connection with the technique to be carried on in the hospital? A. Yes.

Q. And a copy of that is in every ward in the infectious diseases hospital? A. Yes.

Q. And is it available to every member of the staff? A. 20 Yes, it is available to every member of the staff.

Q. I want to put in pages 37 to 40.

Mr. MacInnes: What do you call that, Mr. Reid?

The Witness: Standing orders.

Mr. MacInnes: Standing— A. Orders.

Mr. Reid: Can these be taken out?

Mr. Gibson: Perhaps it would be sufficient if I just put a copy in.

Mr. MacInnes: My learned friend has furnished me with a copy of it and he can get an extra copy. 30

Mr. Gibson: Yes.

Mr. Reid: Will you put that in?

Mr. Gibson: I cannot find it at present, but I will put it in later.

The Court: That will be marked exhibit No. 3.

(DOCUMENT MARKED EXHIBIT No. 3.)

Mr. Reid: Now, what is the practice in connection with those standing orders, in regard to nurses going into the infectious diseases hospital? A. They are taught during the probationary and elementary terms in theory and administration and then 40 when they are allocated or deputed to that department, they receive personal and detailed instructions from the supervisor of that department.

Q. Yes, that is Miss Forrest? A. Miss Forrest or her assistant.

- Q. What do you say about the practice of putting smallpox patients in rooms adjoining other patients suffering from other diseases? A. For the last fifteen years that has been the policy of the institutions I have been nursing in.
- Q. And that is the standard in ordinary practice? A. Yes.
- Q. That is the ordinary practice? A. Yes.
- Q. Well, is it a practice from which you could anticipate any danger from cross infection? A. No.
- 10 Q. I beg your pardon? A. Would you mind repeating that again.
- Q. I say is it a practice from which one might reasonably anticipate cross infection? A. I would say not.
- Q. Do you know of any other hospitals who use that same technique or system that you use up here or that you used in January or February 1932, in the Vancouver General Hospital? A. Yes.
- Q. What other institutions use the same system? A. In Canada—Montreal, Toronto, Hamilton, London and Winnipeg.
- 20 Q. London, Ontario? A. Yes.
- Q. And Winnipeg? A. Yes.
- Q. You have seen all these hospitals yourself? A. Yes.
- Q. Have you seen any infectious diseases hospitals on the other side of the line? A. Yes.
- Q. Where, for instance? A. In New York.
- Q. And what do you say about their system—is that the same? A. Some of their wings are the same—it is partly an old building and partly a new.
- Q. But they are arranged the same as in this one here? A. Yes.
- 30 Mr. MacInnes: What is the answer? A. Yes.
- Mr. Reid: Q. What diseases are treated in an infectious diseases hospital? A. Scarlet fever, diphtheria, measles, chickenpox and sometimes whooping cough and smallpox. There has been only one epidemic of smallpox since I have been here.
- Q. That was this spring? A. Yes.
- Q. But you had some cases of smallpox before that, hadn't you—that is, some odd cases of smallpox there before this epidemic? A. Not since I have been there.
- Q. Not since you have been there? A. No.
- 40 Q. Do you know the members of the nursing staff there? A. Yes.
- Q. Did you have anything to do with them, or are they under the control of Miss Forrest? A. They are under my control.
- Q. And what do you say about the efficiency of your staff? A. They are particularly chosen and particularly trained.
- Q. They are particularly chosen and particularly trained? A. Yes.

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Mr. Reid: Take the witness.

CROSS-EXAMINATION BY MR. MACINNES:

Q. Now, this—did you get exhibit B yet—this is the nursing technique, exhibit 3—the rules and regulations, and those you say are what are adopted in the hospital here. That is, Mr. Reid instead of putting in the bound book says this is a copy taken from it? A. Yes.

Q. Now, on that first page there appears this item: “No. 1. Modes of conveying infection—direct contact—this means touching one person following the touching of infected persons or articles without washing the hands.” Now, direct contact with smallpox is a direct method of conveying the disease, isn't it? A. Yes. 10

Q. And indirect contact, that is, some person who has come in contact with a smallpox patient will carry the disease to another— A. Yes.

Q. —indirectly? A. Yes.

Q. So those are both methods of carrying the disease? A. We use the term indirect contact advisedly but there is really no such thing as indirect contact. All contact is direct. 20

Q. And they are using the term to indicate contact through an intervening object? A. Yes.

Q. That is equally dangerous with direct contact? A. Yes.

Q. Now, there is great stress laid as shown on that first page on washing the hands frequently and on every occasion possible. Is that right? A. Yes.

Q. Now, the idea of that is because the hands are most commonly or most frequently in contact with the diseased person or articles of the diseased person? A. Yes.

Q. And the necessity for this frequent and repeated washing of the hands is in order to break the contact of the disease and prevent its being carried to anybody else? A. Yes. 30

Q. And this system of changing gowns, separate thermometers and basins for the individual rooms and separate wash basins in a room, all this method is for the purpose of breaking that contact? A. Yes.

Q. Because you recognize—and it is recognized by everybody that contact either direct or indirect is dangerous? A. Yes.

Q. And if contact is dangerous which would you consider the safer thing—washing and purifying the—I mean the various steps that are taken, Miss Fairley, for disinfection or to have no passing from one room into another? Which would be the safer of the two? That is, to abolish all transmission of articles that have been used in one room from going into another—wouldn't that be safer than all the washing and all the anointing and all the purifying that could be done? A. The only transmission from one 40

room to another is by individuals or by articles that have been sterilized.

Q. Now, if you could cut off the passage of any article or person from a diseased room, the contact would be completely cut off from the other, wouldn't it? A. Yes.

Q. Now, which would be the safer—stopping the contact altogether or allowing the contact to go on with certain means calculated to prevent contagion? A. I don't quite follow the point. I think it is quite impossible to cut off contact entirely.

10 Q. Now, just one minute—in the I. D. H. and I think probably throughout the hospital, the staffs for each floor are separate, are they not? A. Yes.

Q. That is, in the I. D. H.? A. Yes.

Q. That is, the staff on No. 1 floor has nothing to do with the staffs on Nos. 2, 3 or 4? A. Not necessarily.

Q. That is, they have no work to do on these other floors? A. No.

Q. The staff on No. 2 looks after No. 2 alone and does not have to work on the other floors? A. For the purpose of convenience.

20 Q. For the purpose of convenience or whatever you may say? A. Yes.

Q. And the only persons permitted to circulate from one floor to another, and whose duties take them from one floor to another are the supervisors and the internes? A. Or doctors.

Q. By doctors, do you mean the doctors of private patients? A. Doctors coming from outside may go to any floor.

Q. He may go indiscriminately to any floor? A. Provided he carries out the technique.

30 Q. No, but the only members of the staff who circulate from the bottom to the top of the building are the internes? A. Yes.

Q. And the supervisor is also allowed night and day? A. Yes.

Q. For instance, Miss Forrest? A. Yes.

Q. But the nurses so far as their work takes them, and the orderlies, and the other attendants are limited to a single floor?

A. Yes.

40 Q. Now, supposing this—supposing you had your smallpox patients in the basement floor, with nobody passing from the basement floor to the top floors or upper floors, wouldn't that separate the contact or break the contact completely between the basement and the upper floors? A. It would definitely mean you might be in a position to pin the responsibility more in that way.

Q. Yes, and wouldn't it be a break in the connection between the smallpox rooms and the other rooms if you could stop the traffic between them? A. If that were possible.

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Q. Yes, if it were possible? A. Yes.

Q. Now, wouldn't it be possible to make rules to the effect that the smallpox patients would be put on one floor and the attendants on that floor would not have anything to do on other floors. Wouldn't that be possible? A. Yes.

Q. Perhaps it would not be as convenient as your present system, but it is quite possible, isn't it? A. Yes.

Q. And by doing that sort of thing, Miss Fairley, wouldn't you have a more successful and more complete break in the contact from the smallpox rooms that you would otherwise have under your present system? A. Believing as I do—? 10

Q. No, answer my question; wouldn't it be a more complete break to sever the service more completely than to allow it as you are doing now to pass from one room to another? A. I don't think you could treat a human being with such a complete break as you describe.

Q. Now, Miss Fairley, supposing the smallpox patients were put on say the basement floor—the first ground floor, which is equipped for nine rooms, isn't it? A. Yes.

Q. And you appointed your staff to wait on the smallpox patients on that floor alone and confined all smallpox patients to that floor, wouldn't that be segregating them, and be segregating the disease on that floor, wouldn't that cause a greater break in contact—and to a much greater extent than by scattering it throughout the whole building? A. Where would they get the medical treatment? 20

Q. Where do they get it now? If you put your smallpox patients, with a staff to look after them—your nurses, your internes and your orderlies and have them confined to the one floor and not circulating to the other floors, wouldn't your patients have the service just as they have now? A. Yes. 30

Q. And their own medical doctor could come in there and see them as he does now? A. That wouldn't be a break—if their own medical doctor is coming in from outside and is travelling in street cars and is possibly sitting next to a person with smallpox or in handling dollar bills that have been infected—he has no break in contact.

Q. You know they are not handling dollar bills these days? A. They are.

Q. And do you mean to infer from that the nurses do not handle dollar bills? A. No. 40

The Court: Perhaps not so many.

Mr. MacInnes: Perhaps not so many.

Q. But what I am getting at is this: How many rooms are there on each floor in the I. D. H.? A. Sixteen on each floor—sixty altogether.

Q. Sixteen? A. Sixty.

- Q. That is, 60 on the three floors? A. Yes.
- Q. 316 is the highest number that I have seen? A. 2, 3
and 4—
- Q. The 200 rooms are on floor 2? A. Yes.
- Q. And the 300 on floor 3? A. Yes.
- Q. And do you know the highest numbered room on floor 3?
A. I am sorry I don't.
- Q. I know Dr. Haywood has given in his evidence rooms
316 and 317.
- 10 The Court: Counsel should be able to agree on that.
The Witness: There is 318.
Mr. MacInnes: 318.
Mr. Gibson: 321 is the large ward with large rooms.
Mr. MacInnes: Q. Now, supposing floor 3 were confined to
smallpox patients? A. Yes.
Q. And the other patients were taken to 2 and 1, wouldn't
that be a break in the contact from the other patients who had
been removed from those floors? A. It would be a break.
- 20 Q. Wouldn't it be a much greater break than to allow them
to remain on floor 3 and to be waited on by the nurse who waited
on the smallpox patients on floor 3? A. Not if the technique was
carried out efficiently.
Q. And you think the technique if carried out efficiently is
an absolute protection? A. Yes.
Q. Your technique, you think, if carried out efficiently is
an absolute protection and an absolute break of the contact, is
that right? A. As far as is humanly known.
Q. Now, when the technique breaks down and you have cross
infection, what is the inference to be drawn then? A. It is a
30 very difficult thing to place the cause.
Q. Yes, very difficult to place the cause. Has the technique
ever been known to be violated and not be broken at any time?
A. Not to my knowledge.
Q. Not to your knowledge. Did you ever have any of the
nurses brought before you for a reprimand for not following out
the technique in any way? A. No.
Q. You haven't had that? A. No.
Q. Now, turn to page 2 of those rules, and in paragraph 1
of that technique it says: "Anything which has come in contact
40 with the patient must be regarded as infected." That is right,
isn't it? A. Yes.
Q. Because it is dangerous? A. Yes.
Q. Does your duty take you into the I. D. H.? A. Yes.
Q. Regularly or occasionally? A. Irregularly.
Q. Intermittently? A. Yes.
Q. What would be the occasion of your going over there?

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What would be the purpose for which you would go there? A. For the purpose of criticism.

Q. Criticism? A. And of general supervision.

Q. Now, what would you be called over there to criticize for example? A. I would never be called there to criticize. I go to criticize.

Q. You volunteer to go? A. Yes.

The Court: You mean it is your duty to go? A. Yes.

Mr. MacInnes: Q. Quite frequently? A. Quite frequently.

Q. Do you find it necessary to criticize? A. No.

Q. So your trips have been in vain then, all of them? A. No, I wouldn't say so. I sometimes have suggestions to offer.

Q. Of what kind? A. It is rather a difficult question to answer.

Q. I beg your pardon? A. That is rather a difficult question to answer.

Q. Can't you remember instances where you did make suggestions? For example, Miss Fairley, did you make a suggestion that brought about a separate cleaning apparatus in February, 1932?

Mr. Reid: What is that?

Mr. MacInnes: Adopting a separate cleaning apparatus for the smallpox rooms as distinguished from the others? A. No, the superintendent of the department did that.

Q. That wasn't one of your suggestions? A. No.

Q. Now, if a nurse or attendant follows out literally all those rules and regulations contained in exhibit 3, their conduct, I presume is perfectly correct and right? A. Yes.

Q. Now, if you will turn to page 4 of that technique you will see this, in the second paragraph—"Each nurse or attendant will wear a gown when doing anything which brings her into direct contact with patient or infected article." That is the regulation, isn't it? A. Yes.

Q. That means that a nurse can go into the room and unless she has to touch the patient or come in direct contact with something in the room, she hasn't got to put the gown on? A. No.

Q. And it isn't done. The gown isn't put on unless there is direct contact? A. The gown is invariably put on.

Q. Oh, the gown is invariably put on? A. Because a nurse would go into such a room and not come into direct contact.

Q. Now, you say the rule says, "When doing anything which brings her in direct contact." A. That would be making the bed.

Q. She would not have to put on anything, if she were not doing anything which would bring her in direct contact? A. No.

Q. All she would have to do would be to obey the rules.

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The Court: May I have a copy of that?

Mr. Reid: I will give your lordship the original.

Mr. MacInnes: Q. And at page 4—paragraph “F,” at the bottom of that very page, Miss Fairley it has the same thing again: “Should it become necessary to come into direct contact with patient while administering treatment or medicine or when serving tray, nurse will put on gown.” A. Yes.

Q. So a nurse could go in and out of those rooms without putting on the gown and she would not be violating any rule?
10 A. Providing she did not touch the patient, or the bedding.

Q. Now, it is conceivable that a nurse might go into a room for some purpose which would mean not coming in contact—that is in direct contact with the patient?

The Court: She is not limiting it to direct contact.

Mr. MacInnes: Q. With a patient while administering treatment or medicine.

The Court: I was noticing the witness qualified it—with direct contact with the patient or with the bedding—I understood her to say.

20 Mr. MacInnes: That brings her back to the other paragraph —“An infected article.” That would be what? A. The bed or bedside table—anything within reach of the patient.

Q. It says at page 2, “Anything which has come in contact with the patient must be regarded as infected.” A. Yes.

Q. Now, that is what you mean, “Which brings her in direct contact with the patient or an infected article.” A. Yes.

Q. Now, isn’t it conceivable a nurse might go into a room without any intention of doing anything with regard to the patient and she wouldn’t then have to put on her gown? A. Not if she
30 knew she was going there.

Q. Now, how does a nurse know what all the infected articles in a room are? A. Very well, she does know.

Q. Well, isn’t it conceivable that she might accidentally and without any intention, bring herself in contact with the articles in the room that were infected? A. No.

Q. You don’t think that possible? A. No.

Q. Isn’t it possible that a patient could get out of bed and walk around the room when alone, and meddle with the nurse’s gown or anything else that was there in the room in the absence
40 of the nurse? A. In such a case the nurse would wear a gown when going into the room.

Q. But if the nurse did not know about this, how would she know that it was an infected article or not—or let us take another thing, Miss Fairley: How many nurses—or at least what nurses attend to the patients on a floor. You have a staff of four or five on each shift and you have eight graduates and ten probationers.

Mr. Reid: Pupil nurses, not probationers.

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Mr. MacInnes: Pupil nurses my learned friend tells me.

Mr. Reid: You don't put pupil probationers in that hospital at all.

Mr. MacInnes: Well, when you have a staff of ten pupil nurses or eight graduate nurses, do they have one shift or two?
 A. Day and morning.

Q. That is, on the floor where you had the eight graduates and ten pupils, you would have a staff on duty of four and five of the different classes respectively? A. Yes.

Q. Night and day? A. Yes. 10

Q. Now, do the nurses divide the rooms into sections, to look after each individual room, or do they look after whatever they are called upon to look after? A. No, the superintendent allocates the operation of the rooms. Each nurse is responsible for so many.

Q. Then each nurse has to look after the patients allocated by the supervisor? A. Yes.

Q. And no other nurse has anything to do with them? A. Not unless they were relieving these nurses.

Q. Not unless they are sent for to relieve them? A. Yes. 20

Q. Now, would there have been any difficulty, on the receipt of smallpox patients and their allocation to floor 3, of the supervising supervisor allotting to those smallpox patients special nurses who would not have anything to do with other patients?
 A. Would you repeat that?

Q. Would there be anything to prevent the supervisor from allotting a nurse, or a pair of nurses to the smallpox patients on floor 3 so that they would have no duties to attend to with other patients on that floor? A. There would have been no reason to do so. 30

Q. I asked you would there have been any difficulty in doing so really. I didn't ask you for any reason, but would there have been any difficulty in doing that? A. There might be.

Q. There might be. Can you suggest any? A. If there was no necessity for putting special nurses on with the smallpox patients, it wouldn't be done.

Q. Now, supposing your supervisor has on the third floor, say, twelve, or fourteen patients all told, three of whom are smallpox patients and the other nine are not smallpox patients; would there be any reason why the supervisor should not allocate the three smallpox patients to have separate nurses to look after them, separately? A. If there were three smallpox patients they would have one nurse to look after them, because the percentage is one to three. 40

Q. So if there was a matter of having two or three smallpox patients on floor 3, there would be no reason why the nurse or

nurses, allocated to those smallpox patients, should not have been confined to them, is there? A. No.

Q. Did you ever have any experience in the cubicle system as distinguished from the single room system such as you have here? A. Yes.

Q. Where was the cubicle system?

The Court: I have had that—it was in Montreal when she first went there.

The Witness: Not when I first went. It was room and ward.
10 In London, Ontario, they had the cubicle system entirely.

Q. And in Montreal? A. Entirely cubicle.

Mr. MacInnes: And in that cubicle system did they take the smallpox cases in Montreal? A. The smallpox cases I think were admitted to the room system.

Q. I beg your pardon? A. The smallpox patients were admitted—

Q. —to the smallpox portion of the hospital? A. No, there was no smallpox portion of the hospital.

Q. Do you mean to say in the City of Montreal they don't
20 separate the smallpox diseased patients to a separate building by itself? A. In the Alexandra Hospital in Montreal smallpox was looked after.

Q. Where was it? A. In Montreal.

Q. And how many smallpox patients were admitted in there and treated? A. I cannot remember.

Q. Was it a case that developed in there, or a case brought in with smallpox? A. A case brought in with smallpox.

Q. Which do you prefer, the cubicle system or the room system? A. I have no preference.

30 Q. No preference. In other words, you depend entirely on the technique to prevent contagion? A. Yes.

Q. Of course your experience in connection with smallpox in Vancouver, in this year you have had no smallpox patients? A. No.

Q. But this was a very virulent one? A. Yes.

Q. And the danger of contagion from smallpox depends on the virulence of the disease? A. Evidently.

Q. Yes, the more virulent it is the more contagious it is? A. Yes.

40 Q. How long have you been here in Vancouver? A. Three years.

Q. You came here in— A. '29.

The Court: I have that. That is practically—

Mr. MacInnes: Common Ground.

The Court: I have that already.

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RE-DIRECT EXAMINATION BY MR. REID:

Q. Just one or two questions arising out of the cross-examination. Do you know of any hospital that has the system which Mr. MacInnes suggests? A. In what way.

Q. Separating it in certain portions of the building, and not allowing the nurse or cleaners to go from smallpox rooms to other rooms? A. I know of none now. No buildings that have been built in the last 15 years have been so built.

The Court: But Mr. Reid is going further than that. Do you know of any place where they confine the patients to one floor? 10

Mr. Reid: Yes, and all that sort of thing. A. Not if they have a cubicle system. If they build their hospital with a ward for scarlet fever and a ward for diphtheria, then they would adhere to that system, but not where they have cubicles. The cubicles are built for the purpose of dealing with them like we do in Vancouver.

Q. That is the modern way of doing it? A. That is the accepted way.

Q. Now, I understand the nurses do not go from one floor to another? A. They do. 20

Q. Do they, as a matter of routine?

Mr. MacInnes: I object to this line of re-direct examination. It is a matter of cross-examining your own witness.

The Court: But I wish to get at the truth of it.

Mr. Reid: The suggestion of Mr. MacInnes was if you kept your patients on different floors and didn't allow contact—there being no communication between one floor and another with the nurses on floor 3—the nurse on floor 2 doing the work on 2 and the nurse on 3 doing the work on 3, and the nurse on 4 doing the work on 4—in that way you could put the smallpox patients on one floor and it wouldn't have anything to do with the other two floors. Now, as a matter of fact you did have infection patients on the fourth floor of that hospital, hadn't you, in January? A. Yes. 30

Q. And there were no smallpox patients placed on that floor? A. No.

Q. And yet smallpox developed for some reason or other on the fourth floor? A. Yes.

Q. And you had three cases up there? A. Yes.

Q. Now, when did you first recognize the virulence of this epidemic? A. When the first group of patients were admitted—or at least when the second or third patient was admitted and it was found to be common contact and one family affected. 40

Q. Would that be somewhere about the beginning of February? A. Yes.

Q. Thank you.

(Witness aside)

Mr. Gibson: Does your lordship wish to sit further?

The Court: Perhaps we might adjourn now—and I might say we will meet tomorrow morning if it will suit counsel a little later, because I may be a little late and make it 11:15.

Mr. Gibson: Might I mention one subject—that is the question of your lordship taking a view of this building. It is a very special type of building and perhaps your lordship has never seen a building of this type and I think it would help your understanding of the evidence particularly of the next witness if you saw the
10 building inside.

Mr. MacInnes: Is your lordship vaccinated?

Mr. Gibson: There is no danger from infection.

The Court: I think I can visualize it without viewing it.

Mr. MacInnes: Your lordship has a blue print.

The Court: But if I cannot visualize the evidence sufficiently I will do that.

(COURT ADJOURNED AT 4:30 P.M. UNTIL 11:15 A.M. JANUARY 12th, 1933.)

20 I hereby certify the foregoing to be a true and accurate report of the said proceedings.
“E. BLYGH,”
Deputy Official Stenographer.

Vancouver, B. C., January 12, 1933, 11:15 a.m.

(COURT RESUMED PURSUANT TO ADJOURNMENT.)

Mr. Gibson: My lord, with my learned friend's consent, I am going to ask that this file which was produced by Miss Fairley and described by her as standing orders—

The Court: Part of which was marked.

30 Mr. Gibson: Part of which was marked. I think the whole file should be marked because it might have to be referred to as a whole.

The Court: Do you want to mark it as an exhibit?

Mr. Gibson: Yes.

40 Mr. MacInnes: I think my friend is going a little further than I consented to. My learned friend said he was having put in as an exhibit only that part which was put in yesterday as exhibit 3. I have had no inspection of this. My learned friend sent me a copy of exhibit 3 the other day and also handed me, lent me another document, part of which I think would be in that volume, but he is suggesting putting in other parts of the volume which is very voluminous. It looks as if my friend is putting the book in en bloc.

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Mr. Gibson: Let us get clear on this. I was not aware of this document or the documents in it at the time the affidavit was prepared or until a few days ago, and as soon as I was aware of it, I informed my learned friend of the existence of these documents and offered him inspection.

The Court: That is all the documents in this volume.

Mr. Gibson: Yes.

Mr. MacInnes: My learned friend—

The Court: I can only hear one at a time. I will hear what Mr. Gibson has to say. 10

Mr. Gibson: I said I would send him a copy of the relevant pages and I sent him a copy of exhibit 3.

The Court: That is the relevant pages?

Mr. Gibson: Yes, relating to the technique of the hospital.

The Court: Did you refer to other pages?

Mr. Gibson: No, I did not; but as the doctors and nurses refer to the volume as a whole and not as pages, I thought some confusion might occur if the document as a whole was not put in.

The Court: If any particular witness was called and identified any of the particular documents which you wish exhibited, then I might have to deal with the matter, but I would not be inclined to put the whole thing in and have it marked unless it is considered as evidence. It can be marked in the meantime for identification. 20

Mr. Gibson: It is in this way, my lord, I have obtained from the book certain things which are already in evidence and I suggest that the book be marked and then the relevant parts are referred to. That often happens in cases, a ledger or minute book is put in as a whole and the relevant pages referred to.

The Court: I have had cases where the rest of the book was sealed down. Is that what you mean? 30

Mr. Gibson: It is practically in that position but as this has been referred to all through by the nurses as a whole I thought it should go in as a whole.

Mr. MacInnes: I am quite willing that the five pages which are in as exhibit 3 should be marked in the book as exhibit 3, but I cannot consent to the rest of the book being marked as an exhibit. Here is my difficulty. I don't know where this case is going or what may happen. If that book is put in as exhibit 3 in this action, then the whole book is open and I have had no inspection and no notice other than that part which I have already referred to and for that part I am quite willing to have that marked. 40

Mr. Gibson: Perhaps we can leave it. There may be no necessity. I was only looking ahead. I call Miss Forrest.

ELLA MAUD FORREST, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GIBSON:

Q. Miss Forrest, you are employed in the Vancouver General Hospital? A. Yes.

Q. And what position do you hold?

The Court: I have all that in the examination, have I not?

Mr. Gibson: Yes, my lord.

The Court: Superintendent of infectious diseases hospital.

10 Mr. Gibson: Yes.

Mr. MacInnes: Supervisor I think she calls it.

The Court: Yes, she says supervisor.

Mr. Gibson: Q. You are, I presume, a graduate nurse?

A. I am.

Q. Of how many years' experience altogether? A. Twenty-five.

Q. Twenty-five years; and how long have you occupied your present position as supervisor of infectious diseases? A. Thirteen years.

20 Q. The present building known as the Infectious Diseases Hospital has been occupied and used for how many years? A. Almost six years.

Q. And you have been in charge of that building during the whole of that period? A. I have.

Q. Prior to the erection of that building, where were your duties carried on? A. In old separate buildings.

Q. Where were they, adjacent to the hospital? A. Yes.

30 Q. And when you speak of separate buildings, what do you refer to, separate buildings for what? A. There were three buildings, one for diphtheria, one for scarlet fever—those buildings had two storeys—so that different diseases could be put on each storey and there was also one building for tuberculosis.

Q. And was that the department of the hospital in which the infectious diseases were taken care of? A. Yes.

Q. And all infectious diseases were taken care of in those buildings, were they? A. I think so.

Q. Some mention has been made of the fact there used to be in the city a building devoted to smallpox. That was not under your charge? A. That was not under me.

40 Q. But did you in these buildings you have referred to have smallpox cases at times? A. I remember one case.

Q. I am going to ask you to describe to his lordship in a little detail the construction of this building with the aid of this plan. This building known as the infectious diseases hospital is situated in the immediate vicinity of the main administration building, is it not? A. Yes.

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Q. Just across the street from it or from the group of buildings which surround the administration building and it contains, as you have said, four floors, that is a basement floor, entered from the ground level? A. Yes.

Q. And three floors built above that? A. Yes.

Q. And it is a fact, is it not, that the three floors above are practically identical floors built upon the same plan? A. Yes, except the fourth floor has an operating room.

Q. Is the operating room at one end? A. No, in the centre.

Q. In that respect the fourth floor differs from the third floor? A. In that respect.

Q. I will have the plan of the third floor in a moment to show you. The entrance to the building is in the centre of the long side of it? A. Yes.

Q. And immediately around the entrance are some rooms for instance used for administrative purposes? A. Yes.

Q. Your office, room for the doctors, cloak rooms and other rooms of that description? A. Yes.

The Court: You are putting in the plan?

Mr. Gibson: Yes, the exact plan I have not for the moment, but I will file that.

The Court: The plan has the rooms marked.

Mr. Gibson: Yes, my lord, the rooms are all shown.

The Court: Then you need not take the witness over it.

Mr. Gibson: Only to explain the purpose of the room. Then through the centre of the building is a corridor with rooms opening on the corridor? A. Yes.

Q. On either side of this corridor after you get beyond these offices and administrative rooms you come to a number of separate rooms on either side of the corridor and these rooms are entered from doors opening from the corridor? A. Yes.

Q. But that is the only opening into the room? A. Yes.

Q. That door has glass in it, has it not? A. Yes.

Q. And beside the door there is a large glass window, that is, the partition is made of glass? A. Yes.

Q. As between the corridor and the room? A. Yes.

Q. At either end of the corridor there is a larger room which is used as a ward? A. Yes.

Q. We are not concerned with that because the Plaintiff patient was in one of the separate rooms, was she not? A. Yes.

Q. As I understand it—I think I may lead to this extent,—a patient coming in is allotted to a room? A. Yes.

Q. As the Plaintiff was? A. Yes.

Q. And does she remain continuously in that room? A. Not always.

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Q. I mean, is she nursed in that room? She does not leave it unless she is removed to some other room? A. No.

Q. Describe the method of nursing the patient, please, in this way in one of these rooms. Tell us something about the equipment in the room for the nursing of the patient and what is the object of it. A. There is individual equipment, the necessary basin, combs, thermometers, wash cups, in each individual room.

Q. Then do I understand from that these things you mention and all similar things are used only for that patient and for no other patient? A. The things I have mentioned.

Q. Would you mention the equipment of the room as to washing; a wash basin? A. Yes, a wash basin.

Q. In each room? A. Yes.

The Court: I have some of that, have I not, in the examination of Dr. McEachern?

Mr. Gibson: Yes, I think it was dealt with.

The Court: Do not unnecessarily repeat.

Mr. Gibson: Of course, the technique by which we mean the methods employed in nursing and the rules which are laid down for the guidance of the nurses are contained in this book which has been referred to as the standing orders? A. Yes.

Q. And particularly in the pages which has been put in in exhibit 3, that is a copy of pages 37, 38, 39, 40, and 41 of the standing orders. Now, that is the special rules I take it which relate to infection and the treatment of infectious cases, but those rules do not cover the whole of the technique of nursing, do they? A. General nursing?

Q. Yes. A. No.

Q. Outside of those special rules relating to infectious cases there are in the standing orders a body of rules relating to nursing generally? A. Yes.

Q. And covering all such questions as the handling of patients, the use of hot water bottles, diet and matters of that kind? A. Yes.

Q. Now, as those matters which I have just mentioned are not relevant to this case, I am not putting in that body of rules or intending to make any further reference to them; but returning to the rules in infectious cases, that is the rules which have been put in as exhibit 3, you might mention some of the leading features of the nursing of infectious cases as to the method used by a nurse—or perhaps I might, before asking you that, ask you this: Is it part of your duty to instruct the nurses in the technique of nursing infectious cases? A. Yes.

Q. Do you in the course of your duty instruct all the nurses who come on duty in the Infectious Diseases Hospital? A. Yes.

Q. And is that instruction given to them before they enter upon their duties? A. Yes.

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Q. Well, could you indicate some of the more important points. I don't want all of the instructions you give the nurses, but what are some of the more important points which are dealt with in the instructing of the nurses? A. A careful washing of hands after touching anything which is or might be contagious; the wearing of a gown over their uniform when in contact with any contaminated area; the sterilization of all contaminated utensils before they are considered clean or fit for other patients; nothing taken from one room to another unless it has been sterilized, made clean in some way. 10

Q. You have referred to the gowns. Where are the gowns kept. Where do they get these gowns? A. The gowns are kept in the corridor.

Q. What sort of a supply? A. As many as we need.

Q. Is that a large number? A. Very.

Q. You have referred to contaminated areas. Would you distinguish that from clean areas. Is the corridor a clean area in that hospital? A. It is.

Q. It is a safe place for anyone to be in? A. Yes.

Q. I think we have had it already described as to the method of entering and leaving rooms and that sort of thing with a view to preventing the carrying of contagion. How is the question of the feeding of a patient dealt with with regard to the dishes? A. The dishes that go to a patient are all sterilized including the tray. When they come from that room they are taken immediately to the sterilizing room and sterilized there before they are taken to the kitchen to be washed. 20

Q. And who is in charge of the sterilizing of the dishes, is that part of the nurse's duty? A. There is a maid—I am in charge of it, of course. 30

Q. I do not refer to your connection with it; but who actually does it? A. The maid.

Q. That is in addition to the nurse, there is a maid who has charge of that? A. Yes.

Mr. MacInnes: The maid has charge of the sterilizing.

Mr. Gibson: Of the dishes.

Q. When they are brought from the room they are taken to what you refer to as the sterilizing room? A. Yes.

Q. That room is in charge of this maid? A. Yes.

Q. Is she specially trained for that duty? A. She is. 40

Q. How are they sterilized? A. Steam sterilization.

Q. And after being sterilized? A. They are taken into the kitchen, clean kitchen, to be washed.

Q. Does the kitchen come within the designation of a clean area in the hospital? A. Yes.

Q. And after being washed in the kitchen, by the maid, then

what? A. They are dried and put in various cupboards until the trays are once more sent up and then are taken out.

Q. Then they are ready for use and used again? A. Yes.

Q. In addition to that, certain utensils are used in the room and they are in the care of whom and how are those dealt with by whom are those taken from the room? A. Those which are taken from the room are taken by the nurse.

Q. And how are they dealt with? A. Sterilized.

Q. Is that done in a special room? A. Yes.

10 Q. Equipped with sterilizing equipment? A. Yes.

Q. After being sterilized, what is done with them? A. There are certain racks in cupboards where they are kept.

Q. Then I want to deal with the method of the cleaning of the rooms. Who is employed in the cleaning of the rooms? A. We have a man cleaner.

Q. A man cleaner and are his duties set out in certain rules? A. Yes.

Q. Are the rules for the cleaner contained in that file? There is a separate cleaner for each floor, is there not? A. Yes.

20 Q. There is a set of rules, is there not, relating to the cleaner for the third floor? A. Yes.

Q. And I think the second last page is also applicable to all cleaners, is it not? A. Yes.

Q. Are those the two pages in this which relate to the cleaner's duty? A. Yes.

Mr. Gibson: I would like to have that marked as exhibit 4.

Mr. MacInnes: The map was exhibit 4, was it not?

Mr. Gibson: I have not put in the map yet.

30 Mr. MacInnes: You are going to put in the map and substitute the other for it.

Mr. Gibson: Q. Would you just look at that plan for a moment. That is a blue print and it is marked as a blue print of the second floor of this building, but as a matter of fact the architect's number and your number is different and this what he calls the second floor is now and has always been referred to as the third floor of the building, is that so? A. Yes.

Q. That shows the features which were described before and I don't think we need refer to them again. I think the plan is self explanatory, my lord.

40 The Court: Counsel might just refer to it as the third floor.

Mr. Gibson: The building as constructed consisted of what the architect calls the basement storey, the first floor, the second floor and the third floor, but the hospital authorities knew the basement as the first floor, the ground floor as the second, then the third and fourth.

The Court: As long as counsel are going to speak of that the same way.

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Mr. MacInnes: Yes, I understand so.

Mr. Gibson: Q. All through the reference has been to the third floor, which is the third floor starting with 1 at the bottom.

Mr. MacInnes: Yes, it does not make any difference, simply the name, my lord.

(BLUE PRINT REFERRED TO MARKED EXHIBIT No. 4)

Mr. Gibson: Q. Perhaps it might be convenient to identify the room which the Plaintiff had. I would like the witness to have that plan. The Plaintiff Annabelle McDaniel was in room 314, perhaps I can lead to this extent. My instructions are that it is the second room to the right. 10

The Court: Is it numbered 314?

Mr. MacInnes: I suggest that my friend put a black pencil mark right on the room as Miss Forrest points out, 314.

Mr. Reid: A red or blue pencil?

Mr. MacInnes: A red one would be better. Show us the front.

Mr. Gibson: Q. This is the front of the building, of course, and that is the south end. 20

Mr. MacInnes: Where is the elevator?

Mr. Gibson: There.

Mr. MacInnes: Q. Which way do you turn when you get off the elevator, to your right or left to get to 314? A. Turn to your left.

Q. Coming out of the elevator you go the other way it seems to me.

Mr. Gibson: 314 is the second of those two rooms.

Mr. MacInnes: But would you put in the room number so that it is easily distinguished. 30

Mr. Gibson: Q. 314 and the next room to that would be what? A. 316.

Q. 317 has been referred to. Where is that? A. Here.

Q. Another room which has been referred to by number in the evidence was 308. Where is that? A. There.

Mr. Gibson: I will put 308 on that.

Mr. MacInnes: Q. I suppose the others run straight along.

Mr. Gibson: Q. The even numbers are on one side and the odd numbers are on the other side of the corridor? A. Yes.

Mr. MacInnes: Room 310 to—

Mr. Gibson: Q. 308, 310 are on one end of the building? A. Yes. 40

Q. And 314 and 317 are on the other end separated by the administrative offices? A. Yes.

Mr. Gibson: Now, I am tendering to have marked as an exhibit the pages in this book referring to the duties of the cleaners.

(PAGES REFERRED TO MARKED EXHIBIT No. 5)

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Mr. MacInnes: You are putting in just the last two pages, Mr. Gibson?

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Mr. Gibson: It is not the last two. It is a page which is headed "Summary of duties of cleaner on third floor." And the third page further on which is headed "Instructions for orderly cleaners." Those are the pages? A. Yes.

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Q. Now, you say there is a man cleaner and one man is employed especially on the third floor? A. Yes.

10 Q. Is he instructed as to his duties? A. Yes.

Q. And how to care for these rooms? A. Yes.

Q. And in addition to that he has equipment for cleaning?

A. Yes.

Q. And is it part of your duty to see that he carries out his instructions and observes the rules? A. It is.

Q. He is given these rules, is he? A. Yes.

Q. And do you do that, do you see that he observes the rules? A. Yes.

Q. What does the cleaning of a room involve, just generally?
20 What implements, for instance, does he take into a room? A. A broom, a dust pan and a dust brush.

Q. What about a mop? A. A mop.

Q. Those are the things he takes in? A. Yes.

Q. And any other article he is using he leaves outside the room? A. Yes.

Q. He has some other things but he leaves them outside the room in the corridor? A. Yes.

The Court: Does he wear a gown when he is cleaning? A. Yes, he wears a gown.

30 Mr. Gibson: Q. Well, does he wear a separate gown when going to a separate room, that is, does he wear one gown in one room and a separate gown in another room? A. Yes.

Q. Then does he go from one room to another room—that is perhaps not putting it accurately.

The Court: He does in the course of time.

Mr. Gibson: Yes, in the course of time. He cleans one room and then—

Mr. MacInnes: My learned friend is now getting down to the meat of the case and I suggest he stop leading.

40 Mr. Gibson: All right.

The Court: I might say exhibit 5, the two pages which are ticked are marked exhibit 5.

Mr. Gibson: Q. I take it from what you have said that the cleaner uses these implements which he takes into the room in the room. A. Yes.

Q. And he cleans the rooms in due course one at a time? A. Yes.

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Q. Does he use the same implements in all of the rooms?

A. Ordinarily, yes.

Q. Would you just explain why you say ordinarily, yes? A. There are some diseases that I have always made it a rule to use separate brooms.

Q. Separate brooms? A. Separate brooms, dust brush and dust pan and mop.

Q. That is, the articles which he takes into the rooms? A. Yes.

Q. And what diseases do you refer to? A. Measles, chicken pox and smallpox. 10

Q. Just explain what you mean by that, in what way the practice is carried out as to the separate implements? A. If we have a chicken pox case in, those implements are kept in his room, used for cleaning his room, and when he goes out they are sterilized.

Q. When you say those implements you mean a set of implements? A. The broom, the dustpan, the dust brush and mop.

Q. Which he is using in a smallpox room? A. Yes.

Q. I mean in a chicken pox room? A. Yes. 20

Q. And for the other rooms what would he use? A. He would use his other supplies.

Q. That is, dealing with chicken pox—

The Court: In other words, if a patient was in one room for three weeks, those implements would be left in that room all that time? A. Yes.

Mr. Gibson: Not left in the patient's room, my lord.

Mr. MacInnes: That is what the witness said.

Mr. Gibson: I did not so understand her.

The Witness: Yes, left in the patient's room. 30

Mr. Gibson: Oh, I misunderstood.

The Court: That is what I understood.

Mr. Gibson: Q. If he had two cases of chicken pox, what would you do with those cases? A. He would take them from one room of chicken pox to the other room of chicken pox.

The Court: If you had two at the same time? A. Two cases at the same time of chicken pox.

Q. Yes? A. He would take them from one patient's room who had chicken pox to the other patient's room who had chicken pox. 40

Q. So if you had two patients at one time, the implements would not remain in the one room? A. No, but they would be in a room where the disease was chicken pox.

Mr. Gibson: Q. Would they be used in any other rooms than rooms in which the patient had chicken pox? A. They would not.

Q. That is dealing with chicken pox. Now, are there any other diseases which were dealt with in that way? A. Measles and smallpox.

Q. And was that practice applied in the case of the smallpox patients who came in in the month of January, 1932? A. It was.

Q. Now, some reference to this was made in Dr. Haywood's examination for discovery.

The Court: That is not before me.

Mr. Gibson: Yes, it has been put in, my lord, and I intend
10 Dr. Haywood shall be called and asked about these particular answers, but I think I should be asked Miss Forrest about it because she is the person in charge of it.

The Court: You are just referring to what has been put in?

Mr. Gibson: Yes, my lord. Question 125. This was the question and answer:

“Q. What about cleaning apparatus, brooms, brushes and mops and other cleaning apparatus? A. At that time the cleaning apparatus—I could not answer that. I don't know. Miss Forrest will have to answer that.”

20 “126. Q. Don't you know as a matter of fact there was no segregation or separation of the cleaning apparatus at that time? A. I don't know whether there was or not, but I know when the whole floor become predominant with smallpox cases, they had cleaning apparatus for each room. I imagine that was a later date than this.”

What would you say to that answer, Miss Forrest?

Mr. MacInnes: Is my learned friend going to contradict or vary the evidence of the superintendent of the hospital?

The Court: This witness can give her own evidence.

30 Mr. MacInnes: My learned friend is directing his examination to contradicting a witness he tendered to us for examination.

Mr. Gibson: It is in view of his answer that Miss Forrest would have to answer that.

The Court: It might be better to just ask her the question rather than direct her attention to what Dr. Haywood said.

Mr. Gibson: To ask her the question?

The Court: Yes.

Mr. Gibson: Without reference to what Dr. Haywood said?

The Court: Yes.

40 Mr. Gibson: Very well, I will do that.

Q. Now, did you in dealing with smallpox cases, did you at any time have cleaning apparatus for each room?

Mr. MacInnes: I object to the question. It is a straight leading question, on a vital question.

Mr. Gibson: That surely is not leading.

Mr. MacInnes: It invites the answer yes or no.

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Mr. Gibson: If it invites the answer yes or no, it cannot be leading.

The Court: I disallow the question in that form, but you can put it in another way.

Mr. Gibson: Yes, my lord.

The Court: Just take your time with the witness and get the picture.

Mr. Gibson: Q. What was the practice with reference to the cleaning of the rooms of smallpox patients in January, 1932?

A. There was one set of brooms, dust brushes, dust pans and mops kept for the smallpox patients' rooms and not used in any other part of the floor. 10

Q. How many sets of these implements you have mentioned were in use for smallpox cases.

The Court: That is in January.

Mr. Gibson: Q. In January, 1932? A. One set.

Q. Now, how many nurses were employed on the third floor in January, 1932? A. Eight graduates and ten student nurses.

Q. And had those nurses all received special instructions in the technique of nursing infectious diseases? A. Yes. 20

Q. And did you find the nurses which you had at that time in January, 1932, efficient? A. Yes.

Q. Did you in the course of your duties—

Mr. MacInnes: My friend continues to frame the answer. I don't think it is fair.

The Court: What was the duty, more along that line.

Mr. MacInnes: This witness is competent, and an expert.

Mr. Gibson: Q. Some reference has been made to the occurrence of cases of so-called cross-infection in that building. Were there such cases? A. Yes. 30

Q. And where did they occur? A. On the third and fourth floors.

Q. Can you tell me about the date when these cases occurred?

A. Between about the 5th of February and the 17th of March.

Q. Can you distinguish between the cases on the third floor and the cases on the fourth floor as to date? A. Not as to date.

Q. I don't mean the date, but the order in which they came?

A. No, I can't remember.

Q. Prior to January, 1932, had you had cases of smallpox nursed in that building? A. Yes. 40

Q. How many? A. Eleven.

Q. Did any case of cross-infection occur during that period prior to January, 1932? A. No.

Q. Before this building was built you told us you had seven years' experience in nursing in infectious diseases in separate buildings. Did cases of cross-infection occur under that system? A. Yes.

Q. Can you say to what extent as compared with cross-infection in the present building? A. More.

Mr. Gibson: Your witness.

CROSS-EXAMINATION BY MR. MACINNES:

Q. Now, Miss Forrest, you say that there were more cases of cross-infection in the old building than there was in the new. That was the last thing you said, I think? A. Yes.

Q. Do you mean that to apply to smallpox cross-infection in the old building? A. We only had one case of smallpox.

10 Q. That is what I thought, as I remembered it. So your answer did not mean there were more cases of cross-infection from smallpox in the old building than in the new? A. No.

Q. It was other cases of cross-infection you had in the old building? A. Yes.

Q. Did not apply to smallpox at all. In regard to the cross-infection in the new building, you say the first case you had of cross-infection was February, 1932 beginning on the 5th of February, I think, to the 17th of March? A. Yes.

20 Q. How many cases of cross-infection did you have there in that period? A. Seven developed in the hospital.

Q. Seven developed in the hospital and that included the Plaintiff in this action? A. No.

Q. You do not include her, so that makes eight which occurred in the hospital? A. She did not have smallpox as far as we knew when she left the hospital.

Q. But she did have smallpox within a very few days of leaving the hospital? A. She is said to. I did not see her.

30 Q. If she broke out with smallpox within eight days or nine days of leaving the hospital, the ordinary inference, the plain inference would be she contracted that at a time when she was in the hospital. Isn't that right, from the ordinary rule of incubation, Miss Forrest? A. The period of incubation is ten to fourteen days.

Q. Yes. She left the hospital on the 3rd of February, did she not? A. Yes.

Q. And if she were pronounced a decided case of smallpox on the 12th of February, that would be a matter of nine days, would it not? A. Yes.

40 Q. And if she had developed symptoms which subsequently had turned out to be smallpox symptoms beginning on Monday the 9th of February she must have been infected from ten to fourteen days before that, isn't that right? A. It is within the incubation period.

Q. Yes, within the incubation period. Now, your trouble with cross-infection began to make itself known on the 5th of February? A. Yes.

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Q. Or it was the 5th of February before you realized it was smallpox although the patient may have been ill for some days prior sickening for smallpox? A. Yes.

Q. And there are four or five days at the onset when it is pretty hard to tell just what the trouble is, isn't that right? A. Yes.

Q. The previous cases of smallpox you had were sporadic cases? A. Yes.

Q. Did you ever have anything in those sporadic cases anything like the virulent degree which developed in January and February this year? A. Not as far as I can judge. 10

Q. And you agree, Miss Forrest, that the degree of contagion corresponds with the degree of virulence of the disease? A. I don't know.

Q. You made a statement to my learned friend that some of the cross-infection broke out on the fourth floor, did you not? A. Yes.

Q. What proportion of the cases of cross-infection broke out on the fourth floor? A. Four.

Q. Four of the seven? A. Yes. 20

Q. Or four of the eight if the McDaniel child is to be included in this epidemic of cross-infection? A. Yes.

Q. Is there any communication from the third floor to the fourth in your hospital? A. What kind of communication?

Q. Well, any kind, material, or people or attendants? A. People?

Q. People? A. Supervisors and internes.

Q. Yourself being the supervisor? A. Yes.

Q. You had to make at least one visit a day to all the patients in the hospital? A. Yes. 30

Q. And the internes had to make two in the course of their duties? A. Yes.

Q. Plus whatever emergency calls might happen? A. Yes.

Q. Was there any communication other than that from the third floor to the fourth floor? A. There was the night supervisor.

Q. That I take it would be one thing, supervision. Your staff is doubled? A. Yes.

Q. The day staff and the night staff. Do the day internes have to make two visits per day and the night internes two visits per night or is it one per day for the day interne and one for the night interne? A. One for the day interne. 40

Q. One for the day interne? A. Yes.

Q. And one for the night? A. Yes.

Q. Does the night supervisor and the day supervisor each have to make a tour of the rooms? A. Yes.

- Q. Now, is there any other communication or circulation of people from the third floor to the fourth? A. Visiting doctors.
- Q. Any other of the attendants? A. The orderlies.
- Q. By the way, on the top floor can you tell me who the patients were who became cross-infected? A. Wong, a Chinese child, Ian Fortune.
- Q. A boy of what age? A. Approximately a child or half grown? A. Six or eight.
- 10 Q. Oh, I see, a child? A. And a Carson child.
- Q. Male or female? A. A boy.
- Q. Of what age? A. Eight or nine.
- Q. Anybody else on the fourth floor? A. Kenneth Duff.
- Q. What age? A. Approximately six or eight.
- Q. Now, then, the orderlies in the course of their duties would be waiting upon these male patients? A. Not on children.
- Q. Not on the boys? A. No.
- Q. Would they not be waiting on a boy of six, seven or nine? A. No.
- 20 Q. You say that is no part of their duty unless they happen to be called in by the nurse? A. Yes.
- Q. What about communication by the nursing staff from the third floor to the fourth? A. No.
- Q. It was no part of their duty? A. No.
- Q. Is there anything in the regulations which prohibited them going back and forth? A. No.
- Q. So that the nurses from the third floor, if they wished, could go up to the fourth floor? A. Not if they wished.
- Q. There was no regulation or rule to prevent them, was there? A. Not a definite ruling.
- 30 Q. Not a definite ruling. It is not a rule or regulation? A. No.
- Q. And it is the rules and regulations which were definitely put down in black and white which the nurses and staff had to follow? A. Yes.
- Q. And they went to great and minute length to cover the duties imposed on the staff? A. Yes.
- Q. And when a thing is not mentioned there the general inference is it is not a prohibited act, is that right? A. Will you repeat that question, please?
- 40 Q. When there is no prohibition in the written rules, then the inference is the act is not prohibited? A. No, I would not say that.
- Q. Now, so far as the people circulating in the hospital is concerned, you have told us that the food, dishes, were sent indiscriminately from the kitchen to whatever room they were needed in? A. From the clean kitchen.

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Q. I just simply asked from the kitchen. I presume your kitchen is clean, Miss Forrest. The dishes are sent indiscriminately from the kitchen to whatever room they are asked for? A. Yes.

Q. And it makes no difference from what room they had come previously? A. No.

The Court: They had been through the sterilizing room in the meantime? A. Yes.

Mr. MacInnes: Q. So you relied entirely upon the sterilization to make them safe? A. Yes.

Q. Without complete and perfect sterilization they would not be safe, would they? A. No. 10

Q. They would be contaminated and be very likely to carry disease? A. Yes.

Q. Now, when this cross-infection broke out it was rather a surprise to you in the hospital? A. Yes.

Q. Totally unexpected? A. No.

Q. No, then why was it not unexpected? A. No system is perfect.

Q. No system is perfect? Neither can any system no matter how perfect be perfectly carried out when something is left to human agency, isn't that right, Miss Forrest? A. I suppose so. 20

Q. That applies to your sterilization system in the hospital and to your technique in the hospital, does it not? A. Yes.

Q. And when you have a system which was intended to be as nearly perfect as it could be made and you find it breaks down and does not function the natural inference is there has been some failure somewhere to carry out the system. Is that not the first inference you draw? A. No.

Q. Well, would the inference that you draw be that the system you adopted had defects in it? A. No. 30

Q. Then if you had a system which you considered perfect, and it did fail, did it not, I mean you did have the very thing you were trying to prevent. You did have cross-infection? A. We had those cases developed.

Q. My learned friend called it cross-infection and you did on your examination for discovery and your examination in chief, too. Do you want to change that now?

Mr. Gibson: I said so-called cross-infection.

Mr. MacInnes: When this cross-infection broke out, what investigation did you undertake to ascertain the cause of it? 40

Mr. Gibson: I object to that question.

The Court: Well, what do you say, Mr. MacInnes, about that? You see the child had left the hospital on February 3rd.

Mr. Gibson: Yes, my lord.

The Court: Information she obtained on any investigation subject to what Mr. Gibson may submit, what facts she obtained—

Mr. MacInnes: Yes.

The Court: But as to what she did—

Mr. MacInnes: Did I not put it the other way? What did you ascertain at any time from investigation or otherwise as to the cause of this cross-infection.

Mr. Gibson: I submit that is inadmissible, my lord.

The Court: She might be drawing some conclusion. You cannot ask her to determine a question which the court might have to decide. She might be making a conclusion, but just what
10 facts she learned. What conclusion she came to is not admissible.

Mr. MacInnes: I can quite understand that, my lord.

The Court: There is a difference.

Mr. MacInnes: Q. What did you ascertain or learn as to the cause of this outbreak of cross-infection in your hospital?

Mr. Gibson: I object.

The Court: I still disallow the question in that form. What facts did she observe.

Mr. MacInnes: Q. What facts did you observe in respect to this cross-infection?

The Court: No, I allow it in that form, because that is not
20 giving a conclusion but just what she observed.

Mr. Gibson: If your lordship please, I think the question should be confined to the Plaintiff's case.

The Court: The facts she observed at the time, that is, what the facts were prior to the child leaving the hospital.

Mr. MacInnes: I think your lordship is narrowing that too much, because the witness has already told us the exposure to which this child was put for a period of fourteen days.

The Court: Yes, I do not know that I should narrow it quite
30 so much.

Mr. Gibson: The child obviously could not be exposed after it left the hospital. We have nothing with anything after she left.

Mr. MacInnes: I agree with that.

The Court: I am not going to narrow it too much.

Mr. MacInnes: Q. What facts did you learn or observe, Miss Forrest, which would throw light on this spreading from cross-infection? A. The most obvious fact was that no vaccinated person took smallpox.

Q. That is not a fact you observed, is it? That is an in-
40 ference or conclusion.

The Court: You know that, do you? A. I know that.

Mr. MacInnes: Q. You knew also and you knew it from the time of her admission to the hospital, that she had not been vaccinated, did you not? A. I don't know. It was not my duty.

Q. Personally; but did not the hospital authorities know it. Is that not entered right on her record at the time she entered?

A. On the history.

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Q. And you are supposed to supervise.

The Court: There is something about that chart if you are going to ask her about it let her see it, because there is a question mark. I do not know how it comes to be there.

Mr. MacInnes: Q. Exhibit 1. On your examination for discovery you said something about a question mark being there with regard to "not vaccinated."

The Court: Whose writing is that on the original?

Mr. MacInnes: That is the original document.

The Court: But whose writing is it? 10

Mr. MacInnes: Q. Who would take that record, Miss Forrest, that original record? A. One of the internes.

Q. Who wrote this. You know his handwriting? A. No, I do not.

The Court: If counsel wishes to make anything of that it seems to me the particular person who wrote it should be called and the question mark cleared up? A. I don't know.

Mr. MacInnes: Q. You don't know who wrote it? A. No.

Q. When did you see that question mark for the first time, Miss Forrest? A. The first time I remember it was on the discovery examination. 20

Q. Yes, that was on the 6th of January this year. You had never seen it before? A. I don't remember seeing it before.

Q. That means you did not see it before or it was very unimportant? A. It means I might have seen it before and forgotten.

Q. You do not forget important things, do you? A. Sometimes.

Q. If it had any importance in this case, you would have noticed before it was brought to your attention on the discovery, would you not? A. No. 30

Q. Now, the interne as far as medical matters is concerned is your superior in the building? A. Yes.

Q. Vaccination is a matter for the medical officer to determine and not you? A. Yes.

Q. So the interne who took that being your superior officer unquestionably got the information that that child was not vaccinated.

Mr. Gibson: I object to that. The document does not show that.

The Court: I think I would disallow the question in that form. 40

Mr. MacInnes: Q. As a matter of fact, did you ever see that document before it was put to you on the examination for discovery, Miss Forrest? A. Yes.

The Court: It is not at all clear, if I may be permitted to say so, subject to what counsel may say as to when the question mark was put there.

Mr. MacInnes: As to when it was put there?

The Court: Yes.

Mr. MacInnes: It is quite true it may have been put there at any time.

The Court: It might have been put there at the time the information was being taken. So far as I can recall the evidence there is nothing before me yet to show it was not, subject to what counsel may say.

Mr. MacInnes: Of course, it is not our record, my lord.

10 The Court: No.

Mr. MacInnes: Q. Did you not tell me, on discovery, Miss Forrest, you did not know and were unable to find out what the cause of the cross-infection was? A. Yes.

Q. That is perfectly correct? A. Yes.

Q. Now, with regard to this separate cleaning apparatus, you say that until the smallpox cases came in, there was no separation of the cleaning apparatus? A. No.

20 Q. But after the smallpox patients did arrive, you did then segregate the cleaning appliances and confined them to smallpox patients alone? A. Yes.

Q. Is that any part of the regulations in exhibit 3? A. It is not in our written regulations.

Q. It is not in your written regulations. You did that on your own? A. Yes.

Q. In other words, you went beyond the regulations, went outside of them? A. Outside of the written regulations.

Q. If you had the right to go outside those written regulations, what about the nurses under you? Would they have discretion to go outside of them, too? A. Not without consulting me.

30 Q. Not without consulting you. Was there any reason why you should make that alteration in the written regulations upon the receipt of smallpox cases?

Mr. Gibson: That is not putting it fairly to the witness. It is not what she said in her evidence.

Mr. MacInnes: All right.

Mr. MacInnes: Q. Is there any reason why on the receipt of a smallpox patient you should adopt this method which is not in the written regulations? A. My own reason is that smallpox is a disease that is very dangerous sometimes and this might possibly be an added safeguard.

40 Q. That is, you recognize the fact when smallpox came you had a condition of exceeding danger to contend with right from that moment? A. Yes.

Q. What other regulation did you amend or extend on the receipt of these smallpox patients? A. We sterilized the bedding of smallpox cases.

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Q. Beg pardon? A. We sterilized the bedding of smallpox patients.

Q. That you did not do for any other disease?

The Court: Have I the date, if you please, of the first case of smallpox?

Mr. MacInnes: The 18th.

Mr. Reid: The 18th of January.

Mr. MacInnes: The 18th is the first, the 21st the next, the 23rd the next, the 29th the 4th, that is right? A. I can't remember.

The Court: Known definitely to be smallpox on the 18th.

Mr. MacInnes: Q. That is right? A. Yes.

Q. It was a diagnosed case of smallpox on the 18th? A. Yes.

Q. Mrs. Payne's case of smallpox was a diagnosed case on the 21st? A. Yes.

Q. I don't know the name of the first one and by the extra danger imposed by the receipt of smallpox patients you then took extra precautions? A. Yes.

Q. You told us first about the separating of the cleaning apparatus, and the second was the sterilizing of the bedding? A. Yes.

Q. Is that provided for in the rules and regulations? A. No.

Q. Any other special precautions in connection with the smallpox? A. No.

Q. Just those two. Was there any other cross infection from any other disease than smallpox from the 5th of February to the 17th of March? A. Not that I remember.

Q. So that the entire cross infection was limited to smallpox? A. As far as I remember.

Q. Now, with regard to your position or rank, Miss Forrest, your immediate superior is whom? A. Miss Fairley.

Q. Miss Fairley. She gave evidence yesterday? A. Yes.

Q. That is, she could override you, make an order which could override you. She is your superior officer in that respect? A. Yes.

Q. Now, in the old hospital, in the old system, the pavilion system, you said you took in one case of smallpox. Was that a diagnosed case of smallpox on admission or did it develop afterward? A. She came to us from another ward in the hospital, as I remember.

Q. That is, she developed the disease in the hospital? A. I don't know. She came to us from another ward.

Q. There was another building in the city used for smallpox patients at that time? A. Yes.

Q. And were not treated in the pavilion as a matter of course? A. No.

Q. This was an accidental case coming from another part of the building which you had to take care of? A. She came to us from another part of the hospital.

Q. How long had she been in another part of the hospital do you know? A. No.

Q. Were you permitted then to take in diagnosed cases of smallpox, admit them to the pavilion? A. I don't know.

10 Q. You were supervisor there, were you not? A. Yes; but I did not admit the patients to the department.

Q. But did you not know the rules and regulations as supervisor of the building? A. Not really regarding the admission.

Q. On the 18th of January, can you tell us how many patients you had on the fourth floor? A. Not exactly.

Q. I mean approximately? A. Probably fifteen, sixteen.

Q. What is the accommodation on that floor for patients when full? A. Twenty separate rooms.

20 Q. So you had four or five vacancies on the fourth floor on the 18th of January? A. Approximately.

Q. What about the third floor with regard to vacancies there? A. Approximately the same I would say from memory.

Q. And with regard to the second floor? A. I can only say approximately. There would likely be three or four empty rooms.

Q. Several empty rooms? A. Yes.

Q. And the ground floor had nine fully equipped rooms in it? A. Yes.

Q. You told me on your examination for discovery that floor was occupied by internes? A. Yes.

30 Q. The whole nine rooms? A. I can't remember if they were all occupied at that date.

Q. Do you mean the two internes would be given the whole nine rooms, the whole floor? A. I can't say that two would be.

Q. How many vacant rooms would there be in the basement floor, do you know? A. I can't say whether they were empty or whether they were all filled at that particular date.

Q. You didn't make any inquiry. You were not concerned with them? A. No.

40 Q. You told my learned friend you were very particular in the hospital to have individual equipment as far as possible for each individual room, that is, thermometers, basins and all that sort of thing. Was that good practice? A. Yes.

Q. Why? What is the theory regarding that? A. It saves frequent sterilization.

Q. That is a matter of convenience for the hospital? A. Yes.

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Q. Is that the only reason you can give? A. That is the most important reason.

Q. The most important reason. Did it occur to you it might save the carriage of infection to those rooms or patients? A. No.

Q. That would not occur to you as a matter of importance, is that what I am led to infer? A. Yes.

Q. That would not be a matter of importance. The convenience of operation would be of much greater importance than that. Now, so far as you have explained the nursing technique, that is, with regard to the use of gowns and that sort of thing, 10 where were the nurses' gowns kept? A. At what time?

Q. The gown the nurse would use in any patient's room where was it kept? A. In Annabelle McDaniel's room, do you mean?

Q. Usually. The system was the same in all the rooms? A. Yes.

Q. Then— A. At what time—at what date?

Q. From the 17th of January to the 3rd of February? A. They were kept in the patient's room.

Q. A separate gown in each room? A. Three separate 20 gowns in each room.

Q. I was talking of the nurse's gown. You keep three gowns in each room. You told me before one was for the nurse, one was for the nurse and one for the cleaner. How often were these gowns changed in the room? A. At least once a day and oftener if we considered it necessary.

Q. As I understood you from your discovery, when the nurse came on duty she went to the service room or dressing room, what do you call it? A. Dressing room.

Q. And she changed her outside attire either street or the 30 attire she wore outside the building and donned a uniform for use in the building is that right? A. She came over in her school uniform and changed that for a uniform provided for use in infectious diseases hospital.

Q. She put that on? A. Yes.

Q. And changed her shoes? A. Yes.

Q. Why the changing of shoes? A. It is our regulation. I did not make the regulation.

Q. Designed to prevent contagion being carried out of the infectious diseases hospital, is that it? A. I presume that is. 40

Q. That is a fair inference, is it not? Those shoes and the gown she donned in the dressing room, she wore during the whole of her stretch of duty? A. Yes, unless it became especially contaminated.

Q. The uniform which she put on that way was changed every other day. She had two days wear out of the uniform? A. Yes.

Q. Barring accidents? A. Yes.

Q. And the precaution which was prescribed was that on entering the patient's room she was to don the gown which was hanging in that room? A. When coming in contact with anything which is contaminated.

Q. Whenever it was intended to come in contact with anything which would contaminate she would under the regulations have to don that gown? A. Yes.

10 Q. If she did not propose to come in contact with anything which would contaminate or expect to come in contact with anything that would contaminate, she did not have to put on the gown? A. No.

Q. The nurse's duty was to look after the welfare or wants of the patient at all times? A. Yes.

Q. And nobody else does that. That is the nurse's duty, is it not? A. Yes.

Q. The nurse's duty involves any handling of the patient that has to be done? A. Yes.

20 Q. The bathing? A. Yes.

Q. The face washing, hand washing, cleaning of nails, all that is part of the nurse's duty? A. Yes.

Q. The changing of the bedding and all that sort of thing involving the handling of contaminated matter, does it not? A. Yes.

Q. In smallpox cases the nature of the disease when it is virulent is to create very great source of infection from the pustules at certain stages, isn't that right? A. I don't know.

Q. In smallpox cases the diseased portion is usually the face and hands, is it not? A. Not always.

30 Q. The face and hands of smallpox patients virulently affected get to be in a terrible condition from the disease, do they not, covered with pustules? A. Sometimes.

Q. Filled with pus. Did you have any bad cases in the hospital from the 18th of January to the 3rd of February? A. Yes.

Q. Any case of confluent smallpox? A. Yes.

Q. That is, where the pustules are so thick they break into each other and form a big sore, isn't that right? A. Yes.

Q. And that condition of the patient is most distressing to the patient, is it not? A. Yes.

40 Q. And a great deal of alleviating work is done by the nurse to help the patient out? A. Yes.

Q. That means lotions, and washing and that sort of thing, is that right? A. I don't remember lotions.

Q. Perhaps I am using the wrong term I do not know but it is the nurse who has to take care of the patient chiefly? A. Yes.

Q. Which means the application of something to give relief?
A. Yes.

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Q. So a nurse who was waiting on a bad case of smallpox has a very close contact with the disease and her hands particularly are very much exposed to get contagion? A. Yes.

Q. When she has to go to the patient you tell me she dons a gown. Are the sleeves closed or open? A. Closed.

Q. Elastic bands at the wrists, I suppose? A. No.

Q. Open wrist. When the nurse is through tending to a patient for the time being and is through coming in contact with contaminated matter she would take off her gown? A. After washing her hands.

10

Q. She washed her hands first? A. Yes.

Q. Then what does she do? A. Take off her gown.

Q. Then what does she do? A. Folds it with the two clean sides together and hangs it up.

Q. And then? A. Washes her hands again.

Q. And then she can leave the room? A. Yes.

Q. That is, she leaves the room with the same shoes and uniform as she entered it? A. Yes.

Q. Those shoes are they sterilized in any particular way? A. No.

20

Q. Not dealt with in any process of sterilization? A. No.

Q. You think the shoes should not be worn outside the hospital, but taken off in the dressing room and changed to outside wear, I think you told me that before? A. They change their shoes when they finish in the building.

Q. And I think you told me before that was for the purpose of preventing contagion being carried out of the building? A. I presume so. I didn't make the regulation.

Q. If there is danger of shoes carrying contagion from outdoors in or from indoors out, there may be danger of the shoes carrying contagion from one room to another, would there not?

30

A. I don't know.

Q. There were no steps taken to prevent that sort of thing?

A. They were the same shoes.

Q. Now, my learned friend showed you this "Duties of Cleaners and Orderlies" Miss Forrest and he marked two pages, I am turning to this page at the back, the last one, that is equally part of the instructions to the orderlies and cleaners, is it not?

A. It is some time since I read it.

Q. Can I read it for you? "Instructions covering sweeping of wards and separating rooms in I. D. H. for cleaners and orderlies."

40

Mr. Gibson: For separating rooms, does it say?

Mr. MacInnes: Q. "And for separating rooms." A. There is no separating room.

Q. It must be separate. "Instructions covering sweeping of wards—"

Mr. Reid: "Separate rooms" is what it must be.

Mr. MacInnes: Q. The ward would be the big room at the end? A. Yes.

Q. This has "separating rooms." There is no such thing in the hospital, is there? A. Nothing known as separating room in the I. D. H.

Q. That must be a misprint for "separate rooms?" A. I don't know.

Q. Wouldn't you think so. These are the instructions you gave to the orderlies. It was under you. The orderlies do their work under you, do they not? A. Yes.

Q. And you told my learned friend that you carefully instructed those people in the use and meaning of those? A. Yes.

Q. What would be your instructions to me if I came to you? A. I didn't have this copy.

Q. That is the one my friend produced as used in the hospital.

Mr. Gibson: Yes, these are issued by the hospital. It must mean "separate" surely.

Mr. MacInnes: My friend admits that is "separate rooms."

Q. No matter what this means, Miss Forrest, you cannot tell us what it does mean, can you? You can't help us?

The Court: If it is to be left that way.

Mr. Gibson: It is my instruction that the word "separating" is right and it will be explained, if necessary, by Dr. Haywood.

Mr. MacInnes: Q. So we have in this exhibit 5 a page which you are not able to tell me what it means or what it is intended to apply to. Is that right, Miss Forrest? A. I didn't know what that separating room meant in that relation. We have separate rooms.

Q. Yes, you have separate rooms. I will have this page marked.

The Court: It is marked.

Mr. MacInnes: No. It is an exhibit 5, but not the particular page.

(PAGE REFERRED TO MARKED EXHIBIT No. 6).

The Court: Are you through, Mr. MacInnes?

Mr. MacInnes: Yes, my lord.

The Court: Any questions?

RE-DIRECT EXAMINATION BY MR. GIBSON:

Q. Some of the patients in the I. D. H. are attended by their own doctors and some by staff doctors, is that right? A. Yes.

Q. By whom was the Plaintiff Annabelle McDaniel attended? A. By Dr. Kennedy.

Q. That is her own doctor? A. Yes.

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Mr. MacInnes: Does this arise out of my cross-examination?

The Court: As far as Dr. Kennedy is concerned, that is common ground.

Mr. MacInnes: We put Dr. Kennedy in the box to say that, but I don't know what my friend is intending to do. I admit that Dr. Kennedy was the attending physician.

Mr. Gibson: Q. Would that have any reference or any bearing upon your actions with regard to this patient? I think I might surely indicate with reference to vaccination? A. I think that Dr. Kennedy rather than the hospital staff— 10

Mr. MacInnes: I object.

The Court: Just on what she would do I would allow the question.

Mr. MacInnes: She is going on to supply an opinion.

The Court: What you would do in the course of your duties. A. I think the responsibility of vaccination rested with Dr. Kennedy rather than—

The Court: That is hardly—

Mr. MacInnes: I object.

The Court: On the question of her conduct, would her duties 20 be any different according to the regulations if the patient was being treated by her own doctor or otherwise such a question as that I would allow.

Mr. Gibson: Q. Would your actions be different in respect to this child, referring to vaccination still, my lord.

The Court: Yes. What is your answer? A. Yes.

(COURT ADJOURNED AT 1 P.M. UNTIL 2:15 P.M.)

(2:30 P.M. PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

Mr. Reid: I will call Dr. Underhill. 30

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DR. FREDERICK THEODORE UNDERHILL, a witness called on behalf of the Defence, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. REID:

Q. You are a physician? A. Yes, sir.

- Q. I don't know whether you are on the roll at present? A. Yes, sir.
- Q. Or retired—oh, you are on the roll yet? A. Of the Provincial, yes.
- Q. You are a graduate of Edinburgh? A. Yes.
- Q. What year? A. '81.
- Q. Then give me an outline of your experience from that time on to the present? A. I was practising in England until 1904. I came out to this country and I was practising for a short time at Mission, went up to Cariboo, and came back here and went back to Scotland to take a post graduate course in public health, and then after that I came to Vancouver.
- Q. Did you occupy any office in the City of Vancouver? A. In 1904 I was appointed health officer.
- Q. How long did you remain as medical health officer? A. Until the end of 1930.
- Q. Then you retired? A. They retired me.
- Q. That was after twenty-six years? A. Yes.
- Mr. MacInnes: Time did that? A. Yes, sir.
- 20 Mr. Reid: Q. During your experience or term of officer as medical health officer did you have any experience with smallpox and smallpox patients? A. Yes.
- Q. I believe in the early years of your experience they had a building out at Grandview or somewhere? A. Yes, I think it was Templeton and Turner, I think the old building was.
- Q. Templeton? A. Templeton and Turner.
- Q. Templeton Drive and Turner? A. Yes.
- Q. Somewhere in the east end. There was some discussion I believe with the Council and hospital authorities about the infectious diseases building? A. For smallpox, yes.
- 30 Q. Yes, and other infectious diseases? A. At that time only smallpox—if you are referring to the old one.
- Q. No, I am referring to the new one now. I am leading up to the new building? A. Yes.
- Q. There was some discussion? A. Yes.
- Q. Was anything done to find out what course of proceeding was taken in other cities? A. Yes.
- Q. What was done about that? A. A deputation was sent down from the Hospital Board and from the City Council, to Los Angeles, San Francisco and Portland.
- 40 Q. What year was that? A. 1925—April of 1925.
- Q. Who went with you from the city? A. The late Alderman Rogers and Mr. Bird of the building department, the building inspector.
- Q. What did you do while you were down there? A. We went to Oakland first to see the hospital in course of construction there, a modern and latest infectious diseases hospital, where Dr.

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Broderick who was in charge of it, keenly interested in the work, showed us over this building, showed us the improvements he was making; it was not completed then although it had been under construction if I remember correctly, for two years.

The Court: You might hurry along then.

Mr. Reid: Q. And then you made a report to the City Council? A. To the City Council.

Mr. Reid: Do you object to this report?

Mr. MacInnes: Oh, yes.

Mr. Reid: Q. After that the present building was built? 10
 A. Oh, yes.

Q. Was there any other information obtained in connection with building the new building? A. Along what lines?

Q. Along the lines of modern hospital practice in connection with infectious diseases? A. I was looking for modern hospital construction primarily.

Q. Who drew the plans for this building? A. Mr. Bird.

Q. He was with you on that trip? A. On that trip.

Q. Speaking as a medical man who has had a great experi- 20
 ence with smallpox, what do you say about the construction of that building? A. It is most modern and up-to-date for the care of contagious diseases. I know no better.

Q. Do you know anything about the technique which was carried on in the building? A. No, sir.

Q. You had nothing to do with that? A. Nothing to do with that.

Q. What do you say in reference to modern hospital practice, the placing of people in wards where there were, in other rooms, patients suffering from smallpox? A. I see no reason 30
 why they should not be.

Q. You see no reason why they should not be? A. No.

Q. What do you say about using the proper technique, the fact of nurses passing from one room to another? A. If they carry out the technique as laid down, as far as humanly possible there is no fear.

Q. Have you anything, any suggestion as to anything that should be done in connection with this hospital, this infectious diseases hospital, that is not? A. No.

Q. You inspected it at various times? A. Yes; that is the 40
 last few years.

CROSS-EXAMINATION BY MR. MACINNES:

Q. You said Dr. Underhill, you knew nothing about the technique that is followed? A. No.

Q. I think the last remark you made—

Mr. Reid: Let me ask one more question.

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Q. You have heard the technique described by Miss Fairley and Miss Forrest? A. Yes.

Q. What do you say about that? A. It seems to me the most up-to-date technique they can describe.

Mr. MacInnes: Q. And you say if they carried out that technique perfectly there was no danger? A. No, no danger.

Q. That, of course, depends upon the complete carrying out of the technique? A. Exactly.

Q. You think that technique abolished or eliminated all danger of of cross infection? A. As far as humanly possible and our knowledge at the present day is concerned, yes.

Q. You knew Dr. McEachern? A. Yes.

Q. He was superintendent of the hospital for a great many years? A. Yes.

Q. Would you disagree with him when he says that the modern system does not absolutely eliminate cross infection? A. There are always circumstances of which we have no knowledge, or no control presumably, in all contagious disease.

Q. I will go back to the question—

20 The Court: Just give the question.

Mr. MacInnes: It is question 45. See if I put it rightly, my lord. In answering the question, "A fair answer is the modern system has not absolutely eliminated cross-infection."

The Court: That is not 45.

Mr. MacInnes: It may go on further after 45. It is before 50.

The Court: Question 48 "Has the modern system absolutely eliminated that? A. No."

Mr. MacInnes: Question 48: Q: Do you agree with that or disagree with it? A. Put the question again, sir, will you?

Q. Dr. McEachern said—was asked the question "Has the modern system absolutely eliminated the danger of cross infection?" A. No.

Q. It has not? A. We have always had cases of cross infection occur that we cannot explain. As far as humanly possible, my answer is.

Q. So we may take it no matter what the technique is there will be cross infection? A. There is a possibility of it.

Q. You stated that if the technique was properly carried out there was not likely to be cross infection. Now, where you have a case of seven or eight cross infections in this hospital, cross infections from smallpox patients to other diseases, would that not put you on your guard as to some defect in the technique? A. You would naturally make inquiries to see that the technique as described is properly carried out.

Q. And the inference would be if you had seven or eight cases of cross infection occurring at the same time and all of the

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same nature—you would naturally draw the inference there was something wrong with the technique or the practice of the technique? A. Not necessarily so. There are always cases for which we have no explanation. We all come across those odd cases in our lifetime.

Q. Would you say there would be any risk, or any increase in the risk to patients on one floor of the I. D. H., of cross infection from smallpox by introducing a number of patients virulently infected with smallpox on to the same floor? A. Let me get the first wording. 10

Q. Would there be any increase in the risk to ordinary patients on floor three of the I. D. H. of cross infection from smallpox by introducing a number of patients virulently infected with smallpox? A. The way I would answer that is, if we had some idea or thought it would occur, we would never introduce them on to that floor or anywhere else in contact.

Q. Now, the idea of the technique is to break the contact with the disease? A. Yes.

Q. And the more surely you can break the contact with the disease the safer the other patients would be? A. Yes. 20

Q. Now, if the attendants on smallpox patients were not permitted under any circumstances to wait on other patients, while attending the smallpox patients, would that have any effect in diminishing the risk of cross infection to other patients on that floor? A. Hypothetically I suppose it might.

Q. In other words it would be a more effective break in the contact, would it not? A. Yes.

Q. That is, if you had your choice of allowing the same nurses or attendants to go from one room to another, and the choice of confining or segregating the attendants on smallpox to the smallpox alone, and not allowed to go into any others, you would have a more effective break in the contact would you not? A. Yes, but such a point would not enter my mind. 30

Q. I don't care if it enters your mind at all. Would that not be so? A. Oh, hypothetically, yes.

Q. Now do you agree with Dr. McEachern and Dr. Kennedy that modern science has not discovered the method and means of dissemination of smallpox? A. Do you mean the particular germ?

Q. I don't know just what it was. A. If so, we have not discovered it. 40

Q. Wait a minute until I get Dr. McEachern's statement. I think it is question 55, my lord.

The Court: Yes.

Mr. MacInnes: Q. "The cause of smallpox and methods of transmission are not sufficiently well known to medical science to say how it is transmitted." A. No, the cause is not known.

Q. And the cause of transmission is not sufficiently well known to medical science, is it? Would you agree or disagree with Dr. McEachern when he says that? A. I am trying to get the bearing of his answer to the question. We know how it is caused, but I don't quite follow the bearing of his answer to the question. We are always learning something. There may be methods of which we are quite unaware at the present time.

Q. Now, it is common ground with Dr. McEachern and Dr. Kennedy and the others who have given testimony, that contact
10 is one great danger? A. Yes, undoubtedly.

Q. And Dr. McEachern and Dr. Kennedy too— A. Yes.

Q. —both said that the cause of smallpox and the methods of transmission are not sufficiently well known to medical science to say how it is transmitted other than that? A. That is true.

Q. Now, during your long period as medical health officer of the city of Vancouver, you dealt with a good many contagions of various kinds? A. Yes.

Q. And the system you carried out, or at least one of the systems, was immediate quarantine and effective quarantine to
20 the best of your ability? A. Yes.

Q. And that was based on the endeavor to break contact with the disease? A. Yes.

Q. And one of the worst diseases you have had to contend with Doctor, was smallpox, was it not? A. One of them.

Q. As far as contagion is concerned? A. I would not say that.

Q. Would you not say it was one of the worst? A. Measles and influenza are very infectious.

Q. Smallpox is very infectious? A. Oh, yes.

30 The Court: Q. Did you at any time during your period have one separate building for smallpox? A. Yes, sir.

Q. For how long? A. Oh, up to—I think the new building was finished in 1927. I don't think the smallpox came in during my period and I left in 1930. Of course, we had a special building for smallpox.

Mr. MacInnes: Q. Notwithstanding the new building? A. Notwithstanding the new building. We had a very good building for smallpox up to the end of my regime.

The Court: Q. That was used only for smallpox? A.
40 Only, sir.

Q. For how many years did you have that, approximately? A. There was always a hospital for smallpox during my period as health officer, but the smallpox hospital, the one that was erected, was built in 1912, I believe.

Q. Would the nurses from that building attend on patients in another building? A. We had an entire staff of our own under my own personal supervision.

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Q. An entirely different staff? A. Yes, away from every-
 thing.

Mr. MacInnes: Q. As far as you could make it? A. Oh,
 no question about it; miles away from any other hospital.

Q. Is that building still in use? A. Not for smallpox I
 understand.

Q. As long as you were in charge it was kept for— A.
 Smallpox, yes.

(Witness aside)

DR. FREDERICK CHARLES BELL, a witness called on behalf ¹⁰
 of the Defence, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. REID:

Q. You are a registered medical physician under the laws
 of British Columbia? A. I am.

Q. You were graduated—I am going to shorten this; if you
 take objection I will stop—graduated in Manitoba in 1909? A.
 Yes.

Q. And were an interne, and afterwards Superintendent of
 the hospital there until 1911? A. Yes, Winnipeg General?

Q. Winnipeg General Hospital. Then you studied in Edin- ²⁰
 burgh, London, Vienna and other places from 1911 until 1913?
 A. Yes.

Q. And practised in Winnipeg '13 and '14? A. Yes.

Q. You were on the medical staff during the war, from '14 to
 '20. Is that right? A. Yes.

Q. You were Assistant Superintendent of the Winnipeg
 Hospital during the reconstruction period? A. Yes.

Q. Secretary of the Faculty of Medicine of the University
 of Manitoba and on the staff of the Manitoba Hospital—the Win- ³⁰
 nipeg Hospital? A. Yes.

Q. In 1923 you came to Vancouver? A. Yes.

Q. And you were Superintendent of the Vancouver General
 Hospital from when to when? A. September 1923 to June
 1930.

Q. The last year or so I believe you were not active, owing
 to illness? A. I had several breaks in my duty owing to illness.

Q. Did you have anything to do with the construction of the
 Infectious Diseases Hospital? A. Yes, with the plan and con-
 struction.

Q. Did you go to any other place to find out how infectious ⁴⁰
 diseases were cared for? A. Yes, I accompanied the deputation
 which was mentioned by the previous witness.

Q. Had you any experience with infectious diseases before
 that time? A. Yes.

Q. Where? A. I had been in charge of the infectious diseases building of the Winnipeg General Hospital, and during the war I had certain experience in dealing with infectious diseases.

Q. Where did you go in the investigation to which you referred? A. Oakland, San Francisco, Los Angeles and Portland I think it was.

Q. And did you make any investigation in medical literature? A. Yes, we reviewed the hospital management of infectious disease.

Q. And I believe you reported to the Board of the Vancouver General Hospital as to your ideas in connection with the matter? A. Jointly in connection with J. J. Banfield.

Q. He was not a medical man? A. No. He was a member of the Board.

Q. Did you approve of the plans of the Infectious Diseases Hospital? A. Yes.

Q. How did they compare with the Infectious Diseases Hospitals you had seen when travelling around? A. In its essence the planning was somewhat similar to the newer hospitals for infectious diseases which we had visited during our trip to the south.

Q. Did you find the smallpox patients and other patients treated on the same floor? A. Yes, I saw smallpox patients treated in the San Francisco County Hospital and in the Los Angeles Hospital, on the same floor as other patients.

Q. Nurses going from room to room? A. Yes, the same staff attending them.

Q. You know the technique of this Infectious Diseases Hospital? A. Our Hospital?

Q. Yes. A. Yes.

Q. Give me Exhibit No. 3; I think it is the copy from the standing order. Now this is Exhibit 3 from the standing orders book. Who drew this up? A. The initial orders were drawn up by myself with the Assistant Superintendent at the hospital.

Q. Who was that? A. Dr. R. H. Seymour; and by Miss K. V. Ellis who was then Superintendent of Nurses.

Q. That is the predecessor in office of Miss Fairley? A. Yes. Whether those are the same or not I could not say now.

Q. Those are the original ones. Have you gone over those at all? A. No.

Q. You have heard the evidence given by Miss Fairley and Miss Forrest? A. No, I did not hear Miss Fairley.

Q. You heard Miss Forrest. What do you say about the technique carried on by them in comparison with the technique in connection with other infectious diseases hospitals? A. Well, it is in the line of the technique. Generally it was in line with

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the technique of the hospitals of similar construction, similar facilities for the treatment of infectious diseases.

Q. At the present time. How far back would that go? A. Until 1930. I speak confidently until 1930.

Q. What do you say as a medical man as to whether it is proper practice or not to allow smallpox patients on the same floor as the other patients? A. I consider it, and still consider it, a suitable means of treatment of an infectious disease.

Q. Including smallpox? A. Yes.

Q. How does it compare with the treatment in other places? 10
 A. Quite similar to other hospitals of similar construction and facilities.

Q. What do you say about allowing a nurse carrying out the proper technique according to what Miss Forrest said was carried on here, going from patients suffering from one disease to patients suffering from another disease? A. That is an integral part of the plan of operation of the hospital.

Mr. Reid: Did you get that, my lord? An integral part of the plan of operation.

The Court: That is hardly an answer to the question though. 20

The Witness: Would you repeat the question?

Mr. Reid: Q. Is it in accordance with modern hospital practice? A. Yes.

Q. You see Exhibit 6 there, Dr. Bell. You drew those rules up, did you not? They are signed with a carbon signature? A. My own signature.

Q. That is your own signature? A. Yes.

Q. What about that word "separate rooms." They seem to have made a point on it. A. I can explain that in this way: before this separate building for infectious diseases was erected, 30 we had in the main hospital and still have them, rooms which are called separate rooms. Those are rooms for individual patients it is found necessary to separate for medical or other reasons, noise, or dying persons and so on, various reasons, to transfer them from the wards to single rooms. Those rooms in the main building were called separate rooms. At the commencement of the operation of this new building we had on each floor both wards and separate single rooms, and in the beginning the term 'separate' was applied to the separate room, being the nomenclature with which we were familiar in the General Hospital. Separate rooms 40 in this sense applies to the separate rooms.

Q. There are several pages on the duties of cleaner of rooms. Were those drawn up by you? A. They were approved by me.

Q. And approved by you. Did you have any consultation with anybody else as to these rules? A. Yes, with the chief orderly under whom the cleaners came.

Q. That was Mr. McConnell? A. Mr. McConnell.

Q. Who is still there? A. Yes, I believe he is. And with the Assistant Superintendent Dr. Seymour.

Q. And did Miss Ellis have anything to do with it? A. I don't think it was likely because the cleaning duties did not come under Miss Ellis.

Q. That would be Mr. McConnell instead of Miss Ellis?
A. Yes. Probably Miss Ellis was furnished with a copy of the instructions to the cleaner.

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CROSS-EXAMINATION BY MR. MACINNES:

10 Q. When did you cease to be Superintendent Dr. Bell? A.
1930.

Q. Succeeded by Dr. Haywood? A. Yes.

Q. As long as you were Superintendent the hospital maintained a separate building for smallpox cases, so Dr. Underhill just said? A. The City.

Q. That separate building for smallpox patients was maintained by the City on the hospital property? A. No.

Q. Outside? A. Yes.

20 Q. And all smallpox patients were taken to that hospital,
that is those who were taken to the hospital? A. Yes, when the accommodation permitted.

Q. You did not admit them, you yourself? A. Not as such.

Q. Not as such. So that the admission of smallpox patients to the present I. D. H. is a matter of your successor, not of yours?
A. Yes, as such.

Q. Now the idea of the separate building would be to break contact, the chances and opportunity of contact of the disease with others? A. Yes, that, and to provide suitable facilities for treatment.

30 Q. And the way that was done was to have a separate building, a separate staff, and kept separate all the way through? A. The staff was not entirely separate in that the nurses did do their tour of duty.

Q. When they did their tour of duty there they were not waiting on other patients? A. No.

Q. Their duty was separate while attending to the smallpox patients? A. Their duty was separate.

40 Q. That was for the purpose of breaking contact, to prevent contact with the disease, direct or indirect? A. Yes, with the proper treatment of the disease.

Q. The technique which is substituted for that sort of thing and now in vogue in the I. D. H. has for its object the prevention of contact direct and indirect too? A. Yes.

Q. Do you agree with Dr. McEachern when he said as he did do at question 55, the cause of smallpox and the methods of

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transmission are not sufficiently well known to medical science to say how it is transmitted? A. Yes, I agree with that.

Q. You all agree with this too, I think: that one known method of transmission is by contact, direct or indirect? A. Undoubtedly.

Q. Any other method means of transmission is unknown? A. Yes.

Q. You said you saw smallpox patients in a San Francisco hospital treated on the same floor as other patients. How many patients were there on the floor altogether approximately? A. 10 About thirty according to my recollection.

Q. How many of them would be smallpox patients? A. On the floor I am thinking of there were three smallpox patients.

Q. Three out of thirty? A. Yes.

Q. Where were they kept? A. They were kept in separate rooms, each in a separate room.

Q. Each in a separate room? A. Yes.

Q. How were those rooms separated from the rest of the floor? A. By a corridor and walls.

Q. What about the attendants on those three rooms? Do 20 you know anything about that? A. Yes. The patients were nursed by the floor staff.

Q. By the floor staff indiscriminately, or were members of the floor staff appointed to wait upon them alone? A. No.

Q. You don't know? A. No, I say they were not.

Q. You mean they were indiscriminately waited on? A. Yes.

Q. How long were you there? A. On the floor?

Q. Yes, in touch with that hospital? A. In touch with the hospital about three hours. 30

Q. Any cross infection at that time? A. No.

Q. Do you know of any since? A. No, I don't know. I have not inquired.

Q. You have not made inquiries. What about previous cross infection? A. I cannot recall the statistical information that was given us, now, but all I can say is the cases of cross infection had been almost minimal.

Q. That was the only hospital they did it from your own experience? A. No. And the Los Angeles General Hospital.

Q. You think it is a proper practice to admit smallpox pa- 40 tients to a floor occupied by other patients and have them treated by the staff indiscriminately? A. Providing you have the facilities and arrangements you have in this hospital.

Q. Now, what facilities have you to meet and to counteract the unknown methods of transmission of this disease? A. You have a form of technique which is set up to meet all the known hazards.

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- Q. What technique is set up to meet the unknown hazards?
A. Oh, obviously none.
- Q. Obviously none, certainly. You have admitted Dr. Bell, and so has Dr. McEachern, that the cause of smallpox and the method of transmission are unknown to medical science? A. Yes.
- Q. What method or means or technique has been established in this hospital, or in any other hospital, to meet the unknown method of transmission of smallpox? A. Means have not been
10 taken to meet the unknown.
- (Witness aside).
- DR. ALFRED KIMBALL HAYWOOD, a witness called on behalf of the Defence, being first duly sworn, testified as follows:
- DIRECT EXAMINATION BY MR. REID:
- Q. You are the General Superintendent of the Vancouver General Hospital? A. Yes, sir.
- Q. And have been since 1930? A. Yes.
- Q. You are a graduate of where? A. Toronto University.
- Q. Medical? A. Yes.
- 20 Q. And afterwards what experience did you have? A. I served as interne in the Toronto General Hospital, as an interne at Pittsburg, and two years post graduate training overseas.
- Q. Yes, overseas? A. No, that is before the war.
- Q. Then you were? A. Assistant Superintendent of the Toronto General from 1912 to 1914; overseas at the war from 1914 to 1917.
- Q. That was in connection with the medical staff? A. Yes. I was medical officer of the 3rd battalion.
- Q. And when you came back—? A. The fall of 1917. I
30 became General Superintendent of the Montreal General Hospital and remained there until I came out here.
- Q. And you have been associated with Dr. Walsh and others in hospital surveys? A. Yes.
- Q. Have you had much experience with infectious diseases hospitals and the way they are run? A. Nothing more than I have in visiting other hospitals. I never had the opportunity of running an infectious diseases hospital until I came out here.
- Q. But you have seen other infectious diseases hospitals run? A. Yes.
- 40 Q. How do the best of them compare with the infectious diseases hospital in the City of Vancouver, the General Hospital? A. They do not compare favorably with it.
- Q. In what way? A. I would say this is the most modern-ly built institution for infectious disease that I know of.

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Q. What do you say of the technique carried out there? A. As far as the technique is outlined in the standing orders I would say that the technique was as nearly perfect as we could make it. We have adopted all the known advantages of various techniques.

Q. And what do you say as to the capabilities of Miss Forrest, and I think her assistant was a Miss White, now Mrs. MacLaren? A. My opinion of them is that they are very capable women.

Q. When you say capable what do you mean? A. Capable for the position they are holding. They understand their work. 10

Q. How about discipline? A. Good. Strict disciplinarians.

Q. How often do you go over there yourself? A. I have no regular tour of duty. I go there when I feel that I should go, it is time I made an inspection of the building, or for any reason. I may be sent for.

Q. You have made an inspection from time to time? A. Yes.

Q. How have you found it? A. Very well kept.

Q. Have you had any complaints of a breach of technique? 20
 A. No, sir.

Q. There was some question came up about vaccination. What would be the proper course to pursue in connection with vaccination; first where a patient is sent in by his own doctor and attended by him, and where he comes in without having his private doctor? A. A patient that comes in without having a private doctor is a staff case; and that patient is looked after by an appointed doctor, Dr. Carder, whose business it would be to suggest vaccination to that patient, if the patient had not been vaccinated. That is not the case with a private doctor. We do 30
 not interfere with the practice of the private doctor unless he is making some glaring error.

Q. Now it appears that this hospital had patients suffering from other infectious diseases in some rooms and some patients suffering from smallpox in other rooms—adjoining rooms, or nearly adjoining rooms. What do you say of that as a proper modern medical practice in a disease of this kind? A. That is the proper, modern medical practice.

Q. Where have you seen that practice carried on? A. I have not seen it carried on except here. My knowledge of that 40
 is from reading. There have been many articles in hospital literature referring to it. It was originally—the idea was originally published after years of experiment of Dr. Richardson in Rhode Island, and in a series of articles in 1919, '20 and '21.

Q. Give us the history, Doctor? A. He discovered at that time that our old ideas of segregating various types of contagious and infectious disease in separate pavilions, was out of date, and

he proved to the hospital world that those patients could be nursed in a very much more humane manner by buildings such as we have here. He started first of all with the cubicle system.

Q. That is with the walls only part way up? A. Yes. And he even went so far as to prove that these patients can be nursed in an open ward. This hospital has taken a still further advance than that, for the reason given in Dr. McEachern's evidence, of children passing things underneath or over, and built separate rooms where that could not take place.

10 Q. What else has appeared in medical literature along this line? A. That they have sounded the death knell of the old pavilion. It is now a recognized fact and is no longer of sufficient interest to be published.

Q. A recognized fact? A. Yes.

Q. What do you say about nurses following out the technique such as has been proven here, passing from room to room and treating different classes of infectious disease patients? A. In view of the record of the hospital, showing the very small amount of cross-infection from contagious diseases, and in view of
20 the fact that during the period of the last three or four years they have treated sporadic cases of smallpox in the hospital under this routine, I think the routine is proper, the proper one.

Q. Did you anticipate any reduction or increase in cross-infection by carrying on this routine? A. No, sir. The former practice in the hospital had led us to believe there would not be any cross-infection.

CROSS-EXAMINATION BY MR. MACINNES:

Q. This was the only smallpox epidemic you have had in your experience here, Doctor? A. Yes.

30 Q. And in the smallpox epidemic you admitted some twelve or thirteen patients to the hospital before the middle of February? A. Yes, in round numbers.

Q. The number of patients? A. Yes.

Q. I don't suppose they exceeded twenty did they, up to the middle of February? A. No, I would not think they did.

Q. What was the gross number through the epidemic? I think you told me forty? A. I think in the neighborhood of forty.

Q. The total? A. Yes.

40 Q. And out of that forty cases of smallpox, through this epidemic—

The Court: That is admitted as such.

Mr. MacInnes: Q. Admitted as such? A. No, some of those patients were admitted for other diseases, such as the McDaniel child.

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Q. I mean the diagnosis of admitted cases of smallpox? A. I could not tell you that. Dr. McIntosh would have that information.

Q. Approximately? A. In the neighborhood of 30.

Q. So that having admitted diagnosed cases of smallpox to the extent of thirty during this epidemic, you had at least eight cross-infections in the hospital? A. Yes.

Q. That is roughly speaking twenty-five per cent.? A. Yes.

Q. Twenty-two and a half per cent. Don't you think that is a pretty high percentage? A. Very high. 10

Q. Now the only experience you have had of treating smallpox indiscriminately with other diseases on the same floor, is since you have been in Vancouver here? A. Yes.

Q. And the one experience you had with smallpox turned out with a very high percentage of cross-infection? A. Yes, sir.

Q. And yet you say that practice is right? A. Up until the first case of cross-infection occurred I would have said that practice was absolutely correct.

Q. And when cross-infection had occurred to that extent, you went back, or began to query? A. We began to wonder what 20 could be the matter.

Q. There is no doubt about this, that the danger in all contagious diseases and including smallpox, is contact direct or indirect? A. Yes.

Q. If that can be eliminated you have gone a long way to safety of surroundings? A. Yes, sir.

Q. Do you agree with Dr. McEachern and Dr. Bell that the cause of smallpox and methods of transmission are not sufficiently well known to medical science to say how it is transmitted? A. Yes. 30

Q. The one known method, at least that is recognized, is contact direct or indirect? A. Yes.

Q. Other methods are unknown? A. I do not know of them.

Q. Your technique and your practice then so far as it applies to smallpox, is defective in that it does not cover all possible methods of transmission? A. No, I would not say that our technique is defective.

Q. Have you made any provision in your technique for the unknown methods of transmission of this disease? A. No, sir. 40

Q. Apparently from the statement made by Dr. McEachern and as I took your statement and Dr. Bell's, there are other methods besides contact direct or indirect, but they are unknown? A. Exactly.

Q. And you have no provision for the unknown methods of transmission? A. You cannot meet the unknown.

Q. Cannot meet the unknown, but knowing that contact is

a known danger of it you could keep them separate could you not, under the old pavilion system? A. I would not like to see them kept separate under the old pavilion system as I saw it here. You know, anything is possible.

Q. They could have been kept separate in this hospital by putting them on the first floor, or the second floor, or the third floor? A. They could not have been put on the first floor.

Q. Why? A. Because it was full of internes.

10 Q. In other words the hospital was being used for a purpose that it was not intended for? A. I would not say that. Those quarters were being used for the only purpose we could use them for. You could not put patients down there.

Q. Was not that basement floor equipped as a hospital having the same equipment as upstairs? A. It was; but you could not put patients there.

Q. Because the internes were there? A. No. Because they could not stand the heat. All the pipes of the whole institution go through that corridor.

20 Q. That is something new. It was an impossible floor? A. Yes.

Q. But you could cook the internes there? A. Yes. They are not there twenty-four hours out of the twenty-four.

Q. Was there any reason why the second floor should not be used, the third or fourth? A. Yes. At that time it would have been very inconvenient to have moved the patients.

Q. So then it gets back as Miss Forrest stated, to a matter of convenience— A. Yes.

Q. —in administration? A. Yes.

RE-EXAMINATION BY MR. REID:

30 Q. Just tell us about the inconvenience and troubles of that old pavilion system where you kept smallpox patients absolutely away from everybody? A. Well, I visited this institution that they had here. It was isolated out in an outlying part of the city. It was nothing but a barn. They had old fashioned ideas of red glass panes had something to do with the cure of smallpox, and at the time I visited it in 1929, and again in 1931, those panes of glass were still there. You could not see to read or write in the rooms. Some rooms had a little stove in them, others had no heat at all. It may have been in those days that that was a proper and humane
40 way to treat patients, but in the light of modern medical knowledge and the proof that I have told you of, of Dr. Richardson's, that these patients can be treated elsewhere, it would have been very bad practice on the part of the city officials and the hospital if that had been continued.

Q. Is there anything else you want to say about this?

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Mr. MacInnes: I suppose anything the Doctor wants to say is hardly re-examination.

The Witness: Well, there is something that I would like to say.

The Court: So long as I know the topic, that he would not get on anything inadmissible.

The Witness: I will be as brief as possible.

The Court: You might be brief but touch on something—

The Witness: I am going to refer to the incidence of cross-infection, this cross-infection. The first case we knew of occurred on February 5th. 10

The Court: I have that already. Wait a minute.

The Witness: And one on February 6th. As those were cases of cross-infection and as we had treated eleven cases of smallpox since 1928 without cross-infection we were immediately worried as to whether our technique or practice had broken. And on Sunday the 7th of February a meeting took place of Dr. McIntosh, my assistant Dr. Stalker, Miss Fairley and Miss White, and our technique was reviewed in detail. The medical records of those patients was gone over in detail and it was found at that time that the only reason that we could attribute this cross-infection to was the fact that it took place among people who had not been vaccinated, and as a result of this epidemic I feel convinced that were an epidemic to break out tomorrow, that providing all the patients were vaccinated there would not be a possibility of cross-infection. 20

Mr. MacInnes: I object to all that as coming at this stage.

Mr. Reid: I am perfectly willing you should cross-examine him.

Mr. MacInnes: It is not the usual procedure to allow witnesses to sum up after being cross-examined. 30

The Court: I can give leave to cross-examine.

RE-CROSS-EXAMINATION BY MR. MACINNES:

A. K.

Haywood

Re-cross Exam.

Q. That was the only thing you could find, Doctor? A. Yes.

Q. When did you get your information about vaccination?

A. I have always been a firm believer in vaccination.

Q. That would be twenty-five or thirty years? A. Yes.

Q. All the time of your medical practice? A. Yes.

Q. You always considered that an unvaccinated person was running an extreme risk? A. Yes.

Q. And an unvaccinated person was a danger to himself? 40

A. And the community.

Q. And also that it would be a serious danger to an unvaccinated person to move him into contact with smallpox? A. Up until February the 3rd I did not know.

Q. I want an answer. Any contact— A. After February 3rd I agree with that.

Q. Until? A. Until February the 5th rather.

Q. The 5th or 7th? A. The 5th.

Q. Well, it was the 7th you had your meeting, and the 7th you came to your conclusion? A. Yes.

Q. And you learned nothing between the 5th and 7th of February that you did not know before? A. No.

Q. So that you had your full knowledge on the 17th and 18th of January that you had on the 7th of February? A. No, we did not.

10 Q. The difference was that the cross-infection came. You had your full knowledge of vaccination? A. From January 18th until February 5th we had been carrying on the same routine which had been successful since 1928.

Q. And you considered the routine that was successful with sporadic cases, single cases I imagine from time to time, was sufficient to meet the conditions existing in January 1932? A. Up until February the 7th I honestly thought it was.

Q. Did you not learn before February 7th this was a very virulent epidemic, virulent in Vancouver? A. Yes.

20 Q. You knew that when your first patient came in? A. Yes.

Q. You trusted to the technique which carried you over in the sporadic cases of not very serious smallpox, to carry you through the most virulent epidemic you had experienced? A. Yes, sir.

Q. And your knowledge of vaccination and its virtues you had in full before the 17th of January? A. I had no knowledge before the 7th of January that it would not be possible to nurse smallpox patients in the same room with a technique which had
30 been successful—

The Court: Q. The 7th of January? A. The 7th of February I mean.

Mr. MacInnes: Q. I am waiting for an answer to my question, and you have not touched it yet. A. What is your question? (Question read by stenographer).

The Witness: I had the knowledge before the 17th of January for many years, that vaccinated people would not get smallpox.

40 Q. And that unvaccinated people were very liable to contract the disease if put in contact with it? A. Yes, sir.

Q. Or if the disease was put in contact with them? A. Yes.

Q. Vice versa. The record of this McDaniels child taken at her admission shows that she was not vaccinated? A. I have not read the record.

Q. You have not read the record? A. No, sir.

Q. You told me on your examination for discovery, it did?
A. You showed me one sentence in that which showed that the

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child had not been vaccinated. That is all I have seen of the record.

The Court: Let the Doctor see the record.

Mr. MacInnes: Q. You say that is the first time you have seen that, Doctor? A. Yes, sir.

Q. Didn't you say that you read over the records of all the patients at this meeting of February 7th? A. I was not at the meeting of February 7th.

Q. Well, you were telling my learned friend about it. How did you learn about it? A. My assistant was there. I dele- 10
 gated him to go.

Q. And he reported to you? A. He reported the result to me.

Q. And you have given me a whole pack of hearsay about what took place? A. I have given you the facts of what took place.

Q. Doctor, you were not there? A. No.

Mr. MacInnes: I ask that answer of the Doctor be stricken out as hearsay evidence. I took it that he was there.

Mr. Reid: Q. Who was it? A. Dr. Stalker. 20

Q. He is available? A. Yes.

Mr. Reid: We can get the doctor. I did not know that.

Mr. MacInnes: He certainly gave it as if he was there.

The Witness: I reported the names of those who were present there.

Mr. MacInnes: Q. You put a great deal of stress upon modern ideas in medical practice? A. Yes.

Q. And you are suggesting that the old ideas of medical practice were not very good? A. I still maintain that modern practice is progressing very rapidly. 30

Q. Of course modernism is the great idea. A. I don't know, but I know progression in medicine is a great idea.

Q. Do the ideas in the practice of medicine shift and change like the styles in ladies' hats? A. They have, and I hope they will continue.

Q. Possibly a year or two from now we will have some other method of treating contagious diseases? A. That remains to be seen.

Q. With the progression that is being made it is quite likely to take place? A. I hope it will. 40

Q. The hope being to avoid cross-infection?

Q. And eliminate contagious diseases entirely.

(Witness aside).

DR. EDWIN D. CARDER, a witness called on behalf of the Defence, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GIBSON:

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Q. You are a duly qualified practitioner in the Province of British Columbia? A. Yes.

Q. Practising in the city of Vancouver? A. Yes.

Q. How long have you been in practice, Doctor? A. In Vancouver— I graduated in 1900.

10 Q. After that what was your experience? A. I was ship's surgeon—I was an interne in Toronto General Hospital for a year.

Q. You might just run over the history briefly? A. Ship's surgeon on the Empress of India, three years; practice in Port Arthur Ontario for one year; post graduate in London, England, for one year. I came to Vancouver and have been in Vancouver ever since, since 1906.

Q. In General practice? A. Until 1916, when I limited my practice to children.

20 Q. What experience have you had with regard to infectious disease? A. I have been connected with the city, in charge of infectious disease, since 1908.

Q. When you say connected with the city, what have you reference to? A. I am termed the epidemiologist. It is a long word.

The Court: Do you mind spelling it? A. I might, with a little thought.

The Court: In the meantime you might go on without.

30 The Witness: I am responsible for the isolation and the quarantining of the infectious diseases, and the control of their spread, and the diagnosis of difficult and doubtful cases when called upon.

Mr. Gibson: Q. I understand you do this work under the medical health officer of Vancouver. Is that right? A. Yes.

Q. But this part of the work is particularly in your charge, is that right? A. Yes, sir.

Q. Then I suppose you are familiar with the methods and facilities that have been in use in Vancouver since 1908? A. Yes.

40 Q. Now, prior to the construction of this hospital on 12th Avenue, the infectious diseases hospital, what was the system used for the housing and care of infectious diseases in Vancouver?

A. Smallpox was cared for in a building which was—well the first one was an old house set aside for that purpose, and then later, about 1912 or so, the building on Slocan and 21st was erected for that purpose and remained as a hospital for smallpox until the cases began to be admitted to the present isolation building. All other infectious diseases were cared for in three cottages, two-

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storey buildings, on the site of the present private and maternity wards of the Vancouver General Hospital.

Q. Were those there when you came to Vancouver? A. No.

Q. They were erected afterwards were they? A. Yes, about 1911, I think.

Q. How long were they used? A. They were used until this new building was erected in 1927.

Q. You, of course, are familiar with the new building; that is you know the building? A. Yes. 10

Q. And the technique that is used there? A. Yes.

Q. Have you any special connection with any of the work done there? A. Yes. I am the attending physician for the staff patients.

Q. Does that necessitate you going there frequently? A. Almost daily.

Q. What have you to say as to the method adopted in the Isolation Diseases Hospital as compared with the method of treating infectious diseases as you have described before the erection of that building? A. I think it is more efficient; I think more economical, and as regards smallpox I think it is much more humane in that we are now in a properly equipped up-to-date building with modern facilities. 20

Q. Is it in your opinion in accordance with modern hospital practice? A. Yes.

Q. And are you able to compare it with the other system so far as results—I mean particularly with reference to cross-infection, or so-called cross-infection? Did this occur under the old system? A. Yes.

Q. Can you say to what extent? A. No, I cannot, but my impression is about one per cent. 30

Mr. MacInnes: I object to the guess work.

The Witness: Very well. That is guess work.

Mr. Gibson: Q. Now in particular the system now in use has been attacked in that you put a smallpox patient in a room adjoining that of a patient with another disease? A. I see no reason for making any exception in the case of smallpox.

Q. And of course you are aware that it is a part of the system that the nursing staff may be used for both patients? A. Yes. 40

Q. What do you say as to that? A. I think it is quite all right.

Q. I presume that vaccination is something you have made a special study of in connection with smallpox? A. I have done a great deal of it.

Q. Evidence has been put in to show that the Plaintiff Annabelle McDaniel, after being in the hospital for diphtheria

from January 17 to February 3rd, went to her home on that date; that she had some symptoms of illness commencing on or about the 7th of February; that Dr. Kennedy was called in on the 11th and thought it was smallpox, and he was quite sure it was smallpox on the 13th of February.

Mr. MacInnes: The 12th. He diagnosed it as smallpox on the 11th and confirmed it on the 12th.

Mr. Gibson: Q. Could you express an opinion on that history as to when the infection was probably incurred? A. Her
10 first symptoms were observed on the 7th?

Q. On the 7th. A. Well, the usual incubation period is eleven days; anywhere from ten to twelve days, but the usual average would be eleven days. If one were to subtract eleven days from the 7th of February that would be the 27th.

Mr. MacInnes: The 26th is it not?

The Witness: The 27th of January would be approximately the date on which she was definitely infected.

Mr. Gibson: Q. It appears also that the question as to vaccinating her came up and was discussed by her father and her
20 doctor, Dr. Kennedy, on either the 28th or 29th, but it was not done. What, in your opinion would be the result of vaccinating her on the 28th or 29th? A. I would say had she been vaccinated on the 27th, 28th or 29th, or possibly even the 30th, it would have prevented her acquiring smallpox.

Mr. Gibson: I had intended to have Dr. Carder examine the Plaintiff Annabelle McDaniel, with a view to speaking to the marks on her face, but I understand she is not in court.

Mr. MacInnes: I told her she did not need to come today. She would not be needed. I will produce her tomorrow, but the
30 reason she is not here today is I told both Mr. and Mrs. McDaniel there would not be any necessity to stay around. I will have her here at half past ten.

(Arrangement made for Dr. Carder to visit child).

CROSS-EXAMINATION BY MR. MACINNES:

Q. You told my learned friend you were in the service of the city, the medical health branch of the city service, responsible for the isolation and quarantining of infectious diseases? A. Yes.

Mr. Gibson: Did he say he was in charge of infectious disease?

Mr. MacInnes: The isolation and quarantining of infections. There is no misunderstanding about that is there Doctor?
40 Smallpox is an infectious disease? A. Yes.

Q. You isolate and you quarantine? A. Yes.

Q. As effectively as can be done? A. Yes.

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Q. Am I right in this Doctor, that smallpox is one of the most readily transmissible, most contagious cases? A. Yes, sir, to a susceptible person.

Q. The isolation then and the quarantine then is aimed at preventing contact direct or indirect with the infected person? A. Yes, sir.

Q. Recognizing that contact direct or indirect with the disease is dangerous? A. Yes, sir.

Q. Now you told my learned friend that this new I.D.H. erected in 1927, was extremely modern and well equipped? A. 10
Yes, sir.

Q. And you thought with regard to smallpox patients it would be more humane to treat them in that building than in the old pavilion? A. Yes, sir.

Q. It would be more convenient to treat them there too would it not? Miss Forrest said it was convenient. A. Yes.

Q. So it would be humane and convenient to treat them there because of the appliances and equipment in the building? A. Quite so.

Q. There was no reason why another building could not be 20
equipped as well, a special building for smallpox, and have it as humane and convenient as the present building? A. If it were deemed advisable.

Q. There would be no reason why it could not be done, as a matter of physical fact? A. No.

Q. And it would be just as humane and convenient as putting them in the present I.D.H.? A. But much more expensive.

Q. I see. More expensive. That is another reason, the saving of expense?

The Court: I do not see any objection, but if counsel wish to 30
object they may, to the question I would like to ask the Doctor. You are saying, if I follow you directly, it would be humane to have smallpox in such a building as you have now and not in a separate building. With regard to the possibility of cross-infection, which would be the more advisable from the point of view of the other people? Look at it for a moment from the point of view of other people who may be subject to the cross-infection. A. Well, my lord, one could not deny that were separate diseases kept in separate buildings there would be less chance of cross-
infection. 40

Mr. MacInnes: Q. Yes, Doctor, the more clearly you prevent contact, direct or indirect, the safer it is? A. I quite agree with that.

Q. And when you introduce patients indiscriminately on the same floor suffering from smallpox to other patients suffering with other diseases, you increase the danger of contact? A. You do, but it must be to a very very slight extent.

Q. It is increased anyway? A. It is not decreased.

Q. And when you have these patients attended on and waited on by eighteen or twenty, possibly more, attendants, of more or less capacity, then again you increase the risk of cross-infection don't you? A. Theoretically, yes. I think not to any appreciable extent.

Q. Theoretically, yes. Now you said that the cross-infections under the old system were more numerous than they are now. You mean cross-infections under the old pavilion system which
10 they had for infectious diseases here? A. I don't think I said that.

Q. What? A. I don't think I made a definite statement, because I don't know.

Q. You did not intend to do that, did you? A. I cannot say. I don't believe we have had any more or any less. I cannot tell. My recollection is about the same.

Q. But Doctor, the cross-infections that you did have under the old pavilion system were not cross-infections smallpox to other diseases, were they? A. I regret to say on one occasion, yes.

20 Q. On only one occasion in all your years? A. Yes.

Q. Now, what would you say as to eight cases of cross-infection in the course of about a month? A. I don't think it is correct to describe this as cross-infection.

Q. But those who were in charge—Dr. Haywood, Miss Forrest, Miss Fairley, all say cross-infection. Well, when they say they had eight cases of cross-infection in barely a month, is that too much, Doctor? A. I would not call them cross-infections. I don't think it is fair to label them all cross-infections.

30 The Court: The Doctor is quite entitled to say that. Just a moment Mr. MacInnes, please.

The Witness: May I explain that a cross-infection that one could conscientiously call such, is one in which we know that the infection occurred from a patient or from somebody with whom the other patient and been in direct or indirect contact; but in the presence of an epidemic we are not justified in saying that that infection originated within the hospital. If it originated outside the hospital then it is not, in my opinion, a cross-infection.

40 The Court: Q. Now, you may assume for the purpose of Mr. MacInnes' question, there was a cross-infection. You have given us your own view. Now you may put it, Mr. MacInnes.

Mr. MacInnes: Q. What would you say as to the system that would permit or bring about seven or eight cases of cross-infection in a very short period of time, barely over a month? A. Well, I won't say that the system caused it.

Q. Is it too many? A. The system may have permitted it. Yes, I think it is too many.

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Q. It is a very serious matter when you get that number of cross-infections at once, or practically at once? A. Yes, it is.

Q. And the fair and reasonable inference when you get that in this modern, up-to-date hospital where all the methods that can be thought of are said to be carried out—then how can you explain it otherwise than by inferring it came from a breakdown somewhere in the system? A. I think in the presence of an epidemic and with the admission of visitors to the hospital there was every chance in the world of it being brought in from outside, and not inside. 10

Q. You are still going back to your theory this was an outside infection, but I am putting it to you—I am putting to you the supposition that this was a cross-infection? A. Yes.

The Court: You are just being asked to answer the question on that assumption. You are not obliged to agree with the assumption, Doctor. A. May I have the question again?

Mr. MacInnes: Q. Assuming that this was a cross-infection in the narrow sense, is it not a fair inference that when seven or eight cases occur in this building with all its supposed advantages, that there must have been a breakdown in the carrying out of the technique somewhere, somehow? A. Either that or the technique was not equal to the occasion. 20

Q. Either that or the technique was not equal to the occasion. Now if the room in which the patient is kept is sufficient to maintain the disease inside—do you get what I mean? A. Yes.

Q. If it is sufficiently secure and safe that the disease will not issue freely from it, is it not secure and safe from the admission of disease from the outside? A. I don't think I quite get that.

Q. You know about Paddy's coat, it keeps the heat in and 30 the cold out.

The Court: I do not know that simplifies the question.

(Question read by stenographer). A. No.

Q. You say that the disease will enter from the outside more readily than it will issue from that room? A. I am talking about people.

Q. I am talking of the doors and windows and equipment of that room. A. Yes.

Q. Now we come to the human factor. You say it may be brought in by somebody taking it in? A. Yes. 40

Q. And you have this condition of affairs Doctor: You have there twenty to twenty-four attendants on the floor, all of whom are indiscriminately mixing with smallpox and dealing with smallpox patients, and a number of them in turn as occasion requires coming into this room, directly or indirectly waiting on smallpox— Would you not consider that was a reasonable ground to expect that they brought the smallpox in? A. I don't think

if they govern themselves according to the regulations, and gown themselves, wash themselves and take the precautions that are prescribed.

Q. But if the smallpox came in and it was brought in by— assuming it was brought in by one of the attendants, it would certainly mean a breakdown in the technique or a defect in the technique? A. If that were the case, yes.

Q. When you have this condition of affairs, when that patient was waited upon by her doctor daily, and Dr. Kennedy
10 says that he was not in contact with smallpox so far as he knows, had not been near a smallpox patient for a long period of time, used his own care that he adopted, and applied the technique laid down with regard to putting on the gown, and washing, and care, there would be no more likelihood of his bringing in infection than there would be one of the attendants in the hospital around there? A. I don't think so.

Q. And if the technique was sufficient to prevent contagion being brought in there would not be contagion brought in by him would there? A. I don't get that question.

20 Q. If nobody else had entry to that room but the doctor and the attendants in the hospital, what would you say would be the balance of probability as to the infection that was brought into the room, as to whether the doctor brought it in, or someone else of the many attendants who were back and forward? A. Those are all possibilities, but not all the possibilities.

Q. Not all the possibilities? A. No.

Q. What other possibility would you suggest brought the infection into that room? A. I cannot tell you. We find smallpox arising in situations where we can find no adequate cause or
30 explanation.

Q. Has it ever been described as a disease of spontaneous origin? A. No.

Q. It is all from contact? A. Yes.

Q. And when you have, as we have here, a large number of attendants— A. Always from contact—

The Court: I cannot follow you there Mr. MacInnes. Wait a minute.

The Witness: Always from contact with a person or contaminated material.

40 Mr. MacInnes: Q. When I say contact I mean contact direct or indirect? A. Yes.

Q. I mean that. A. Yes, sir.

Mr. MacInnes: What are you looking for, your lordship?

The Court: What you have been emphasizing is what Dr. McEachern says, that there might be other—

Mr. MacInnes: I am coming to that. I did not have that in mind a moment ago.

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Q. You suggested a moment ago Doctor, there might be other means of infection being brought into this child's room. Now we have discussed the attendants and we have discussed Dr. Kennedy, and you said there might be some other things which would bring it about. What other things have you in mind? A. I don't know. Not knowing the exact bacteriological cause of this disease we are at a loss to explain why some people get infected.

Q. Now when you say that not knowing the bacteriological cause of this disease, you mean of smallpox? A. Yes.

Q. And you are saying practically the same thing that Dr. McEachern said in his examination, that the cause of smallpox and methods of transmission are not sufficiently well known to medical science to say how it is transmitted? A. Yes. 10

Q. That is putting it in other words.

The Court: What is that answer?

Mr. MacInnes: Question 55. That seems to be generally accepted. Dr. Kennedy said the same thing.

Q. Doesn't that mean this, Doctor, that there may be methods of transmission of smallpox which the technique did not provide for? A. There may be. 20

Q. Now that is another possibility; that is the technique, extensive as it is, still did not reach far enough to get at one of the causes of transmission. Now if that is true would it not have been much safer to have the smallpox patients confined by themselves to one floor? Would it not have added to the safety if that had been done? A. I don't think so. I don't think so.

Q. You still think with the thousand or hundred means of contact for which the technique in a measure provides, it is safely guarded by that technique. Is that what you mean? A. Yes, I think the segregation in an individual room is quite as efficient as it would be on a separate floor. 30

Q. Doctor, I think you told me before, and I think this must be logical, that if segregation in an individual room is desirable, it would be still safer to have segregation in another building? A. Yes.

Q. If segregation in another building would add to the safety, segregation on another floor would add to the safety, would it not? A. You are still in the same building.

Q. You mean the danger is just as great to the fourth floor as it would be to the patients on the third floor? A. Small as it is, I believe probably so. 40

Q. That would account for the infections, the cross-infections that were made on the fourth floor of this building? A. Well, all I meant to say was if you had them in a separate building there cannot be such a thing as cross-infection because there cannot be anything to cross it with.

(Witness aside).

The Court: I think I would like to ask Dr. Haywood to come back.

DR. ALFRED HAYWOOD RECALLED.

The Court: I want to ask you Doctor something about how the matter would stand assuming you came to the conclusion that this cross-infection was going to people not vaccinated—how would the matter then stand, if someone sought to be admitted to this hospital during that period with an infectious disease, and unvaccinated? A. If they refused to be vaccinated we put them
 10 in another building entirely in the main hospital. If they would be vaccinated they could still go into that building.

(Witness aside).

DR. EDMUND WYLDE, a witness called on behalf of the Defence, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GIBSON:

Q. Dr. Wylde, you are at present employed as an interne at the Vancouver General Hospital? A. Yes.

Q. And you employed in that position in January 1932?

A. Yes, sir.

20 Q. And on the 17th of January 1932 you were on duty in the Infectious Diseases Hospital? A. Yes.

Q. Then Annabelle McDaniel, on that date, came for admission as a patient and I understand that the first two pages of the ward history, Exhibit 1, are in your handwriting? A. They are, sir.

Q. That is, you wrote the facts, the statements that are there? A. I did, sir.

Q. I direct your attention to the second line on the second
 30 page.

The Court: Q. You were getting the information from whom? A. From the child, from the patient.

Mr. Gibson: Q. Was she accompanied by either of her parents? A. Not when I saw her.

Q. On the second line of the second page you have the words "Not vaccinated," with a question mark after it. You see that? A. Yes.

Q. When did you write that? A. At the same time that the history was written, sir, on the afternoon of the admittance of the patient.

40 Q. Including the question mark? A. Including the question mark.

Q. What did you mean to indicate by those words, in the medical history? Will you tell us what information you got

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from the child? A. She was not certain as to vaccination; in fact she was quite uncertain; and on her arm there was some type of scar. I was indefinite as to whether this was a vaccination mark, so I was uncertain as to whether she had been vaccinated.

Q. Now you would be on duty in that building for the rest of the month of January? A. Yes, sir.

Q. February too? A. Half of February.

Q. So you were on duty during the time that Annabelle McDaniel was in the hospital namely January 17th to February 3rd? A. Yes, sir.

Q. Would it be in the course of your duties to visit her? A. Yes. I visited her on arrival, but as she had a private physician, only when necessary. 10

Q. Do you remember whether you did visit her afterwards or not? A. Yes, I do; I cannot say the exact time.

Q. I think you are familiar with the technique? A. Yes.

Q. That is, the aseptic technique in use in the building? A. Yes.

Q. To be used by any persons entering a patient's room. Did you observe that technique? A. I did, sir. 20

Q. On all occasions? A. On all occasions, sir.

Mr. Gibson: Your witness.

CROSS-EXAMINATION BY MR. MACINNES:

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Q. It would have been a serious menace to the child if you had not? A. It would.

(Witness aside).

DR. BERNEL CLARENCE NORINE, a witness called on behalf of the Defence, being first duly sworn, testified as follows:

B. C. Norine
Direct Exam.

DIRECT EXAMINATION BY MR. GIBSON: 30

Q. Dr. Norine where do you practice, where do you reside?

A. Tenasket, Washington.

Q. Practising your profession there? A. Yes.

Q. In January or February 1932 I believe you were employed as an interne at the Vancouver General Hospital? A. Yes, sir.

Q. During the months of January and February 1932 you were on duty in the infectious diseases hospital? A. Yes, sir.

Q. Along with Dr. Wylde the previous witness? A. Yes, sir. 40

Q. And I suppose he took part of the time and you took the rest? A. Yes, sir.

Q. Do you remember the patient Annabelle McDaniel? A. No, sir.

Q. If she were a patient there it would be in the course of your duty to visit her room? A. If called, only.

Q. She being a private patient? A. Yes.

Q. Were you familiar with the technique laid down in that building for all who were engaged in any duties? A. Yes.

Q. Did you observe that technique on all occasions? A. Yes, sir.

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10 CROSS-EXAMINATION BY MR. MACINNES:

Q. The reason for it being that any failure to do so would be a danger of carrying infection to the patient? A. Repeat the question.

Q. The reason for carrying out the technique as you did would be to prevent carrying infection to the patient? A. Yes.

(Witness aside).

DR. JOHN WILLIAM McINTOSH, a witness called on behalf of the Defence, being first duly sworn testified as follows:

DIRECT EXAMINATION BY MR. REID:

20 Q. You are a duly registered medical practitioner in the Province of British Columbia? A. Yes, sir.

Q. And have been for how long? A. Twenty-three years.

Q. Where did you graduate? A. The University of Toronto.

Q. Where did you practice after that? A. In Ontario and then came out to Vancouver, British Columbia.

Q. What position do you hold at the present time? A. Medical Health Officer for the City of Vancouver.

30 Q. How long have you held the office? A. Two years and one month—two years just.

Q. You were Medical Health Officer when this McDaniel child was in the hospital? A. I was, sir.

Q. Now what do you say about the Infectious Diseases Hospital; do you make an inspection often yourself of this hospital? A. No; I go occasionally, but that is left to my assistant, Dr. Carder.

Q. But you have been there? A. Oh, yes.

40 Q. Have you had any experience of infectious diseases? A. Oh, yes, sir, in private practise and in the army. I saw two thousand, over two thousand cases of flu in the army. I took a course in Toronto in public health and attended at their hospital for infectious and contagious disease, and in practice here.

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Q. Any smallpox there at Toronto hospital? A. Yes, I had smallpox to attend to when I practised in Toronto. I also had an epidemic which I attended when Medical Health Officer in Burnaby.

Q. What do you say about the construction of this building and its use for the treatment of the disease? A. Oh, the approved system, right up-to-date.

Q. Does that apply to the technique you heard given today?
A. Yes, sir.

Q. And the hospital of course, the building, is what, do you say? A. It is an approved system and right up-to-date. 10

Q. What do you say about having smallpox patients and others in rooms on the same floor? A. All right, sir, do it again.

Q. And how about the nurses? A. The same nurses; safer if broken in and they follow the technique.

Q. Did you know about the establishment of this building for the purpose for which it is used? A. Just as an onlooker while I was in Burnaby.

Q. How has it worked during the years you have been Medical Health Officer, up to February 1932? A. Very well, sir. 20

Q. What do you say about the use of systems of this kind in various other hospitals? Give me that as fully as you can. A. I got in touch with hospitals in various parts of Canada and the United States. I have a list with me which if it is allowable I will read from, from Rhode Island—

Mr. MacInnes: I object.

The Court: They are not admissible.

The Witness: Providence, Rhode Island—

Mr. MacInnes: They are objectionable, Doctor.

The Witness: I won't read them. 30

Mr. MacInnes: I object to your telling what they are or talking about them.

The Court: You made inquiries?

Mr. Reid: He made inquiries and finds certain things in connection with the administration of hospitals. I think it is just the same as reading out of a text book.

The Court: Those are matters of fact Mr. Reid.

Mr. Reid: No, I am trying to prove the question of medical knowledge.

The Court: The doctor may give his opinion after having made his inquiries and investigations. 40

Mr. MacInnes: He cannot make any indefinite statement as to where he got the information.

The Witness: Having made all those inquiries I got substantial information.

Mr. MacInnes: I object to the doctor giving hearsay evidence.

The Court: It may be hearsay evidence in that way, but of course if he had text books or had reports here—how far would you go with regard to that.

Mr. MacInnes: I certainly go this far, that private letters—

Mr. Reid: I am not talking about private letters. His lordship has ruled upon that.

Mr. MacInnes: When I say private letters I mean letters written by individuals. We have a right to have those individuals here for cross-examination.

10 The Court: So far as it comes into the same category as text books or authorities, those books would be produced. We frequently have that.

Mr. MacInnes: The difference between a text book and a written statement handed in to the Court in this way—

The Court: Oh, yes, I think Mr. Reid will concede the difference.

The Witness: My lord, may I confine myself then to the best authority in the text books.

Mr. Reid: What text book is that you are referring to? A.
20 Preventive Medicine and Hygiene by Milton J. Rosenau, who is Professor of Preventive Medicine and Hygiene, Harvard Medical School; Professor of Epidemiology, Harvard School of Public Health.

The Court: Just sufficient to identify the book.

The Witness: And was with the United States Public Health Service in Washington for some years, in connection with contagious disease, and the date is 1928. The best up-to-date book we can get in the City Hall. I would like to quote from page 31 so you will just understand, seeing those are not allowed, how they
30 stand. I will just quote a few parts on page 31: "While the patient should be isolated—"

Mr. MacInnes: I make formal objection to it.

The Court: I had better settle that. I have had it up before. The authority is quite clear.

Mr. MacInnes: I have it here, my lord.

The Court: I refer to Phipson on Evidence, page 381, although I have some case in mind to which I might take the liberty of calling the attention of counsel if there is any disagreement as to the practice:

40 "An expert may refer to text books to refresh his memory or to correct or confirm his opinion; for example, a doctor to medical treatises. Such books are not evidence per se—"

And I have that in mind at the same time—

"Though if he described particular passages as accurately representing his views they may be read as part of his own testimony."

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Mr. Reid: That is exactly what the doctor wants to do.

The Witness: Yes, my lord. On page 31:

“While the patient should be isolated, it is not necessary to isolate the hospital by banishing it to an inconvenient or undesirable location. There is, in fact, no good reason why a smallpox hospital should not be one of the units of the general hospital for communicable diseases.”

The Court: Q. You give that as your opinion? A. My absolute opinion, just expressed in those words.

Mr. MacInnes: Q. Should not be one of the units of what? 10

“Should not be one of the units of the hospital for communicable diseases.”

On page 853:

“The air was long regarded as the vehicle and even the source of the communicable diseases. Theories, such as noxious effluvia, poisonous emanations, and infectious miasma, gave way with the advent of bacteriology.”

Page 854:

“Within recent years however we have learned that the air is not very much to be feared on account of the bacteria 20 it may carry, except under occasional circumstances.”

“There are only two diseases of man, namely smallpox and measles which may possibly be air borne in the sense that this term is generally used. Both these diseases are so readily communicable that the virus seems to be ‘volatile;’ it is assumed that the active principle is contained in the expired breath; however, there is no proof of this assumption and some evidence to the contrary. Even in these two diseases the radius of danger is much more limited than was once supposed to be the case.” 30

“The more the transmission of communicable diseases is studied, the less the air is implicated . . . Some association between soil, air and disease still persists in both medical and lay minds, but with a more precise knowledge of the causes and modes of transmission of infections, such as typhoid fever and cholera, the air becomes a negligible factor. Out of door air contains relatively few bacteria; further, the dilution is enormous. Most micro-organisms pathogenic for man soon die when dried or when exposed to sunlight.”

And also on page 855:

“The radius of danger through droplet infection is quite limited. It is difficult to conceive that infection may be car- 40

ried long distances in the air and still be dangerous. My own experience indicates that there is practically no hazard in establishing a hospital for contagious diseases upon the high-road, and even in a thickly inhabited part of the city. In fact the communicable diseases are not conveyed in the air from ward to ward or even from bed to bed in well managed hospitals. At the Kingston Avenue Hospital in Brooklyn various diseases, as smallpox, measles, scarlet fever, and diphtheria are treated in wards only a few feet apart, with no evidence of aerial transference.”

10

Mr. MacInnes: My lord, that I think is objectionable for this reason. That is not a statement of opinion, but a submission of fact, the evidence of what took place say in Kingston or any other place. It is not an opinion at all.

The Court: Just confine yourself to your opinion, Doctor.

Mr. Reid: I submit that statements in a book such as this—

The Court: We may have to thrash it out a little further, because two pages on for example, he gives it quite clearly again. There was a case of *Collier vs. Simpson* referred to, which is at 5
20 C. & P., page 460. I have had the matter before me in other cases, if I may be permitted to say so, and it would seem to be along the lines of what I have said, that the books are not evidence per se. And in the case referred to it was held they could not be put in evidence to show what treatment would be proper, though the witness may refer to such works to refresh his memory, and then as I read before at page 381, if the particular passages are described by the witness as accurately representing his views, they may be read as part of his own testimony. But that would not be with regard to statements of facts in the books.

30 Mr. MacInnes: Illustrations and so forth.

The Court: The writer may refer to certain particular cases where he had such and such an experience as a matter of fact. That would not be—

Mr. Reid: Would it not be this, my lord: the witness says for instance that nurses—

The Court: You may ask the Doctor what his opinion is about certain particular matters. If he wishes to refresh his memory as to the matter, and then by reference to the books, he may do so, or give us the name of the author of the book. And
40 then if he says that the opinion so expressed there is his opinion that would be evidence.

Mr. MacInnes: The value of the testimony is the witness' though—

The Court: He is pledging his oath.

Mr. MacInnes: But that is a proper opinion as an expert.

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Mr. Reid: I have not had yet an opportunity of putting to your lordship my view of the matter. I submit that under the authorities, if the witness says it is all right for the patients to be treated in the rooms on the same floor, to back up that opinion he can produce medical text books to show that it has been done.

The Court: It has been done as a matter of fact, but that is not sworn testimony before me. That would not be sworn testimony before me.

Mr. Reid: If nurses in a number of hospitals go from case to case, surely a reference to that in a volume would back up the 10 Doctor's opinion that is a proper practice.

Mr. MacInnes: It would if proved by proper testimony, but not being proved by proper testimony is unacceptable.

Mr. Reid: I submit that is within the rule. It is to show what the practice is and it is the fact which shows what the practice is, just as we can use the tide table to show the way the tide rises and falls.

The Court: I disallow the question in that form.

Mr. Reid: Q. I will put it this way, then, Doctor: I do not know whether I asked this question. What do you say about 20 the treatment of patients with various diseases, in rooms on the same ward, separate rooms on the same ward, such as we have in the hospital here? A. Proper technique, quite the right thing to do, sir.

Q. Do not answer this question until I put it and get his lordship's ruling. Is that practice approved in the medical text books? A. Yes, sir.

Mr. MacInnes: I object to that. That is a matter— No, my lord, I am wrong.

Mr. Reid: Q. Is that practice approved by medical text 30 books of authority? A. Yes, sir, the best ones. There is an opinion expressed here—

Q. Before you put it let me see it. Yes, this is on page 855. Do you agree with what he says there?

The Court: Page what?

Mr. Reid: 855. And the first line of 856.

Q. You agree with that? Is that your opinion? A. Yes.

Q. Now read it. A. "He also insists that measles is probably not an air borne disease and that adjacent patients do not necessarily infect one another." 40

Q. From the standpoint of infection, which is the most infectious of the two diseases, measles or smallpox? A. About the same, save and except for this hemorrhagic form.

Q. That would be an effect, not a question of infection, would it not? A. That is speaking of one type of smallpox.

Q. But I am talking not about the effects of smallpox, but

the ease with which persons get infected with the disease. A. Yes.

Q. You say that smallpox and measles are about the same?

A. About the same, yes.

Q. Have you anything in Rosenau there about the risk or otherwise of nurses going from different cases without mentioning any particular facts? A. Nurses go from case to case.

Q. The page, Doctor? A. Page 855.

Q. Is that your opinion? A. My opinion. It is three-quarters of the way down; that is it appears on that page three-quarters of the way down. It is my opinion all the way around.

Mr. MacInnes: Q. That is a statement of fact, is it not?

The Court: Q. What you mean is that in your opinion they can go from case to case safely? A. Yes, sir.

Mr. Reid: Q. If they carry out the technique? A. Yes, sir.

Q. Dr. Kennedy said that— Oh, yes— If we have eighteen or twenty attendants waiting on smallpox patients and other patients, could they do this without danger of infection. And he said “It is unlikely.” What is your experience? A. They can do it, sir, and they have done it, and experience shows it elsewhere.

Q. Would it reduce the risk if the smallpox patients were confined to separate floors? A. No, sir.

Q. As a matter of fact I believe here that the smallpox patients were put on one separate floor and yet there was infection found on other floors? A. Yes, sir.

Q. You have heard Dr. Carder give evidence as to the possibilities of vaccination of this child so as to prevent her catching the smallpox. You heard what he said? A. Yes.

Q. What do you say about that? A. That child need not have smallpox and been a patient if it had been vaccinated.

Q. If it had been vaccinated by the 30th? A. It could have been vaccinated up to the 2nd of February and been safe. That was proved by the family itself. The child took ill on the Monday, and they were not vaccinated until Thursday—

The Court: Just a moment. The Doctor is being asked as to vaccination.

Mr. MacInnes: Now he is going along with a whole matter of fact; that is not a matter of opinion.

Mr. Reid: He is basing his opinion on the statement of your witness.

The Court: He should make it clear on what basis he is giving this opinion.

The Witness: I make it clear on my own experience in treating and vaccinating patients, contacts in a home, where one case gets smallpox, and if I can get them vaccinated within four days

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after they have been infected they will not get smallpox. And this case is an instance where the family themselves in the home were exposed for three or four days, then were vaccinated and did not get it, just as she would have been safe if she had been vaccinated up until the 2nd of February.

The Court: It might be suggested Doctor that the other members of the McDaniel family had not been exposed to the infection in the same manner as the little girl was, if she was? A. There is no proof that the girl was, but there is proof that the family was, because the girl went home with it. She was ill and they were with her for three or four days before they knew it was smallpox and before they were vaccinated. So it is absolute proof—it is an assumption with the child but proof with the family. 10

Q. There was contact in the home but the other members of the family were not exposed to contact if there was such in the hospital. Would that not be a fact that you would have to take into consideration? A. Might I just say what went through my mind when listening the other day, that this woman went along the whole—

Mr. MacInnes: Q. Are these inferences you have drawn from the evidence? 20

The Court: Just a minute, Mr. MacInnes. If the witness says that the assumptions he is making—or that the Court knows that the assumptions he is making, be true, then he is at liberty to give his opinion although the Court may come to the conclusion that the assumptions and the facts are not correct.

Mr. MacInnes: Oh, I quite agree with that. But he is drawing inference.

The Court: But if the Court knows—

Mr. MacInnes: I refuse to be judged by Dr. McIntosh. 30

The Court: Q. You must make it clear to me what you are assuming to be a fact when giving your opinion, as I may come to the conclusion that the facts are otherwise. A. Well, stop me if I get wrong on this. I assume that when that mother went in that hospital and saw what she conceived to be smallpox through a window and acknowledged she opened the door of her own child, I don't know, and I don't know that anybody in there knows, she may have exposed herself to smallpox while in there.

Mr. Reid: Q. I want to clear this up just a little. The child— Let me see if I have the dates right— It was the 3rd she went home, the 3rd of February? A. Yes. 40

Q. And the first signs of it were on the 7th of February? A. Said to be the 8th. I understand it was the Monday.

Q. The 7th? A. Might I ask, my lord, if that is correct according to the evidence, the 7th? Because I heard the 8th mentioned.

Q. We will take the 7th or 8th, we won't bother about that. But it was on the 28th of January when Dr. Kennedy knew there was smallpox in the vicinity, and the 29th she was moved to another room. I don't know whether that is the 28th or 29th? A. The 29th.

Q. Now considering the time when she broke out, could that child have been safely vaccinated on the 29th of January? A. Yes, sir.

10 Q. Or the 30th of January? A. Yes.

Q. Or the 31st of January? A. Yes, sir.

Q. Or the 1st of February? A. Yes, sir.

Q. Or the 2nd of February? A. Yes, sir.

Q. Or the 3rd of February? A. I would not say.

Q. But anyway before the 3rd of February it was perfectly safe to vaccinate that child? A. Yes, sir, and keep it safe.

Mr. MacInnes: Might we have that book? A. Yes. It belongs to the City. Will you return it?

Mr. Reid: Are you going to cross-examine?

Mr. MacInnes: Yes, tomorrow morning.

20 Mr. Reid: That will do, Doctor. There is one matter I want to talk to the Court about. I have had here in the last few days practically all the attendants on the ward, not the orderlies, but sweepers, nurses and maids. The claim as made by the Court—

The Court: By the Court?

Mr. Reid: No, made in the statement of claim to the Court—does not allege negligence on the part of the employees. It sets out the three things on which Plaintiff claims damages. That was brought out on the first day and no steps have been taken. I am taking it for granted it is not the intention of the Plaintiff to ask 30 for any amendment, and I do not propose to bring those witnesses back.

The Court: Your allegations of negligence are set out on page 8.

Mr. MacInnes: Page 8, my lord.

The Court: And you are not asking any amendment?

Mr. MacInnes: No, my lord.

(PROCEEDINGS ADJOURNED AT 4.45 P.M. UNTIL 11 A.M., JANUARY 13th).

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40 (PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT).

Mr. Reid: I want to ask Dr. McIntosh one or two further questions.

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JOHN W. MCINTOSH, resumed the stand.

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DIRECT EXAMINATION BY MR. REID CONTINUED:

Q. You are sworn, Dr. McIntosh. About what time did the smallpox outbreak start in the latter part of 1931 or the beginning of 1932? A. The first case came from Washington, in the United States, on Christmas Day, 1931. That was not discovered for two or three months afterwards. We worked back and got the early cases. The first case discovered was January 8th, 1932. Those were all milder cases.

Mr. MacInnes: Q. That means the fact that it came from 10
Washington was not discovered? A. No, that case itself was not
discovered and run to the ground until two or three months after-
wards.

Q. You found that that was the fact? A. Oh, yes, that was
proved. It was mistaken for flu.

The Court: Q. I was taking it from Dr. Haywood's exam-
ination that the first case admitted to the hospital was the 18th
January? A. That is right, my lord. The first case we got was
a very mild case and we afterwards traced it back to Christmas,
to the first case—

Q. But you did not know? A. No, not for two or three 20
months afterwards. I wanted to direct the attention there that
that was a very mild float that we had had every year until very
late, when they became virulent.

The Court: Q. But it was not found to be smallpox? A.
The case was found, reported as smallpox. That was January
8th.

Mr. MacInnes: My lord, Dr. McIntosh is the City Health
Officer and has nothing to do with the hospital direct.

The Court: Q. It did not go to the hospital, that case? A. 30
No. The first case to go to the hospital was the 18th. They did
not go to the hospital because they were mild at first, and they did
not go to the hospital until we got the virulent kind developing.

Mr. Reid: Q. How many cases were there altogether? A.
In the outbreak there were 56. That is 48 in the city and the others
were Langley, two, Burnaby, four, two in Britannia Mines. In
the Britannia Mines, they came from Vancouver. The man was
down here, was exposed, got it, went home and he exposed his wife.

The Court: Q. And of that 48, 40 were in the hospital? A.
Well, no, there were not as many as that.

Q. About 40? A. No, there were not that many. 40

Mr. MacInnes: Q. Dr. Haywood in his discovery said that
approximately 40 cases went into the hospital. A. There were
not that many. I have not absolutely the number that were there,
my lord.

Mr. Reid: Q. From what parts of the city? A. These cases came from all over. We got one case down on the C.P.R. Dock; we got another case in a bank, west, we got others up near Central Park, and we got them from Grandview; from various parts of the city, so that the whole city was exposed to this whole epidemic.

Q. What checked the epidemic? A. The epidemic was checked by vaccination and nothing else, and of course searching out the cases, and quarantine. And then as far as the hospital
10 was concerned, in the hospital we took four steps. One was, of course, to give orders—that was the 7th February—that all technique be tightened up and watched, that all visitors should be prohibited from coming into the hospital.

Q. That is including the doctors? A. Visiting doctors were no longer to follow in on their cases. That was later. And that we would have as far as possible universal vaccination; we went so far as to refuse any patient coming into the hospital, unless they were very serious cases, and then they had to sign a waiver taking all responsibility. In fact, one of those cases that
20 did sign it took the disease and died. But in the general ward—I think I ought to let you know that there were four cases developed in the general ward, and they could not be traced in any other possible way than visitors or doctors coming in from outside. There was another feature of great importance and interest, and that was the difficulty of diagnosis. Doctors made mistakes in diagnosing these cases. Some cases were diagnosed as chickenpox, and as a matter of fact one doctor who diagnosed his case as chicken pox discovered it was not, because he got the smallpox himself and had quite an attack.

Q. To what extent was vaccination in the city? A. In the
30 city and around we estimated about 90,000 vaccine points were used. 90,000 people were vaccinated and everybody around the hospital of those taking charge were fully 100 exposing themselves. Of those cases not one case got it, and we have not an instance of anybody who got smallpox who had been vaccinated within 15 years, and nobody got smallpox who was vaccinated up to within or four days after they had been exposed; and in cases where they had not been vaccinated within 15 years, 100 per cent got it, and 100 per cent the other way.

The Court: Q. Would you take the same position that Dr. Hayward takes, that after investigating the matter he would not have admitted a person unvaccinated? A. We took that step. We would not allow them in unless they signed, if it was serious, signed a release in case they got smallpox that they alone would be responsible, and one woman who signed it, she got the disease and died. She was in the hospital and must have been exposed to visitors or doctors coming inside. In what we call cross-infection

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cases—it could not possibly have been in there—there were four of those.

Q. Then could one say that you would agree if you had been in charge of Vancouver General Hospital and of the contagious infectious diseases part of the hospital, and having in mind all that you have now you would not have admitted to that hospital a person not vaccinated and have exposed him to the conditions then existing in the hospital? A. Yes, my lord, up to that time we would have taken chances in that way, because it was a mild variety and it worked with us for years and it worked elsewhere. So that it was when we got these serious cases that we saw it was absolutely essential. 10

Q. But you would not do it now? A. No. I got power from Victoria—I wrote the Health Officer there and got power to absolutely put any doctor from the city who followed in there in spite of what we said and in spite of public opinion, that we could quarantine him in there and not let him out.

Q. With regard to admitting in a patient unvaccinated? A. When the cases of smallpox came in, we would then insist on all patients being vaccinated, and if the doctors refused, well, “Please take them out.” 20

The Court: If it is common ground between counsel, I think it might be essential to have it in evidence, if it is a fact and if counsel agree, that there was no case of cross-infection arising in the hospital of any patient who had been vaccinated.

Mr. Reid: That is our contention, my lord.

Mr. MacInnes: I do not admit that, my lord.

The Court: I am not sure that there is evidence before me to that effect. There is no evidence yet before me, Mr. Reid.— 30

Mr. Reid: Isn't there?

The Court: Dr. Haywood, if I recall correctly, and if not counsel may correct me, said that he came to that conclusion from some report received from, or the result of a meeting at which he was not present.

Mr. Reid: Well, I thought Dr. McIntosh has stated in his evidence that there was no instance in the I. D. H. of any person getting smallpox who was vaccinated.

The Witness: My lord, if I may suggest—I understood Dr. Carder is coming again. Dr. Carder saw all these cases, and if he is coming in the box again you can ask him and he would absolutely know from observation. But my reports are all that way, that we had not any. 40

CROSS EXAMINATION BY MR. MACINNES:

Q. Will you let me have Mrs. Payne's medical history? This is the ward history, Dr. McIntosh, of the second patient

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admitted on the 21st January to the I. D. H. suffering from smallpox? A. Yes.

Q. You are familiar with these documents, are you not? They are not strangers to you? A. Oh, no.

Q. Will you kindly look through that medical history taken from the records of the hospital with regard to Mrs. Payne, and tell me whether she was vaccinated or not as far as the records show? A. Vaccinated in infancy and again at eight years old. What is the age?

10 Mr. Reid: Q. Age 49 or 44. A. My statement, my lord, was that anybody who had been vaccinated within 15 years.

Mr. MacInnes: Q. Doctor, your opinions are not in question. I am asking you a simple question of fact, that that shows.

The Court: Q. Well, I will ask the doctor— A. Of all the cases of smallpox that developed here, my lord, not one case had been vaccinated within 15 years.

Q. But I understood you to say you did not feel that you could give that evidence; that Dr. Carder might give that evidence? A. Well—

20 Q. You meant to qualify your statement to that extent? A. Yes, Dr. Carder can do that, but of course all the records of the cases came to our department. We had office records of all contagious diseases come to us. They came first from the doctor who examined them.

Mr. MacInnes: Q. Reported to you? A. Yes.

Q. You did not make the examinations yourself? A. No; Dr. Carder—I am referring to Dr. Carder.

30 Q. And this matter that you have been giving us all the way through about vaccination, or lack of vaccination, is a matter that is not in your own knowledge, but simply reports coming to you from other people? A. It is absolute facts recorded in writing in the department.

Q. Doctor, you are now giving testimony about written documents, aren't you, and your testimony is based on written documents in your hands? A. Sometimes I would see these patients.

Q. Would you answer my question? A. Yes.

40 Q. The testimony that you have been giving us, the statements that you have been making this morning, are based on written records down in your office and are not gained by your own personal investigation and observations? A. Not all, some of them.

Mr. MacInnes: Then I object, my lord.

The Court: Well, I have the evidence to this extent, that there are documents which have been called the medical history of each patient made up at the time when the patient is admitted.

Mr. MacInnes: Yes.

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The Court: And the doctor is speaking from those.

Mr. MacInnes: No, my lord. With deference, my lord, I think your lordship is confusing Dr. McIntosh's position. Dr. McIntosh has no office in the hospital building.

Q. That is right, isn't it, doctor? A. No.

Q. Your connection with the hospital and your interest in the hospital arises by reason of the fact that you are medical health officer for the city? A. Yes.

Q. And in the course of your duties as medical health officer for the city, you come in contact with the hospital? 10

The Court: Q. And with the report, the medical history report? A. Not only that—

Q. Such as this one. You come in touch with that evidence. You see them within the scope of your duties? A. Yes.

Q. And you see these medical history reports? A. No, my lord. I am not in charge of the I. D. H.

Q. Well then, what are you basing your statements on? A. The reports that are handed in to my office of all these—

Mr. MacInnes: Q. By whom? Who gets these reports and hands them in? A. Reports of these cases? 20

Q. Yes. A. Our department of contagious diseases under Dr. Carder, the epidemiologist, my assistant, and all these reports, of course, come in to the Health Officer.

The Court: Q. You would not call that a medical history report A. A medical history report sets up these same—

Mr. MacInnes: Q. That is purely a hospital matter? A. Yes, but the contagious disease part of it is absolutely ours.

Q. When a patient is admitted to the I. D. H. suffering from a contagious disease, it is the duty of the hospital authority to notify the health authorities of the city? A. Absolutely. 30

Q. And then that case comes under the scope of your duties as medical health officer? A. Yes.

Q. Now then, the reports that you have been speaking of on which you have based your theory are reports received from your assistants who are dealing with the public health in the city, are they not? A. Naturally, yes.

Q. Dr. Carder and others? A. Yes.

Q. Now it is incumbent upon every medical man, and in fact, I think, on every citizen to report promptly to the health authorities the presence of contagious disease? Is that right? A. That is right, sir. 40

Q. And then when that report is made, the medical health department or officers take such steps as they in their wisdom deem necessary? A. Right.

Q. Now it is on reports such as these made from various sources and gathered into your office that you make the statement about the vaccinated and unvaccinated? A. My lord, my

assistant, he sees all these cases. Dr. Carder, I say if you ask Dr. Carder—

Q. So that your testimony in regard to that then is, either verbally from Dr. Carder or somebody else, or a matter of your record? A. Written records and verbal.

Mr. MacInnes: Then I object to the testimony, my lord. It is not admissible. I ask that that be stricken from the record.

The Court: I refuse to strike it out. For example, you might address your objection in this way. If I were trying to find out, and considered it relevant to find out how many of those patients were vaccinated or not, the only evidence then that would be available, even so far as you say it is evidence, would be these medical history reports?

Mr. MacInnes: Identically.

The Court: Yes, and to absolutely prove that a child or patient was not vaccinated, it might be necessary to call the parent or some other party like that. I would not go that far. I would think that the medical history report should be accepted directly as a public document. Otherwise, for example, it would be necessary to call the parent or the people who had been associated with these different people, or to call—Just for example as to this woman Mrs. Payne, how would I establish that she was or was not vaccinated except from the medical history report?

Mr. MacInnes: It is established, my lord, by evidence on discovery.

The Court: Yes, but just a minute now. How is that done except that that party being examined is relying upon the medical history report. That is, you are not insisting upon the person that knows being called.

Mr. MacInnes: No, my lord, but what I do object to—

The Court: And Mrs. Payne was asked whether or not she had been vaccinated, and it is put on the report. Do you object to the admissibility of the report?

Mr. MacInnes: All I say is this in regard to that. If I get the medical history on production from my friend as a document and record kept by them in their operation of the hospital, that then comes into my hands as counsel for the Plaintiff by way of admission, and they are evidence against them. My friend could not put those medical sheets in as evidence on their behalf.

The Court: If the court wishes to ascertain how many of the 40 cases were cases of patients who had been vaccinated or not within 15 years, would you submit that I should insist upon the people being called themselves, or the people that were associated with them, to prove that? Could I not say that the medical history report should be sufficient? Some of these people are dead—for example, the little Jap child. If you wanted to ascertain whether that child had been vaccinated, would you submit I could not rely on the medical report?

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Mr. MacInnes: I say this, that your lordship cannot rely on anything which is not proper evidence admissible in the due course of trial.

The Court: And the rule is the best evidence, and that might be the best evidence in the case of death of the Jap child, or the parent.

Mr. MacInnes: That will have to depend on who tenders it and the circumstances surrounding it. But what I say is this. Where Dr. McIntosh is carrying on his work as Medical Health Officer for the city of Vancouver, Medical Health Officer for a district under the Public Health Act, and he gets from all sources information which he tabulates, or the officers in his office tabulates, on this question of vaccination or lack of vaccination how could I test the accuracy of Dr. McIntosh's statement that 100 per cent of the deaths were unvaccinated; and 100 per cent of the exposures are freshly—

The Witness: My lord, may I interfere? I did not say that 100 per cent. of the patients died who had not been vaccinated for 15 years.

Mr. MacInnes: Q. Now, doctor, you say that on the 7th February, or the 8th February, there was a change made by reason of the virulence of the epidemic, and new steps were taken to cope with the situation as it developed? A. Yes, sir.

Q. And I suppose it was as a result of this activity that the meeting of the hospital authorities was held on the 7th or 8th February to check up on their conduct of this work? A. Yes, sir.

Q. And as a result of that you say that the technique was tightened up? A. I did not say it was tightened up. Orders were given to tighten up the technique to the limit. The way you put it, it left an inference that—

Q. All visiting being stopped? A. Yes.

Q. And you ultimately declined to receive in the hospital anybody who had not been vaccinated? A. Unless they signed a waiver.

Q. The reason for that being that a person unvaccinated is much more amenable to the disease than a person who is vaccinated? A. Yes, sir.

Q. And that has been known to medical science for quite a considerable length of time? A. Yes.

Q. Now, doctor, have you since last night had any occasion to change your opinion about the value of Mr. Rosenau as an authority in hospital matters? A. In public health matters.

Q. Well, that includes hospital too, doesn't it, and in particular hospital work in regard to contagious diseases? A. Yes, sir.

Q. This book deals with the matter of public health? A. And epidemiology.

Q. You read some portions of this as authority which you said was proper for the court to accept as being the last word on this subject?

The Court: I would hardly put it that way, proper for the court to accept.

Mr. MacInnes: Q. Proper for you to tender to the court for its consideration. I think that is putting it accurately.

10 Mr. Reid: I do not think that was the ruling of the court at all.

Mr. MacInnes: No, I do not say that is the ruling of the court at all. His lordship is quite right.

Mr. Reid: If he found anything in that that backed up his own opinion he can suggest that he agreed with it.

The Witness: Yes, that was all.

Mr. MacInnes: Q. I do not know whether you read all of this, but you read part of it. A. My lord, I was not given an opportunity to read it all. I was cut off.

20 Q. Page 855, at the top of the page:

“In a crowded and stuffy street car, in a poorly ventilated office, or in a closed, close sick room it would be very easy for the micro-organisms of diphtheria, scarlet fever, whooping cough, measles, pneumonia, influenza, common colds, tuberculosis, pneumonia form of plague, and other infections contained in the secretions from the nose and mouth to be carried in droplets so that exposed persons may contract the disease.”

Now it says:—

30 “This probably occurs more frequently than we are at present inclined to admit.”

That is true, isn't it? A. Yes.

Q. And you believe that? A. Yes, sir.

Q. So that this work, which is the latest that you can get your hands on— A. One of the latest.

Q. I think you said the very latest that you could get your hands on. A. Yes.

Q. Says that the danger from the droplets and this direct contact with contagious diseases is more occurrent than we are
40 inclined to believe up to the present time? A. Such as an epidemic.

Q. Now then, it goes on: —

“The radius of danger through droplet infection is quite limited. It is difficult to conceive that infection may be carried long distances in the air and still be dangerous. My own

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experience indicates that there is practically no hazard in establishing a hospital for contagious diseases upon the high road or even in a thickly inhabited part of the city. In fact, the communicable diseases are not conveyed in the air from ward to ward or even from bed to bed in well-managed hospitals."

Now I take it, doctor that what that means there is that if you have a reasonable amount of separation or segregation, then the gathering of contagion in a single space can be done with comparative safety. It will not scatter from the building. That is what it says there, isn't it? A. Yes. 10

Q. Now then, at page 31, I think it was you read— A. Yes, sir.

Q. One of the items you read. Now I have here on this page, towards the bottom, in black type, the title, the subject matter of the paragraph is, "Isolation and Smallpox Hospitals?" A. Yes, sir.

Q. So this is dealing particularly with isolation of smallpox hospitals? A. Yes.

Q. And generally with the isolation of smallpox cases? A. 20 Right.

Q. "Isolation and disinfection are only secondary measures in preventing smallpox. Isolation should be carried out with strictness, for the reason that smallpox is one of the most contagious of the communicable infections. While the patient should be isolated, it is not necessary to isolate the hospital by banishing it to an inconvenient or undesirable location."

Now that fits in with all of that at page 855? A. Yes, I read that.

Q. "There is, in fact, no good reason why a smallpox hospital should not be one of the units of the general hospital for communicable diseases." 30

A. Yes, sir.

Q. That is clearly stated there? A. Yes.

Q. You agree with all that? A. Yes.

Q. "In any event, there need be no danger from a smallpox hospital situated upon a high road or near other habitations. wherever the hospital is situated, proper precautions must be taken to prevent the spread of the disease."

Now that I think you read? A. That goes without saying. I 40 did not read that part of it. I read the part that was marked down there.

Q. Now we turn over to page 32, which is a continuation of that same paragraph of the same treatise, all dealing with smallpox? A. Yes.

Q. The last paragraph in that section reads thus:—

“The nurse attending a case of smallpox should also be segregated, and all visiting should be strictly interdicted. A separate kitchen should be provided and care taken that the dishes be scalded and remnants of food burned.”

10 Doctor, did you know that was there when you were reading the former part yesterday? A. I presume I have read that some time, but I did not read that.

Q. You did not read it anyway? A. No, and I did not check it over.

Q. Now at page 528 of the same authority. This is dealing with subsequent isolation, quarantine:—

20 “The degree of isolation varies markedly with the different infections. A case of yellow fever may be isolated under a mosquito screen, and a case of diphtheria or scarlet fever may be effectively isolated in a bed in a general ward, provided intelligent and painstaking care is exercised to destroy the infection as it leaves the body.”

Now that is provided for in the hospital, the washing and the kind of dishes for provisions that are spoken of there. Now it goes on to say:—

“Isolation of the more readily communicable diseases as smallpox and measles, call for special measures.”

That is true, isn't it? A. Yes, sir.

Q. And that is the same high authority that you read yesterday? A. Yes. That is what we do.

30 Q. But you did not read those, did you? A. No, I was not allowed to read all that I wished to read, if you had let me go further. I quite agree with that, and we have it there.

Mr. MacInnes: Thank you.

RE-DIRECT EXAMINATION BY MR. REID:

Q. I want to broaden out a little that you last said. Does the hospital provide for that very thing? A. Oh, yes. We take special—evidence has been shown right along we take special care.

40 Q. Special care for these special— A. Four diseases, chickenpox, measles, influenza and smallpox. The ones that are so readily spread.

Q. Now the case of yellow fever:—

“A case of yellow fever may be isolated under a mosquito screen, and a case of diphtheria or scarlet may be effectively

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isolated in a bed in a general ward, provided intelligent and painstaking care is exercised to destroy the infection as it leaves the body. Isolation is the more readily communicable diseases, as smallpox and measles, call for special measures."

Now what do you say about that? Our infectious diseases hospitals carry out that very principle? A. That is it exactly, sir.

Q. To the fullest extent? A. Yes, sir.

(Witness aside.)

EDWIN D. CARDER, a witness called on behalf of the Defendant, recalled, testified further as follows: 10

E. D. Carder
Recalled
Direct Exam.

DIRECT EXAMINATION BY MR. GIBSON:

Q. You have already been sworn. You have had an opportunity of examining the Plaintiff Annabelle McDaniel, have you not? A. Yes.

Q. When and where? A. I examined her this morning at her home.

Q. Now it is alleged in the particulars of the Plaintiff's statement of claim that the hands, arms, neck and face of the infant Plaintiff were, during the course of the said attack of smallpox, heavily and severely pitted, scarred and marked, and that such pitted, scars and marks are and will remain permanently, thereby disfiguring the infant Plaintiff, impairing her appearance and interfering with her opportunities for advancement and betterment in the future. Now will you please describe the appearance of the Plaintiff, or the effect of the disease upon the Plaintiff, as you found it on your examination? You had better perhaps take these four areas separately, hands, arms, neck and face. A. The marks are still evident on the hands and arms; they have, I would say, improved very, very much since her illness. I think that in time they will disappear practically entirely 20 from the arms and the hands. The neck—

The Court: Q. In time? Could you approximate that? A. Based on those that I have seen before, I would think a matter of three or four years. On the arms no doubt much sooner, because they seem to be more superficial. On the neck they were not very noticeable at all. I would say that they would quickly disappear. The marks on the face are quite noticeable as yet, and I think some of them will be permanent.

Mr. Gibson: Q. You might just say on what parts of the face. A. Perhaps three or four about the nose and a similar 40 number on the forehead. I think those will be permanent. The rest of the face, I cannot be sure, but after attending on smallpox cases here for 20 years, and based on my experience and seeing these patients, meeting them on the street later on, having them

recognize me, but possibly my not recognizing them, I am surprised at the extent to which the evidences of smallpox have disappeared from those patients, and I think the same would probably be her experience; that in a matter of perhaps seven or eight years I think there will be very little to be noticed on this child's face.

Q. Well, his lordship has seen this infant Plaintiff. It would perhaps be well if you would say what you mean when you refer to marks, what sort of marks? A. Well, these were scars due to the ulceration that has penetrated through the superficial skin and involved the true skin underneath in the course of the disease.

Q. But I mean the appearance of it, as to colour, for instance. A. Well, there is no discolouration. I mean there will be no discolouration except the contrast that may show between the normal skin and these pits during emotional displays, blushing or flushing with the wind, or something of that sort; that is, I think the contrast would be noticeable temporarily.

Q. Now as regards the size or area of these marks—I mean to say, a person who is not familiar with smallpox does not really know perhaps what you are intending to convey in that respect. A. Well, these marks are about, possibly one-eighth of an inch in diameter. That would be the approximate size, I take it, of those that are to remain perhaps permanently.

Q. Now when Dr. McIntosh was in the box a question arose as to whether or not persons who had been vaccinated, took smallpox, were infected with smallpox in the hospital—or put it the other way: Whether the persons who did take smallpox in the hospital had or had not been vaccinated, and he referred to you. Can you help us on that point? A. Yes. There was nobody, no patient in the hospital with smallpox who had been previously successfully vaccinated within 15 years. I saw them all. I made a point of asking that question. I made a point of asking that question of every smallpox patient everywhere, in the hospital or outside. The inspectors who removed these patients or who give the certificates are instructed to ask if they were ever successfully vaccinated, and if so, when.

Q. In the administration of the infectious diseases hospital, is there a record kept in the hospital in that point, as to the vaccination of patients, whether they have been vaccinated or not? A. Not necessarily, except during the smallpox epidemic, or when it is evidence in the case of a patient that has smallpox.

Q. Well, in respect to the smallpox patient, that is made part of the record? A. Quite so.

Q. And is there any system of reporting or transmitting those records to the Medical Health Office? A. I think that notation is made on each inspector's report. Every smallpox case

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is either taken to the hospital by the city ambulance or else they are quarantined at home by an inspector, and in both of those cases the inspector makes a report, on which is noted the circumstances regarding vaccination.

Q. Did any of the nurses employed in the infectious diseases hospital contract smallpox? A. No, sir.

CROSS EXAMINATION BY MR. MACINNES:

Q. You said, doctor, that cases of smallpox coming under observation of the department—of course you are developing information as much as you can get, or as accurate as you can get, with regard to the effect of vaccination? A. Yes, sir. 10

Q. And this, however, did not apply to the I. D. H. except in cases of smallpox coming in? A. You mean the question asked whether they had been vaccinated or not?

Q. Yes? A. No.

Q. So that patients coming in the I. D. H. prior to the 7th February, 1932, it was not a point with them whether they were vaccinated or not? A. Oh, yes; oh, yes.

Q. I mean, it was not a point of inquiry on the part of the staff? A. Oh, yes. I gave instructions as early as the 1st February to the internes. 20

Q. And that was the earliest instruction given, on the 1st February? A. Yes, I think it was the 1st or 2nd February.

Q. The reason I said the 7th, Dr. McIntosh mentioned that date. A. I had already done that personally a few days before.

Q. It was not a matter of concern or a matter of interest to the hospital authorities, the vaccination with regard to a diphtheria patient coming on on the 18th January? A. No.

Q. Now this knowledge and the information as to the value of vaccination as a preventative of smallpox is not a matter of recent years. It has been known for quite a long time? A. Yes. 30

Q. And you knew practically, at least the medical profession knew as much about it on the 1st January, 1932, practically as they did on the 1st February? A. Yes, quite so.

Q. There was nothing new learned in that period. Now with regard to these marks on the child's face, doctor. You saw her, I believe, when she was afflicted with the disease, did you not? A. I remember stepping over one evening.

Q. Do you remember about what time that was—at least, what stage of the disease? A. Oh, it was at its height. 40

Q. What was the appearance of the patient then? What would you judge as to the severity of her attack from what you saw? A. I thought she had a very severe attack.

Q. A very severe attack? A. Yes.

Q. There are different types or classifications of smallpox? A. Yes.

Q. According to virulence? A. Yes.

Q. The milder type, I think, is called varioloid? A. That is the type that is modified by previous vaccination usually . . . That is the mildest form.

Q. The next more severe form is what? A. Variola, which is smallpox proper.

Q. Not modified by previous vaccination? A. No.

Q. And then the next stage of virulence? A. We have the confluent form, in which the lesions run together in a great many
10 areas.

Q. Now was this a case of confluent smallpox? A. Well, I didn't examine her closely enough. I was not a pleasing personage in the household. The father was very hostile, and as a matter of fact I made my stay as short as possible. I could not say whether that was confluent or not, but they were certainly very numerous, and I would say a fairly severe attack.

Q. Now the confluence of the pustules arises when they are thick and close together and the suppuration extends from one pustule to another? A. Yes.

20 Q. And the effect of confluence is to spread, a big area rather than a pitted, isn't it? A. Yes.

Q. And it is quite apparent, is it not, with the marks on the side of the cheeks or side of the face of the patient here? A. No, I did not think that. I thought they were quite numerous but distinct and separate. I did not notice any large areas.

Q. Were there not several large pitted on the side of the face, did you notice? A. No, I did not.

Q. You did not? A. No.

30 Q. Of course, a scar, or the injury, rather, that affects the outer skin—that is the epidermis, isn't it? A. Yes.

Q. Will disappear in the course of time? A. Yes.

Q. A scar that reaches the inner skin, the true dermis—at least, an injury that reaches the true skin will leave a scar? A. Yes.

Q. Depending upon the violence of the injuries as to the extent and the life of the scar? A. Yes.

Q. And the scar attachment is always tied with it? A. Yes.

40 Q. These pitted or lesions as you call them, when they go into the inner skin, they go in in rather a cone-shape, down to a point at their deepest? A. Yes.

Q. And spread to the widest area at the outer skin? A. Yes.

Q. And when these lesions take place in the inner skin, the whole content of that cone that is affected, suppurates and sloughs off, doesn't it? A. Yes.

Q. The result of that is that there is a fresh growth of new tissue or new flesh, or whatever it is, takes the place of the suppurated and sloughed off matter? A. Yes.

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Q. And that becomes permanent and remains with the subject for ever in that way? A. But the epidermis grows in.

Q. But the epidermis is a matter of trifling— A. Yes, that grows in from the circumference. But the size of the scar cannot always be predicted because it depends on the depth, and the resulting permanent scar may be a very minute one. It will be a scar. I mean to say, the epidermis can never fully restore what has been destroyed, but the scar remaining may be very minute or it may be very large.

Q. Now there are scars on this child's face that you admit 10 certainly will be permanent? A. I think so.

Q. Some of them you think may disappear? A. Yes.

Q. And that is as far as you will go? A. Yes.

Q. Whether they will or whether they will not, you are not prepared to predicate? A. No. I would think from experience that the most of them will disappear, but I think that some of them will be permanent marks.

(Witness aside.)

Mr. Reid: That is the case, my lord.

The Court: Any rebuttal? 20

Mr. MacInnes: Just from Dr. Haywood's discovery, my lord, Questions 79 and 80 (reading). The first part of 81 is already in. I am putting this in to meet any medical testimony given by Dr. Haywood. That is the case.

* * *

Extracts
 Examination
 for Discovery
 A. K.
 Haywood

79. Q. Is smallpox described as a disease of spontaneous origin, or is it transmitted? A. I could not tell you that. My job is hospital administration. I have never practiced medicine.

80. Q. You have never practiced medicine? A. No.

(ARGUMENT BY MR. REID) 30

(COURT ADJOURNED AT 12:55 P.M. until 2:15 p.m.)

2:15 p.m.

(COURT RESUMED PURSUANT TO ADJOURNMENT)

(ARGUMENT BY MR. MACINNES)

(REPLY BY MR. REID)

(Judgment follows)

ORAL REASONS FOR JUDGMENT.

J. A. MACINNES, ESQ.,

appearing for the Plaintiffs.

R. L. REID, ESQ., K.C. and
J. G. GIBSON, ESQ.,

appearing for the Defendant.

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The Court: In this matter I wish to begin by taking the liberty of saying, if I may be permitted to do so, that I appreciate
10 the frank and careful manner in which the doctors and nurses and officials called on behalf of the Defendant have given their evidence, this assisting me in coming to a conclusion as to what the facts are, and my findings are as follows:

It is apparent from the examination for discovery of Dr. Haywood—for example at question 50, and it would appear to be common ground that the Plaintiff Annabelle McDaniel was admitted to the hospital on the 17th of January suffering from diphtheria and there were no symptoms of infection from smallpox at that time so far as they knew of it and so far as the records
20 show at the hospital; and I would find that there were none; that the infant Plaintiff had no symptoms of infection from smallpox at that time and was not vaccinated. I am not prepared to find that the Defendant or its officials knew that she was not vaccinated, but I think with all respect that I might say, that it would seem to me that they should have ascertained that definitely. At that time, it is also apparent from what Dr. Haywood says that the infant Plaintiff was placed in Room 314 and at that time there was no smallpox in the building in which she was put.

Then referring to what Dr. Haywood says in his answer, 31
30 and following—on the 18th of January the first smallpox patient was admitted and placed in room 308, which it is apparent, from the plan, is on the same side of what might be called the corridor, but is further along—the even numbers being on one side and the odd numbers on the other.

That was on, what has been called, and is called in Dr. Haywood's evidence, the third floor—I. D. H.

Then the next smallpox patient was admitted on January 21st, Mrs. Payne and she was allotted room 316, which would be the adjoining room to that where the infant Plaintiff had been put
40 and in passing one might note that neither the Plaintiff nor the other patients, under usual circumstances, would have anything to do with the allotment of the rooms, unless some special request was made in connection therewith.

In this case the infant Plaintiff would not appear to have had anything to do with the particular room, nor would her parents nor the doctor.

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Then on January 28th another smallpox patient was admitted and was put in room 317, which was on the other side opposite 316.

So at that time it would not appear, and I find that neither the infant Plaintiff's doctor, nor her mother or father knew anything about the admission of the smallpox patients in the immediate neighbourhood of the infant Plaintiff. On the 28th of January the mother of the infant Plaintiff discovered that there was, as in fact there was, in the adjoining room to that of her daughter, a smallpox patient, and upon complaint being made, the little girl was removed to the floor below on the 29th of January, on which date four more smallpox patients would appear to have been admitted, being placed two in room 314 previously occupied by the infant patient, and two in 306, all on Floor 3. Then two on January 30th went into Room 304 and one on February first went into 321, the infant Plaintiff leaving the hospital on February 3rd. Smallpox is admittedly very contagious or infectious, liable to be passed from one to the other. The infant Plaintiff was what might be called a pay patient, being admitted on the admission card at \$2.50 a day. At that rate the services of nurses would be the general nurses on the floor and not a special or private nurse, as is apparent from the examination for discovery questions 97 to 199. Then reading in part from Question 105 to 117:

“Q. It would be part of the cleaner's duties, who is a man, to go in and out of that room on his regular round of duty? A. Yes.

Q. And it is part of the duties of the resident doctors to visit the patients regularly? A. Oh, yes.”

“109. Q. And an attendant will find it necessary in the course of his duties to go from room to room, in the course of his duties? A. Correct.

Q. Were the smallpox patients on this floor segregated as to services. Were any employees set apart for the smallpox patients solely? A. Not to my knowledge at that time.

Q. So that the cleaner and the maids, and the nurses and the orderlies, if it was proper for them— A. If necessary.

Q. —would go from room to room without any appropriation or confinement, rather, to smallpox? A. Correct.”

I think there is a suggestion in some of the evidence given by Miss Forrest that the maids would not go. Going on with the evidence:

“113. Q. Or to diphtheria? A. Yes, or to any other disease on the floor, like scarlet fever, or measles.

Q. Yes, there was no segregation? A. No.

Q. Now, the nurses, of course, come from room to room, too, in the course of their duties? A. Yes.

Q. And they would have their thermometers and swab sticks and basins and various appliances that they are using from time to time with different patients? A. Yes, but each patient has its own outfit. Each one has its own room and equipment.

Q. So that they did not carry such equipment from one room to the other? A. No."

10 And at question 152 "Q. Did you have cross-infection in there in January of 1932? A. Yes.

Q. You did have cross-infection? A. Yes.

Q. Several cases? A. Yes.

Q. One a Jap baby? A. Yes.

Q. Died? A. Yes.

Q. One the Duff child? A. Yes.

Q. And the third one was the McDaniel child? A. I don't know what order they came in.

Q. It was one of the three? A. Yes."

20 And questions 201 to 203:

"Q. What notice was given in the I. D. H. that you were bringing in smallpox patients to floor three? A. Notice to whom?

Q. To the medical profession or to the public? A. I don't know of any notice.

Q. No notice at all? A. Except that the hospital reported to the proper authorities."

I have in mind what Dr. Carder has said, that his opinion would not be that there was cross-infection such as would appear to be suggested in the way I have just read, but my conclusion, and my view would be there is a preponderance of evidence that way. I would find that what has been called cross-infection did occur, and it did occur with respect to the infant Plaintiff, and I find that the damage thus caused to her arose through the exposure of the infant Plaintiff to the contagion of smallpox by placing her and causing her to remain in close proximity to other patients suffering from smallpox, and that the nurses and orderlies in the employ of the Defendant after waiting upon or attending or serving such smallpox patients or rendering service to them and in and about such smallpox patients, came into contact with, waited upon and served the infant Plaintiff, and thereby caused the infant Plaintiff to contract the disease of smallpox. I have carefully considered the arguments of counsel before me with regard to whether or not there was negligence and want of due care in respect to this exposing the infant Plaintiff. I would say that the

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(Cont'd)

Plaintiff would have to prove negligence, and in analyzing the situation here, one may consider whether or not the exposure of the infant Plaintiff to the contagion in the manner I have referred to, can be looked upon as the unreasonable exposing of the infant Plaintiff to a risk of harm as has been said by *Salmond* in his Law of Torts, 7th Edition, on page 29, for a disproportionate object; or, as it has been put in another case, whether there was lack of reasonable care under the circumstances of the particular case as known to the Defendant. Counsel for the Defendant has referred to the case of *Jones v. Sisters of Charity of the Incarnate Word*, (1914) reported in 173 S.W.R. 639, in which the statement is made the court could not see how the Sisters could be held negligent for doing that which the most eminent medical authorities, with a full knowledge of the situation, regarded as safe. Now, applying such a principle as that as stated, with which counsel for the Plaintiff here does not seem to very seriously disagree, I have a situation here somewhat different from the Jones case referred to, in which it is clearly stated Mrs. Jones was not placed near the smallpox patient, but in a room to herself in an entirely different portion of the hospital and on a different floor, and no one was allowed to go into the room of the smallpox patient except the nurse and the doctor, and this nurse was not allowed to see other patients in the hospital or go into the portion of the building in which Mrs. Jones' room was situate. I have to consider the facts in this particular case, that this infant Plaintiff would be in Room 314, it being entirely unknown to her or her parents or her doctor that there were any smallpox patients admitted to the floor, or to the rooms nearby until January 28th. One patient I have already referred to, and the facts are as I have found them, one smallpox patient was put in room 308 another in the room immediately adjoining 314, and another 317 opposite, and they came, one might say, very rapidly in the neighbourhood of the room, namely 314, where the infant patient was. In my opinion that was exposure of the infant Plaintiff to a risk of harm unjustified by the objects or reasons given, and it was conduct on the part of the Defendant, which I say with all respect, involved an unreasonably great risk of causing damage to the infant Plaintiff, and the damage to the infant Plaintiff was thus caused through the negligence and want of due care of the Defendant and its servants, and the undue or improper exposure of the infant Plaintiff to the contagion of smallpox by placing her and causing her to remain in undue close proximity to another patient or patients suffering from smallpox, and in allowing the nurses, orderlies, and attendants in the employ of the Defendant, after waiting upon, attending, or serving such smallpox patients or rendering services to such smallpox patients to come into contact with, wait upon and serve the infant Plaintiff, thereby causing her to contract the disease of smallpox.

The magnitude of the risk was increased by the fact the Plaintiff was not vaccinated, and it might be said—this is common ground, of course—the Plaintiff was suffering from diphtheria and would be in a weakened condition, and under those circumstances I find she was unnecessarily exposed to this risk, and negligently so exposed.

Now, it is submitted by counsel on behalf of the Defendant that there was a failure to vaccinate on the part of the doctor, or on the part of the parents to see that such was done after they
 10 had notice on the 28th of January, and it is suggested that there was contributory negligence dis-entitling the Plaintiff to recovery. I have in mind the evidence of Dr. McIntosh with regard to the advisability of vaccination at that time, that it could have been safely done at any time before the 3rd of February; but I also have this in evidence, that Dr. Kennedy was in charge of the case, that he knew the case, saw the infant Plaintiff, and in his opinion vaccination at that time was not safe or desirable. Under those circumstances, accepting, as I do, that evidence given by Dr. Kennedy, I cannot find there was any contributory negligence
 20 such as would disentitle the Plaintiff to recover.

In my opinion the Defendants are liable for negligence which I have already found for the damage suffered by the infant Plaintiff and her father. As to the amount of damages the Plaintiff Matthew G. McDaniel is entitled to the special damages as claimed less \$150.00, and I would allow him, in addition to such special damages the sum of \$250.00 general damages.

With regard to the infant Plaintiff, it is a duty that is quite a responsibility to assess the damages done to the infant Plaintiff, and in this connection I may say that I accept without reservation
 30 the evidence of Dr. Carder given this morning with regard to the observations he made as to the child. I think his evidence was given very frankly and I rely upon it. In a way it might be said that he cannot definitely say that some of the marks will not be permanent, but that it is a probability that some of them, at least, would disappear with seven or eight years, as he put it, speaking with regard to those on the face. I think it would be fair if I allow, as I do, general damages in the sum of \$5000.00 to the infant Plaintiff.

Mr. MacInnes: My lord, would that payment be to the joint
 40 guardians of the child.

The Court: That can be spoken to.

Mr. MacInnes: I submit it would be payment to the joint guardians of the child.

Mr. Reid: Oh, I don't think so.

The Court: Counsel might speak to the matter later.

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*In the Supreme
Court of British
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Fisher, J.
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(Contd.)

JUDGMENT

RECORD

In the Supreme Court of British Columbia

No. 7
Judgment
Jan. 13, 1933

BEFORE THE HONOUR-
ABLE MR. JUSTICE
FISHER

} FRIDAY, THE 13TH DAY
OF JANUARY A. D.
1933.

This action having come on for trial on the 11th, 12th and 13th days of January 1933, in presence of Mr. J. A. MacInnes and Mr. M. M. McFarlane, of Counsel for the Plaintiffs and Mr. R. L. Reid, K.C., and Mr. J. G. Gibson of Counsel for the Defendant; UPON HEARING the evidence adduced and what was alleged 10 by Counsel aforesaid;

THIS COURT DOTH ORDER AND ADJUDGE that the infant Plaintiff, Annabelle McDaniel, do recover against the Defendant the sum of Five Thousand Dollars (\$5,000.00).

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff, Matthew G. McDaniel, do recover against the Defendant the sum of Five Hundred and Forty-five Dollars (\$545.00).

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the said sum of \$5,000.00 recovered by the said 20 Annabelle McDaniel, an infant, be paid to the Official Guardian in trust for the said Annabelle McDaniel to dispose of the said sum and the income arising therefrom as directed by this judgment or by any further order of this Court or a Judge thereof, with liberty to invest from time to time at his discretion the whole or any part of the said fund which is in his possession in such securities as are authorized by the Official Guardian Act.

AND THIS COURT DOTH FURTHER ORDER that the Guardian or Guardians of the said Annabelle McDaniel, or the Official Guardian, shall be at liberty at any time to apply to the 30 Court or a Judge for directions as to the disposal of the said investments or the income arising therefrom for the benefit of the said Annabelle McDaniel.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiffs do recover against the Defendant their costs of this action, forthwith after taxation thereof, such costs to include the costs reserved to be disposed of by the Trial Judge, and any costs allowed Defendant by any order heretofore made may be set off.

AND THIS COURT DOTH FURTHER ORDER pursuant 40 to Section 104 of the Legal Professions Act that the Solicitors

for the Plaintiffs shall be at liberty to deliver a bill of their costs, charges and expenses of and in reference to this action, including Counsel fees, to the Plaintiff, Matthew G. McDaniel, and to the Official Guardian who shall act herein on behalf of the infant Plaintiff, Annabelle McDaniel, and thereafter upon notice to the said parties the said bill of costs shall be taxed as between Solicitor and Client and thereupon the Registrar shall certify what is the difference between the said Solicitor and Client costs and the party and party costs taxed hereunder, and the said Soli-
 10 citors shall be entitled to recover one-half of the said difference from the Plaintiff, Matthew G. McDaniel and to be paid one-half of the said difference out of the moneys of the Plaintiff Annabelle McDaniel, in the hands of the Official Guardian as hereinbefore mentioned.

Minutes filed.

BY THE COURT,

“H. BROWN,”
 Dep. District Registrar.

Entered
 20 Jan. 20, 1933
 Order Book Vol. 29 Fol. 215
 Per “A. I. R.”

Settled
 “A. I. F.,”
 J.

Vancouver
 Jan. 20, 1933
 Registry.

RECORD
 In the Supreme
 Court of British
 Columbia
 No. 7
 Judgment
 Jan. 13, 1933
 (Contd.)

NOTICE OF APPEAL

TAKE NOTICE that the Defendant appeals to the Court of Appeal from the Judgment pronounced herein on the 13th day of January, 1933, whereby the Plaintiff Matthew G. McDaniel recovered against the Defendant damages in the sum of \$545.00 and the Plaintiff Annabelle McDaniel recovered Judgment against the Defendant for damages in the sum of \$5000.00;

AND FURTHER TAKE NOTICE that the Court of Appeal will be moved by Counsel on behalf of the Defendant at its sittings at the City of Vancouver, in the Province of British Columbia, on Tuesday, the 7th day of March, 1933, at the hour of 11 o'clock in the forenoon or so soon thereafter as Counsel may be heard to set aside the said Judgment and that Judgment may be entered dismissing the action, or for such further or other order as may seem just and as the nature of the case may require, upon the following among other grounds: 10

1. The said Judgment is contrary to law.
2. The said Judgment is against the evidence and the weight of evidence. 20
3. That the learned Trial Judge erred in finding that the Defendant was guilty of any negligence whatsoever in respect of the infant Plaintiff.
4. That the learned Trial Judge erred in finding that the infant Plaintiff contracted smallpox from being placed in close proximity to other patients suffering from smallpox and from being attended by nurses who also attended smallpox patients.
5. That the learned Trial Judge, considering that no negligence was alleged or proved in respect of the technique used by the Defendant nor in respect of the nurses or other attendants, erred in finding that placing the infant Plaintiff in close proximity to other patients suffering from smallpox and allowing the same nurses to wait upon the infant Plaintiff and upon smallpox patients, involved an unreasonable risk under the circumstances and amounted to negligence. 30
6. The learned Trial Judge should have found on the evidence that as the system adopted by the Defendant in respect of the location of the infant Plaintiff and in respect of the nursing attendance is approved by, and regarded as safe by eminent medical authorities and is in accordance with approved Hospital practice, the Defendant could not be held to be negligent in adopting and carrying out said system. 40

7. The learned Trial Judge should have found on the evidence that the relationship between the infant Plaintiff and the Defendant was based upon contract and that the Defendant fully performed the contract on its part by furnishing a building designed and equipped in accordance with approved modern hospital practice for the treatment of infectious diseases and by operating said building in a careful manner in accordance with modern hospital practice and which eminent medical authorities, with a full knowledge of the situation, regarded as safe, and by supplying
 10 competent nurses and other attendants.

8. That the learned Trial Judge should have found on the evidence that the duty imposed upon the Defendant towards the Plaintiff was to provide proper physical hospital facilities, a proper system of operation and proper nursing care and attendance; that such duty did not extend to being an insurer nor to assurance against the ordinary risks incident to the conducting of an Infectious Diseases Hospital properly operated with due care and skill according to the approved standards of professional and technical practice.

20 9. That the learned Trial Judge should have found on the evidence that the hospital facilities provided for the infant Plaintiff were in accordance with approved medical and hospital standards and that the procedure, methods of treatment and technique were in accordance with approved medical and hospital practice, and no breach of the regulations having been alleged or proved on the part of the servants of the Defendant, there was no breach of duty on the part of the Defendant upon which a finding of negligence could be based.

30 10. The learned Trial Judge should have found on the evidence that in the nursing of the infant Plaintiff the Defendant used all such precautions as are usually employed and have been generally found by experience to be sufficient to protect the infant Plaintiff from the risk of cross-infection.

11. The learned Trial Judge erred in finding that the fact that the Plaintiff was not vaccinated although it was unknown to the Defendant imposed upon the Defendant the duty to take greater care and that the Defendant failed to perform such duty.

40 12. The learned Trial Judge erred in holding that the failure of the parents of the infant Plaintiff to have her vaccinated did not amount to contributory negligence.

13. That the damages awarded to the Plaintiff Matthew G. McDaniel are excessive.

14. That the damages awarded to the Infant Plaintiff are excessive.

RECORD

*In the Supreme
Court of British
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Notice of
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Feb'y. 13, 1933
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(Contd.)

AND upon such further or other grounds as Counsel may advise.

DATED at Vancouver, B.C., this 13th day of February, A.D. 1933.

“D. S. WALLBRIDGE”
Defendant’s Solicitor.

To the above named Plaintiffs,
And to Messrs. MacInnes & Arnold,
Their Solicitors.

COURT OF APPEAL

ANNABELLE McDANIEL, An
 Infant by MATTHEW G.
 McDANIEL, Her Next Friend,
 and the said MATTHEW G.
 McDANIEL
 v.
 VANCOUVER GENERAL
 10 HOSPITAL

JUDGMENT OF
 THE HONOURABLE
 THE CHIEF JUSTICE

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 Reasons for
 Judgment the
 Honourable
 the Chief
 Justice
 June 6, 1933

Negligence is a want of care in the circumstances. What are the circumstances here? The infant Plaintiff was taken into the General Hospital at Vancouver suffering from diphtheria. She was a pay patient. Neither her parents nor her physician knew that smallpox patients were admitted or were about to be admitted into the hospital. Up to that time none had been admitted. The Defendant knew that she had not been vaccinated. She was placed in a room on the third floor known as "The Infectious Diseases Hospital" and was attended by a nurse or nurses of Defendant
 20 who had common admittance to all the rooms on that and the fourth floor and who associated indiscriminately with the attendants there. On the day following the infant Plaintiff's admission, without her knowledge or that of her parents or her physician, a patient was admitted to the hospital suffering from a virulent type of smallpox and placed in an adjacent room to hers. The Defendant knew that owing to her unvaccinated condition she was very susceptible to infection and took no other means to protect her from contagion than that furnished under regulations which they did not know to be efficient for the purposes for which they were
 30 being used. The medical witnesses of the Defendant deposed that apart from the protection of vaccination and isolation it is not known by the profession at the present time what the causes of infection are; that is to say that apart from these two precautions there was no method of fully protecting persons coming into direct or indirect contact with smallpox patients. Altogether, after the admission of smallpox patients on these floors, eight smallpox infections occurred on the third and fourth floors of this hospital within a very short time after the infant Plaintiff's admission. The Defendant became alarmed and called the physicians and
 40 supervisors together in an effort to ascertain the cause and the only reason they could find for this infection was that the infected victims had not been vaccinated. Thereafter they refused to admit smallpox patients who had not been vaccinated unless they signed

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a waiver of the hospital's responsibility for infection. This, of course, was a system of protecting themselves not their patients. Their system was disclosed to have been more than 20% inefficient in its protection from infection. The medical witnesses for the Defendant confirmed the views of Milton J. Rosenau expressed in his work on Preventive Medicine and Hygiene, 5th Edition; see particularly pages 31 and 32 and page 854. We were invited by counsel on both sides to read this book if we thought fit. The author asserts that vaccination is the only real protection against smallpox; that it is the only effective guard against infection; and that isolation, a secondary means of avoiding infection, need not necessarily take place in a separate building, but that the nurse as well as the patient should be isolated. I may point out that the physician of the infant Plaintiff, Dr. Kennedy, who was a witness for her at the trial strongly disapproved of the means adopted by the hospital for the prevention of infection. 10

The eight cases of infection above referred to tempts me to say *res ipse loquitur*, though some of the factors giving that maxim application to the facts of this case are wanting. A jury might well say that that fact condemns the Defendant's system. I have no hesitation in saying that the Defendant was negligent and that the negligence was the proximate cause of the Plaintiff's injury. 20

I would dismiss the appeal.

"J. A. MACDONALD,"
 C.J.

VICTORIA, B.C.
 6th June, 1933.

No. 10

COURT OF APPEAL

McDANIEL

v.

VANCOUVER GENERAL
HOSPITAL} JUDGMENT OF
THE HONOURABLE
MR. JUSTICE MARTIN

RECORD

Court of Appeal

No. 10

Reasons for
Judgment
Archer
Martin, J.A.
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VICTORIA, B.C., 6th June, 1933.

Upon the facts as found by the learned Judge below, which differ, obviously, in certain essentials from those in *e.g.*, *Jones v. Sisters of Charity of the Incarnate Word* (1915) 173 S.W.R. 639, much relied upon by the Respondent, I am of opinion that the right conclusion has been reached in law and therefore the appeal should be dismissed.

(Sgd.) "ARCHER MARTIN,"
J.A.

No. 11

COURT OF APPEAL

McDANIEL et al

v.

20 THE VANCOUVER
GENERAL
HOSPITAL} JUDGMENT OF
THE HONOURABLE
MR. JUSTICE McPHILLIPSNo. 11
Reasons for
Judgment
McPhillips,
J.A.
June 6, 1933

The action was one for negligence and damages resulting to the infant Plaintiff and expenses incurred by her father her next friend in this action. The particulars of the negligence were stated to be:—

30 (a) The negligence and want of due care of the Defendant and its servants and the undue and improper exposure of the infant Plaintiff to the contagion of smallpox consisted of placing the infant Plaintiff and causing her to remain in too close proximity to another patient or other patients suffering from smallpox and that the nurses, orderlies and attendants in the employ of the Defendant, after waiting upon, attending or serving such smallpox patients or doing work or rendering services to such smallpox patients and in and about such

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 McPhillips,
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smallpox patients, came into contact with, waited upon and served the infant Plaintiff, thereby causing the infant Plaintiff to contract the disease of smallpox.

(b) The Plaintiffs say that the hands, arms, neck and face of the infant Plaintiff were, during the course of the said attack of smallpox, heavily and severely pitted, scarred and marked and that such pitts, scars and marks are and will remain permanently, thereby disfiguring the infant Plaintiff, impairing her appearance and interfering with her opportunities for advancement and betterment in the future. 10

The Appellant is a corporation incorporated by Private Act of the Legislature of British Columbia (An Act to Incorporate the Vancouver General Hospital, Chap. 69, Statutes of British Columbia, 1902). The Appellant carries on and operates a Public General Hospital not operating for profit. It is sustained by grants from the Government of British Columbia, Municipal Corporations and private donations and has for years done this work and does a very large amount of charitable work—no patients being refused but all applying being cared for—the infant Plaintiff was a paying patient. The illness for treatment in the present case was that of diphtheria from which the infant—of the age of nine years—was suffering. 20

The infant Plaintiff, before entering the hospital and until discharge therefrom, was receiving the attention of the family physician Dr. William Davis Kennedy that is Dr. Kennedy was the attending physician throughout, making daily visits upon his patient. The Vancouver General Hospital is a very modern block of buildings and today along with many other hospitals throughout Canada—that is in its principal cities—has the highest position of standardization amongst hospitals in staff and equipment and is approved as such by the American and Canadian Colleges of Physicians and Surgeons. To effectuate continued efficiency there is an organization common to both the United States and Canada which overlooks and inspects the hospitals and one of the witnesses called on the part of the appellant was Dr. Malcolm T. McEachern who in connection therewith occupies the position of Director of Hospital Activities. It can well be said on the evidence that the hospital in every way is most modern and most complete in its buildings, staff and equipment generally. Now what is alleged and what, in my opinion, was not proved that by some class of negligence which with great respect to the learned trial Judge, I cannot perceive—there is legal liability upon the appellant for that which happened to the infant Plaintiff after her discharge from the hospital then being cured of diphtheria—in that later she contracted smallpox and portions of her body 30 40

are pitted and scarred by that disease. Whilst the infant Plaintiff was in the hospital and being treated for diphtheria, smallpox broke out in the City of Vancouver but was not existent for any long period of time. The hospital work is carried on in several buildings upon the unit principle and the infant Plaintiff was in that called the Infectious Diseases Hospital and therein smallpox cases were also treated in separate rooms with glass fronts through which the patients may be observed—this was known, of course, to Dr. Kennedy the infant Plaintiff's physician—it could

10 not be possible that he did not know being the attending physician and making daily visits and taking as he said every precaution expected of physicians and nurses—putting on a gown and everything necessary to obviate infection or carrying infection. It would seem that the infant Plaintiff had next to her a smallpox patient in a separate room—the mother of the infant Plaintiff complained of this and she was removed to another floor. In moving her it was more a matter of sentiment to satisfy the mother's desire than any admission that there was any danger in the system in vogue. The now recognized mode of arrange-

20 ment of patients in the most advanced and up-to-date hospitals supported by the highest medical opinion is the separate room or cubicle system with the closest possible attention to sterilization and this medical opinion was given by medical men of eminence, men of great experience whose evidence I have given the closest study and I am satisfied to accept that testimony and, in my opinion, the learned trial Judge should have accepted it—in saying this I do so with the greatest respect to the learned trial Judge. In my view year by year there has been great advance in medical science and the treatment of diseases—the old time method of

30 caring for smallpox was inhumane in the extreme—"pest houses" as they were called were the most usual place to which the patients were removed—giving great mental worry to relatives. Now smallpox as other infectious and contagious diseases may be treated in the same building with all modern safeguards and there is no danger in the system as carried out. There will be unaccountable infection even under the most careful supervision and that careful supervision was given in the present case—the testimony of the medical staff and the trained and experienced nurses shows this. There are so many possible sources from which infection

40 will come that it would indeed be most dangerous to hold or come to the conclusion by mere inference that owing to being in the same building as smallpox patients were—or even have next to her a smallpox patient that because of that the infant Plaintiff became infected. I might almost say that infection might have occurred in countless ways, the infant Plaintiff's own physician may have been the agency mixing with the populace in daily practice—the mother may have likewise brought it upon her visits to the daughter.

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The mere fact that the infant Plaintiff contracted smallpox is no determination that the system in vogue in the hospital was defective. Let us visualize things—the medical staff, nurses, and cleaners of the rooms are not shown to have contracted the disease—why should this be? The answer must be that the system is as near perfect as human agency fortified by the latest scientific knowledge can make it. After the most careful study of the voluminous evidence adduced in this case, I fail to find any negligence proved as against the Appellant even if I were to admit that negligence in law were capable of being found in the light of the relevant facts of the case—which I do not admit—there is no relationship existent between the parties to this action in view of the facts of the case that will permit of it being said that there is any legal responsibility upon the Appellant for the damages sustained by the Respondent. The authoritative case upon the point of law that must be determined in this case is *Hillyer v. The Governors of St. Bartholomew's Hospital* (1909) 2 K. B. 820 (C. A.). The hospital must be carried on under some system and that system must be determined by the best medical opinion. The hospital in this case was built, arranged, staffed and equipped under the best medical opinion obtainable—has passed careful inspection—and that being the case can it be said that there was negligence in any particular. Here we have not found it established that the Appellant was in any way negligent by itself or its servants. The infant Plaintiff was cared for in the hospital and dealt with in the manner that was approved of and laid down by the medical staff and trained nurses. It would indeed be perilous to run counter to professional opinion in the operation of the hospital—further the duty is to obtain that opinion and act upon it. Whilst the present case is not in all respects analogous to the *Hillyer* case, *supra*, it is useful to observe what Farwell L. J. and Kennedy L. J. said at pp. 825-831. I would particularly refer to what Kennedy L. J. said at pp. 830 and 831:

The Plaintiff had produced no evidence that the Defendants had been guilty of a breach of their duties towards the Plaintiff—the duty of using reasonable care in selecting as members of the staff persons who were competent, either as surgeons or as nurses, properly to perform their respective parts in the surgical examination, and the duty to provide proper apparatus and appliances.

Here we have, in my opinion, no breach of duty whatever established—can it be that maintaining and operating the hospital as it does in accordance with the best medical opinion with qualified persons acting on the medical staff and qualified nurses—that nevertheless there is liability? That is in effect placing the Appellant in the position of an insurer—a liability which in my

opinion is not upon the Plaintiff. Here we also have the infant Plaintiff being attended and under the charge of the family physician—it may be assumed that he did not consider the infant Plaintiff in any danger of infection—if he did why did he not complain to the medical staff of the hospital—it was a duty that rested upon him—not upon the hospital authorities. They were entitled to rely upon their medical staff and trained nurses. The present case is devoid of any evidence that Dr. Kennedy made any complaint or gave any direction that was disobeyed.

- 10 The evidence shows that Dr. Kennedy knew there was small-pox in the vicinity of the infant Plaintiff's room on the 28th of January, 1932, and on the 29th of January, 1932, she was moved to another room—yet although the infant Plaintiff could then be safely vaccinated—there being medical opinion to that effect—the infant Plaintiff was not vaccinated although it could have been done safely up to the 3rd of February, 1932—here there was negligence attributable to the Respondents—that responsibility, of course, rested upon Dr. Kennedy—not the hospital authorities. Dr. Kennedy it appears so advised but was overborne by the
- 20 father of the infant Plaintiff (the next friend in this action) who would not have it done and so advised Dr. Kennedy. This course of conduct was in my opinion negligence imputable to the Respondents. I would refer to the case of *Thompson v. Columbia Coast Mission et al* (1914) 20 B. C. R. 115—a decision of this Court—where it was held that the liability upon the hospital authorities extended only to providing reasonably skilled and competent medical attendants for the patient—there the doctor though was held liable upon the particular facts of the case. I would also refer to *Foote v. Directors of Greenock Hospital* (1912) Session
- 30 Cases 69—there *Hillyer v. Governors of St. Bartholomew's Hospital, supra*, was followed—it was held that apart from special contract the managers of a public hospital are not responsible to the patients whom they receive (whether paying or non-paying) for unskilful or negligent medical treatment provided they have exercised due care in the selection of a competent staff. The learned counsel for the Appellant at this Bar in his very able argument laid great stress upon the *technique* adopted and carried out in the hospital and its completeness in all its parts supported as it was by the highest medical opinion—now followed in the
- 40 best equipped and managed hospitals of this continent—and submitted that it was in no way impugned—in this submission I agree and the evidence adduced in this case from competent members of the medical profession well supports the system now universally accepted in the leading hospitals upon this continent of which The Vancouver General Hospital is one. It is unthinkable that the hospital authorities should not apprise themselves of the latest and most accepted medical opinion as to the manner of carrying on the hospital—in all its phases.

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 J.A.
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 McPhillips,
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 (Cont'd)

If there was a weak spot in the technique here—which upon the evidence I do not admit—it cannot be postulated thereon—that by reason thereof it can be said to constitute an actionable wrong. Upon the evidence as I read it no negligence has been established—the infection giving rise to the infant Plaintiff being affected with smallpox may have been caused by countless possibilities almost amounting to the inscrutable—but this is clear to my mind that the onus resting upon the Respondents to prove negligence, i.e., absence of due care—has not been discharged.

I would allow the appeal and dismiss the action. 10

(Sgd.) “A. E. McPHILLIPS,”
J.A.

Victoria, B. C.,
 6th June, 1933.

No. 12

COURT OF APPEAL

No. 12
 Reasons for
 Judgment
 M. A.
 MacDonald,
 J.A.
 June 6, 1933

ANNABELLE McDANIEL, an
 infant, by Matthew G. McDaniel,
 her next friend, and the said
 MATTHEW G. McDANIEL

v.

THE VANCOUVER
 GENERAL
 HOSPITAL

JUDGMENT OF
 THE HONOURABLE
 MR. JUSTICE
 M. A. MACDONALD. 20

This is an appeal from the judgment of Mr. Justice Fisher awarding the infant Respondent \$5,000.00 and her father \$545.00 damages against Appellant, Vancouver General Hospital. The infant Respondent under the care of the family physician, received treatment for diphtheria as a paying patient in the Infectious Diseases unit of the hospital from January 12th, 1932 to February 3rd and 12 days after her discharge, on returning to her home, contracted smallpox. The complaint is that inasmuch as several smallpox patients were during the period referred to, placed in adjoining rooms, on the same floor, (the first January 18th in room 308; the second on January 21st in room 316 immediately adjoining 314, where the infant Respondent was confined, and the third on January 28th in room 317 on the other 30

side of the corridor) the Respondent was improperly and negligently exposed to contagion therefrom and in fact contracted the disease in that way. Several other cases of cross-infection developed.

The period for incubation of smallpox is from ten to fourteen days and as it developed within that time it is likely that contact was established while she was a patient in Appellant's hospital. The trial judge so found. On January 29th on demand of the child's mother, who learned on the 28th that a smallpox patient
 10 was in an adjoining room, she was removed to the floor below and on that day four additional smallpox cases were admitted, all placed on floor three, two of them in the room just vacated. Several cases of cross-infection occurred in January and February 1932, that is to say, carried from another patient, or from some one with whom the other patient was in direct or indirect contact. Infection may occur through doctors and attendants going from one suffering from smallpox to another who is not and in other ways. Dr. Haywood on discovery (Appellant's medical superintendent) referred to several cases of cross-infection
 20 in January, although Miss Forrest, supervisor of the Infectious Diseases Hospital, stated that cases of cross-infection appeared for the first time in February. It is possible, as Dr. Carder stated, that in view of the epidemic in the City of Vancouver at that time infection might have originated outside the hospital; not from cross-infection within. While however that is possible it is a question of fact and from the evidence, knowing that visitors were not admitted and that the child's physician was not, at least consciously, in contact with smallpox patients, a judge or jury might draw the inference that the infection in this case did not
 30 originate from outside sources. When the trial judge finds "that what has been called cross-infection did occur, and it did occur with respect to the infant Plaintiff" that finding cannot be disturbed.

The defence is that Appellant used reasonable care—

- (1) in the construction of the Infectious Diseases Hospital as a separate unit;
- (2) in selecting a competent staff of physicians, nurses, orderlies, maids etc. working under a rigid system of rules designed to prevent contagion and
- 40 (3) in providing proper apparatus and appliances approved by the best medical knowledge available.

No liability, it was submitted, attaches as Appellant is not an insurer against ordinary risks incident to the operation of a hospital conducted with due care and skill according to approved standards of professional and technical practice. If Appellant

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used all reasonable precautions found by experience, as developed in medical research work, to be necessary to protect the infant Respondent from the risk of cross-infection while a patient in the hospital it discharged its full duty. The system provided must be reasonably capable of coping with the risk involved. Patients suffering from Infectious diseases are invited, for reward, to take advantage of the facilities afforded in this branch of the hospital and the obligation to use care, guided by the best knowledge available, is undertaken. If, for example, experience and scientific research shows that special care is required to prevent 10 infection in smallpox cases, not so imperative where other less virulent infectious diseases are dealt with, Appellant impliedly undertook to provide these additional safeguards. The degree of care taken should, I think, be greater, if it is true, as testified, that it is not known with precision all the ways smallpox may be transmitted. Doctors, nurses or a patient may carry an infectious disease and while not developing it themselves transmit it to others with lowered powers of resistance. In the case of smallpox however, to quote Dr. McEachern, whose opinion is entitled to 20 great weight, "the cause of the disease and the methods of transmission are not sufficiently well-known to medical science." He does not think "there is very much danger of air-borne contamination" not suggesting that such a possibility is eliminated. A quotation was given in evidence from a standard work in Preventive Medicine and Hygiene (*Rosenau 5th Ed. 854*) as follows:—

"There are only two diseases of man, namely smallpox and measles which may possibly be air borne in the sense that this term is generally used. Both these diseases are so readily communicable that the virus seems to be 'volatile;' it is 30 assumed that the active principle is contained in the expired breath; however, there is no proof of this assumption and some evidence to the contrary."

and he goes on to say—

"Further, it is noteworthy that we are still ignorant of the causes and the precise mode of entrance of the contagion in both measles and smallpox. Even in these two diseases the radius of danger is much more limited than was once supposed to be the case."

In view of this uncertainty and limited knowledge, while it 40 may be difficult to provide against unknown danger, the fact that it is known that this disease may be transmitted in ways not yet understood suggests the need of rigorous precautions with the view, within reasonable limits, of closing every avenue from which danger might be apprehended. The opinion is general that con-

tact direct or indirect is responsible for the spread of the disease. Indirect contact arises where a person coming into contact with a smallpox patient, through the person, or clothing, conveys it to another; also by the common use of articles, instruments, dishes &c. not properly sterilized. A system to be adequate ought to reduce to the minimum the possibility of contact in this way.

10 It is not necessary to review the evidence showing the elaborate scientific precautions taken to prevent, or at least to reduce to a minimum, the danger of cross-infection. Our task is to ascertain if the system was defective to a degree that justifies the finding of negligence. We are not in the same position as the trial judge. On appeal our inquiry is restricted. Have we reasonable evidence to support the judgment? The following extract from the reasons for judgment under review presents a case difficult to overcome. He found it negligent to allow

20 “the nurses, orderlies and attendants in the employ of the Defendant, after waiting upon, attending or serving such smallpox patients or rendering services to such smallpox patients to come into contact with, wait upon and serve the infant Plaintiff, thereby causing her to contract the disease of smallpox.”

The last clause is an inference drawn from the facts recited and while the elaborate and approved precautions taken by nurses before entering and upon leaving the sick room, in the absence of evidence showing failure to observe the technique prescribed, might justify another inference a Court of Appeal cannot say that it is clearly wrong. There is evidence to support it. Dr. Kennedy called by Respondent gave this evidence—

30 “Q. What do you say as to the danger of permitting nurses, cleaners, doctors, and others to wait upon, serve and attend smallpox patients and other patients indiscriminately as part of their daily duty? A. I don't think it is hardly fair to patient.

Q. Now would it be likely in your opinion that a staff of 18 or 20 attendants, in daily service could be expected to serve a number of smallpox patients and other patients indiscriminately without inducing cross-infection? A. It is unlikely.”

40 Dr. Underhill (called by Appellant) until 1930 medical health officer for the city of Vancouver, gave this evidence—

“Q. Now if the attendants on smallpox patients were not permitted under any circumstances to wait on other patients, while attending the smallpox patients, would that have any effect in diminishing the risk of cross-infection to

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other patients on that floor? A. Hypothetically I suppose it might.

Q. In other words it would be a more effective break in the contact, would it not? A. Yes.

Q. That is, if you had your choice of allowing the same nurses or attendants to go from one room to another, and the choice of confining or segregating the attendants on smallpox to the smallpox alone, and not allowed to go into any others, you would have a more effective break in the contact would you not? A. Yes, but such a point would not enter 10 my mind.

Q. I don't care if it enters your mind at all. Would that not be so? A. Oh, hypothetically, yes."

I do not think the addition of the word "hypothetically" or the phrase that "such a point would not enter my mind" detracts from the view expressed that confining nurses and attendants to smallpox patients alone would diminish the risk of cross-infection. Possibly if all approved precautions are taken the disease would not be transmitted in this way. Where however it is known that smallpox is a particularly virulent disease "one of the most con- 20 tagious of the communicable infections" the trial judge was at liberty to find that a system should have regard to the ever-present possibility of failure on the part of attendants to take all necessary precautions and obviate, or at least minimize, this danger by confinement in the way suggested.

We have this further evidence: The attention of Dr. J. W. McIntosh, medical health officer for the City of Vancouver was called in cross-examination to an extract from a book already referred to (Rosenau, Professor of Preventive Medicine and Hygiene, Harvard Medical School) and as he regarded this work 30 as an authority it is proper to assume from the evidence that he agreed—as follows:—

"The nurse attending a case of smallpox should also be segregated and all visiting should be strictly interdicted. A separate kitchen should be provided and care taken that the dishes be scalded and remnants of food burned."

This is a special precaution that ought to be taken in treating smallpox patients not necessarily applicable to other infectious diseases. This was not done. The regulations did not provide for it. Miss Forrest gave this evidence:— 40

"Q. Now, what were the regulations with regard to segregating smallpox patients from the others? A. No different regulations.

Q. You treat them all alike? A. Yes.

Q. Indiscriminately? A. Yes."

While the regulations did not provide for special precautions in case of smallpox (the system defective to that extent) still because it was recognized as a dangerous disease added safeguards not covered by the regulations were in fact resorted to. For example the cleaners might carry brooms, brushes, and mops from room to room. Miss Forrest gave this evidence—

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10 “Q. Now with regard to this separate cleaning apparatus you say that until the smallpox cases came in, there was no separation of the cleaning apparatus? A. No.

Q. But after the smallpox patients did arrive, you did then segregate the cleaning appliances and confined them to smallpox patients alone? A. Yes.

Q. Is that any part of the regulations in exhibit 3? A. It is not in our written regulations.

Q. It is not in your written regulations. You did that on your own? A. Yes.

Q. In other words, you went beyond the regulations, went outside them? A. Outside of the written regulations.”

20 There was therefore failure to follow a system approved by medical authority in two important aspects. One the failure to segregate nurses attending smallpox patients, the other, as the evidence shows, the common use of cooking utensils, dishes, etc., by smallpox and other patients. No “separate kitchen” as Rosenau stipulated, existed nor were dishes and cooking utensils provided for the use of smallpox patients alone. My conclusion is that whatever view one might form at the trial of the action when the trial judge found that the failure to segregate nurses was negligence and in addition we find from the evidence failure to maintain a
 30 separate kitchen we cannot interfere.

It was submitted that Respondent was negligent inasmuch as the infant Plaintiff was not vaccinated and because of this omission as alleged the disease was contracted. She was admitted however with knowledge of this oversight. Her physician stated he did not know that there were smallpox cases treated in the hospital at that time. Later while still a patient he thought it might possibly “cause an upset” in her condition to vaccinate while under treatment for diphtheria. He did however suggest it when he found that smallpox cases were being treated. An interne suggested it to him. Although Dr. Kennedy said “I suppose it should be done” still he did not do so, apparently because the child’s father objected. He said: “no, vaccination is a dangerous thing having already contracted the disease” (meaning, I assume, diphtheria). However, as intimated, the hospital authorities did not demand vaccination. It was willing to accept her as a patient without it although smallpox patients were on the
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same floor. The responsibility of admitting patients, not vaccinated, rested on Appellant. It may be true, as testified, that no one vaccinated contracted the disease and that the infant Respondent might have been inoculated with safety in time, but in view of all the facts, this oversight has no bearing on the question of liability.

As to the law applicable, we are concerned, not with the obligation on Appellant to provide proper facilities and to secure a competent staff in dealing with cases of infectious diseases generally but rather with a special situation in the case of smallpox patients admitted for treatment indiscriminately with other patients. It is a dreaded disease and even to the lay mind special care is regarded as necessary. The evidence shows (Appellant's evidence) that medical authorities are of the same opinion. If the Directors knew, or should have known of this need for special care, and did not by instructions or otherwise provide for it liability follows. They knew that in comparatively recent times smallpox patients were isolated and treated in an entirely separate building. They know, or ought to know that if—as the fact is—that policy was changed, and smallpox patients, as in this case, were admitted to the same building with other patients that regulations should be formulated pertaining to this highly dangerous disease. There were in fact no regulations applicable to it alone.

If Appellant was obliged to provide a proper building approved by competent authorities it was equally obligatory that regulations should be framed to cope with an admittedly dangerous situation. It is not a case of regulations framed by skilled professional men where damage results from failure to carry them out, a breakdown in technique or negligence of the staff; it is the entire absence of regulations of any kind, particularly on two points already referred to. The fair inference from the evidence is that if Appellant had, as it was bound to do, secured competent medical assistance in the framing of regulations those two points would have been covered by appropriate rules. Appellant's directors could not, if laymen, intelligently interfere in framing regulations but reasonably anticipating the need they could and should direct that rules for this special care should be framed. I base liability on this ground. Conduct involving failure to provide by regulations for a special situation involves great risk and in this case resulted in damage. For the general law applicable—although not strictly applicable to the special and essentially different facts in this case—I refer to *Hillyer vs. Governors of St. Bartholomew's Hospital* (1909) 2 K. B. 820 and to an article in *Justice of the Peace May 13th, 1933 at p. 296* referred to by my brother Martin.

It was submitted that the damages awarded were excessive. The amount awarded is, it must I think be conceded, liberal. However we cannot say on the evidence that it is so large that it could not reasonably be allowed. A wrong measure of damages was not applied, nor extraneous matters taken into consideration.

I would dismiss the appeal.

“M. A. MACDONALD,”

J.A.

Victoria, B. C.
10 June 6th, 1933.

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M. A.
MacDonald,
J.A.
June 6, 1933
(Contd.)

RECORD

*Court of Appeal*No. 13
Judgment
June 6, 1933

COURT OF APPEAL

BETWEEN:

ANNABELLE McDANIEL, an Infant, by Matthew
G. McDaniel, her next friend, and the said MAT-
THEW G. McDANIEL,

Plaintiffs (Respondents)

AND

THE VANCOUVER GENERAL HOSPITAL,
Defendant (Appellant)

CORAM:

10

THE HONOURABLE THE CHIEF JUSTICE OF
BRITISH COLUMBIA,
THE HONOURABLE MR. JUSTICE MARTIN,
THE HONOURABLE MR. JUSTICE McPHILLIPS,
THE HONOURABLE MR. JUSTICE M. A. MACDON-
ALD.

No. 13

JUDGMENT

VICTORIA, B. C., Tuesday, the 6th day of June, 1933.

The appeal of the above-named Appellant from the judgment 20
of the Supreme Court of British Columbia pronounced herein by
The Honourable Mr. Justice Fisher on the 13th day of January,
1933, having come on before this Court at its Sittings held at the
City of Vancouver, on the 30th and 31st days of March, 1933, in
the presence of Mr. R. L. Reid, K. C., and Mr. J. G. Gibson, of
Counsel for the Appellant, and Mr. J. A. MacInnes and Mr. M. M.
McFarlane, of Counsel for the Respondents: UPON HEARING
READ the appeal case and what was alleged by Counsel afore-
said:

THIS COURT DOTH ORDER AND ADJUDGE that the 30
said appeal be and the same is hereby dismissed out of this Court.

AND THIS COURT DOTH FURTHER ORDER AND
ADJUDGE that the Appellant do pay to the Respondents their
costs of the appeal forthwith after taxation thereof.

B.C.L.S.
\$1.10Vancouver
Jan. 22, 1933
Reg'ty
Seal C. of A.
"R.L.R."
"J.A.M.," C.J.

BY THE COURT.

"J. F. MATHER,"
Registrar.

"J.F.M.," D.R.

Entered Jan. 26, 1933.
Order Book Vol. 9, Fol. 217
Per "A.L.R."

40

COURT OF APPEAL

No. 14

REGISTRAR'S CERTIFICATE OF COMPLIANCE
WITH ORDER.

RECORD
 Court of Appeal
 No. 14
 Registrar's
 Certificate as to
 Security
 Oct. 18, 1933

I, the undersigned Registrar of the Court of Appeal in Vancouver, B. C., HEREBY CERTIFY that pursuant to the Order of the Court of Appeal dated the 29th day of June 1933 the Bond of the Canadian Indemnity Company for the sum of \$1500.00 was on the 21st day of September, 1933 filed by the Defendant
 10 as security for the due prosecution of the appeal herein of the Defendant to His Majesty in his Privy Council and payment of all such costs as may become payable to the Plaintiffs (Respondents) in the event of the Defendant (Appellant) not obtaining an order granting it leave to appeal or of the appeal being dismissed for non-prosecution and for the payment of such costs as may be awarded by His Majesty, his heirs and successors or by the Judicial Committee of the Privy Council to the said Plaintiffs (Respondents) on such appeal and that the said Defendant
 20 (Appellant) has taken out all appointments necessary for settling the transcript record on such appeal in compliance with the said order of the 29th day of June, 1933.

DATED at Vancouver, B.C., this 18th day of October A.D. 1933.

“J. F. MATHER,”

Registrar

RECORD

Court of Appeal

No. 15

Order Grant-
ing Leave to
Appeal

Oct. 23, 1933

COURT OF APPEAL

No. 15

ORDER GRANTING FINAL LEAVE TO APPEAL.

THE HONOURABLE THE CHIEF JUSTICE OF
BRITISH COLUMBIA,

THE HONOURABLE MR. JUSTICE McPHILLIPS,

THE HONOURABLE MR. JUSTICE M. A. MACDON-
ALD.

THE HONOURABLE MR. JUSTICE McQUARRIE.

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VANCOUVER, B.C., Monday, the 23rd day of October A.D.
1933.

UPON MOTION made to the Court this day for final leave to appeal, UPON READING the Order made by this Court dated the 29th day of June, 1933, and the Certificate of the Registrar of this Court at Vancouver, dated the 18th day of October, 1933, of due compliance with the said Order and upon hearing Mr. J. G. Gibson of Counsel for the said Defendant (Appellant) and Mr. J. A. MacInnes of Counsel for the Plaintiffs (Respondents);

THIS COURT DOTH ORDER that final leave to appeal to His Majesty in his Privy Council from the Judgment of this Court pronounced herein on the 6th day of June, 1933, be and it is hereby granted to the said Defendant (Appellant).

BY THE COURT.

"J. F. MATHER,"

Registrar.

COURT OF APPEAL

No. 16

CERTIFICATE OF REGISTRAR.

RECORD
 Court of Appeal
 No. 16
 Registrar's
 Certificate as
 to Case
 Oct. 30, 1933

I, the undersigned Registrar at Vancouver of the Court of Appeal, DO HEREBY CERTIFY, that the foregoing is a transcript of the Record of Proceedings in this action for the purpose of appeal to His Majesty in Privy Council herein as prepared and settled by this Court.

I FURTHER CERTIFY that the said Record of Proceedings contains the Reasons for Judgment of The HONOURABLE MR. JUSTICE FISHER, (Trial Judge) and of The HONOURABLE the CHIEF JUSTICE of the Court of Appeal, The Honourable Mr. Justice Martin, the Honourable Mr. Justice McPhillips, and the Honourable Mr. Justice Macdonald being all the Judges before whom the trial and appeal herein were heard who have delivered Reasons for Judgment herein.

AND I FURTHER CERTIFY that the said Record of Proceedings contains an Index of all the papers and Exhibits in the case.

DATED at Vancouver, B. C., this 30th day of October A.D. 1933.

"J. F. MATHER,"

Registrar.

RECORD

*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No. 5
Duties of
Cleaner and
Instructions
for Orderly
Cleaners
Feb. 1, 1927

EXHIBIT No. 5.

INFECTIOUS DISEASES HOSPITAL

Summary of duties of cleaner on third floor

Hours of duty—7 a.m. to 12 noon and 1 to 5 p.m. except on Thursday and Sunday when he goes off duty at 12 noon. Also off duty on p.m. of all legal holidays.

Morning duties—Empty and wash all garbage cans and waste paper containers.

Sweep (no dusting) nurses office, wards and separating rooms.

Sweep and dust corridors, landings and waiting room. 10

Scrub all tiled floors except kitchens, toilet bowls, seats and hoppers.

Wash tiled walls in bathrooms, lavatories and service rooms.

Sweep landings and steps on both sides from third to second floor.

P.M. duties.

Sweep up where necessary.

Clean windows and lights.

Wash woodwork in corridors, lavatories, etc.

Run block over waxed parts of linoleum daily. 20

Keep fire extinguishers polished and hose brushed off.

Keep walls of corridors, offices etc swept down and walls free of cobwebs.

Fridays wax and polish linoleum. Polish furniture in nurses office and waiting room weekly. Keep hinges of doors on third floor oiled and clean.

Leave orderly's room tidy and floors of bathroom etc clean when going off duty.

Instructions for Orderly Cleaners.

Each man's duties and responsibilities are combined in the list of duties supplied to him but conditions may arise from time to time which will necessitate his being called upon to undertake work or duties not so specified. 30

Men employed in this section will be under the supervision of the supervisor in charge and any orders given by her must be

carried out. If such orders are considered unreasonable employees must not argue or refuse. Obey first and complain afterwards.

All cleaning supplies, brooms, etc must be obtained from cleaners supply cupboard in the basement of the Main Hospital and will be issued by the Senior Janitor.

10 Employees must familiarize themselves with the technique observed by nurses to protect themselves and others from infection and strictly observe the rules regarding wearing of gowns, contact with patients etc.

When washing unwaxed linoleum warm soapy water only is to be used and mop squeezed half dry before using. Be careful not to put too much water on linoleum, merely wash over quickly and dry off at once. Use no soda. Tiled floors to be scrubbed with Wyandotte Detergent. When there is a bad stain that cannot be removed by ordinary scrubbing apply a paste of detergent and water, leave on for a few hours and then scrub.

Windows to be cleaned only with Bon Ami and clean cloths. No coal oil etc to be used.

20 In washing white woodwork use only soap and warm water.

For waxed floors use equal parts of wax and turpentine mixed.

For polishing furniture obtain furniture polish from Head Cleaner.

For cleaning nickelled metal use Bon Ami only—not metal polish.

February 1st, 1927

Chief Orderly.

RECORD
In the Supreme
Court of British
Columbia

Defendant's
Exhibit No. 5
Duties of
Cleaner and
Instructions
for Orderly
Cleaners
Feb. 1, 1927
(Cont'd)

RECORD

*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No. 6
Instructions
for Sweeping
Wards
June 13, 1927

EXHIBIT No. 6.

INSTRUCTIONS COVERING SWEEPING OF WARDS
AND SEPARATING ROOMS IN I. D. H. FOR
CLEANERS AND ORDERLIES.

Have ready long handled hair broom, dustpan and brush and dust container without lid for sweepings, also a pail or basin of creoline solution ($\frac{1}{2}$ oz to $\frac{1}{2}$ pail of water) and a sponge.

Leave container and pail of solution outside door of room. On entering room and before touching anything else put on one of the gowns provided there. 10

Sweep room and place sweepings in can that is outside of door. Empty waste paper containers also into this can being careful not to let any of its contents fall on floor.

Then wash handle of broom and handbrush into the solution also dip dust pan into the solution. Remove and hang up gown and scrub hands before finally leaving room.

This procedure to be followed in each room swept. After all rooms are swept empty container into garbage can and thoroughly wash it with creoline solution.

Hair brooms and hand brushes to be well washed in a soapy 20 creoline solution once a week and left to dry overnight.

Orderlies and cleaners must avoid touching door handles, taps etc. after handling infected material until they have cleansed their hands, as by so doing they may be the cause of carrying infection to other members of the staff handling the same articles and who may in turn unknowingly carry it to the next patient they attend.

Approved:
"F. C. BELL"
General Superintendent

30

"G. A. McCONNELL,"
Chief Orderly.

June 13th, 1927.

EXHIBIT No. 3
 RULES AND REGULATIONS.
 INFECTION.

RECORD
 In the Supreme
 Court of British
 Columbia
 Defendant's
 Exhibit No. 3
 Rules and
 Regulations
 Infectious
 Diseases
 Hospital
 February, 1928

It is the duty of each and every member of the staff to do his or her utmost to reduce the possible spread of infection.

The following points should be remembered and applied faithfully and consistently.

Modes of conveying infection:—

- 10 1. Direct contact—this means touching one person following the touching of infected persons or articles without washing the hands.
2. Droplet system.
3. Flies, insects.
4. Carriers.
5. Unrecognized and undiagnosed cases.

Consider all undiagnosed cases as potentially infectious.

Probationers are not to carry out treatment for undiagnosed cases.

The following simple rules should be followed by everyone.

- 20 1. Wash the hands *frequently* and *always* before meals
2. Wash the hands before preparing patients meals.
3. Do not touch the face, head or anything else after handling a patient until you have washed your hands.
4. Do not allow patients to cough or sneeze in your face.
5. Do not eat anything that a patient gives you.
6. Put nothing but food in your mouth, it is not intended to be a receptacle for the fingers, pens, pencils, pins, etc.

For a physician or nurse to contract a communicable disease from a patient is a reflection on their carefulness and their ability
 30 to carry out the principles of asepsis and infectious technique.

Wash your hands—wash your hands again— and then wash them.

See that you faithfully carry out all instructions in medical and surgical technique, realizing that if you deliberately or carelessly fail to do this, you may be the cause of spreading infection and of undoing the good work of the physicians and surgeons and the other nurses on the ward.

RECORD

*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No. 3
Rules and
Regulations
Infectious
Diseases
Hospital
February, 1928
(Cont'd)

Rules governing the Nursing care of
Infectious Cases.

General Warning.

Nurses are reminded that the chief source of danger to themselves and others is hands, hair and throat. They will therefore arrange their hair in such a manner that it will not be necessary to adjust it when on duty, wash their hands frequently and guard against infection as outlined below.

Special consideration is given to the fact that the observation of careful technique requires time and nurses are requested to co-operate in this respect and not to sacrifice care of detail to speed, or for any other reason. Each nurse should consider the responsibility she owes in this respect to the patients, herself and the institution which she represents. 10

Technique.

All nurses should be familiar with technique as outlined in the following articles—remember infection diseases are contracted (and may be carried) through CONTACT made directly with the patient, or with the patient's bodily discharges. Articles which have come in contact with the patient must also be regarded as possible sources of infection. 20

1. Anything which has come in contact with the patient must be regarded as infected.

2. Do not remove anything from a patient's room except for immediate disposition, i.e. bedpans for sterilization (or disinfection), medicine glasses, dishes, instruments, etc. to be boiled.

3. Give special care to finger nails, wash hands often, always between handling patients, before touching anything to be regarded as clean, and before eating.

4. Keep fingers, pencils, pins and labels out of the mouth. 30

5. Take care not to touch the face or head, put hand in pocket or make use of handkerchief after handling infected articles, until hands are thoroughly washed.

6. Direct contact with patient should be avoided, unless absolutely necessary, children should not be taken from their cots for treatment, feeding or any other purpose. A nurse should take precaution to avoid a patient coughing or sneezing in her face or touching her face or hair. She should only partake of the food provided for the use of the nurses and should never eat on the wards. 40

7. Prophylactic measures to be taken by nurse if exposed by direct contact through patient coughing or sneezing in her face:

1. Remove gown.
2. Wash hands.
3. Wash face thoroughly in dressing room.
4. Gargle and mouth wash with Listerine.
5. Neo-silvol 10% to nose and eyes.

8. Any known break in technique, whether it has been accidental or avoidable should be reported to the nurse in charge of the ward, in order that special action be taken if the circumstances so determine.

- 10 The corridors are regarded as clean. Gowns must therefore be removed each time before a nurse or attendant leaves a room or ward.

Disinfection to be carried out:—

- (1) By sterilization or fumigation, mattresses, pillows, clothes, etc. (Fur, feathers and leather require special care—see special instructions).
- (2) By application of soap and water—hands, etc.
- (3) By boiling—instruments, dishes, enamel wear, all articles that will not be injured by this means of disinfection.
- 20 (4) Soaking in solution Biniiodide, 1-3000 (for at least 30 minutes)

In each instance care must be taken that the contaminated article is thoroughly exposed or immersed.

Regulations governing nurses on duty I. D. H.

Nurses on duty on Isolation wards will live in the Nurses Home, and carefully observe the following rules:—

- Duty On a pupil nurse being assigned to duty in Isolation wards she will first report to the Supervisor and thoroughly familiarize herself with the Isolation rules and practise. She will rigidly observe the Technique described in the following paragraphs.
- 30
- Dress Nurses on Isolation duty will wear regulation uniform dress, go properly wrapped to and from the wards.
- When going on duty, the nurse will discard her wraps in the Dressing Room, and before going to the ward will change her shoes and uniform, wearing the dress provided for nurses when on duty in Isolation. She will wear the uniform cap unless specific instructions are given to do otherwise. She will wear her hair neatly confined
- 40 within a hair net at all times.

RECORD
 In the Supreme
 Court of British
 Columbia
 Defendant's
 Exhibit No. 3
 Rules and
 Regulations
 Infectious
 Diseases
 Hospital
 February, 1928
 (Contd.)

RECORD
 In the Supreme
 Court of British
 Columbia
 Defendant's
 Exhibit No. 3
 Rules and
 Regulations
 Infectious
 Diseases
 Hospital
 February, 1928
 (Cont'd)

When going off duty. Before leaving the ward the nurse will remove her shoes and ward dress and wash the face, neck, hands and arms to the elbows, before resuming her uniform, cap and apron in the dressing room to leave Isolation.

Ward Dress will be changed every other day.

Hair will be washed at least once a week.

Throat. Nurses in contact with patients suffering from diphtheria will have nose and throat swabs taken once a week.

10

Meals Will be taken in the nurses' dining room and for their own protection nurses are warned not to eat anything in the ward kitchen. Nourishment will be provided in the Nurses' Rest Room from 10-10.30 each morning when nurses may go individually to obtain the same. They will report and arrange for suitable relief before leaving the floor.

General Warning.

Nurses on duty in Isolation wards are advised to keep out of doors as much as possible when off duty and are urged to report at once a cold, sore throat or other indisposition. 20

Individual Technique.

Each room, as well as ward, to be regarded as a single unit and individual isolation observed, irrespective of the fact that the patients may be suffering from a common disease, for this reason:—

Each nurse or attendant will wear a gown when doing anything which brings her into direct contact with patient or infected article. Each time before leaving the room this gown will be removed and hung in such a manner as to keep the inside clean. 30
 Hands to be thoroughly washed after disposal of gown.

Individual basin, thermometer, mouth wash, cup and other equipment is provided for each patient and will remain in the room or ward until patient is discharged, when it will be thoroughly disinfected.

Articles may only be removed from the room or ward for immediate disposition as follows:—

(a) In case of rooms not provided with toilet—bedpans are to be placed immediately in the bedpan sterilizer.

(b) Bed linen to be placed in clean bag before being removed from the room and carried immediately to linen chute. 40

(c) Drugs should never be left in patient's room unless placed in cupboard which, in case of children, should be kept locked.

(d) Medicine to be poured outside the room and handed to the patient, medicine glasses to be collected and sterilized.

(e) Nourishment trays to be carried to the sink room where they will be scraped by the maid and placed with dishes in sterilizer before being washed.

(f) Should it be necessary to come into direct contact with patient while administering treatment or medicine or when serving tray, nurse will put on gown.

(g) Ice caps and hot water bottles will be refilled in individual rooms, ice and hot water (tested) to be taken to rooms in clean container which will be treated as an infected article each time it is taken from the room.

February, 1928.

RECORD
In the Supreme Court of British Columbia

Defendant's Exhibit No. 3
Rules and Regulations Infectious Diseases Hospital
February, 1928
(Cont'd)

EXHIBIT No. 4

PLAN OF SECOND FLOOR OF INFECTIOUS DISEASES BLOCK OF THE GENERAL HOSPITAL

Defendant's Exhibit No. 4
Plan Second Floor General Hospital

RECORD

*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No. 1
Ward History
A. McDaniel
Jan. 17, 1932
to Feby. 3,
1932

EXHIBIT No. 1

WARD HISTORY

V. G. H.

WARD—I. D. H. 3	C.56826—Hosp. No.
NAME—McDaniel Annabelle	Kennedy W. D.—Doctor.
ADDRESS—763 W 8th Ave.	Fair. 721.L Phone No.
RELIGION—R. C.	Jan. 17/32 Date Admission
OCCUPATION—Schoolchild	Feb. 3/32 Date Discharged
NATIONALITY—Canadian	Date of Death
AGE— 9 SEX F	History taken by 10
PROV. DIAGNOSIS—Diphtheria (Tonsillas)	
FINAL DIAGNOSIS.	

Complaints—

1. Sore throat—2 days.
2. Swelling of neck—1 day
3. Slight fever and malaise 2 days. Patient became sick Jan 15 e a sore throat and slight headache. Was rather warm the night of Jan. 15-16. Jan. 16th throat very sore and parents saw patches in the mouth. Developed a swelling left side of neck which was quite painful. Swallowing moderately difficult due to soreness of throat but foods etc. did not taste right. Did not vomit. Jan. 17th seen by Dr. Kennedy because of aggravation of all complaints and sent to I. D. H.

Past history—

Infectious diseases—Measles
History of sore throat.
No. R. F. syndume—No. T. B.
History—Not vaccinated?—No anti-toxin

Family history—

Father and mother alive and well
4 other children—no present complaint—A. I. W.

30

HISTORY CONTINUED

Ward—I. D. H. 3	C.56826—Hosp. No.
Name—McDaniels Annabelle	Kennedy W. D. Doctor.

P. X. Rather slight well nourished girl who is apparently of a nervous nature. In no distress and is quite bright.
Head—Scalp clean—No sinus or mastoid tenderness.
Eyes—Conjuntiva clear—react to L.
Normal movts. etc.

Ear—Neg. Nose—Neg, except for polypos of rheum.
 Mouth—Fetid odor to breath. Tongue coated, pertacles in mid line. Thick whitish grey membrane extending over left tonsil, purces and soft palate e projection into post pharynx. Membrane does not strip, leaves bleeding parts when torn off. Pharyngeal reflex present.
 Tonsils (rt. neg) Teeth fair—except for 1 or 2 caries.
 Neck—Swollen glandular mass on left side of neck about size of walnut. Cervicals palpable, not tender. No rigidity of neck.
 10 Chest—Neg.
 Heart—Forcible apex beat—loud H. Ts—regular rhythm—no deficit—rate about 94.
 Abdomen—Neg.
 G. U.—Neg.
 Extremities—Neg.
 Nervous-tendon reflexes all present and active. No abnormal reflexes.
 Skin—No rash or pediculli.
 Treatment—20,000 units Anti-toxin Routine Dip.
 20 (BALANCE OF EXHIBIT No. 1 OMITTED BY CONSENT)

RECORD
 In the Supreme Court of British Columbia
 Defendant's Exhibit No. 1
 Ward History A. McDaniel
 Jan. 17, 1932 to Feby. 3, 1932
 (Cont'd)

EXHIBIT No. 2

Vancouver, B. C.
 Feb. 15, 1932.

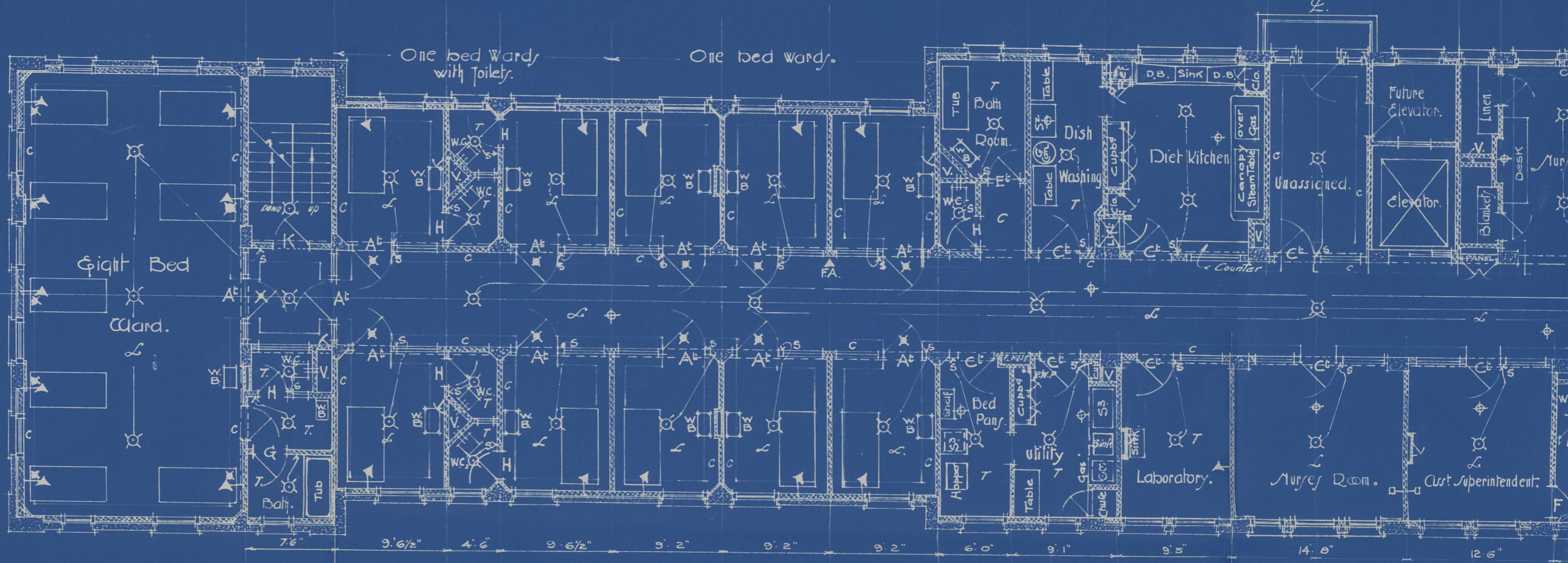
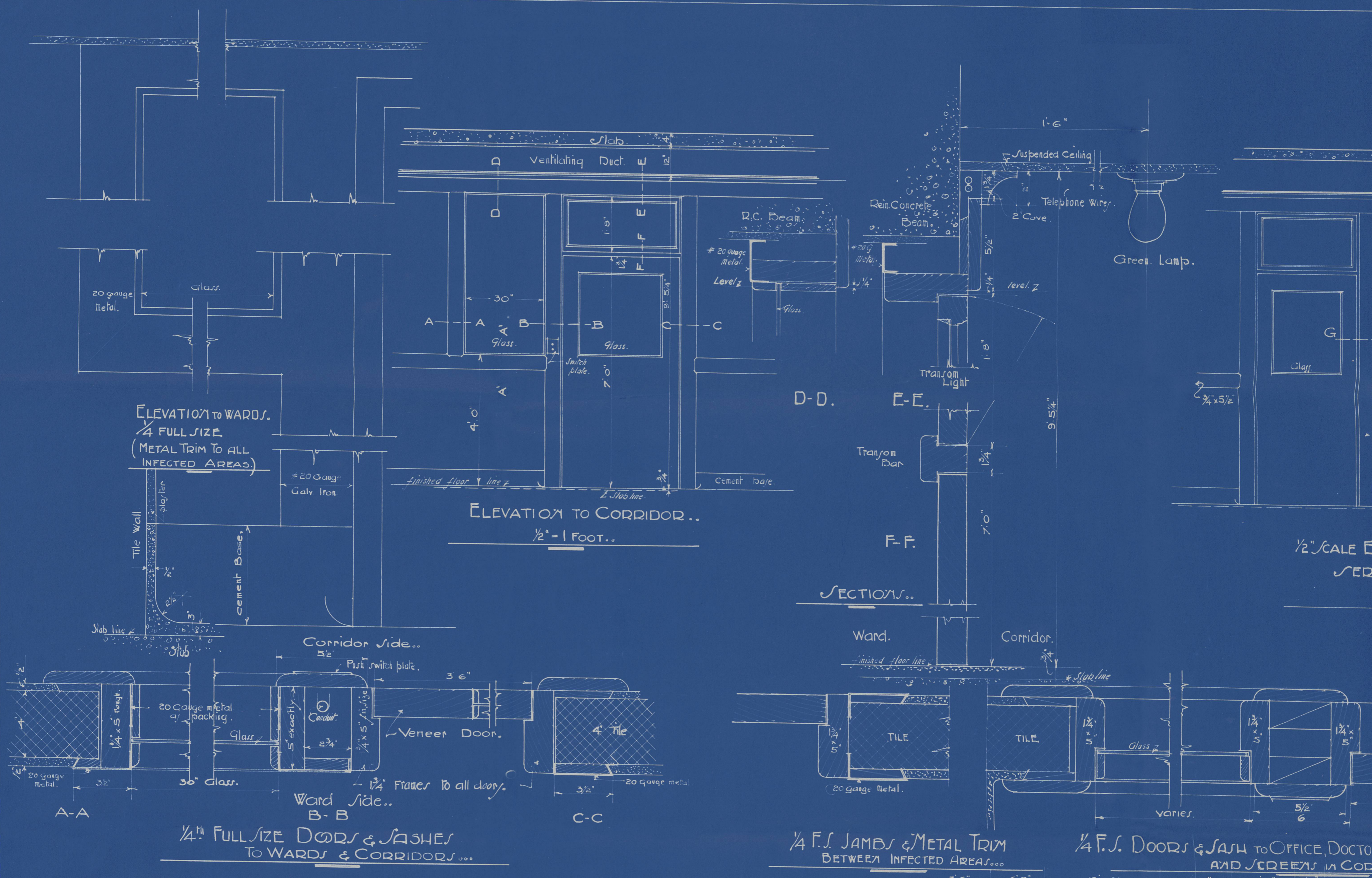
C56826.
 Mr. M. G. MacDaniel.
 763 W. 8th Ave., City.
 Dr. To

Plaintiffs' Exhibit No. 2
 Account General Hospital with M. G. McDaniel
 Feby. 15, 1932

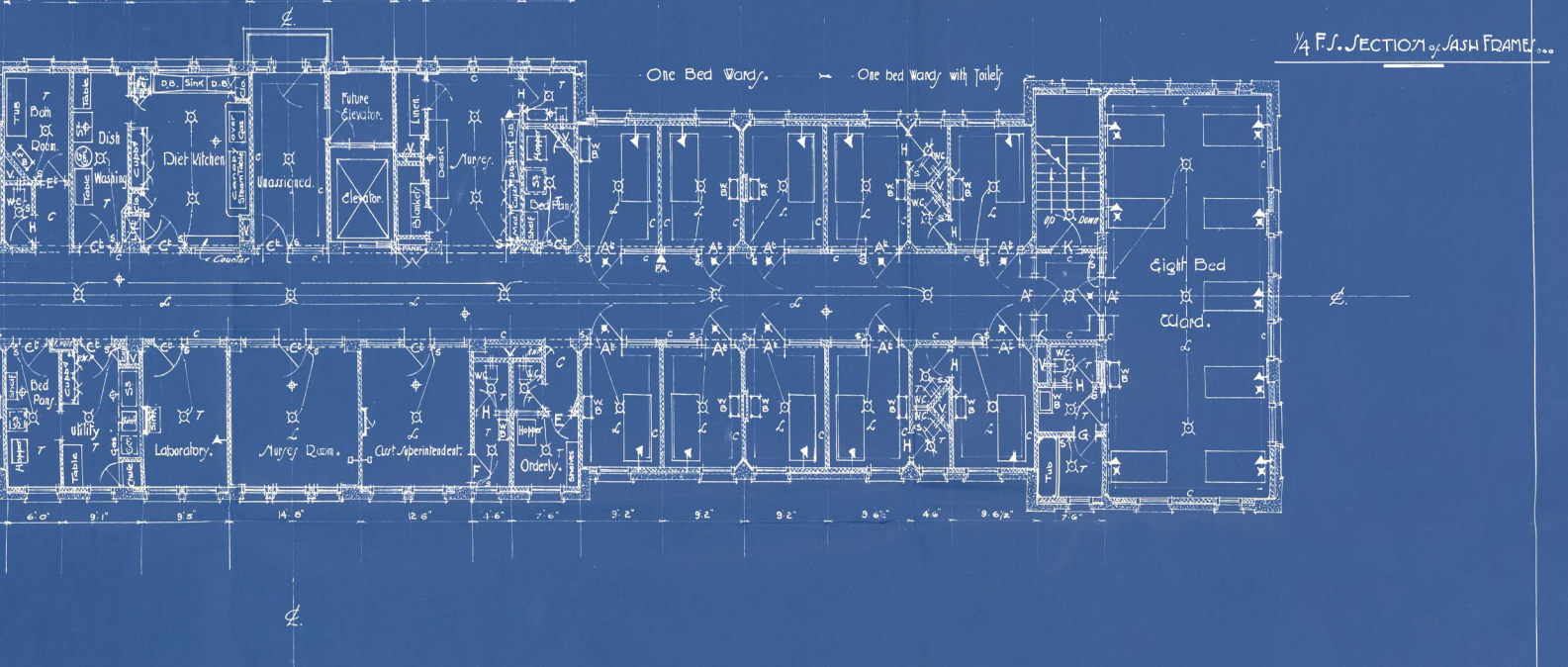
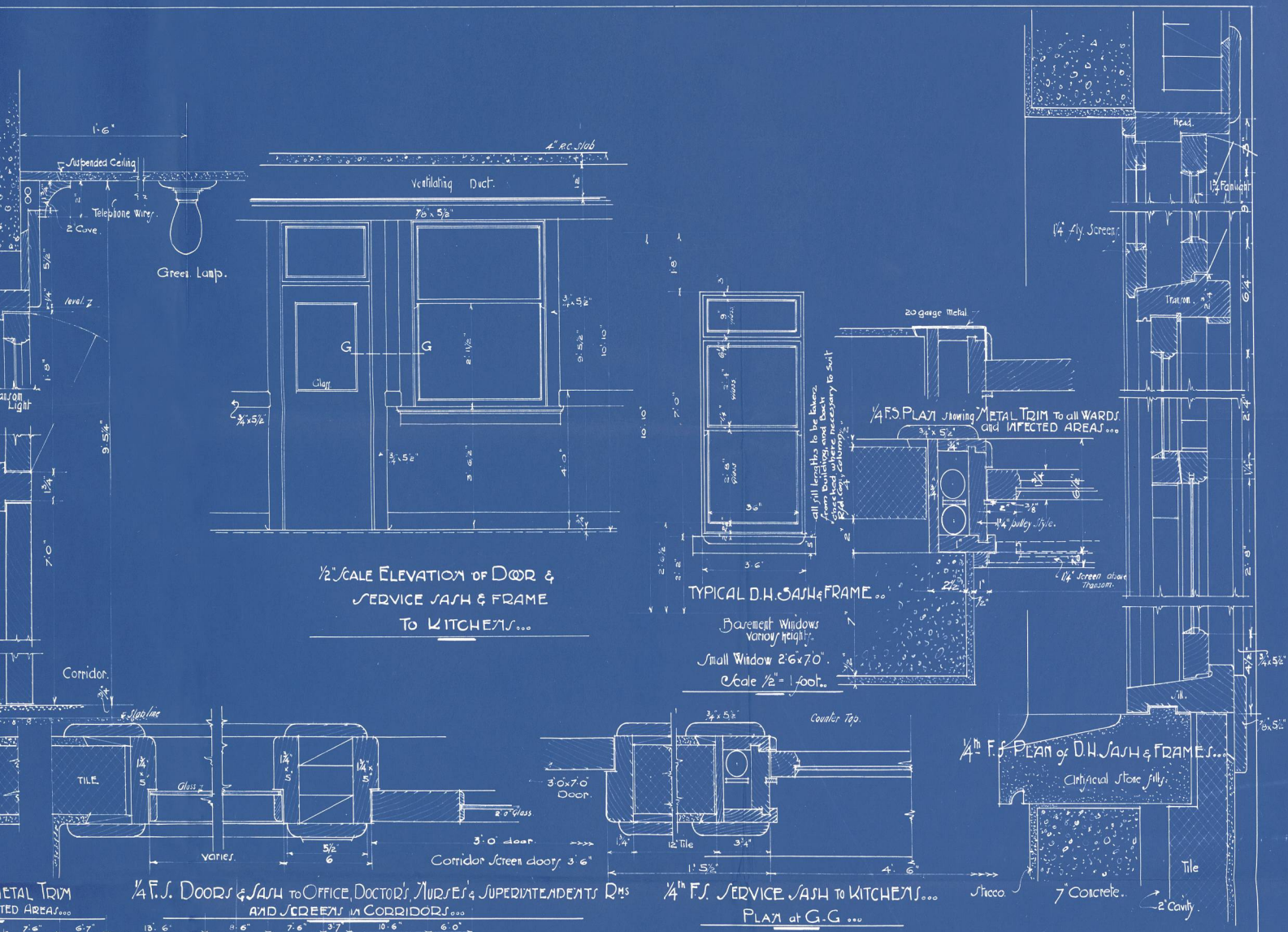
THE VANCOUVER GENERAL HOSPITAL.
 Re. Annabelle.

30	From	Jan. 17, 1932			
	To	Feb. 3, 1932			
		17 days at \$2.50 Per day			42.50
	Extras, if any:				

			Total		42.50
	By Cash		To Feb. 4		30.00
			Balance		12.50
40					_____



SECOND FLOOR PLAN.



For Legend see Sheet No 3.

Drawing No. 4 of 3 sheets	CITY OF VANCOUVER..B.C.	SCALE... 1/8" = 1/2 inch = 1/foot.
Drawn by: P. F.	INFECTIOUS DISEASES BLOCK. OF THE GENERAL HOSPITAL ...	DATE ... August, 29 th 1925.
Checked by:	GENERAL DRAWINGS...	
Set No:	PLANS & DETAILS ...	