

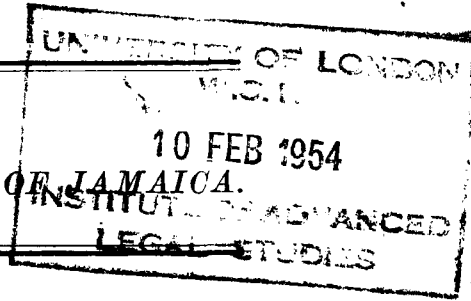
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17, 1953

No. 19 of 1952. 33549

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF JUDICATURE OF JAMAICA.



BETWEEN

LAWRENCE ADRIAN MOODIE (Plaintiff) - - - - *Appellant*

AND

LENNOX M. JOHNS (Defendant) - - - - *Respondent.*

RECORD OF PROCEEDINGS

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In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF JUDICATURE OF JAMAICA.

BETWEEN

LAWRENCE ADRIAN MOODIE (Plaintiff) *Appellant*

AND

LENNOX M. JOHNS (Defendant) *Respondent.*

RECORD OF PROCEEDINGS

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In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF JUDICATURE OF JAMAICA.

BETWEEN
LAWRENCE ADRIAN MOODIE (Plaintiff) *Appellant*
AND
LENNOX M. JOHNS (Defendant) *Respondent.*

RECORD OF PROCEEDINGS

10

No. 1.

PARTICULARS OF CLAIM.

IN THE RESIDENT MAGISTRATE'S COURT.

For the parish of Kingston.

Holden at Kingston, Civil Division.

Between DR. L. A. MOODIE, 82 King Street, Kingston Plaintiff

and

L. M. JOHNS, c/o Administrator General's
Office, Kingston Defendant.

*In the
Resident
Magis-
trate's
Court.*

No. 1.
Particulars
of Claim,
20th
April 1948.

The Plaintiff's claim is against the Defendant to recover the sum of
20 NINETY-SEVEN POUNDS THIRTEEN SHILLINGS (£97 13/-) due and owing by
the Defendant to the Plaintiff for professional Services rendered.

The Plaintiff also claims costs and Solicitor's costs hereof.

(Sgd.) T. N. WILLOUGHBY,
Plaintiff's Solicitor.

This Complaint is filed by T. N. WILLOUGHBY, of No. 117 Tower Street,
Kingston, Solicitor for and on behalf of the above-named Plaintiff, whose
address for service is that of his said Solicitor.

*In the
Resident
Magis-
trate's
Court.*

No. 2.
NOTES OF OPENING.

Plaint No. 1886/48.

IN THE RESIDENT MAGISTRATE'S COURT.

For the Parish of Kingston.

Holden at Kingston (Civil Division).

No. 2.
Notes of
Opening,
14th
September
1948.

Between L. A. MOODIE Plaintiff

and

L. M. JOHNS Defendant.

14.9.48.

10

Evelyn of Counsel for Plaintiff.

Manley of Counsel for Defendant.

Evelyn opens : Claim for Professional Services rendered.

By Consent : Correspondence put in Evidence.

17.1.48 to Defendant }
4.2.48 to Plaintiff } together marked Ex. 1.
28.7.48 }

No Counter-claim filed.

Manley : Defence—Set out in letter dated 4.2.48.

(1) Services rendered were rendered in negligent manner.

20

(2) Defendant's wife did not have benefit of that degree of skill that a proper medical man has and should have possessed and used.

(3) Claim for other Doctors : Defendant does not admit that Plaintiff can in case take an action on their behalf. Doctor's claim given cannot be dealt with in this case.

Jurisdiction admitted.

Evelyn asks that Defence state particulars of negligence alleged.

Manley gives Particulars of Negligence.

(1) Plaintiff employed to attend Defendant's wife in her expected confinement with view to safe delivery of the child. As result of Plaintiff's error child not safely delivered—died prior to delivery.

(2) By reason of Plaintiff's failure to diagnose true condition of Defendant's wife and his delay in taking appropriate measures—ordering Cæsarian operation—child died within womb and mother's life gravely imperilled.

(3) On the day of expected confinement Plaintiff absented himself from Kingston, was unavailable to Defendant for 24 hours after onset of symptoms which required medical attention.

(4) Plaintiff when requested to call in a consultant refused or failed to do so and assured Defendant no need for consultant, when in truth and in fact the condition of Defendant's wife was in fact a serious one.

*In the
Resident
Magis-
trate's
Court.*

(5) Plaintiff, when after undue delay did decide to call in consultant—delayed in securing the attendance of a consultant—until it was too late to save life of child.

No. 2.
Notes of
Opening,
14th
September
1948,
continued.

(6) Plaintiff was so negligent that he failed to discover the symptoms at the onset of death of child, that child died in there; Plaintiff being unaware of fact, imperilling life of mother and aggravating her subsequent illness and suffering.

(7) Plaintiff failed to recognise that the case was one in which a Cæsarean operation might be necessary, took wrong measures for a case in which such an operation might be necessary. Failed to take any steps to secure Defendant's wife removal to institution where such an operation could be performed rapidly if such operation became necessary; failed to advise such operation until it was too late to save life of the child and caused further delay which gravely imperilled the life of the mother.

PLAINTIFF'S EVIDENCE.

No. 3.

*Plaintiff's
Evidence.*

20

LAWRENCE MOODIE.

LAWRENCE MOODIE, sworn.

No. 3.
Lawrence
Moodie,
14th
September
1948,
Examin-
ation.

Registered Medical Practitioner. 29 years' practice. Office: 82 King Street, Kingston. Nursing Home: Half Way Tree Road, St. Andrew. I have carried on Nursing Home for 15 years. Practising Gynæcologist.

Defendant's wife was a patient and attended my Ante-natal Clinic from April, 1947. She came to me at my office where I examined her. I found her pregnant and gave advice from time to time. She came about once per month throughout the pregnancy.

The charges now claimed are not related to these monthly visits.
30 These were paid for as she came.

I charge for the treatment 30 guineas. I am also collecting for Dr. McFarlane 10 guineas. Services were rendered in consultations with:—

Consultants: Drs. Parboosingh	£36 15 -
Stockhausen	3 gns.
Evans	15 15 -

It is the practice that when a Doctor is called in consultation the Doctor so called looks to the Doctor calling for his fees, and sends a Bill to such Doctor, not to the patient. This is the custom and the custom recognised by the S.M. Council.

*In the
Resident
Magis-
trate's
Court.*

*Plaintiff's
Evidence.*

No. 3.
Lawrence
Moodie,
14th
September
1948,
Examin-
ation,
continued.

Dr. Parboosingh ultimately operated on Defendant's wife.

Defendant's wife last attended at my office 13.11.47. I examined her. Condition was normal and that the baby's head was engaged—well fit into the Pelvis. She was very nervous and spoke of people telling them of cutting off the Baby's head, of different gruesome operations at child's birth. I advised her to keep quiet and not to notice such people. I advised her not to allow her friends to come in and play cards, and return home to take a dose of castor oil, and to keep a light diet. This is usual in the last three months of pregnancy.

I gave Defendant's wife some medicine, digestive for the stomach. 10

On 20.11.47 I had appointment with Dr. Stephenson, Morant Bay, and I called up and asked Defendant's wife how she was getting on. She said: "Fine, no signs of labour."

I went to my King Street office. Delivered a patient with forceps about 12.30 p.m. Left Kingston 1.40 p.m. for Morant Bay to meet Dr. Stephenson. Returned after 10 p.m.

I left instructions with a nurse that if anyone came in ring me at Dr. Stephenson's home, or if very important to call Dr. Stockhausen.

Nurse Waite at Barton Court. She worked with me for over 10 years, and during my absence abroad she ran the Nursing Home satisfactorily 20 for me for six months.

My wife is a qualified nurse and Matron in charge of Nursing Home and she is qualified to give proper attention in case of confinement. My wife not at Nursing Home the 20.11.47.

On my return after 10 p.m. I received report from Nurse Waite that she got call at 3.30 p.m. from a person who said he was Mr. Johns that his wife whenever she passed urine and used tissue she saw traces of blood. I asked if there were any pains and the answer was no pains. I said: "If the pains start bring her in."

The person on the telephone asked if I had already gone to the 30 country. I said he has already gone down to King Street. I can't tell. He will be back about 6 p.m. (I had expected to be back at 6 p.m.) I got another call about 8.30 p.m. A voice said, speaking for Mrs. Johns, and asked if you had returned.

I telephoned Mr. Johns that I was going out to the country.

I rang up telephone number which I knew to be Defendant's number. I got no answer.

Next morning about 7.30 a.m. Defendant called me on the telephone. He said: "Any time my wife uses tissue she sees traces of blood." I said I will come down as soon as I could. 40

I had an operation at St. Josephs, and after that I went to Defendant's about 8.30 a.m. I can't be precise.

I found Defendant's wife sitting on the verandah, Defendant present. She said: "I am perfectly alright, and went for a motor car drive yesterday, and after I came back I saw traces of blood whenever I used tissues."

I told her to go inside, and I examined her. I found that blood was coming not from the vagina but from the bladder. It would have been normal for blood to come from the vagina and not from the bladder.

In the Resident Magistrate's Court.

I asked Defendant : " Is she keeping on the diet ? " Defendant said : " No, she was keeping so well that she did not bother with the diet."

Plaintiff's Evidence.

I advised the wife to come into the Nursing Home and she was brought in same morning.

No. 3.

I took wife's blood pressure. It was 140^s over 100^D. Normal the week before—was 120^s over 70^D. Normal in a pregnant woman. I can't tell where I took blood pressure, home or Nursing Home.

Lawrence Moodie, 14th September 1948, Examination, *continued.*

At the Nursing Home I examine wife. She complained of pains in her chest and head. I gave her injections of calcium gluclate to stop pains by helping liver.

The sudden rise within one week in the blood pressure was something to be regarded with concern and the blood in the urine made it extra serious.

I suspected Toxemia pregnancy—treated her accordingly. Injection, rest in bed and sedatives, plenty of fluids. I used for sedatives Bromides mixed with chlorides.

20 I examined Defendant's wife again said afternoon. Blood pressure was 140. Urine a little better i.e. less trace of blood. She complained terribly of pains in chest, and felt as if head was bursting.

I decided then that since she was under the term to puncture or rupture membrane. This would relieve the tension in the chest and in the abdomen, and this would bring her into labour.

This is the least dangerous of all obstetrical operations and is a standard treatment of such condition—Toxemia.

30 Defendant's wife did not complain of other pains. She was very restless. Such pains are called Epigastric pains and means that fits are not far off—eclampsia. Then condition was pre-eclamptic. This was about 7 p.m. 21.11.47.

I removed her to Labour Room, administered anaesthetic and punctured the membrane.

40 I saw Defendant at the Nursing Home about 7.30–8.00 p.m. I told Defendant the nature of the case, and that his wife's condition was serious as the patient could get fits or anything like that. Defendant said : " I would like to have a consultation." I said : " Alright, if you are agreeable." I mentioned Drs. Parris, Parboosingh and Stockhausen. Defendant said : " I want Dr. Mellad as he is related to my wife." I agreed. Defendant then called up Dr. Mellad on my telephone. He could not get Mellad and Defendant said : " I know where to find Dr. Mellad " and he left.

Defendant returned later and said : " I can't find Dr. Mellad " I said " All right. In the morning will do all the same."

*In the
Resident
Magis-
trate's
Court.*

*Plaintiff's
Evidence.*

No. 3.
Lawrence
Moodie,
14th
September
1948,
Examin-
ation,
continued.

About midnight I visited Defendant's wife. She was restless, but otherwise in a fair condition, having regard to the disease. She was still kept on sedatives.

Next morning I took her blood pressure. It was 158^s over 100^p. She complained of headache and I gave another injection of calcium gluconate and morphine and kept her on the sedatives and fluids for the day, and left her in charge of the nurse.

It is the practice to keep such a patient on a low protein diet so as to rest the kidneys and encourage repair, and is called pre-eclamptic diet.

Diet—coconut water, glucose, barley water and other fluids. I 10 noticed that the condition of the urine had improved a whole lot.

Dr. Mellad telephoned to me and I gave him full explanation of the condition and treatment. I asked him to go and see her and he said he would ring me up.

Later on Dr. Mellad rang me up and we had a talk. He said that he agreed with my treatment.

Defendant's wife started labour pains about 10 a.m. The matron reported that she was dilated and that the head was well down.

I saw her about 1.30 p.m. I examined her. I had to put her under an anæsthetic. She was hysterical and uncontrollable. She bit one nurse 20 and kicked another in the abdomen, so I put her under anæsthetic.

I found that she was a little more than half dilated. At this stage persons in pre-eclampsia tend to develop fits, and I decided to apply forceps and see if I could extract the child.

I had to use ether instead of chloroform, as chloroform tends to damage the liver being much stronger than ether.

I could not use too much force as a pre-eclamptic patient cannot stand too much shock. I tried to extract the baby, but did not succeed.

I decided to give her more time to see if she would relax, and about 4 p.m. I re-applied the forceps but found that she was in a state of rigidity. 30 In this condition only three things could be done.

(1) Continue the sedative treatment so that after the sedative condition had passed she would be able to push out the baby.

I did not apply this treatment. Her condition was such that I felt that after the sedatives wore off she would be just as violent.

(2) Destructive operation. The fœtus is cut up—extracted in pieces— . . . craniotomy.

I did not attempt this treatment as it carried a higher maternal mortality than other treatments and carries a lot of shock.

(3) I decided we should have Cæsarean section.

40

I realised it was a serious operation and carried a maternal mortality of 47%. In a Cæsarean section the fœtus mortality is lower than the maternal mortality. It is considered good medical practice to save the mother and sacrifice the foetus. That was about 4.30 to 5 p.m.

Defendant was present all the time. I told Defendant I was going to get Dr. Parboosingh. Defendant agreed. Dr. Parboosingh was called and came about 45 minutes after we decided to call him.

Dr. Mellad was also present. I did not call him. I saw him there.

When Dr. Parboosingh came he examined Defendant's wife externally and said: "Cæsarean Section." There is less shock in doing Cæsarean Section than doing destructive operation.

Dr. Mellad felt we should use the sedative treatment as it was the safest method.

I said I felt a Cæsarean Section should be done because from the experience we had of Defendant's wife, she would become violent as soon as the sedatives wore off.

10 Parboosingh said: "I will go home for dinner" and we could decide.

Dr. Parboosingh attempted to make an internal examination, the wife jumped up in a hysterical condition and he could not do so.

Defendant said: "Get a third person. Call Dr. Stockhausen." I agreed and Stockhausen was called. He came after Dr. Parboosingh had left. I gave Dr. Stockhausen the history of the case and he decided that a Cæsarean Section should be done.

Dr. Parboosingh returned. Present were Dr. Parboosingh, Dr. Stockhausen and myself, also Mellad. We decided to take her to Nuttall Hospital for a Cæsarean Section. My operating room was being
20 repaired and for a successful Cæsarean Section it is necessary to have a team work and best facilities.

Just before Defendant's wife left for Nuttall, Defendant asked me to call Dr. McFarlane. He was called and came as a surgeon and assisted.

At the Nuttall, Dr. Parboosingh assisted by Dr. McFarlane, wife was operated on, and I gave anæsthetic. The baby was born dead, wife survived.

I had suspected this from about 2 p.m. as I could not get the foetal heart. I could not tell definitely for on many occasions you put tester to abdomen and can't hear the foetal heart—thick abdomen or the toxemic
30 condition.

During the lying state she was given blood plasma and transfusion. I visited her twice a day for the first 4 days. On the fourth day she complained of pains in the shoulder. I took up some medicine to wife day after she had baby. On the fifth day after operation I met Defendant at the door of room and he said: "I don't want you to see my wife any more (I left without seeing her that day), because she gets hysterical each time she sees you."

Ultimately, it was decided for Dr. Parboosingh to attend to her. Next day Defendant came to me and said: "I did not mean that you
40 should give up the case all together. You can supply her with medicine."

I still visited the Hospital, looked at her chart and gave her medicine and saw how she was progressing.

The day wife was leaving Nuttall, Dr. Parboosingh and I went to the Hospital. Dr. Parboosingh went in to see her. He returned saying she wants Dr. James to be her doctor. I said: "She can get any doctor." Later, I heard she had got Dr. Clarke.

*In the
Resident
Magis-
trate's
Court.*

*Plaintiff's
Evidence.*

No. 3.
Lawrence
Moodie,
14th
September
1948,
Examin-
ation,
continued.

*In the
Resident
Magis-
trate's
Court.*

As far as I know wife has fully recovered. My fee from 20/11/47 for medical attention is 30 guineas, a reasonable fee for the services rendered. I consider the fees charged by the other Doctors to be reasonable for the services rendered.

*Plaintiff's
Evidence.*

No. 3.
Lawrence
Moodie,
14th
September
1948,
continued.
Cross-
examin-
ation.

XXD.: I am responsible for paying consultants. I have not paid the fees. I am responsible for the surgeon's fees. I am responsible for Dr. McFarlane's fees. I called him. He said: "He would not come if Mr. Johns wants me. I will come if you want me." He asked to be allowed to speak to Defendant. I heard Defendant say: "I am a Civil Servant, you have operated on my wife before." 10

I keep records of patients who attend Ante-natal Clinic.

Examined on each visit, say one necessary per month. I examine heart, take blood pressure. Examine urine, examine the vagina to see how foetus is developing or any disproportion developing, advise to diet, exercise. I also examine foetal heart, examine to find size of pelvis; these are about the chief things.

I have no normal routine to check on each month.

I do pelvic measurement when the child is sufficiently developed, so as to see size of head and pelvis. I keep no records of the month to month examination. 20

I keep record of the blood pressure, i.e., I keep some record month by month. It is correct to keep a record of month to month examinations.

There are certain things that have to be done each month, testing urine, blood pressure.

I keep no records of what a patient tells me; each occasion I may forget what a patient tells me.

Wife told me that she had been once operated on by Dr. McFarlane, and that he thought her uterus was infantile. She said infantile. I kept no record of it. I said: "No, it had a baby in it."

Where a patient shows abnormalities a routine record is kept of what is found on each occasion. The nurse does certain things and she records in a Day Book. When the Doctor has to make a record he tells the nurse what to put down. 30

Wife was an abnormal case, not difficult case, a serious case.

A record was necessary and was kept and shows all important things done, symptoms observed, and noted.

I am willing to produce the records. They are in Court.

When I am consulted about a pregnancy I make an estimate of delivery.

When a case is coming into my Nursing Home I make a record from the beginning. I know wife was entering Institution. 40

I have another book in which her date may be entered. I don't know if I have a record of the expected date, but I do know that it was November 20th. She told me that she last menstruated 13.4.47.

I knew when I rang up Defendant's wife that 20th November was the expected day of labour. I was in Kingston up to 1.40 p.m.

I never told Defendant that I had got message about urine. I was never informed that wife had rung up in the day and that a nurse had told her it was only a show.

I agree that such a message should have been given to me. I would say if I got a report that when labour was expected 20th November and blood was found in the urine it would be gravest negligence not to examine the patient then and there.

10 Blood in the urine is a serious sign at any time, and near the end of pregnancy it is very serious. It means kidneys are inflamed. It would mean that I must treat the kidneys. The quicker the treatment the better chance the patient has.

The condition tends to cause death to the child.

(1) From the toxemia in the system.

The placenta becomes infected and the child dies.

(2) of the placenta can cause death of the foetus. I don't know why the child dies. If the mother's blood pressure is increased I can't tell what happens to the child's blood pressure.

Luncheon adjournment.

I now produce my records showing entry made 13.11.47.

20 It is not standard practice to keep record of each maternity case separately.

This is the record (*Marked Exhibit 2*).

In the final month I have to make a check up on a lot of things. I now say I made the examination, but made no record. The record is chiefly of the urine.

The record reads: Mrs. Johns—pregnancy. 9 months urine trace. It means that nothing else found on examination was worth noting. Trace means cloudy . . . phosphates in it . . .

30 *Question*: Does the word "Urine trace" in a medical note book—pregnancy—and can mean albumin or phosphates.

I agree trace can mean albumin.

There is no record of the blood pressure. I give my evidence from memory.

Albumin in the urine is one of the symptoms of developing kidney trouble and of toxemia.

Urine cloudy has a meaning; phosphates make the urine cloudy, so does pus.

I have marked all the places of examination of Defendant's wife.

40 This other book is really a diary kept at the Nursing Home. There is no continuous case record for each patient.

There is no entry in the Diary (*Exhibit 3*) of the time when I discovered that the foetus may not have been alive.

I took the blood pressure of wife either at her home or when she came to the Nursing Home. I next took it the same afternoon.

*In the
Resident
Magis-
trate's
Court.*

*Plaintiff's
Evidence.*

No. 3.
Lawrence
Moodie,
14th
September
1948,
Cross-
examina-
tion,
continued.

*In the
Resident
Magis-
trate's
Court.*

*Plaintiff's
Evidence.*

No. 3.
Lawrence
Moodie,
14th
September
1948,
Cross-
examina-
tion,
continued.

The entry 6.00 p.m. Blood pass when B. distend. That was just before I punctured the membrane.

At that time the position of the head was entirely normal. It was engaged in the pelvis. The head had advanced. As the finger was put say 1½" into the vagina you could feel the head through the cervix. The head remained where it was. The head was as far down as described on the Saturday 22nd.

When I ruptured the membrane the head was fully engaged in the pelvis.

In many cases where a woman is having her first child if the pelvis is normal I think it is all right to rupture the membrane. 10

When I ruptured the membrane the cervix could admit two fingers. The cervix was not hard or rigid. I did not attempt then to dilate the cervix. I attempted to dilate the cervix on the Saturday afternoon. I wanted the wife to deliver the baby.

Up to then there was no sign of onset of labour.

The cervix may dilate to admit up to two fingers for some cause.

I never told anyone labour had come on but it is of the niggling variety. I would have used the words "slight pains".

I did say the cervix did not dilate as well as it should. 20

Up to the time I ruptured membrane there was no sign of onset of labour.

On the Friday night I considered the condition of wife serious. (1) Suffering from pre-eclampsia. This did not indicate the treatment for a Cæsarean Section that would be the worst treatment.

The constitutional rigidity made a Cæsarean Section necessary. On the Friday night I did not think that I would have to resort to a Cæsarean Section.

I am afraid of that treatment. It is a dangerous treatment. There is a high English authority to say it is the worst treatment. 30

On Friday night Defendant asked me if I would like a consultant. I named Parboosingh, Parris, Stockhausen, and Defendant named Mellad. This was after I had treated her in Labour Room.

Defendant failed to find Dr. Mellad.

I did not tell Defendant that night that wife had responded so well to treatment that there was no need for a consultation.

I did tell Defendant consultation in the morning would do just as well. In my opinion there was no need then for a consultation. Defendant wanted a consultation and I named three Doctors.

On the following morning the condition of wife was worse. Urine 40 was clear but blood pressure higher. This indicated kidneys better, but the blood pressure had gone up. There was a sharp rise and was dangerous.

Dr. Mellad saw wife that morning. My wife was present. That would be about 11 a.m. I had left her between 9.30-10 a.m. I got a report that labour pains started after 10 a.m. Saturday.

There is no entry in the Book (*Exhibit 3*) about all this. The nurse whose duty it was to write up the book was with wife all the time.

I saw Defendant after 1 p.m. I never said all is going O.K.

Pre-eclampsia is only a step of eclampsia. Epigastric pains—pains in head as if head would burst—all symptoms of pre-eclampsia.

Wife should not forget pains in her chest. She complained of this pain from Friday right into Saturday evening. I can't account for wife having forgotten it.

Pain in the chest is one of the most significant symptoms.

I told Dr. Mellad that I had diagnosed a pre-eclamptic condition. I told Dr. Parboosingh. I showed them the urine.

10 The whole case was dealt with by the experts as a pre-eclampsia case. The main question for the experts was the rigid state.

This is a condition in which the uterus loses its polarity. Both cervix and uterus contracted at the same time.

This is not the condition called tonic contraction of the uterus.

There is nothing to be done about the contraction of the uterus, medically. I am not speaking of a spasmodic contraction of the uterus, nor of a tonic contraction of the uterus. This is a contraction of the uterus and of the whole body.

20 I agree with the statement in Hand Book of Midwifery, page 249—Cumyns Barkly.

I first detected onset about 4 p.m. when I attempted to use forceps.

Before this there was no sign of this condition coming on, and it was after I could not hear the foetal heart. This condition usually causes the death of the child. After the onset of this condition it would be fair to assume that the child was dead.

Up to 6 p.m. I did not refuse to say the child was dead. I said I was not sure the child was dead, and I told Parboosingh I could not get the foetal heart. I don't remember if I told him for how long.

30 The moment the child died it did not increase the danger to mother's life. Sometimes the mother improves when the child dies. The death of the child did not indicate that the matter was becoming urgent.

I told Parboosingh I was of the opinion it was a case of pre-eclampsia and I told him of the constitutional rigidity. He could have found that out himself by examining her externally, I told him that I was unable to detect the foetal heart.

The tonic condition of the constitutional rigidity could have killed the child.

40 I did tell Parboosingh of the case in this manner. I did tell him of pre-eclampsia and constitutional rigidity. I did tell him I considered a Cæsarean Section necessary.

I did not tell him the cervix would not dilate as it should. I had dilated the cervix fully with my hands. To put in the forceps I had to dilate fully. Full dilation would be about 4 inches.

I did not tell Parboosingh the labour pains were niggling. The labour pains were not satisfactory. She was having good labour pains.

I did tell him that I gave wife a good sedative with the hope that the head would come out and that all would be well.

*In the
Resident
Magis-
trate's
Court.*

*Plaintiff's
Evidence.*

No. 3.
Lawrence
Moodie,
14th
September
1948,
Cross-
examina-
tion,
continued.

*In the
Resident
Magis-
trate's
Court.*

*Plaintiff's
Evidence.*

No. 3.
Lawrence
Moodie,
14th
September
1948,
Cross-
examina-
tion,
continued.

I say Dr. Parboosingh was told of the absence of the foetal heart beat. I say the head was full down in the pelvis.

It was not Dr. Parboosingh who told me that the child was dead. It was not Dr. Parboosingh who first mentioned Cæsarean Section. It was my opinion and that is why I got Dr. Parboosingh. He did not say it should have been performed long before.

I never said the child was not dead nor that the drugs I had given had slowed down the heart beat of the foetus.

Only Dr. Mellad disagreed with regard to the Cæsarean Section.

The first of my remarks to Dr. Parboosingh was: "A Cæsarean Section is necessary." I told him the condition of hysteria and sitting and kicking might bring on a fit, and that is why I would not try the sedative treatment. 10

The child cannot be born where a state of constitutional rigidity exists. The child is certain to be killed.

When I came to the conclusion about the pre-eclampsia I decided against a Cæsarean Section but when the constitutional rigidity came on I had to consent to it.

Dr. Parboosingh said he thought a Cæsarean Section was necessary for it brought on less shock. I did agree with him that is why I called him. 20

When he gave his opinion I did not keep quiet because I did not agree.

Dr. Parboosingh did say every hour's delay will reduce the mother's chance of living 20 per cent.

The child had been dead for hours. I think the child was dead from about 2 p.m. I could tell from looking at the child, unless it was dead for over 24 hours. The skin strips after 24 hours . . . maceration.

If a Cæsarean Section had been performed in the morning the mother and child might have died.

I don't think she was better than she was in the morning. I think she had a better chance to recover from a Cæsarean Section in the evening than in the morning, for she had a chance to recover. I could see the urine was clearer. Specimens were taken every time wife passed urine. 30

In the morning it was red bloody colour, then it was like Porter—blackish, then it became clearer. This black colour urine is characteristic of Eclampsia.

Part heard and adjourned—15.9.48.

Continued :

15th
September
1948.

XXD. continued : I did not send for Dr. Parboosingh on my own initiative. I told Defendant I wanted him and he consented. 40

My view was the case had reached a stage that something must be done. I decided a Cæsarean Section had to be done and asked to be allowed to call Dr. Parboosingh. I sent for Parboosingh with a view of consulting with him on the advisability of a Cæsarean Section. I told him so when he came.

We had a talk and I spoke of it. We spoke before he made his own examination. I mentioned to him the three types of treatment. I told him that I preferred the Caesarean Section and I asked him to let me know what he thought.

*In the
Resident
Magis-
trate's
Court.*

I told him the reason and observations that had led me to my conclusion. I said she is in a pre-eclamptic condition. I spoke in general terms. I said I knew she was not

*Plaintiff's
Evidence.*

10 I told Parboosingh I found rigidity in my examination at 4 p.m. I told him that I could not detect the foetal heart. I may not have said when I found it out.

No. 3.
Lawrence
Moodie,
15th

The question of child being alive did not yet arise when Dr. Parboosingh was examining wife.

September
1948,

He did not say: "I can't hear the child's heart, you have a try." I did not say: "I can't hear it either."

Cross-
examina-
tion,

I do not dispute the fact that the child was dead after Parboosingh's examination.

continued.

After the first conference with Parboosingh, Mellad and Stockhausen, I did not say to Defendant: "As all the others agree I have to agree to a Caesarean."

20 I told Defendant I wanted a consultation with Dr. Parboosingh. I did not say why. I never told Defendant: "I want Parboosingh to assist me with something of a simple nature, and you can expect the baby to arrive shortly after."

On Friday evening Defendant did not ask me to call Parboosingh. I mentioned three names, Parris, Parboosingh and Stockhausen. Defendant said he wanted Mellad.

After I punctured the membrane I did not tell Defendant that wife had responded so nicely to treatment that a consultation was not necessary.

30 Defendant did not urge me to have a consultation. He asked me if I wanted a consultation. I named the three doctors.

I did not say: "As your wife is going to sleep it would be a pity to disturb her." It is not true that the matter was left on the footing, as soon as wife woke up Dr. Parboosingh would be called.

No record in my book of his record of the operation by me is an omission by the nurse—Nurse Waite.

There is a Law governing the control of Nursing Homes. I know there are regulations made under the Law. I have never read them.

Reg. 25/10/44. Page 1239—Gazette—Jan., 1944.

40 I know that it requires a record of the nature of the operation, type of anæsthetic, and person administering the anæsthetic.

I agree it is of the highest importance to know the beginning of labour pains following the type of treatment I give. I induced labour.

I have no record of the time a nurse reported the onset of labour to me, after 10 a.m. I would instruct her if she said she was in labour from 10 p.m. the night before. I had asked her if she said she had labour pains all the night.

A nurse would not tell a patient to bear down.

*In the
Resident
Magis-
trate's
Court.*

I did not hear that wife was shouting out : " I want an operation." She never said so in my presence. Wife did not say Saturday morning : " I want an operation."

The nurse told me that satisfactory progress was being made. I arrived after 1 p.m. and I found this to be true.

*Plaintiff's
Evidence.*

I found the cervix half way dilated and the head was down that I could feel it without any trouble, about $1\frac{1}{2}$ " from the vulva. There was a considerable descent of the head.

No. 3.

Lawrence
Moodie,
15th
September
1948,
Cross-
examina-
tion,
continued.

If a Cæsarean Section is done the head has to be pulled out.

I gave anæsthetic. I did not see where the baby's head was in this 10 case.

As far as I know the head was down. Dr. Parboosingh examined after 5.30 p.m.

If I had drawn the head when it was $1\frac{1}{2}$ " from the vulva I could not draw it out with instrument, owing to the spasmodic contraction of the uterus.

I made an internal examination and I was the only person who can say where the head was.

I don't know if Diary contains no entry of the time of onset of labour at 10 a.m. If labour had in fact commenced 12 hours before the picture 20 of the case would not be changed nor would my treatment.

Operation depends on the condition of the patient. Time factors are immaterial.

Where labour is indirect the condition is not called a trial of labour.

The membrane is not ruptured as the water help to dilate the cervix.

It is not the only justification for rupturing the membrane to induce labour. My particular reason was to reduce the tension in pressure in the chest-abdominal region.

When labour is induced time factors become all important. In effect a condition of trial of labour is created. 30

In my view even if patient is elderly, I would allow trial of labour to exist over 24 hours. In a normal case I would allow labour to continue for over 24 hours.

Where labour has commenced in a case where Cæsarean Section may be necessary I agree that after four hours if no progress made consideration must be given to necessity for operation provided the condition of the patient allows it.

The possibility of trouble in the uterus usually exists where an elderly woman is having her first child. It is a condition that has to be kept under special observation. 40

I used forceps at 1.30 p.m. with onset of labour pains 10 a.m. and within $1\frac{1}{2}$ hours later I felt something more drastic should be done.

If labour has started 12 hours earlier then I could not have delivered the child safely without losing the mother, for her condition was worse in the morning. The condition in the evening had improved.

I appreciate that the complaint against me is that the measures taken by me should have been taken hours earlier.

Sometimes irregularity of the foetal heart—increasing of pulse rate or decrease of pulse rate below normal.

In a case of this kind my first duty is to see that the mother is kept alive and to disregard the baby. In my opinion in this case it did not matter to find out whether the child was alive or dead. I did check the foetal heart. Before I first applied the forceps I found the foetal heart irregular.

10 It is not the practice, not my practice to check the foetal heart in early stages of labour once every hour and in the later stages once every half hour.

I applied forceps after 1 p.m. because I thought I could get the child away and save further trouble.

I never told Dr. Parboosingh that the trouble was that the cervix was not dilated. I did myself manually dilate it as far as I know.

It may be I killed the child with the forceps. It is possible. The mother could not stand the strain or shock.

My object was to try to save the mother. I could not make a real effort. I could not use force, for the mother could not stand shock. I was hoping to save both mother and child.

20 I agree that the use of forceps was likely to kill the child. It may be. I can't say that the forceps killed the child.

On the Saturday morning Defendant did not speak to me about consultation. Dr. Mellad called me and said: "I hear they wanted me" and I agreed for him to come in.

I saw Defendant after 1 p.m. I spoke to him, I said: "I would like the consultation." I did speak to Defendant. I did not say I would have delivered the baby by about 1.30 p.m. but as she never had a baby before I was letting her take her own time, and she would deliver about 4 p.m.

30 Between 1-2 p.m. I did not lead Defendant to believe that all was well. He did not say: "I still feel for a consultation." I did not say: "It is not necessary." Defendant did not say: "If you feel it is all right then everything is in your hands." I could not possibly have told him so.

It was not my suggestion or my own initiative. Suggest to Defendant saying at 5 p.m.: "I would like a consultation."

I realised the gravity of the condition of wife from the moment she came in.

40 *Re-AD.*: I rang up to to enquire condition of wife, before I went out of town 20th November. On my return I got message and I rang up Defendant. Next morning I went to see her. I found her suffering from tonic condition. I had her brought into the Nursing Home and I gave her the appropriate treatment. There are two schools of thought. Pre-eclampsia one is operative school—operate as soon as possible.

Manley objects: Does not arise out of cross-examination.

Objection allowed.

In the Resident Magistrate's Court.

Plaintiff's Evidence.

No. 3.
Lawrence Moodie,
15th
September
1948,
Cross-examination,
continued.

Re-examination.

*In the
Resident
Magis-
trate's
Court.*

*Plaintiff's
Evidence.*

No. 3.
Lawrence
Moodie,
15th
September
1948,
Re-examina-
tion,
continued.

No. 4.
Defendant's
Case, 15th
September
1948.

The other school Conservative—leaves operation as a last resort (Dr. Alex Bourse—Advances in Obstetrics—page 128 Chap. 7, 1928).

I treated wife medically as opposed to surgically when I found she was pre-eclamptic. (Queen Charlotte Text Book of Obstetrics, 1945, 6th Ed. page 138, Heading Eclampsia Treatment. Hand Book of Midwifery, 1943 Ed. 179-180, by Cunyns Barkly) Cæsarean Section was worse method of treating Eclampsia—see pre-eclampsia.

The onset of labour is not recorded in the Day Book or in the Labour Book. At no time did I seek to prevent a consultation.

No. 4.

10

DEFENDANT'S CASE.

Manley opens: Evidence will be led to show that at 1 p.m. things not going well although Plaintiff said all was going well.

If head was $1\frac{1}{2}$ " from vulva it was near to delivery. If labour was proceeding normally $3\frac{1}{2}$ hours after labour had started why were forceps used while known to be dangerous to the fœtus. Plaintiff admits that fœtus was in distress before he found he could not hear the fœtal heart.

Dr. Parboosingh called when it became apparent trial of labour failed or likely to fail.

When to act: Test is, skill professed must show, *when* to decide that 20 not safe to rely upon trial of labour.

The case put to Court: Induction of labour Friday evening results appearing at 10 a.m. Saturday. Labour proceed, short time condition supercede. Demand of surgical operation and not leaving it to Nature.

Dr. Parboosingh formed a correct view of the case. Parboosingh will say nothing told of pre-eclampsia—rigidity on onset of labour. Made an examination and discerned no fœtal heart beat. He suggested Cæsarean Section immediately as wife in grave danger. No comment made and he left. Plaintiff did not agree.

Defendant insisted for another Doctor to be called and Dr. Stockhausen 30 called who agreed with Parboosingh. Dr. Stockhausen in Court and not called.

Wife says she communicated with nurses and got no treatment for 24 hours. If wife had received treatment immediately she might have delivered child safely and without danger to herself.

No pains in chest. Had pains in back of head—neck back.

No labour pains before being taken into Labour Ward, Chloroformed. When she came to, from 10 p.m. judging, she had continuous labour pains received advice of the nurses and drug.

Next she got a drug to assist with pains and she knew nothing until 40 after the operation at Nuttall's. She was in a state of distress.

Defendant in constant attendance.

Judging Plaintiff said wife's condition as serious and suggest advisability of a consultation. Later on Plaintiff said wife responding well to the treatment. Plaintiff said: "Your wife never had a child before. I am letting her take her own sweet time. I expect birth about 4 p.m." Defendant insisted on consultation. Plaintiff did not agree. Then something happened and Plaintiff sent for Parboosingh.

Defendant's wife did not get benefit of contract.

Nurses give wrong injection to her, imperilling wife's chances.

*In the
Resident
Magis-
trate's
Court.*

No. 4.
Defendant's
Case, 15th
September
1948,
continued.

10

DEFENDANT'S EVIDENCE.

No. 5.

EVIDENCE of Irene Mercedes Johns.

IRENE MERCEDES JOHNS, sworn.

Wife of Defendant, Married for 15 years. I am 39 years old. In April, 1947 I consulted Plaintiff as I thought I was pregnant for the first time in 15 years. He tested and discovered I was pregnant.

My husband and I contracted with Plaintiff to attend to me during pregnancy and thereafter to deliver child at his Nursing Home. He was to be in charge of everything.

20 I attended at Plaintiff's Surgery from time to time up to 13.11.47, On that day I told Plaintiff that Dr. McFarlane had operated on me for appendicitis, and McFarlane said my uterus was undeveloped, and that he thought it was so small it would not keep the foetus after three months.

Plaintiff said: "It might have been so then but it was not so at the time you conceived."

30 Plaintiff fixed 20.11.47 as the date of expected arrival of child. Plaintiff phoned me that morning. He asked how I was. I said: "all right." He asked if any signs of baby. I said: "No, if any I will ring you." He did not say he was going out of town or what to do if anything happened.

About 11 a.m. I noticed blood in urine and was inclined to urinate frequently. I only saw blood when I urinated. Defendant telephoned Plaintiff. A nurse said he was not there. That was about 11.30 a.m. I am certain it could not have been later. A nurse said it was only a show. My sister said: "No, I have 4 children and it was not like that."

I communicated almost every 20 minutes, all day with Plaintiff. No one told me to see a Doctor or if I should be brought in, and a nurse said: "No, not unless you have pains."

40 I have a telephone at home. I went to bed about 10 p.m. I am a light sleeper. I heard no attempts to communicate with me that night.

*Defendant's
Evidence.*

No. 5.

Irene
Mercedes
Johns, 15th
September
1948,
Examina-
tion,

*In the
Resident
Magis-
trate's
Court.*

*Defendant's
Evidence.*

No. 5.

Irene
Mercedes
Johns, 15th
September
1948,
Examina-
tion,
continued.

About 6 a.m. 21st my sister telephoned Plaintiff. I was still bleeding. Plaintiff said he would come. He told my sister so.

Plaintiff came around 11 a.m. Plaintiff examined me internally, took blood pressure, took specimen of urine and left. Shortly after Plaintiff telephoned and said I should be brought in. I went in and put to bed and got injection and things to drink.

My symptoms and feelings that day were :—

Terrible pain at back of head, and across back, low down.

I was quite well. I walked up steps myself. I never had any pains across chest. I am quite certain I never complained of such pains. 10

At 7 p.m. I was taken into Labour Ward and given anaesthetic. I heard something later on.

During the night about 10 p.m. I started to have awful pains in back. I asked the nurses to hold my back. I don't recall what happened the Saturday.

I held my abdomen. The pains were awful and went on all through the night until daylight. When the pains came on the nurse said : " Bear down." I kept speaking all the time : " Operation, operation." I had told Plaintiff so before on three occasions.

I was taken back to Labour Room and given an injection. I have no 20 recollection after that except for a split second I heard Dr. Mellad's voice. I tried to talk to him but could not. I came to myself in the Nuttall Hospital Sunday morning.

Luncheon adjournment.

Cross-
examina-
tion.

XXD. : I had confidence in Plaintiff. I went to him regularly every month. My confidence was not shaken up to 13th November. My urine used to be examined by a nurse. I was not given any diet at any time. Up to 13th November my blood pressure taken twice. That would be in 6th-7th month of pregnancy and then between 7th-9th month.

Plaintiff used stethoscope testing the foetal heart. 30

Dr. McFarlane did not say infantile uterus. I did start to say infantile uterus in giving evidence-in-chief. I am saying I thought they meant the same.

I was taken to Labour Room about 7 a.m. I got an injection by Plaintiff.

Dr. Mellad is my uncle. I don't remember Dr. Mellad coming to see me in my room.

The whole day Saturday is a complete blank except for a split second, until the Sunday morning.

I remember Plaintiff coming to see me about midnight on the Friday 40 night. On the Friday I had plenty of barley water. I don't remember getting coconut water.

I have no recollection of getting barley water or coconut water on the Saturday. My mind is a blank.

My nerves were quite good when I went in on the Friday morning. I was not restless, as far as I know, I was calm throughout. I am not highly strung.

I got a little excited on the Thursday when I did not see Dr. Moodie. Pains were back of head and across lower back. None in chest or stomach.

I lived then at No. 28 Beechwood Ave. My sister, my husband and I were there. I told Plaintiff that morning that I was all right, no signs.

I went for a drive that morning. My husband drove me about 9.30-10 a.m. to Lyndhurst Crescent to see Mrs. Eric Morris. Don't remember going anywhere else.

This was my allotted day. Plaintiff told me a girl baby is due to-day —any signs.

I got home about 11 a.m. not near 12 a.m. It was there I noticed for the first time some blood. Defendant then rung the Doctor. I did not know he was going out of town. Defendant did not know. I rang up Nursing Home and then the office. Plaintiff not there. A nurse said he was not in town and would be back at 4 p.m.

1st call was about 11.30 a.m. 2nd call about mid-day. Calls proceeded until about 10 p.m. I could not call anyone else.

20 Defendant goes to Races. He went to the Races that day. He came back about three times. He came back between 5.30 and 6 p.m. My sister did the calls. Defendant came back about three times. Defendant was worried about me.

I do not recall seeing Dr. Parboosingh at the Nursing Home Saturday. I don't recall him trying to examine me and I jumped up into a sitting position. I do not recall seeing Dr. Stockhausen or any of the other doctors.

30 On the Friday Doctor took a sample of urine and blood pressure. He said: "I will examine it and say whether you are to come in." I went in near 12 a.m. not as early as 10.15 a.m. Plaintiff did not come about 9.30 a.m.

On the Friday night Plaintiff said to me: "Mr. Johns told the nurse something this morning which upset her." I said: "He was only joking." Plaintiff said Defendant said to nurse that Doctor stayed so long on the case and if anything happened to me or the child he would not rest until Doctor was struck off the rolls and the nurse would have to practise in a Balm yard.

On the Thursday I had pains at back of head, fairly bad pains in back of neck. Slight pains in back and condition of urine. I had no pains in chest. Pains in back of head continued and did not get worse.

40 I do not recall Plaintiff trying to extract the baby from me. My memory is very good. I say labour pains started Friday night and not from 10 a.m. Saturday morning.

I kept on saying: "Operation, operation." I told Plaintiff that I thought it would be a hard time.

I had it in my mind the whole time. Plaintiff assured me an operation would not be necessary.

*In the
Resident
Magis-
trate's
Court.*

*Defendant's
Evidence.*

No. 5.

Irene
Mercedes
Johns, 15th
September
1948,
Cross-
examina-
tion,
continued.

*In the
Resident
Magis-
trate's
Court.*

On the Sunday morning I remember seeing Dr. Parboosingh. I don't recall Plaintiff. I did see Plaintiff at the Nuttall. He gave me medicine. Defendant was always there. Up to that time there was no objection to Plaintiff treating me until a certain time.

*Defendant's
Evidence.*

I started to get hysterical when I saw Plaintiff come in. I would start to cry. Defendant thought it best and asked him not to come into the room. I don't know if Plaintiff still continued to visit the Hospital, examine my card and give medicine.

No. 5.

Irene

Mercedes

Johns, 15th

September

1948,

Cross-

exam-

tion,

continued.

Dr. Parboosingh used to come to the Hospital. I think he stopped one afternoon and asked how I was getting on. I have not seen him 10 since the case has started. Don't know if my husband has seen him.

Never had any discussion with Dr. Parboosingh on the treatment of symptoms before entering Nursing Home.

No. 6.

EVIDENCE of Lennox Johns.

No. 6.

Lennox

Johns, 15th

September

1948,

Examina-

tion.

LENNOX JOHNS, sworn.

Civil Servant Principal Clerk, Administrator General's Office. Living 28 Beechwood Ave., Collins Green.

I engaged the services of Plaintiff for my wife. I entered into a contract with him to look after wife at all stages of pregnancy and to 20 deliver child.

Fees were 8/- per month and the fees on admission. I know 20.11.47 to be the expected day. I was at home when Plaintiff telephoned. He spoke to my wife. I did not know Plaintiff was going out of town.

I was at home when my wife first saw certain signs.

About 11.30 a.m. 1st telephone message to Plaintiff. My wife's sister and myself telephoned. I spoke on the first occasion at my wife's request. A nurse answered me. She said, "Dr. Moodie is out of town. I do not know when he is returning."

About 12.30 I rang up again and asked for the Nurse in Charge. 30 I heard someone called. That person said my wife is having a show and should not be brought in until she started having pains. She said Doctor will be back at 4 p.m. During the day other messages were sent and the same advice received. I tried to get the Doctor up to about 10 p.m.

Next morning the Matron told me something. As far as I know I received no telephone calls that night.

In my presence my sister-in-law telephoned. My wife about 6 a.m. Plaintiff arrived about 11 a.m.

Plaintiff examined my wife, left and gave instructions to bring her 40 in. I remained with wife all day and all Friday night.

I asked Plaintiff to explain his absence and he said "I did not get the telephone message."

Up to 7 p.m. Plaintiff said nothing to me about the case.

That night after wife taken into labour room Plaintiff said to me
 “Your wife is suffering from bleeding from her kidneys. The fatality
 rate in this sort of business was high. I would like a consultation.”

*In the
 Resident
 Magis-
 trate's
 Court.*

I asked “Who you suggest?” Plaintiff—Dr. Parboosingh. I said
 “Wait a few minutes. I will soon be back.”

*Defendant's
 Evidence.*

I went downstairs to telephone Dr. Evans. I did not find any
 telephone and I went home and telephoned Dr. Evans. I returned to
 Barton Court Nursing Home and I said to Plaintiff “Call Dr. Parboosingh,”
 and he agreed and left me.

No. 6.
 Lenoxx
 Johns, 15th
 September
 1948,
 Examina-
 tion,
continued.

10 Dr. Parboosingh did not come. Plaintiff suggested, “I have given
 your wife treatment. She has responded to it so nicely I do not consider
 it necessary to have the consultation.” This was about 8 p.m. I said
 “No Doctor, the suggestion for a consultation came from you. I would
 not be happy in my mind unless you have the consultation.”

Plaintiff said “All right,” and went away.

Plaintiff returned and said “The treatment I gave your wife has put
 her to sleep. It would be a pity to wake her. We could have the
 consultation after she awakens.”

20 I went to my wife after 9 p.m. She was awake. She was screaming
 all night. Early next morning about 5.30 a.m. I went to the room. Wife
 was screaming, “Caesarean, I tell you! Can't come.” Nurse was present
 and said “Bear down Mrs. Johns, I tell you, you will have the baby
 all right.”

Wife said “Bear down on what? There is something blocking it.”
 My wife's sister who was present said “Bear down, never mind.”

Next morning (Saturday) I communicated with Dr. Mellad. I was
 upset about not having had the consultation and asked him to go and
 see wife and let me know her exact condition. Dr. Mellad spoke to
 me later.

30 Plaintiff did not say why Parboosingh was not called.

I remained until about 8 a.m. I did not see Plaintiff. I returned
 about 9.30 a.m. I spoke to Plaintiff about 1.30 p.m. My wife was in
 the Labour Room. She was taken there about 7-7.30 a.m. After he
 had seen my wife he told me “I could deliver the baby by 1 o'clock,
 but as your wife never had a child, I am allowing her her own sweet time”
 and that the baby would be a girl of about 5½ lbs. and would arrive
 about 4 p.m.

Plaintiff said nothing about the case being grave, and/or that he was
 having any difficulty.

40 I then asked, “Have Dr. Parboosingh called.”

Plaintiff said, “I have had cases in which both baby and mother
 had suffered from fits and that I have delivered the baby safely and both
 mother and baby are doing fine. There are no such symptoms in my
 wife's case—nothing to worry about.”

I said, “Doctor, if you can give me a full assurance that my wife
 and the baby are safe you need not call Parboosingh.” Plaintiff gave me
 his assurance and left.

*In the
Resident
Magis-
trate's
Court.*

Later on Plaintiff's wife spoke to me. She had not been present at this conversation. She repeated what Plaintiff said and said to bring a new Doctor into the case and change the treatment and perhaps cause death of the baby. She said, "You are unnecessarily anxious about the case. Better go to Cross Roads and have some beer."

*Defendant's
Evidence.*

I decided to remain where I was.

No. 6.
Lennox
Johns, 15th
September
1948,
Examina-
tion,
continued.

I next saw Plaintiff about 5 p.m. Plaintiff said, "Since 4 p.m. I have been trying to get Parboosingh but I have not succeeded. I tried his home and Jubilee." I asked why, and Plaintiff said, "I was doing something and I want Dr. Parboosingh to do something simple for me" 10 and that baby will arrive right afterwards.

I suggested calling Dr. Mellad. Dr. Mellad was called.

Plaintiff never said but even one word that an immediate operation was necessary. He did not say it was doubtful if child was alive or if its life could be saved. Plaintiff appeared nervous.

Parboosingh came about 6.30 p.m. I was present when Plaintiff consulted with Dr. Mellad. I was not present when Parboosingh consulted with Plaintiff.

Parboosingh examined my wife and said: "This is a case for an immediate Cæsarean Section, and in my opinion, I think the child is 20 dead."

Plaintiff was present. He said: "No, the child is not dead. I think the child's heart has subsided as a result of the drugs I have given wife." Plaintiff said nothing about Cæsarean Section. Parboosingh left.

Mellad arrived just before Parboosingh left. Plaintiff was present. I said: "This is a hell of a business!" Mellad—I risk my professional reputation the child is dead. I agree with Dr. Moodie about limbing the child in preference to the Cæsarean Section, as I think wife is too fargone to undergo Cæsarean Operation.

I suggested having another opinion. Plaintiff was present. Plaintiff 30 suggested calling Dr. Stockhausen. I agreed.

Plaintiff definitely objected to a Cæsarean Section when Parboosingh was there and up to the time Dr. Stockhausen arrived. Dr. Stockhausen advised immediate Cæsarean Section.

Mellad said: "The surgeons having advised a Cæsarean, I am inclined to agree with them." Plaintiff said: "I don't agree."

I pressed Plaintiff for his reason and he threw his arms up into the air and said: "Since there are three to one, I agree."

My wife was removed to Nuttall and operation performed. I heard 40 that the child was dead.

I received a bill demanding payment. I consulted my Solicitor.

*Cross-
examina-
tion.*

XXD.: I went to my Solicitor after I got bill.

Plaintiff continued to treat my wife with my consent until the Wednesday after the operation with my acquiescence.

I asked Plaintiff to stop after his visits left my wife upset. She refused to take his medicine.

My wife is very cool and calm. I never saw Plaintiff after the Wednesday. I did not know if Plaintiff continued to go at the Nuttall's still.

I am fond of Races. I attended Races on the 20.11.47. I went home after each Race or to telephone. I was late for the first race. I saw nothing to worry about. I was advised I could wait until the Plaintiff came. Dr. Leigh Evans advised me.

10 Wife suffered slight pains and discomfort at the time. Up to then we had great deal of confidence in Plaintiff. I began to lose confidence after the first telephone call I made to Barton Court. I told Nurse Waite to call Plaintiff. She said: "He will soon be there." I waited. He did not come. Later she said: "He is at his office."

I said: "Tell Dr. Moodie that if anything happens in this place to my wife and baby I will take any step to have his name removed from the roll of Medical Practitioners, and if you are the Nurse who answers his telephone calls, you lady, I will see to it that you practise your profession in a Balm yard."

20 I spoke to nurse shortly after my wife entered the Nursing Home. I say she was admitted after mid-day. The record that she was admitted 10.15 a.m. is absolutely false. I say about 11.45 a.m.

My wife was admitted about $\frac{3}{4}$ hour after Plaintiff called to see my wife. My wife showed no signs of nervousness or anxiety. My wife was very calm and said she had no fear about having a baby.

I remained at the Nursing Home the Friday night.

I have a fair amount of confidence in Dr. Mellad. He is my wife's uncle.

About 12.14 p.m. Mrs. Moodie told me that my wife had settled down quite nicely and baby expected about 1 p.m.

30 Up to then I was quite satisfied that everything was going all right, although—Plaintiff had asked—Mellad gave me his views before I saw Plaintiff at 1.30 p.m.

Dr. Mellad said: "I did not examine your wife, but Mrs. Moodie says everything is all right. These people have a lot of experience in these things and I suppose it is all right."

This would be after mid-day on the Saturday.

Dr. Mellad did not say Mrs. Johns is unconscious.

Part heard for 1.10.48.

LENNOX JOHNS, sworn.

40 *X X D. continued*: Letter written by my Solicitor—Exhibit 1—4.2.48 were written by my instructions. I agree with it. I do not disagree that the Consultants are entitled to their fees. I say Plaintiff must assume responsibility for paying the Con. Doctors.

The letter 4.2.48 does not set out all my objections to paying Plaintiff's bill for 30 guineas. I can't say if it set out all the objections as advised by my Solicitors. I did say that according to the advice of my Solicitors it sets out all the objections. I say further objections are found in my Counsel's statement in Court. I have no further objections.

*In the
Resident
Magis-
trate's
Court.*

*Defendant's
Evidence.*

No. 6.
Lennox
Johns, 15th
September
1948,
Cross-
examina-
tion,
continued.

1st October
1948.

*In the
Resident
Magis-
trate's
Court.*

It is not suggested in Exhibit 1 that the charge of 30 guineas is not reasonable. I have not considered the question whether the charges are reasonable or not. I did not say that the charges by the Consultants are unreasonable. I can't say in the absence of particulars if Plaintiff's claim is reasonable. I see no Particulars.

*Defendant's
Evidence.*

The bill rendered by Palintiff would have been paid but by reason of the negligence that I complained about. I did not know of practice of Consultant looking to the Doctor for his or their fee.

No. 6.

*Lennox
Johns, 1st
October
1948,
Cross-
examina-
tion,
continued.*

All the Consultants were called in with my consent and approval. I do not recall having to get a Consultant called before. 10

I first heard of the custom of the Doctor in charge of case to collect the Consultant's fees. I first heard of it in Court. I can't say if it is the practice.

I have lost complete confidence in Plaintiff. I would say on Friday 21st. This was due to his absence on the Thursday I started to lose confidence from the Thursday or the Friday due to his absence until 11 a.m.

I say the entry in the Day Book—Mrs. J admitted 10.15 a.m. is untrue. I say that where Dr. Moodie says he called to see patient between 8.30—9.30 is untrue. 20

I never regained confidence in Plaintiff. I regained confidence partially at times. I regained partial confidence when Plaintiff states: (1) His stating clearly whatever he saw (2) He said: "I do not call other Doctors in consultation. They call me."

I do not recall any other reason. My confidence was shattered again and again after this.

(1) Plaintiff's failure to have consultation after it was demanded.

Plaintiff suggested a consultation. When Plaintiff told me that things were going all right after he told me that he wanted a consultation, I lost all confidence. I lost all confidence after 7 p.m. on Friday 21.11.47. 30

I regained some confidence the Saturday when Dr. Mellad said that Mrs. Moodie had said that things were going right. I was still a bit suspicious.

When Plaintiff said: "I assure you wife and baby will be all right" I accepted his assurance. I now say that I had no confidence. I now say I did not remember saying yes a while ago . . . I am definite this conversation did take place.

On the Friday morning I did not tell Plaintiff that my wife did not keep to the diet as she had been feeling so well. I say we had no conversation with him. 40

I did not go to work that day. I was present when Plaintiff came. I know that Plaintiff had examined my wife. I did not speak to Plaintiff before or after the examination. My wife told me immediately after Plaintiff left. I am quite definite.

I was worried about the condition of my wife. She was not in a critical condition. I say I was worried about the absence of the Doctor.

Plaintiff was in a hurry. I was annoyed with him and I did not wish to speak to him. My wife decided to wait on him. I was still annoyed with Plaintiff.

To my knowledge my wife was never on any diet as far as I know. She ate any and every thing as if she was not pregnant.

My Solicitors have not advised me to pay the consultants.

I always pay my bills promptly. I am in a position to pay the bills. I have been posted for not paying my Club dues. Members of the Committee saw me. I have not attended the Club for eight years. I owed the Club dues for eight years. I received a few letters. The matter has since been settled. I have not paid the arrears. I have not received my member's card.

Dr. Evans is a very good friend of mine. I saw Dr. Evans at the Races. I told him what the nurses said. I don't think I told him about the condition of my wife. I said the nurses say my wife is having a show. I did not say more.

*In the
Resident
Magis-
trate's
Court.*

*Defendants'
Evidence.*

No. 6.
Lennox
Johns, 1st
October
1948,
Cross-
examina-
tion,
continued.

No. 7.

EVIDENCE of Emmanuel Mellad.

EMMANUEL MELLAD, sworn.

Registered Medical Practitioner, of some 35 years experience. I have had special experience in obstetrics. I took course Edinburgh, Glasgow and Dublin. I took a special course in Ireland in obstetrics. My course in Glasgow, Edinburgh and Dublin I did maternity work.

In Jamaica I was specially employed as Visiting Surgeon at the Jubilee Hospital for several years.

Mrs. Johns is my niece. During her pregnancy I saw her several times, not professionally, except when she became pregnant she consulted me.

I know she was admitted to Nursing Home Friday 21st November. I did not go to the Nursing Home until Saturday 22, between 12-1 p.m.

Defendant told me that he had arranged for a consultation with Dr. Moodie. I had not received any message from Plaintiff so I telephoned Plaintiff and said: "Johns requested me to meet you in consultation which he (Johns) had arranged with you."

This was after 12 . . . between 12-1 p.m. Plaintiff said: "You are no stranger. You go round any time to see the patient." I understood Plaintiff to say Wife is doing well. Plaintiff said nothing more. He did not mention wife's condition, any treatment he was giving. He did not say that wife was in pre-eclamptic condition. Plaintiff said not one word about this at any time.

I understood that I was being told I could see wife without Plaintiff being present. Plaintiff said nothing to indicate that the case was serious.

As far as I know I have never known the Doctor in charge not to be present with the consultant or to give his opinion in the case.

No. 7.
Emmanuel
Mellad, 1st
October
1948,
Examina-
tion.

*In the
Resident
Magis-
trate's
Court.*

*Defendant's
Evidence.*

No. 7.

Emmanuel
Mellad, 1st
October
1948,
Examina-
tion,
continued.

I viewed the conversation of Plaintiff—that wife was doing well—you are at liberty to go and see her—not as unprofessional conduct of one Doctor to another.

I went to see wife. I did not examine her. I felt in the absence of Doctor in charge of the case I should refrain doing an examination. My observation : Wife was somewhat restless, but apparently she knew me. I heard her say : “ Uncle Viv.” I would not like to express an opinion on wife’s condition then.

When lying on the table, I heard Plaintiff say : “ The child will be born without an operation.” 10

After I saw wife I did not telephone to Plaintiff. I never told Plaintiff that I had examined wife and that her condition was good or that I agreed with his treatment. I had not gone into question of treatment with anyone.

I returned between 6–7 p.m. to the Nursing Home. I think I don’t remember seeing any Doctors, but whilst I was there Dr. Stockhausen and Parboosingh came.

I was present during the discussion between Plaintiff Parboosingh and Stockhausen about a Cæsarean Section. I think Plaintiff’s attitude was like mine, was contra indicated. He never expressed himself as being then in favour of a Cæsarean Section. I preferred limbing. My impression was he agreed with me. 20

After Dr. Parboosingh examined wife and came out Parboosingh said : “ I do not hear the foetal heart.” He asked Plaintiff to listen if he could hear it. As far as I recall Plaintiff said : “ I do not hear it.” It was after that there was a discussion. Dr. Stockhausen and Parboosingh advised Cæsarean Section. I differed, but acquiesced. I was under the impression that Plaintiff acquiesced. As far as I recollect it was after. Plaintiff did not propose first and always. Did propose a Cæsarean Section in my presence and hearing. 30

Cross-
examina-
tion.

XXD. : I have had a great deal of obstetrical experience. There are two schools of thought dealing with treatment of eclampsia.

- (1) The Conservative school—treat it medically.
- (2) Operative School.

With regard to pre-eclampsia there are different opinions. The circumstances of the case, symptoms and so will decide what to do. The doctor in charge is the best person to decide the treatment or, if in doubt, to call in a consultant.

I am still in private practice. I at times doctor maternity cases. When you undertake a maternity case to safely deliver the child, as far as professional services are concerned I undertake to discharge my duty to the patient, but there are so many pitfalls, not only with regard to obstetrics, but medicine in general, that I never venture to offer any guarantees whatsoever. 40

I was specially interested in the case of my niece. Defendant telephoned me, that he had arranged for a consultation with me. He may have said : “ I was trying to get you last night.” Defendant told me that wife had been passing blood.

Plaintiff told me nothing over the telephone. I would not expect him to. I understood him to say, her condition was such, she is doing well. A consultation is not necessary. He said: "You can pass and see her." I was going there to satisfy Defendant.

*In the
Resident
Magis-
trate's
Court.*

When I saw wife on the Saturday, as far as I knew she was quite conscious. She knew me. When I saw her I was not satisfied with her condition.

*Defendant's
Evidence.*

I told Defendant that I was not satisfied and that he should call doctors in consultation. I expected the courtesy of a consultation.

No. 7.
Emmanuel
Mellad, 1st
October
1948,
Cross-
examina-
tion,
continued.

10 It is not my experience when a Doctor in charge cannot be present at the interview with the consultants. It is not usual for the Consultant to examine patient and then afterwards get in touch with the Doctor in charge. Rule No. 7 Med. Ethics . . . I did not venture to express any opinion.

I expected a History of the case from Dr. Moodie. Plaintiff did not attend with me. I did not examine wife. I did not tell Plaintiff anything about my views. I never telephoned to Plaintiff after I saw wife.

20 I was present when Dr. Parboosingh examined wife. I was present when Dr. Stockhausen arrived. I don't know if Dr. Parboosingh came, made examination and then left.

I have never at any time examined wife on the Saturday. As far as I saw, no internal examination was made. I would not say that the hysterical condition of wife prevented it.

I am not in a position to say whether wife was in a condition of constitutional rigidity between 6-7 p.m. Saturday. Plaintiff told me that he had ruptured the membrane and tried to use forceps and I formed the opinion that Cæsarean Section might produce too much shock. I formed the opinion that if Cæsarean Section was to have been performed it should have been done at least 12 hours before.

30 I told him and did indicate limbing as the treatment. Limbing and Cæsarean Section have a very high maternal mortality. I would start by treating every case as a different entity with medical treatment. A show is a sign of onset of labour.

I did not form the opinion that wife was suffering from pre-eclampsia. I would expect headaches, albumin in urine. I would say that symptoms of albumin in blood, headaches, pains in chest, rise in blood pressure—sudden—need not necessarily be pre-eclampsia.

If the head was engaged and forceps applied unless there was some insuperable difficulty, the child should be taken away.

40 Plaintiff has been called by me to help me in maternity cases. He had never delivered by forceps where I failed to deliver with forceps. I never called in Plaintiff when I was in charge of the Public Hospital unless patient required outside consultant.

I would not call wife a highly strung person. When wife spoke to me about her suspicion she was nervous. If wife was in a nervous state on the Friday morning I would not be surprised.

I say Plaintiff never said at consultation on the Saturday between 6-7 p.m. that a Cæsarean Section was necessary. He never said so in my presence and hearing.

*In the
Resident
Magis-
trate's
Court.*

I say I advised Defendant to call in a consultant or ask Plaintiff to get a consultant. I could hardly have told Defendant that these people have a lot of experience and I suppose it is all right. I don't remember saying that these people have a lot of experience. I may have said so, but I do remember saying I advised Defendant to call in a consultant.

*Defendant's
Evidence.*

Re-XD. : When a woman who is going to have a child places herself in the care of a Doctor she should expect to receive the best care and expect that her child will necessarily be born alive.

No. 7.

Emmanuel
Mellad, 1st
October
1948,
continued.
Re-amina-
tion.

When an elderly woman is going to have her first child and the due date is known it is the duty of the Doctor in charge of case to be available, 10 and if not available to arrange to have some other Doctor answer for him. If symptoms of pre-eclampsia showed on Thursday and no Doctor saw her until Friday morning, then the patient could not have a fair chance of having her baby born safely.

No. 8.

Ivan S.
Parboos-
singh, 1st
October
1948,
Examina-
tion.

No. 8.

EVIDENCE of Ivan S. Parboosingh.

IVAN S. PARBOOSINGH, sworn.

Registered Medical Practitioner, Senior Medical Officer, Jubilee Hospital, Kingston, one of the largest Maternity Hospitals in the British Empire. I specialize in Midwifery. I took no Degree in maternity work, 20 but I have done some work in maternity and I am regarded as a Specialist. I enjoy consulting practice.

I know Plaintiff. I know his Nursing Home for Maternity work, operated by Plaintiff and his own staff. I was called by Plaintiff on the 22.11.47 relating to Wife of Defendant. I knew nothing of case before.

Before I saw the patient, I am not sure if it was before or at the bedside, Plaintiff gave me a short history of the case.

Plaintiff said : I had given her ante-natal care. Everything was all right until previous morning (Friday a.m.) When I was told there was blood in her urine I took her into my Nursing Home, gave her castor oil, 30 injection of calcium and a sedative and at that time I noticed blood pressure 140 over 80 or 90. She did not go into labour with the castor oil and sometime in the evening I ruptured her membrane. She had irregular pains that night, but labour had not really started until following morning. By morning the urine had shown some improvement. I gave her more sedative and I think more calcium. Sometime in the afternoon I gave her anæsthetic and applied forceps. I thought I would have to use more force than would be compatible with a time force and so I abandoned the use of the forceps. I gave wife more sedative and then re-applied forceps. At that time cervix became very rigid. I again abandoned forceps without 40 using much force.

I don't remember if Plaintiff said anything else about the cervix. Plaintiff expressed no views as to the outcome. He said nothing as to whether child was alive or dead. Plaintiff said nothing about the position of head in the pelvis. I drew inference that the head must have been fully engaged.

I made my examination of the patient. I found she was with rapid pulse, rising temperature. The head was engaged but a portion was out of the pelvis. There was no foetal heart beat. I came to the conclusion that the foetus was dead. I advised that Cæsarean Section should be done.

*In the
Resident
Magis-
trate's
Court.*

I felt that it would not be for the benefit of the mother to do dismemberment. I thought a Cæsarean Section would be best. I have no experience in dismemberment, but I have developed some skill and speed in doing a Cæsarean Section.

*Defendant's
Evidence.*

No. 8.

Ivan S.
Parboos-
singh, 1st
October
1948,
Examina-
tion,
continued.

10 Cæsarean Section was done about 10 p.m. The child had not masserated, and could not have died any earlier than 24 hours before operation. I could not form any opinion as to when foetus died until I performed operation. That would be earliest 10 p.m. Friday.

I said to Plaintiff: "I think the child is dead." Plaintiff agreed.

The position of the head as I found it having regard to that stage of labour—now not fully in . . . The head was not fully engaged.

If the head of the foetus is within $1\frac{1}{2}$ " of orifice of vulva it would be nearing being born. When I saw it the head was not $1\frac{1}{2}$ " from the vulva.

20 A swelling (succedenum Caput) on top of head of foetus caused by pressure of foetal head against maternal pelvis can mislead the Doctor. It generally disappears after birth. I don't remember if this foetus had a caput succedenum. This condition is not unusual. I would not be likely to remember.

When I advised a Cæsarean Section Plaintiff said: "I will get another opinion." Up to then Plaintiff had not expressed any opinion. I left after this. Up to the time I left Plaintiff had not expressed any other opinion. I am not sure if Plaintiff mentioned Dr. Stockhausen or Dr. Mellad or both.

30 I felt that to do a Cæsarean Section where the foetus was dead was unusual, and Plaintiff might have felt to have another opinion. If the opinion expressed by the Consultant agreed with the view of the Doctor in charge, the Doctor in charge usually says so. This is my professional experience.

I don't remember if Plaintiff said he called me on his own initiative or at request of Mr. Johns. I came back late. Plaintiff called me. I found Dr. Stockhausen. Mellad came in some time or the other.

Plaintiff informed me that Dr. Stockhausen was of opinion that a Cæsarean Section should be done and that he agreed also.

40 Mellad said if you give intravenous sedatives and wait until wife is completely rested, aversion and extraction could be done with safety. I disagreed and said so. I said every hour we wait before the baby is extracted the woman's chance of living will drop 20%. This was about 7 p.m. We all agreed and the operation was performed. It was successful.

I don't remember if Plaintiff told me anything about the death of child. Plaintiff did not tell me in history of the case that the baby was dead. Plaintiff did not use the word "pre-eclampsia" to me. Plaintiff never said he came to the conclusion that a Cæsarean Section was necessary but that he wanted another opinion.

*In the
Resident
Magis-
trate's
Court.*

*Defendant's
Evidence.*

No. 8.

Ivan S.
Parboos-
singh, 1st
October
1948,
continued,
Cross-
examina-
tion.

The symptoms : Rising Blood Pressure. Blood in urine. A woman in whom previously nothing wrong could indicate toxemia, latter part of pregnancy is pre-eclamptic and very serious condition.

There is a treatment. In this case there was evidence that on one side the condition was beginning to change and that on the other side that the condition may be worse. It is good medical practice to recognise the more serious of the two. On the whole the longer that condition is left untreated the worse it becomes.

XAD. : The medical practice is where a medical man calls in a Consultant, the Doctor in charge collects the fees and pays the Consultant. 10 This has been so from my knowledge the past 13 years. I believe the Doctor in charge gives an order to the Consultant to collect direct. I got no such order.

The foetus would have died any time within the 24 hours. I think it might have died within half an hour or one hour or any space of time prior to extraction.

I know of the opinion that wife's condition was pre-eclamptic. I agree with the treatment given by Plaintiff. It was the recognised treatment for pre-eclampsia. It is very frequent that in cases of pre-eclampsia the foetus dies. It dies from toxemia. Where a patient is suffering from 20 pre-eclampsia one must be careful not to submit her to too much shock. I can't say to-day what happened yesterday but from the history of the case that Dr. Moodie gave me I would say there was nothing that would have led him to expect to do a Cæsarean Section.

Re-
examina-
tion.

Re-XD. : Necessity for a Cæsarean Section would be indicated :

(1) If the head was not fully engaged—if diameter of head had not passed pelvic bones ; foetal distress or maternal distress. Rigid cervix. Pelvic disproportion. Certain number of hours inactive labour and no advance. Where person is elderly I would put 16–20 hours, provided there was no distress of mother or foetus.

30

No. 9.

EVIDENCE of Eric Don.

ERIC DON, sworn.

Registered Medical Practitioner. I have been 26 years in practice, mainly in England—two years, in West Africa 21 years and 3 years in Jamaica.

I pay special attention to Maternity work since graduation in 1922. I have sat in Court during the whole of the case. I heard the evidence of Plaintiff and the other Doctors.

10 Where a Doctor engages to do pre-natal care and confinement care it is his duty to make a note of the expected day. If it is possible for the Doctor to be in reach of the patient on that day it is his duty to be within reach unless there is some other obligation. If he is not in reach he should arrange with another Doctor to do his work for him. This is my view of what a Doctor should do.

I have heard history of Wife. Where it is certain that blood is coming, not from the vagina but in urine it is a serious condition in a pregnant woman and she should see a doctor as early as possible.

20 It is the duty of a maternity nurse where a patient has a doctor to inform the nurse of such condition, that she should tell that Doctor. I would instruct my Head Nurse that if she is informed about such a condition she should tell this Doctor or person answering for the Doctor. Such a condition affects health of unborn child.

Where symptoms are recognised then 24 hours delay might materially lessen the safety of child or mother. The earlier the treatment the better the chances. In this case, having heard the facts, condition notified early Thursday morning, that the Nurse brushed it aside, if treatment had been given then the mother and child would have had a better chance.

30 It is the duty, in my opinion, of a medical man undertaking the pre-natal care and delivery of a child, to give mother and child the best chance of survival and safe birth. If wife says labour pains commenced Friday night . . . in the circumstances, having induced labour it would be, in my opinion, the duty of the Doctor to know how labour pains progressed during the night.

In a case of toxemia at the end of pregnancy a woman of 36 having her first child and with rupture of membrane on the Friday night then trouble was probable.

40 In my opinion during those 24 hours if no appreciable progress was made in labour over four hours, one had to consider a change of treatment. In this case it ought to have been foreseen that something could have happened necessitating a change of treatment. Operative interference is implied in a change of treatment. Decisions of this sort are vitally affected by questions of time.

If onset of labour was really Friday night, i e.—12 hours earlier than time Plaintiff says then the time factor would be most material and would alter the picture. Before I could be dogmatic and say how it could alter the picture it would be necessary to hear what the doctor in charge had to say about that very period.

*In the
Resident
Magis-
trate's
Court.*

*Defendant's
Evidence.*

No. 9.
Eric Don,
1st October
1948,
Examina-
tion.

*In the
Resident
Magis-
trate's
Court.*

If head of child was $1\frac{1}{2}$ " from orifice of vulva, child is very nearly born. The condition of cervix could obstruct birth. There can be no pelvic obstruction remaining then.

*Defendant's
Evidence.*

It would not be surgically proper to apply the forceps if the cervix was not fully dilated. Once the forceps has been applied one assumes that the cervix must have been fully dilated.

If a portion of the head could be felt above the pelvic brim then the head could not be felt about $1\frac{1}{2}$ " from the orifice of vulva.

No. 9.
Eric Don,
1st October
1948,
continued.

Part-heard and adjourned for date to be fixed.

ERIC DON, *XXD.*

10

12th
November
1948,
Cross-
examina-
tion.

Eclampsia is caused by some toxemia. Any condition of body, disease of mother, kidneys or child can cause it. It is a condition that comes on very often without any warning at all. No Doctor can be held responsible for eclampsia or pre-eclampsia. Sometimes it appears in early stages of pregnancy, other times just before confinement. Ante-partum eclampsia is where it occurs in early pregnancy.

Having heard the evidence in this case—connect with questions following: Fulminating eclampsia is a sudden sharp type.

Question: Do you agree the type of eclampsia in this case was sudden and sharp?

20

Answer: Yes, on the evidence I have heard. On the evidence I heard I think wife was suffering from pre-eclampsia. This condition is not necessary before eclampsia. I am satisfied that wife was suffering from pre-eclampsia. From what I heard it came on suddenly. I can't say sharp or severe. It was something that one could not expect.

I made mention of expected date of confinement. This is not a definite day, merely an approximation and might vary a fortnight either side. There is the possibility of 349-day period of gestation. It is not an impossible length of time. It is impossible to prognosticate the exact date of confinement. Experience shows that birth is more likely to occur around about that time. I would not be surprised if nothing happened on the due date. It might happen next day or the day after. The period of labour of first child is usually from 18 to 24 hours.

I have never been to Morant Bay. Under normal circumstances if distance is 31 miles a Doctor could come in good time if labour started, to attend to wife.

The mere fact that having heard the foetal heart and then afterwards not hearing it does not mean the foetus is dead. There are many reasons, contraction of the uterus, extraneous noise. Before labour starts the foetus shifts position from time to time. But after the head becomes fixed the foetus does not shift. There are variations in the power of heartbeat of the foetus. Liquor Amniotic does increase. Can interfere with the proper hearing of foetal heartbeat, but I don't think the increase in the Liq. Amniotic during labour could be to that extent to prevent hearing the foetal heart beat. But if there is a lessening in power of heartbeat of foetus and there is at same time increase in Liquor Amniotic both could combine to prevent hearing of foetal heart beat.

On the evidence I agree that the treatment Plaintiff gave for pre-eclampsia in wife was the orthodox treatment. I agree that a Cæsarean Section is no part of the orthodox treatment of pre-eclampsia. But there are two schools of thought, each school equally reputable, one school being slightly older than the other. In the treatment of diseases there are often two schools of thought and in practice a Doctor is entitled in his experience to adopt the one he finds most effective, and that would be no reflection if another Doctor follows the other school.

The schools are :—

- 10 (1) Conservative, medical school.
 (2) The operative school.

Second School believes in a Cæsarean Section as soon as possible. The medical School would go as far as dismemberment to avoid a Cæsarean Section at all costs. Dismemberment is operative treatment. Medical School avoids dismemberment until it can't possibly be helped.

A Cæsarean Section is a major operation and the mortality rate is very high, varying with the skill of the surgeon. Where there is disease Cæsarean Section is a high mortality rate both for mother and for foetus. Cæsarean Section causes a great deal of shock to the patient, and this is
 20 one of the reasons why the mortality rate is high.

It is accepted apart from shock, no major operation should be undertaken before testing the urine for albumin, the object of test being to find out the condition of the kidneys. Where operation brings on great deal of shock where the kidneys are bad, the greater the chance of the patient dying. When lot of albumin is found in the urine it is better to treat the condition first, unless delay would give patient a less chance of surviving. If between two evils then the surgeon has to take the chance and operate. Where a condition of pre-eclampsia exists it is good medical practice to bring about delivery of foetus as early as possible. It is good medical
 30 practice when castor oil and other like treatment did not bring on labour to rupture the membrane. When rupture of membrane does not bring on labour then application of the forceps would assist, depending on the condition of the cervix, i.e. if the cervix is fully dilated or not. If cervix is fully dilated it is good medical practice to apply forceps, if it is not fully dilated it is not good medical practice to apply forceps. Dilation may be naturally or manually. It is proper practice to dilate cervix manually to use the forceps. I heard the evidence in this case that dilation was manual.

Recession of the head means that the head goes back. A fixed head
 40 does not recede. If the head recedes it means that the head is smaller than the pelvis. Relaxation of the uterus may cause recession. A short cord will cause recession. Administration of anaesthetic may cause relaxation of the uterus. Operation in the Trendelenberg position could facilitate recession of the head, i.e. head down, knees up.

When a Doctor undertakes to deliver a child he does not undertake that at the end both mother and child would be alive and well. That would be impossible.

It is very frequent that in cases of pre-eclampsia and eclampsia the foetus dies through no fault of the doctor at all in spite of the best treatment.

*In the
 Resident
 Magis-
 trate's
 Court.*

*Defendant's
 Evidence.*

No. 9,
 Eric Don,
 12th
 November
 1948,
 Cross-
 examina-
 tion,
continued.

*In the
Resident
Magis-
trate's
Court.*

I agree that very often in cases of pre-eclampsia and eclampsia that the death of the foetus favourably affects the mother. The cause of death of the foetus would be toxemia.

*Defendant's
Evidence.*

Very often in cases of pre-eclampsia and eclampsia where the foetus dies the treatment is to continue treatment and deliver the foetus in the normal fashion. The chief object of Cæsarean Section is to deliver a living child.

No. 9.
Eric Don,
12th
November
1948,
Cross-
examina-
tion,
continued.

I am not familiar with Eden & Holland's Manual of Midwifery 1931 edition, page 692. I qualified in Scotland.

Question : Do you agree with this statement—Cæsarean Section 10 during labour should not be performed if conditions indicate that survival of child unlikely, e.g., marked slowing of foetal heart (under 100) or fixation with marked moulding of head in contracting rim.

Answer : I agree.

1937 Edition same work. Page 705. Cæsarean Section would be undertaken with the object of rescuing the child, and when doubt as to survival of foetus, to gamble with the life of the mother in such circumstances is not justifiable.

I agree generally where there is conflict of chances of life between foetus and mother it is the practice to preserve the mother and sacrifice 20 the child. I would not take that responsibility on myself. I would put the facts before father and wife and let them decide. It is good medical practice if one of them must die then you save the mother and let the foetus die.

The time factor generally is of great importance and the experience of the doctor in charge of the case is also of very great importance. The man in charge of case if he is experienced and should be the best person to decide when to operate.

If labour onset was 10 p.m. Friday night instead of 10 a.m. Saturday the picture would be altered. I can't say. Can't prophesy that earlier . . . 30

Correction. Before I could be dogmatic and say—that is what I said then.

Question : If labour had commenced 10 p.m. Friday night I am not in a position to say it would have made any material difference to subsequent events.

Answer : The time factor comes into that. In any 24 hours, during any four hours if there is no appreciable change then a change of treatment is indicated.

Question : Is it quite frequent just before labour a trace of albumin appears in the urine without any adverse effects ? 40

Answer : That is not my experience. There is albumin in the urine of any normal person. Trace means slight amount.

I would say if in any 24 hours there is no appreciable change in four hours, then the Doctor must go over in his own mind if he should change the treatment or continue the same treatment. This is what I meant when I just gave the answer about the time period. Very often Doctor

can't wait for four hours and often he may wait for twelve hours before deciding to chance treatment. I mean the Doctor must review his treatment not necessarily change his treatment.

Latent Period means the period between puncturing the membrane and the onset of labour. I know the *Journal of Gynecology & Obstetrics*. It is of the highest repute. In the case of a primipara the period may vary from over one day to over seven days. I agree.

I would not be surprised that after rupturing of membrane Friday evening that labour should commence 10 a.m. Saturday. On the evidence
 10 I have heard there was nothing after rupturing of membrane to indicate that there was going to be any trouble. When the rigidity of the uterus set in that was an indication of trouble. That rigidity of itself could kill the foetus. No one is responsible for the rigidity of the uterus where it arises in a case of this kind. I think Plaintiff was right in deciding to do something once he observed the rigidity of the uterus.

The shortest period of onset of labour after rupturing of the membrane in my experience as normal period would be 24 hours. It varies. It averages about 10 hours after rupturing of membrane. Any pains before labour however irregular is an indication that the woman is going into
 20 labour. They may go on or off for a long time before the actual contraction of the uterus begins.

Evidence that wife had pains in her back on the Thursday. Such pains are not necessarily labour pains. A woman often gets pains in back before labour. Niggling abdominal pains are labour pains. Queen Charlotte Text Book of Obstetrics, 6th Edition, 1945, page 220. I agree it is a book of highest repute.

Niggling pains—irregular pains may continue for hours or may be days before the regular uterus contractions. These pains are symptoms of the beginning of labour. True labour begins when the uterus begins
 30 to contract.

When these niggling pains or irregular pains begin the patient often thinks she is actually in labour and from a medical standpoint she is not. The niggling pains may last for 48 hours, the longest in my experience. I say niggling pains are spasmodic irregular contractions of the uterus. Where there is rhythmic contraction of the uterus these cannot be conformed with the spasmodic contractions. I say these niggling pains do not begin in the lower part of the back.

Question : Do you agree with this passage from Queen Charlotte's Text Book on Obstetrics : The pains begin in the lower part of the back
 40 and extends to thighs and abdomen.

Answer : I won't answer.

I say the niggling pains which begin are in my opinion, the beginning of labour. I mean the spasmodic uterine contraction which may be irregular or niggling are the beginning of labour, do not begin in the back as well, but when the pains become rhythmic the pains involve the back.

The pains which wife states she had in her back on the Thursday. I can't say what they are.

*In the
Resident
Magis-
trate's
Court.*

*Defendant's
Evidence.*

—
No. 9.
Eric Don,
12th
November
1948,
Cross-
examina-
tion,
continued.

*In the
Resident
Magis-
trate's
Court.*

Medically there is in pregnancy certain things called false pains, meaning those pains do not come from the contraction of the uterus. They are often painful and characterised by irregularity in offset and more in front than in the back.

*Defendant's
Evidence.*

Re-AD. : Pre-eclampsia condition is different from eclampsia. The distinction is a real one. Fulminating eclampsia is where that comes on suddenly and is very severe. Eclampsia comes on with a warning. It is not fulminating. If there is ample warning there can't be fulminating eclampsia. Condition that exists during the period of warning is called medically, pre-eclampsia. 10

No. 9.

Eric Don,
12th
November
1948,
continued,
Re-
examina-
tion.

Refers to Cumyns Barkly—1931 Edition page 99.

Symptoms may be developed that may lead to eclampsia, but may not if treated.

All the signs of pre-eclampsia were not present in this case. In this case on the evidence heard, this was a case of pre-eclampsia. Eclampsia is a condition of fits. I would say the symptoms were not severe in this case. The real danger of pre-eclamptic condition is where it passes into eclampsia. If it does not pass into eclampsia the prognosis is good. Page 107 of the same Text Book.

Pre-eclampsia can't cause death. It either passes into eclampsia 20 or not. Hence there is no prognosis for pre-eclampsia. High mortality rate for the foetus is in eclampsia.

Page 101 same book. I agree with the passage just read to me.

In my experience, where there are pre-eclampsia symptoms cases which yield to treatment, the chances of the unborn child are good. There are two factors : Profundity of the toxemia and the resistance to treatment. The longer the condition of toxemia persists the greater the danger to the child.

I agree that when symptoms of pre-eclampsia condition arises 30 treatment must begin immediately. I agree the longer the delay in initiating treatment the larger the danger to the foetus. That delay can cause the death of the foetus. In case of moderately severe eclamptic condition, 24 hours delay in my opinion can mean the difference between life and death of the foetus.

Luncheon adjournment.

When I said that after the rupture of the membrane I expected no trouble—if there was no abnormality then the child should be born normally. I did not take into consideration the age of wife, that she had no child before. Taking these into consideration one would hope Nature would come to one's aid and that as the condition was one of pre-eclampsia the 40 child might be born alive.

When I spoke of time factor 24 hours I think it must be important to know the facts of what happened during the first 12 hours. Unless the facts are known it is difficult to express an opinion.

No. 10.

EVIDENCE of Gilda Ilene Neale.

*In the
Resident
Magis-
trate's
Court.*

GILDA ILENE NEALE, sworn.

*Defendant's
Evidence.*

No. 10.
Gilda Ilene
Neale,
12th
November
1948,
Examin-
ation.

10 Married to Harold Neale. I have four children. Defendant's wife is my sister. On the 20.11.47 I visited wife at her residence at Beechwood Avenue, between 11 and 12 a.m. I discovered after my arrival that wife passed blood when urinating and suffered from pains at back of head and in back. I personally telephoned Barton Court Maternity Home. A nurse spoke to me. This was about 12-12.15 p.m. I asked for the Doctor and the nurse said he had gone to the country. I asked: "Who has he left to act for him?" The answer was "No one." I told the nurse the symptoms. The nurse asked if I thought they were the usual symptoms. I said: "No, I think it is far from it, for I had nothing like it and I have had children." I asked: "What do you suggest I do?" Nurse said: "Hold on. The Doctor will soon be here." I telephoned quite a few times afterwards until about 10 p.m. I got no better advice on any occasion. I asked the nurse to tell the Doctor to telephone me when he came in. I said I thought wife's condition was serious. The nurse was quite matter-of-fact and said she would tell Plaintiff when he came in.

20 I slept there that night. We retired about 10.30 p.m. I did not go to sleep immediately. I never heard the telephone ring. My door was left open to hear the telephone if it rang. I am not a heavy sleeper.

I telephoned again and nurse answered. When Doctor Moodie came to the telephone I asked: "Did you get a message yesterday?" He said: "No." I told him of the symptoms again, same as I told the nurse. Plaintiff asked me a few questions and said he would soon come around.

30 I left for my work after that. I left office at 3 p.m. and went straight to Barton Court. I saw Plaintiff and Defendant in the building. I asked Plaintiff if the baby had arrived. He said: "No. It is serious. I must clear the trouble up first." I said: "How can you, when you have not taken away the cause."

40 I remained at Barton Court that night. I did not see Wife during the night but I could hear her groaning. I saw her between 5.30-6 a.m. Saturday. The nurse allowed me to see her. When I went in my sister was walking up and down and crying and holding her abdomen. She complained of pains and cried out: "I want a Cæsarean." The nurse said: "Stop it Mrs. Johns. You are going to have a perfectly normal birth. Hold on and strain down." Wife said: "Strain down? I can't. There is something blocking it. I must have a Cæsarean." I put my arms around Wife and said: "Never mind. Do what the nurse says and strain down."

I considered it unusual for wife to be walking up and down. I think when a nurse says: "Strain down" labour has actually commenced. I was there for about half an hour. I had to go.

I returned on the Saturday afternoon. I saw Plaintiff and Defendant. Both were talking on the balcony. Defendant said: "We are going to have a consultation." I was present when Dr. Parboosingh came. He left.

*In the
Resident
Magis-
trate's
Court.*

*Defendant's
Evidence.*

No. 10.
Gilda Ilene
Neale,
12th
November
1948,
continued,
Cross-
examin-
ation.

I saw Plaintiff talking to Defendant. Plaintiff said : " I do not agree with a Cæsarean." I am absolutely certain of that. Later on I saw Drs. Parboosingh, Stockhausen and Mellad. I spoke to Stockhausen.

XXD. : When I saw Plaintiff's wife on Thursday she was not in a state of distress. Defendant also called up the Doctor. I was worried about my sister's condition. I could see that Defendant was worried too. Defendant went to the Races. He came in from time to time. He came in from the Races three to four times.

I thought the pains in the back on the Thursday was due to the bleeding. I did not think she was in labour then. I asked Plaintiff after 10 3 p.m. if the baby had arrived.

I have been to Court every day and sat in Court at the beginning of the case. I heard the evidence. I am interested in this case. I can't tell if Plaintiff was worried when he said : " I have to clear up the trouble first."

Plaintiff did suggest a consultation on the Friday and Defendant agreed. I think Dr. Parboosingh's name was mentioned. I did not hear Parris or Stockhausen. I did not hear Mellad's name called on the Friday night.

Dr. Mellad is my Uncle. I know he went to see wife on the Saturday. 20 He said wife's case was serious. I did not speak to Dr. Mellad myself. Defendant told me that Dr. Mellad said that the case was serious. I don't remember anything else.

Defendant did not tell me that Dr. Mellad said they have plenty of experience and she is all right. Defendant did say that. Dr. Mellad said : " I did not examine her."

I am sure I asked the nurse if Plaintiff had left anyone in charge. This was because I felt that the case was very serious and that wife should see a Doctor. This was about 12.15 p.m. The condition did not improve. It got worse and worse. Wife complained of pains in back of head 30 and back.

Wife did not show any worry about her condition. She was not restless. I did not get any other Doctor because I felt that no Doctor would take the case as Plaintiff had left no Doctor.

The nurse did not say " Bear down." She said " Strain down." Those words are used when a woman is in the last stage of labour. I say wife was in labour on the Saturday morning. Everything showed that wife was in labour. Wife was getting pains on and off. I am certain about it.

Wife went into Labour Ward after or about 7 a.m. Saturday morning. 40

Dr. Stockhausen said Cæsarean Section too. Dr. Mellad did not agree with a Cæsarean. He said pulse was rapid and temperature high and the best thing was to limb. He did not think wife was strong enough to stand a Cæsarean Section.

Dr. Moodie agreed with a Cæsarean after Drs. Parboosingh and Stockhausen said Cæsarean Section. I am not certain who named Stockhausen. I know he was there.

Dr. Moodie did not in my recollection agree with Dr. Parboosingh on a Cæsarean Section then. Dr. Mellad said he preferred limbing. I do remember he said so.

I really don't know who suggested Dr. Stockhausen. It might have been Dr. Moodie or Mr. Johns.

CASE

Part-heard to 20.11.48.

10

No. 11.

SPEECH by Counsel for Defendant.

Mr. MANLEY addresses :

Plaintiff sues on contract. Reasonable fees charged for services rendered.

What is the contract: Doctor professes to possess a certain skill and undertakes to use that skill. If in performance of services he fails to use that degree of skill, having regard to modern knowledge and usage, which is expected of him, and that failure results in his work being useless, he is not entitled to recover any of his fees.

20

Where there is an entire contract for performance of services involving many acts and extending over a period of time, any breach of an essential element in the contract will have the result that the person claiming under it can recover nothing.

Where it is alleged in such a contract that there has been a breach of an essential element in the contract, and as the result has seriously affected the party entitled to the benefit of the contract, onus is on the person guilty of the breach to show if he can that the breach did not affect or injure the party entitled to the benefit of the contract.

30 E.G. Contract of Bailment.

Plaintiff never told what the contract was. In cross-examination he undertook to give pre-natal care and to deliver wife's child at his Nursing Home.

Wife gives evidence of the contract. Defendant said: Engaged services of the Plaintiff for my wife and entered into contract to look after her in all stages of pregnancy and to deliver child at his Institution.

What are the obligations arising under the contract.

Conduct on 20th November 1947. Conduct showed nature of Plaintiff's duties appreciated. Plaintiff took the Matron away. He did state what arrangements he had made for another Doctor to do his work. His instructions to nurse—Ring me at Dr. Stephenson's or if important call Dr. Stockhausen.

40

*In the
Resident
Magis-
trate's
Court.*

*Defendant's
Evidence.*

No. 10.
Gilda Ilene
Neale,
12th
November
1948,
Cross-
examin-
ation,
continued.

No. 11.
Speech by
Counsel for
Defendant,
20th
November
1948.

*In the
Resident
Magis-
trate's
Court.*

Dr. Don's evidence—page 31. Plaintiff's evidence page 3. See evidence Dr. Don and Dr. Parboosingh. Chance of survival of child in such a condition of toxemia—then the necessity for early treatment—the greater the chance of survival. What was the obligation under contract.

No. 11.
Speech by
Counsel for
Defendant,
20th
November
1948,
continued

Duty of Doctor undertaking to give attention to expectant mother and maintaining Institution for reception of such a person. It is his duty at expected time of confinement to have Institution so maintained as (1) to give proper advice when needed, (2) to give proper treatment consequent on that advice. 10

To leave Institution when wrong advice may be given—indifference shown to urgent report and urgent treatment delayed.

If condition of pre-eclampsia had ripened into eclampsia during delay of 24 hours what could be the answer.

Assuming Plaintiff did make arrangement with Dr. Stockhausen that if another Doctor needed Dr. Stockhausen would attend.

A duty during his absence to have his Institution so maintained that complaints or reports could be properly dealt with. See page 4 of Plaintiff's evidence.

Nurse Waite not called. Nurse reported that wife reported traces of blood 3.30 p.m. Nurse's report admittedly did not inform a doctor, took no steps to secure any advice for wife, failed in her duty to send for Plaintiff or for Dr. Stockhausen, or to tell wife to get another Doctor. Allowed her to rely on the advice of a person left by Plaintiff to deal with such reports. Plaintiff himself failed to do anything when he got report. Ask Court to find as a fact that Plaintiff did not ring up.

(Plaintiff called on wife 8.30 a.m. next day 17 hrs. p. 4) 24 hrs. ?

It can't be stated for certain that if wife had received treatment earlier that child would not have died.

Doctor's duty is to give that degree of service that will give reasonably fair chance of successful outcome. Onus on Doctor to show that even if one had done this duty the outcome must have been the same. Medical opinion in this case, need for immediate treatment. 30

Vigers v. Cooke [1919] 2 K.B. p. 475. Judgment of Bankes L.J. Onus on Plaintiff to establish no default on his part.

Defendant also alleged other breaches of duty and consequential delay leading to death of child. Failure to hold consultation Friday night. Failure to hold consultation Saturday morning. Onset of labour—all in conflict.

Court asked in case of conflict in evidence between Plaintiff, Defendant's wife and Mrs. Neale to accept evidence of Defendant. Mellad and Parboosingh with Plaintiff's evidence, to prefer evidence from Drs. Parboosingh and Mellad. 40

Submits Dr. Moodie's recollection at fault. (Court asked to treat Plaintiff's evidence with reserve.)

What happened the Friday night? What would have been the proper treatment ?

Has Plaintiff satisfied the Court his treatment reasonably fair and skilful? Has he told the Court what happened? Has he discharged the onus on him?

In the Resident Magistrate's Court.

Case rested: Admitted state of negligence, resulting delay may be death of child. Breach of contract in material aspect.

Owners of Institutions—even where they are not professional are liable for the negligence of those they employ in those Institutions, even if term of employment . . .

No 11.
Speech by Counsel for Defendant, 20th November 1948, *continued.*

10 Obligations arising under contract. *Gold v. Essex County Council* [1942] 2 K.B. 293, Green, at p. 301. If nurses or other professional assistants are negligent the owners are liable.

Question of fees for Consultants. At no time has Defendant refused to pay fees of other Doctors. Defendant never told: "I have paid the fees and I am asking for payment." This case is concerned with the fees claimed by Plaintiff. No evidence to show that it is the custom to collect the fees of the Consultant. Plaintiff must first pay Consultant. Claim is premature.

No. 12.

SPEECH by Counsel for Plaintiff.

No. 12.
Speech by Counsel for Plaintiff, 20th November 1948.

20 EVELYN replies: 1st. Recovery of Consultants' fees. No direct authority. Relies on implied contract. *Corbin v. Stewart* [1911] 28 T.L.R. p. 99. At page 101, Scrutton, J.

Doctors called at request or with consent or acquiescence of Defendant. An implied contract arises between Defendant and Plaintiff that Defendant will pay to Plaintiff any fees that Plaintiff may be liable to pay Consultants for services rendered by them.

30 Also implied contract between Plaintiff and Consultants called by Plaintiff that Plaintiff will recompense them for the services that are being rendered by them to patient. In Law Plaintiff made liable to Consultants. The important aspect of the case is concerned with Plaintiff's claim for his fees.

On question of entire contract. The basis of Plaintiff's claim is *quantum meruit*. Defence set out at beginning of case. Not one word about entire contract or breach of contract. Refers to Particulars of Defence given by Defendant.

40 *Rich v. Pierpont* (1862), 3 F. & F., page 35. Necessary to have competent degree of skill and knowledge and care, at page 41. *Lamptier v. Phipps* (1838), 8 C. & P., at page 475. Test—was injury due to want of proper degree of care and skill—*per* Tindall, C.J. All skilled workers and tradesmen and professional, are required to show fair, reasonable and competent degree of care and skill. Hals. Law, Hail. Ed., Vol. 34, pages 465–466.

Luncheon adjournment.

*In the
Resident
Magis-
trate's
Court.*

No. 12.
Speech by
Counsel for
Plaintiff,
20th
November
1948,
continued.

Vigers v. Cooke considered with reference to Defence is contained in letter of 4.2.48 reply to claim letter of January.

No Cross-examination directed to Plaintiff that the contract was for 14 guineas. Distinguishable—Plaintiff claims to sue on a *quantum meruit*. In *Vigers v. Cooke* Defendant admitted not performing essential and specific terms of the contract. In this case Plaintiff suing on *quantum meruit*. Admitted the charges are all reasonable.

Plaintiff gave detailed evidence of services rendered and *prima facie* services rendered in accordance with good medical practice—fair, reasonable degree of skill. No admission of any negligence. 10

To meet *prima facie* case onus shifts to Defendant.

Reference to Particulars of Defence. Must prove negligence went to root of whole contract. Mere proof of the death of child does not prove negligence.

Evidence—Plaintiff's case on the Thursday night, nothing urgent on the face.

Record shows wife admitted to Institution 10.15 a.m. 21.11.47.

Refers to evidence of Dr. Don in particular, in cross-examination.

No analogy between payment of fees—Counsel and Solicitor Doctor and Consultant. Consultant only attends when called by the Doctor in charge of the case. Plaintiff's case—Plaintiff agreed to give ante-natal care and attend at delivery of child for 14 guineas, a normal case. 20

Case not an ordinary case. Plaintiff proceeds to claim on *quantum meruit*. Onus on Defendant to show that services rendered were useless, substantially, or if negligence proves to show that negligence made the services rendered useless.

No. 13.
Judgment,
20th
November
1948.

No. 13.

JUDGMENT.

Judgment for Plaintiff.

No. 14.

NOTICE OF APPEAL.

Plaint No. 1886 of 1948.

IN THE RESIDENT MAGISTRATE'S COURT.

For the Parish of Kingston.
Holden at Kingston.

*In the
Resident
Magis-
trate's
Court.*

No. 14.
Notice of
Appeal, 2nd
December
1948.

Between DR. L. A. MOODIE Plaintiff

and

L. M. JOHNS Defendant.

10 TAKE NOTICE that the Defendant hereby appeals from the Judgment of His Honour Mr. H. P. Allen Resident Magistrate for the parish of Kingston pronounced herein on the 20th day of November 1948 and take further notice that the Defendant has deposited in Court the sum of ten shillings as security for the due prosecution of the said Appeal and the further sum of Ten Pounds as security for the payment of any costs that may be awarded against the Appellant.

Dated the 2nd day of December 1948.

(Sgd.) MILHOLLAND, ASHENHEIM & STONE,
Defendant's Solicitors.

20 To the above-named Plaintiff,
Or to his Solicitor Mr. T. N. Willoughby,
Kingston

And to the Clerk of the Resident
Magistrate's Court, Kingston.

Filed by MILHOLLAND, ASHENHEIM & STONE, of No. 5 Port Royal
Street, Kingston, Solicitors for the Defendant.



No. 15.

NOTICE OF REASONS FOR JUDGMENT.

Plaint No. 1886 '48—On Appeal.

*In the
Resident
Magis-
trate's
Court.*

No. 15.
Notice of
Reasons for
Judgment,
23rd
December
1948.

IN THE RESIDENT MAGISTRATE'S COURT.

For the Parish of Kingston.

Holden at Kingston (Civil Division).

Between DR. L. A. MOODIE Plaintiff

and

L. M. JOHNS Defendant.

TAKE NOTICE that His Honour Mr. H. P. Allen, Resident Magistrate, 10
Kingston (Civil Division) has this day filed his Reasons for Judgment in
the above matter which may be inspected at this office any day between
the hours of 10 a.m. and 3 p.m. except on Saturdays when the office closes
at 12.00 noon.

Dated this 23rd day of December 1948.

(Sgd.) H. WATKINS,
(Ag.) Deputy Clerk Courts,
Kingston.

To : T. N. Willoughby, Esq.,
Solicitor,
Kingston.

20

And to : Messrs. Milholland, Ashenheim and Stone,
Solicitors,
Kingston.



No. 16.

REASONS FOR JUDGMENT.

Plaint No. 1886/48. On Appeal.

IN THE RESIDENT MAGISTRATE'S COURT.

For the Parish of Kingston.

Holden at Kingston (Civil Division)

Between DR. L. A. MOODIE Plaintiff

And

L. M. JOHNS Defendant.

*In the
Resident
Magis-
trate's
Court.*No. 16.
Reasons for
Judgment,
23rd
December
1948.

REASONS FOR JUDGMENT.

10

1. In this case the Plaintiff claims the sum of £97 13s. from the Defendant for professional services rendered.

2. The Defendant denied liability on the ground that he obtained no benefit under the contract for services made with the plaintiff, by reason of the negligence of the Plaintiff. The Defendant gave particulars of negligence, to wit :—

20

(A) Plaintiff was employed to attend Defendant's wife in her expected confinement with a view to the safe delivery of the child. As a result of the Plaintiff's error, the child was not safely delivered—died prior to delivery.

(B) By reason of the Plaintiff's failure to diagnose the true condition of Defendant's wife and his delay in taking appropriate measures—ordering Cæsarean operation—the child died within the womb and mother's life gravely imperilled.

(C) On the day of expected confinement Plaintiff absented himself from Kingston, and was unavailable to Defendant for 24 hours after onset of symptoms which required medical attention.

30

(D) Plaintiff when requested to call in a Consultant, refused or failed to do so and assured the Defendant that there was no need for a Consultant, when in truth and in fact the condition of the Defendant's wife was in fact a serious one.

(E) Plaintiff, when after undue delay, did decide to call in a Consultant, delayed in securing the attendance of a Consultant until it was too late to save the life of the child.

(F) Plaintiff was so negligent that he failed to discover the symptoms at the onset, of the death of the child, that the child died in there—Plaintiff being unaware of the fact imperilling the life of the mother and aggravating her subsequent illness and suffering.

40

(G) Plaintiff failed to recognise that the case was one in which a Cæsarean operation might be necessary took wrong measures for a case in which such an operation might be necessary ; failed to

*In the
Resident
Magis-
trate's
Court.*

No. 16.

Reasons for
Judgment,
23rd
December
1948,
continued.

take any steps to secure Defendant's wife's removal to an institution where such an operation could be performed rapidly if such an operation became necessary failed to advise such an operation until it was too late to save the life of the child and caused further delay which gravely imperilled the life of the mother.

3. The trial commenced on the 14th September, 1948, and continued on the 15th September, 1st October, 12th and 20th November, 1948.

4. The Plaintiff's case is that the Defendant engaged his services in Kingston as a Doctor and Obstetrician to attend his wife, Irene Mercedes Johns, during the stages of pregnancy and at her confinement, which was to take place at his Nursing Home in St. Andrew. She attended at his office for monthly examinations, and on each occasion a fee was charged and paid. 10

5. The "Due day" based on Mrs. Johns' history, was known to be the 20th November, 1947. On that date the Plaintiff said he telephoned Defendant some time in the forenoon of the 20th November and enquired as to her condition, and if she saw any signs, and was told "No." He then said (and this was seriously disputed) that he informed him that he had to be out of town that day.

6. The Plaintiff was absent from his office (in the parish of St. Thomas) and returned about 10 p.m. the same night, when, he said, his chief nurse at the Nursing Home informed him that she had received telephone messages from and on behalf of Mrs. Johns, stating that after a ride in her motor car she notices that whenever she micturated and used tissue she saw traces of blood. The Plaintiff stated (and this was seriously contested) that he telephoned the residence of the Defendant, but although the telephone bell rang several times, he got no answer. He further stated that before he left Kingston he gave instructions to his principal nurse that in case of any calls of emergency she should call Dr. Stockhausen to answer for him. This was also seriously challenged by the Defendant. 30

7. The Plaintiff further stated that next morning around 7.30 a.m. he spoke on the telephone with Defendant who called him and who reported that there were traces of blood when Mrs. Johns used tissue; that he visited Mrs. Johns around 8.30 a.m. and examined her and discovered that the blood was coming from the bladder, and on his advice, she entered his Nursing Home the same morning. That the blood pressure that morning was 100^s and over 100^p; that Defendant's wife complained of pains in her head and chest, and the Plaintiff diagnosed toxemia pregnancy and treated her accordingly; that as she still complained of pains in the head and chest he punctured the membrane that evening to bring on labour. 40

8. That he told the Defendant that night around 7.30 to 8.00 that Mrs. Johns' condition was serious, and Defendant said he would like to have a consultation, and that he agreed, and Defendant selected Dr. Mellad, who could not be found that night.

9. That on the morning of the 21st November, 1947, the blood pressure was 158^s over 100⁰, and wife still complained of pains in her head, and he continued treatment for the condition; that labour pains started around 10 a.m.; that when around 1.30 p.m. he examined Mrs. Johns, she was hysterical and uncontrollable, and he had to give her anæsthetic. She was then half-dilated. He then used forceps but failed to extract the child. He tried again at around 4 p.m. without success, and he then decided for a Cæsarean Section, and told Defendant that he was going to call Dr. Parboosingh. Defendant agreed. Dr. Mellad was present.

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10. That Dr. Parboosingh came and examined the patient and agreed to a Cæsarean Section—Dr. Mellad being against it. That Defendant asked for an opinion of a third Doctor, and Dr. Stockhausen was called and he agreed for a Cæsarean.

11. That at the request of the Defendant, Dr. McFarlane was called and Mrs. Johns was operated on that night at the Nuttal Hospital, the Plaintiff giving the anæsthetic; that the baby was born dead; that the Plaintiff attended on Mrs. Johns, and on the fifth day after the operation he was asked not to visit Defendant's wife, as she was hysterical whenever she saw him. The Plaintiff's services were discontinued when Mrs. Johns left Nuttal Hospital.

12. The Plaintiff claimed £31 10s. for services, also Consultants' fees £66 3s. for which the Plaintiff claimed that he was responsible.

13. The Defendant's case was that the Plaintiff failed to diagnose properly and in time the true condition of Mrs. Johns, the Defendant's wife; that he failed to take proper steps whereby the baby was born dead; that the Plaintiff was absent on the "due day," the 20th November, 1947, and that the Plaintiff failed to make provision for another Doctor to answer for him in a case of emergency, and that leaving a mere nurse to answer was not sufficient discharge of his professional duty to his patient. A great deal of cross-examination was directed on these matters and a great deal of evidence tendered and called on both sides.

14. The effect of the Defendant's case was that the Plaintiff never informed him of his intention to be absent from his office on the "due day"; that the information received from the nurse left in charge by the Plaintiff was inadequate and misleading; that the Plaintiff never called up the Defendant on the night of the 20th November, 1947, nor did he call to see Defendant's wife after receiving Defendant's information of her condition until 11 a.m. or thereabouts, on 21st November, 1947; and that she was sent to the Nursing Home by the Plaintiff after midday. That she never complained of any pains in her head and/or chest; and that her blood pressure was never taken by the Plaintiff on the 21st November, 1947. That labour pains commenced 10 p.m. on the 21st November, 1947, and that she was not unconscious nor under the influence of anæsthetic; that she was clear, that she was groaning all night; that she recognised her Uncle, Dr. Mellad, when he came to see her.

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15. That her sister, Mrs. Neale, stated that she saw Mrs. Johns walking up and down, shouting, "Operation, operation" and that a nurse was telling Mrs. Johns to "bear down, bear down."

16. The Defendant further stated that the Plaintiff refused to have a consultation on the evening of the 21st November, 1947, and on the 22nd November he disagreed with the Consultants and unwillingly consented to a Cæsarean Section; that he failed to diagnose the absence of the foetal heartbeat on the 22nd November, and failed to inform the consulting Doctors of the History of Defendant's wife.

17. I had the opportunity of hearing the Plaintiff and of seeing him in the box under prolonged and intensive cross-examination. I regard him as a witness of truth, and I accepted his story. I did not regard Defendant Johns as a witness of truth. I did not think it was safe, having regard to the medical evidence both by Drs. Moodie and Parboosingh as to the state of Mrs. John's health and suffering, and mental and physical condition, to treat her recollection of events from the night of the 21st to 22nd November, 1947, as clear and definite. I formed the opinion that her evidence should be viewed with greatest caution, and could not be accepted as trustworthy. I find as a fact that Mrs. Johns was suffering from toxemia in pregnancy, which developed into a pre-eclamptic condition. 20

18. The evidence of Dr. Parboosingh was clear, and in my opinion, fair. He agreed that the diagnosis of Dr. Moodie was correct; that the treatment was correct. Dr. Don's evidence also agreed that on what he had heard, the treatment was correct, and that no Doctor could guarantee the ultimate safety of the unborn child. I was not impressed with the evidence or demeanour of Mrs. Neale.

19. Where the evidence of the Plaintiff and the Defendant and/or the Defendant's wife was in conflict, I preferred the evidence of the Plaintiff. I took the view that, on the evidence of the experts called by the Defendant, that I was right in finding that the diagnosis and treatment by Dr. Moodie of Mrs. Johns was correct, that the Cæsarean Section was properly resorted to and that there was no failure to diagnose properly, nor was there any delay or defect in treatment. 30

20. In this regard, I would point out that against the evidence of the Defendant and his wife (A) when the Plaintiff called to see Mrs. Johns on the 21st November, 1947, and (B) the hour she was admitted to the Nursing Home, are totally inconsistent when tested with the records of the Nursing Home, which showed that Mrs. Johns was admitted around 10.15 a.m. on the 21st November, 1947, and not 12.45 p.m. as suggested by the Defendant. 40

21. I accepted the evidence of the Plaintiff that he arranged for Dr. Stockhausen to answer for him in case of an emergency during his temporary absence from his office on the 20th November, 1947, I accepted the evidence of the Plaintiff that he communicated his intention to be absent to the Defendant. I accepted the evidence of the Plaintiff that he informed his Head Nurse of his arrangement with Dr. Stockhausen to

answer for him. I accepted the evidence of the Plaintiff that on the morning of the 21st November, 1947, around 8.30 a.m. he discovered that the blood was coming from the bladder, and not from the vagina. There was nothing on the night of the 20th November to suggest that the blood was coming from the bladder, in fact this was not discovered until Plaintiff examined Mrs. Johns on the morning of the 21st November, 1947. I accepted the Plaintiff's evidence also that it was the custom in the medical profession for the Doctor in charge of the case to pay the Consultants' fees.

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22. I did not accept the evidence of Mr. Johns that the Plaintiff
10 refused to have a Consultant called on the night of the 21st November, 1947,
or that he failed or refused to call a Consultant or Consultants on that or
any other occasions.

23. On the facts found, I drew the inference that a "due day" does not mean the very day of delivery, but is only the likely day; that a "show," a trace of blood, is not unusual at or about the period of the due day, provided that the blood comes from the vagina.

24. The evidence of the medical expert Dr. Don called by and on behalf of the Defendant, did not take the matter any further. He agreed in substance that on the evidence which he heard in Court, that the
20 diagnosis and treatment of the condition of Defendant's wife was correct.

25. On the conclusion of the Defendant's case, the defence placed main stress on the allegation of negligence—on the evidence surrounding the conduct of the Plaintiff on the 20th November 1947 (the "due day") and authorities were cited to support the contention urged. Whilst I accepted the view that the negligence of a nurse in those circumstances could be laid to the Doctor in charge of the case, yet I do not think the authorities go as far, in view of my findings of fact and inferences drawn, to establish the allegations of negligence on which the Defendant based his claim that the Plaintiff is not entitled to recover.

30 26. On the question of the fees charged by the Consultants, this was conceded by the Defendant to be fair and reasonable, nor was the question of the reasonableness of the charges by the Plaintiff questioned.

27. I therefore entered judgment for the Plaintiff for the amount claimed with costs.

Dated this 23rd day of December 1948.

(Sgd.) H. P. ALLEN,
Resident Magistrate,
Kingston (Civil Division).

GROUNDS OF APPEAL.

Plaint No. 1886 of 1948.

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IN THE RESIDENT MAGISTRATE'S COURT.

For the Parish of Kingston.

Holden at Kingston.

No. 17.
Grounds of
Appeal, 3rd
January
1949.

Between DR. L. A. MOODIE Plaintiff

and

L. M. JOHNS Defendant.

GROUNDS OF APPEAL.

10

1. The Learned Magistrate has failed to deal adequately with the principal ground relied on by the Defendant in defence to the Plaintiff's claim.

2. It was proved at the trial and not disputed that Plaintiff was engaged to attend the Defendant's wife professionally on her confinement and owed a duty to give medical advice and treatment in relation thereto including advice and treatment for such a condition of toxemia as supervened on or about the expected date of confinement.

3. It was admitted that the failure of the Plaintiff's Nurse to give proper advice to and secure adequate professional attendance for the Defendant's wife on her report of a serious symptom of toxemia on 20th November 1947 was an act of gross negligence. 20

4. It was not disputed at the trial that that act of negligence materially lessened the chances of a safe delivery of a live child.

5. It was not disputed and ought to have been found that the Plaintiff owed a duty to the Defendant's wife to see that she had as good a chance of a safe delivery as reasonable care and skill could secure.

6. The Plaintiff failed, by reason of the negligence of his servant, the Nurse, to discharge this essential duty arising in the course of his contractual obligations, and failed to show that even if that duty had been performed the child would still have died. 30

7. The Plaintiff, in the circumstances, was not entitled to recover anything for services rendered which in fact ended with the death of the child.

8. The Magistrate was wrong and acted contrary to the weight of the evidence in accepting the Plaintiff's account as correct in all particulars. The evidence showed and established that the Plaintiff had reconstructed the case from a Medical point of view and professed at the trial to certainty at the material time about matters concerning which he was wrong or wholly uncertain when the events occurred. 40

9. The Judgment is contrary to the evidence and the weight of the evidence.

10. The Judgment is wrong in law and fails to apply the proper principles in a claim on a contract where there has been a breach of duty in a material part of the obligations under the contract.

Dated this 3rd day of January 1949.

(Sgd.) MILHOLLAND, ASHENHEIM & STONE.

JUDGMENT by The Honourable The Chief Justice.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.
In the Court of Appeal.

L. A. MOODIE *vs.* L. M. JOHNS.

Manley K.C. for Defendant-Appellant.

Evelyn for Respondent.

The following judgment was delivered by the Honourable The Chief Justice :

10 The Plaintiff, a medical practitioner, successfully sued the Defendant for the sum of thirty guineas being fees which he charged in respect of his treatment of the Defendant's wife and the sum of £66.3.0 being fees which were said "by custom" to be payable by him to four doctors for consultation and professional services rendered to the Defendant's wife, a total of £97.13.0 and the Defendant has appealed.

20 When the Respondent submitted his account the Appellant's solicitors replied that their client accepted liability to pay the sum of £66.3.0 on proof that the Respondent had paid the fees of the doctors concerned or alternatively that he would pay the doctors "direct in due course." They stated, however, that their client declined to pay the Appellant's fees "because of the grossly negligent manner in which he had dealt with the confinement" of the Appellant's wife. It is to be noted that there was no mention at this time of negligence in the Respondent's nurse or in the Respondent himself prior to the confinement.

At the trial it was alleged that the Respondent had been negligent in diagnosis, in treatment, in his failure to call in a consultant in time and in other ways, but the findings of the trial Judge that the Appellant had not established these particulars of negligence have not been questioned on appeal.

30 It was also alleged as the only other particular of negligence that "on the day of the expected confinement (the 20th November, 1947) the Plaintiff (Respondent) had absented himself from Kingston and was unavailable to the Defendant (Appellant) for 24 hours after the onset of symptoms which required medical attention." At the outset of the trial, although the Solicitors of the Appellant had been or should have been instructed in regard to certain messages which were alleged to have been given to the Respondent's nurse, no allegation of negligence in the nurse was made. That defence was developed in the course of the trial and, as will be seen, still another defence was not developed till the hearing
40 of the appeal. The trial judge found that the Respondent had communicated his intention to be absent to the Appellant, that he had arranged for Dr. Stockhausen to answer for him in case of emergency and that he had informed his head nurse of the arrangement he had made with Dr. Stockhausen. One of the Appellant's witnesses, a medical man, gave evidence that "the due date" was "not a definite date but merely an

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approximation and might vary a fortnight either side” and also that the Respondent could have returned to Kingston from Morant Bay where he had gone “in good time if labour started.” In these circumstances and in view of the findings of the Judge, it can hardly be said that the Respondent was personally negligent in the mere fact that he had left Kingston on the 20th November, the expected day of labour. He hoped to be back at 6 p.m. but did not return till 10 p.m. In the meanwhile certain events had taken place.

It was stated by the Respondent in examination-in-chief that on his return to Kingston at 10 p.m. a nurse in his employment at his nursing home, where the Appellant’s wife was to have been admitted for her confinement, had reported to him that she had received a telephone call at 3.30 p.m. from a person who, stating that he was the Appellant, had said that “whenever his wife passed urine and used tissue she saw traces of blood,” and that she (the nurse) enquired if there were any pains and on being told that there were not, had advised that “if the pains start she should be brought in.” It was on this statement by the Respondent in examination-in-chief and an opinion which he expressed in cross-examination that the defence of negligence on the part of the Respondent’s servant was based. The judge, however, rejected the defence of negligence. 10 20

This decision was most strenuously challenged by Counsel for the Appellant who also put forward another argument which was based, not on the alleged negligence of the Respondent’s servant, but of the Respondent himself. The trial judge had been invited to find, contrary to what the Respondent had stated in his evidence, that the Respondent had not telephoned to the Appellant’s number at 10 p.m. on his return to Kingston, and therefore that he had failed to do anything on receipt of the message from the nurse which he admitted having received. It does not appear to have been argued before him that even if he had received no response on the telephone, it was his duty to have made a point of seeing the Appellant’s wife at that time of night and the judge accordingly made no finding. In view, however, of his acceptance of the Respondent’s evidence that he did telephone, this argument too was pressed on us although it finds no place even on the grounds of appeal. 30

Counsel for the Appellant found himself in difficulties by reason of the fact that the judge took a most favourable view of the Respondent’s credibility and an adverse view of the Appellant’s credibility, and he therefore founded his argument, as I have said, on the statement made by the Respondent of the terms of the message he had received from the nurse and the opinion which he had expressed in cross-examination. 40

I have already referred to the statement made by the Respondent in examination-in-chief. The opinion he expressed in cross-examination appears in a passage at page 10 of the typescript (p. 9 of this Record): “I never told the Defendant that I had not got a message about urine. I was never informed that wife had rung up in the day and that a nurse had told her it was only a show. I agree that such a message should have been given to me. I would say that if I got a report that when labour was expected 20th November and blood was found in the urine it would be the gravest negligence not to examine the patient there and then.”

It was argued that in view of the Respondent's admission that he had received a message about urine and in view of his admission that it would be the gravest negligence not to examine on the 20th November, the day when labour was expected, a patient who had blood in her urine, it was the gravest negligence in the nurse not to have arranged for Dr. Stockhausen to see the patient and also the gravest negligence in the Respondent not to have seen the patient himself as soon as he had returned from Morant Bay.

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This argument makes the whole case appear to be a very simple one.
10 But in my opinion it involves a misunderstanding of the evidence. Counsel for the Appellant has sought to place a certain interpretation on the evidence with which I find myself quite unable to agree.

The Respondent said that he had not told the Appellant that he had not received a message about urine. The message he had admittedly received about urine was, as he had already said in examination-in-chief, that "whenever the Appellant's wife passed urine and used tissue she saw traces of blood." He then said that he had not been informed that the Appellant's wife had rung up in the day and that a nurse had told her it was only a show. He then agreed that such a message should have been
20 given to him. Precisely what "such a message" refers to, I do not know. Does it mean the message he said he had received, or does it mean the fact that the Appellant's wife had telephoned and that the nurse had said that it was only a show? The answer to the next question clearly had no reference to any message he had received. On the contrary he said that "if he got a message," by implication a message he did not get, that blood was *found in the urine*, he would say that it would be the gravest negligence not to examine the patient there and then." Elsewhere in his evidence, at page 11 of the typescript (page 9 of this Record), he said "blood in the urine is a serious sign at any time . . . it means the kidneys are inflamed."

30 The third of the grounds of appeal was that "it was admitted that the failure of the Plaintiff's nurse to give proper notice to and secure adequate professional attendance for the Defendant's wife on her report of a serious symptom of toxemia on November 20th, 1947, was an act of gross negligence." This was the main argument on which the appeal proceeded and it is an illusory argument. At no time did the Respondent admit that the nurse had been guilty of negligence in not taking action on the message which the nurse told him she had received. His position was quite clearly that it would have been the gravest negligence not to have taken action there and then, if the message was to the effect that blood had been found
40 in the urine, but that was not what the message indicated. It was only that blood had been seen, traces of it, not in the urine but on tissue that was used after urination.

One difficulty I have experienced in deciding this appeal is that while Counsel for the Appellant has attacked the judge's finding on the issue of the nurse's negligence for reasons with which I do not agree, the judge has decided that issue for reasons which are by no means clear to me. In his judgment he said he believed the Respondent to be a witness of truth and that he disbelieved the Appellant and his wife wherever they were in conflict with the Respondent. But when he dealt with one of the
50 principal defences developed at the trial, the alleged negligence of the

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nurse, he contented himself with saying : " Whilst I accepted the view that the negligence of a nurse . . . could be laid to the doctor in charge of the case (this is admitted by Counsel for the Respondent) yet I do not think the authorities go so far, in view of my findings of fact and inferences drawn, to establish the allegations of negligence on which the Defendant based his claim that the Plaintiff is not entitled to recover."

In relation to the defence of negligence in the nurse, what does this mean and what are the facts which he found ? I do not know. If he found that the message which had been given to the nurse was that " whenever the Appellant's wife passed urine and used tissue she saw traces of blood," I would agree that that message did not convey the information that blood had been found in the urine. It merely suggested traces of blood on tissue. But the nurse did not give evidence. However convinced the judge may have been that that was the message the nurse had given to the Respondent, he could not conclude from the Respondent's evidence alone that that was the message that had been given to the nurse. The respondent gave evidence as to what was said to him *by* the nurse. On the subject of what was said *to* the nurse during his absence, the Respondent's case is a complete blank. What was said to the nurse must depend upon the evidence, believed by the judge, which was given by the Appellant and his witnesses. What did he believe of the alleged conversations with the nurse ?

I now come to another difficulty I have had in deciding this appeal. It is true as I have said that the nurse was not called as a witness, and the Respondent had therefore not attempted to prove what had been said to the nurse. On the other hand the onus of proving negligence in the nurse rested on the Appellant. It was for him to prove that the nurse had been given a message which indicated, or should have indicated, to her that blood had been found in the urine ; and of the three witnesses who spoke to the nurse, two did not claim to have said anything to her at all on the subject of blood being found in the urine ; at any rate, not in their evidence.

In her evidence the wife of the Appellant said : " At about 11 a.m. I noticed blood in urine and was inclined to urinate frequently. I only saw blood when I urinated." There is no evidence that the nurse was informed that blood was noticeable only when she urinated. She also said that her sister had told the nurse, it is to be presumed that she was claiming to have heard her sister speaking on the telephone, that " she had had four children and it was not like a show." The Appellant said that the person who spoke to him on the telephone said " that his wife was having show and should not be brought in till she started having pains." He was not, however, asked and did not say what he had told that person whoever she was. No doubt she was a nurse. The Appellant's wife said that she communicated all day with the Respondent. She probably meant the Respondent's nursing home. She does not mention what she said. Neither, as I have said, did the Appellant.

It will be seen that on the vital question of what was said to the nurse, in particular of the terms in which the so called " symptoms " were described, there was in the evidence of the two most important witnesses for the defence not a single word said to the Court. They did not say

they told the nurse and the defence could only succeed (unless the Respondent's evidence is given an artificial meaning) if the nurse had been told, that blood had been found in the urine. If this is what the witnesses had seen—blood in the urine—and had told the nurse, surely they should have told the Court that this was precisely what they did tell the nurse. But they did not do so. They said nothing on this subject. Was it because they could not place the defence higher than the Respondent's own evidence? If this is so and if the argument of Counsel for the Appellant is unsound, as I think it clearly is, that the Respondent's evidence was an unqualified admission of gross negligence, then, as will appear in my opinion, the appeal must fail. But the Appellant called another witness whose evidence I propose to examine first. She is a witness whose evidence, if believed, could have carried the defence much further, if there was not in it an obvious hiatus.

It was left to Mrs. Neale, the last witness in the case, to give the Court some details of what she said to the nurse. In her evidence she said "I discovered after my arrival that wife passed blood when urinating and suffered from pains at back of head and in back . . . I told the nurse the symptoms. The nurse asked if I thought they were the usual symptoms. I said no I think it is far from it, for I had nothing like it and I have had children." In another part of her evidence she said that she told the nurse "she thought the wife's condition was serious."

Did the Judge believe this evidence? He did not expressly say that he disbelieved it, but he said that he was not impressed with the evidence of Mrs. Neale or her demeanour.

It seems to me that on the evidence of Mrs. Neale where she said that she expressed the opinion that the symptoms were not the usual symptoms, and that the condition of the Appellant's wife was serious, two views are possible. One is that she was wise before the event and that she did express the opinions to which I have referred. If she had expressed those opinions, then a communication had been made to the nurse which should have indicated to her, that, in the opinion of Mrs. Neale at least, all was not right with the wife of the Appellant. The other is that in the interests of the Appellant and his wife, in regard to whose credibility the Judge took a very adverse view, she had not spoken the truth in the witness-box and that she had falsely claimed, on behalf of an untruthful Defendant, to have been wise before the event. It would appear that the Judge was not disposed to place reliance on Mrs. Neale, not having heard or seen her give evidence it would be quite incompetent in me to say he should have done so, and for the purposes of this appeal I must take it that he did not believe her when she said that she had told the nurse the symptoms were not like the usual symptoms and that the condition of the Appellant's wife was in her opinion serious.

But apart from the opinions she expressed, what did she say in regard to the condition of the Appellant's wife: "I discovered the Appellant's wife passed blood when urinating . . . I told the nurse the symptoms." How did she describe what she called the symptoms? Surely it must have been realised that that was of fundamental importance to the defence? Did she say there was blood on tissue used after urination? No witness expressly denied that that was the message he or she had

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given. Or did she say there was blood found in the urine? If the latter why did she not say so? Even after having had the advantage of hearing Dr. Don giving evidence to the effect that only where it is certain that blood is coming, not from the vagina, but in urine, is it a serious condition, the Solicitors of the Appellant boldly assert that an admission of traces of blood on tissue is an admission of a serious symptom of toxemia. Could any approach to this case involving as it does questions of medical science, show less regard of the importance of accuracy?; and Mrs. Neale may have thought that the mention of blood on tissue was an adequate intimation to the nurse that the Appellant's wife passed blood when she 10
urinated. At any rate the details of her description of the "symptoms" are all important and they are entirely missing from her evidence. The onus of proving negligence rested on the Appellant. The evidence of the Appellant and his wife was negative on the subject of what had been reported to the nurse. Assuming the Judge disbelieved Mrs. Neale in regard to the opinions she expressed, although she was supported in regard to one of the opinions by the wife of the Appellant whom the Judge did not regard as truthful, then it cannot be said, in my opinion, that the Appellant discharged that onus.

There is one other matter to which as I indicated I would address 20
myself. If the nurse received the message about blood on tissue, and it must be taken into account against the Respondent at the least that she received that message, should she have communicated with Dr. Stockhausen and arranged for him to see the Appellant's wife. Was there a failure of duty on her part to have taken no steps to have the source of the blood ascertained in case it was coming from the kidneys? On this aspect of the case there is no evidence at all. Dr. Don was invited to express an opinion in regard to the duty of a nurse if a report had been made to her of blood coming, not from the vagina, but in urine. The defence seems to have been obsessed with the idea that the Respondent had admitted 30
he had received a message indicating that blood had been found in the urine, and that he had gone out of his way, against his own interests, to convict not only himself but also his nurse of gross negligence. Dr. Don said "I have heard history of wife. When it is certain blood is coming not from the vagina but in urine, it is a serious condition in a pregnant woman and she should see a doctor as early as possible. It is the duty of a maternity nurse where a patient has a doctor to inform the nurse (? doctor) of such condition, that she should tell the doctor or person answering for the doctor. Such a condition affects health of unborn child." The condition to which he was referring was blood in the urine. 40
He was not asked, nor was any medical witness asked, whether a message about blood on tissue should have indicated, even as a possibility, that blood was coming from the kidneys. No medical witness was asked whether it was a matter of common prudence and ordinary practice for a medical man to examine his patient on such a message being received by him. If a discharge of blood is normal, as the evidence indicates, on or about the date when labour was expected, would he be failing in his duty not to examine his patient at once on hearing *on or about that date* that "when she passed urine and used tissue she saw traces of blood?" These are medical questions which a Judge can of course answer but he 50
cannot do so without evidence on which to base his answers, and of

evidence bearing on these questions there was none. The facts underlying the defence in this case, in so far as it was made to depend upon what was called the Respondent's "admission," are very different from the facts in the case, cited by Counsel for the Appellant, of *Gold and Others v. Esser County Council* [1942] 2 A.E.R. 237, in which a grave state of affairs was known to exist and with that knowledge a grave risk was incurred.

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I would summarise my views by saying

10 (1) that it was not proved that the Appellant and his witnesses had given a message to the nurse that blood had been *found in the urine* of the Appellant's wife,

(2) that the message the Respondent admitted he had received was not a message to the effect that blood had been found in her urine,

(3) that on the basis of the message the Respondent admitted he had received, there is no evidence at all on which it could be found that either he or the nurse had been negligent.

20 It will be seen that what I had said is independent of the veracity of the Appellant and his witnesses. I have not seen them and have no means of judging them. The conclusion I have reached is that a minimum sufficiency of evidence, even assuming it was available, was not adduced, and that certainly the Respondent did not, in advance, make good the deficiencies of the Appellant's case. If this is what the judge thought, I agree with him. It appears that far too much reliance was placed, in my opinion, mistakenly, on the Respondent's supposed "admission."

On the subject of the fees which the Respondent said are by custom payable by him to the doctors who were consulted, no authority was cited to us to support the claim to recover those fees from the Appellant unless the Respondent had already paid them himself.

30 It was not argued that the fees charged by the Respondent were unreasonable, and for the reasons I have given I would have allowed the appeal to the extent of ordering that in place of the judgment that was entered, judgment should be entered in favour of the Respondent for thirty guineas (£31. 10. 0). I would also have made an appropriate order as to costs in this Court and the Court below.

(Sgd.) H. H. HEARNE, C. J.

1st April, 1949.

JUDGMENT of Cluer J.

No. 19.
Judgment
of Cluer, J.,
1st April
1949.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

In the Court of Appeal.

L. A. MOODIE *vs.* L. M. JOHNS

Manley K.C., for Defendant-Appellant

Evelyn for Respondent.

I have had the advantage of reading my brother MacGregor's judgment and am wholly in agreement with it. I only desire to add the following.

During the hearing in the Court below some stress was laid on the question as to whether or no the Respondent telephoned to the Appellant's house on the night of November 20th. It seems to me that all that the Respondent's evidence may have established is that he dialled a number to which no reply was received. I feel that a little warning, based on my personal views alone of course, may not be out of place. 10

Cross-examination seems to have been directed with a view to establishing that the Respondent did not use the telephone. I would go further and say that the mere dialling of a series of numbers, believed to be the Appellant's numbers, is far from conclusive. The wrong numbers may have been inadvertently dialled; the correct numbers may have been dialled but a wrong automatic connection given, an experience which, it must be conceded, is locally not infrequent. In my view the telephone is an exceedingly useful but by no means infallible method of communication; and I would go so far as to take the view that Counsel for the Appellant in his address to the learned Resident Magistrate when he used the words, "Plaintiff himself failed to do anything when he got the report" might justifiably be said to have included the alleged telephoning. Whether he intended this or not I do not know. But to dial a number and fail to get a reply may well not amount to "anything." 20

Further, I feel it necessary to emphasise the extent to which I find much of the learned Resident Magistrate's reasons for judgment unreasonable. 30

He has found that where the evidence of the Respondent and the Appellant was in conflict he preferred to accept the evidence of the Respondent. He has also stated that he did not regard the Appellant Johns as a witness of truth; and that he was not impressed with the evidence or demeanour of Mrs. Neale the sister-in-law. Nevertheless, one is left in some difficulty in assessing the value which the Resident Magistrate may have given, if he applied his mind to it at all, to the evidence of the Appellant and Mrs. Neale as regards their telephone conversations with Nurse Waite, who was not called as a witness. The nurse's report to the Respondent at 10 p.m. on 20th November proves conclusively that there was at least a considerable measure of truth to be found in the Appellant's and Mrs. Neale's versions, which, as far as Nurse Waite is concerned, have remained uncontradicted. Is it right to assume that the 40

Resident Magistrate must have disbelieved the whole of the Appellant's and Mrs. Neale's evidence as to the telephone conversations where they embellish Nurse Waite's brief report to the Respondent? I hardly think so.

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The Appellant stated: "About 11.30 a.m. first telephoned message to Respondent. My wife's sister (Mrs. Neale) and myself telephoned. I spoke on the first occasion at my wife's request. A Nurse answered me. She said: 'Dr. Moodie is out of town. I do not know when he is returning.'

About 12.30 p.m. I rang up again and asked for the Nurse in charge;
10 I heard someone called. That person said my wife is having a show and should not be brought in until she started having pains. She said the Doctor will be back at 4 p.m. During the day other messages were sent and the same advice received. I tried to get the Doctor up to about 10 p.m."

Mrs. Gilda Hene Neale, Appellant's sister-in-law, said: "I have four children. I visited wife between 11-12 a.m. I discovered after my arrival that wife passed blood when urinating and suffered from pains at back of head and in back. I personally telephoned Barton Court Maternity Home. A nurse spoke to me. This was about 12-12.15 p.m.

20 I asked for the Doctor and the nurse said: 'he has gone to the country.' I asked: 'Who has he left to act for him?' The answer was: 'No one.' I told the nurse the symptoms. The nurse asked if I thought they were the usual symptoms. I said: 'No, I think it is far from it, for I had nothing like it and I have had children.' I asked: 'What do you suggest?' Nurse said: 'Hold on, the Doctor will soon be here.' I telephoned quite a few times afterwards until about 10 p.m. I got no better advice on any occasion. I asked the nurse to tell the Doctor to telephone when he came in. I said I thought the wife's condition was serious. The nurse was quite matter of fact and said she would tell the Doctor when he came

30 in." Now, the only pertinent question, relative to all the above, which was asked in cross-examination was one which produced the answer: "I am sure I asked the nurse if Respondent had left anyone in charge. This was because I felt the case was very serious and that wife should see a doctor." All the rest is left unchallenged by Counsel for Respondent and is uncontradicted by Nurse Waite who was not called as a witness. As against this we have only the Resident Magistrate saying, generally, that he was not impressed by Mrs. Neale's evidence or demeanour. He does not go so far as to say e.g. that he was most unfavourably impressed with the whole of her evidence given in chief or with the particular passages quoted above.

40 Similarly, there seems to have been no question asked of the Appellant in cross-examination with a view to querying his assertion that on one occasion the Nurse said: "My wife is having a show and should not be brought in until she started having pains" nor do there appear to have been any questions asked to suggest that the Appellant's and Mrs. Neale's allegations that they telephoned more frequently than the two occasions admitted to by Nurse Waite were incorrect or an exaggeration.

In the circumstances, I find it difficult not to take the view that the Resident Magistrate was unreasonable in apparently substantially ignoring the evidence of these telephone conversations as given by the Appellant
50 and Mrs. Neale. Granted that in my view the Appellant's case is strong

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enough as it stands. But this apparently unreasonable review of the evidence reaches its culmination in the learned Resident Magistrate's—to me—inexplicable, if not astounding, comment: "There was nothing on the night of the 20th November to suggest that blood was coming from the bladder." In light of the Nurse's report to Dr. Moodie that "his wife whenever she passed urine and used tissue saw traces of blood," how was it possible to say that this report contained "no suggestion"? The report that the wife saw blood whenever she passed urine was surely suggestive of its being more likely, or at least more possible, that it derived from the bladder than that it could be attributed to other causes. The inclusion 10 of the words "and used tissue" are surely no more than incidental detail, the material words being "whenever she passed urine . . . she saw traces of blood."

Clearly the Resident Magistrate misdirected himself at this crucial stage and must have proceeded to found at least some of his conclusions upon this misdirection. It must be inferred that he took the view that the messages which the nurse received by telephone could not be regarded as "very important," such as should have caused her to carry out her instructions and call Dr. Stockhausen; and further, that she was justified in her judgment by the fact of the Respondent taking the same view at 20 10 p.m. as to the lack of importance, and failing to do anything. The Respondent, however, be it to his credit, in cross-examination frankly advanced a totally opposite view of a doctor's obligations in circumstances which inescapably included the present situation.

It appears to me that the case might well be said virtually to have been concluded at this stage.

In my opinion this appeal must be allowed with 10 guineas costs, and judgment be entered for the Defendant in the Court below with costs to be taxed.

(Sgd.) R. M. CLUER, J. 30

JUDGMENT of MacGregor J.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.
In the Court of Appeal.

MOODIE, DR. L. A.

vs.

JOHNS, L. M.

Manley K.C. for Defendant-Appellant.

Evelyn for Plaintiff-Respondent.

10 The following is the judgment of Mr. Justice MacGregor :

The Respondent, a medical practitioner, recovered judgment in the Resident Magistrate's Court, Kingston, against the Appellant for the sum of £31 10/- being fees in respect of his treatment of the Appellant's wife at the time of her confinement, and for the further sum of £66 3/- being fees which he stated were payable by him to other doctors who were called into consultation by him at the request of the Appellant. As to this latter sum, I agree with the views expressed by the learned Chief Justice and have nothing to add.

20 At the trial, the Appellant resisted the Respondent's claim, so far as the claim for his fees was concerned, on the ground that the Respondent was negligent, and Counsel stated the many heads of negligence relied on. As the trial proceeded facts were deposed to, which previously had not been known to the Appellant, with reference to the conduct of Nurse Waite, the nurse temporarily in charge of the Respondent's Maternity Home, and in both his addresses, Counsel for the Appellant submitted to the learned Resident Magistrate that the facts proved that the nurse was negligent. Her negligence was therefore clearly raised, was one of the issues for decision by the learned Resident Magistrate, and it was on this issue that the appeal was chiefly argued.

30 The evidence upon which this submission was based was given by the Respondent, by the Appellant, by Mrs. Johns, and by her sister Mrs. Neale. Because of the opinion expressed by the Resident Magistrate as to the evidence of the Appellant, of his wife and of Mrs. Neale, I will only refer briefly to it.

Mrs. Johns stated that at about 11 a.m. on the 20th she saw blood in her urine and that her husband telephoned the Respondent's maternity home. The Appellant said that his wife saw certain signs, that he and Mrs. Neale telephoned, and that a nurse on one occasion said that the blood was only a show. Mrs. Neale said that she discovered that
40 Mrs. Johns passed blood when urinating, that when she telephoned the nursing home and was told that the Respondent had gone to the country she told the nurse the symptoms, and that when asked if they were the usual symptoms said that she thought not as although she had had children she had had nothing like it. All these witnesses stated that they telephoned frequently during that day and were told that the Respondent was not there.

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The evidence given by the Respondent is of importance and I will quote it. In examination-in-chief he stated :

“ On 20.11.47 I had appointment with Dr. Stephenson, Morant Bay, and I called up and asked Defendant’s wife how she was getting on. She said, ‘ Fine, no signs of labour.’ Left Kingston 1.40 p.m. for Morant Bay to meet Dr. Stephenson. Returned after 10 p.m. I left instructions with a nurse that if anyone came in ring me at Dr. Stephenson’s house, or if very important to call Dr. Stockhausen. Nurse Waite at Barton Court. She worked with me for over 10 years, and during my absence abroad she ran the 10 Nursing Home satisfactorily for six months . . .

“ On my return after 10 p.m. I received report from Nurse Waite that she got call at 3.30 p.m. from a person who said he was Mr. Johns, that his wife whenever she passed urine and used tissue she saw traces of blood. I (i.e. Nurse Waite) asked if there were any pains and the answer was no pains. I said (again Nurse Waite) ‘ If pains start bring her in.’

“ The person on the telephone asked if I (that is the Respondent) had already gone to the country. I said (this is again Nurse Waite) : ‘ He has already gone down to King St. I can’t tell, he will be 20 back about 6 p.m.’ I got another call about 8.30 p.m. A voice said : ‘ speaking for Mrs. Johns ’ and asked if you had returned.

In cross-examination he said :—

“ I never told Defendant that I had not got message about urine. I was never informed that wife had rung up in the day and that a nurse had told her it was only a show.

“ I agree that such a message should have been given to me. I would say that if I got a report that when labour was expected 20th November and blood was found in the urine it would be gravest negligence not to examine the patient then and there. 30

“ Blood in the urine is a serious sign at any time, and near the end of pregnancy it is very serious. It means kidneys are inflamed. It would mean that I must treat the kidneys.

“ The quicker the treatment the better chance the patient has.”

At the conclusion of the trial which had lasted for five days, four days of which had been taken up with the hearing of evidence mostly on difficult medical subjects, the learned Resident Magistrate contented himself with merely entering judgment for the Plaintiff. It is perhaps unfortunate that he did not reserve judgment and deliver a considered one. Had he done so it is probable that he may have been able to give an explanation, 40 less obscure than the one he gave in paragraph 25 of his reasons for judgment, dealing with this issue of the negligence of the nurse. The material portion of that paragraph is as follows :—

“ Whilst I accepted the view that the negligence of a nurse in those circumstances could be laid to the doctor in charge of the case, yet I do not think the authorities go as far, in view of my findings of fact and inferences drawn to establish the allegations of negligence on which the Defendant based his claim that the Plaintiff is not entitled to recover.”

What, therefore, are his findings of fact, and the inferences he has drawn from those findings.

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His findings commenced in paragraph 17 where he states that (A) he regarded the Respondent as a witness of truth ; (B) he did not regard the Appellant Johns as a witness of truth ; and (C) he did not think it was safe to treat Mrs. John's recollection of the events from the night of the 21st and 22nd November as clear and definite." I formed the opinion that her evidence should be viewed with greatest caution, and could not be accepted as trustworthy." Is the Resident Magistrate to be understood
10 to refer to *all* her evidence or only to that portion which related to the events from the night of the 21st ? If he was of opinion that her evidence should be viewed with the greatest caution then :—

“ He ought to examine that evidence with care, even with suspicion, but if after that he felt that it was evidence of truth he should act upon it ”

per Lord Russell, C.J., in *Rawlinson v. Scholes and Another* (1898), 79 L.T., at p. 351. I must assume, although he has not said so, that he has rejected her evidence only after viewing it with care and caution.

Paragraph 18 deals with the evidence of the two doctors, Parboosingh
20 and Don, who agreed that the diagnosis and treatment of the Respondent was correct. Then attached to the end of this paragraph is the statement : “ I was not impressed with the evidence or demeanour of Mrs. Neale.” It cannot be denied that coming where it did, this remark is completely out of place and appears to have been inserted as an afterthought.

In paragraph 19 he states that where the evidence of the Respondent and of the Appellant and/or of the Appellant's wife are in conflict he preferred the evidence of the Respondent. It is to be noted that he does not refer here to the evidence of Mrs. Neale. He then immediately refers to the dispute between the Respondent and the Appellant as to diagnosis
30 and treatment and to the alleged delay in diagnosis and performance of the Caesarean operation. Again I ask myself, is the rejection of the Appellant's evidence only in so far as it relates to the conflict as to what occurred on the 21st and 22nd ?

Then in paragraph 21 he makes the following findings :—

“ I accepted the evidence of the Plaintiff that he arranged for Dr. Stockhausen to answer for him in case of an emergency during his temporary absence from his office on the 20th November 1947. I accepted the evidence of the Plaintiff that he communicated his intention to be absent to the Defendant. I accepted the evidence
40 of the Plaintiff that he informed his Head Nurse of the arrangement with Dr. Stockhausen to answer for him. I accepted the evidence of the Plaintiff that on the morning of the 21st November, 1947, around 8.30 he discovered that the blood was coming from the bladder and not from the vagina. There was nothing on the night of the 20th November to suggest that the blood was coming from the bladder, in fact this was not discovered until Plaintiff examined Mrs. Johns on the morning of the 21st November 1947.”

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And then in paragraph 23 he states that on the facts found he drew the inference that a "show," a trace of blood, is not unusual at or about the period of the due day, provided that the blood comes from the vagina.

These are all the findings of fact and inferences drawn by the Resident Magistrate which are, or could be said to be relevant to the negligence of Nurse Waite.

Notwithstanding that Nurse Waite was not called to give evidence as to the telephone conversation that she had on the 20th with the Appellant, with Mrs. Johns and with Mrs. Neale, and assuming that the learned Resident Magistrate is not prepared to accept any part of the evidence of the Appellant, of Mrs. Johns or of Mrs. Neale, it is clear from the Respondent's evidence, which was accepted by the Resident Magistrate, that during the day of the 20th Nurse Waite was informed by the Appellant that whenever Mrs. Johns passed urine and used tissue, she saw traces of blood. What therefore was the duty of Nurse Waite on receipt of this information? That would depend on the reaction that such a communication should have had upon her mind having regard to her training, the position she occupied at the Maternity Home and the knowledge that a woman in her position should have had. 10

I have already set out the evidence given by the Respondent in cross-examination of the view that he held as to the seriousness of the situation when blood is present in the urine. Dr. Don stated:— 20

"When it is certain that blood is coming, not from the vagina but in urine it is a serious condition in a pregnant woman and she should see a doctor as early as possible."

The following two lines of the notes of evidence are unintelligible as they stand but I understand Counsel to agree that the evidence continued as follows:—

"It is the duty of a maternity nurse where a patient has a doctor and the nurse is informed of such condition, that she should tell that doctor. I would instruct my Head Nurse that if she is informed about such a condition, she should tell this doctor or person answering for the doctor." 30

I cannot read these last two sentences as meaning that the duty of the nurse arises only upon its being ascertained that the blood is not coming from the vagina. That is a matter which can only be ascertained upon examination by a professional person, be it nurse or doctor. I understand this evidence to mean that upon blood being discovered to be passing in the urine it is the duty of the nurse immediately to inform the doctor for him to ascertain whether the source of the blood is the vagina, in which event the condition may be of no importance, and just a show, or the kidneys, in which event the condition is serious requiring immediate medical attention. Nurse Waite is a woman in charge of a Maternity Home with sufficient experience to have been left solely in charge during the absence of the doctor for six months. In my judgment, when it was reported to her that a state of things existed, the cause of which may have been either unimportant or so grave as to seriously affect the life of a patient, then her duty was to have taken all necessary steps to ascertain 40

the cause. These steps should have been to request Dr. Stockhausen immediately to examine Mrs. Johns as she was instructed by the respondent to do.

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In my judgment the finding of the learned Resident Magistrate that the Appellant had failed to establish negligence in Nurse Waite is unreasonable and cannot be supported.

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continued.

On behalf of the Appellant it was also argued that the Respondent himself was negligent in that on his return from Morant Bay at 10 p.m. having been informed by Nurse Waite of the nature of the telephone
10 message, and having failed to contact Mrs. Johns by telephone, he should then and there have visited her to ascertain her condition.

It was argued for the Appellant contra that in the heads of negligence pleaded at the start of the case, this was not specifically pleaded, that the Respondent was not cross-examined about it, and was given no opportunity to answer the charge.

The only particulars of negligence given by Counsel when he stated the defence that could cover this particular allegation of negligence is:—

20 “ On the day of expected confinement Plaintiff absented himself from Kingston, was unavailable to Defendant for 24 hours after onset of symptoms which required medical attention.”

When this pleading was made some of the facts which were alleged by the Appellant were that on the 20th the Appellant had frequently telephoned in an effort to contact the Respondent and had been told that he was out of town, had continued to telephone until 10 p.m., and had not contacted him until early on the morning of the 21st. The Appellant denied that he had been told by the Respondent that he intended to be out of town. He admitted that on the morning of the 20th the Respondent telephoned, spoke to Mrs. Johns and when asked how she was, was told “ all right ” and that there was then no sign of onset of labour.

30 The Respondent then gave evidence and stated that he had told Mrs. Johns of his intended absence from Kingston, a fact which the Appellant denied and which was found against him by the Resident Magistrate. But it was not known to the Appellant, it fact it could not have been known to him, until the Respondent gave evidence, that on his return at 10 p.m. Nurse Waite had reported to him the receipt by her of the Appellant’s message. I have no doubt, therefore, that the pleading, designed as it was to cover a set of facts alleged by the Appellant was sufficient to cover the additional fact as spoken to by the Respondent.

40 “ You absented yourself from Kingston and for 24 hours were unavailable to me when I required your services ” was the pleading. “ You absented yourself from Kingston and for 24 hours were unavailable to me when I required your services, although during that time you returned and knew that I required your services ” was the suggestion which was put forward when the Respondent in cross-examination stated “ it would be the gravest negligence not to examine the patient then and there.”

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Thereafter, as the evidence was given, the Respondent was not re-examined as to that statement made in cross-examination, nor was any question put to any of the doctors called for the Appellant to suggest that, in the circumstances that existed at 10 p.m. when the Respondent received the information, there was no duty on him to visit Mrs. Johns to ascertain her then condition. The learned Resident Magistrate found as a fact that the Respondent then attempted to telephone the Appellant's home, but without success, a fact not without some significance when considering what he should have done when he received that message.

In his closing address, Counsel for the Appellant submitted :— 10

“ Plaintiff himself failed to do anything when he got report.
Ask Court to find as a fact that Plaintiff did not ring up.”

It appears to me that that first submission was based on the admission of the Respondent in cross-examination already referred to.

In his reasons for judgment the learned Resident Magistrate in paragraph 25 stated as follows :—

“ On the conclusion of the Defendant's case the defence placed main stress on the allegation of negligence—on the evidence surrounding the conduct of the Plaintiff on the 20th November, 1947 (the due day), and authorities were cited to support the 20 contention urged.”

He then in the same paragraph dealt with the allegation against the nurse to which I have already referred, but made no finding as to whether or not that conduct of the Respondent on the 20th amounted to negligence.

Although Counsel for the Appellant has asked this Court to say that on the facts proved, the Respondent was negligent, it was not raised in the grounds of appeal, and Counsel for the Respondent has called the attention of the Court to this fact. Can this Court now deal with this issue? After careful consideration I have come to the conclusion that there is no reason why it should not now be decided in view of— 30

(A) the issue was covered by the pleading at the start of the case ;

(B) it was referred to in the closing address of Counsel for the Appellant ;

(C) it was referred to by the Resident Magistrate in his reasons for judgment although he made no finding ;

(D) the Respondent had notice of the suggestion from the nature of his cross-examination, yet in spite of such notice, no question was asked of him in re-examination, nor was any evidence adduced to the Court on his behalf either by calling witnesses or 40 by cross-examination of those called for the Appellant.

Mr. Evelyn for the Respondent sought to explain the admission :—

“ It would be gravest negligence not to examine the patient then and there ”

by stating that the evidence was qualified, although no such note appears, by an explanation that if the doctor were present in Kingston and received the report it would then be the gravest negligence not to examine the

patient then and there. I cannot see how, even if that qualification was made, it would make any difference to the duty in the doctor whenever he received that report. In fact it may be that the longer the delay in receiving the message, the greater the need for urgency.

On the admission made by the Respondent I cannot see how it is possible to escape a finding that he was negligent when he received the message from Nurse Waite, in not going then and there to examine Mrs. Johns.

10 The Appellant having succeeded in establishing negligence of the Respondent and of his servant, Nurse Waite, for which he is in law liable, what then is the position ?

20 We have been referred to the decision of the Court of Appeal in *Vigers v. Cooke* [1919] 2 K.B. 475, and although the facts are different, I am of the opinion that the principle on which that case was decided is applicable to this case. It appears to me that the obligation that the Respondent owed was to use a reasonable degree of care and skill, that amount of care and skill that a doctor of reasonable professional competence would be expected to exercise, in order to give the mother the best chance of safe delivery of a live child. It is apparent from the evidence of Dr. Don that if Mrs. Johns had been treated on the 20th, "the mother and child would have had a better chance." I am of opinion that the onus was on the Respondent, once his negligence and that of the nurse was established, to prove that even if Mrs. Johns had received attention on the 20th, and all was done that could have been done, then the child would have had no better chance of living. This he made no attempt to prove. His action should therefore have failed.

I agree with the order proposed by my brother Cluer.

(Sgd.) C. M. MacGREGOR, J.

*In the
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No. 20.
Judgment
of
MacGregor,
J., 1st April
1949,
continued.

*In the
Resident
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Court.*

NOTICE OF MOTION for Leave to Appeal to His Majesty in Council.

Plaint No. 1886 of 1948.

No. 21.
Notice of
Motion for
Leave to
Appeal
to His
Majesty
in Council,
20th April
1949.

**IN THE RESIDENT MAGISTRATE'S COURT.
For the Parish of Kingston.
Holden at Kingston.**

**On Appeal :
M9/49.**

Between DR. L. A. MOODIE Plaintiff

and

L. M. JOHNS Defendant.

10

TAKE NOTICE that this Honourable Court will be moved on the 22nd day of April, 1949, at ten o'clock in the forenoon or so soon thereafter as Counsel can be heard by Counsel on behalf of the Plaintiff for an Order, upon referring to the Affidavit of Lawrence Adrian Moodie filed herein this day and to the Record herein, that the Plaintiff be at liberty to appeal from the Judgment of this Honourable Court delivered herein on the 1st day of April, 1949, to His Majesty in Council. AND FURTHER for an Order that the execution of the aforesaid Judgment be suspended pending the Appeal to His Majesty in Council.

20

Dated the 20th day of April, 1949.

(Sgd.) T. N. WILLOUGHBY,
Solicitor for the Plaintiff.

To : The above-named Defendant, and his Solicitors,
Messrs. MILHOLLAND, ASHENHEIM & STONE,
5 Port Royal Street, Kingston.

THIS NOTICE OF MOTION is filed by T. N. WILLOUGHBY of No. 117 Tower Street, Kingston, Solicitor for and on behalf of the Plaintiff.



AFFIDAVIT of Appellant.

Plaint No. 1886 of 1948. On Appeal.

IN THE RESIDENT MAGISTRATE'S COURT.

In the Parish of Kingston.

Holden at Kingston.

M 9/49.

In the Resident Magistrate's Court.

No. 22. Affidavit of Appellant, 19th April 1949.

Between DR. L. A. MOODIE Plaintiff

and

10 L. M. JOHNS Defendant.

I, LAWRENCE ADRIAN MOODIE being duly sworn make oath and say as follows:—

1. I am a Registered Medical Practitioner having my true place of abode at No. 70 Half Way Tree Road in the parish of Saint Andrew, my postal address at No. 82 King Street, Kingston, and I am the Plaintiff in this action.

2. On the 1st day of April, 1949, this Honourable Court delivered Judgment (the Honourable the Chief Justice dissenting therefrom) allowing the Appeal by the Defendant in the above-named action from the judgment of the learned Resident Magistrate for the Parish of Kingston which was delivered on the 20th day of November, 1948, and directed, *inter alia*, that Judgment be entered for the Defendant. I crave leave to refer to the Judgments handed down by this Honourable Court for the full terms and effects thereof.

3. The action was brought by me for the purpose, *inter alia*, of recovering my fees for professional services rendered to the wife of the Defendant during her confinement at his request.

4. The Defence, as stated by Counsel for the Defendant at the inception of the case, was that the said services were rendered in a negligent manner and that the Defendant's wife did not have the benefit of that degree of skill that a proper medical man has and should have possessed and used, and particulars were thereafter stated of the specific acts of negligence intended to be relied upon by the Defendant. I crave leave to refer to the said Particulars of Negligence.

5. The action lasted five days and involved an inquiry into medical matters of the utmost importance and complexity, including the extent of the duty owed by a medical practitioner to his patient in the particular circumstances of this case.

6. I crave leave to refer to the evidence taken in the suit at the hearing thereof, and all other proceedings in the said suit.

*In the
Resident
Magis-
trate's
Court.*

7. This action has aroused a great deal of public interest and the decision is one of the utmost importance to the medical profession in Jamaica quite apart from the fact that it is of vital importance to myself from a professional point of view.

No. 22.
Affidavit of
Appellant,
19th April
1949,
continued.

8. I am advised by Counsel, and verily believe, that the Appeal involves questions of great general and public importance which ought to be submitted to His Majesty in Council for decision.

Sworn to at Kingston in the parish of) (Sgd.) LAWRENCE A.
Kingston this 19th day of April, 1949. } MOODIE.

Before me :—

10

(Sgd.) T. A. P. WYNTER,
Justice of the Peace.

Filed by T. N. Willoughby of No. 117 Tower Street, Kingston, Solicitor
for and on behalf of the Plaintiff.

*In the
Supreme
Court.*

No. 23.

JUDGMENT of the Court of Appeal.

No. 23.
Judgment
of the
Court of
Appeal,
25th July
1949.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.
In the Court of Appeal.

L. A. MOODIE *vs.* L. M. JOHNS.

Evelyn for Applicant.

20

Manley K.C. for Respondent.

The judgment of the Court (Sir Hector Hearne, C. J. Carberry and MacGregor JJ.) was delivered by Mr. Justice Carberry on the 25th day of July 1949.

The Applicant (Plaintiff) in this case succeeded in an action before the Resident Magistrate for Kingston in which he claimed £97.13.0 for professional services.

The Applicant is a medical practitioner and he conducts a nursing home where he practises as a gynæcologist. The claim arose from the professional services rendered to the Defendant's wife by the Applicant and his claim for these services amounts to 30 guineas. The balance of the claim—£66.3.0 covers the fees of Consultants called in by the Applicant at the Defendant's request or with his consent. 30

The entire claim was resisted by the Defendant : as to the Applicant's fees on the ground that his services were rendered unskilfully and negligently as a result of which the Defendant's wife was delivered of a stillborn child, and as to the fees for consultation on the ground that the Defendant was personally liable to these Consultants.

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continued.

The judgment of the Resident Magistrate was reversed on appeal by a majority of the Court, Cluer and MacGregor JJ., on the ground that negligence had been established against the Applicant as well as against a nurse in his employment and who had been left in charge of his nursing home when the Applicant was out of town and his services were required by the Defendant's wife. The Chief Justice dissented from the majority judgment, but all the members of the Court of Appeal were of opinion that the Applicant was not entitled to recover the amount of his claim for Consultants' fees. The Applicant now seeks leave to appeal to His Majesty in Council.

Applicant's counsel conceded—as is clearly the case—that an appeal as of right does not lie since the matter in dispute falls far short of the amount of £300 or upwards stipulated in rule 2 (a) of the Order in Council of the 15th February, 1909, setting out the rules governing appeals from this Court to the Privy Council, but he submitted that this case comes within rule 2 (b) which is in these terms :—

“ At the discretion of the Court, from any other judgment of the Court, whether final or interlocutory if, in the opinion of the Court, the question involved in the Appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision.”

And he asks this Court to exercise its discretion under this rule and grant leave to appeal. He put his argument thus : “ *or otherwise* ” should not be construed *ejusdem generis* as these words were intended to extend the reasons for granting leave to appeal and should include a matter of great private importance ; that this case was of great private importance to the Applicant as the issues involved a stigma on him in his professional capacity ; and finally that an issue of great public or general importance was also involved as the medical profession was affected by the application of the law of negligence to the facts of this particular case which embraced the relationship of a medical practitioner and his patient and the liability of a medical practitioner for the negligence of a nurse in his employment. He relied on a statement in the judgment of Lord Hobhouse in *Banarshi Parshad v. Musammat Mewa Kunwar* (1900), 17 T.L. Rat. 128, which reads :

“ It was true that by sections 595 and 600 (of the Indian Code) an appeal might be granted if the High Court certified that the case was fit for appeal ‘ otherwise ’—i.e. when not meeting the conditions of sec. 596. That was clearly intended to meet special cases, such, for example, as those in which the point in dispute was not measurable by money, though it might be of great public or private importance.”

Sections 595 to 600 of the Indian Code are set out hereunder they appear in Safford and Wheeler Privy Council Practice 465 *et seq.* :

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“595. Subject to such rules as may from time to time be made by Her Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained, an appeal shall lie to Her Majesty in Council—

- (a) from any final decree passed on appeal by a High Court or any other Court of final appellate jurisdiction ;
- (b) from any final decree passed by a High Court in the exercise of original civil jurisdiction ; and
- (c) from any decree when the case, as hereinafter provided is certified to be a fit one for appeal to Her Majesty in Council. 10

“596. In each of the cases mentioned in clauses (a) and (b) of sect. 595, the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards, or the decree must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value, and where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law. 20

“598. Whoever desires to appeal under this chapter to Her Majesty in Council must apply by petition to the Court whose decree is complained of.

“600. Every petition under section 598 must state the grounds of appeal and pray for a certificate, either that, as regards amount or value and nature, the case fulfils the requirements of section 596 or that it is otherwise a fit one for appeal to Her Majesty in Council. Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.” 30

It will be observed that the Indian enactment does not contain the words “great general or public importance”—and that Lord Hobhouse was of opinion that one application of these words “or otherwise” was where the point in dispute was not measurable by money, though it might be of great public or *private* importance. So that Lord Hobhouse would extend the words to include matters of great private importance. Reference was made to a passage in Bentwich “Privy Council Practice,” 3rd ed., p. 117, which reads: “The High Court of the North-West Provinces suspended a vakeel for three months. Before his application to the Judicial Committee for leave to appeal was heard, this period had expired, but that fact alone, it was intimated would not induce the Board to refuse the application, if a lasting stigma on a man’s character had been passed.” 40

We were heavily pressed by the applicant’s counsel to consider the application in the light of the unsubstantiated allegation of unskilful service which had been pleaded in the Court below, which we were told placed a stigma on the professional skill of the Applicant. But before the Court of Appeal the allegation of negligence in the way the Applicant performed his professional services was abandoned and the appeal was 50

argued on two grounds of negligence : (1) negligence by the nurse in the employment of the Applicant in that while the Applicant was out of town she was informed of symptoms which were being shown by the Defendant's wife which might have indicated a grave condition requiring immediate medical attention and she failed to communicate with the Applicant's *locum tenens*, and (2) negligence in the Applicant in that when he returned from the country and was told by the nurse of the report she had received of the symptoms of the Defendant's wife he failed to immediately examine the patient to ascertain whether the symptoms indicated the necessity for immediate medical treatment.

*In the
Supreme
Court.*

No. 23.
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continued.

We have given anxious and careful consideration to all that has been urged on behalf of the Applicant. In our opinion the issues decided by the Court of Appeal do not involve any stigma on the character or professional ability of the Applicant. An allegation of negligence was made against the Applicant which the majority of the Court of Appeal considered was established but this view turned on the particular facts and circumstances of this case which largely resulted from the fact that when the Applicant's services were required by the Defendant's wife the Applicant was out of town, apparently engaged on another case. The decision has no bearing on the applicant's general method of conducting his profession, and certainly does not question his skill or professional competence.

As to the submission that an issue of great public or private importance was involved, it must be pointed out that the conclusions reached by the Judges who were adverse to the applicant on the question of negligence are based upon the general law of negligence applied to the facts of this case. There is no branch of the law of negligence particularly applicable to medical practitioners and although members of the applicant's profession may be interested in the illustration of the application of the law of negligence afforded by this case, this does not, in our view, make the matter one of great public or general importance, even to a class or group of persons in the community.

We are of opinion that the applicant has not satisfied this Court that in the exercise of its discretion leave to appeal to his Majesty in Council should be granted and the applicant must be left to take such further steps in this matter as he may be advised.

The applicant must pay the costs of this application.

(Sgd.) H. H. HEARNE, C.J.

(Sgd.) J. E. D. CARBERRY, J.

(Sgd.) C. M. MacGREGOR, J.

ORDER IN COUNCIL granting Special Leave to Appeal.

No. 24.
Order in
Council
granting
Special
Leave to
Appeal,
2nd
November
1950.

AT THE COURT AT BUCKINGHAM PALACE.

The 2nd day of November, 1950.

Present—

THE KING'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT.
Mr. WILSON.

Mr. STRAUSS.
Mr. MARQUAND.

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 16th day of October, 1950, in the words following, viz. :—

“ Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of L. A. Moodie in the matter of an Appeal from the Supreme Court of Judicature of Jamaica between the Petitioner and L. M. Johns Respondent setting forth (amongst other matters): that the Petitioner prays for special leave to appeal against an Order of the Court of Appeal of the Supreme Court dated the 1st April 1949 reversing on Appeal (by a majority) a Judgment of the Court of the Resident Magistrate of the Parish of Kingston Jamaica dated the 20th November 1948 whereby the Petitioner was awarded against the Respondent sums amounting to £97 13s. 0d. for professional services rendered to the wife of the Respondent: that the Court of Appeal refused to grant the Petitioner leave to appeal to Your Majesty in Council: that the Petitioner is a Registered Medical Practitioner and conducts a Nursing Home in Kingston where he practises as a gynaecologist and obstetrician: that he instituted an action in the Resident Magistrate's Court claiming from the Respondent the sum of £31 10s. 0d. for professional services rendered by the Petitioner personally to the wife of the Respondent during her confinement and further sums amounting to £66 3s. 0d. for fees payable to certain consultants called in by the Petitioner at the request or with the consent of the Respondent during the course of the confinement: that the defences raised at the trial were (a) with respect to the claim for the Petitioner's own fee of £31 10s. 0d. that his services had been rendered negligently and (b) with respect to the claim for fees payable to the consultants that the Petitioner could not take action on their behalf: that the Court of the Resident Magistrate held that the Petitioner had not been guilty of any negligence and entered Judgment for the Petitioner for the full amount of his claim: that on Appeal by the Respondent the Court of Appeal by a majority allowed that part of the Appeal which related to the Petitioner's own fees on the ground that negligence had been established against him: that such negligence consisted of two allegations whereof one was first raised during the hearing of the Appeal and had not even appeared in the Notice of Appeal

and the other was not included in the detailed Particulars of Negligence supplied before or at the opening of the trial and related to the conduct of a nurse employed by the Petitioner : that the Court of Appeal also allowed unanimously that part of the Appeal which related to the fees payable to the consultants : that the Petitioner does not pray for special leave to appeal from this part of the Judgment of the Court of Appeal but only from that part of the Judgment whereby the majority of the Court stigmatized him as negligent : And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal against the Order of the Court of Appeal dated the 1st April 1949 or for such further or other relief as to Your Majesty in Council may seem meet :

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Privy
Council.*

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continued.

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“ The Lords of the Committee in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Order of the Court of Appeal of the Supreme Court of Judicature of Jamaica dated the 1st day of April 1949 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs :

20

“ And Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.”

His Majesty having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

30

Whereof the Captain-General and Governor-in-Chief or Officer administering the Government of the Island of Jamaica and its Dependencies for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

*Exhibits.***EXHIBITS.**

Exhibit 1.
Letter from
Newton to
Lennie
Johns, 17th
January
1948.

Exhibit 1.—LETTER from Newton to Lennie Johns.

117 Tower Street,
Kingston,
Jamaica.

17th January 1948.

Lennie Johns Esq.,
c/o Colonial Secretary's Office,
Duke Street,
Kingston.

10

Dear Lennie,

Dr. Lawrence Moodie has given me a list to collect and on the list I see your name down for £97 13s. in respect of your wife's illness made up as follows :—

Dr. McFarlane	..	..	..	£10.10.0.
„ Parboosingh	..	..	..	36.15.0.
„ Evans	..	..	..	15.15.0.
„ Stockhausen	..	..	..	3. 3.0.
„ Lawrence Moodie	..	..	..	31.10.0.

Dr. Moodie having been the doctor on the case is obliged to see that the 20 other doctors are paid and I should appreciate if you would be so good as to send me your cheque in settlement on receipt hereof.

Yours faithfully,
(Sgd.) NEWTON.

tnw/s

Exhibit 1.—LETTER from Milholland, Ashenheim & Stone to T. N. Willoughby.

Exhibits.

MILHOLLAND, ASHENHEIM & STONE
Solicitors and Notaries Public

Kingston,
Jamaica.

4th February 1948.

Exhibit 1.
Letter from
Milholland,
& Stone
to T. N.
Willoughby
4th
February
1948.

T. N. Willoughby Esq.,
Solicitor,
Kingston.

10 Dear Sir,

Mr. L. M. Johns has consulted us on your letter of 17th January written on behalf of Dr. Lawrence Moodie and requesting payment of £97 13s. in respect of the following Doctors Bills arising out of the confinement of our client's wife in November last :—

Your client	..	..	..	..	£31.10.0.
Dr. McFarlane	..	..	..	..	10.10.0.
„ Parboosingh	..	..	..	..	36.15.0.
„ Evans	..	..	..	..	15.15.0.
„ Stockhausen	..	..	..	..	3. 3.0.
					<u>£97.13.0.</u>

20

Dr. Moodie is well aware that the whole of the expense to which our client was put was due entirely to the grossly negligent manner in which he dealt with Mrs. Johns' confinement and indeed there can be no doubt that the loss of the baby was also due to his negligence. In the circumstances our client declines to pay Dr. Moodie's bill. The other doctors must of course be paid and if Dr. Moodie does not settle with them and send us their receipts in proof thereof Mr. Johns will pay them direct in due course and take proceedings to recover the amounts from Dr. Moodie. Other items of special damage incurred by Mr. Johns are as follows :—

30	Nuttall Hospital Bills	..	..	..	£40. 0.0.
	Cost of ambulance	..	..	..	10.0.
	Nursing fees	..	..	..	29. 8.0.
	Dr. L. M. Clark's bill to date for				
	medical attendance	..	..	..	4.10.0.
	Medicines & drugs	..	..	..	5. 0.0.
	Burial expenses for baby	..	..	..	5. 0.0.
					<u>£84. 8.0.</u>

Exhibits.

Exhibit 1.
Letter from
Milholland,
Ashenheim
& Stone
to T. N.
Willoughby
4th
February
1948,
continued.

In addition to the foregoing both Mr. and Mrs. Johns are entitled to substantial damages for pain and suffering and anxiety and the agonies and sorrow attending Mrs. Johns' serious illness and the death of the baby. If Dr. Moodie is prepared to discuss the quantum of damage in an amicable way we shall be glad to do so. If not, Mr. and Mrs. Johns will have no alternative (painful though it may be) than to seek redress from the Courts.

Your immediate reply will oblige,
Yours faithfully,
(Sgd.) MILHOLLAND, ASHENHEIM & STONE.

lea/m

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Letter from
Milholland,
Ashenheim
& Stone
to T. N.
Willoughby
12th March
1948.

Exhibit 1.—LETTER from Milholland, Ashenheim & Stone to T. N. Willoughby.

Milholland, Ashenheim & Stone
Solicitors & Notaries Public

Kingston,
Jamaica.

12th March, 1948.

T. N. Willoughby Esq.,
Solicitor,
Kingston.

Dear Sir,

Johns—Dr. Moodie

20

We refer to our letter of 4th February, to which we have received no reply.

Our client would regret having to seek redress through the Courts, but will be forced to do so in the absence of an amicable settlement by Dr. Moodie. Unless, therefore, we hear from you not later than 19th instant, there will be no alternative but to proceed to litigation.

Yours faithfully,
(Sgd.) MILHOLLAND, ASHENHEIM & STONE.

LEA/M

Exhibit 2.—APPELLANT'S RECORD.

COPY RECORD—EXHIBIT 2 AT PAGE 247
(Original under separate cover)

Exhibits.
—
Exhibit 2.
Appellant's
Records,
November
1947.

“ Mrs Johns of 28 Beechwood Ave was admitted on the 21st November 1947 at 10.15. Pt. was given an injection of Calcium Gluconate by Dr. at 10.25. B. P. taken 140. She was swabbed and shaved 11.5. Pt. was given a dose of castor oil. Pt. had two actions. Pt. was given Glucose water 2.20 Pt. had an action Pt. had coconut water.

6.00 Blood Pressure taken by Dr. 140 Urine tested has blood

10 Pt. was given Barley water.

12.30 Pt. was examined by Dr.

Mrs. Johns Day Report 22.11.47

8.45 Pt. was given $\frac{1}{4}$ c Gr. Morphine by Dr.

8.50 Pt. was given Calcium Gluconate by Dr.

8.55 Pt's blood pressure taken by Dr. 158.

14

11.55 Pt. Tem. 100 & Pulse 98. were taken

Pt. had several glasses of coconut water & barley water

12.30 Pt. was given a cup of weak tea.

20 1.30 Pt. was swabbed, douched examined by Dr. Forceps were applied, no advancement—was left to rest until 5.00 p.m. Forceps reapplied still no advancement. Uterus contracted. Consultation between Drs. Parboosingh and Moodie. Was examined by Dr. Parboosingh. An injection of morphine $\frac{1}{4}$ c. Gr. given. Pt. was given an injection of Caramen I.C.C. Submanary Saline given. Consultation with Dr. Stockhausen. Pt. was swabbed. Pad applied changed. Was transferred to the Nuttall Hospital at 9.40.

Exhibit 3.—APPELLANT'S DIARY.

COPY ENTRIES IN DIARY—EXHIBIT 3—AT MARKED PAGES

Exhibit 3.
Appellant's
Diary.

30 (Original Diary under separate cover)

“ Mrs. Johns
Preg. 6th mth Urine O.K. 28 Beechwood Ave.

“ Mrs. Gloria Johns
Preg. 7 mth Urine cloudy ” 28 Beechwood Ave.

“ Mrs. Johns
Preg. 9th mth. Urine O.K.” 28 Beechwood Ave.

“ Mrs. Johns
Preg. 9 mths Urine trace ” 28 Beechwood Ave.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF JUDICATURE OF JAMAICA.

BETWEEN

LAWRENCE ADRIAN MOODIE (Plaintiff) - - - - *Appellant*

AND

LENNOX M. JOHNS (Defendant) - - - - *Respondent.*

RECORD OF PROCEEDINGS

R. C. BARTLETT & CO.,
27 JOHN STREET,
BEDFORD ROW,
LONDON, W.C.1,
Solicitors for the Appellant.

HYMAN ISAACS, LEWIS & MILLS,
8 SOUTHAMPTON PLACE,
BLOOMSBURY SQUARE,
LONDON, W.C.1,
Solicitors for the Respondent.