No. 84 of 1946.

In the Privy Council.

ON APPEAL

FROM THE HIGH COURT OF AUSTRALIA.

BETWEEN

STELLA EILEEN HOCKING (Plaintiff) - - - - *Appellant*

AND

GEORGE BELL (Defendant) - - - - - - - *Respondent.*

RECORD OF PROCEEDINGS

VOLUME 2

(Pages 503 to 976)

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Mr. SHAND : It is pus travelling up the neck—it is suggested it is destructive of the tissues, and we assume the foreign body is in it. Do you remember the suggestion that it was the pus that is destructive of the tissues ?—A. Yes—the foreign body per se could not destroy the tissues.

Q. In an abscess there is pus ?—A. Yes, an abscess is a bag of pus.

Q. I will read from Boyd, p. 776—he is M.D., M.R.C.P., F.R.C.P.Ld., Dip. F.R.S.C., Prof. of Pathology in the University of Manitoba and Professor in the University of Canada :—

> " The thyroid gland is singularly immune from acute inflammatory lesions. A mild form of thyroiditis may be present in acute tonsillitis, acute articular rheumatism, typhoid fever, and less frequently in other infections. Suppuration is rare in the thyroid."

—A. Yes.

Q. " When it does occur the gland is hot and swollen, and an abscess forms which may discharge into larynx, trachea or œsophagus " ?—A. Yes.

Q. Where is the larynx ?—A. That is just where the thyroid cartilege is—the cartileges are in the middle of the throat. The trachea is the wind pipe just below that. The region of the larynx and the œsophagus is below, or behind that—a continuation of the pharynx.

Q. It has been stated in the exhibit, Dr. O'Hanlon's letter of 17th October, 1939, that " Within a month or six weeks after Mrs. Hocking returned to Sydney the nurse discovered undissolved sutures " ?—A. Yes.

Q. Could they possibly be raw catgut ?—A. I do not think they could be.

Q. You have told us how long ordinary raw catgut lasts ?—A. Yes.

Q. Do you remember my friend reading yesterday from Joll (Notes, p. 424) : " The process is associated with the formation of one or more sinuses or of recurrent abscesses, which have to be opened up to permit the ligature to be cast off. For this reason unabsorbable sutures should not be used exclusively in thyroid operations." Do you agree that they should not be used exclusively ?—A. Both unabsorbable and absorbable—what do you mean do I agree with ?

Q. He says you should not use only unabsorbable sutures ?—A. Yes, that is so.

Q. " They can "—that is the unabsorbable ones—what do you call those ?—A. Chromic catgut.

Q. What is the colour of that ?—A. That is dark.

Q. Is that flexible—would it flick back ? (Objected to, pressed, rejected.)

(Witness retired.)

(Plaintiff's case closed.)

Mr. CASSIDY : Can we agree that any of the textbooks quoted can be referred to ?

Mr. SHAND : So long as before this matter ends my friend will tell me what passage he wants to refer to.

His HONOR : You do not want the books to go in " on the blind " as it were ?

Mr. SHAND : No—either of us might find some passage that the other did not refer to and then refer to it. That is the only reservation I make.

His HONOR : Very well.

In the Supreme Court of New South Wales.

No. 15. Opening Address of Mr. Cassidy, K.C., (Defendant) Respondent 9th December 1943.

No. 15.

OPENING ADDRESS of Mr. Cassidy, K.C., for the (Defendant) Respondent.

Mr. CASSIDY: May it please your Honor and gentlemen of the jury: Up to the present you have been able to follow this case from the Defendant's point of view only through the questions that I have put in cross-examination. That necessarily makes it very very difficult to follow the significance, I suppose, of the character of those questions, and the sequence that they are intended to convey, before one gets the opportunity of putting the Defendant's case.

For a Judge or a tribunal to be able to get a connected view of what the Defendant's case is from cross-examination, is, of course, extremely difficult. The Plaintiff has the advantage of putting his case in a logical way—putting his points.

It is now the first time that I get the opportunity of putting to you in some sequence the Defendant's account of this matter and the evidence that is to be advanced on behalf of the Defendant in this case and the evidence which will show up in its true perspective the nature of the Plaintiff's case. Much, of course, of what I am going to say, your minds will have grasped. What I am going to prove and establish you will now have the opportunity of hearing, and that opportunity, I hope, will not be interrupted during the course of my remarks.

To understand the evidence for the Defendant and the application of that evidence that I now put before you, to this case, you want clearly to remember the charge that the Plaintiff makes. What that charge is will be the first part of the Defendant's case that he puts. It is this—obtained by the Defendant who is charged in negligence as a result of inquiry made prior to the action starting as to what the negligence that is alleged is. That has been stated in a document dated away back in 1941, months before the first case came on. How it was stated and what subsequently was said with regard to it becomes very important because the charge that the evidence of the Defendant is directed to meet must be the charge of negligence; that in law must be specifically and affirmatively proved.

It was, as stated in the particulars and as elaborated somewhat here, that the Defendant left in this wound, three, four or five days after the operation, the object of which, Ex. P.—that is that tube plus the two wires—is a fair representation. It is also the object described in this way, and described at page 270 of our appeal book and described in the document which is in evidence. It contains the full description of it, and it is this:—

> "A piece of soft rubber tube about 2 inches long, greyish in colour; had the appearance of having been in water some time; was cut off straight at one end and torn at the other; on the side was a straight cut in which could be seen what appeared to be a swab and wire protruding from the torn end of the tube; that swab and wire appeared to be the only other foreign bodies passed."

Further, with regard to it you will be shown by the Defendant that on the 11th October the sketch of that tube was forwarded with an accompanying letter from Dr. O'Hanlon, which Dr. Bell produced for the purpose of this case. It is important, to commence with, to get that clear conception of what the Defendant under law has to direct his attention to.

It will be proved in evidence to you that the Plaintiff has endeavoured to alter this charge as it became evident that it was not maintainable, and the evidence of the Defendant will be directed towards showing you this, that apart from the original story of its leaving there being unthinkable and impossible, this description of the way in which it was put and that a tube in that area could travel from where it was put to erupt in the extraordinary way that was described, is equally impossible. And, gentlemen, that will be done not with a lot of technical, theoretical terms, not with the high sounding phrases of Dr. Thompson, but it will be put to you in a plain matter-of-fact practical way. This is no case for the theory that we have heard indulged in ; this is a case that can be practically illustrated to you, and the evidence that is going to be called before you is the evidence of practical workaday men who have done the job, done thousands of them, who know it and who know what you encounter there, and can put to you graphically the impossibility of this story that is endeavoured to be buttressed up by the last witness.

The evidence that has been given before—and you have heard a great deal of it and your minds have probably grasped why it has become necessary—the evidence which has been given before will be largely before you. The important evidence and the inference that the Defendant asks you to bring from that is that all the holes in that case are endeavoured to be patched up and patched up by cunning and invention.

You will be told, and if it is not admitted the evidence will go in before you so that you can read it through—you will be told that this object which was described in the particulars as an object containing two pieces of wire and which was so sketched and where the length of one piece was given as 1 inch to 1¼ inches and the other a bit shorter—you will be shown from the record that the first time that it ever is sworn in evidence that that is felt by her as she squeezes it and it flicked back is on the third trial of this case. Why ? As the evidence is adduced you will see.

Sub-dividing the evidence so that you will follow my address, which I hope will be logical and able to be followed—it may be long—sub-dividing it so that your minds may get it more or less into compartments, it will proceed along these lines :—

(1) The patient's condition in the months prior to and immediately before she interviewed Dr. Ritchie;

(2) Her condition at the time of her interview with Dr. Ritchie, the significance naturally being the serious and critical state of health in which she was and the nature of the complaint with which she was afflicted ;

(3) The nature of the operation which was to be performed ; the actual technique and manner of performing that operation and the use and service of the tube which was used in connection with it.

It will be found, gentlemen, as you hear the evidence that you will get from what I call my " workaday " doctors—you will hear no theory, but practical sound common sense, as to where the tube goes, why it is of a certain length, why it is put into position, what it does there, and when you contrast it with what you have heard, your judgment and discrimination will be brought to bear calmly between the two sets of evidence that you have.

In the Supreme Court of New South Wales.

No. 15. Opening Address of Mr. Cassidy, K.C., for (Defendant) Respondent 9th December 1943, *continued.*

Following that, the next matter will be the untruth of the Plaintiff—the evidence called by the Defendant to establish the untruth of the Plaintiff and her husband in these statements :—

(1) That they saw the tube sticking out half an inch, that they saw its colour ; that it was black.

(2) That it was the untruth of their statements that that tube was not removed on the second day as described by the doctor, but that they say either on the third or fourth or maybe the fifth.

The next aspect of the case that will be dealt with by the evidence for the defence will be that the tube was removed in the normal and usual way, that that method of removal was sound, was easy, and had none of the difficulties associated with it such as you have heard suggested in this case. That, gentlemen, will be the first part of my case. You will follow it.

We will see the important matter, her condition at the time of the operation ; there will be an examination of the complaint that she had, and its possibilities ; persons having that complaint ; the operation ; the tube ; its removal. That deals with the situation surrounding where the charge of negligence lies.

Let me pass first to consider her condition prior to coming to Sydney. You will find this, that this woman was in a very serious state of health. You will find that she came to Sydney to consult a specialist. That specialist will be called—Wing-Commander Flynn. You will find that at that time she was a nervy neurotic woman. You will find that the local doctor, Dr. O'Hanlon, was extremely worried as to her condition. You will have, I hope, the letter written by him at that time to Dr. Flynn. If I can get it for you, it shall be done. You will have the fact that she returned home, that she is no better, and that she goes to hospital, and you will have what has not been drawn to your attention yet sufficiently because you have not had time I suppose to peruse the hospital records—but you will find her condition during her period in hospital.

This you will see—pains in the limbs, ringing noises in the head, entry into hospital on the 19th October 1937, on the 2nd November weight 6 stone 13 lbs., on the 8th November " Up in the chair for half a day with no ill effects," on the 10th November " Up in a chair for a while and walked."

Now, gentlemen, these records which will be pressed upon you were written long before any case or litigation was thought of. They are the records that speak and the records that I ask you to accept, and they have been accepted by the other side, which put them in, as correct.

You will have, in addition to that, a matron who was unavailable previously—the matron of that hospital. That lady had been in distinguished service in the Middle East and was unable to be present, and she is important having regard to what has been said by the Plaintiff about her treatment in Quirindi Hospital. Because, gentlemen, you will be shown that from this lady has come that systematic irritability, that systematic criticism and attack on people right from very early days. You will be shown, as was stated here, in regard to the skin specialist to whom she went, that she complained that she was severely burned by X-rays. Whether that exists in the imagination or not, you may have enough knowledge of X-ray burns to know. You will find from Matron Fall that during her period in that hospital in 1937 she was sick, very thin, " Collarbone showing," emotional, temperamental and highly strung, weak and

debilitated. This is further confirmed in this letter also written at the time to Dr. Ritchie, to whom she was sent by the local doctor. You will find her condition—(Objected to by Mr. Shand). I have said, your Honor, that I will endeavour to put these documents in as far as I can.

Mr. SHAND: You are using the contents now; we don't want any tricks.

Mr. CASSIDY: We have Dr. O'Hanlon. We will have Dr. Ritchie, and you will be shown in contradistinction to this lady who said she was not ill—you will be shown in contradistinction that she was very wretched, and lost much weight, that the thyroid was prominent, that that was a coarse tremor and clammy skin, and that she was thyrotoxic, and that there were certain other features associated with it. Calling in aid of that for the defence, we have from Dr. Welch that from his observation of the records she had an obvious toxic thyroid condition. Dr. Ritchie will tell you that it must be obvious in view of the other evidence that will be given that before she came to him Dr. Ritchie will tell you that she had "Thyrotoxicosis severe and dangerous in her case, very nervy and unstable, the only means of cure surgical operation."

Let us pause for a moment. Gentlemen, this case cannot be considered by taking little bits here and there. This is a case where a whole view of the situation must be looked at, and this is a case where we have this condition of thyrotoxicosis where all sorts of aftermaths are possible; where the surgeons will tell you that it is one of their worries that they do not know the aftermath because it leads finally to insanity. It has the seed and germ in it of all possibilities of serious trouble. It is a disease, the poisoning of the thyroid, which as I say brings about a state of nervous instability. Operation was decided as the only thing that would meet the position, and she goes to Dr. Bell for the operation.

The operation itself is one involving high surgical skill; it is a major operation. It is one of the specialist, and it is not one for anybody without experience. As you see some of the illustrations and as you get some view of what is involved, it will be easy for you to understand that in that portion of the neck, packed as it is with vital structures, very great care and very great skill has to be exercised.

You will bear in mind of course, that you are dealing with the lobes of the thyroid which are poisoned and diseased. You will bear in mind that as it enlarges it gets the capacity to twine and get around into various places and into places that are difficult for the surgeon to manage. It is an operation that you cannot do by the clock; major operations are not like that. Once parts of the body come to be diseased one does not know or measure an operation as taking any usual time. It is a question of what turns up—what the condition is, and the defence will put to you that this suggestion from the box that there was something wrong because the operation was a long one, has nothing to support it.

In this very case you will be shown that although this woman was sedated at a quarter to six in the morning, when she came to the theatre at 7.30 it was necessary to give her further treatment, which delayed the start. It must surely be practical common sense without my needing to stress it, that it is not a question of getting five or six runners up to a tape and firing a revolver and say "Go" and you will find that at 7.30 she had to be further sedated by morphia given in the theatre, which of course means further delay before business starts.

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In this operation you will be told by Dr. Bell that he had some difficulty—the gland, as he will tell you, was moderately enlarged, the superior artery was abnormally placed, and the gland had to be dissected from it. If you will follow it you will see the thyroid placed in that position (indicating on textbook). The incision goes along the top of the breastbone running from side to side shown probably better in these slides.

(Mr. Shand objected to the use of the slides, but on being shown the slides withdrew his objection.)

Mr. CASSIDY: The nature of the opening before and after may be seen more conveniently from these slides. It will be necessary to see them because this case will be put to you as a practical case so that you will know and be able to visualise what the condition of that neck will be within forty-eight hours, or three days, when it is alleged that this act of negligence occurred.

You will remember you were told that 7/8ths of the gland was removed. After dealing with the removal of the thyroid these illustrations will show you what is left. It becomes important to follow that in view of what that tube must do and what you must keep it away from. (Plate in textbook shown to jury.)

So that you may get an idea of the structures in the neck round about that part will you look at these pages as I turn them over. (Plates in Surgical Anatomy by Deaver—p. 604 onwards—shown to jury.) These, you see, show the neck before you make the incision, before you start to deal with what is inside. The size of the neck at the site of the incision is shown by this plate and that gives you the idea of the various structures met with there working from the back to the front. That is about the average normal size of the cut through. Those matters will be shown to you not for the purpose of confusing but for the purpose of illustrating in all its practicality this case and the defences to it.

I come next to the actual performance of the operation. You will be told of that by Dr. Bell and you will be told of the very important thing, the post-operative treatment. Dr. Bell will tell you that this lady when she came in was seriously ill, and that after the operation also seriously ill as one would naturally expect from that operation, but he will tell you that this expression that at that operation that she was at death's door or that she had lost two pints of blood, as was suggested, is absolutely wrong, and that the succeeding days before this infection started shows that that statement is without foundation. The doctor will be called, the three nurses who attended in the after-treatment will be heard before you. The theatre sister is unable to be present, she being in New Guinea. There is nothing, of course, that the defence has to meet with regard to the operation, but one would like to have them here, but you will remember the charge of negligence is as to that tube on a certain date. The assistant surgeon at the operation we are unable to produce, he being a very distinguished assistant, Colonel Kay, killed in Greece, so the only one we have on that is Dr. Bell.

You will be told that after the operation this woman's condition was quite satisfactory considering the serious nature of her illness before it started and the gravity of the particular operation concerned. The tube is inserted in the theatre and the doctor will tell you that following his usual practice the tube was tested by him before use, the length of tube

cut by him as in the ordinary way from the piece of sterilised tube in the theatre was of the ordinary length used by him and was put in by him in the ordinary way. He will tell you, and every other surgeon called will tell you, that the tube you use, 2 inches usually, often shorter, depending on the neck, Dr. Bell will tell you that following his ordinary custom, because one of the troubles you have is that the tube slips out and what occurred in this case is as usual, that you put one horsehair stitch into the tube outside to hold the skin. He will also tell you that to prevent any tendency to slipping, because the tube becomes slippery, there is a great discharge of serum for the first twenty-four hours after the operation, that to keep it from going in you put in a safety pin and that this was done in this case. He will tell you that the tube was red tube always used by him, always used at St. Luke's Hospital, and not in one operation for thyroidectomy has he used other than the standard type of tube, red tube, and of that bore ; that the cut is put close to the end to get the drainage into it.

The Defendant will tell you that this suggestion that a tube would be put in the neck pointing upwards, as suggested by Dr. Thompson, is fantastic, and shows an utter ignorance of the technique of that operation, and you will be told why, and the doctor will tell you that what you want is to get the tube as close as you can to the breastbone at the bottom of the cavity where you have the drainage, or oozing coming down so that you can collect it and have it coming out. You keep it two inches because the thing you wish to avoid is to push it too far back where it may interfere with some of the back portion of the cavity and that surgeons, of necessity, keep them short and that this suggestion that you have a tube 4 to 6 inches long is ridiculous and unheard of. Dr. Edye, Dr. Poate, Dr. Bell and other people will tell you it would be unheard of, that the very object is not to push your tube right into the cavity where it might come in contact with painful parts or brush against the rear of the cavity, but keep it so that it goes through the skin half inch or three-quarter inch into the cavity which is there. You will be told also that Dr. Bell, as he describes it, because he tells you he cannot be exactly sure where he put the tube in, the operation was not one that had any particular thing to impress upon his memory and you will remember that it is not until the end of 1939 or 1940 that there is any suggestion made, but he will tell you that his practice is to put it slightly to one side or the other of the middle but never to push the tube across the patient's trachea and work it up in a position as described. Your isthmus is gone and the cavity is there to drain and placed in the right or left cavity it would drain just the same.

In this case he will tell you that as he had some trouble with the dissection of the thyroid away from the superior thyroid artery on the left he did not put it in on the left but put it in slightly to the right of the middle line. The evidence of the Plaintiff is that it was put in on the right. Dr. Bell, of course, cannot at this stage say the exact position he put it in, all he knows is that he put it in slightly to the right of the middle because of the trouble that might have been experienced in putting it in on the left by touching the left superior thyroid artery.

You will be told, and I suppose you have gathered it since my cross-examination, that during this operation, or you were told during the Plaintiff's case, that there was a sea of blood. In the opening it was said

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that the left superior thyroid artery might have been bruised or severed. Gentlemen, it is severed. The surgeon has to do that, he has to cut it, he ligatures it first, of course, and that shows it (textbook shown to jury). This talk of a sea of blood from an accidentally cut artery, the Defendant will put to you, is just another matter like some of this talk about tetany to lead your minds away from the practical situations we have to face in this case.

The next thing we pass to is the removal of the tube. We have on that issue, fortunately, three nurses who attended this case, as well as the doctor. We have also the hospital records that are here. These nurses will tell you, and the hospital records support it, and they are here in existence, containing the very material about the high temperature which the Plaintiff has endeavoured to use to support her case. Those hospital records will tell you, and the nurses will give the evidence on oath, that the tube was removed on the 17th. You will be told by Dr. Bell and the other surgeons that the idea of the surgeon is to get the tube out at the earliest possible moment, and in many cases you have your serum sufficiently out of the place within twenty-four hours, and in some cases the tube removed in twenty-four hours, but the maximum to which it is left is forty-eight hours. The nurses will be here who removed it, you will be told that a practice exists in that hospital and that is that after tubes are looked at one sister must report to the other sister the tube and it must be seen, the idea being that some check on nothing being left is made. You will have those two ladies before you who will tell you that that practice is universally adopted in St. Luke's and was adopted in this instance, that the tube was looked at, seen, and its removal entered—intact.

You will have also Dr. Bell who will tell you that he insists on removing the tube himself. The matter is so simple that some surgeons do not insist on doing it, they allow the nurses to do it, but it is a matter of such simplicity that Dr. Edye hardly ever removes it himself, Dr. Bell always does it himself. You will be further shown that those records disclose that her condition after that operation was satisfactory.

Now gentlemen, there comes a very important conflict of evidence and it is a conflict of evidence which must present itself to you as fair-minded, reasonable men in this community as having an important bearing on the case.

We have on the one side Dr. Thompson who deduces from what happened on the 15th, 16th and 17th and who gives the pulse rates to justify him, who says to you on that day this woman's condition was very, very bad. You will be told by Dr. Bell, and you will be told by the nurses who attended her, you will be told by Dr. Ritchie, that that woman came out of that operation, a serious operation, and her condition, considering those things, was normal and her progress normal.

I don't know whether your memories go back to what Dr. Thompson said, but he suggested that there was something other than normal in her condition. That it was not so will be deposed to by Dr. Bell, Dr. Ritchie, Dr. Poate, Dr. Edye and Dr. S. A. Smith and the nursing staff. Gentlemen, that is an array of men whose word, I suggest to you, must be seriously considered. It is the word of men who are not only at the top of their profession but men whose service to the country in other directions,

civil and otherwise, is very notable ; men whose medical service and civil service, and whose word has to be contrasted with that of Dr. Thompson. Dr. Thompson did not see that patient, Dr. Thompson took as a basis of one of his conclusions that her pulse was 88 at one time before the operation, and that it made a big jump to 100. Gentlemen, he went and selected on the very day to make his chart 88 when he knew the nearest pulse rate to 100 was 99, and he omitted it. The inference he put was this, that the huge jump in pulse showed something wrong. You will contrast that with what the doctors say. Those are men who are out in actual practice doing their work and their job to observe these particular things, surgical treatment and the surgical care that follows.

Let us see where that takes us to. It takes us to this, that on that day, the 17th, when the tube was removed, the patient's condition followed the normal course of that operation. The first twenty-four hours, as the hospital records show, free discharge ; that is in the document you have before you. On the next day, the discharge getting less. That is exactly what one expects, and looks for, and what is right. We come to the position that, on the day of this removal, this operation has followed its normal course.

(Mr. Cassidy asked for the projector to be placed on the table.)

Mr. SHAND : If coloured pictures are intended to be used, I object. It is covered by your Honor's former ruling. If it was in evidence, that would have to be proved, and, on the voir dire, I would have an opportunity of questioning the person who made them as to how those colours came to be superimposed.

Mr. CASSIDY : I submit they are photos, just as photos are taken of roads, or a scientific drawing, or a plan.

Mr. SHAND : I suggest the colours on them are not a true representation, and I will be able to show that.

Mr. CASSIDY : I have the man who drew them, research professor in anatomy at the University, and I have the right to open it. They were used in the second and third trials.

First I want to show an X-ray of an actual life-size neck, showing the thyroid, as it is situated, the neck as it goes up, and the parts that show in the X-ray, and the tonsil, where it is situated. That is shown on an X-ray plate of a human neck. Superimposed on that, the thyroid is drawn in, firstly. That has all been done by Professor Shellshear, and I undertake to call Professor Shellshear.

His HONOR : I do not know how one can decide at this stage. One would imagine that it would be admissible prima facie. On what ground do you say it is inadmissible ?

Mr. SHAND : Before any evidence is admissible in a case, such as diagrammatic evidence, it must be subject to cross-examination, because opposing counsel may or may not succeed in adducing evidence that it is not a fair representation. Until that test is applied, one cannot say whether or not it is admissible.

His HONOR : Do you suggest to me that a drawing or an X-ray picture made by a professor at the University is not accurate ?

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Mr. SHAND : I do not care who drew it. My submission is that these X-ray photographs, with superimposed drawings, do not give a proper representation.

His HONOR : By reason of what ? In what way are they not a true representation ?

Mr. SHAND : One way is the distance between the tonsil and the thyroid.

His HONOR : It is somewhat unfortunate that the jury cannot see them at this stage, but they may have the opportunity later on. I ask you not to open it.

Mr. CASSIDY : That prevents me using what a very eminent man has photographed.

His HONOR : No, you can call him and give evidence of it, and then you can use it thereafter. The only thing it stops you from doing is getting it before the jury at this stage.

Mr. CASSIDY : Surely I have the right to put it pictorially before the jury. I could draw it myself and take it to the jury.

His HONOR : Why not call him now and you could put him in now ?

Mr. CASSIDY : Yes, I will do that and continue my address afterwards. I will have him at 10 o'clock in the morning.

Mr. SHAND : My friend may do what he chooses, but there are certain rules in this court as to opening the case.

His HONOR : Do I understand you to say the court cannot give Counsel permission to call evidence during his opening ?

Mr. SHAND : The question has not been raised yet ; I will take certain objections afterwards.

Mr. CASSIDY : I am going to ask, if Mr. Shand takes that objection, that I be so allowed, because I think it is a vital matter for me to have before the jury for a proper understanding of this case, particularly as Dr. Thompson has given positive sworn evidence of this distance of half an inch.

These have been shown to my friend in my Chambers for them to look at. Mr. Shand's junior came and borrowed them and took them away.

His HONOR : Why cannot you continue without it ?

Mr. CASSIDY : Because the picture shows very graphically the human neck, and where things are.

Mr. SHAND : I have no objection to any X-ray.

Mr. CASSIDY : This is an X-ray with the thyroid coloured so that it can be seen.

His HONOR : Will the jury leave, and I will have a look at them myself.

(Jury retired at 3.18 p.m.)

Mr. CASSIDY : Here is the thyroid, here is the tonsil, and this is the windpipe (shown).

His HONOR : Do you suggest that is not the position of the thyroid ?

Mr. SHAND : Relying on textbooks, inter alia, yes. Not the position of the tonsil, anyway.

His HONOR : Can you show me a textbook that shows that ?

Mr. SHAND : Yes, page 935, at the middle of the page, at the left there is a small pencil mark. (Book shown to his Honor.)

Mr. CASSIDY : What is suggested can be asked on the voir dire to make this evidence not admissible, once a qualified man swears it is the position ?

(Further textbook shown to his Honor by Mr. Shand.)

His HONOR : It all depends on the plane in which it is taken.

Mr. SHAND : So does the picture.

Mr. CASSIDY : How can it be suggested that Mr. Shand's cross-examination of a witness that he may have drawn it wrongly, on the voir dire, could affect the admissibility of the evidence. It is only criticism of the weight. It can only go to weight of evidence, as to whether it is drawn properly, and he swears it is.

Mr. SHAND : He has not sworn that yet.

Mr. CASSIDY : When he swears it, the voir dire does not help ; his Honor would have to disbelieve him.

His HONOR : Can anybody direct me to any authority as to what can or cannot be given in opening ? My recollection is that you did not open matters in which there was a serious question as to whether they would be admissible or not.

Mr. SHAND : They have been termed " contentious matters."

His HONOR : Would not Roscoe's Nisi Prius say something about it ?

Mr. SHAND : Yes, and I think Taylor.

Mr. CASSIDY : This is stronger than illustrations in textbooks—we call the person who did it.

His HONOR : Baron Pollock says in Darby *v.* Dueley—" It is the duty of a judge to see that Counsel does not state facts that he does not mean to prove."

Mr. CASSIDY : Where would the administration of justice get if a Counsel could say—" You cannot show that to the jury because I am going to cross-examine to show that he has no qualifications to draw a picture " ?

Mr. SHAND : It appears to me that no harm could be done if your Honor told the jury that I am not objecting to those matters being referred

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to, providing they keep in mind that I am not assenting to the position of the various organs. I think that would protect me and would resolve the difficulty. Roughly, your Honor, could put to the jury that Mr. Shand is withdrawing his objection to the X-rays being used, but he is not assenting to the correctness of the relative position of the organs. If your Honor told them that on that matter they would suspend their judgment until evidence is adduced.

Mr. CASSIDY : I do not mind any part except the last couple of lines.

His HONOR : Mr. Shand is withdrawing his objection to the use of the X-rays, but he is not assenting to the relative position of the organs shown thereon. On that matter Mr. Cassidy has undertaken to prove the relative positions shown.

Mr. SHAND : And that they will be guided by the sworn evidence.

His HONOR : Why any more ? All the matters that Mr. Cassidy has been opening depend on his calling evidence.

Mr. SHAND : But this is a particular matter. I withdraw my consent on any other conditions.

His HONOR : I propose to tell the jury that " Mr. Shand withdraws his objection to the X-rays being used at this stage, but is not assenting to the relative position of the organs as shown. On that matter Mr. Cassidy has undertaken to prove the relative position as shown, and on that as on all matters the jury will be guided by the evidence adduced." Do you agree to that, Mr. Shand ?

Mr. SHAND : Yes.

(Jury recalled to court.)

His HONOR : Gentlemen, Mr. Shand is withdrawing his objection to the X-rays being shown to you at this stage, but is not assenting to the relative position of the organs as shown in them. Mr. Cassidy has undertaken to prove that the relative positions are correct, and on that matter as on all other matters you will be guided by the evidence as adduced.

Mr. CASSIDY : I was just going to illustrate the position—This is an X-ray of the neck taken from the side. It will be proved that that is scientifically accurate as to the tonsil and as to the thyroid. You will see that from the top the tonsil is something like 3 inches.

Mr. SHAND : It does not purport to be of the Plaintiff ?

Mr. CASSIDY : No, but the neck is somewhat similar. From the bottom to where the tube is put in is about 5 inches—you can measure it. That becomes very necessary when we consider the position of Dr. Thompson getting that tube to go through there, because it has got to travel half an inch. And it will be put to you that that was either thorough ignorance of anatomy, which is the more charitable thing to say, or designedly wrong. There will be no doubt, because that is a neck not prepared for this case and an X-ray not prepared for this case but used by the Professor for the instruction of his students as to the position of these things in the body, and not brought into existence merely for this case.

Let us come back again to the manner of that alleged removal. As I told you, it was 17th March when the tube was reported as having been removed. Dr. Bell will tell you that at no time did he approach that wound to remove that tube with his bare fingers; that he has never done so; that it is a thing a surgeon at a time like that does not contemplate; that he removed that tube in the ordinary way with the forceps and naturally keeping his body and his fingers from contact with her flesh. He has his responsibilities to other patients and to her, that infection, which is a thing that so easily might come there—and he will tell you that this story that he, not wearing gloves, just got his fingers and pulled that tube, is not right, and if not consciously untrue to the Plaintiff's knowledge must be a figment of the imagination. He will tell you that he at no time pulled on that tube and suffered resistance; that he at no time pulled a second time, and suffered further resistance, nor did he place his hand on the head and as described pull hard, so that the tube broke. Just think as practical men what the position was on that day—with that neck cut right into the throat—with all the chopping about that there would be—and within forty-eight hours before only sewed back. The union of the cut surfaces has not begun—it is still in a state of a kind of serum or gum round about—and if any force is exerted round about that wound does it require a surgeon to tell you what would happen?

(Statue shown to jury.)

Again you will be told that this lady is put into a position, a rather standard position in these operations—that she lies back after coming from the operation. The idea is that the head is to be kept down in that fashion to prevent any straining on the muscles. To do that they are kept in a sitting position for the purpose of getting the drainage down. In that position they are bandaged——

Mr. SHAND: Your Honor, apparently I have no rights here—something is shown to the jury, which I have not seen.

Mr. CASSIDY: Have a look at it.

Mr. SHAND: I am not interested. I should like to know what it is—the unveiling apparently has occurred already.

Mr. CASSIDY: She is lying in the natural position for the obvious reason that the surgeon wants that position—propped up with certain sandbags at the shoulder with the head in that position to prevent strain. For the first time—and there are three trials behind us—we hear that she is lying on the right and Dr. Thompson follows it this morning with the influence of the lying on the right and the effect of gravity if she is lying that way. With any perspicacity is it not obvious what is happening in this case, when that expression which is used for the first time in four trials by the Plaintiff is adopted by the doctor as the influence of gravity to bring about the result that he wants to achieve? The position in which she is lying has been described, and the bandages are as you see. The suggestion is that the husband sitting at the side of the bed on the second day that he is there, that is on the 16th, the day after the operation—is able to see half an inch of that tube, and that it is black. You will be told by the hospital nurses that that was absolutely impossible having regard to the way in which the dressings are placed at that particular

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moment. And it will be put to you by the defence that on that day the husband did not see the tube—did not see a tube that was black—and that it could not be right that the tube was as is described.

Let us just think of it a little further from the practical point of view. If pulled, could muscles hold it? You will hear later. If you could imagine a stitch going through rubber, could a stitch hold it? It will be illustrated to you the way in which this tube is left—so that I will not have any trouble I had better show this first.

(Slide handed to Mr. Shand and to his Honor.)

(Slides placed on lighted frame and shown to jury.)

That, gentlemen, also from Dr. Bell's lectures, will show you the stitching down the muscles which you finish—you work back after you take the thyroid out—the surgeon retraces his steps, and you see the stitches where you finally leave the hole, where the tube goes in—four stitches are shown—leaving a hole where the tube goes in, that being the last part of the operation before you just finally sew up the outside part of the skin.

You will see, therefore, as I indicated to you earlier, the tube is lying in there—part of the difficulty is to get it in—it will slip out. The other difficulty is that it goes in—for which purpose you put the horsehair suture and the safety pin to prevent it travelling in. So we pass from that. Nurses and doctors all will say that at no time was any complaint made to one of them that Dr. Bell had shown any roughness in regard to removing that tube, nor did the Plaintiff suggest it. Not one complaint from her of mishandling—no "damn" or "oh"—no such incident occurred. Gentlemen, if that incident did not occur, that is the end of the case. That it could not occur, I suggest to you, because we call in evidence the Plaintiff's admission that not until 5th October 1939 did she ever suggest that Dr. Bell broke a tube in her neck or manhandled her, or was rough in any way in the course of the operation. Imagine those salient features of the case—the doctor and nurses—the record showing the tube out—no complaint by her and the suggestion that the tube is there so firmly entrenched that it has to be pulled the third time before it is removed.

Come to the next suggestion, that it is broken and is thrown by the doctor on the tray with an expression "damn," and that the sister and nurses both left the room immediately. The doctor will tell you that when he removes the tube he dresses the wound—that is his ordinary necessary practice. Can you imagine that a doctor, who has given years of service to the community—a man whose job it is to do good and to relieve suffering—that he, knowing he left it there would continue not to attend to it, and with a woman who gets sick and sick and sick over a month with these spasms, that he would never make a suggestion that the cause of it was something he left there and he never mentioned it. You will see whether he is a man whose chief attention in life has been his medicine and his profession and his patients—or whether he is a man who forgets and leaves another in misery, when he knew that he was the cause. The life that he has led, what he has achieved, the honour that he has been given among the citizens of this state you will hear. He has lived a life of public service in the community.

Let us pass from that. Gentlemen, think of it—a tube 2 inches long, with a swab on it called on one occasion "marine sponge"—you will be shown the swab that he used—they are there, the smaller ones and the larger

ones—a marine sponge found in this tube, which is left to be recovered after these convulsive spasms at that late date. Can you imagine that that tube could remain there causing infection, and that an article of that size could remain there—trouble followed and he never told the local doctor: "Look, there might be something wrong there—we had better open it up." Can you imagine that with infection there and that tube there we would get all the knots coming out along the line of least resistance and this would not? Can you imagine that by the end of June when Sister Sly leaves—and she had had a letter from the Plaintiff thanking her for bringing her back to health—and you have got this, you have clear in the evidence that from June 1938, although she was attended for the tetany spasms, we have not one suggestion that she has any attention for the neck. We have had the whole of the prescriptions and the doctor's evidence of what happened—we have got letters from her—Dr. Ritchie has had a letter—and as to the swelling, there is not one word of complaint. Could it be quiescent as Dr. Thompson says, and then suddenly appear coming out of the tonsils, after travelling 5 or 6 inches up through the neck among the structures that will be described.

She goes home for a fortnight. She leaves Sydney by car on the 14th April. She does not see the doctor for a fortnight—because we have the doctor's letter, written after these tetany spasms. Gentlemen, what has been endeavoured to be done in this case—the red herring that is raised that we have got to attack, is this tetany. You have seen hours spent here on this tetany being relied upon as proving that the tube might be there. Gentlemen, once you get the infection of the parathyroid glands—this parathyroid feature could start—we have got it—it is mentioned in her letters that she had it in hospital—what is the purpose of it—to get your minds away from the real practical position—to try to raise some long medical argument whether it is tetany or hysteria, when you are told you have got features which show that it is the most difficult diagnosis to say whether it is parathyroid tetany.

Let us keep to what we know. On her return to Quirindi she is looking after herself, and it is during that period, as was admitted to me by Dr. Welch, of course infection might occur. It cannot always be avoided. Let us get the further position that in that period in the hospital later than the 1st June we get the cessation of those hot foments when relief is given by Dr. O'Hanlon, operating with regard to the swelling in the neck, and there it ends. So we have the admission that the husband says that up to October she was normal, except for the tetany spasms. The condition is proved by hospital records, her own correspondence, the chemist's prescription, and Dr. O'Hanlon's evidence, and the witness, Sister Sly, and the corroboration of the husband. I do not propose to refer to it any further than that, because I will have to go into that in some detail a little later.

(Further hearing adjourned until 10 a.m. on Friday, 10th December.)

Ninth day, Friday, 10th December 1943.

10th December 1943.

Mr. CASSIDY: I put to you yesterday that the normal removal of that tube would be established by the evidence (1) of the Defendant and

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nurses; (2) by the records; (3) by no untoward incident such as the Plaintiff relates ever being mentioned by the Plaintiff or her husband at any time during the whole time she remained in the hospital; (4) that the state of her neck, that her condition at that time would show the absolute impossibility of any rough treatment having been administered without having disastrous results. That last matter will be deposed to by the oral evidence of men who know the structures of the neck and the condition that follows that operation.

You will remember in this case the Plaintiff gives a lot of talk about this thing tetany; that has been the burden of their song, one might say, and the tetany she uses to support the suggestion that something must have been left in there that caused that trouble, gentlemen, that is what we call in law and in logic an absolute non sequitur, it does not follow at all. Tetany can result, and does result, from infection or inflammation and other causes, but the Plaintiff's endeavour is to say "Oh, it must have been a tube because I got spasms at a later stage." The answer to it is this, that it does not follow in the slightest, but, as the defence will show you, the important thing would be what is the condition of her neck, and I suppose your minds have grasped that before as to how my cross-examination was directed to how her neck got right. It is not the tetany that is important because that may be referable to other things, but the matter that is important when you come to your deliberation is what was the condition of her neck. Look at it with ordinary common sense. An article 2 inches or more long left in the neck and going to remain there, and on all the admissions in the case from June 1938 to October 1939, except for the Plaintiff and a few exaggerations a quiescent period; with a swab in it. Would that thing if it started to get infected die down and the neck get right because, gentlemen, we have the pincers on there. We have documents, we have Dr. O'Hanlon, we have her letters and people who saw her during that time, and an X-ray on the 7th October, 1939. You follow, as I said earlier, that this tetany is a red herring to get into an argument. The real thing in this case is the swelling of the neck, and as I say it is what we call in logic a non sequitur, it does not follow.

Let me look now, just shortly, at what followed the operation. Her progress, you will be told by doctors who have studied the chart and people who were there, was normal after that operation. You have only to look at the temperature, and to save you the trouble of looking through those exhibits I will have the temperatures taken out and placed on the one sheet, and you will have set out the date, the time, the pulse rate, the temperature and the respiration rate. You will be told that the temperature and pulse rate were normal on the 16th. You will find that on the night of the 19th a slight set-back occurs, that is when the doctors will tell you that there was some slight infection, not a heavy infection that Professor Welch speaks about, which is modified by Dr. Thompson. Heavy infection is something that goes on and is serious. In two days the condition is back to normal, and from then on everything is so normal that they do not bother to transfer it from the ordinary charts that are kept. More than that, this will be the position, the pulse rate was 150 when she left Quirindi on 12th February 1938, she goes into hospital and has this lugol treatment to get control and, gentlemen, her pulse rate is back to normal. When the infection occurs the highest it goes to is 100 and it is back to 72 on the 22nd and the temperature back to 97.

The defence will further show, and I think it is to all intents and purposes admitted, that infection can occur in numerous ways, that despite all the care a surgeon can take he may not necessarily eliminate it, it can come from the visitor who sits at the bedside, it can come from the patient touching her own neck, it can come from her own blood, it can come from the surgeon when he is bending over her and is just removing that tube, but it is a thing that you cannot eliminate totally. The infection that came here has to be admitted because the defence has not to prove its case, it is the Plaintiff who has to prove his case, it is consistent with 100 other things that infection can occur from other sources. That it did not last long is apparent by the fact that the lady leaves hospital and takes a journey home on the 14th. Let us follow the position : she leaves hospital on the 14th—and I am going to put before you in sequence what is said in letters written about this time. Letters are things that are written before the parties get their horns locked, before they start to butt one another, it is a time when all parties are good friends, when Dr. Bell is spoken of, as we suggest, that she adores him and that he gave her careful treatment. She goes home on the 14th April and on returning home this is what we have. By the 2nd May she has not been to see the doctor, she has been attending to herself, the knots have been coming out, and she has taken them out herself. That gives some light, surely, on her condition, and that is proved by the letter that her husband writes and by the letter that we received from her own doctor : " The throat is not yet healed, she has taken out seven knots since she came home." The doctor will tell you that there are a lot of knots used in this operation. (Sloane's textbook shown to jury.) The point is at the moment on her letter she herself has been giving the attention and she had taken out seven knots since coming home, the tetany is still very annoying but the attacks do not last so long. Then we have a further confirmation from her own doctor on the 10th May stating that not knowing she had returned from Sydney he had not seen her until a fortnight after her return.

> " There was a free discharge from her neck and she told me she had recovered several pieces of suture material. She had also been troubled very much by contractions in her forearms and legs and occasionally in her facial muscles. A few days after I first saw her I persuaded her to go into hospital where she is at present—there we recovered more catgut and with frequent foments to the neck there is less discharge and it appears to be generally better. However, the tetany is, I think, worse."

So we get the position there as to her condition. The condition generally is better after treatment, and by the 25th May you will find the hot foments cease and she leaves hospital and you know the subsequent history that before Sister Sly leaves she says it is healed, there is no discharge and there is no swelling so that is the position by June ; no inflammation, does not require further medical attention. That is the position and that is the basis we have established on the documents as they stand and Dr. O'Hanlon's evidence will corroborate it and on a long series of events that will show you that from this period on that her story that she had a neck that she could not move, that was like all one part of the trunk, is a story that we say so much exists in the imagination.

It will be established to you that from October 1938 to the 6th October 1939, Dr. O'Hanlon saw her twice only and was only asked to see her twice.

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The 1st February 1939, the occasion when her daughter was going to school and he was asked by the husband to be there in case of spasms, to keep his eye on her while he was away ; nothing wrong with her neck. The next one, the 19th September 1939, nothing wrong with her neck still. Let us look at two other signposts on the way, these, gentlemen, are letters written at the time. This is not after a very active brain under the stimulus or exhilaration of this strange disease, that can give such exhilaration to a mind, can drag her mind into channels that are clever beyond the ordinary when an obsession is got and imaginings are that some persons are persecuting her, those minds under that stimulus become very active and I think you will agree with me when I say the Plaintiff's is such. We have another record from the 3rd of September to the 6th of September 1938, written down in black and white in the hospital records, not a thing done to the neck, she is in hospital, what is it ?—spasms. 17th September 1939, you will remember that Dr. O'Hanlon has not been asked to see her since October 1938, here is the 17th January 1939, another letter written before there is any suggestion of trouble, she is writing to Dr. Bell five months later in the most friendly terms, she is writing a letter with some small degree of flippancy in it to Dr. Ritchie when she calls herself Chickquetta and speaks about the doctor having teased her. When those documents are written and signed the whole atmosphere is one of friendliness, and as you see by Dr. Bell's letter that he is trying to help her when he says that he has spoken to Sir Allan Newton of Melbourne, a very distinguished person, about her case. Why should Dr. O'Hanlon in 1939 be inventing something ? She tells you : " I did not go to the pictures for two years." Is it right or does it exist in the imagination or has it become real to her as these things do, that she really thinks she has not been to the pictures ? Listen to the letter of the 17th January 1939 :—

> " Your inquiry as regards Mrs. Hocking to hand a few days ago. I must admit that the extraordinary heat wave has caused me to neglect my correspondence. If anything I would say that the lady is improving slightly. The major attacks though not less frequent are becoming less severe, she recovers from them more quickly than before. She has frequent minor spasms which do not leave the muscles involved as sore as before. She was not able to tolerate the large doses of calc lactate for more than a month or so. At present she is having occasional doses of paroidin s o s also morphia only when she is feeling ' staticy ' (as she calls it). For the first time since her return from Sydney she attended a picture show last week I regard as useful and definite evidence that she is recovering as Mrs. Hocking always said she would attend the pictures when she was better."

Can that be wrong, can she be right ?

> " She certainly looks very well and I cannot help thinking there is a big functional element in her trouble."

Gentlemen, is not that right, this functional element in her trouble, isn't it obviously a case of that ?

When I review the history later you will see. You understand by functional element I mean something different to organic ; functional means nervous, and, gentlemen, that becomes obvious when one comes to examine other aspects of that particular matter, but the point I am making

to you at the moment is this, in January 1939, she was looking very well, that she had attended the pictures, that the doctor was right when he said he thought there was something functional in her trouble. February her daughter goes away, and in May we have letters written. We have got first of all a letter to Dr. Ritchie and, gentlemen, I ask you when you come to see it to apply your mind to it.

The way in which the defence calls that in aid of its evidence is observable chiefly if you look at it, because the observation I want to make on it makes it necessary for you to look at it. Firstly you realise that I am making the point that her condition is not as serious as she now states. The letter is not one where she was so bad that she would drop her pen and take two days to write it. The whole context of it, the whole appearance of it negatives that, it is written in a reasonably regular hand, quite good writing, if you look at the "Chickquetta" at the end it is written very, very well and very, very regularly. It contains no suggestion of an unsightly swelling of her throat, and it contains this "The voice is much better." That letter I put to you becomes extremely valuable from this point of view, that it corroborates to the full what I am saying that in May 1939, that woman's condition was not such when she wrote that letter that it would take two days to write it, it was written at the one time, there is not one word about the throat being swollen, and it is being written to the doctor and it contains the terms "my voice is much better than when I left St. Luke's." It contains also the words "Gosh but you are beautiful," and that, gentlemen, indicates one thing only, and that is that there was no deformity in the neck at the time. I suggest to you for the defence that this talk that it was some ungallant slinging off at her appearance is wrong, that from that letter the position is this that qua the throat, it is much better, but the other condition she has is not right yet, she still has, as the doctor has said on the 17th, the spasms. That is not the only letter she writes: she writes to Dr. Bell, and she admits to me not one word about the throat. Just pause for a moment there. She has been cross-examined about that letter on different occasions and I have got before you her answer, she wrote to Dr. Bell not one word about the throat. In this case, for the very first time in the whole of the trials we have this added to the record, that the letter is not produced because there might be something else in it. How unfair that is, what a remark to make. What is the innuendo, that we have kept it away, when she has been asked about it and she has admitted that it is a letter to which she has made no remark about the throat and to which we have Dr. Bell's answer written at a time when they were both in agreement. Dr. Bell's answer is written on the 27th May:—

> "Dear Mrs. Hocking: Many thanks for your letter. I am glad to see that your writing is so good. I only wish some of the medical students could write as clearly as you do. I hope you will be able to take up tennis next summer. I was talking to Sir Allan Newton in Melbourne about a similar case to yours. He is a great believer in cod liver oil and calcium, and he puts his patients on this treatment. I saw another patient some time ago and she is completely recovered. I will write to Dr. O'Hanlon. I told Dr. Ritchie that I had heard from you. Best wishes, Yours sincerely, George Bell."

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Gentlemen, is that a letter in reply to one where she had been making complaints about the condition of her throat or one where the only complaint was that the tetany was the only trouble. You can judge from that reply what it is with reference to.

Let us trace this innuendo to the base. Is Dr. Bell—and he can be the only man suggested—who did not produce that letter? Look at the one that he did produce. On that, every bit of criticism that my friend can find against Dr. O'Hanlon, and you will hear him later, that letter could have been torn up like that if Dr. Bell wished to be dishonest. That letter is one of the foundations of my friend's case, who produced it—Dr. Bell. That is the letter that would have been torn up if a man wanted to be dishonest, as many a man might have been, who would know of it, Dr. Bell and Dr. O'Hanlon, what is done with it, do his legal advisers suppress it, does he suppress it? He brings it here, the very thing on which they can work, let me show it to you, the very words they have used as the great big stick, where does my friend get it from? From us, we give it to him, he does not know of it and we give it to him. This other letter, what could we have done with it, and this is the letter, mind you, gentlemen, the innuendo is that we were destroying things. Just listen to it :—

> "Last evening I was called to see Mrs. Hocking who was complaining of pain in her left chest and down the middle of the chest. Clinical examination revealed nothing definite.
>
> Mr. Hocking gave me the following history—last Monday she had as bad an attack of tetanic spasm as she has ever had, she complained of pain in the neck which was swollen. Until Wednesday she complained of pain and soreness from the neck to the stomach, the act of swallowing was painful, he thought she had symptoms of indigestion and gave her castor oil, salts, etc. On Thursday Mrs. Hocking had a bowel action and passed a piece of grey rubber tubing, squarely cut on one end and ragged on the other, the tube was partially split up, and stuck in the lumen was what she took to be a small piece of marine sponge about which was twisted a piece of wire, I enclose the sketch she made for her husband and which he passed on to me. Mrs. Hocking emptied the tube along with the bowel action result into the w.c. so neither Mr. Hocking nor I saw it. Mrs. Hocking's description is too vivid for the article to be imaginary, so of course I was somewhat nonplussed when I was asked to explain it all.
>
> Assuming that it was a piece of drainage tube that was accidentally left behind—I suppose it is possible that it could work its way into the œsophagus, though to me it seems strange that it did not work out through the sinus which persisted for so many weeks after her return from Sydney. Mrs. Hocking on a few occasions did complain of soreness in the neck but at no time did I ever detect any symptoms that would indicate an X-ray examination—naturally the possibility of a foreign body being the cause never entered my mind. Within a month or six weeks after her return from Sydney her nurse did recover undissolved sutures on several occasions; the sinus eventually closed and now she has an excellent scar. The attacks of tetany have become fewer nevertheless, Mrs. Hocking is still far from well, she is very unsteady when she tries to walk.

If a foreign body has remained in the neck all this time do you think that it may be a possible cause of the tetany and could we now expect an improvement in her general condition? You understand, doctor, that this question is based on an assumption only.

Mr. Hocking had worked out the foregoing explanation for himself, though he did ask me if it were possible for a piece of tubing to get into her alimentary tract during the administration of oxygen.

To-day I X-rayed Mrs. Hocking's chest and neck—her heart shadow does not seem normal to me, also the transverse processes of the cervical vertebrae on the right side appear rather indistinct and blurred—though this I think is due to faulty posture, I could detect no f.b. in the neck or lung fields.

Kind regards, Yours sincerely, Kevin O'Hanlon."

Now, gentlemen, the best evidence of honesty in this case is that Dr. Bell does not burn it or tear it up, and then you get this innuendo that there is something in that letter of May missing.

Let us pass on a little. I said to you that we had the letters and the correspondence. We next have the prescriptions. These, as you will see, are from the chemist. As the letter shows, the chemist has discussed the matter with Mr. Hocking and there are the whole of the prescriptions that he has made up. (Objected to by Mr. Shand.)

No, every prescription. When a prescription is made up, the day it is made up he gives his prescription for the day it is made up. You will see that whereas in 1937–38 you have got a bundle of them, such as you have noticed before, in 1939 you have got this—7th January, 1st February, 16th February, 2nd March, 20th September, 20th September; the 5th October, one is for Mr. Hocking. You have those four over that period, but none of them in regard to the throat. What is the only logical inference? That during that period the throat was right and that tetany parathyroidal tetany—hysterical tetany we see it has developed into when this unconsciousness comes to be persisting. Two of the prescriptions are repeats as the 1st February shows, and that is a nerve tonic.

These conclusions follow, and to every reasoning mind I suggest with every humility, that what was left with that woman with the spasms of parathyroidal tetany in the early stages up till June or a little later, probably developed then into hysterical tetany due to the previous predisposition of this particular patient. What the defence will establish will be this, that as indicated by Dr. Bell, early after that operation, and as told her husband before she was leaving, that there was tetany following the operation. Further, you have heard from a number of sources that that is due to inflammatory interferences or otherwise with the parathyroid glands, and which stops with the proper supply of calcium to the blood.

Then you will read the records and you will see that those spasms in June, or just before June in Quirindi Hospital, begin to get much worse, and you get, I think for the first time, the unconsciousness. That matter becomes of very great importance because as men who know tetany and as men who know hysterical tetany—the doctors who will be called by the defence—there you get into the region of great experience being necessary before anybody can diagnose it. It is all very well for Dr. Thompson, who

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has never seen it, to come along and say : " I have read twenty-five text-books," and such and such ; you want the man of experience, and you will hear how even he can be deceived.

Dr. Bell will give you one instance where he thought his patient had tetany, but it was actually hysterical tetany, and he only found that out when he discovered her hanging by her hands from the window, and she did not fall. You will hear from the authority I have read that they collapse on a bed or in some place where they won't injure themselves or are comfortable. Strange things happen, and as Dr. Poate will tell you, in this condition of goitre you will get it as high as this, practically, to use his own words : " There are four main types of nervous disturbances with toxic goitre patients." Then he deals with them—obsessions, general mental instability and so on, and he says : " About 80 per cent. recover fully but 20 per cent. are left with some form of nervous instability." It is an operation of course that has problematical aftermaths. It always had been so and still is so in this condition of medical science—it still is so.

You will hear from physicians and surgeons as to this condition. Dr. Poate will tell you that in his opinion what happened in this case was this, that this was a parathyroidal tetany existing up till some time like June, when the unconsciousness starts. It alters, and this convulsive spasm that is spoken of on the 2nd October is and was hysterical tetany, because here we have the one thing that every medical man will tell you, that if you have parathyroidal tetany or ordinary tetany it won't cease suddenly when you have a bad spasm.

Just reason it out for yourselves ; look at it reasonably. When you have a paralysis or a convulsion with the intensity described by the Plaintiff which lasted on one occasion for twenty-four hours or two days on and off, that shows that the blood calcium content must be in a shocking state, and it cannot recover immediately ; it is going to go on for some time, if she is getting better, getting less and less, but it will take weeks or months.

What have you got here ? On her birthday—this is a remarkable thing and ordinarily we take very little notice of age, but this woman whose age was always strange with her, has, on her birthday, this dramatic incident occurring of the tube bursting through the throat. She does not send for the doctor, but on the night of the 6th when he is called from the picture show she tells the doctor a story but does not tell him about this bursting through the throat. Your minds must have advanced to the impossibility of that position ; your minds must have grasped this problem, that if you have a splinter coming up that length (indicating) you have got a prince of carbuncles or whatever they call it and a big one at that. You are not going to get it shooting across through your tonsil or anywhere else but you are going to get it for days. It can only travel surrounded by pus.

If you have an infected area that size in your neck what are you going to get ? Then again there is this dramatic incident, and this dramatic thing on her birthday. You have this thing, and then almost immediate recovery. This same condition demands to be the centre of attraction. Under the exhilaration of that, she is capable of very extreme mental effort—something dramatic.

During the last three months she had normal periods according to her husband except for some tetany, and then there was this dramatic climax, and then it ends. There was no swelling of the throat, and gentlemen, I will put before you the X-ray of her throat taken by one of the two men

who get the seal of approval of Dr. Thompson. Dr. O'Hanlon took the X-ray and it was interpreted by Dr. Edwards, the only man who has the seal of approval of Dr. Thompson, and then on the 2nd October there is this tremendous eruption, which is supposed to have taken place on the 2nd October; it will be interpreted to you by Dr. Edwards—a normal neck. These doctors know tetany and have seen tetany and known the difficulty of diagnosis. They will tell you that it is a most difficult diagnosis because you have the same symptoms appearing in each.

There they say that you have additional symptoms that point to hysterical tetany. One of the men who will speak of that is Dr. S. A. Smith. I suppose there is no one of a more versatile knowledge in medicine, anatomy, and in many things apart from medicine and anatomy than Dr. Smith. He is one of the great brains of this community, not limited to a narrow sphere of medicine; he is of a distinguished family of scientists and you will have him speak of it. You will have the practical surgeons speak of it and you will have Dr. Ritchie speak of it, and you will find this, that they will sum up to you these symptoms thus, that this condition, which was a case of hysterical tetany, ceased dramatically after this incident, and never occurred again. The drama had had its effect.

On that night of the 6th, you take it from me that the evidence called by the defence will be, and as admitted by her, that she said not one word to Dr. O'Hanlon about that tube bursting through the throat. There is that letter where he says that the article is too vivid to be imaginary. Whether it hurts my case or not, I put it that he was reporting truly what he thought on his knowledge. Then in the same part of the letter you will find his description of what he was told as to what happened to that tube and we haven't it here because if we had it here or if the tube had been produced we could have said whether it was our rubber or not. We could have seen the size of the tube. The position would have been a very very different matter if we had that here.

Where is it? We have what was told Dr. O'Hanlon on the night of the 6th. The husband didn't see it. Why didn't he? It was a thing of the imagination. She told him that she put it in the pan and pulled the chain on it, not this story that we have of crawling along the wall and so on, then pulling on the chain and it dropped. What was written on the 7th October by the doctor—(objected to by Mr. Shand).

His HONOR: At the moment I see no reason to stop you, Mr. Cassidy.

Mr. CASSIDY: I am calling Dr. O'Hanlon as I said I would, to prove what was said to him, and to prove that he wrote that night substantially what was said to him, on the following day.

Let me just for one moment further pause on this matter. I had said that the previous position to this condition of hysterical tetany was present in this particular patient, and there are certain indicia of that. They are these:—

(1) We have the charge made against Dr. Flynn that when he treated her for that two weeks he severely burnt her with an X-ray. Gentlemen, that is imagination. An X-ray burn does not clear; an X-ray burn leaves its traces. An X-ray burn is in many cases a most dangerous thing.

(2) We have next, following her visit to Dr. Flynn, that she did not know why she was in Quirindi Hospital; she did not know she had goitre.

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At that stage it will be proved to you by the defence that her neck was thick and that she was in a debilitated state, and it will be proved by the defence that the enlargement, though not a large one—a moderate enlargement—was observed.

(3) She tells you that in Quirindi Hospital she was not made a fuss of. Again that centre of attraction—she was not made a fuss of.

(4) She tells you then of this dramatic occurrence on her birthday.

(5) We know that within five days of that, on the 11th October —by the 11th October—she had written a letter which, if she had been in the condition she said she was, is written remarkably well. It is remarkably good writing for a woman who says she was in the condition that she had to be carried about and loaded with this care and attention that she called for. That letter is the 11th October. It says :—

"Thanks for your letter received some time ago. You have probably heard from Dr. O'Hanlon giving you full details of the piece of drain that was left in my neck. I have been feeling quite worried. Doctor, please don't think I blame you or anyone in the hospital."

Think of it, gentlemen ! She says that by the 5th October she told her husband that Dr. Bell had done this thing to her throat. On the 11th—at that stage she is writing to the doctor stating—"I don't think I blame you or any else." Is it understandable ? Because remember that it is after that that she comes down to Dr. Bell ; it is after that that she is in Sydney here, and it is after that that she goes down to Manly and she comes in to see Dr. Bell and Dr. Ritchie before she returns.

You will follow the contrast between that letter—"Don't think I blame you, Dr. Bell or anyone at the hospital," and what she says now.

The next matter is the charges of "cruel, cruel treatment" when she comes to St. Luke's Hospital, and that she can't eat. The records show that her diet was good. She said she could only eat certain things. The record shows that her diet was good ; she now says that that is the record they put in in the kitchen, but she sent it back. What could that be ? The mind getting to work on the basis so that it becomes an obsession, and she is clutching at any straw so as to make suggestions to support a case.

I am putting all these matters as matters which show the previous position and the basis of what my medical advisers refer to as that lapse into hysterical tetany—the transition stage from tetany to hysterical tetany.

Gentlemen, this is a matter confirmatory in the absolute of what I am putting to you. You may take it that in November 1941 the solicitors for the Defendant wrote to the solicitors for the Plaintiff asking for permission for their doctors to examine Mrs. Hocking. That permission was refused on these grounds—"It is not alleged that Mrs. Hocking is now impaired, and as her present condition is not relevant to this action, we cannot therefore consent to submit Mrs. Hocking to a medical examination for or on behalf of the Defendant."

The importance of that is this. That is written, as you see, in November—no, on the 1st December, 1941. Our request had been made some time earlier and had not been complied with. In April of that

year, evidence will be given that she consulted Dr. O'Hanlon, and evidence will be given there that this is what she said : (1) that her husband was tampering with her food ; (2) that her husband had assaulted her ; (3) that her husband had drugged her and had taken advantage of her in her sleep, and that she was pregnant. Dr. O'Hanlon said to her that he would not believe it, and he spoke to her in no uncertain terms—that that was wrong.

What is the basis of the mind in a wife who had made those charges ? What can it be ? Gentlemen, it is endeavoured to be put here that if you have passed through anything like that you might say things. Is that so if it was only tetany—that once you get your calcium back you are right ? Is it tetany that makes the mind so disordered that it makes those groundless charges ? The defence will call in aid this, that this Plaintiff and her husband are happy people and that this one assault was a tapping or a spanking and one isolated incident in her life. Whereas, unless she is telling Dr. Thompson something untrue, she tells Dr. Thompson that she is very very unhappy with her husband. What does it mean ? What is the state of mind which gives expression to those things ? Does it need medical evidence to support common sense together that following this goitre operation there is there a nervous instability characteristic of and accompanying very often the aftermath of this particular trouble ?

Let us pass on. The other thing—the allegation against Dr. Bell, as I am reminded, is in regard to the pus. I don't want to be too long over that because I will deal with it in my address later—that Dr. Bell kept her in that hospital until she got the pus out of her mouth before Dr. Marsh could see her.

Now again, in regard to this letter to Dr. Ritchie—we have heard the evidence in regard to that. Plain beer becomes cherry brandy (objected to by Mr. Shand).

As I understand the evidence Mr. Nancarrow said he never had a cherry brandy in his life. Where has it come from ? Where has this come from, this failure to put facts, this tendency to put embroidery on things, this tendency to exaggerate—what does it mean in the psychological make-up of that particular patient ? Among the salient features of distinction between parathyroid tetany and hysterical tetany, Dr. Poate and others will tell you that you will find this, that parathyroid tetany is eminently controllable by calcium lactate and intravenous injections or paroidin. You get control of it by those means ; you get control of it within two or three months or so. You get control of it, if not within a short time after the operation, then within some two or three months.

Then this other one, the calcium lactate and the other thing do not stop it, and you get the patient herself getting a dramatic occurrence and she gets that into her mind and cures herself.

A study of the records will show the increased severity of these spasms. The first unconsciousness occurs about June, 1938, and you will be told that it is quite a significant thing. She is given calcium lactate and intravenous injections that night, but in $3\frac{1}{4}$ hours that night she gets two spasms. (Objected to by Mr. Shand.)

We will check it up—" Had tetany spasm at 6 p.m." That is the day report. The night report is " Had tetany spasm 9.15 p.m." The evidence will be that the injection controls for two or three days, and the evidence will be that it was given intravenously on the morning of the 1st June—intravenously " 6 a.m." " Had tetany spasm 6 p.m." Then

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the night report, "Had tetany spasm 9.15 p.m." "lasting 15 minutes." That is two spasms within three hours of one another, following an injection that morning.

I am not going to deal with all the features significant in regard to this hysterical tetany. The outstanding one is, as I say, this sudden cessation, the others being the frequent lapses into unconsciousness, the extremely long period of resistance, the fact that massage relieved it, because in true tetany massage irritates it and makes it worse, and you have got the husband's evidence that in this case the massaging is supposed to relieve it. You have heard that he said that the more he massaged it the less it became.

In regard to the distinctions, you will remember that there are a number of matters that will be put before you, such as those ones I have indicated, the chief of them being the sudden cessation, the unconsciousness, the frequent lapses into unconsciousness, the nature of the spasms on the 2nd October, the relief alleged to be given by massage, and the question of the eyes.

I come now to the culmination of this case. As I have indicated earlier, the letters, the hospital records, and the medical evidence that will be called will show that during this period preceding October there was no trouble with the throat. I will call in aid there what the husband himself swore on the first occasion.

Leaving that, Dr. O'Hanlon saw her on the 19th September, and there was no complaint about the throat—nothing wrong with the throat. On the 2nd October what is alleged to have happened is that after very, very serious convulsions and after periods of unconsciousness, it is alleged now that a tube burst through the throat. This was preceded, it has been sworn, by a wall of pus forming in the throat which you will remember had to be scraped off with a toothbrush. For such an incident to have occurred for a tube of that size or any size—but the one we are dealing with is that size (indicating)—or for a 2-inch tube or for one of any size, for a tube to have cut its way out of the thyroid bag (capsule is the word) found its way up the neck without being observed, to have then crossed laterally, to have come out of the tonsil, and to have burst through in the way it is alleged to have done, is, I put to you, all impossible—it is absolutely impossible, gentlemen. And you will have little doubt about it from these men who have anatomical knowledge and pathological knowledge, who will deal with it.

Now, you will remember that a case which starts as impossibility must always gather further impossibilities as it proceeds. I will not dilate on that, but suffice it to say that a thing that starts as an impossibility must gather further impossibilities as it proceeds. I propose to put before you many details, and the doctors will explain it to you in detail, and it won't be very, very theoretical detail either.

Gentlemen, you will remember that the thyroid is in a bag. They call it a capsule. We call it a bag. That bag has to be cut open to get the thyroid and take it out. That is the cut and that is the bag (indicating), and you will see that it is held apart by those clamps. Now, that bag, for a start, is tough. It is thin, but it is of extreme toughness, and you will be told how tough it is, and the doctors will tell you that it is hard to pierce. You will get some idea of it there (indicating) and you will

see that there is some tension on those clamps that are pulling it. It is a tough bag.

The doctors will tell you that this tube or a tube or a body ulcerates if left while there is an open wound there, and if infection forms, that is the thing which makes anything move. It would drive the body, not through a tough bag, but it would drive it along the line of least resistance. That is a fundamental medical fact. The fact is that it is seeking its way to the outside; it goes along the line of least resistance and you have got there your open sinus, and you have got there, if infection had formed there, sufficient to carry a body because it has to carry it and push it, and before the thing can go through anything the pus and infection has to eat through the wall. Imagine the trail of destruction which it would leave behind when it pushes along. Medical men will tell you that it goes along the line of least resistance and when you have the opening there that is the way it will go. The knots come out and infection drives it along, and brings them out at the opening of the cut, where everything else would come, and for a start it will be said that the first impossibility in the matter is that a body won't go up in that area of dangerous and vital structures where death would certainly ensue in some form or other.

Dr. Thompson said that he has never seen foreign bodies in the neck——

His HONOR: That is not so. He said he has seen shrapnel bullets.

Mr. CASSIDY: It will be told by the surgeon I am calling that you do not see foreign bodies in the neck because when they get in the neck it is usually the end. In the limbs or in other places you can follow them, but in the neck, that is a place where the doctor is usually not much good. Why? Because you have got there all the structures that you know—the jugular vein, the carotid artery, the vagus nerve, the windpipe, the æsophagus—it is full of things—full of vital structures. You are not going to have a thing like that travelling around in the area of the neck.

I had said to you, gentlemen, that the first thing is that that body, as we have been told, would not move out of the thyroid capsule. You will be given evidence, which I think will be uncontradicted by the doctors, as to when bodies can move, how they can move and what makes them move. Fundamentally the defence says this body will not move out of that thyroid capsule. If there is infection there sufficient to move it, and you realise it must be a large infection, a heavy infection, and a serious infection, and there was movement, that movement would be along the line of least resistance and would be the way the knots came out through the sinus, which was open when she left the hospital, was open again in Quirindi, and finally healed at the end of June. The doctors will tell you that if that body had been in the thyroid capsule with extensive infection that she would have had big swelling, and it could never have healed. With that in, something had to break if you had infection there.

There are two classes of foreign bodies, you will be told by the defence, that may be in the human body. There are what we call septic bodies, those are bodies, of course, that are infected, and the others are what we call aseptic; those are things like a bit of shrapnel or a bit of coal or something that may get into your body. The aseptic bodies—that is, the bodies that are not septic—they become ingulfed in what is called fibrous tissue, and you get them inside fibrous tissue, and that anchors

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them; they do not move. That is the aseptic body. The surgeons who will be called before you are men who have a very, very large experience of foreign bodies, both war surgeons and men who have operated in N.S. Wales very extensively, during this war and the last, and on this subject, as you will see when they give their evidence, they are especially entitled to speak with experience lasting over 20 or 30 years. The septic bodies, however, they are the ones that can move. How they move is through pus and inflammation. Those are necessary things to be present. The body becomes surrounded by an inflammatory area. The body become walled off in that inflammatory area, and it only moves as the surrounding tissue is destroyed and eaten away. It is not difficult to follow, I think. So that, if you have got this body movement, as is suggested, it is moving along a pathway and to get ahead it has got to destroy tissue. It will eat it away first and destroy it. It is not a sharp body; it is a long body, and you can imagine the time that would take. You can imagine what is happening as it is going on its path.

You have heard it suggested that it was shaped like that (shown) and put in like that (shown) from the right across to the left, and that it has gone up. That, you will be told, gentlemen, is surgically, physiologically, and anatomically impossible. Think of the size of it, the bore of it, and the size of it, and in size I mean circumference, for a start. That has to be surrounded with pus and has to move in pus and fluid, which has to perform the task of eating a path for it. That tissue destroyed, as the doctors will tell you, it is replaced, but replaced by a non-elastic tissue. So that, if it moved you would get a neck—that is, if it could move. The doctors will tell you it could not do it; but you would get a neck which was stiff for ever, never get better, and stiff for ever, and never get its function back.

Of course, right behind it all is the position that it could not possibly move; there are such vital structures there that it is impossible. If you look back at that picture that I have already shown you, it has to go in among all these veins and arteries and things, which I will illustrate to you through the X-ray. It has the windpipe and the other parts around there that might be pierced and that is the end.

The next thing the doctors will tell you is, that if there is pus there, heavy infection, sufficient to carry that tube and push it along—if you had that pus there that pus goes down—say the thyroid cavity is there, you have a kind of opening, a fascia at the bottom that the pus will go through, and it would go down into what is called the mediastinum, and that is the end. In certain operations to stop things going down you put people upside down for that very purpose, but in this case, with the ordinary lying motions of the body and moving about with a heavy infection the pus goes down this thyroid cavity down into here (shown) and the result is the end. The possibility of it moving up, as I say, cannot be envisaged.

The results, as the doctors will tell you, could not be that the body could twine around and out this way (shown) and move through those veins, arteries, and nerves and other parts. The veins, nerves and arteries there are important. The muscles there would have to be cut through. Then they will tell you, when there is talk of it travelling laterally to come across and to get in your tonsil, there you have some of the strongest muscles that operate your jaw that you have to go through. It cannot

go up like that (shown), gentlemen. You will remember the picture of the tonsil, and the tonsil you might take it is opposite the angle of the jaw at the level of the lower back molar; that is your tonsil, and it is a very short thing, about three-quarters of an inch, and it is there (shown); so you have to go from where the tube is put in here to there (shown), and it has got to go up, and it has to go right through the muscles that will be described to you by the doctor as vividly as can be done.

Mr. SHAND: I suppose it will be explained that these organs are on the side of the neck.

Mr. CASSIDY: That is one there, and you have a similar thing on the other side of the neck. That is put in to show one side of the neck. There is the area (shown).

His HONOR: That would be the left lobe you see there?

Mr. CASSIDY: Yes. There is the area, and you see the red is the arteries, the blue the veins, and the brown is the vagus nerve, and they will be explained to you in more detail, but I only want to give you a general picture of the things it has to go through and your rubber has to twine in and about. In addition, there are the muscles which will also be shown later.

That is the first impossibility; that it would eat through the bag which is cut. The second, that it can ever travel in that direction and then come across laterally to shoot out of the tonsil. In addition, of course, to those vessels there, which are not shown, but you will remember them, there is the windpipe and the gullet. You will remember the evidence for the defence will show you that that must turn practically at right angles to come out the tonsil. Dr. Thompson used the word "laterally," of course he meant come across. The evidence for the Defendant will be that it has to turn at a right angle and it will be put to you that that is impossible. That that tube, as he suggests, followed like that, or in anyway could come out there into a position where it has been stated, that could not occur.

Let us come to the incident itself. That is the first part of the problem; the physiological and the anatomical side of it. Now let us come to the incident itself. Just think of it. We have this, and the defence will deal with it, that with no premonition other than about 24 hours of convulsion and that sort of thing, without any premonition, according to some—well, the husband is not there—it bursts through. Imagine the condition in which the patient must have been if it is proved, that there is a huge abscess there of pus which has broken, and which has free entrance, if that is so, as she is unconscious, down her throat. Think of it. The discharge into the body of that suppuration and that pus which would be sufficient to have the results which are suggested there were here. They do not call a doctor. Imagine what would be the position of the neck as to swelling on that day.

The next thing is that medicine is taken, and it is alleged that on the morning of the 5th—the husband not being there—that this tube is passed, or this thing is passed, and it is said that that something, which afterwards is said to have gone down, that body, on the 2nd and to be there on the 5th, after purgatives had been given on the 3rd, and after the thing has been in the intestines for that time, that when it is picked

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out in the way described and the chamber put down, and it is squeezed, the wire I am told now flicked back, it is said then that the green pus ran out. You will be told by the medical evidence, and you will be shown that it was agreed to by Professor Welch that that is not possible, that that object being in the intestines for that period of time the pus would have been gone. You will be shown how it was originally sworn by the Plaintiff that it was green, and repeated by her that it was green, and after that was later altered, after Professor Welch had been examined on the first occasion when he said it was a yellowish green, it becomes yellowish green for all succeeding times except the first. That matter is of very great importance, because even this explanation of Professor Welch, that you could get a certain amount of bile, will be dealt with and criticised very, very severely by the defence, that that excreta, or that that thing at that time with the bile would have any influence on that object being in the intestines as it was. Leave that for the moment; because that is slightly technical. On the plain straight facts the defence will prove to you that it was sworn that she picked it out and squeezed it and the green pus ran out, and it will be proved that that excreta would be brown. Then it is altered to greyish yellowish, because it is suggested by the Professor that you could get bile in it and that that might have done it.

Then what happens? We get on the morning of the 5th an account given by the Plaintiff, and the defence will prove that she was seen on the night of the 6th, and that on the 7th she was X-rayed. The defence will prove, and Dr. O'Hanlon wrote it at the time, that there were no clinical signs about that throat; that he examined it will be proved, and that there was no swelling, and that there was no hole in the throat. Mind you, at that time she had not told him it had burst through the throat, because he writes on the 7th, the next day. He did examine her throat and there is nothing wrong. The throat is not swollen, and an X-ray is taken at the hospital the following morning, and Dr. Edwards will tell you that that is the normal outline of the throat, and that the woman's neck so far from not being able to turn it is twisted round into a position so that the X-ray might be taken.

Mr. SHAND: It has never been at any time suggested she could not turn her head to the right, and it was turned to the right in that.

Mr. CASSIDY: There is the picture of the throat taken with the head turned to the right and there is the throat, you can see it there (shown), and you will see the outline of the throat going down there with the head turned to the right. And Dr. Edwards, I suppose one of the most experienced X-ray men in Sydney, will tell you that that is a normal neck and there is definitely no swelling. The Plaintiff said to me: "It may have been better on the 7th." Well, gentlemen, it will be put to you that that is only said because she knows she is confronted with that X-ray picture which was taken, and Dr. Edwards will also tell you that no sign of any fibrous tissue signifying the destruction of the tissue or restoration of the tissue which would have to be in the path where that thing would have to travel. You will remember yesterday I showed you this (shown), as if you cut through the neck just below the thyroid. That would be about normal size, or it may be a little smaller. Increase it a little bit, if necessary. Imagine this is the tube (shown) that goes in there, and that is it, if her story is right. That is the area there cut straight across. As

you have been told, the doctors keep it a little over a quarter of an inch out, with a safety pin in it, and you heard this from Professor Welch that they use a tube 4 inches to 6 inches. It shows here that when we are dealing with this we get into the realm of theory instead of keeping to practice and practical things.

The next incident with regard to the alleged eruption of this tube is that on the night of the 6th it was reported and on the 7th Dr. O'Hanlon writes what has been told him to Dr. Bell, and that letter you have heard read, and you have heard it reported there what had been told him, that the tube was lost because she put it into the pan and pulled the chain on it and went away, and the defence will call in aid the contradictory story told by the Plaintiff's husband and that later and now told by the Plaintiff herself.

Dr. O'Hanlon examined her on the 7th, she went to the hospital on the 7th, she had free movement of her neck on the 7th, and she moved her neck to the right on the 7th.

The next position we follow is the trip to Sydney. We have her coming to Sydney and being seen by the doctors. The Defendant will call evidence and Dr. Bell will give evidence that she is wrong when she says he did not examine her throat; that he did examine her throat, and that he found nothing wrong with it other than a kind of tendency, I think it was, to tonsilitis, and that Dr. Marsh came in, and Dr. Marsh will tell you what he saw with her throat. The nurse will be called; Dr. Marsh will be called, and the nurse who attended her there will be called. The nurse will tell you that her condition was not serious. She left hospital on the 3rd November, and she and her husband go to Manly, and in contradistinction of her evidence she said it was only two days before she was able to go back, that she was able to get into town; it will be proved to you that she saw Dr. Ritchie in his rooms, that on the 17th she saw Dr. Bell and that it was not until early December she went back to her home. You will be told also that Dr. Tebbutt took a blood count, a normal blood count. If the position had been such that there was this heavy infection it could not be so that the count would be as a normal blood count. It will be called in aid that it has been admitted by the Plaintiff's advisers that it was inconsistent with her story.

What is the position? The documents, the X-ray, the oral evidence, the hospital records, this talk that she was not able to eat well in St. Luke's and she was receiving cruel treatment—the records show full diet. The records show when she went to Manly into the Doctor's rooms on two different occasions within seven days—on the 10th and the 17th—what happens? No claim against Dr. Bell then. The next we hear of her is when they are down for the show they see Dr. Bell and then approach him. That is Easter 1940, and Dr. Bell says, wisely: "Are you going to talk like that? If so, see a solicitor." That is the first time we have the charge, and what happens after that? Without any word of warning from anybody, in January, 1941, the doctor gets a writ. Without any solicitor's letter or anything suddenly there is a writ in January, 1941. Those are the events.

You have heard described this incident at the inception of what is called the negligence. The defence evidence with regard to that will show it is impossible. That Dr. Bell is a man further removed from his attitude

In the Supreme Court of New South Wales.

No. 15. Opening Address of Mr. Cassidy, K.C., for (Defendant) Respondent 10th December 1943, *continued.*

to his profession and his attitude to his surgery. You will see him; not a cunning man, a plain man who knows and has learnt his job. There is no suggestion of cunning or anything about him such as you would be lead to believe by the fact that one letter is missing. You will be able to judge whether that is typical of him or not; whether he (1) would have done that thing, and (2) would have neglected to endeavour to remedy what he did if he broke that tube, and, as is said now, that he broke it, walked out of the room, without doing a bit of further dressing to it, and walked away with the sister and left the ward. That the story is wrong the evidence of the defence will establish to you on every ground—probability and otherwise.

I am sorry I have taken so long, but the matter had to be put in some sequence.

Mr. SHAND: My friend mentioned to me before he started that he would like an examination of the Plaintiff by some of his experts, and it would be quite convenient if that were done to-morrow morning.

Mr. CASSIDY: Would 12 o'clock suit?

Mr. SHAND: I will see; but there will be no difficulty about it; the solicitors can arrange it.

In Causes:

Ninth Day—Friday, 10th December 1943.

Defendant's Evidence.

DEFENDANT'S EVIDENCE.

No. 16. Mabel Winifred Barnett, 10th December 1943, Examination.

No. 16.

EVIDENCE of Mabel Winifred Barnett.

Sworn: examined: deposed.

To Mr. CASSIDY: I am a married woman residing at Richmond. I was formerly Sister McEwan. I trained at St. Luke's Hospital. I completed my training there and was a sister there on the staff for some time. I was doing special nursing there for a while. At that time I worked at St. Luke's. Since then I have done special nursing elsewhere, but not at that time. I was the night special looking after the Plaintiff. That means that I would see a good deal of the Plaintiff, because I was in her room except when I went out. I looked after her entirely. I remember the case very well.

To Mr. CASSIDY: I started on the night of the 15th March.

Q. You left on the night of the 23rd March?—A. Yes, well on the morning of the 24th.

Q. In your opinion what was the condition of the Plaintiff on the 21st or 22nd ?—A. Her condition was much better.

I finished up as a " special " on the 23rd. Her condition then was very satisfactory.

Q. Did you call to see her some time afterwards ?—A. At her request. She was then very well, very bright. I called after 7.30 a.m. and she had completed her morning sponge. She was sitting on the bed. I have knowledge and experience of this operation of thyroidectomy.

Q. Have you been a theatre sister, and seen Dr. Bell operate ?—A. I have not been a theatre sister, but I have been a theatre assistant, and I have seen Dr. Bell amongst others operating on thyroidectomy.

Q. Can you tell me the colour of the tubing used at St. Luke's ? (Objected to.)

Mr. SHAND (by permission) : Q. Do you attend every operation at St. Luke's ?—A. Not every operation. I would not work day and night. I do my hours on duty.

Mr. CASSIDY : At any time you have attended operations at St. Luke's, what colour tubing have you seen used ? (Objected to.)

Q. I will alter the question. First of all, is there an invariable practice as to the colour of the tubing used in thyroidectomy operations at St. Luke's ?

Mr. SHAND (by permission) : I suppose it would be safe to say that even when you are on duty, well you don't attend anything like all the operations which go on. There are other sisters there ?—A. But you forget this . . .

Q. Don't tell me that ?—A. I have worked in the theatre. I can tell you I have done all the sterilisation during my time in the theatre. I am quite familiar with everything you said in that theatre.

Q. But do you suggest you attend anything like all the operations which are performed ?—A. I do not attend all the operations.

Q. Or anything like it ?—A. Not anything like it. I attend the operations that I am asked to attend when I am on duty.

Q. There are a great number of sisters who attend operations at St. Luke's or used to while you were there ?—A. There were two sisters at that time. It is only theatre work. The assistants were drawn from the members of the staff, trained nurses and nurses in training.

Q. There are a great many of those ?—A. Yes, but we also did . . .

Q. Don't say that ?—A. Very well.

To Mr. CASSIDY : I have been at St. Luke's training and acting as a special altogether over about six years.

Q. Do you call yourself the " equipment sister." Would you be the equipment sister ?—A. No, I would be assistant in the theatre.

Q. What did you say of the sterilisation of tubes ?—A. We had a course of training in the theatre. We handled all the sterilisation and the preparation in the theatre for operations.

To Mr. CASSIDY : I saw this particular tube in Mrs. Hocking when I did the dressing. Its colour was red.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 16. Mabel Winifred Barnett, 10th December 1943, Examination, *continued.*

Q. Do you remember how the tube was in the neck ?—A. Near the middle of the wound.

Q. Will you give us an idea of the length of it ?—A. About two inches long and it would vary according to the neck, but it is usually two inches long.

Q. But take this one ?—A. It would be about two inches long.

Mr. SHAND : Do you remember it was that, or was usually that ?—A. It was the usual practice.

To Mr. CASSIDY : I cannot say specifically that I remember this tube as two inches. I did not see the tube being taken out. I cannot exactly say what length it was.

Q. You have seen the operation on a number of occasions. What is the length of that tube ? (Objected to.) (Withdrawn.)

Q. Did you see how the tube was attached, and how it was in the wound ?—A. It was about the middle of the wound. It has a safety pin through the external end of the tube and secured to the wound by means of horsehair suture, and it keeps it in the wound.

I dressed it, I did the dressing.

Q. What was the bore of the tube, the diameter ? Would it be——(Objected to).

Q. Will you give me an idea of the circumference of it ?—A. I could not exactly.

Q. How would it compare with a pencil ?—A. I should say pretty near it. It would be pretty near the ordinary lead pencil.

Q. Will you have a look at this piece of rubber with safety pin attached. Was that in your opinion the kind of safety pin used ?—A. Yes.

I consider that would be about the size of the tube.

(Tube with safety pin in tendered and marked Exhibit 1.)

I remember the condition of the patient.

Q. Do you remember the end of the first day, or do you remember the first night ? The operation can be taken as being the 15th. Without looking at your records, can you give us what her condition was ?—A. I should say she had a satisfactory night.

Q. Did you make your records at the time ?—A. I wrote the night report.

Q. The night report, we see, is signed by you ? It is page 4 or page 8. I don't know what it is. Your report is in evidence. That is your report that night (referring to night of the 15th March) ?—A. Yes. That report is quite correct. I remember coming on duty next night.

To His HONOR : I start at 7.30 p.m. I finish at 7.30 a.m. or when we finish.

Mr. CASSIDY : Without looking at your report, can you give all the details, or would you like to look at it for the details ? (Objected to.)

Q. Well, is what you wrote down in your report correct ?—A. Yes.

Q. Without going into every detail, what do you say ? By the way, you cannot give us the grains you gave her of anything from memory ?—A. No, that was why I wrote it out.

Q. Will you give us a general indication as to how her case went in your own words on the night of the operation ?—A. If I remember rightly, when I came on duty she was just the usual thyroid case, very excitable and nervy, and I took her pulse and found it quite satisfactory, and I gave the drugs which were ordered, and you will find she had a very satisfactory night, I think, and I reinforced or changed the dressings.

Q. Do you remember her second night ? That was the 16th ?—A. I think it was quite a normal night.

Q. Will you follow this as I read it——

Mr. SHAND : I will not question that these are correct records. I am objecting to the report being put in her hands at present.

His HONOR : Very well. (To Mr. Cassidy) : Will you read it ?

Mr. CASSIDY : " Very restless, 7.45 p.m. H.I. morphia Grs. 1/8 given with effect." What is H.I. ?—A. Hypodermic injection.

Q. " Has slept fairly well." Is that a good sign ?—A. Yes.

Q. " Awake several times for short intervals only . . . sore throat 3 a.m." ?—A. That is quite natural considering the nature of the operation.

Q. " Dose of A.P.C. Mist. given with effect . . . lugol M10 " ?—A. Lugol is a mixture prescribed, and M. means minims, and 10 ms. means 10 minims.

Q. (Mr. Cassidy continued reading the night report of 15th March, 1938) What is P.U. ?—A. Passed urine.

Q. (Mr. Cassidy completed the reading of the night report of the 15th March, 1938) Is that normal in a thyroidectomy operation for the first 24 hours ?—A. Yes.

Q. You invariably get a discharge from thyroidectomy operations ?—A. Always.

Q. Go to the night of the 16th March : " Slept fairly well." (Objected to.)

Q. First of all, before you look at the report, tell me what you remember of the night of the 16th ?—A. Quite a normal night.

Q. " Slept fairly well. Sed. mist. given 7.30 and 11.30, cough troublesome at times." Is there anything unusual in that ?—A. No, it is quite normal.

Q. Is that the accompaniment of that operation ?—A. Yes.

Q. " Cocillana Co. drs. 1 given 11 p.m. with some effect " ?—A. It is a compound, cough syrup. Dr. is drachm.

Q. " Lugols M.10 given last 7 a.m. Back attended to. Position changed four hourly. Aperient given p.m. BNO pulse regular and good volume." What is B.N.O. ?—A. Bowels not open.

Q. " Chart 4 a.m. 99.4—100—18 " ?—A. It is respiration.

Q. Does it confirm as you say a normal night ?—A. Yes, quite.

Q. In what position was Mrs. Hocking lying in bed ?—A. Lying on her back propped up by means of pillows, and her head well supported, her head and neck well supported.

Q. What was the angle of the head or face ? What way was she holding her head ?—A. Perfectly straight.

I never saw her lying on her right side, only when turned over to have her back done by means of two nurses. On the first and second nights

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 16. Mabel Winifred Barnett, 10th December 1943, Examination, *continued.*

they are moved as little as possible to give them as much rest as possible. That is part of the treatment.

Q. Take the night of the 17th. First of all is it part of your job to read the day report before you go on duty ?—A. Always read the day report.

It is part of my duty to know the condition of my patient.

Q. Do you remember the night of the 17th. What was the position as to the tube ?—A. The tube was not there on the night of the 17th.

Q. You may take it it appears in the report, day report, that the tube had been removed ?—A. Yes.

Q. Is it correct that on the night of the 17th the tube had gone ?—A. And I think you will find in my report of it when I did the dressing. It was either the night or the morning I noticed there was no tube there.

Q. Take this thyroidectomy operation. What is the practice as to the time when it is to be removed ?—A. Within 48 hours.

Q. Give us a short description of her condition on the night of the 17th ?—A. Quite a comfortable night.

I cannot remember anything definitely abnormal. She had a rising temperature. I am not sure whether it was that night or the night following. It is nothing unusual.

Q. Was there a time when there was something unusual, or out of the normal ?—A. About the 4th or 5th night after the operation.

Up till then she was quite a normal case.

Q. On the 17th this is your report : " H.I. morphia, grs. 1/8 given 8.30 p.m. . . . copious fluid taken during night " ?—A. Water or tea.

Q. " Lugols M10 given last 7.30 a.m. Patient had skin action 6 a.m." ?—A. Had perspiration, as you say a bath of perspiration, the skin was acting freely.

Q. Anything abnormal ?—A. Not when having A.P.C. mixture. A lot of people react in that way to it.

Q. " Sponged, made comfortable. Charts 7 a.m. 99.4/84/22 " ?—The temperature is down and the pulse was getting towards normal ?—A. Yes, it was not high. The temperature did come down.

Q. And the pulse rate also ?—A. It was good.

Q. " Still complaining of pain between shoulder blades." Was there anything unusual that night ?—A. I do not think so. She would complain of her position. She was lying in the same position and drinking fluid which would cause flatulence and discomfort.

Q. It has been suggested by Mrs. Hocking that some nurse told her to lie on her right side. Did you do that ?—A. No.

Q. Do the doctors tell patients to lie on their right side ?—A. Once they can be moved about they can go to sleep on their ear if they want to. They can lie any way they like. Until the danger point is passed they are usually in the same position.

Q. Come to the 18th March. Do you remember anything unusual about the 18th ? First of all, take your memory ?—A. No, probably restless at some stage that night. All the time I found she had her restless moments. She got very restless. She would sleep awhile, and wake up. I think it was all part of her temperature and condition, possibly.

Q. " Complained of aches and pains . . . (night report of the 18th referred to) . . . large quantity flatus expelled." Is that normal ? How do you describe that condition ?—A. In the first place she did have some

sleep that night but as to her pains in the arms and legs, I do not think I am qualified to give an opinion on it. I should say lying still in bed might have had something to do with it. You get terribly sore and achey.

Q. Take the 19th. You have difficulty in remembering separate nights, have you, or is your mind fairly clear ?—A. I can remember the case quite well. I was with her for 12 whole hours each night.

Q. This is the fifth night. What do you remember as to her condition then ?—A. I think she was very restless when I came on duty. She seemed to be very panicky. It may have been due to her temperament.

Q. How did you find her as to temperament. How did you find Mrs. Hocking ?—A. I think I previously stated she was very excitable and panicky.

Q. " Very restless and distressed, 7.30 a.m. . . . (night report 19th March read) . . . aperient given p.m." That morning at 4 o'clock there is a rise in temperature ?—A. I do not think it went to 103.8. It was 102.8 was it not ? I cannot remember exactly. I do not remember the temperature exactly to the degree.

Q. What you put down would be right ?—A. What I wrote in the report is accurate, would be accurate.

Q. You have said that before. I think you have said that ?—A. Yes.

Q. What is in here is right ?—A. What is written in my own handwriting would be correct.

(Luncheon adjournment.)

At 2 p.m.:

Mr. CASSIDY : Going to the night report of the 20th, what is your memory so far as it goes as to that date ?—A. Fairly comfortable night.

Q. You have given evidence in the second, third and fourth trials ?—A. Yes.

Q. Would your report be correct—" Dr. Bell here 8.30 p.m. Wound probed, fair amount sero purulent discharge. Dressing done. Patient more comfortable after same. Wound still inflamed and swollen, to have foments continuously for half an hour and dry dressing in a.m. Dr. will do dressing when he visits in a.m. Give h.i. morphia grs. 1/6th if not sleeping at 10 p.m. Same given. Has slept fairly well since. Back attended to and position changed " ?—A. Back attended to and position changed, that means that you rub the back with methylated spirits and rearrange the pillows.

Q. " Aperient given p.m. Foments applied and dressing changed a.m. Fair amount of discharge. Lugols M.5 given last 7 a.m." The next time you see her is the night of the 21st—" Dr. Bell here 8.30 p.m. wound probed, little sero purulent discharge expressed. Foment applied for quarter hour." Does that mean that the condition has improved ?—A. Yes, there is only a little expressed.

Q. " Foment applied for quarter of an hour, dry dressing. Same repeated 7 a.m. If restless may have morphia grs. 1/6th. Chart elevated 8 p.m. 101–80–20. Patient very restless and cough troublesome. B.M.S. pulv. dr. 1 given 10 p.m. for flatulence with some relief " ?—A. That is a powder given for flatulence.

Q. " Still restless 10.30 p.m. morphia grs. 1/6th given. Patient has been quieter but only sleeping for short intervals. A.P.C. mist. with brom. given 2.30 a.m. Has been sleeping since 3 a.m. till 6 a.m. lugols

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 16. Mabel Winifred Barnett, 10th December 1943, Examination, *continued.*

M.5 given last 7 a.m." Do you read the notes of the sister who is in between before you go on duty?—A. Every night before I go near the patient I read the day report.

Q. Now the night of the 22nd—"Complained of pain in legs and extremely restless 7.50 p.m. A.P.C. mist. given with relief. Barbitone pulv. 7½ given 10 p.m. with ovaltine with good effect. Has slept for long intervals. Cough very troublesome at times. Cocillana drs. 1 given 11.30 p.m. with effect. Lugol M.5 given last 6.30 a.m. Foment applied to wound then dry dressing 8 p.m. Same repeated in a.m. Has taken fluids well. Back attended to chart 4 a.m. 97–76-20, patient more comfortable this a.m. B.S.O. p.m." Does that indicate anything to you?—A. I say that the patient is very comfortable. Looking at that, I say that it is very good.

Q. After that we have the night report of the 23rd—"Barbitone grs. 7½ pulv. given 9 p.m. Has slept well. Awake for very short intervals only. Lugols M.5 given a.m. dressing changed 8.30 p.m. Very little discharge. Same done when awake a.m. Specimen of urine saved a.m."?—A. That is my last night.

Q. You notice there on the last day you have no temperature or pulse report; what does that mean?—A. There is nothing to report; she was perfectly normal.

Q. Do you keep charts with each patient?—A. Each patient has a fourth hourly chart.

Q. And to your records do you only transfer when there is something not normal?—A. When we write a report it is an accurate summary of the night's happenings; we put in the report anything that may be of interest to the nursing staff. Those reports are only written for the nursing staff; a chart we also write for the doctor.

Q. After that you may take it in the reports there are no more temperatures or pulse rates. Does that show that the condition is normal?—A. In a surgical case we only mention the temperature if it is something different to what we expect.

Q. And does that apply to pulse and respiration?—A. Yes.

Q. When you left on the 23rd what was this lady's condition?—A. In my opinion, very satisfactory.

Q. What was the position as to the swelling, can you remember that?—A. I cannot remember anything—I don't think there could have been very much swelling; I said I considered her condition satisfactory, therefore I think I was not particularly impressed by any swelling.

Q. You have no knowledge of any abnormal swelling at all?—A. No, I would have mentioned it.

Q. So was a night special needed after that?—A. After the 23rd, no.

Q. Was there anything with regard to the last two days at all? Was that when you were normally to leave?—A. When I came to the case I was engaged for one week, and when I had finished on my seventh night I was asked to stay for an extra two nights.

Q. Who asked you?—A. I cannot remember whether it was Mr. or Mrs. Hocking, but one of them asked me personally to stay.

Q. In your opinion was there any need for the extra two nights to be there?—A. No, none whatever.

Q. And as night special you ceased on the 23rd?—A. Yes.

Q. Is there a practice in St. Luke's Hospital with regard to tubes being removed? (Objected to: allowed)—A. Yes, they are checked by

the most senior person on duty, the senior sister on the floor, that is actually concerned in the case.

Q. And when is that done?—A. Immediately on removal of the tube, as soon as the patient has been made comfortable and the doctor has gone, the sister usually finishes off that case.

Q. And is the practice always to record the fact that the tube has been removed? (Objected to: allowed)—A. Yes.

Q. But as a night sister you have the patient on your own, do they talk to you from time to time?—A. Yes, quite a lot.

Q. Did Mrs. Hocking ever say to you that Dr. Bell had pulled the tube very hard to get it out of her neck?—A. No.

Q. Or that Dr. Bell had broken the tube as he took it out of her neck?—A. No.

Q. Or any complaints about any trouble in connection with the removal of the tube?—A. She had no grievances at all.

Q. Do the night sisters get the grievances from the patients?—A. Yes, we get the lot.

Q. Have you in these thyroidectomy cases at St. Luke's and the surgical cases seen any other colour of tube used other than red? (Objected to; question withdrawn.)

Cross-examined:

Cross-examination.

Mr. SHAND: You can remember this particular tube, can you, this very tube?—A. Which tube?

Q. This tube that was in the neck?—A. I remember that there was a tube in Mrs. Hocking's wound.

Q. You remember that very tube?—A. I remember a tube, one tube in her wound.

Q. Was it sticking out of the wound?—A. It would be sticking out of the wound, I did not put a tape measure on it to see how far, but there is a safety pin——

Q. How far was it sticking out?—A. Quarter of an inch or less.

Q. You are quite sure of that?—A. Yes, it would be safely——

Q. Do you remember this exact tube?—A. Of course I remember it.

Q. How many have you seen in wounds?—A. In a thyroidectomy operation——

Q. No, in different wounds?—A. It depends on the type of the operation.

Q. Altogether, hundreds? How many tubes in wounds have you seen?—A. I have seen hundreds of operations.

Q. And tubes in wounds?—A. Yes.

Q. And you can remember this one, can you?—A. I can remember one tube in Mrs. Hocking's wound.

Q. And you can remember what it looked like?—A. Yes, quite.

Q. And I suppose you can tell these gentlemen what any other of those hundreds of tubes were like?—A. They were all the same colour.

Q. No, can you tell these gentlemen what every one of these hundreds of tubes that you have seen were like?—A. That is ridiculous, we are talking about a thyroidectomy tube.

Q. Just answer the question?—A. I can tell the jury just how the tube looked in Mrs. Hocking's wound.

Q. I have not asked you that, you are addressing the jury, are you?—A. You told me to, didn't you?

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 16. Mabel Winifred Barnett, 10th December 1943, Cross-examination, *continued.*

Q. Have you any bias in this case ?—A. No bias whatever.

Q. You have been volunteering a few things ?—A. I have been telling the truth as far as I remember.

Q. You have volunteered a few things to Mr. Cassidy, haven't you ?—A. No, not at all.

Q. Now, where was the tube in the wound ?—A. Near the middle of the wound.

Q. You can remember that, can you ?—A. Yes.

Q. Did you swear before that you could not say ?—A. Ask me that question again, please.

Q. When you were asked where the tube was placed, did you swear before, in the first place, that you could not say ?—A. No.

Q. You did not say that ?—A. No, I said near the middle of the wound.

Q. Did you swear in these words first of all " I cannot say " ? Did you swear that ?—A. I don't remember swearing that.

Q. Would that be true ?—A. I don't remember.

Q. So that would not be true ?—A. No, it would not be true.

Q. Now is this what you were asked first of all : " Can you remember where the tube was placed ?—(A.) It is usually about the centre of the wound " ?—A. Well, isn't that just what I said ?

Q. You said that you remember this very tube ?—A. I do remember the tube in the wound.

Q. Why answer this in the first place " It is usually about the centre of the wound " when you were asked about this particular tube ?—A. Well, because it is.

Q. And that is what you are relying on, where it usually is ?—A. It was because if it had not been——

Q. Why say it usually is if you remember this very tube, you could have said : " Oh, I remember it, it was in the centre " ?—A. To the best of my memory, it was.

Q. That is better, so it is not so very good, your memory about that, is that right ?—A. I have answered the question.

Q. What did you say ?—A. I said it is about the middle of the wound.

Q. No, the question was : " So your memory is not so very good " ?—A. I think it is.

Q. Is it ? Why didn't you answer that question when you were asked that in the first place. Why didn't you say : " I remember the tube, it was in the centre of the wound." Why did you say : " It is usually about the centre of the wound " ?—A. I suppose it was the way I was asked the question.

Q. Here is the question : " Can you remember where the tube was placed." That is plain enough, isn't it ?—A. Yes.

Q. Why did you say : " It is usually about the centre " ?—A. Because I did, I suppose.

Q. That is rather a feminine version of it, haven't you a better one ?—A. Because it always is.

Q. Now I will read on. The next question : " Where was this wound placed ?—I cannot say, it would be about the middle." Not " was," you say " it would be " ?—A. Well, why should it be in differently to where it ought to be ?

Q. That is what I am putting to you, your recollection is where it should be or would be ?—A. It would be.

Q. That is all right then. "You have no recollection?—I have a recollection of it being just about in the middle of the wound." How many thyroidectomies have you been present at?—A. I cannot count them.

Q. Give it within a thousand, do you think you can do that?—A. No, I don't see that it has any bearing on the case.

His HONOR: Just answer the question please?—A. A great number.

Mr. SHAND: That tells us nothing, give us within a few hundred.

His HONOR: Can you say approximately how many you have been present at?—A. I cannot say approximately, I could say I have been present at many.

Mr. SHAND: That tells us nothing. Does that mean 10. 100, 500, 1,000?—A. I can definitely say 30 or 40.

Q. Over how many years?—A. Two or three years.

Q. But you were at the hospital more than that?—A. I may not have been in the theatre all the time.

Q. I suppose we can check up on the records, your name would appear?—A. Yes.

Q. When you make out the records that is not where they are put down first, is it (book shown to witness)?—A. The record of the operation?

Q. You have a book that you make entries in and from that book you enter it into this book?—A. I don't, that is a special nurse's book, is it?

Q. You enter it straight into this, do you?—A. Yes, because I have one case and one case only.

Q. Nurses other than specials enter it first of all in a small notebook and then into this other book?—A. Not a small notebook.

Q. Well, a large one if you like, and then into the hospital book?—A. Yes.

Q. In this book a number of people make entries?—A. Of special cases, all special cases have different books.

Q. A number of persons make entries?—A. Of different cases, yes.

Q. Before you gave evidence on any occasion you read through the hospital records?—A. I have read my reports once, I just read them through.

Q. You had them in your possession, did you?—A. I had a copy of them, yes, of my own reports.

Q. Those are the reports that have been before the jury in this case and you studied them?—A. I did not need to study them.

Q. So you can remember what happened in any particular day in any particular case that you have had?—A. For two years you have not been able to forget it.

Q. But even on the first occasion?—A. I was a special nurse and I sat for 12 hours for nine nights. Don't you think I would remember something about the case?

Mr. SHAND: You have used two words here. You have said "Mrs. Hocking was nervy and panicky." You have never used those words on any trial before, have you?—A. I have never been asked.

Q. You were not asked this time. You volunteered them. You offered them. (Objected to.)

Q. My friend did not use the words "panicky or nervy." You used them?—A. I was just saying my impressions.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 16. Mabel Winifred Barnett, 10th December 1943, Cross-examination, *continued.*

Q. You have already given evidence twice before. Why save it until this last time?—A. I was not saving it at all; it just came out because I was asked the questions and I gave the answers.

Q. Those two words came out although you have never used them before?—A. It was only because I was asked the question that I gave the answer.

Q. You know that it has been suggested to me——A. It was not suggested to me.

Q. Just wait till I have finished my question. It was suggested that the Plaintiff was suffering from some neurotic complaint?—A. It was not suggested to me.

Q. You know that it has been suggested in the case?—A. No.

Q. Whom have you seen in connection with the case—Mr. Cassidy?—A. I have seen Mr. Cassidy.

Q. And the solicitor for the doctor?—A. The solicitor with Mr. Cassidy, yes. I haven't had anything to say to the doctor.

Q. And you do not know that it has been suggested in the case that the Plaintiff was neurotic?—A. I don't remember.

Q. You don't remember anything about that?—A. No; it has never been suggested to me——

Q. I did not ask you that. You don't know that there has been a suggestion that her complaint was that she was neurotic and she imagined things?—A. No.

Q. You have never heard that at any time?—A. No.

Q. And before you gave evidence last time you saw counsel and had a discussion with him?—A. The last time.

Q. Do you remember Mrs. Edwards?—A. No.

Q. You don't remember her at all?—A. No—why should I?

Q. Do you remember that you were her special nurse?—A. I could have been. If it is written in the report I was.

Q. I want to test your recollection. You remember Mrs. Hocking so well. Don't you remember Mrs. Edwards at all?—A. No.

Q. No recollection at all?—A. No.

Q. Do you know what her operation was—what her trouble was?—A. No.

Q. You have just no recollection at all?—A. No.

Q. Do you remember whether she had a tube inserted?—A. I don't remember Mrs. Edwards.

Q. Not the slightest recollection?—A. No.

Q. You remember Mrs. Hocking——A. Do you want to know why?

Q. I did not ask, did I?

His HONOR: Just answer the questions.

Mr. SHAND: You don't remember that patient, do you?—A. No. I don't.

Q. You are bursting to say why you remember Mrs. Hocking, aren't you?

His HONOR: Why do you remember Mrs. Hocking?—A. I remember Mrs. Hocking because she was an unusual person.

Mr. SHAND: Nervy?—A. And another thing is——

Q. One thing at a time—nervy?—A. She was highly strung.

Q. Panicky ?—A. Well, I felt that she was that way. That was only my opinion. When we are engaged as special nurses some cases stand out more vividly in our memory for different reasons. If a patient is a very quiet person and sleeps well, and we are a night special and they do not give us any work to do we do not remember them, but if we come on duty and the patient does not sleep well and we talk to them quite a lot and we have to attend to them we do remember them because we earn our money.

Q. Was Mrs. Edwards a good sleeper ?—A. I don't remember.

Q. You don't remember her ?—A. No.

Q. Of course, if she was not a good sleeper and she was making complaints you would remember her ?—A. Yes, if she was worrying me, I would.

Q. You could not forget her then, could you ?—A. No.

Q. But you do not even remember her name ?—A. No, I can't.

Q. This is what it says about this lady : " Has not had a good night ; slept on and off ; still not sleeping. 12.30 a.m. complained of pain. 1.15 awake ; still complaining. Given brandy. Has complained at intervals during the night. Irritability of skin." Then the next time she is " Very restless and dozing at intervals." One is the 6th April and the other is the 8th April, 1938. " Slept for a short time, still restless. 2.30 propped on side. Attended to. Position changed frequently during night." That is pretty sleepless and restless, isn't it ?—A. May I ask how many nights I was with that person ?

Q. You may ask but you won't get an answer yet. What about this lady. She is not too good, is she ? Can't you remember her now ?—A. No, I can't recall her to mind.

Q. You have got no recollection yet ?—A. I said no.

Q. Then on the 5th you were attending her—that was before. Still you cannot recollect her at all. I will show you so that there will be no deception. Now, here is the 6th April. She is your patient (Document shown to witness) ?—A. Yes, that is my writing.

Q. And your signature ?—A. Yes.

Q. Do you remember her now ? Have you read that through now ?—A. Yes.

Q. Can you remember her now ?—A. No, I cannot.

Q. Now, have a look at the next page ?—A. No, I cannot recall her.

Q. Can't you remember her now ?—A. No.

Q. Have a look at another one then. There she is again (indicating). You still cannot remember her ?—A. No, I cannot.

Q. You would not forget a very grave operation. I have shown you three sheets out of the history. There are some more here ?—A. Was it an operation ?

Q. You don't even remember that ?—A. There is nothing in these reports to indicate that it was an operation.

Q. I have shown you these sheets and you cannot remember even now what it was. You would not forget a histerectomy operation, would you—the removal of the uterus ?—A. That is quite an ordinary operation.

Q. And you said last time that you have a very vivid recollection of this case—that is the case of Mrs. Hocking ?—A. Yes.

Q. Of course, there is such a thing as loyalty to the doctors and to the hospital ?—A. I would not say loyalty.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 16. Mabel Winifred Barnett, 10th December 1943, Cross-examination, *continued.*

Q. Through thick and thin ?—A. No, I would not.

Q. What does a " swinging temperature " indicate ?—A. Well, it is not an expression I would use, but if I was to read a report containing " swinging temperature " I would say that they had a fluctuating chart. That is, going up and down.

Q. I suppose most of us would say that, but what does it indicate ?—A. I could not say what. It would depend on the length of time it was swinging.

Q. Well, supposing it was swinging for a few days ?—A. Well, you would take the nature of the person's illness into consideration.

Q. Well, take a thyroidectomy ?—A. Well, I don't think I am qualified to give an opinion on that.

Q. Well, you have attended a few of them ? (Objected to.)

Q. Doesn't that indicate inflammation—swinging for a few days ? (Objected to.)

Q. Would not that indicate inflammation ?—A. Well, I would look into any swinging temperature for a few days.

Q. Well now, what about this : " Temperature on the 16th—the day after the operation—99, 17th, 99.4 and 101.8, 18th, 101.4 and 102.4, 19th, 101.4." On the 19th, night, back to 97 and up to 103. This is all swinging, isn't it ?—A. Well, I would not use the expression " swinging."

Q. On the 20th, 103 and 102, and on the 20th, night, no report you make of temperature at all. And on the 21st, 101—you have missed out all mention of temperature apparently ?—A. Well, there was evidently no temperature——

Q. This is the position. In the day report on the 20th it is 103, and at 4 p.m. 102, and you come on in the night at 7.30, and you admit, do you, that her temperature tends to rise at night ?—A. Not necessarily.

Q. It tends to rise ?—A. It depends on the nature of the illness.

Q. It is 102 at 4 o'clock and you come on at 7.30 and we find—the day report temperature is swinging—and do you suggest to these gentlemen that between 4 o'clock and when you came on at 7.30—I think it was 102 at 4 o'clock—it must have been normal ?—A. No. There is no rule that the temperature should be mentioned in the report. There is a special chart for temperature recordings.

Q. Aren't those charts kept ?—A. Only while the patient is in hospital, and when the patient leaves hospital there is no further use for them.

Q. Do you suggest that they are destroyed ?—A. I suppose they are. I don't see any further use for them.

Q. Have you seen them destroyed ?—A. No.

Q. So that is the position, you don't know whether they were destroyed or not ?—A. No.

Q. But you were suggesting that they were destroyed, weren't you ?—A. Well, I suppose they would be.

Q. I have taken you from the 16th to the 21st. That was a fluctuating temperature ?—A. Yes.

Q. And you would look for inflammation, wouldn't you ?—A. That would only be my opinion. I don't comment on it.

Q. Will you tell these gentlemen this : have you ever had a case of thyroidectomy where you get a temperature such as that ? (Objected to.)

Q. You know what I mean, don't you ?—A. Yes.

Q. Such as in this case, or a discharge such as this, days after the operation. Have you ever had one ?—A. A thyroidectomy ?

Q. In which you get these same things—the temperature is fluctuating and a discharge such as occurred here ?—A. I cannot call to mind any thyroidectomy having a similar run, of course, but in other wounds I have.

Q. Never mind about other wounds. I ask that that be struck out.

Mr. CASSIDY : I will ask it later.

Mr. SHAND : It would appear to you as unusual, would it not, after two weeks after the operation, that you get a large amount of discharge from this type of operation ?—A. That I would consider it unusual ?

Q. Yes ?—A. Well, I don't think I would pass an opinion on it, really.

Q. Well, you have never had an experience of it, have you ?—A. Not in the thyroid, but in other wounds I have.

Q. Never mind about other wounds—the thyroid ?—A. Well, that is just my particular experience.

Q. Well, it would be an unusual experience in regard to the thyroid ? —A. I would not consider it so.

Q. Wouldn't you ?—A. No.

Q. You would not regard that as an unusual condition ?—A. No.

Q. Although you have never had an experience like it with this type of operation ?—A. No, I have not had a thyroid operation with the same condition.

Q. Well, if two weeks after you were getting a large discharge, don't you think there might be something wrong ?—A. No. I would not comment on it.

Q. Would it be worth while reporting her ?—A. When I was writing a report if I found that condition ?

Q. Yes ?—A. I would comment on it, certainly.

Q. You would regard it as something that might need attention, wouldn't you ?—A. No, not necessarily.

Q. What—no importance at all ?—A. The doctor sees the person——

Q. I was not asking you that. Would you regard it as something that might need attention ?—A. No.

Q. No importance at all—is that so ?—A. I would not say it was of no importance, but I would not attach any special importance to it.

Q. But if it was of some importance it might need attention, might it not ?—A. Well, it would be getting attention.

Q. If it was of some importance it might need attention ?—A. Yes, and it would get attention.

Q. I did not ask you whether it would get it. Because it would seem to indicate a condition of considerable inflammation, wouldn't it ?—A. A sero purulent discharge from the wound ?

Q. No, a large amount of discharge from the wound a fortnight after ? —A. It would depend on the nature of the discharge.

Q. A large amount ?—A. You said it would indicate inflammation. It would depend on what sort of a discharge.

Q. Well, say that it was purulent ?—A. Yes, it would be inflammation.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 16. Mabel Winifred Barnett, 10th December 1943, Cross-examination, *continued.*

Q. We find that on the 29th March there was a large amount of discharge from the wound, and on the 30th a fair amount of purulent discharge. You would not expect the patient to be exactly well in that condition, would you ?—A. No.

Q. "A fair amount of purulent discharge from wound." And the day before "A large amount of discharge." You would not expect that woman to be well, would you ?—A. It would depend on whether it was local or otherwise. If the condition was local they would not be in actual sickness or feeling——

Q. But supposing she had inflammation in that wound a fortnight after ?—A. Well, if it was local she would not be sick with it. No, why should she ?

Q. She would be quite all right ?—A. Well, she would be quite all right. She would have a discharge there if the inflammation was a local one, but she would not be sick with it. She did not have a temperature——

Q. How do you know that ?—A. Well, when I saw her I considered her very well.

Q. What do you give pronticele tablets for ?—A. Just as a precautionary measure, I presume.

Q. Is that all ? Just for luck ?—A. I would not say just for luck. They would be given to prevent——

Q. They are given for inflammation, aren't they ?—A. I suppose they are.

Q. Well, why didn't you say so ?—A. They can be given to prevent it, too.

Q. And you still say that she was very well and bright when you visited her ?—A. She was extremely well when I spoke to her that morning.

Q. She looked as though she could spring out of the bed ?—A. Yes.

Q. And go home ?—A. Yes ; I considered her very well that morning. I was very surprised.

Q. Did you expect to see her sick ?—A. No. I mean——

Q. What is it ?—A. Well, I did not expect to see her sick. I did not see her bright before, and it was a little unusual.

Q. Are you a bit uncomfortable about that answer ?—A. No.

Q. Was she pretty sick after the operation ?—A. No, I would not say that.

Q. You would not call her dangerously ill ?—A. No.

Q. I don't suppose you are aware that Dr. Bell has termed her dangerously ill ?—A. No, I was not.

Q. You entirely disagree with that ?—A. No, I did not consider her dangerously ill.

Q. And nothing like it ?—A. Well, she responded right through while I was nursing her.

Q. And of course you would give your reports to the doctor. You think that no skilled doctor would think she was dangerously ill ?—A. I did not discuss it. From my observations I did not consider her dangerously ill.

Q. And you could not imagine any skilled doctor thinking she was ? —A. Not when she responded to treatment—not from what I saw of the case.

Q. At what angle was this tube at, if any angle ?—A. I did not consider it at any angle. It looked to me to be straight in the wound.

Q. Why did you put your finger up like that ?—A. I did not intend to put my finger up for any purpose. It is just a mannerism.

Q. But you did put your finger up, didn't you ?—A. Perhaps I did.

Q. It was your finger and your neck. Was that a little slip ?—A. No. I told you it was purely a mannerism with my hand.

Q. But it was a pretty accurate one, wasn't it ?—A. No, I didn't consider it.

Q. I asked you where the tube was and you put your finger up here to the right side (indicating) ?—A. No, you did not ask me whether the tube was there. (Shorthand notes read.)

Q. Why did you put your finger up there when I asked you the angle of the tube ?—A. I did not put my finger up to indicate any angle of the tube. I said that the tube was straight to the wound.

Q. Why did you put your finger to the right side ?—A. Well, you are telling me. I could not see where I put my finger.

Mr. SHAND: She was quite all right when you left ?—A. I considered her so.

Q. What did you give the specimen of urine for ?—A. Routine, unless it is specially asked for.

Q. Do you remember it being specially asked for on any occasion ?—A. It is always kept the day following an operation, perhaps for two or three days, to test for any of the acids in the operation.

Q. Would it be kept for eight days after the operation ?—A. Not unless it has been asked for.

Q. So that that would be specially asked for ?—A. Yes.

Q. You, it appears, on the night of the 23rd had made a note "Specimen of urine was saved, a.m." ?—A. Perhaps I was asked to save it, and if I was not I just did it of my own accord.

Q. You considered her quite all right ?—A. Yes, quite all right.

Q. And you have a very good memory. Can you tell these gentlemen whether it was Dr. Bell who instructed you to obtain the specimen of urine ?—A. No, he did not instruct me to do it.

Q. Just a moment ago you said "Perhaps it was the Doctor instructed me or perhaps I did it of my own accord" ?—A. Not the Doctor. (Shorthand notes read.)

Q. Who would ask you to save it ?—A. The sister in charge of the floor.

Q. You say that Mrs. Hocking was moved as little as possible. You were asked whether she was lying on her side at all, and you said "No, she was moved as little as possible. She was lying in one position all the time" ?—A. I did not say all the time.

Q. Of course it would not be all the time, but she was moved as little as possible ?—A. For the first few days, yes.

Q. I am going to suggest to you she was moved every few hours ?—A. Her back would be rubbed and her pillows changed, turned over.

Q. Every few hours ?—A. Four hourly they usually do it in operation cases until they can move around themselves.

Q. Was not the position changed every four hours ?—A. That was a figure of speech. We mean we readjust their pillows and rub their back. That is all we mean by that remark.

Q. That would be something that occurred every day ?—A. For the first few days following the operation.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 16. Mabel Winifred Barnett, 10th December 1943, Cross-examination, *continued.*

Q. Can you tell me why it is you have only made one note of that ?—A. The first 24 hours following a surgical operation are usually the most tedious.

Q. Unfortunately it is not in the first 24 hours ?—A. I just wrote it in. There is no rule for me to do it. Unless it has been stated in the day report. I just do it of my own accord.

Q. It was not because it was so tedious you wrote it in ?—A. The changing of her position was so tedious or the position was tedious to the patient ?

Q. You suggest that this only means she was moved up and her back was attended to, but this is what it says, two things : Back attended to ; position changed four hourly ?—A. As I told you, she would be lifted forward and her pillow changed.

Q. And that was done for the first few days ?—A. Yes.

Q. But you only made a note of it once ?—A. It was not absolutely necessary to make a note of a thing like that. It was just routine treatment.

Q. You have said there was some custom about tubes being changed by the most senior person, I suppose the senior nurse ?—A. The senior sister.

Q. What were they changed for ?—A. Because it is written down.

Q. I do not want to know what is written down. I want to know the reason behind the changing ?—A. When a person has a tube in the wound when they leave the theatre, and it is removed, it is checked, so that the senior sister in charge of the floor knows it has been removed and she records it.

Q. So that she knows the whole of it has been removed ?—A. Yes, the whole of the tube.

Q. In other words, so that she will know there has not by some unfortunate accident been a part left in. That is what it is for ?—A. No, there is no question or thought of a portion of a tube being left in.

Q. But these things are boiled, sterilised ?—A. They are sterilised before they are put into the patient's wound.

Q. And the tubes are used over and over again ?—A. Not necessarily.

Q. I did not ask you that, but sometimes ? (No answer.)

Q. You can answer that Yes or No ?—A. If a new piece of tubing (interrupted.)

Q. A tube may be used over and over again ?—A. Not over and over again. It may be boiled up and used, be presented again, but once after it has been in a patient's wound it is never boiled up and used on anyone else.

Q. Just think carefully over this. You swear that a tube is never again used after it has been in a patient ?—A. I swear that a tube that is used for draining has never been reinserted in a patient.

Q. But this is what I understand you to say—a tube may be boiled up several times, but once it has been in the patient it is not used again ? —A. No, definitely not.

Q. Originally the tube is a long piece, and a sufficiency is cut off for a particular operation ?—A. I could not say how much they purchase at a time.

Q. No ; how much do you boil at a time ?—A. We would select the most suitable pieces for the operation concerned, and we just boil up what

we think the doctor might need. He cuts the tube himself, and he makes it the shape he wants, and everything.

Q. And then the next time they are put back again, and he selects what he wants from the balance ?—A. Yes, if there is another piece of tubing (interrupted.)

Q. Have you seen the doctor make a diamond cut in the end ?—A. I cannot remember.

Q. But you would not forget that ?—A. I do not stand over the doctors while they cut the little pieces of tubing.

Q. No, but you have such a good recollection of this tube, have you not seen a doctor make a diamond or V-shaped cut in the end ?—A. An eyelet cut, yes.

Q. He bends it over ?—A. Yes, the best way to cut it.

Q. And he cuts a snip out of it ?—A. He takes a piece out of the tube and they call it an eyelet.

Q. It is shaped something like a V, or a diamond ?—A. I suppose it is.

Q. You thought it was quite a normal amount of drainage in Mrs. Hocking's neck during the time there was drainage ?—A. Yes, from the operation, it was quite all right.

Q. Were you aware there had been a fair amount of drainage at first —serous and blood-stained oozing ?—A. Yes, it is perfectly natural.

Q. And then within a few hours it had died off into a slight oozing ? —A. It is quite in order.

Q. With a tube that is not changed ?—A. That is the natural thing. It is the normal sequence of the operation.

Q. In every operation you have had, that is what has happened, the first day after the operation ; originally there has been a fair amount of serous and oozing, and then it has died off ?—A. Yes.

Q. That is correct ?—A. Yes.

Q. You have no doubt about it ?—A. In the operation in question, no.

Q. Would you expect drainage as long as the tube was in the wound ? —A. Not necessarily.

Q. Does that express your opinion on the matter—not necessarily ? —A. Yes.

Q. You were asked on the last occasion, and you swore you would expect the drainage as long as the tube was in the wound. Is that wrong ? —A. The tube came out within 48 hours.

Q. No, is that wrong ?—A. I would expect a less amount coming.

Q. No, that is not what you said ?—A. When the tube is due to come out, I would expect the discharge to have ceased.

Q. Would you agree that Mrs. Hocking's neck was swollen and red, and she had a distressing night ?—A. The fourth or fifth night, yes, I can remember that that night in particular she did have swelling.

Q. And she was very distressed ?—A. Yes.

Q. The wound was red and swollen ?—A. Yes.

Q. You would not tell these gentlemen that that was usual, on the fifth night ?—A. I would not comment on it. I would not be in a position to tell you.

Q. As far as your experience goes, you have not seen that in a thyroidectomy operation before ?—A. Not in a thyroidectomy operation. not in one I have known.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 16. Mabel Winifred Barnett, 10th December 1943, Re-examination.

Q. Do you remember that hot fomentations were applied frequently ?—A. Yes.

Re-examined :

To Mr. CASSIDY : I was asked a question about what I knew was being contended about this woman being neurotic. At each trial I have been living in the country. My husband is in the Air Force, and I have come with permission, and I have left the Court straight away when I have given my evidence. I have not been in Court following my evidence. In the first case I sat in Court until the luncheon adjournment, and that is the only time. To-day I have come down specially from the country to give my evidence.

Q. You were asked about an eyelet hole. Is the hole in that tube similar to the one you mean ? (Objected to.)

Q. What do you say as to that hole ?—A. It is an eyelet hole.

Q. Is that the kind you mean ?—A. Yes, similar to that.

Q. Mr. Shand read you three lines from page 177, and I will complete the extract : " It is usually about the centre of the wound," and then you are asked : " Where was this one ? " and you said : " I could not say. It would be about the middle. I have a recollection of it being just about in the middle of the wound." Then on page 177, line 51 : " As a matter of fact I suppose you will agree you have not got much independent recollection of Mrs. Hocking's sickness ? " and you replied : " I have a very vivid recollection." Then at page 179 you were asked : " Do you say you would not expect these tubes to be draining ? " and you replied : " I would expect drainage as long as the tube was in the wound." Then to Mr. Reimer, in re-examination on that : " Supposing on changing a dressing I found a normal amount of discharge, having regard to the nature of the alteration, I would not necessarily put that in the report. If I thought it would be of interest or vital I would put it in, otherwise it would be just what I would expect."

Tenth Day—Monday, 13th December 1943.

No. 17. Helen Melville, 13th December 1943, Examination.

No. 17.

EVIDENCE of Helen Melville.

Sworn : examined : deposed.

To Mr. CASSIDY : I am a married woman living with my husband at Five Dock. Formerly I was a nurse and I was in St. Luke's Hospital. I was a sister there, Sister Helen Will. My reports would be signed " Will." I did my training at Wellington Hospital, New Zealand, and completed it in 1930. I spent some time at the Grey River Hospital, Greymouth, New Zealand. There I saw a good deal of thyroid trouble, a great deal. It was very common in the district, That is not a cold spot. It has the glacial waters from the snow-fed rivers. Fifty per cent. of the surgical cases at that hospital were thyroidectomy, those disorders being frequent in that district, quite a problem.

Subsequently I was on the staff at St. Luke's. I was senior sister in charge of the second floor during February—March 1938, when

Mrs. Hocking was a patient and had her thyroid operated on. The two doctors who attended her were Dr. Bell, surgeon, and Dr. Ritchie, physician.

Q. At St. Luke's is there a practice as to the colour of the tube used ? (Objected to : His Honor says that this is covered by his previous ruling.)

The colour of the tube which is used is invariably red, always red.

Q. As to the length of it, what do you say ?—A. A typical thyroid tube is about 2 inches. I have never measured them, but I should say about 2 inches.

Q. Will you tell the jury how it is fixed in the wound ?——

Mr. SHAND : Is this custom ?

Mr. CASSIDY : This is knowledge.

Mr. SHAND : Then I do not understand the question.

Mr. CASSIDY : Have the surgeons a practice as to where the tube is put in ?—A. In the thyroid incision.

Q. Is there any practice as to the attachment of the tube ?—A. All drainage tubes, thyroid or otherwise are attached to the skin by a suture and there is a safety pin across the tube.

Q. Is there any usual period for the tube to remain in in thyroidectomy ?—A. Forty-eight hours is the average.

Q. Have you ever known a tube to be left in more than 48 hours ?—A. Well, I cannot remember, it would be so rare I cannot remember such a thing happening.

After a thyroidectomy operation I have quite often seen swelling occur.

Q. What is done then—what is used ? (Objected to : not pressed.)

Q. Is swelling something which happens after an operation ; often ?—A. Oh yes.

I was on duty during the period that Mrs. Hocking stayed in hospital, from the time of her operation.

Q. With regard to the removal of tubes is there a practice in nursing in thyroidectomy at St. Luke's ? (Objected to) ?—A. Yes, in what respect ?

Q. Is there a practice as to removal ?—A. From the nurse's point of view there is a checking of the tube when it is taken out of the wound.

When the tube is removed the sister with the doctor brings it to another sister, preferably the senior one, just to look it over and get it checked, to check that it is out of the wound.

Q. What is done after that checking, as to record ?—A. It goes into the report book, that is, after checking.

Q. We know that you and Sister McCallum were the sisters at St. Luke's. Was that usual practice followed in Mrs. Hocking's case ? (Objected to.)

Mr. SHAND : Can you remember ?—A. I cannot remember, but it was the practice.

Mr. CASSIDY : We have the original notes available. Looking at that note what do you say ? First of all, is there a practice with regard to notes made, by day sisters and night sisters, or made in regard to this operation ; is there a practice ?—A. Do you mean the day report ?

Q. Yes ?—A. Yes, all important things are put in the day report. The report book is the first thing you read when you go on duty.

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Q. Is it the duty of the sisters to read the reports before they go on duty to keep themselves familiar with the case ?—A. Immediately any nurse comes on duty she reads the report book. You have everything of importance which has happened. If I went off at 6 o'clock I would read the report in the morning. I would not have to look at charts and things. If anything abnormal happened to the patient at all, it is in the report book. I am too busy to look at charts.

The reports bring it to your notice. I cannot remember whether I was present when the tube was removed in this case.

Q. You cannot remember one way or the other. You have looked at your records before you came to Court ?—A. Yes.

The reports contained there are correct to my knowledge. To my knowledge of the way things were done they would be correct.

Q. For the 17th, day report, we have " Dr. Bell here, tube removed . . . appetite improving " ?—A. Yes.

Q. In whose handwriting is up to there ?—A. Mine.

Q. " Give plenty fluids." What does that signify to you ?—A. It is an important point in nursing thyroidectomies. They have to have more fluids than the average operating case because the system has to flush out this excess of thyroid secretion. It helps the kidneys. It might make them sweat, but it gets this thyroid secretion out of the system and is a very important point.

Q. Up to there is in your handwriting. After that it says " Dr. Bell here, to have so and so morphia grains . . . H. Will." Whose is the latter part of the report in ?—A. The sister on duty after I went off duty at 6 o'clock, and that would be Sister McCallum.

She is the other senior sister. We were the two most senior. There were other sisters on the floor, mostly junior, but we were the most senior.

To Mr. SHAND : Sister McCallum was senior too.

To Mr. CASSIDY : I signed the whole report.

Q. Before you signed a report " tube removed," would you have verified that it was correct ? (Objected to.)

Q. Did you check it with Sister McCallum ?—A. If I were on duty I would have done.

His HONOR : Have you any recollection ?—A. No.

To Mr. CASSIDY : There was nothing outstanding in this case to draw my recollection to a particular incident like that. It is only on account of my interest in thyroids that I remember it at all, I think.

Q. Go to the day of the operation. We have the entries there : " To operating theatre 7.30 a.m. . . . and retained." What is the object of the saline ?—A. Lugols are necessary. You have to get fluids into the system. If the patient cannot retain it by mouth it is given directly into the bowel.

To His HONOR : " P.R." stands for per rectum. It is nearly always retained.

To Mr. CASSIDY : That is the normal treatment, copious fluids.

Q. " Was there anything out of the way in that operation or out of the normal ?—A. In the report of the operation ?

Q. In the report there ?—A. No.

Q. We have the night report, of course. After the operation what is the position as to serous oozing ?—A. There is usually a lot. You anticipate it and you prepare for it. It is done in the theatre. The patient comes back to the ward. If the oozing is excessive and it comes through the pads and distresses the patient when she sees it, well, a good nurse does not disturb a patient if it is not necessary. If that patient were resting after the operation and that is what you wanted to do, you might see this oozing, it might come through the top pad and you do not start disturbing the patient if she is resting and you reinforce it. You put pads on the top and keep them in position with plaster and put a towel on that so the patient is not distressed by seeing them. If she is unhappy and restless, if she is wide awake enough you might cut the plaster——

(Mr. Shand says that this is a general description and does not apply to this case. He says he objects to all this type of evidence.)

Q. Take this case. Will you show us how the dressings were ? Were the dressings in this case in the normal way ?—A. It would have been reported if they were not.

Mr. SHAND : I object to this and ask that it be struck out.

The WITNESS : But it is true.

Mr. CASSIDY : Were Mrs. Hocking's dressings dressed in the usual way ? (Objected to : question withdrawn.)

Q. How were these dressings ? Will you fix the dressings how they were in this case ?

Mr. SHAND : Can you remember ?—A. No, but if there was anything wrong it would be in the report.

To Mr. CASSIDY : I cannot remember that I did the dressings myself, but one of the sisters would do them, decidedly.

Q. Is there a practice—is there a method of doing it ? (Objected to : His Honor says this is covered by his previous ruling) ?—A. Yes. There is a practice for the dressings in thyroidectomies.

Q. Will you fix those dressings as they would be fixed in accordance with that practice ?—A. (Witness demonstrates at the bar table). The patient is lying down, of course. This is put through narrow in the first place. This is the first stage of it. This is what is called the collar. There is a pad a little smaller than this one. This collar is put around. Of course, this is very unsatisfactory and I cannot give a proper demonstration here, but the collar is put around like that (illustrating). Some surgeons do it there instead of directly over here. This is over the actual wound and you see the sticking plaster to keep that one in place. It might stay there a week. It is a collar. This is the dressing and now you prepare for the oozing which is bound to come. This again is too narrow. This should be the width (indicating). This is what we call the St. Andrew's Cross. This sticking plaster will be put firmly over the shoulder. Of course, a surgeon has someone helping him. That is brought securely down to the skin on this side and another one is put there (indicating). I will do it with this and you will imagine that it is wider. You see that it goes around to almost under the armpits, and this is how it is held. You have two pieces of this width across like that. It protects the wound

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until the patient is taken back to bed. It protects her while she is a bit restless after the operation. You leave it on 12 hours. You do not disturb your patient if she is resting. After 12 hours if the fluid is excessive the doctor will cut like this (indicating). It is a pity that this plaster does not give me a fair chance, but this is what we call making a "gate." You can change these pads. You make the same little gate in the collar. You first take this off. You make this gate and you put a piece of tape there. You take all those pads off. You make another little gate there (indicating). You open it. You take that one off. Then you can see the whole wound, the stitches and everything. You put fresh dressings on. You tie up your little gate again. This is what you call the gate. The collar goes around the back. It is painful to take sticking plaster off a patient. It may be on until the wound is healed. This gate is only when the discharge is very bad, excessive and dirty.

Q. (On returning to witness box): That remains in that fashion how long?—A. Generally we keep these big pads on until the tube is out, sometimes after.

Q. Will you tell the Court: how do you put your patient in bed?—A. In what we call the semi-recumbent position. You make the bed, slanting like a comfortable easy chair. The patient would be sitting at that angle (indicating). There would be good pillows. She does not want a strained back like that (indicating). You have these pillows supporting her head. You have one on either side of the head. That protects the patient when she is restless, before she is properly conscious. If she has pain she does not move her head too far.

Q. How long is she kept in that position?—A. Some of them like it that much that they stay all the time like that all the time they are in hospital.

Never at any time did I tell Mrs. Hocking that she was to lie on her right side, well, I don't remember, but I would not have done so. I would never do that with a thyroid patient. I have never seen a thyroidectomy laid on its right side, not deliberately. A very sick restless patient might do that, but you would put her back at once. As a senior it is part of my work, part of my job to watch the progress of my patient.

Q. Take those reports you see, do they set out the progress of that patient from time to time?—A. Every day.

It is the practice to examine the records daily; every nurse does that.

Q. We have mention in the report of a cough. I am told it is the night of the 16th.

Q. The entry is: "Slept fairly well, sedative mixture given . . . cough troublesome at times." What do you say in regard to that?—A. 90 per cent. of thyroids are bothered with that little cough. It is a big problem in nursing them. If a patient has a catarrhal cough or a smoker's cough before, the operation aggravates it.

His HONOR: Did you say a smoker's cough?—A. There may be a catarrhal discharge at the back of the throat. It is very common and is difficult to deal with.

To Mr. CASSIDY: The sisters do the dressings in St. Luke's. They would be done by trainees at very late stages of the illness when it is a minor dressing. The trainees might do them then. It is a training school.

Q. Otherwise it is the senior sisters ?—A. As long as there is any urgency or any importance attached to the dressing it is the trained sister's job.

At no time while Mrs. Hocking was there did I see Dr. Bell pull twice at a tube, then put his hand on her forehead and pull again.

Q. Did this ever occur in your presence ; the doctor threw the piece of tube on to a tray and you and he walked out of the room straight away ? —A. No.

Q. At any time did you see Dr. Bell use his bare fingers, no forceps or anything, just his fingers, on a tube to pull it out ?—A. I have . . . (Objected to and struck out on Mr. Shand's application.)

Q. Did you see Dr. Bell do that ?—A. No.

To His HONOR : I have never seen Dr. Bell do that.

Mr. CASSIDY : Is there any difficulty in getting a tube in thyroidectomy ?—A. No, indeed, I have never seen anything in that way at all.

Q. On the night of the 20th we find that the temperature in this case went up : " Wound probed, fair amount of sero-purulent discharge . . . patient more comfortable after same." Have you seen cases of wounds swelling or having trouble like that, thyroidectomy cases ?—A. Oh yes.

I have seen probes used from time to time. They are used in all dressings. The wound may heal up too quickly and . . . (Objected to.)

Q. What is the purpose of the probe in thyroidectomy ?—A. The wound may tend to heal up too quickly and the discharge cannot get away. (Objected to.)

Mr. SHAND (by permission) : You would not probe a wound yourself ? —A. Yes, indeed, it is a nurse's job to see it does not heal up too quickly.

Q. Would you do it yourself of your own accord or refer it to a doctor ?—A. The doctor would probably say : " Watch the wound."

Q. But would you do it of your own accord, off your own bat ?—A. I would do it off my own initiative.

Q. Without referring to the doctor ?—A. If I thought it necessary, yes.

Q. Have you done it without referring to the doctor ?—A. Yes.

Mr. CASSIDY : What do you do when you probe it ?—A. It is merely a matter of separating a little of the external wound which is healing up too quickly. You do not go away into it, it is not necessary.

Q. Is this particular kind of probe used ?—A. It is a very fine one, it is a good one.

(Probe tendered ; marked Exhibit 2.)

If you had swelling it would probably be used in those circumstances to let the stuff get away, there is the reason for it.

Q. Can you tell us what the progress of discharge is, just after operation, in a normal thyroid case. How does it go ?—A. You get this quantity of serous oozing at first. That is usual.

Q. For how long is the average ?—A. It might go on for three or four days, I think, yes, it does, and then it diminishes gradually and the wound heals up.

I have seen infection in this class of wound. I have had experience of seeing what happens to knots. They would generally make a little slough. Slight irritation is caused. The wound discharges it.

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Q. What kind of discharge do you get in those cases ?—A. It might have a little pus in it.

Q. From your reports what was the condition of the patient by the 30th March. Will you check up your memory. Take from round about the 30th March (copy of reports handed to witness). You see : " Patient up for some hours . . . walking a little." And on the 28th March : " Sitting on the edge of the bed " and the 29th : " In chair " ?—A. Yes.

Q. 31st—" Up for some hours," and the 6th April—" May go to bath " ?—A. Yes.

Q. And the 8th April—" Slough discharge," and the 9th April—" Knot of catgut obtained from wound " ?—A. Yes.

Q. 13th—" Comfortable day," and " Slept fairly well." What does it show as to her condition when she left the hospital ?—A. From the 30th she seems to have made steady and good progress and was steadily improving all the time in her general health. The wound was healing too.

Cross-examination.

Cross-examined :

Mr. SHAND : The wound was healing from the 30th on, was it ?—A. Yes.

Q. On the 31st you have " Still some purulent discharge " ?—A. Yes.

Q. On the 3rd April, " Still a little pus " ?—A. Yes.

Q. On the 4th April, " Some purulent discharge from wound " ?—A. Yes.

Q. It was still healing ?—A. Yes.

Q. And on the 5th April, " Fair amount of purulent discharge " ?—A. Yes.

Q. 8th April, " Still some purulent discharge " ?—A. Yes.

Q. " Small slough discharged " ?—A. Yes.

Q. That indicates some inflammation ?—A. Yes.

Q. So the wound is healing all the time. On the 10th April there is " Some purulent discharge " and " Small sloughs expelled." Is it still healing ?—A. Yes, that is the cause of the trouble and it is gone.

Q. When would you expect it to heal after that in a normal way ?—A. It depends on the health of the patient, partly.

Q. But when would you expect it to heal ?—A. From then on, it might take another week or 10 days.

Q. You would not expect it to take two months more ?—A. That depends.

Q. You would not expect it to take two months more ?—A. In certain conditions, yes.

Q. You would not expect it to take two months more ?—A. Not if she were in hospital.

Q. She was in hospital ?—A. She was not.

Q. How do you know ? You heard so ?—A. It was in all the papers.

Q. What papers ?—A. " Truth," a long time ago.

Q. Where was she ?—A. I have forgotten. I hardly remember that.

Q. Was she not in hospital ?—A. There was a period when she was at home looking after herself with a discharging wound.

Q. Was she in hospital after that ?—A. I do not remember. I know it was one of those cases where the patient was allowed to go home with a discharging wound and did not look after it.

Q. You tell these gentlemen that she went home and did not look after the wound ?—A. I have known it to happen.

Q. But you have sworn that that is what in your opinion happened. She went home and did not look after her wound. You have sworn that ? —A. Yes.

Q. All you know is what you read in " Truth " newspaper, that she went home ?—A. Yes, and what I have heard.

Q. What is funny ?—A. It is funny to me ; I beg your pardon.

Q. Is it funny you swearing to the jury she went home and did not look after it ; is it fair ?—A. I quite agree with you ; well, it is not fair.

Q. Why did you do that unfair thing, because you wanted to help the doctor ?—A. No, but because I thought that is what possibly happened.

Q. And that is why you did an unfair thing ?—A. Can I retract it ?

His HONOR : It is down in evidence now.

Mr. SHAND : Until I questioned you about it, you would not have retracted about it ?—A. No, I quite agree with you.

Q. What colour is that ?—A. That is an old red tube. It has been red when it was new.

(m.f.i. " a.")

Q. Are these tubes boiled up more than once ?—A. I cannot say what they do in the theatre with a new tube. I cannot say how many times they boil them. They are sterilised.

Q. You do not know how many times they are done ?—A. No, I could not say that. They are never used more than once.

Q. In the body, that is, but you do not know how many times they are boiled ?—A. They are properly sterilised before being used.

Q. You do not know how many times they are used ?—A. No.

Q. You do not remember this tube at all ?—A. No.

Q. You have no recollection of it at all ?—A. No.

Q. This also is true : the mere fact that you have made a note in your book " tube removed " does not say that you were there when it was removed ?—A. No, it does not.

Q. It may be that some other senior sister has been present when the tube is removed ?—A. Yes.

Q. She had made a note in her notebook ?—A. In the general notebook.

Q. And then you have noted it down in the other book. Does that happen ?—A. You do not understand the purpose of the daily report. May I explain it ?

Q. No, you answer the question. The fact that you have written down " tube removed " does not necessarily indicate that you were present ?—A. No.

Q. Tell me now what may happen ?—A. The doctor comes to do a dressing. I either send a senior sister or go myself. This is an important dressing, removal of the tube. The senior sister goes. In the theatre book and report it says " tube inserted," and we have to see that that tube comes out. The sister who takes it from the doctor will bring it to another sister, a second one, to be checked over.

Q. But I am going on the entries in the book ?—A. I have no recollection of this.

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Defendant's Evidence.

No. 17. Helen Melville, 13th December 1943. Cross-examination. *continued.*

His HONOR: Mr. Shand wants to know how does it come to be written in the book?—A. May I explain it in my own way?

Mr. SHAND: No. I have already had an explanation. This is the fact, is it not; although this entry is in your writing in the book, you may not necessarily have been there when the tube was taken out?—A. That is right.

Q. What may happen is this: some senior sister who was there when it was taken out has made a note?—A. Yes, that is right.

Q. And you may have copied that note down in that book?—A. She would also show me the tube to check it.

Q. That would be what happens at times?—A. All the time.

Q. Why is it compared between two sisters?—A. It is not a matter of comparison.

Q. Well, why is it shown?—A. Because the theatre people say that that tube was put in and we have to see that it comes out.

Q. And that means the whole of it?—A. Of course.

Q. To see that part of it is not broken off?—A. I suppose that is the object. I have—— (On application of Mr. Shand balance of answer directed to be struck out.)

Q. Neither of the sisters who show each other the tube may have been there when it was put in?—A. Certainly not, that is the theatre's job.

Q. The two sisters who see it when it is taken out do not know what the tube was like when it was put in?—A. No.

Q. You would think there would be a better way of checking?—A. That is all that is found adequate.

Q. You said that the average time for taking tubes out was 48 hours?—A. Yes.

Q. And it was so rare that it should be more than 48 hours, you cannot remember one case?—A. That is right.

Q. But it was sometimes under 48 hours?—A. I do not think so.

Q. When you say "average" it means a certain thing?—A. Average—does it?

Q. You cannot remember anything over 48 hours, so the average is 48 hours?—A. I do not understand that.

Q. First of all you have never known of a case more than 48 hours?—A. No.

Q. And you have never known of a case of a tube being in less than 48 hours?—A. No.

Q. So the only case you have known of is 48 hours?—A. Many cases 48 hours.

Q. Is it "Many"? There must be others?—A. If they have happened they are so rare I cannot remember them.

Q. The only cases you can remember are 48 hours?—A. Yes.

Q. You think you would remember a case if it were longer than 48 hours?—A. Yes, I really think I might.

Q. Is it likely, do you think?—A. My memory is average good, I think I would.

Q. Supposing it were four days?—A. Are we dealing with facts or suppositions?

Q. Supposing it were four days, do you think you could forget it?—A. No, I do not think so.

Q. Do you remember a Mr. Edgerton ?—A. Mr. Edgerton, I remember him very well.

Q. Does that recall anything to you ?—A. Yes.

Q. You don't mind discussing Mrs. Hocking's ?—A. Well, she has asked for it.

Q. You are not a bit vindictive, are you ?—A. No, but this is a matter of very bad manners.

Q. You remember Mr. Edgerton ?—A. Yes, very well.

Q. How long was his tube in ?—A. Goodness, I can't remember, and Mr. Edgerton was not a thyroidectomy.

Q. What was it ?—A. If I remember rightly he was an obstruction of the bowel, he was a Melbourne businessman, I remember a lot of cables going through about him, and he was in Sydney and was stricken suddenly, poor man.

Q. You will admit that tubes are left in for a long time in that type of operation ?—A. What type of operation ?

Q. Mr. Edgerton's operation ?—A. I cannot remember that that was the type of operation, without looking at the records.

Q. In the type of operation that you described a tube is left in for over two days ?—A. If it is what I think it was it may have been left in much longer than that, I can't remember whether he was that or a gall bladder.

Q. Assuming it was what your recollection tells you, how long would you think ?—A. Now look, that gall bladder might be very suppurated, before it was operated on, it might be a simple gall bladder caught in time, that decides how long the tube would be left in.

Q. Give us an idea ?—A. I cannot, I refuse to try.

Q. Don't get angry, madam ?—A. I am not getting angry, I am only trying to impress you——

Q. You are not impressing me ?—A. I am sorry. These things vary from case to case, everybody's body is different, how could every man respond to that treatment ? My goodness, we are not machines, you cannot press a button here, there and everywhere and get the same response from everyone. Your gall bladder is undoubtedly different to what Mr. Edgerton's was.

Q. Now, you said that that was bad manners. You see, you are breaching your own moral code ?—A. That is quite true. It is the influence of the surroundings perhaps.

Q. You say we are not all machines ?—A. No, indeed.

Q. Nor even gramophones, I suppose ?—A. Some might tend that way with practice.

Q. This is the position, you have no recollection at all of Mrs. Hocking's tube ?—A. No.

Q. Will you agree with me that you have attended many hundreds of operations ?—A. Yes, I think it might be that.

Q. A lot before and I suppose a lot after Mrs. Hocking ?—A. Yes.

Q. And I suppose you will agree with me that it is quite natural that you would not be able to recollect ?—A. Yes.

Q. There is nothing unusual in not being able to recollect one operation amongst hundreds ?—A. That is quite true.

Q. You have told the Court that it does not necessarily follow that because you wrote all records that you were there ?—A. Yes.

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Q. And in point of fact, there were on the floor three or four other senior sisters, were there not ?—A. No.

Q. Are you certain ?—A. Quite certain.

Q. Not three or four whom you would call senior girls ?—A. Senior girls, yes, senior in point of experience and graduated as such.

Q. That would be so ?—A. Yes.

Q. And any one of those girls might have been present at a major dressing ?—A. No, I disagree, that is not right.

Q. Did you always disagree with that ?—A. Yes, that is an important thing.

Q. That is too important to forget ?—A. I don't see what aspect of it is too important to forget.

Q. You said that was an important thing ?—A. It is important that a major dressing as this, which the doctor will do himself, be attended by a senior sister.

Q. Just let me remind you what you swore before. Do you know any reason why you should change your sworn evidence since you gave evidence last time ?—A. No.

Q. There is none ?—A. No, I don't think so, unless I had remembered something, but I don't think so.

Q. And I suppose you regard it as important that you should give the best of your recollection ?—A. Yes.

Q. And you would regard seriously the fact that you had altered your evidence on oath ?—A. Yes, indeed I would.

Q. Just let me remind you what you swore before—" What I am suggesting to you is that if there were eight there," that is eight nurses, " there would be at least four or five whom you would call senior girls," and you said " I don't think so. Q. Would there be three ?—A. Three or four. Q. And any one of the four that you indicated might have gone with any particular surgeon for a major dressing ?—A. Yes " ?—A. Yes.

Q. Well, what about it ?—A. Well, hospital staffs are hard to get, sometimes we have a good staff of seniors, sometimes we are a little short, at times I might have had three senior sisters with me, at times I might have had four.

Q. You will agree what you swore then is opposed to what you have sworn to-day ?—A. What have I sworn to-day ?

Q. You have sworn that you disagreed that any of those senior girls might have been present at a major dressing. You disagree that any one of those three or four senior girls might be present at a major dressing and previously you have sworn that any one of those four senior girls might have gone with any particular surgeon for a major dressing. They are quite different aren't they ?—A. I don't see that they are so different.

Q. Don't you really ?—A. No.

Q. Do you mean that ?—A. I am sorry, but I really cannot see that there is a quibble there.

Q. I am not talking about a quibble, I am talking about a direct contradiction. You said that they would not go for major dressings this morning, previously you admitted that any of the four might have gone for a major dressing ?—A. I really cannot follow that.

Q. Perhaps a few of us can't, but there is no difficulty in understanding the words, is there ? I put to you that they are direct opposites ?—A. Well is it not possible—I can't see it, I can't see it at all.

Q. What can't you see ?—A. I can't see what you are getting at.

Q. It does not matter what I am getting at. Can you see that they are direct opposites ?—A. No.

Q. You cannot ?—A. No.

Q. We won't leave this until we get it right down to the essentials. You see you swore before that any one of those four senior girls might have gone for a major dressing ?—A. Yes.

Q. This morning you denied that any one of such senior girls would go for a major dressing. Now, what is it ? (No answer.)

Q. It is not very difficult, is it ?—A. I am just trying to think how I could have said that. My first answer is the correct one.

Q. So your answer this morning was incorrect ?—A. May I have the whole thing over again ?

Q. What do you want done, another try ?—A. Whatever I have said to now, the fact remains, if I had three senior sisters on my floor, one of them would have gone with Dr. Bell.

Q. Senior girls ?—A. Well, we will call them seniors and juniors.

Q. We will keep to the words we used, senior girls ?—A. Sisters.

Q. Senior girls were the words used on the previous trial and used this morning ?—A. Very well, girls.

Q. I suppose you will see that you have given a direct sworn contradiction of your previous evidence ?—A. It appears to be that way.

Q. Why ? You did not understand it before ?—A. You have put it so clearly ; you have been so helpful.

Q. What is your explanation for swearing the exact opposite ? Trying to assist the doctor ?—A. Oh, no, you frighten me, perhaps.

Q. Frightened you into telling the truth or frightened you into telling an untruth ?—A. Telling a lie ; it is a mystery to me.

Q. I frightened you into telling a lie, did I ?—A. I am only trying to say what might have happened.

Q. What is right ?—A. If I had three senior sisters on the floor, if I was lucky enough to have four, one of them might have gone with the doctor.

Q. Senior girls ?—A. Girls, if you like.

Q. So what you said this morning is not true ?—A. If you say so.

Q. I am not saying so, I am asking you ?—A. You are telling me.

Q. I am asking you what you swore this morning, if that was untrue ? —A. Yes, I suppose it is.

Q. And you cannot offer any explanation as to why you swore on oath an untruth ?—A. Yes, except as I have said, that we had three or four sisters, sometimes, and I was very lucky then, and sometimes we only had two really senior ones.

Q. I am not asking you that. Can you explain why you swore this morning an untruth ?—A. No, I cannot.

Q. I suppose you were endeavouring to be careful, were you ?—A. I suppose I was just saying what I thought and what I knew. I don't have to be particularly careful ; I know these things.

Q. When would you expect the bandages to be changed after this operation for the first time ?—A. As I have explained, you don't disturb your patient if you can help it, so sometimes I have known them to be left as long as 12 hours after an operation, but in the report it says 5 o'clock of that day.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 17. Helen Melville, 13th December 1943, Cross-examination, *continued.*

Q. You have gone through the reports pretty carefully, I suppose ?—A. I have had these, yes.

Q. How long have you had them ?—A. I can't say.

Q. A year ?—A. No, I was not here from the beginning. Since the last trial, I think, but I have been really too busy to look them up.

Q. I did not ask you that. You got the reports just before the last trial, did you ?—A. Yes.

Q. And you have had them in your possession ever since ?—A. That is right.

Q. And you have studied them fairly carefully ?—A. Within the last day or so, I have.

Q. When the bandage is removed, how much is removed ?—A. They are usually renewed right throughout ; there would be no point in leaving a dirty one on.

Q. And I think you will agree that in this case the bandages were removed ?—A. Yes, at 5 o'clock that day.

Q. Twice that day and night of the operation ?—A. Yes.

Q. And also on the 16th and 17th ?—A. Yes.

Q. I noticed when you were putting the bandage on this thing here (indicating model) you pulled it very tightly ?—A. I had to, because it was very short.

Q. That is because it was a model ?—A. It is not a satisfactory piece of plaster.

Q. You did not pull it tight like that with a human being ?—A. Certainly not.

Q. You would drive the tube into the neck ?—A. Oh, you cannot do that ; the safety pin would stop that and the suture—that is what it is for.

Q. That will withstand any force, will it ?—A. Any force ? Why should a nurse use any force ?

Q. Have you never heard of the safety pin tearing through the rubber ?—A. No, I have not.

Q. You have not ?—A. No, never.

Q. Do you know of a case that happened when you were at the hospital ?—A. Not St. Luke's, no, I never heard that.

Q. I am not suggesting that it happened at St. Luke's, a case outside St. Luke's ?—A. No, I cannot say I have.

Q. Will you agree that Mrs. Hocking, after the operation, was very ill indeed ?—A. As ill as a thyroid usually is.

Q. Dangerously ill ?—A. No, not dangerously ill.

Q. You won't agree with that ?—A. No.

Q. I suppose you will agree with this, that thyroidectomy operations, these days, are very safe ?—A. Oh, well, yes, they are really.

Q. And you don't expect a patient to be dangerously ill after a thyroidectomy ?—A. Well, sometimes they could be.

Q. Of course, anything can happen ?—A. That is right, so it can.

Q. You would not expect them to be ?—A. You can expect anything in nursing.

Q. Do you think that is a fair answer ?—A. You just said yourself that nothing is impossible.

Q. Do you think that is a fair answer ?—A. What ?

Q. Would you in an ordinary case expect them to be ill ?—A. Look, before a thyroidectomy patient is operated on she might be very ill.

Although she might have left it too long on the other hand she might not, she might have come in early, it is like your gall bladder——

Q. From your experience do you expect a patient to be dangerously ill after a thyroidectomy ?—A. No, certainly not.

Q. Have you ever had a case of post-operative progressive tetany ?—A. No, I have only heard of them.

Q. How many cases of thyroidectomy have you been associated with in New Zealand and here ?—A. Oh, dear ! I cannot say that now.

Q. We don't expect you to be exact ?—A. It must run into over 100.

Q. Do you remember anything unusual towards the end of the Plaintiff's stay in hospital ?—A. I don't remember anything about Mrs. Hocking except her appearance and her condition and her doctors and her room.

Q. In those cases you have had, how many cases of tetany have you had following ?—A. I have never seen a tetany. There was one during my training days that happened in our hospital and I just happened to be on annual holidays at the time and I did not see it.

Q. You have had no experience in tetany cases ?—A. No.

Q. What do you give calcium lactate for ?—A. A number of reasons.

Q. Give us the best one first ?—A. It is often given before a thyroidectomy to help to coagulate the blood, and it may be given for the same reason afterwards.

Q. How long afterwards ?—A. That depends, it would depend on how long it was given, it might be necessary to give it for quite a long time afterwards in some people.

Q. What for ?—A. For this blood condition.

Q. What blood condition ?—A. It is very scientific, it is a lack of coagulation ; they do not clot very easily, and the calcium lactate helps them.

Q. To stop hæmorrhages ?—A. Yes, it would help that, it is a precautionary measure, it is often done before thyroidectomies.

Q. I am talking about afterwards ?—A. Oh yes, afterwards it is given to people whose blood is not quite up to standard and things like that.

Q. Tell us a bit more about this blood being not up to standard ?—A. I am afraid I cannot, that is a specialist's job.

Q. You have been posing as having some knowledge of that ?—A. From the nurse's point of view, certainly.

Q. Can't you do better than that, that it is given for the coagulation of the blood ?—A. No, I am afraid it is a long time since I dealt with it. I have probably been told that in my day, but it is a long time ago.

Q. That is all you can think of ?—A. Yes.

Q. You are being quite candid and telling the truth ?—A. I am being quite candid. There are other reasons for it, but I cannot remember them just now.

Q. I put to you that there is one important reason for it ?—A. Yes ?

Q. What do you say to that ?—A. Yes, that is right, I believe it is used in vast quantities when there is an actual tetany present.

Q. Hadn't you thought of that before ?—A. I was so concerned with the other business.

Q. Hadn't you thought of that before ?—A. No, not just at the moment, if I had time to think it over, swot it up, I would.

In the Supreme Court of New South Wales.

Defendant's Evidence

No. 17. Helen Melville, 13th December 1943, Cross-examination, *continued.*

Q. No need to swot it up, that is the main reason it is given post-operatively ?—A. Indeed it is not. If it were given it would be a precautionary measure.

Q. What would indicate that ?—A. It does not indicate that there was a tetany present because the patient was given calcium lactate.

Q. Is it always given ?—A. No, some doctors have their little ways.

Q. Does Dr. Bell always give it ?—A. I don't think so, I really forget.

Q. He gave it in this case ?—A. You will find out about another patient—perhaps you will know better than I do.

Q. Don't worry about other patients; you say Dr. Bell does not always give it, but he gave it in this case ?—A. He may have given it to other people, but that is a thing that escapes my memory.

Q. What are pins and needles in the fingers ?—A. That is also a condition very common in thyroidectomies, you watch for it and report it immediately.

Q. What would that indicate—coagulation ?—A. No, it is only a transient tetany. It happens in a number of cases and only for a very short time.

Q. Is not a better word " latent " ?—A. No, I don't think they mean the same, do you ?

Q. Don't ask me, you might not like my answers ?—A. If it were right I would.

Q. Have you heard of latent tetany ?—A. No, I can't say I have.

Q. You have not ?—A. Is there such a thing ?

Q. You seemed to suggest a moment ago that it was something different from transient. What are you laughing at ?—A. It is a bit funny.

Q. Is it ? Let us into the joke ?—A. I am sorry, I am not in command of a dictionary now.

Q. That is not quite the point ?—A. Well, what is it ?

Q. When I said " latent " you indicated that that was not the right word. You thought you preferred " transient " ?—A. No. Latent, to my way of thinking, does not mean the same thing as transient, whether it is applied to medicine or anything else.

Q. You have never heard of latent tetany ?—A. No, I can't say I have.

Q. You have only heard of transient tetany ?—A. Yes, it is a thing you hear about, you are warned for it, and you have to report it if you see it, but I have never had to report it.

Q. Supposing you learned, and I suppose you have learned, that these, as you call it, transient indications, were later followed by spasms, tetany spasms, you have heard that, haven't you ?—A. I have heard of that happening.

Q. On the assumption that that happened, what do you think of these indications which you were pleased to call transient ?—A. I don't understand you.

Mr. CASSIDY : I object to this, she is not an expert.

Mr. SHAND : She is put forward as an expert. If she is not an expert, I will ask that her evidence be struck out.

Q. I want to turn to another aspect of her evidence. You have sworn that 90 per cent. of thyroidectomy patients are bothered with a cough ?—A. Yes.

Q. Do you mean that they develop a cough afterwards or have it before the operation ?—A. Some people might.

Q. What do you mean by that ?—A. They might have a cough from some other reason.

Q. What, before the operation, you mean ?—A. Yes, they might have a catarrhal cough or a smoker's cough.

Q. Quite so, and I suppose you know that this is the practice in surgery, unless a case is urgent, not to operate while there is a cough present ?—A. It depends on the reason why the cough is there.

Q. It is inadvisable to have a person with a fresh wound that has been stitched to cough if you can avoid it ?—A. Yes, my word, it is very important.

Q. So you will agree that unless you get a case of emergency the practice is to endeavour to cure the cough first, if you can ?—A. Yes.

Q. And I suppose you did notice here in the record—that there is not one word, not one single mention of the Plaintiff's evidence of a cough until the day after the operation ?—A. That is all right, that is the occasion when the cough comes up, as the result of the operation, it happens in 90 per cent. of the cases.

Q. You swear that, do you ?—A. Yes.

Q. In 90 per cent. of the cases a cough commences after the operation ?—A. It is a little irritable throat because it is not a chest cough.

Q. Do you swear that in 90 per cent. of cases a cough commences after operation ?—A. Yes.

His HONOR : That has been your experience ?—A. Yes.

Mr. SHAND : In 90 per cent. of cases ?—A. Yes.

Q. There is no doubt about that ?—A. I don't think so ; I can say that definitely.

Q. You can say that definitely ?—A. Yes.

Q. And that has applied to your experience at St. Luke's, has it ?—A. Yes.

Q. Ninety per cent. of cases have a cough ?—A. Yes.

Q. Assuming that when this tube was removed either a sister or one of the senior girls was there, then what would happen would be this, would it not, whoever was there would make a note on a piece of paper ?—A. Certainly not a piece of paper.

Q. Or in a small book ?—A. A small book, decidedly, nothing so slipshod as a piece of paper.

Q. You are clear on that, are you ?—A. Decidedly.

Q. And it would later be entered up into the report ?—A. Yes.

Q. I don't want to dwell on matters, but this is what you swore before after referring to the senior girls " and they would make a note on a piece of paper or a small book, and it would later on be entered up in the report ?—A. Yes " ?—A. Yes, and I heard about that, and I cannot understand how I let them get away with it.

Q. You think they were trying to put something over you ?—A. Well, really a slip of paper, I would not allow a thing to be done in that slipshod way.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 17. Helen Melville, 13th December 1943, Cross-examination, *continued.*

Q. Why did you answer "Yes" to the question?—A. I cannot understand really unless I was being badgered.

Q. Being badgered, do you suggest that?—A. Yes, quite likely.

Q. Do you suggest that you are being badgered to-day?—A. No, thank you. I don't think you understand the way a daily report is used, may I explain it?

Q. No, pray don't.

His HONOR: Just answer the question?—A. But he does not understand.

Mr. SHAND: Forgive me my ignorance, but just allow me to remain ignorant. You have seen drainage tubes with two or three holes in them used?—A. Not in a thyroidectomy.

Q. Do you swear you have not?—A. I swear I have not.

Q. You remember being asked this question: "Were you told that the operation was a fairly long one?—A. I don't remember. Q. Have you ever seen what is called a cigarette drain?—A. No, what is that? Q. Just take this in your hand, have you ever seen anything like that?—A. No. Q. Do you recollect whether there are any holes in the drainage tube?—A. I don't remember any about the drainage tube." And you say you were talking about this operation and this drainage tube?—A. Yes.

Q. "You cannot tell us whether it has one, two or three holes?—A. No"?—A. Yes.

Q. "Have you ever seen drainage tubes with more than one hole in?—A. Yes. Q. Several holes?—A. I would not say that. Q. Well, two or three?—A. Yes, that is done on some occasions"?—A. Yes, some operations.

Q. Will you agree with this, that the whole of the questions that were asked had reference to this operation?—A. No, they do not.

Q. You disagree with that?—A. Yes.

Q. In what operations have you seen two or three holes used in a tube?—A. In a kidney operation, never in a thyroid.

Q. Never?—A. No, well, never.

Mr. CASSIDY: A question below you have not read.

Mr. SHAND: I will read on from the last one—"When you were in the theatre at St. Luke's have you noticed who used to cut the drainage tubes before they were used? (Objected to.) Q. Did you see rubber tubes being prepared for drainage purposes when you were in the hospital? (Objected to)?—A. I would not have seen them prepared. That is the theatre sister's job. His Honor: When you spoke about seeing drainage tubes with several holes in them, did you mean that to relate necessarily to thyroidectomy?—A. No, different surgeons have different methods. Q. What is the largest number of holes you have seen in tubes used for thyroidectomy?—A. I cannot tell you. Q. Particularly thyroidectamists?—A. Not necessarily." What is the greatest number of holes that you have seen in a tube used for thyroidectomy?—A. The typical thyroidectomy tube——

Q. What is the greatest number you have seen?—A. One.

Q. Are you clear on that?—A. Yes.

Q. You seemed to have some doubt on it a moment ago ?—A. No, I have never had any doubt about it.

Q. " What is the largest number of holes you have seen in tubes used for thyroidectomy ?—A. I cannot tell you " ?—A. Well, neither I can.

Q. Did you swear you have not seen more than one hole used now ?—A. No.

Q. Which is it, you cannot tell or you are certain you have not seen more than one ?—A. I think my first answer might be the best, I cannot tell.

Q. Don't give us what is the best, give us the truth. What is the truth ?—A. I cannot tell.

Q. You don't know ? (No answer.)

Q. Do you tell these gentlemen that you don't know ?—A. I have never prepared tubes for thyroidectomy, I have only seen them taken out.

Q. Tell us what you have seen, you have seen plenty taken out——

His HONOR : What is the greatest number of holes in a tube you have seen taken out after a thyroidectomy ?—A. One.

Mr. SHAND : You said this morning one, and that you were quite certain. How did you come to swear before that you could not say ?—A. To my way of thinking it means the same thing.

Q. Do you ? In one case you are certain it was not more than one, in the other case you don't know. They mean the same to you, do they ? (No answer.)

Q. Do they mean the same to you ?—A. They shouldn't really, should they ?

Q. Only you can say. Do they mean the same to you ?—A. I cannot tell.

Q. I don't want to harass you, but will you agree that in hospitals a recognised loyalty of the sisters to the doctors exists ?—A. No, let me see : we are working together, there is co-operation—yes, I suppose you would call it loyalty.

Q. And might that explain some of your answers ?—A. No, my answers are given entirely on my own behalf.

Q. But might not that sense of loyalty explain some of the occasions when you have said something different to what you have said before ?—A. No, that is my fault entirely, it is nothing to do with anyone else, I have a bad way of expressing myself.

Q. More than that, direct opposites ? (No answer.)

Q. Is gauze used for drainage ?—A. Not in thyroidectomies.

Q. Will you swear Dr. Bell did not use gauze in this case ?—A. What do you mean ?

Q. Used pieces of gauze at the site of the wound, inside the neck ?—A. I have never seen a thing like that done in thyroidectomy.

Q. Pieces of gauze pushed inside the neck ?—A. I have never seen a thing like that done in a thyroidectomy.

Q. Swabs ?—A. No, gauze is mostly used for draining boils and carbuncles.

Q. Do you remember being asked this : " I have no personal recollection of anybody removing the tube from Mrs. Hocking's neck ; there is a custom at St. Luke's Hospital in respect to that matter ; it is an

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 17. Helen Melville, 13th December 1943, Cross-examination, *continued.*

invariable practice; the practice is that any material that is used for drainage, whether it is tubing or anything else, gauze and so on, is presented to another sister to be looked at after it is removed from the patient" ?—A. Yes.

Q. You see, there you were referring to Mrs. Hocking's operation ?—A. Yes.

Q. Do you say you were not referring to a thyroidectomy ?—A. Yes, I do. I must apologise again for expressing myself badly; I was bringing in other operations, I suppose.

Q. Is thyroidectomy the one operation where gauze is not used, or do you know or not ?—A. Well, there are lots of operations where you would not use gauze.

Q. And thyroidectomy is certainly one of them ?—A. Oh, yes.

Q. And you would not use swabs ?—A. In what way; a swab is a little piece of cotton wool.

Q. Used in the wound ?—A. No, certainly not.

Q. Suppose it was difficult to arrest the bleeding from an artery ? Do you use a swab then ?—A. No, certainly not.

Q. You think that would be bad practice, do you ?—A. Yes.

Q. Do you know that Dr. Bell used swabs ?—A. In the theatre during an operation ?

Q. Yes ?—A. Well, of course, that is surgical technique.

Q. But I thought you said that would be very bad practice ?—A. Look here, I was talking about a dressing done by a nurse.

Q. You don't dress the inside of a wound ?—A. No, of course not.

Q. My questions were all addressed to the inside of the wound ?—A. When the patient comes back from the theatre I don't put things inside the wound.

Q. Do you know anything about the swabs inside a wound ?—A. No, certainly not; people don't put things——

Q. Very well; I only want to get your knowledge; you don't know whether Dr. Bell used them or not ?—A. No, any surgeon does during the operation.

Q. That is, pieces of cotton wool ?—A. Sterilised cotton wool swabs. Perhaps there is a better method and the surgeons haven't found it yet.

Q. And gauze ?—A. And gauze, definitely.

Re-examination.

Re-examined:

Mr. CASSIDY: One portion of this evidence was read to you about three or four senior girls. Do you remember this: "And any one of the four that you indicated might have gone with any particular surgeon for a major dressing ?—A. Yes." To-day you said it would be one of the senior sisters. Did you before that say this: "And the mere fact that there is a note 'tube removed' does not say that you were there, does it ?—A. No, but a senior would be present. Q. You, as a senior sister, have a fair amount of responsibility on the floor, haven't you ?—A. Yes. Q. And just because a particular doctor comes to see the patient you are not there to go with the doctor to see every patient ?—A. No, but in a dressing like this, a major dressing, in that case a senior sister would be in attendance on the doctor." Is that what you swore last time ?—A. Yes.

Q. And at the second trial did you say also: "In the case of the floor where I was that would be either Mrs. McCallum or myself" ?—A. Yes.

Q. The Plaintiff has sworn in this case that a sister was present when the tube was removed ?—A. Yes.

Q. That would be either you or Mrs. McCallum ?—A. Yes.

Q. Now you said something about reading something in the paper. I think you were not present at the first trial; your home was in New Guinea then ?—A. Yes.

Q. And I think it was in New Guinea that you read of this matter ? —A. No, I was shown the paper by a friend as I was passing through Brisbane, but I did not have much chance to read it.

Q. Have you had experience of sinuses not healing after thyroidectomy for some time ?—A. Oh, yes, sometimes three weeks.

Mr. SHAND: On what my friend asked: you said that when the case was on the first time you were passing through Brisbane ?—A. No, I was not. I was in New Guinea. A friend was reading it in "Truth" when I was passing through Brisbane on my way down from New Guinea.

Q. Was that when the case was on ?—A. That was in December.

His HONOR: The first case was in December 1941.

The WITNESS: We left New Guinea on Christmas Eve of 1941.

Mr. SHAND: When did you go to New Guinea ?—A. 1939, I think.

Q. At the end or the beginning ?—A. About March.

His HONOR: When did you get married ?—A. 1939.

Mr. SHAND: You said that you or Sister McCallum—my friend put it to you that you or Sister McCallum would be present. Did you also have Miss Grace ? Was she a sister on the floor ?—A. That is right.

Q. Barrington ?—A. Yes.

Q. She was a sister ?—A. Yes.

Q. Miss McEwan ?—A. She was the night special—a sister.

Q. Miss Troman ?—A. She was with us for a very little time.

Q. But she was a sister, was she ?—A. Yes.

His HONOR: Was she there at that time ?—A. Well, evidently from the report.

Q. Have you any recollection ?—A. Yes, I know what she looks like.

Q. But can you recollect whether she was there at the time ?—A. No, I don't.

Mr. SHAND: On page 221, before the passage which I read to you, I will just read three lines—line 9—"What I am suggesting to you is that if there were eight there, there would be at least four or five whom you would call senior girls," and your answer was, "I don't think so." You were then asked, "Would there be three," and your answer was, "Three or four" ?—A. Yes.

In the Supreme Court of New South Wales.

No. 18.
Jessie Beatrice Warburton, 13th December 1943, Examination.

No. 18.

EVIDENCE of Jessie Beatrice Warburton.

Sworn : examined : deposed.

To Mr. CASSIDY : I am a married woman living with my husband at Mortdale. Before marriage I was Sister McCallum. I had done my training at the Royal North Shore Hospital, and I was a sister at St. Luke's Hospital at the time that Mrs. Hocking was a patient there during February and March, 1938. I was a senior sister on the floor on which Mrs. Hocking was at the time. The other senior sister was Sister Will. Sister Will was in charge and I was second. I remember Mrs. Hocking. Following the operation I remember that there was a tube there. From recollection the tube was in the centre of the wound, in the neck. I don't remember exactly that tube. I remember a small tube. I remember its colour. I have never seen any other tube but red. (Objected to.)

Q. I will put it this way. Is there a practice there in regard to the colour of the tubes used at St. Luke's ? (Objected to)—A. Yes, I have never used——

His HONOR : That is covered by my previous ruling.

The WITNESS : I have never used any other but red. (Objected to.)

His HONOR : That is not an answer to the question.

Mr. CASSIDY : Is there a practice there as to the colour of the tubes that are used at St. Luke's ?—A. Yes. Red tubes are always used. I was there about six months, and during that period I had never seen other than a red tube used.

Q. Would you tell me how is the tube affixed ?

Mr. SHAND : Does she remember this tube ?

Mr. CASSIDY : Do you remember how this particular tube was fixed ?—A. Yes. I remember that it had a safety pin and strapping applied across it—affixed to the safety pin.

Q. Anything else that you remember as to the way it was fixed in apart from the safety pin ?—A. The adhesive strapping ?

Q. No, I am talking of the tube ?—A. The sutures.

Q. Now on the 17th March—is part of that record in your handwriting (handed to witness) ?—A. Yes. My handwriting commences at the second time it says " Dr. Bell here." I do not remember exactly whether I was present when the tube was removed. I have a recollection of Dr. Bell doing something with the tube ; I do remember being with him at one time.

Q. Would not that be a correct record of what happened that day (indicating) ? (Objected to.)

Q. Is there an invariable practice among the sisters in regard to tubes being removed ?—A. Yes. Any tube that is removed is checked by second person and then written up in a special book.

Q. Now, seeing that entry there, would that entry have been made unless the check had been taken ? (Objected to ; pressed.)

His HONOR : I did not understand the witness to say it was checked by the senior sister.

The WITNESS : That is what I meant.

His HONOR : She said checked by a sister.

Mr. CASSIDY : The words were " a second person."

Q. Who is the second person that checks ?—A. The other senior sister, or a senior sister. If you happen to be the most senior one yourself then you would be the next most senior sister.

Q. Were you and Sister Will the two senior sisters working that day of the 17th ?—A. Yes, evidently by this report.

Q. Definitely ? (Objected to.)

His HONOR : She said " evidently by this report."

Mr. CASSIDY : Did you say " evidently " or " definitely " ?—A. Well, it could be evidently or definitely by this report. It is both our handwriting in this report.

Q. Were they the only two on that floor on duty with regard to Mrs. Hocking ?—A. I don't remember. There may have been another trained nurse or senior sister on, but I cannot remember. That record was made that day and it was checked by me.

Q. Can you say from that record, following the practice, whether it would be either you or Mrs. Melville who would have checked the tube ? —A. No. You cannot tell by this book. I remember this patient and I have refreshed my memory by looking at the hospital records.

Q. Well, tell us what is the position in which she lay in bed—or that the thyroidectomies lay in bed ? (Objected to.)

Q. Or that she lay in bed ?—A. Lying upright supported by pillows.

Q. And as to bandages—what bandages were on ?—A. She had a lot of bandaging really—she had a lot of dressing.

Q. You have looked at the records as to her progress that day. What is the usual thing in regard to these thyroidectomies as to discharge first after the operation ?—A. They have a little serous oozing at first.

Q. And how long does that persist. Does it vary ?—A. Yes, but it does not last long.

Q. Would you look at the notes of the 15th, the night of the 15th. You will see the end of the day report of the 15th—" Free drainage from tube ; dressing changed 5 p.m." ?—A. No.

His HONOR : Have you found that now ?—A. Yes.

Mr. CASSIDY : Opposite line 35 : " Free drainage from tube ; dressing changed 5 p.m." ?—A. Yes. That is the normal routine and the normal progress of oozing some time after the operation. I see the night report, opposite line 47—" Dressing changed 6.30 a.m. ; fair amount of serous blood stained oozing." That is normal. I see the day report of the 16th—" Doctors Bell and Ritchie here. Pleased with patient's condition. Dressing changed. Slight serous oozing through." That is normal progress. I also see opposite line 10—" Taking fluids and nourishment fairly well to-day." That is quite a normal course.

Q. And was there anything in those days abnormal about this patient's progress and recovery ?—A. No.

Q. I want to keep still to those first couple of days. On the 17th I have referred you to the reference " Tube removed." It is alleged by Mrs. Hocking that Dr. Bell, in the presence of sister first of all, put his

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Defendant's Evidence.

No. 18. Jessie Beatrice Warburton, 13th December 1943, Examination, *continued.*

fingers on to the tube and pulled it twice, then the third time put his hand on the forehead and pulled it hard. Did anything like that occur in your presence ?—A. No.

Q. It is further alleged that Dr. Bell did not use forceps, but used his bare fingers. Did that happen ?—A. No.

Q. Or did Dr. Bell get a piece of black tube half-an-inch long—did the tube break off and did he throw a piece of black tube half-an-inch long on to the tray ? (Objected to ; pressed.)

Q. The tube broke, he held it in his fingers, looked at it, and then threw it into the tray and you and he walked out——(Objected to.)

Q. You and he walked out of the room. (Objected to.)

Q. Or that you and he walked out of the room ?—A. No.

Q. Did that ever occur ?—A. No.

Q. After a tube is removed, is the wound dressed ?—A. Yes.

Q. Did you ever hear these expressions. After he pulled the third time and it came out, the doctor said " Damn," and the patient said " Oh " ?—A. No.

Q. You saw Mrs. Hocking in hospital. What do you say as to her temperament that you noticed ?—A. She seemed a very excitable sort of a person. Following the operation I attended Mrs. Hocking from time to time. I remember that her temperature did not go up later. I don't remember exactly what her pulse was during those periods. I don't remember anything abnormal.

Q. The pulse rate and the temperature are recorded in your charts while there is anything abnormal. Isn't that so ?—A. Yes. (Objected to as a leading question.)

His HONOR : That certainly is leading.

Mr. CASSIDY : In any event you might tell us what is your practice as to temperatures and pulse being recorded ?—A. Any temperature or pulse over normal is recorded in the reports.

His HONOR : And how about if it is under normal ?—A. If it is under normal it is quite all right.

Mr. CASSIDY : His Honor said : " If it is under normal " ?—A. Well, I mean there is a state above normal, and below that it is quite all right. It is quite normal. You count it as normal.

Q. Have you looked through the reports for any record of temperature after the 23rd ? (Objected to.)

Q. Those before you ?——

His HONOR : That is common ground.

Mr. CASSIDY : Very well, I need not ask that.

Q. Assuming for the moment that the reports show no record or no report of temperature after the 23rd, what would that indicate to you ?—A. That they were quite normal.

Q. Did you ever tell Mrs. Hocking to lie on her right side ?—A. No.

I have never seen thyroidectomies lying on their right side ; I have never nursed any.

Q. Supposing she is sitting as you tell us, propped up in bed, could half an inch of this tube be seen by somebody with the bandages arranged —would it be possible for anybody sitting at the side of the bed to see half an inch of the tube sticking out ? (Objected to.)

Q. You know the bandages that are used in that operation, do you ?—A. Yes.

Q. Will you tell us first of all what is the nature of the bandage that is placed round the neck ? (Objected to.)

Q. Take the bandage round the neck for a start. Unless it is removed by one of the sisters, what is the position of the bandage round the neck and nearest to the wound ?—A. It is tied on with adhesive strapping and then tape. It is tied with tape.

Q. Then over that is a further dressing ?—A. Yes. (Objected to as a leading question.)

Q. Will you just give me the order of the bandages ?—A. Well, there must be a certain amount right around the neck, and quite a lot on the chest, which is tied with adhesive strapping, usually crosswise.

Q. Unless the bandages are removed, would a person sitting at the edge of the bed be able to see half an inch of tube sticking out of the wound ?—A. No, certainly not.

Cross-examined :

Mr. SHAND : You are now the wife of a doctor of medicine ?—A. Yes.

Q. How long were you in St. Luke's ?—A. Six months.

Q. And where were you before then ?—A. I had just finished my training at the Royal North Shore Hospital.

Q. You had just become a sister, had you ?—A. Yes.

Q. And then was it six months after you had been at St. Luke's that you got married ?—A. No.

Q. Did you go to some other hospital ?—A. Yes, I was down at the Royal Alexandra Hospital for children at Collaroy.

Q. For how long ?—A. I don't remember ; about nine months.

Q. Any other hospital ?—A. Then I was at the Dental Hospital.

Q. Was that the last hospital you were at ?—A. Yes.

Q. You did not see this tube put in, did you ?—A. I was not in the theatre, no.

Q. You have sworn before, and it is correct, that you did not see the tube put in ?—A. No.

Q. And you gave evidence for the first time on the second trial, didn't you. You did not give evidence on the first trial ?—A. No.

Q. You were in Sydney during the first trial, weren't you ?—A. Yes.

Q. Were you spoken to as to whether you should give evidence or not, before the first trial ?—A. No.

Q. You were only approached some time before the second trial ?—A. Yes.

Q. When you were spoken to—on the first occasion when you were spoken to, who spoke to you ?—A. The Matron of St. Luke's Hospital.

Q. When you were first spoken to had you seen any records then ?—A. No, I hadn't.

Q. You were asked, were you not, whether you remembered anything about this tube ?—A. Yes.

Q. And you could immediately remember Dr. Bell doing something to the tube ?—A. Yes.

Q. Your unaided recollection ?—A. Yes.

Q. But you have not told us what it was. The second trial was August 1942. You can take that as being correct, and this incident in

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Defendant's Evidence.

No. 18. Jessie Beatrice Warburton, 13th December 1943, Cross-examination, *continued.*

regard to the tube took place in 1938, and this was the fact that when you were asked whether you could remember anything about the tube, by the matron, you immediately remembered back to one operation and about a tube, over four years before ?—A. Yes.

Q. You were immediately able to remember it ?—A. Yes.

Q. Although there was nothing unusual in anything that was done about the tube ?—A. Some cases you can remember more than others.

Q. But you could remember one incident about the tube 4½ years after ?—A. Yes.

Q. That immediately came to your mind ?—A. Yes.

Q. Now tell us what the incident was ?—A. I don't remember exactly.

Q. But apparently the incident was striking enough to cause you, out of all the cases you had had in the meantime, to remember back to one incident when Dr. Bell did something to the tube. Now what was it ?—A. I don't remember.

Q. But you do remember him doing something ?—A. Yes.

Q. Just this one case that you happen to remember ? (Objected to.)

Q. You do remember this one incident ?—A. Yes.

Q. Well, tell us can't you ?—A. Well, I don't think I can tell you anything more. I have told you what I remember. The more you try to remember anything as far back the more hazy you become. I don't remember the tube being removed. I cannot definitely say I remember it being removed. I cannot be any more definite, and I certainly could not be any more definite.

Q. But you do remember an incident ?—A. Yes.

Q. And you cannot tell the gentlemen of the jury what the incident was ?—A. No, I cannot.

Q. Now are you sure ?—A. Yes, I am sure.

Q. Are you ?—A. Yes.

Q. Can you remember any other incident of any other tube being removed or dealt with four years ago, or now it is five years ago ?—A. Yes, I remember various other cases where tubes were in, and I have nursed them.

Q. But can you remember something about a tube with regard to Mrs. Hocking. Supposing I asked you that question about someone else, can you give any case ?—A. Quite likely.

Q. Well, can you give us one now ?—A. I cannot remember now.

Q. Well, you said you remembered this immediately when the matron asked you ?—A. Yes.

Q. Now, can you give us another case now immediately ?—A. I possibly could——

Q. Well try ; you said : " Yes, immediately I did remember Dr. Bell doing something to the tube." That is p. 305. Can you give us another case where you remember a tube being dealt with ?—A. Well, there is this other case that is in the same book.

Q. You are now looking at the book ? (Objected to.)

Q. I am just asking you your unaided recollection ?—A. If you mention the name, I probably would.

Q. No, I want you to remember the name ?—A. I am sorry, I cannot.

Q. If you can't do it, you can't. I am not going to press you. Now what was it that made you remember this tube immediately ?—A. The name of the patient, only.

Q. The name of the patient ?—A. Yes.

Q. But, assuming you are given the name of the patient, why remember some incident about a tube ?—A. Because they were serous dressings, when Dr. Bell came and dressed the wound himself.

Q. You remember that ?—A. Yes, definitely.

Q. You remember that ?—A. I remember Dr. Bell dressing the wound himself, certainly.

Q. Did he remove the dressing ?—A. Well, he would if he——

Q. Did he ?—A. Certainly.

Q. Now what did he do to the tube ?—A. I don't remember. He might have cut a suture. He might have just cleaned it and finished it off and gone away—dressed the wound and gone out again.

Q. Something very usual and ordinary ?—A. Yes. The removing of the tube would be quite ordinary.

Q. But there would be nothing to make you remember that particularly, would there ?—A. Yes.

Q. Unless something unusual happened ?—A. The fact that I remembered the patient and I remembered Dr. Bell attending to her.

Q. I will write this particular name down. (Mr. Shand writes on paper handed to witness.) Look at that name ?—A. Yes.

Q. Do you remember that patient ?—A. I remember a patient by that name.

(Piece of paper shown to Jury.)

His HONOR : You can refer to her as " Mrs. X " from now on.

Q. Mrs. X is the lady whose name you saw written down ?—A. Yes.

Mr. SHAND : Now what about her ?—A. Well, she was a medical case.

Q. She would have to be a medical case to be in the hospital (objected to) ?—A. No. She was not a surgical case.

Q. She was a medical case ?—A. Yes.

Q. Anything else ?—A. That is the most vivid thing about her. She was a medical case, not a surgical case.

Q. That is all you can remember about her, is it ?—A. No. I remember that she was very troublesome at night-time. I think she had a special nurse at night because of that, and in the day-time because of that.

Q. And anything else ?—A. Well, after that I would not have nursed her because she had a special nurse.

Q. But while you were nursing her ?—A. I think it was only a couple of days before she got the special nurse.

Q. Well, what can you remember of her ?—A. Well, about her there was not very much of her to remember, except that she was a medical case. She was troublesome. She got two specials and after that she was out of our hands.

Q. That is all you remember about her ?—A. Yes. I think that is quite enough.

His HONOR : Is there any objection to anyone knowing when that was ?

Mr. SHAND : No, Your Honor—the 4th April 1938.

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Q. Don't you know that her mental condition was strange ?—A. Yes, that is what I say. She was very troublesome.

Q. Was her mental condition strange ?—A. Yes.

Q. Mentally strange ?—A. Yes.

Q. Misbehaving in the bed ?—A. I think that all comes under the heading that she was very troublesome to us.

Q. Do you ?—A. Yes.

Q. Well now, you cannot help us any more in your recollection about this matter of the tube. When the matron asked you and you remember immediately, what did you say—" Yes, I remember—— " ?—A. I said : " Yes, I remember the patient."

Q. Did she ask you about the tube ? (Objected to.) (Shorthand notes read.)

WITNESS : I did not take it that you meant the Matron of St. Luke's asked me.

Q. But that is the person you said spoke to you first ?—A. I don't remember whether she did or not.

Q. Well, you said she did ?—A. As a matter of fact, I think I said to her straight away without her having asked me anything about the tube.

Q. You mentioned the tube, you think, yourself, first ?—A. Yes.

Q. What was there about this tube that you should volunteer to mention it to her without a question ?—A. Yes.

Q. But what was there about it ?—A. I suppose because I had seen the case in the paper after the first trial, and I had thought of it then—that I had remembered Mrs. Hocking.

Q. But if that is so, why should you mention that to her if you could not recollect the incident at all ?—A. Because I could not be absolutely definite. I would say that I could remember the tube removed, and if I tried to remember every little detail, then I would become hazy, and then I would say that I could not say anything that I was a bit hazy about.

Q. Anyhow that was the first thing that sprang to your mind—the tube ?—A. Yes.

Q. And you say, even then, that you could not remember ?—A. Not definitely.

Q. Of course the tube was taken out on the morning of 17th—according to the evidence ?—A. Yes.

Q. And you were there then on duty weren't you ?—A. Yes, I was on duty.

Q. Did no one endeavour to get in touch with you before the first trial ?—A. No.

Q. You did not hear anything ?—A. No.

Q. You had been round from one hospital to another ?—A. Yes.

Q. And on the first trial in 1941, were you then married ?—A. Yes.

Q. And living with your husband Dr. Warburton ?—A. Yes.

Q. So you cannot assist us any further than that ?—A. No. I am sorry.

Q. I suppose you will agree, will you, that there is a certain recognised loyalty of the nursing staff, to doctors in hospitals ?—A. Yes, certainly.

Q. You will agree further with this, that if a tube is removed properly it is an easy thing to do, isn't it ?—A. Yes.

Q. An easy thing ?—A. Yes.

Q. And there is nothing to strike the attention in it? How do you remove it?

His HONOR: Q. How is a tube removed?—A. The sutures are cut. You are told to use forceps and then remove it.

Mr. SHAND: What sutures?—A. I think they would be horsehair.

Q. And how many are there?—A. Well, just one probably in the tube. That would be the only one removed in the tube.

Q. You said "sutures" in the plural?—A. He would not remove the wound sutures at the same time.

Q. You meant "suture"?—A. Yes.

Q. And what happened then?—A. Then the tube is just removed with forceps.

Q. Haven't you forgotten one thing?—A. The safety pin and the strapping. The strapping would have to be cut.

Q. That is the thing that you remembered before, that there was a safety pin in that?—A. Yes.

Q. You just forgot then that that would have to be removed? A. The safety pin would come out with the tube. The strapping would only have to be removed.

Q. Where is the strapping?—A. It is from the safety pin on to the skin. The safety pin is on to the tube and it comes out with the tube.

Q. And the strapping is on to the skin?—A. Yes.

Q. From the safety pin?—A. Yes.

Q. There is nothing at all in that very simple matter to catch the attention, is there?—A. There is nothing unusual in it. It is easy to remember.

Q. This is what you swore before—p. 303, the second trial—you were asked about this before. "Give us what you can remember." Your answer was "My recollection is that he certainly did something to the tube. I could not say just what it was, it is such a long time ago." So your recollection goes that far, that he certainly did something to it?—A. Yes.

Q. But your recollection cannot go any further?—A. No.

Q. How long does the ordinary raw gut take to dissolve?—A. What do you call "raw gut"—catgut?

Q. Yes?—A. It varies. Sometimes it takes quite a time.

Q. It is a number of days, isn't it. You would expect it to be dissolved in about 10 days, wouldn't you?—A. Yes. It depends. It varies. I could not say definitely.

Q. Knots were coming out of this wound for a long time after, weren't they?—A. Yes.

Q. And I want to put to you that these knots were what is known as chromic gut?—A. No.

Q. Do you say that no they were not?—A. Well, I have seen the records. That is where I have seen them.

Q. What is your recollection?—A. Well, from my recollection, I don't remember the knots coming out at all, except from reading the records.

Q. Twenty-six days after the operation, according to the records, was the first time that a knot of gut came out. That is what the records say.

His HONOR: What date is that?

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 18. Jessie Beatrice Warburton, 13th December 1943, Cross-examination, *continued.*

Mr. SHAND : 9th April.

Q. Chromic catgut is dark, isn't it ?—A. Yes.

Q. And it takes a very long time to dissolve ?—A. Longer.

Q. A very long time, doesn't it ?—A. Yes.

Q. Now is this the position, that from your recollection you cannot recollect whether these knots that came out were this dark chromic gut or the ordinary catgut. You cannot recollect ?—A. No, but if it were down there it is catgut.

Q. Don't worry about it being there ?—A. I think I wrote one.

Q. But you were not in the operating theatre, were you ?

His HONOR : You were asking about what came out.

Mr. SHAND : Have a look (witness refers to documents).

His HONOR : It is your own report of 9th April, signed " J. McCallum " ?—A. Yes.

Mr. SHAND : But that entry covers both, doesn't it ?—A. No.

Q. You say it does not cover " chromagut," that entry of yours ? A. No.

Q. You are clear on that ?—A. Yes. I would know the difference.

Q. Just let me read you what you said last time. This is p. 306 of the second trial. You were actually shown your own report the last time—" In a night report of 9th April under your name appears this ' has healed fairly well, not complaining, knot of catgut obtained from wound, 6 a.m.' That would be signed by you," and you said " Yes." —A. Yes.

Q. Your attention was drawn to that entry ?—A. Yes.

Q. Then you were asked " Do you know whether it was a knot of chromic gut," and your answer was " I cannot say." Then you were asked " Having the record put before you, will you say it is not chromic gut if I suggest it to you," and your answer was " I could not say." The next question was " It might have been chromic gut," and your answer was " It could have been either."

Q. Now do you wish to alter your evidence that you gave before ?—A. Yes, I think so, on seeing that down there.

Q. Do you wish to alter your evidence now ?—A. I don't remember saying that before. I realise I must have.

Q. There were three questions addressed to you. Your attention was drawn to your own report and you said you could not say which it was, it could have been either. Do you say that that is wrong, what you answered before ?—A. Yes.

Q. How did you come to give wrong evidence before ?—A. Well, I think I was very nervous at that time and I was trying to say as little as I could.

Q. Why did you want to say as little as you could ?—A. I don't mean not saying what I know, but I know that barristers will get you involved in saying things that you don't intend.

Q. You know that, do you ?—A. Yes. I was not deliberately hiding anything, or deliberately not saying anything.

Q. Do you say that this was read out to you, and you were asked three questions running, that you were not aware of how you were answering. Before you answer that question I will read you the next question, the fourth one—" Chromic gut is distinguished from plain catgut because it is dark," and you said " Yes." So that you had brought to your attention

your own entry, you had brought to your attention the distinction between the two guts, and then you said you could not say which it was, it could have been either. You could not have been mistaken about that, could you ?—A. Well, it was not deliberate.

Q. I am not suggesting anything about it being deliberate at all. I am suggesting that that was correct. Now it was, wasn't it ?—A. No, I don't remember saying that, and seeing this report I should say no.

Q. But you had the report last time ?—A. Yes.

Q. And you had it in front of you ?—A. Yes.

Q. Can you give any explanation ?—A. No, I am sorry.

(Luncheon adjournment.)

At 2 p.m.

Mr. SHAND : What happens to these notebooks in the hospital in which the original entries are made ?—A. I should imagine they are stored. It is a matter for the matron of the hospital. They are usually kept for reference for some years, but if they have no accommodation they might dispose of them after a few years. I do not know.

Q. You had 19 patients ?—A. Yes, 19 rooms.

Q. More than one patient in each ?—A. Sometimes there were two in a room, not all.

Q. When did you make your entries in these little books—straight off or did you make them later ?—A. You wrote the report during the afternoon. You might make a note during the morning. Everything which is ordered is written up.

Q. But these things about patients, do you have to remember back to what has happened through the day and then make a note in your book ?—A. Yes, you write it in the afternoon.

Q. You would have to remember in respect of 19 or more patients, assuming there was more than one in a room ?—A. Yes.

Q. You would have to remember the salient features of each case ?—A. Yes.

Q. I am going to the reports now. The doctor reads the reports ?—A. No, the doctors do not. They have reports of the patients in the form of temperature charts.

Q. But I mean the nurses' reports ?—A. No.

Q. I don't mean the little books, but the final book ?—A. No, they do not.

Q. I know you did say that before. However, that is correct ?—A. Yes.

Q. Do you remember swearing at the second trial at page 303 that you ceased to attend Mrs. Hocking some three or four days before she left ?—A. Yes.

Q. And did you then say the wound was not inflamed when you last saw it ?—A. Yes.

Q. In point of fact, the wound had still some purulent discharge at that time ?—A. Yes.

Q. A slough came away ?—A. Yes.

Q. That indicates tissue is being destroyed ?—A. Yes.

Q. And indicates inflammation ?—A. Not necessarily.

Q. What about the purulent discharge ; inflammation ?—A. A wound could look normal and still have a little purulent discharge.

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Defendant's Evidence.

No. 18.
Jessie Beatrice Warburton, 13th December 1943, Cross-examination, *continued.*

Q. And slough coming away ?—A. Yes.

Q. That indicates inflammation ?—A. Slight inflammation, but nothing abnormal.

Q. Not of catgut coming out ?—A. Not necessarily.

Q. Does it indicate inflammation ?—A. Nothing abnormal.

Q. But you cannot remember how it looked ?—A. I cannot remember anything abnormal about it.

Q. But you cannot remember exactly how it looked ?—A. No.

Q. You are depending on the reports ?—A. Yes.

Q. And the reports indicate that these things are happening : some purulent discharge, slough and knot of catgut. So far as you are concerned there may have been indication of inflammation ; it may have been inflamed under those circumstances ?—A. May have been slightly. I would have remembered if it were abnormal I am sure.

Q. Did you see nothing abnormal about the progress of this case ?—A. No. Inflammation does not always occur. It is not an extreme abnormality.

Q. But in thryoidectomy it rarely continues for weeks ?—A. It was gradually settling down.

Q. But it rarely continues for weeks in thyroidectomy ?—A. No.

Q. So it was unusual in that respect ?—A. Her progress was not unusual. She was quite a usual case as far as progress.

Q. Inflammation rarely continues over weeks in thyroidectomy ?—A. Yes, that is so.

Q. It continued here and that would make it a case which was not usual ?—A. Yes, except the inflammation continued. It progressed quite normally. It was after it had come to a stage.

Q. What stage ?—A. That the inflammation was gradually decreasing. She was quite normal when she left the hospital as far as I remember.

Q. It was weeks, three weeks after the operation ?—A. Yes.

Q. After you had seen the matron were you given a typewritten copy of the notes ?—A. Yes.

Q. Have you kept those since ?—A. No.

Q. What happened to them ?—A. I suppose I have them. I do not know.

Q. You saw them again before you gave evidence in this case I take it ?—A. Yes.

Q. Who handed the notes to you ?—A. I do not remember.

Q. Was it the matron ?—A. I do not remember.

Q. You swore last time you were asked " Who gave you that," that is the typewritten copy, page 305. You said " The Matron of St. Lukes'." That would be correct I suppose ?—A. Yes, I do not remember.

Re-examination.

Re-examined :

Mr. CASSIDY : At any time during her stay there did Mrs. Hocking make any complaint to you about Dr. Bell breaking a tube or anything like that ?—A. No.

Q. You were asked before lunch about chromo gut. You told us with regard to the removal of a tube the practice is for a sister to report to a senior sister ?—A. Yes.

Q. Because the records show from the theatre " tube in " ?—A. Yes.

Q. Look at your report of the 15th March. Is that taken from the theatre record ?—A. Yes.

Q. " To operating theatre 7.30 a.m., surgeon, Dr. Bell . . . horsehair"? —A. Yes.

Q. That is part of the notes of the 15th. Now take page 303 of the trial. Is this what you said last time. Is this what you said :—

" Immediately following the operation the woman did not have any swelling around the site of the operation. Towards the latter period the condition of the neck was quite normal except for a small point where the discharge was coming through. There was no swelling or inflammation, nothing abnormal " ?—

A. Yes.

Q. You were in St. Luke's. You spoke to matron about the tube. At that time were you in St. Luke's in a maternity ward ?—A. Yes.

No. 19.

EVIDENCE of George Bell (Defendant).

Sworn : examined : deposed.

To Mr. CASSIDY : I am a legally qualified medical practitioner practising as a surgeon at 133 Macquarie Street, Sydney. My name is George Bell. I am a foundation Fellow of the Royal Australian College of Surgeons.

Q. From 1916 to 1919 you were Surgical Specialist attached to the 1st Australian Casualty Clearing Station in France ?—A. I was not attached there all the time. I can give you my record as far as the war is concerned : I went home. I landed in England in 1916. After leaving an infantry camp I was sent to the 3rd Australian General Hospital for four months and then went across to France to a General Hospital at Boulogne, and in April or May 1917 I was sent up to the 3rd Casualty Clearing Station near Bapaume. (Objected to.)

Q. You were surgical specialist ?—A. At the 1st Australian C.C.S. from the 19th March 1918 until the end of the war.

It meant I had considerable experience in wounds, in war injuries. I had the honour of O.B.E. conferred on me for my surgical work. I have been a surgeon at Sydney Hospital since 1910.

Q. You have been Honorary Senior Surgeon for the last 20 years ?—A. Yes, on the senior honorary surgical staff.

Q. And for the last seven years senior surgeon ?—A. No, to be quite correct, in July 1942 I returned to the consulting staff with active rights.

Q. It would be seven years up to July 1942 ?—A. Yes.

I am also surgical consultant to the Royal Australian Navy in Sydney. I have been visiting surgeon in connection with the Repatriation, Randwick, since 1919.

Q. You have been lecturer in clinical surgery at the Sydney University from 1935 to 1942 ?—A. At the Sydney Hospital. It is a University appointment.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 13th December 1943, Examination, *continued.*

I am at present deputy chairman and executive officer of the State Co-ordination Committee. I have had extensive experience in all types of surgical work. I am a general surgeon. I have had a large experience with thyroid operations during the last 20 years; extensive experience. I made a special study of thyroidectomy for many years. I have addressed members of the medical profession on the medical and surgical technique in connection with those matters. I published a pamphlet for the guidance of the profession.

Q. You saw the patient on the 21st February 1938?—A. May I refer to my notes?

His HONOR: What notes are you referring to?—A. A record I made on my card when the patient called to see me. The date was the 21st February 1938.

To Mr. CASSIDY: She had been referred to me by Dr. Harold Ritchie, of Macquarie Street, a physician. I got a history from her. She gave her age as 41, married, one child 13 years old, and she said she had had a goitre for four months. She said she had been ill for 12 months, that she had had an itch in the back, and had been treated by Dr. Flynn. She had palpitation for nine months and she felt the heat and she had tremor; that is, she was shaking. She stated she had been in hospital one month at Quirindi. She did not know if she had taken iodine. She had been given quinine. I found on examination that her pulse was 132. She had a clammy skin and a moderately enlarged thyroid. I recommended her admission to St. Luke's. The normal pulse rate is regarded as 72. I would describe 132 as a very rapid pulse.

Q. Did you diagnose her complaint or was diagnosis obvious?—A. It was obvious. She was suffering from a disease known as thyrotoxicosis. It was in an acute form. I felt she had it for some time, but I would regard it as an acute form; "severe form" would be better. I recommended an operation. I recommended she should go into hospital for rest and pre-operative treatment. It was in my opinion vital that an operation should take place.

Q. In this complaint of thyrotoxicosis, in her condition was it necessary to have pre-operative treatment?—A. Yes, it was essential that she should have pre-operative treatment because if they are operated on without adequate pre-operative treatment they are very prone to develop what we call a thyroid crisis, thyrotoxic crisis, which is a very serious condition and often ends in death.

Thyrotoxicosis is a serious matter for the surgeon. They are very serious cases. They are serious to us because we always fear they may get these crises after the operation. The general symptoms are: first you get this increase in the pulse rate. The patient complains of palpitation particularly on exertion and even without exertion they complain of their heart beating when they are in bed at night. They usually feel the heat because their body is as it were "burnt up" by the increased metabolism. The thyroid is driving the chemical processes of the body.

Q. What does that mean?—A. The ordinary chemical processes in the body are accelerated, nutrition and everything. They can eat more.

It can be described as a burning up. That is quite a good way of describing it, a layman's way of putting it.

Q. What is the effect on the system of the person who has the disease ?—A. It affects the whole body and every system, particularly the nervous system. You get all grades of nervous disorders.

I myself have seen everything from an acute mania to what you might describe as cases suffering from nerves.

The WITNESS : I have seen every type of mental disorder ; I have seen acute mania ; I have seen melancholia ; I have seen them die in some of these attacks before operation.

Mr. CASSIDY : The palpitation in the heart, the increase in the heart rate, what brings that about ?—A. It is the poison from the thyroid gland circulating in the blood ; that is the basic trouble.

Q. And is one of the things that they lose weight very much ?—A. Yes, the majority lose weight very much, and if they go on it ultimately affects the heart very greatly ; they get breaking down of the heart.

Q. What is the effect on their temperament ?—A. They become very nervous and irritable.

Q. Did you find these signs in this patient ?—A. Yes, she was very nervous.

Q. She was admitted on the 22nd February 1938. Prior to the operation did you see her ?—A. I visited her frequently up to the operation.

Q. You can give the date if necessary ?—A. I cannot remember every date ; I was to see her very frequently ; she was in hospital approximately three weeks before the operation ; first of all, she was to be at rest with a sedative and given a course of treatment with iodine which prepares the patient for operation.

Q. But looking through the notes up to date of operation, do they show the treatment you gave her, the lugol treatment and iodine treatment ?—A. Lugol solution is a solition of iodine and potassium iodine.

Q. Is this correct, that you saw her almost daily except for a couple of instances ?—A. Yes, I had to go to Melbourne for a few days not long before the operation.

Q. During that time did Dr. Aspinall see her ?—A. Yes.

Q. On the 15th March, 1938, you operated at St. Luke's ?—A. Yes.

Q. Who was your assistant ?—A. Colonel W. E. Kaye.

Q. Did you perform the whole of the operation yourself ?—A. Yes.

Q. And was Dr. Kaye a surgeon of experience ?—A. Yes, he was the senior assistant honorary surgeon at Sydney Hospital, a man of years of experience.

Q. He has been killed ?—A. He was killed in Greece.

Q. Have you got a clear recollection of this operation ?—A. I remember this operation because certain incidents were particular in it.

Q. So that your recollection was clear ?—A. As clear as can be after all these years.

Q. I want you just to explain to the jury, because it is necessary to have it, what the operation means ?—A. Could I have any diagrams to help ? Reinhoff and Sloane are the best.

Q. Before you come to the actual cut the first thing is the anæsthesia ?—A. Yes.

Q. Was there anything connected with that in this particular case, anything you remember ?—A. I followed my usual course. I frequently

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operate with what we call Narco local anæsthesia. You give them sedatives, morphia, some time before the operation.

Mr. SHAND : Was that done in this case ?—A. Yes.

Mr. CASSIDY : The record shows it was done at quarter to six ?—A. Yes, it is a good while before.

Q. On the 14th, 5.45 a.m. H.I. morphia given ?—A. That is on the morning of the 15th. Narco local anæsthesia was part and also part gas and oxygen. It takes longer with Narco local anæsthesia because the idea is you give the narcosis the first dose two hours or so before in order to get the patient well sedated before they go to the theatre. When they come up to the theatre you have to examine the patient and see if they are sufficiently sedated, if they are not you have to give them another dose and wait until that has had effect.

Q. Was that done in this case ?—A. Yes.

Q. What was given ?—A. It would be another dose of morphia.

Q. And what is the ordinary time that that takes ?—A. It usually takes about half an hour.

Q. That is before you start your local anæsthetic ?—A. Yes, then you inject the local anæsthetic, and after that, that takes the best part of quarter of an hour or 20 minutes, it has to be done very carefully, injected into the tissues, you understand the neck has a lot of vital vessels there, and you have to be very careful with your long needles, and you wait for that to have effect. It is a time-consuming operation, you must not start until the patient is right. Success of the operation depends on that, then at this stage when you have injected the local you give the gas and oxygen with the idea of reducing shock.

Q. Coming to the removal, the first thing is the cut ?—A. Yes, there is one thing I ought to say—(Objected to, by order of His Honor the remainder of the statement struck out).

Q. The next thing was the cut ?—A. Yes, the incision.

Q. And that incision, where do you make that ?—A. It is made just above the top of the breastbone (indicating).

Q. Where does it go from, where to where ?—A. It runs across from about there to there (indicating).

Q. When you make the incision the flaps are tied back ?—A. They are actually dissected up (p. 242, Reinhoff).

Q. And this one shows after the operation the finishing up ?—A. Yes. (p. 321, Sloane).

Q. Can you give us the next one ?—A. Yes, the flaps are reflected up (p. 300 of Sloane). I have a slide here which shows it up better.

Q. Is that your own slide used for teaching purposes ?—A. Yes, for students.

Q. That was not prepared for this case ?—A. No, it is used at Sydney Hospital.

Q. Your incision done, then do you open your thyroid capsule ?—A. Yes, you separate the straplike muscles that extend from the hyoid and thyroid bone down to the sternum, from the Adam's apple down to the breastbone.

Q. You cut those, do you ?—A. You separate them, occasionally you have to cut them to expose the gland.

Q. When do you start to open the thyroid capsule ?—A. After you have done that.

Q. And is that a good illustration of it ?—A. Yes, the muscles are then retracted (pp. 243–245 of Reinhoff).

Q. Then you start to open the capsule ?—A. Yes.

Q. You cut through that and is that shown on p. 245, the capsule being held back by clamps ?—A. Yes, that is right.

Q. And what kind of a bag is it ?—A. A tough but thin membrane.

Q. You would describe it as tough, would you ?—A. Yes.

Q. That having been done what is the next thing ?—A. Then you begin to shell out the gland. That is shown quite well here on pp. 246 and 247 (Reinhoff). You have to do that very carefully, of course.

Q. When you say shell out, how do you shell it out ?—A. That was done by your finger or blunt dissector, you gradually separate the capsule sheath from the gland.

Q. Then what is the next thing ?—A. The next thing is you expose the superior thyroid artery which is at the top of the gland and that is shown on p. 247, the early stage of isolating the artery.

Q. There are one of those on each side ?—A. Yes.

Q. It is necessary to expose that artery, is it ?—A. You cannot remove the gland without exposing it and ligating it and cutting it. It is a careful process, if you follow each picture you will see the artery coming into view and being isolated with a pair of forceps under it and further there you will see the forceps on it and then later cutting it with the knife.

Mr. SHAND : Is that after it has been ligatured ?—A. It has not been ligated there.

Q. But wouldn't it be ?—A. Not in this one.

Q. I mean wouldn't it be ?—A. It would be ligated after that.

Mr. CASSIDY : You separate it ?—A. Yes.

Q. And then you clamp it ?—A. Yes.

Q. What is the next thing you do ?—A. You ligate it.

Q. What is the next thing you do ?—A. You sever it.

Q. Have you always to sever that artery in this operation ?—A. Yes, because the artery, so to speak, ties the gland down and you must sever it.

Q. Would you describe those three illustrations ?—A. Starting at p. 250 that shows the superior thyroid artery severed, the next one is where it shows it with the clamp still on the artery and gland with the upper end of the artery being ligated. Having done that of course that is not all the operation, there is still quite a considerable amount of severing of the gland to be done at the lower pole and there are other vessels to be tied there.

Q. How are they tied ?—A. With ligatures.

Q. Then what is the next thing you do ?—A. Having secured the arterial supply you proceed to remove the portion of the lobe, the diseased gland, and that is done by slicing it away and leaving a small strip at the back of the gland. It is shown here on pp. 252 and 253.

Q. In this case how much would you say you left behind ?—A. I removed in this case 7/8ths of the gland so that would mean that one would leave 1/16th of each lobe.

Q. Is it necessary sometimes to leave some portion of each gland ? A. I put it this way, it is an extra safeguard to protect the parathyroids. Then having cut that away you have to stop all your hæmorrhage from that area, that is the final part shown on p. 255. There is an illustration

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in Sloane's which gives a better idea of that, of the position at the end of the operation (317 of Sloane). After you remove it there is perhaps a little more than I would leave there, but that gives an idea of what strip you leave at the back of the gland.

Q. When you speak of an isthmus that is the piece that connects the two lobes ?—A. Yes, across the front of the windpipe (p. 317).

Mr. CASSIDY : Having got that out could you give us an idea of how many knots you would have there ?—A. I have never counted them.

Q. But would there be a number of knots ?—A. I have never counted them, but I would think that there would be well over 50—more than that.

Q. And what would they be of in this operation ?—A. In this operation I use plain catgut. In this particular case I used and I have done it for some years, catgut specially prepared by the London Hospital in glass ampules. I could show you one if you like. I have got one in my bag (produced). I use my own catgut. I always take the catgut to operations.

Q. And is that the same catgut that you have been using—for how long do you say ?—A. I have been using that type of catgut for seven or eight years or longer—10. That is an example of the type of catgut which I used, and that would be the coarsest gut that you would use. You would use finer, also.

(Catgut tendered, marked Exhibit 3.)

Q. That is the class of catgut that you used in this particular case ?—A. Yes.

His HONOR : It is in a liquid, isn't it ?—A. Yes.

Mr. CASSIDY : That is for sterilisation ?—A. It is a sterilised catgut and it is kept in that liquid. Once I open it I don't keep any of it for use in another operation. If there is anything over it it is thrown away.

Mr. SHAND : Is that liquid alcohol (indicating) ?—A. I could not say what the London Hospital uses, I think it is some alcoholic fluid.

Mr. CASSIDY : Then once you get your thyroid out, do you retrace the steps in your operation ?—A. Yes.

Q. Bring us backwards. Bring us along to the end in sequence ?—A. You just let your retractors go, and the muscles come together with very little tension. You have to place some sutures in them—in the strap-like muscles. The best illustration is this slide, because it is the one I used to use for the students (indicating). The best way to demonstrate it is this book (book shown to jury). This is page 255 ; that shows the muscles retracted (indicating). You can imagine that if you removed that retractor there, that drops back like a curtain. These slides show against a white background (indicating). You can see two fine catgut sutures are placed between those muscles just to keep the edges together. Sometimes you have to cut across that muscle, across the upper part. It is an operation which some surgeons do quite frequently, and I think the first I know that it was described was from the Mayo Clinic in America.

Q. Then what are the sutures you put in your muscles there (indicating) ?—A. They are all plain catgut.

Q. You spoke about these muscles. You can illustrate these muscles on the neck, the two muscles that you speak of?—A. You mean in the living subject?

Q. Yes?—A. It is hard to see the sternohyoid and sternothyroid, but the sternmastoids stand out.

(Slide tendered and marked Exhibit 4.)

Q. Having stitched it down like my coat (indicating) at the bottom you will have a kind of opening?—A. Yes, that is where you place the tube.

Mr. SHAND: You put the tube in afterwards?—A. As a rule you do that.

Mr. CASSIDY: Might it vary?—A. Sometimes you might put it in to see how it is fitted, before. That is my usual technique, the one on the slide.

Q. In this case you say that there is something that makes you remember this operation?—A. As I said before, in this operation I had difficulty in isolating the superior thyroid on the left hand side.

Q. How did that occur?—A. To me, I considered that it was a congenital abnormality. It was an abnormally placed artery, and the moderate enlargement of the gland had displaced it also. I found difficulty in getting it. I had to dissect it off, and the ligatures slipped when I was tying it, or the artery slipped when I was tying it.

Q. What happened then?—A. Well, that meant that we had some definite difficulty at the time, and we ultimately secured it with no great loss of blood.

Q. Before you close these cavities up, you have your arteries tied, have you not?—A. They are all tied, yes.

Q. Before you close up?—A. Yes. Before you close up you use swabs. You use two types of swabs.

Mr. SHAND: Might the witness be not led in these matters.

His HONOR: Yes, that was leading. Don't lead any more, Mr. Cassidy.

Mr. CASSIDY: What do you do before you close up?—A. You have to see——(Objected to as leading question).

His HONOR: Put it this way—describe the operation.

Mr. CASSIDY: Just describe the operation?—A. Well, when you have all your arteries tied you swab out any serum or blood that is there with swabs, and, as I say, there are two types of swab. There is the gauze square which I think you have shown in your address, and a larger one. The larger swab is very useful for soaking in a saline solution and washing out the cavity.

Q. Are those the two—are those the classes (indicating)?—A. Yes, those are the types of swabs that are used.

(Swabs tendered and marked "Exhibit 5.")

His HONOR: How do you describe them?—A. Two types of swab used.

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Mr. CASSIDY : How do you use them ?—A. Well, the small ones you take in your fingers like that and just dab on any bleeding point because this is an operation on a very delicate area and you have to be sure to get all your little oozing points stopped.

Q. And what is the condition of the area that you want ?—A. You want to get everything dry before you bring the muscles together. Even then there is a considerable amount of serum which oozes from the cut surfaces for the first twenty-four hours, anyway.

Q. Speaking of the things that you mentioned there, would you look at these illustrations (indicating). Do those illustrations show the type of things you meet with ?—A. Yes.

Q. Just show those to the jury.

His HONOR : What are the pages you are referring to in the book ?—A. It is Beavers Surgical Anatomy, p. 605 (shown to jury). This shows the number of vessels there are in the neck. This is p. 608 and this is p. 613 (indicating).

Mr. SHAND : This is the superior thyroid (indicating) ?—A. Yes. That shows the blood vessels in the neck. That is all it shows, and their situation.

Mr. CASSIDY : Now if you took a cross-section—do you see this diagram. It is showing a cut through (indicating) ?—A. Yes. That shows the condition of affairs in the human neck. That is a cross-section of the human neck. The one on the right I am referring to. That is much higher (indicating). The one on the right is the base or the bottom of the thyroid.

(Mr. Cassidy tenders sketch.)

Q. How would that compare with a neck like Mrs. Hockings' ?—A. Well a small one of the long type. (Shown to jury.)

Mr. SHAND : Is the thyroid round the larynx ?—A. It is either side of the larynx, not round it. This is only for showing vessels (indicating). I would not demonstrate the thyroid on that myself.

(Tender objected to by Mr. Shand—tender withdrawn.)

Mr. CASSIDY : You have given me an account of the swabbing, and then you were going back, and I think you got to the muscles ?—A. Yes.

Q. In this operation can you tell us when you put your tube in ?—A. When I put my tube in ?

Q. Yes ?—A. Well, I put the tube in—the muscles—I would not swear as to whether I put the tube in after I stitched the muscles or before. What I sometimes do is to put a couple of stitches in the top and the sides of the muscles to try it, and then I put the tube in.

Mr. SHAND : The doctor did swear he put the tube in afterwards, before.

His HONOR : We will see what the note is.

WITNESS : I said that is the technique. I taught the students.

Mr. CASSIDY : Can you remember definitely in this case which one it was ?—A. I cannot remember definitely which one it is.

Q. What kind of space do you leave for your tube ?—A. There is no tightness at all—the hole—(Objected to.)

Q. Everybody agrees that you do not sew the whole neck across do you ?—A. No. I would like to explain. These muscles are brought together as in the diagram—that slide—and there is a space left at the bottom, where you put the tube in before or after. I will put it that way.

Q. Then at what stage do you start to sew up the neck ?

His HONOR : Is that the slide you are referring to (handed to witness) ?—A. Yes, that is the one.

Q. And where is the hole you are referring to ?—A. Down here at the bottom (indicating).

Mr. CASSIDY : When do you start to sew up the outside of the neck ? —A. Well, having got those muscles together you just put the flap back —put the lid back so to speak. It shows it here (indicating in book). You stitch those muscles up and you then begin to stitch the skin, and this layer here (indicating), the skin incision being closed down over those flaplike muscles. You saw in one of the diagrams one of these things pulled up and one pulled down, and then you just let them come together. There is a thin layer of platyama, a very very thin muscle, which is cut in the same line as the skin, and you usually sew that with a very fine catgut so as to leave a very fine scar, and then you put your horsehair stitches in.

Q. And what about the tube ?—A. The tube is brought well down in the neck. The tube was in about there (indicating). It is shown there that it goes to one side or the other of the trachea, about the middle line. It goes almost straight in, occasionally a little downwards or a little upwards, but it is not pushed down that way or up that way, and it is absolutely essential that you do not push it straight in there because it would go on the windpipe, and it is rather uncomfortable.

Q. You must push it to the right if it is in on the right ?—A. Yes, and if it is in on the left it might go to the left of the trachea, but it must not go straight into the trachea or up in the air or down that way (indicating). You just push it inside the cavity, not to the bottom of the cavity. It shows here (indicating). That is the position of the tube.

Q. What is the length of the tube you use ?—A. Well, a maximum of 2 inches—usually shorter. That is an average tube, not more than 2 inches.

Q. Exhibit 1 (indicating) is a typical tube ?—A. That is a typical tube, but you vary the length of the tube to the patient.

Q. And how much of it is outside the wound, would you say ?—A. Well, there is a good quarter of an inch or a little more because the safety pin is superficial to the skin.

Q. You say it goes into the cavity ?—A. Yes. When you speak of a cavity after removing the gland, it is not an open cavity, it is what we call a potential cavity. Imagine a football when it is blown up as a cavity, but if you let the bladder down it is deflated and there is a potential cavity there. It is not a big hole or a big open space like that when you take out the gland, to put it in, and the object is to drain away the blood-stained serum, and you endeavour to just get the tube into the cavity sufficiently to drain the serum. You don't push it in far, because if you do there is a danger of it rubbing up against soft tissues and bruising them.

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Q. And is the neck tender round about there?—A. It is a very sensitive area. Then you were asking me about the completion of the operation. The tube is put in, and for the finer stitching of the skin I use "interrupted horsehair." It is supposed to be best for getting the best scar, if you take it out early.

Q. What do you mean by "interrupted"?—A. Could I have Sloane again. It is here (indicating). They are separate sutures. Instead of sewing it with a continuous suture I always use interrupted horsehair stitches.

Q. The idea is the scar?—A. Yes. You let one go at a time, or more, where you see any tension. You don't want to leave them in too long because they leave a stitch mark.

Q. Anything else about the tube?—A. The tube is secured with one horsehair stitch, and in addition to that I always place a safety pin through the outer end of the tube.

Q. And is that the practice you adopted in this case?—A. Yes, because if you did not do that the tube is so loose that it might slip in or out. I always regarded the stitch is to keep it from slipping out, and if the stitch did happen to break—horsehair is rather brittle stuff—well then, if it was not for the safety pin the tube might slip in.

Before you put on your final dressing you always press the neck very gently and get out any bloodstained serum that has collected while you are stitching up the skin. It is usual for a considerable amount of bloodstained serum to collect after the operation and that is the reason why we have to see that the tube goes into the cavity. The tube is held with one stitch and the safety pin is put in, and then of course you put on a dressing.

Q. Before you put in a tube have you any practice with regard to it? (Objected to, that is the same matter.)

Q. What is your practice with regard to the tube before you put it in?—A. I always test the tube and cut a little eyelet in the end, a drain hole in the end of the tube. I give it a pull like that (shown). You do that with the idea of seeing if the rubber is perished, or to see if the rubber is flabby. I get the tube at St. Luke's, the hospital supplies the tube. The length of tubing is given to you by the theatre sister in the instrument tray, and it has been sterilised and boiled. I cut off the length of tube to suit the particular operation. I heard Professor Welsh say that he would use a tube 4 to 6 inches long, but I have never in my experience seen a tube in thyroidectomy 4 to 6 inches long, it is quite incredible. That is the type of tube I used (shown). I have never used a black tube; St. Luke's always have red rubber. I heard Dr. Thompson say that the tube was put in superficially to one muscle and deep for the other side and pointing at that angle up the neck (shown) but that is absolutely ridiculous because it is the one way which is just in here (shown) and in there (shown) and with these two cavities when the thyroids are removed they connect across the middle line, across the windpipe. That is the reason of having it in the base. The drainage comes down in the neck down to the dependent portions, because the patient is propped up in bed afterwards, and you would want it to drain to that region (shown).

Q. At page 333 Dr. Thompson said to Mr. Shand:—

"Q. Now, assuming that the tube was in the left lobe of the thyroid cavity where would it be in relation to those muscles?—

A. Like that (indicating). It would come superficial to those muscles here and underneath all these muscles on the left hand side.

"Q. It would be underneath there (indicating)?—A. Yes.

"Q. Would that serve to retain the tube?—A. Yes. That would be pressed on the tube and help to grip it."

What do you say as to that?—A. Well, I would never use a tube in that position. I think it is best to demonstrate it with a particular tube. (Demonstrated.) I take it Dr. Thompson said the tube comes across this sternum mastoid and underneath the muscles there, and the only way you can get it there is to push it right athwart the windpipe and the patient would be very uncomfortable indeed. No one would dream of doing it.

Q. Would you have put it up in the air draining from the top of the cavity?—A. No, you would not have it pointing up like that. I would not use a tube like that, and if the tube is put in in the ordinary way, these strap-like muscles are very thin, they are not powerful muscles in that way at all. I would think that the power of gripping would be, if any, very feeble.

Q. On this occasion you hear Dr. Thompson state, at page 382, that the patient nearly died on the table. Is that in any way right?—A. It is quite wrong.

Q. The question to Dr. Thompson, at page 381, was:

"Q. Why not open it?—A. It was too dangerous. The patient nearly died on the table. She came from the theatre semi-conscious with a rapid running pulse. She had to be given rectal saline and she lost a lot of blood and I draw the inference from that that she was in a desparate condition."

What do you say to that observation, considering the material you had to go on? (Objected to.)

Mr. SHAND: That is a question of one witness commenting on another witness's evidence, but he can give his own views of how the patient was.

Mr. CASSIDY: I will do it that way.

Q. It is said there that she had to be given rectal saline, what does that mean?—A. Rectal salines are salines solutions which are run into the rectum. Generally one gives about 6 ounces in the case of thyroid operation. It is an invariable rule of mine to give them rectal solutions with lugol solution added.

Q. And the object of it being?—A. To supply fluid. These patients have been sweating a lot during the operation and the lugol solution is given with the idea of lessening the risk of thyrotoxic crisis. It is just a procedure we had in those days.

Q. What do you say as to this account of her being in a desperate condition?—A. This is a very serious operation but I would not have said that her condition was desperate. It is a very serious operation, and naturally you would regard the patient's condition. If you were asked what list you would put her on you would put her on the seriously ill list.

Q. I don't know whether it has been suggested, I did not think it had, that you might have stitched the tube up, but so that the jury may follow it, what do you use for stitching?—A. A plain catgut suture with a round non-cutting needle, that is not cutting on the side.

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Q. If you had a piece of rubber in a wound and you stitched it, would it be hard to stitch up, the rubber, without noticing it ?—A. Well, you are stitching in a very delicate area and you are not waving your needle around in a cavity, and if you are stitching with this type of needle, if you catch rubber you are immediately conscious of it. When we are suturing rubber, putting in a horsehair stitch that attaches it to the skin, we have to use a cutting needle, but with this we have no cutting surface and it is very hard to drive that through the rubber, and anyone operating would be conscious at once of it and you would pull the tube right out.

Q. Is the tube easy to slip in and out of the wound ?—A. It slips in and out, that is the practical difficulty. If you are stitching rubber you want to use a needle with a cutting edge, because if you try and drive that through it is quite hard, because you hold your things very loose. That is the needle you use for stitching the deeper tissue. I have not got one here that you use for rubber, but I could bring one up. It is what we call a bayonet needle, a straight one.

(Needle tendered ; marked Exhibit 6.)

To His HONOR : This needle is a round bodied curved needle, non-cutting on the edges.

To Mr. SHAND : When the suture is being made the needle is used like that (shown). That is the flat end of the needle up there and when you are stitching you put it through like that, and then you have to let go and catch the point. You push it through like that and then catch the point (shown).

To Mr. CASSIDY : The one I use for rubber is straight. It is sharp, but it is also like a bayonet with a cutting edge.

After the operation the patient's pulse was rapid. If my memory serves me right, I think the pulse rate was 120. I have got a copy of my records here. I have had prepared the temperature, pulse, etc., from the records. The temperature and the pulse rate are important. The temperature for this reason, that after these operations, if what we call a crisis is setting in, it is very important to watch the temperature to see that they do not get what we call hyperthermia, that is a very high temperature. One has always to guard against that and get in early with the treatment. After every thyroid operation, I am talking of toxic thyroids, the temperature rises and sometimes you get an alarming rise, that is what we call the post-operative rise which is associated with thyrotoxicosis.

(Mr. Shand objected to the statement being handed to the jury as it was misleading, and it was very confusing, and after some argument Mr. Cassidy stated he would have it re-drafted.)

Q. Looking at the records of temperature and pulse, what do they show as to the aftermath of that operation ?—A. Well, they show that it was not an unusual reaction following a severe operation.

I said you have to watch for hyperthermia, and those temperatures go up to 105 and 106. It is during those first 48 hours, sometimes longer, that you get these crises, and you have to watch so carefully. The records of any unduly high temperature would always be regarded. There is not anything unduly high in any of those early days. I know that here somewhere the pulse was settling down. After the operation the pulse was very rapid and light, but the pulse settled down by 3 p.m.

To His HONOR : That was on the 15th, that is the day report.

To Mr. CASSIDY : The pulse settled down by 3 p.m., and breathing was deep and steady. That shows that she was then beginning to settle down, the primary shock of the operation was beginning to wear off. On the 16th there is a note; "Drs. Bell and Ritchie here, pleased with patient's condition, dressings continued, slight serous oozing through tube. Taking fluids and nourishment fairly well to-day." The pulse than was 96 to 104, and that is, I would say, a usual pulse after a severe operation like that. Her condition at that time would be considered satisfactory. On the night of the 15th, or the early morning of the 16th, it says " Fair amount of serous and bloodstained oozing," and that shows that there was liberal bloodstain and serous still coming away. You will notice, as far, as drainage was concerned, that would be in the evening of the 15th that would be towards the end of that day report. " Free drainage from tube, dressings changed at 5 p.m." That means that there had been a copious discharge of bloodstained serum from the drainage tube which necessitated dressing. " At 6.30 a.m. dressings changed, slight serous oozing." That means that it was a normal state of affairs. It is during the first 24 hours that you get the most oozing, it is easing off by the second day. After these thyroid operations some surgeons take out the tube at the end of 24 hours, as most of the oozing discharge has taken place at the end of 24 hours. I leave it in for 48 hours. The reason you do not leave it any longer is that it has finished its job, and when you have to put a tube into a cavity you always feel it may lead to infection, because once you put a tube in it is one of the sources of infection, and if you drain a sterile cavity you always feel the sooner the tube is out the better, as soon as it has performed its function. The object is to get the entrance inside closed up as soon as possible, that is the idea, sealed off.

(Further hearing adjourned until 10 a.m. on Tuesday, 14th December 1943.)

Eleventh day. Tuesday, 14th December 1943.

14th December 1943, Examination, *continued.*

DEFENDANT :

Examination continued.

WITNESS : Your Honor, it is very difficult for me to demonstrate to lay people by a method which is really 300 to 400 years old. When we are teaching students we demonstrate on the dead body.

Mr. CASSIDY : You will remember yesterday that you showed the Court the needle that you use for your inside stitches, do you remember ?—A. Yes.

Q. And supposing you put it into rubber, could you notice it ?—A. Yes. You are soon conscious if you are putting it into rubber because rubber is tough and you really have to drive it through with some force. I am talking about the round needle, not the bayonet pointed needle. It is one of the practical difficulties. When you are stitching the tube into the bowel, for instance, to drain the contents of the bowel out, you put the stitch through the side of the bowel like that (indicating).

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 14th December 1943, Examination, *continued.*

Q. Would you like to demonstrate with the thing itself?—A. Yes. (Handed to witness.) You put it through the bowel wall and then you have to put it through the tube and you put the tube in the bowel, and in your efforts to try and get the needle through the rubber you very frequently in practice pull the rubber out. You have to hold the rubber very firmly to get it through. So much so that I always use a cutting needle—a bayonet pointed needle. This is a bayonet pointed needle (produced)—(shown to jury). I have a magnifying glass in my bag (produced). It is a very powerful one—(Handed to jury).

Mr. SHAND: You can also get these round—circular (indicating)?—A. Yes.

Q. The shape of the other one, but with the bayonet end?—A. Yes.

His HONOR: The bayonet end or the bayonet side?—A. Well it is like a bayonet. It has cutting edges—they have cutting edges at the side to enable them to go through tougher tissues.

Mr. CASSIDY: Are they straight or rounded?—A. That is the one I use for these stitches through the skin (indicating). I also have other ones, and they have cutting edges also. That is what I call a cutting edge (indicating).

(Needle tendered; marked "Ex. 7.)

Mr. CASSIDY: Coming next to these strap-like muscles that you told the jury about. When you cut the isthmus of the thyroid, how far would these muscles be from the skin?—A. Well, there is a diagram in Cunningham's Anatomy which gives a fair idea of the closeness to the skin. I think there is another volume here in Court. That is the volume (indicating). The muscles are in about that distance—(indicating). It varies in different necks. In a neck like the Plaintiff's it would be much less than half an inch. This is the one that was used in the last trial (indicating diagram). It is a cross section of the neck. Mr. Hardwick, the Plaintiff's counsel, used it in the last trial. That is the one that was last used—(indicating—shown to jury). The windpipe is there, and here is the front of the skin. There is the thyroid gland. That is white. It comes round just in front of the trachea there. This is the strong sterno-thyroid cut on the side (indicating). (Witness demonstrates on a woman's neck in the Court.) That is the sterno-mastoid running down there (indicating).

Then these strap-like bodies are the sterno-hyoid there and the sterno-thyroid there. They run down from up here in the front of the voice box down behind the breast bone. You have your skin there and a layer of fat there, and then these are the strap-like muscles (indicating). They are very thin.

Q. Is that part of the neck almost life size?—A. It would be a small neck.

Q. Just explain to the jury, taking your tube again—would that be much more than normal?—A. I would say, looking at that, that it would be slightly smaller than normal. It is somewhere near normal.

Q. Would you show us somewhere near where you put the tube?—A. Well, there is your middle line (indicating) and the tube usually goes in to one or other side of the middle line, and it goes into that cavity. It is not a cavity when the gland is removed; it falls back.

His HONOR : Like a deflated football ?—A. Yes, that is the idea. It lies like that (indicating).

Mr. CASSIDY : The idea being on the one side or the other ?—A. Well, it is the shortest distance to that particular cavity. You cannot push it into the trachea. If it goes straight in it would bump up against the trachea, so you put it this way or that way. If it went in that way you would have to turn it round like that (indicating) to get it into the cavity.

Q. Take a thing like that (indicating). That is the thing that is alleged to have come out. (Objected to.)

Q. This is what is called a fair representation of what came out. This is the piece that was left in (indicating). So that the piece that was broken comes off this end. That is the story. (Objected to.)

Q. Well, that must be so if that is the piece that came off ?—A. Well that is coming into the realms of conjecture. I cannot accept that that was ever used in a thyroid operation.

Q. Assume that a thing like that had been in and you tugged it as suggested. If the wires were in it, they would be outside, and could you help seeing them ?—A. No, you could not help seeing them if it had been used.

Q. Wouldn't you use a shorter tube ?—A. If you had a neck like that you would use a shorter tube. If you had a small neck you would have to use a small tube. The suggestion that you would have the tube over 4 inches is incredible to me.

Q. From your knowledge of anatomy and your experience in these operations, what would be the effect of a tube going across the front of the trachea as suggested ?—A. It would cause extreme discomfort, because as I pointed out there, it is athwart the windpipe. It would be see-sawing across the front of the windpipe, and the windpipe is not a fixed tube in your neck ; as you swallow it moves up and down, rising and falling, and this thing would be rubbing against it constantly and that is one of the things that you pay particular attention to when you put the tube in, to see that it does not rub against the windpipe.

Mr. CASSIDY : I tender that sketch in Cunningham.

Mr. SHAND : They are all in.

His HONOUR : That has been agreed to.

Mr. CASSIDY : There was one other suggestion made by Dr. Thompson, that you would put the tube into the left lobe because you had had some trouble with your left superior thyroid. What do you say as to that ?—A. It would be very unlikely that one would do that. You would keep your tube away from any area in which you would have had trouble.

Q. Because of friction ?—A. Just the same as friction on the trachea. It is not very likely, but that is one of the things you would do.

Q. Can you remember on which side you put it ?—A. I cannot remember at this stage, but I know it would go in approximately at the middle but just to one side or the other. If I was asked to think back, I would say that it would be more likely that I would put it in on the right on account of having trouble on the left.

Q. Can you remember at this stage how many ligatures you put on the left superior thyroid ?—A. I put three ligatures on the left superior thyroid in this case, and I used strong catgut.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell, (Defendant) 14th December 1943, Examination, *continued.*

Q. You heard Dr. Thompson speak of a raw cutgut. Do you use raw cutgut ?—A. I think Dr. Thompson may have used the term unwittingly. Raw catgut is applied to catgut—some of the big hospitals prepare their own catgut, Prince Alfred and Sydney for instance, and they obtain what they call raw catgut which is in paper envelopes, and that is the term here in Sydney that we apply to that type of catgut, as raw catgut, and that catgut is sterilised by putting it through various solutions, and that catgut we call plain catgut which is sterilised, and then if you want to delay absorption, where you would wish the catgut to last for longer, you then place it into some other solutions such as potassium bichromate to chromocise it. That is known as chromic gut, and that lasts longer than plain catgut and some manufacturers describe it as 20-day gut. That is chromic gut, 20-day gut. I use London Hospital plain catgut because there is no reason to use anything else. There is no tension. These muscles come together quite easily. The amount of force required to keep them together is infinitesimal. They do not pull apart like if you are operating on a rupture where there would be a danger in coughing.

Q. Where do you use this chromic catgut ?—A. Well, almost entirely in the abdominal region, where they want the sutures to hold longer. In regard to the abdominal wall, the patient is allowed up on the 17th or 18th day, and the idea is to have some suture such as chromic gut that will last for three weeks—that it will take the strain for say three weeks roughly.

Q. And in this operation—in these structures of the neck, do you ever use chromic catgut ?—A. I have never used chromic catgut in my life in that region, and I have never seen other surgeons use it. I have seen surgeons operate on the thyroid. Sir Thomas Dunhill, Sir Alexander McCormick ; I have never seen them operate on a toxic goitre because it was before their day that these operations were common. I have seen Sir Allan Newton do a toxic goitre. They are very great men in the medical profession.

Q. You were dealing last night—you had some temperatures taken out, and they did not just meet with approval. You have prepared a synopsis of charts from the hospital records ?—A. Yes.

His HONOR : I think the jury are aware that the night report on the hospital records includes the early morning of the following day.

(Document tendered ; marked Ex. 8.)

Mr. SHAND : I have not been right through it, but the scheme seems all right, subject of course to correction.

Mr. CASSIDY : What story does that chart tell you up to the 17th March, the date of the removal of the tube ?—A. Well, the story there is the usual story of a patient who has been operated on for thyrotoxicosis. There is nothing very unusual there at all for a person who was as ill as Mrs. Hocking and who had had that serious operation. The temperatures and the pulses, plus the hospital records, are a guide to me in forming that conclusion. In the hospital records on the 16th day report, I see " taking fluids and nourishment fairly well to-day." In the night— " Pulse regular and good volume."

His HONOR : I don't think the jury can follow.

Mr. CASSIDY : I am reading the day report of the 16th March up to the day report of the 17th March, line 9—" Volume good, respirations fairly slow. Taking fluids and nourishment fairly well to-day." Night report of the 16th, line 13, " Slept fairly well. Cough troublesome at times. Pulse regular and good volume." Then on the 17th—you were there—" Tube removed. Less discharge. Condition good. Appetite improving." What story does that tell you ?—A. Well, one would be very satisfied with that progress.

Q. You may take it that Dr. Thompson said, at page 310—" The cough started directly after the operation, and according to the record on the 16th. On the 15th she was semi-conscious but we do not know exactly when that cough first manifested itself when she recovered consciousness. That cough has great significance to me from the 16th right up to the 2nd October. It suggests to me that the superior laryngeal nerve was being irritated, or it would also suggest that there was something in the vicinity there irritating the larynx on the left-hand side. It would be consistent with a foreign body ; it could easily be explained as such." What do you say as to that ?—A. After all thyroidectomies there is a certain amount of irritation of the windpipe, and you invariably get some cough and irritation, and it was that really which induced me to do a great number of my cases with local anæsthesia because in local anæsthesia you must handle the parts very gently, and my idea in doing that was an extra safeguard to the trachea, but despite that, you always get some cough from irritation, because the gland is wrapped round the trachea and you have to get it off, and if it is a tough gland you must get some irritation. If you operate as carefully as you like, you must get some irritation.

Q. Now, he speaks of the laryngeal nerve ?—A. That is well up on the side. I don't think that has anything to do with the irritation to the trachea because it is higher than the trachea—the part that would cause the irritation. It is outside the operational area ; the sensory part is outside of it.

Mr. SHAND : It is outside the operation area ?—A. Above it. I presume that Dr. Thompson is presuming that the tube is up here at the time (indicating). I cannot answer the question otherwise.

Mr. CASSIDY : It is up there. How long would the tube have to be up there irritating that ?—A. The tonsil is up here—the level of the tonsil would be well above the windpipe. I should say that it would have to go 4 to 5 inches to get up there. It would also have to have got out of the cavity, to get to that area.

Q. If, for example, this doctor is saying that it could affect the laryngeal nerve within a few days of the operation, could it have been anywhere near it ?—A. Not at the first.

Q. And to get anywhere near it, how far would it have to travel ? —A. Well, it would have to travel from here (indicating). The distance from here to the tonsils is a good 5 inches. The length varies in different necks. In a long thin neck it is longer than it would be in the neck of a thick-set man.

Q. And in this case can you tell the jury from where the tube went in to the tonsil, what is the distance ?—A. 5 to $5\frac{1}{2}$ inches.

Q. You heard Dr. Thompson say that the top of the lobe is within half an inch of the tonsil ?—A. Well that is inconsistent with anatomical fact. (Objected to.)

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 14th December 1943, Examination, *continued.*

Q. Half an inch Dr. Thompson said. (Objected to.)

Q. And if Dr. Welsh says an inch, what do you say in regard to this neck that we know?—A. That is ridiculous also. If I could have Cunningham's Anatomy I could give a better idea of the distance between that point and the tonsil. You can demonstrate it better diagramatically. This is Cunninghan's Text Book of Anatomy, Oxford Medical Publications, 1943 Edition, page 1424. That shows a section out right through the mouth back—a transverse section, showing the last molar tooth in the jaw, the jawbone there, and a tonsil there, showing that it is quite at a high level —(shown to jury). If you cut a section right back to the mouth there, the level of the tonsil—the landmark that people use is the last molar tooth. Here is the jawbone itself, up here, and the tonsil is opposite that jawbone (indicating). That gives you the level of the tonsil. You can tell the last molar tooth and then you go straight back from that. Then you have seen the cross-section of the neck (indicating). That is showing the thyroid here and the big blood vessels on either side of the thyroid cavity, and then if you come over here (indicating) you can see the breast-bone away down here, and there is the Adam's apple, and the jawbone is there, and there is the tonsil (indicating). That was on pages 1424, 1429 and 1431.

Q. Now I want to come to March 17th—the removal of the tube. I want to deal with the evidence of the Plaintiff first. On the 17th March, you might tell us how you removed your tube?—A. I left a perfectly good pair of dissecting forceps here at one of the trials and I was wondering where they are.

Q. Well, here they are (handed to witness)?—A. Will I describe the whole incident?

Q. Yes. (Objected to.)

Q. Do you remember this incident particularly, or do you remember it as your practice?—A. I remember it as my practice—invariably—that is at St. Luke's.

Q. Will you take the tube (handed to witness)?—A. I think it is only right that I should state the practice. I was cross-examined by His Honor Mr. Justice Street. (Objected to by Mr. Shand.)

His HONOR: Just answer the question.

Mr. CASSIDY: Just tell us, doctor. (Objected to.)

Q. Did you use that practice in this case?—A. I did not hear you.

Q. It is immaterial. Just go ahead?—A. What am I to do?

Q. Just tell us the practice in removing the tube?—A. Just the tube or the whole incident?

Q. The whole incident.

Mr. SHAND: The general practice.

WITNESS: The general practice at St. Luke's is that you do not do dressings without a sister being present at the bedside. She brings the necessary sterile instruments and dressings and lotions for cleaning up the incision. The dressings are removed, and the wound is swabbed over with some spirits. The horsehair stitch is snipped with a pair of scissors, and you lift the tube out with a pair of forceps like that (indicating—shown to jury). The tube is put in a kidney tray and you always inspect the tube. That is only common sense. And you put it in the kidney tray and I have never seen one used again·

After that you probably swab the wound up again with some spirit and place a dressing on it, and put the strapping and bandages and dressings in place again.

Mr. CASSIDY: Who does that?—A. Well, both may do it. I may do it or the sister may do it. It is done at once because you do not want the wound exposed to the air too long. There is no difficulty in removing the tube. There is no difficulty with these tubes. They do not stick. They slip out quite easily.

Q. For four or five days after the operation when there has been all this cutting of the neck, what is the condition of these cut surfaces?—A. Well, they just lie together, just like that (indicating). They are not firmly glued together. If you took the stitches out, you could take a blunt instrument like a probe and open the wound right up.

Q. Say in forty-eight hours, would any of these surfaces have come together?—A. No, they would only be stuck together with a little lymph.

Q. Now, first of all, did you use your bare fingers?—A. No, that is absolutely unbelievable. You wash your hands before you come in, and even then you would not touch it with your bare fingers. You only want to think——(Objected to.)

His HONOR: Just answer questions.

Mr. CASSIDY: Did you pull hard once and the tube refused to come?—A. No.

Q. Did you pull hard a second time and the tube refuse to come?—A. No.

Q. And then the third time, did you put your hand on her head and pull very hard?—A. No.

Q. What would be the effect of any rough treatment such as pulling in that area, at that stage?—A. Well, the neck is in a very delicate condition at the time; you might say it is friable, and any violence would break the wound down and cause intense pain. The neck is so sensitive at that time that you would never indulge in any rough treatment at all.

Q. And what would be likely to be the results supposing it is suggested that one of these catgut stitches had been sewn in to something?—A. Well, the central portion of the wound could be pulled open.

Q. And at that stage would your catgut still be holding very firmly?—A. Well, it would be holding firmly on the second day.

Q. The London Hospital catgut that you use—what is it as to tensile strength, compared with local?—A. It has a very good tensile strength and it was for that reason that I gave up silk and used this London Hospital catgut. It is stronger than ordinary catgut. That is my practice and experience of it. How they get it that way I don't know, but it is a matter of fact I should say.

Q. You heard the Plaintiff's story that on that occasion when it broke you inspected it in your fingers, and you pulled out a piece, black, and about half an inch in length?—A. No.

Q. And when you pulled it out you said "Damn," and she said "Oh."?—A. No.

Q. And that then you threw it into a tray, and that you and the sister left the room?—A. That is absolutely untrue.

Q. Are you careful as to infection in these cases?—A. Very.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 14th December 1943, Examination, *continued.*

Q. And to leave the room with those bandages off—would you do that ?—A. No surgeon would do that. I never did it.

Q. Or the nurse to leave the room with you ?—A. No.

Q. You say that that incident did not occur ?—A. It never occurred.

Q. Nor anything like it ?—A. No.

Q. Now, I want to come next to this suggestion—you heard it said by Dr. Thompson that if you had left a bit of tube there it would have been madness for you to have endeavoured to get it. As a practical surgeon what do you say as to that ?—A. There would be no practical difficulty about it at all because the wound has not healed. It would only mean taking the patient up to the theatre in proper sterile surroundings, taking out a few stitches and taking the tube out. You would only need at most a little anæsthetic in the skin.

Q. And have you had occasions when you have had to do that sort of thing ?—A. Yes. I had one occasion in Sydney Hospital, forty-eight hours after the operation, when one of the ligatures broke on one of the jugular veins, and I took the patient to the theatre, and with some local anæsthetic I had no trouble at all.

Mr. SHAND : Was that a case where there was infection ?—A. No infection at the time.

Mr. CASSIDY : And was there any infection here on the second day when you took the tube out ?—A. No, nothing to indicate infection.

Q. And is the first indication of any serious infection not till 4 o'clock on the morning of the 20th ?—A. I think one ought to be clear there. You get some inflammation if you cut your hand ; you get some inflammation there, but that is a very different thing to an infected wound.

Q. " 4 a.m. on the 17th, 99.4, 100 and 18 " ?—A. " 4 a.m. on the 17th 99.4, 100, and the respirations 18."

Q. And the tube is removed—" appetite improving, condition good " ?—A. Appetite improving, condition good. Also there you will notice that there is a mixture 4th hourly suspended. She must have been getting better ; she must have been improving there at that time.

Q. And then follow your temperatures, the next day. " Little sleep." (Shown to witness.) Then you get 101. Is that anything out of the ordinary ? And then back to 99. Is that anything out of the ordinary in this operation ?—A. No ; there is an invariable rise of temperature in this operation, as I have told you before. It rises up to 105 sometimes.

Q. Then on the 17th and 18th you are back to 99.4 ?—A. Yes.

Q. And from that is there any evidence of serious infection at all ?—A. No, because if you read there " 99.4," that is the temperature, but the pulse is a better guide to any serious infection. But the pulse rate there is 84, and before that the nearest one was 88 to 96. So that there it shows that the pulse rate is coming down ; it was lower than it was before the operation. That indicates that a good deal of the thyroid poison had been removed, or a greater part of it.

Q. Now look down the whole list of the pulse rates after the operation. It is 99, 120, and then after that the highest is 104 ?—A. 102 is the highest that I have here.

Q. No ; I think it is 104 on the 16th ?—A. Yes, that was on the 16th. It was higher before. That is right.

Q. Now, up to the 17th or the 18th, the time of the removal of the tube, is there any indication of infection at all ?—A. There is no indication of any infection.

Q. When do you say you get an indication of infection ?—A. Well, there is one on the morning of the 20th that I regard as one of the outstanding temperatures. Although the pulse rate there is not high, still I would regard that as one of the definite signs of infection.

Q. Now we have got it at night, 102, 98 and then 97, temperature, and the pulse dropped to 88, and then at 4 o'clock the temperature goes up and the pulse goes up somewhat. That is at 4 a.m. on the 20th ?—A. That is the time that I would consider that there was evidence of some infection taking place.

Q. Was that heavy infection, in your opinion, judging by what happened afterwards ?—A. Well, naturally, I was worried about it at the time, but the subsequent history shows that it could not have been a heavy infection.

Q. At the time, 103 gives you what ?—A. I would consider it was too high for the fourth day after the operation when one takes it that all the days before that things were coming down and improving.

To Mr. CASSIDY : The subsequent history shows that the infection was short-lived so far as the acute stage is concerned. The acute stage was practically over by 4 a.m. on the 23rd in the small hours of the morning of the 23rd, because there the temperature is 97—there was no temperature then—and the pulse rate was down to 76. I regard that as the period in which this short acute infection lasted. After that it gradually subsided, became sub-acute, and then chronic ; well, not very chronic.

I note that on the 20th I probed the wound, that night 8.30.

Q. Is that a usual thing to do ; what do you say ?—A. If there are signs of infection and some swelling around the wound, you would probe it to let out any serum which had accumulated there.

Q. What does combined consideration of the night and day reports show ?—A. It says " Patient more comfortable."

Q. Take the night of the 20th ; how did she respond to the probing ? —A. The probing would release the tension and the discharge would come out and she would feel more comfortable. Then foments were ordered. She was swallowing quite well there because the fluids were taken well. The swallowing was not pressing on her œsophagus. Also the dressing was changed a.m. that would be early morning, and there was a fair amount of discharge. It shows the effect of the probing had been good.

Q. Had you thought, had you knew you had broken a tube and left it in would your probing have found it ?—A. Imagine it being there, you would be quite likely to feel it.

Q. If it were the seat of anything which looked like the seat of a dangerous affection would you have gone after it ?—A. If I thought it was there. It would not have deterred me. One has taken out quite a number of foreign bodies like this, in wounded soldiers.

I have had extensive experience in taking out foreign bodies, because I saw scores of wounds in France and Belgium, and since I came back I have been connected with the Repatriation Hospital since 1919. In this war also I have looked after some of the Naval men. I removed a large shell from a naval man. He went down when the " Canberra " went down. I have had very extensive experience.

In the Supreme Court of New South Wales.

Defendant's Evidence.

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Q. Will you look at the 21st—(Read). It says " Swelling decreased and feels more comfortable " ?—A. That indicates to me that the patient is feeling more comfortable and the swelling is going down as a result of the probing.

Q. " Temperature swinging " ?—A. It is obvious, well, you would not know that particular day; but the subsequent history shows the temperature was swinging down in the right direction. The pulse was more steady. In infective conditions you pay tremendous attention to the pulse.

Q. Dr. Thompson described it as a moderate infection. Professor Welsh said swinging temperature indicated a heavy infection. What do you say to that ?—A. I say that that is ridiculous. Dr. Thompson is much nearer the mark.

Q. In this matter, the observation of whether things indicate infection or not, is it a matter of experience and practice you want to be able to deal with charts ?—A. The man looking after the patient who has had large experience in the care of them and after-treatment, well. must have more experience.

Q. Go on to the 21st. You were there at 8.30 p.m. It says " wound probed, Little sero-purulent discharge expressed." (Night report 21st March 1938 read.) ?—A. . . . There was not so much discharge coming away then. It was satisfying. The chart was still elevated. You notice pulse 80. That is a very important point; the pulse is only 80. I say that again in a woman who had a more rapid pulse before the operation.

Q. Take the day report of the 22nd. The remaining sutures were removed ?—A. Yes. Pronto-sil tablets were given.

Q. You are leaving something out, are you not ?—A. I am on the reports.

Q. Yes, " Remaining sutures removed." What does that indicate ?—A. It is one of the sulphonamide group. It was the first which reached Australia; that is the groups used so much now in infection. You all know of M and B in pneumonia, and this was one given for infections. It is given now as a routine and after-war wounds.

The temperature was normal until 4 p.m. and then it went up to 100 in the afternoon. It is still a little afternoon rise.

Q. The following day it is back ?—A. Pulse 76 again. I emphasise the pulse.

Q. You have heard this talk with regard to a foreign body, that if there were infection there it would be madness to go after it. Do you know of your own experience of soldiers wounded in New Guinea, that in the early days it was days before you would get them back to Hospital ?—A. I know that that does take place. I have been informed that that is so. (Objected to.)

Q. Do you know that they are brought to Sydney to be operated on ? (Objected to; rejected.)—A. If you had asked me about conditions in France I would have given you an answer.

Q. Well, from your experience in France what do you say ?—A. Yes, I removed many foreign bodies from wounds which had been infected.

Q. Would that be some time after ?—A. They usually reached us days afterwards—two or three days afterwards.

They were successfully removed.

Infection can occur to the wound despite the greatest care on the part of the surgeon at the hospital. It is one of the things that we meet now and again, every now and again, and we cannot explain it. In lots of these cases it is difficult to explain it. Organisms may possibly be from catgut. That is one possibility. They may, of course, come through the air by droplet infection although every care is taken to prevent it by wearing masks.

Q. By someone breathing?—A. In midwifery cases and confinements people wear masks. They are very particular. The old idea that it was in the air, now they know it comes through the air. You may get an infection from the patient's own skin. Organisms may get down the tube. It was one of the reasons why one wishes one would do the thyroid operation without a tube, and also sometimes the patient is restless. I have known them to handle wounds. It is also possible for secretions from the mouth to appear on the wound. That is one of the reasons you put on such ample dressing on these cases, because they may vomit. The vomitua may get down on the wound. Despite all those, infection sometimes occurs.

Q. Have you had numerous experiences, in a large surgical experience? —A. I would not say "numerous," but I have had a number, I regret. I can remember one thyroid. The woman after the operation was comatose for some days with her head hanging down and some of the secretions from the mouth must have got on the wound. She ultimately made a good recovery, after some weeks.

Mr. SHAND: Not eighteen months?—A. No, not eighteen months.

Mr. CASSIDY: This woman was two or three weeks at home?—A. I always tell patients——(Objected to.)

Q. But what did you tell her?—A. She was instructed to swab the wound. (Objected to). I am sure I tell every patient this. I have told hundreds of them in Sydney Hospital . . . (Mr. Shand objects to this and asks that it be struck out—no direction given).

His HONOR: What did you tell Mrs. Hocking when she left hospital? —A. To swab it with spirit and keep on the sterile dressing, to swab the wound with spirit, sterile dressing, and some little strips of Z.O sticking plaster. It is possible for wounds to become infected from the skin although it may be a tiny little opening.

Mr. CASSIDY: Were you asked by her or by her husband whether she could leave the hospital?—A. I cannot remember which one asked me, but I know she was anxious to get home. That was perfectly natural. She had been ill a long time and had been a long time in hospital the year before. There are risks in allowing a patient to go out with a tiny sinus like that. (Objected to.)

There is a risk of infection when they go out. There is a very slight risk, but it still exists. I cannot remember whether anything was said about the country doctor—the local doctor—at the time of going out; I cannot remember anything except that I promised to get in touch with Dr. O'Hanlon. As regards progress of the case, the only other thing I can remember is I told them to keep on with the calcium lactate; I am quite sure of that. In these operations, when you get an infected wound the sinus may continue to discharge for some time. It is quite common

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for the sinus to discharge for a long time, and they discharge until all the loose materials are discharged.

Q. In this case we hear it said, we see it in the records that knots came out from time to time. In Dr. O'Hanlon's letter of the 10th May he said the Plaintiff herself got knots out of the wound, and swelling. What does that signify to you?—A. It signifies that the infection had delayed really the absorption of the catgut and the knots were still coming out.

Q. What is the effect of infection on knots?—A. When a wound heals up without infection the tissues can act on the catgut, but when infection takes place the process of the healthy tissues acting on the catgut is delayed and the knot can keep coming out for some time afterwards.

I have had experience of knots coming out for some considerable time afterwards. I know of one case where it came out about a year afterwards. It was the same kind of catgut—plain catgut.

Q. We are told in this case that the wound healed by the end of June? Would that be any lengthy time? Would it be anything abnormal in infection having occurred for the wound to have lasted from March till the end of June?—A. I have seen sinuses open for much longer than that.

Mr. SHAND: In thyroidectomy?—A. In thyroidectomy following operation with silk ligatures.

Mr. CASSIDY: Take the fact that knots are still coming out in May and June. Does the fact that those knots are still coming out indicate —What does it indicate to you?—A. That they had not been absorbed.

It would delay the healing of the sinus. The fact that the sinus heals indicates that the infected knots had been got rid of.

Q. Assume for the moment that a tube, a thing like Exhibit "P" (shown to witness) were in a centre of infection, what would you get?—A. You would get a tremendous swelling if this thing were in the neck. I presume that I have to assume these things, because I would not admit it for one minute.

Q. Only assume it?—A. You have this long object here. The abscess cavity containing that would at least be as long as it and it would be longer, because it would be bathed in pus.

Q. What do you mean by that?—A. You may imagine a cavity with this thing and thick pus all around it, and a great swelling of the tissues contained in a large abscessed cavity like a large carbuncle.

Q. If there were infection continuing in that wound, as has been sworn up to the end of June, extruding knots and that body were in there, could that infection have stopped and that would close up and heal?—A. In my opinion it would be absolutely impossible.

I see it was on the 12th April that I first prescribed calcium lactate.

Q. Had something suggested itself then from the patient's condition, I mean, as to her having something?—A. Yes, on one or two occasions she complained to me of some tingling in the fingers.

Q. What does it indicate?—A. When a patient complains of that I always think it is a possible sign of latent tetany and I try and get in early.

Q. Take thyroidectomy; is tetany a possibility there?—A. Yes, a distinct possibility.

The reason for that is, you are operating in an area very close to these parathyroid glands, and even if you don't actually cut them, the blood vessels may be interfered with, because they are all parts of the same system. You very often get temporary interference with them or you sometimes get interference with those blood vessels, and it causes, you could call it, transient or latent tetany.

Q. Where are those parathyroid glands situated? Explain it?—A. They are situated at the back of the thyroid gland; that is, in general terms. They vary in position. That is the reason one plays for safety. They are quite small. Perhaps I could show them here (referring to text-book). There is a very good illustration in Reinoff.

(Short adjournment.)

Q. You were going to show us something?—A. Yes.

(At this stage witness makes reference to two text-books; Practice of Surgery, Dean Lewis VI, and Cunningham's Text-book of Anatomy, 8th Ed., by Brash and Jamieson.)

You are looking at the back and they are there and there (indicating). They are tiny little bodies; they vary in their position a good deal. Sometimes they are actually in it, but as a rule they are back. This is looking from the back. (Up to this stage witness has been referring to Reinoff, parathyroid glands, p. 2.)

They are also shown in Cunningham's Anatomy, 1943 Edition, that is, these bodies here (shown to his Honor and jury). It is page 786. It is the same sort of picture as the other one, they are these little bodies here.

Q. Sometimes they are in amongst the thyroid?—A. Occasionally they are embedded in the thyroid gland.

Putting it broadly, their function is to deal with the calcium content of the blood.

Q. What classes of interference with them can bring this tetany?—A. They may be actually removed, that is one possibility, or damaged. It would be actual trauma.

Q. What do you mean by that?—A. By injury or bruising at the operation, or they may be interfered with by infection following operation.

Q. And interference with the blood supply?—A. Bruising would interfere with the blood supply. I include bruising of the blood vessels going to the gland.

This thyroidectomy operation is one of the operations where it is possible to get tetany. It follows in a small percentage of cases.

Q. Early on the 20th you got the first signs of anything. On the 20th March there is a record—"Patient complains of cramp in fingers. Same sponged and rubbed with effect." What do you say as to that?—A. I do not think it could impress me at all. The fact it was rubbed and that they got better would be rather against it being tetany.

Q. What is the effect of friction or rubbing on tetany?—A. Irritation of the nerves causes contraction. If you irritate a nerve it causes contraction.

Q. There is the Chvostek test?—A. On one or two of the days on which she complained of this tingling in the fingers I tried that test. The facial nerve comes out here (indicating). You tap on that nerve and it makes the patient's face twitch.

I did not get any response.

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To His HONOR : The test was negative.

To Mr. CASSIDY : Later on I gave calcium lactate. If I get a patient who complains of tingling in the fingers I always think it is wise to give calcium lactate. It may prevent an attack coming on.

Q. Is that the thing you go for, for any latent or transient tetany, or any form of tetany ?—A. It is one of the things I use. The common word is lime. We give them lime.

Q. After the 22nd March what do you say as to her improvement ?—A. Her general condition was very good then. I could not find much in the notes after the 22nd. To be correct, it would be 4 a.m. on the 23rd. It says " The patient is more comfortable this a.m. B.S.O. P.M. Chart 4 a.m. 97–76–20."

Q. Following her record along, what is the next favourable sign you see in the hospital record ?—A. The question of when she got up.

That is on the day report of the 28th. She was " sitting on edge of bed. No ill-effects." That was thirteen days after the operation. I say that is quite good progress.

Q. Will you follow her condition on as reported in that way. Take the 29th ?—A. On the 29th we have " Patient to sit out in chair. Up ¾ hour. No ill-effects."

The day report of the 30th says " Up for a while. Feeling a little stronger." The 31st says " Still some purulent discharge. Patient up for some hours. Feeling very well and walking a little." The 2nd April shows " Up and walking a little." There is nothing much there. The wound was syringed.

Q. Take the lugol solution ?—A. That is given to control thyrotoxicosis. Iodine is the principal ingredient which has the good effect.

It is ordinary post-operative administration ; I always give it.

The next is " Up and walking a little (referring to day report of 3rd April 1939). The 6th April says " Very little discharge. May go to bath."

Q. Taking that patient's progress as a whole what do you say ? What should you say, having regard to her condition prior to operation ? What was the progress of that patient when she left hospital on the 13th ? —A. I should say her progress was good—slightly delayed by the infection.

The sinus was almost non-existent when she left. It was just a small tiny opening here near the middle of the neck, low down.

The first I heard of the patient after that was a letter I had from Mr. Hocking.

Q. Do you remember the first letter you got after the tube was out ? It is described as " marine sponge." Do you ever use marine sponge at any time ?—A. No.

The first I heard of the patient after that is a letter from Mr. Hocking. I received a letter dated 2nd May 1938.

Q. That letter has been read. It says that she had taken knots out ? —A. Yes.

Q. What do you say as to the question of the whole body being swollen ?—A. It is a very extraordinary statement for the " whole body to be swollen."

Q. Is there some condition called myxœdema ?—A. That is a disease which sometimes occurs following the removal of the thyroid, either the removal, or a diseased thyroid.

Q. Could an infection have an influence on the whole of the body—swell the whole of the body ?—A. I do not think the infection per se could.

Q. But that is what Mr. Hocking said. It goes on " Tetany still annoying, but the attacks do not last quite so long." Following that did you write to Mr. Hocking or to her ?—A. I wrote to Mr. Hocking.

I there suggested calcium glucinate. That is the thing to deal with tetany. It has to do with tetany. It is a more elegant preparation, usually made up with chocolate.

Q. They are chocolate tablets. What was the next information you had about the patient ?—A. A letter from Dr. O'Hanlon.

Q. Was that the next information ; a letter ?—A. That is the only recollection I have.

Q. Do you think you communicated with Dr. O'Hanlon by telephone. Can you remember at this stage ?—A. I know I rang Dr. O'Hanlon in May and June of that year, 1938.

Q. Have you some report of that which you have looked up at home ? —A. I looked up an old book of appointments and I saw there " Ring Dr. . . . (Objected to.)

I could produce it. I think it is there. It is in the bag there (indicating) but it might take a time to look out. I remember ringing Dr. O'Hanlon, but I only used that to get dates, the approximate date.

Q. The letter of the 10th May came (read). In that letter it was said the neck appears generally better, " less discharge and it appears generally better " ?—A. Yes.

Q. From that time did you ever hear any complaint about her neck, in regard to the trouble of her neck after that time ?—A. Not up till October 1939, I think it was.

Q. That is after this incident occurred ?—A. Yes.

Q. Was that information in writing ?—A. It was Mrs. Hocking's own letter.

After that I had a letter from Dr. O'Hanlon in January 1939.

Q. Was there anything in that period other than tetany referred to in this case ?—A. I have no recollection of anything else but tetany.

Q. You wrote on the 29th June to Mr. Hocking (letter read). At that time was there anything causing any worry other than tetany ?—A. No, I mean I was not worried about anything.

I never saw the patient at all in between the time she left and the time when she came down to St. Luke's in October 1939.

Q. What was the latest you think you heard anything of the Plaintiff in 1938, what is the last news you had had of her in 1938 ?—A. I think Mr. Hocking's letter.

Mr. CASSIDY : Any telephone communication ? (Objected to). —A. I think I rang Dr. O'Hanlon in May and June, I am sure of that.

Q. You told us before that you rang in May and June 1938 ?—A. Yes.

Q. Will you look at the letter and tell us the date that Mr. Hocking's letter is ?—A. 2nd May 1938.

Q. And can you give us the date of Dr. O'Hanlon's letter ?—A. 10th May 1938.

Q. What is the next letter you had with regard to the Plaintiff ? Can you remember without looking at the file, the next letter you had ?

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—A. I cannot remember the letter, but there is a letter missing, it might have been that one.

Q. We have the date of the letter fixed by the Plaintiff ?—A. I don't quite understand what you are driving at.

Q. Can you give me the next letter you got with regard to the Plaintiff ? The last one you have there is the one from Dr. O'Hanlon dated 10th May 1938 ?—A. I can remember getting a letter in January 1939. Dr. O'Hanlon wrote to me early in 1939.

Q. Is that the letter (shown to witness) ?—A. Yes, 17th January 1939.

Q. That letter read as follows :—

> " Your inquiry as regards Mrs. Hocking to hand a few days ago. I must admit that the extraordinary heat wave has caused me to neglect my correspondence. If anything I would say that the lady is improving slightly. The major attacks though not less frequent are becoming less severe, she recovers from them more quickly than before. She has frequent minor spasms which do not leave the muscles involved as sore as before. She was not able to tolerate the large doses of calcium lactate for more than a month or so. At present she is having occasional doses of paroidin s.o.s. also morphia only when she is feeling 'staticky' (as she calls it). For the first time since her return from Sydney she attended a picture show last week I regard as useful and definite evidence that she is recovering, as Mrs. Hocking always said she would attend the pictures when she was better. She certainly looks very well and I can't help thinking there is a big functional element in her trouble."

There, again, nothing was said as to her neck or swelling of her neck ?—A. No.

Q. Do you remember the Plaintiff giving evidence that around about the time she wrote to Dr. Ritchie she wrote to you ?—A. Yes.

Q. Have you been able to find that letter ?—A. No, I have searched very carefully for that letter and I cannot find it.

Q. You heard her suggestion that there were certain other things in that letter. Was that suggestion ever made before, that there was anything in that letter to cause you to keep it away ?—A. I cannot remember any suggestion at any trial, I might not have heard all the evidence.

Q. About that time the letter is in evidence to Dr. Ritchie dated 6th May 1939 ?—A. Yes.

Q. You got a letter which you say you cannot find and on the 27th May 1939 you replied to that letter in these terms :—

> " Dear Mrs. Hocking : Many thanks for your letter. I am glad to see that your writing is so good. I only wish some of the medical students could write as clearly as you do. I hope you will be able to take up tennis next summer. I was talking to Sir Allan Newton in Melbourne about a similar case to yours. He is a great believer in cod liver oil and calcium and he puts his patients on this treatment. I saw another patient some time ago and she is completely recovered. I will write to Dr. O'Hanlon. I told Dr. Ritchie that I had heard from you."

Was there anything in that letter other than about tetany ?—A. No, it certainly conveyed to me that it was tetany that she still had or was worried about.

Q. When you referred to a similar case to hers, when you spoke to Sir Allan Newton, what would that be in connection with ?—A. That would be in connection with the treatment of parathyroid tetany and the other trouble.

Q. Other than that had you heard anything further from the Plaintiff up till after this incident occurred ?—A. No.

Q. And what is the first intimation you had of the occurrence ?—A. A letter from Dr. O'Hanlon early in October.

Q. That is dated 7th October and that said : " Last evening I was called to see Mrs. Hocking who was complaining of pain in her left chest and down the middle of the chest. Clinical examination revealed nothing definite."

His HONOR : Need you read all that again, it has been read before.

Mr. CASSIDY : You heard subsequently that Dr. O'Hanlon had a look at this lady on the Saturday morning, he looked at her on the night of the 6th and looked at her on the morning of the 7th and took an X-ray of the lady at the hospital ?—A. Yes.

Q. Can you tell the jury the date you saw the lady when she came down ?—A. When she came down to St. Luke's.

Q. When did you first see her ?—A. The 27th I think ; it would be in the records. She came in on the 26th.

Q. There is a note " Dr. Bell here examined chest back and neck." Did you examine her throat ? (Objected to.)

Q. Tell us what you did ?—A. I looked at her throat, I examined her head and neck and chest.

Q. If there had been a discharge such as this lady has sworn to would there have been some evidence at that time ?—A. Very definite evidence.

Q. Was there any ?—A. No.

Q. Can you tell us when you saw her throat ?—A. I saw her that day and she was complaining in a letter to me of pain on the left side and I examined that side of her neck and throat carefully.

Q. Looking at your records can you say whether you saw her throat on more than one occasion ?—A. I saw her on the 29th and again on the 31st.

Q. The report shows you had been there on intermediate days, does it not ?—A. Yes.

Q. You received a letter from Dr. O'Hanlon. Following that letter did you have a conversation over the telephone with Dr. O'Hanlon ?—A. Yes, I telephoned him.

Q. What was the conversation ?—A. Dr. O'Hanlon seemed to be—— (Objected to.)

His HONOR : Tell us to the best of your recollection what he said and what you said to him ?—A. I am sure I said this—that was after I received his letter, after the sketch.

Mr. CASSIDY : Did you have a look at the sketch ?—A. I said to Dr. O'Hanlon : " It is a pity that Mrs. Hocking did not keep the thing so that we could see this extraordinary object which she has sketched."

Q. Anything else that you can remember about it ?—A. I cannot remember very much else of that conversation but I remember asking him that question.

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Q. In his letter which reported the incident to you had anything been said about this article bursting through the tonsil?—A. I don't remember the letter saying anything about that.

Mr. SHAND: You used the word "burst," that is not there, but inferentially a reference to it is there.

Mr. CASSIDY: Very well, I will read the whole letter.

"Last evening I was called to see Mrs. Hocking who was complaining of pain in her left chest and down the middle of her chest. Clinical examination revealed nothing definite.

Mr. Hocking gave me the following history—last Monday she had as bad an attack of tetanic spasm as she has ever had, she complained of pain in the neck which was swollen. Until Wednesday she complained of pain and soreness from the neck to the stomach, the act of swallowing was painful, he thought she had symptoms of indigestion and gave her castor oil, salts, etc. On Thursday Mrs. Hocking had a bowel action and passed a piece of grey rubber tubing, squarely cut on one end and ragged on the other, the tube was partially split up and stuck in the lumen was what she took to be a small piece of marine sponge about which was twisted a piece of wire. I enclose the sketch she made for her husband and which he passed on to me.

Mrs. Hocking emptied the tube along with the bowel action result into the W.C. so neither Mr. Hocking nor I saw it.

Mrs. Hocking's description is too vivid for the article to be imaginary, so of course I was somewhat nonplussed when I was asked to explain it all.

Assuming that it was a piece of drainage tube that was accidentally left behind—I suppose it is possible that it could work its way into the œsophagus, though to me it seemed strange that it did not work out through the sinus which persisted for so many weeks after her return from Sydney.

Mrs. Hocking on a few occasions did complain of soreness in the neck, but at no time did I ever detect any symptoms that would indicate an X-ray examination—naturally the possibility of a foreign body being the cause never entered my mind.

Within a month or six weeks after her return from Sydney her nurse did recover undissolved sutures on several occasions, the sinus eventually closed and now she has an excellent scar.

The attacks of tetany have become fewer, nevertheless Mrs. Hocking is still far from well, she is very unsteady when she tries to walk.

If a foreign body has remained in the neck all this time do you think that it may be a possible cause of the tetany and could we now expect an improvement in her general condition.

You understand, doctor, that this question is based on an assumption only.

Mr. Hocking had worked out the foregoing explanation for himself, though he did ask me if it were possible for a piece of tubing to get into her alimentary tract during the administration of oxygen.

To-day I X-rayed Mrs. Hocking's chest and neck, her heart shadow does not seem normal to me, also the transverse processes of the cervical vertebræ on the right side appear rather indistinct and blurred though this I think is due to faulty posture, I could detect no f.b. in the neck or lung fields."

Q. Did you then get a letter from her after the letter of the 7th ?—A. Yes.

Q. Has the œsophagus got anything to do with the tonsil ?—A. No, it is right below.

Q. And where is the œsophagus ?—A. It starts about the level of the voice box.

Q. And is it immediately behind the trachea ?—A. Yes.

Q. If you get a ruptured œsophagus what would be the result ?—A. Death.

Q. The next communication you got was the 11th October from the plaintiff ?—A. Yes.

Q. And is that where you were told that, in her own words, " I think it was then that the tube burst into my gullet and I almost choked " ?—A. Yes, that was the first intimation I had of that.

Q. And when she came to hospital you examined her throat on three occasions ?—A. Yes.

Mr. SHAND : I take it the doctor was thinking when he gave that answer.

Mr. CASSIDY : Is it three ?—A. Yes.

Q. Did a Dr. Marsh also examine it ?—A. Yes.

Q. And have other doctors examined that throat since ?—A. Yes, Dr. Steel ; Dr. Poate at the first trial, and I understand that Dr. Poate and Dr. Edye and Dr. Marsh and Dr. Steel examined her with Dr. Thompson last Saturday.

Q. By the end of October when you saw her, if such a thing had occurred as an eruption into the throat, what would there have been as to scarring and as to evidence of it ?—A. There would have been very definite evidence of the inflammation and definite evidence of the scarring. I don't think an object like this coming out would have left no mark, there would be very definite signs, there would still be an open sore.

Q. I want to return for the moment to this tube. This tube Ex. " P," you told us where the tonsil is situated, the distance of the tonsil from the bottom of the lobe ?—A. Yes.

His HONOR : Where the tube was inserted ?—A. Yes.

Mr. CASSIDY : From the top of the lobe to the tonsil, what would that distance be about in this woman ?—A. Three inches.

Q. You showed us an illustration in Cunningham of a man's head. Assume a tube was in the thyroid capsule, what do you say as to it being able to move, a tube like Ex. " P " ?—A. Well, my own view is that it would be very unlikely to move at all ; it is so large I think it would have to be taken out.

Q. And there are two classes of foreign bodies that may be in the body ?—We think of sterile foreign bodies and infected foreign bodies. A sterile foreign body becomes surrounded with tough fibrous tissue, they remain localised, anchored is a good word. If there is infection and suppuration

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around a foreign body the foreign body does not move because of any inherent properties in itself but it follows destruction of tissues, it is in a bath of pus and it can only move as more tissues are destroyed.

Q. What destroys the tissues ?—A. The pus.

Q. If that body were in the capsule and there is infection there and moving, what would be the natural course of movement, assume that wound is open for a couple of months ?—A. The natural line of movement, if there is any, I mean if there is pus forming the natural thing would be for it to make towards the surface along the sinus.

Q. Why ?—A. Because they go down in the neck. The fascie there are open, the large opening is towards the chest.

Q. In your opinion could that body move out of the thyroid capsule upwards or at all ?—A. I don't think it could without causing very great destruction and if it broke into certain areas it would cause death.

Q. When you said if there were pus accumulated there you said something about going down ; would you explain that to the jury ?—A. The capsule and the cavity from which you take the thyroid is really open downwards, and there was quite a considerable opening going down behind the breastbone and it is the natural way for a thing to spread. Anatomically it is the only way in which it can spread.

Q. And what would have been the result of that if there had that quantity of pus ?—A. If it had got loose in the chest it would have caused mediastinitis, with a fatal result. Inflammation in that region behind the breastbone is very fatal because it is against the heart and in my own war experience I have seen mediastinitis with fatal results and that is my opinion.

Q. If it has to move it has to have this body of pus around it and it becomes very large. Then assume it has to move to get to the tonsil. In your opinion is that anatomically possible ?—A. I think it is not only anatomically impossible, but quite impossible whichever way you look at it.

Q. Would you explain the position ?—A. It is very hard to explain these things without the actual body, but there are vital structures there, you have the windpipe and the gullet and the voice box and then the throat above that and on the outer side you have running up under the sterno mastoids on each side you have the large blood vessels which supply the brain and the tissues of the neck, the carotid arteries, the common carotid and the branches into which it divides and the jugular veins. The neck contains in a small area a number of vital structures.

Q. Nerves and glands ?—A. Arteries, veins and nerves in addition to your windpipe and gullet going down to your œsophagus. I mean you have all these important structures packed into one small area.

Q. Could it go upwards in your opinion, a body like that ?—A. I think it is quite impossible.

Q. Are there any muscles there ?—A. When you get further up, presuming it did get loose out of the cavity from which the thyroid was taken, as you pass upwards and get up opposite the outer side of the pharynx, it then has to go through some very powerful muscles, the constrictors of the pharynx and also the massetter muscles in the same region, the big muscles going to the jaw, the pterygoid, I should say.

Mr. SHAND : It would have to go through those before it gets to the tonsil ?—A. Yes.

Mr. CASSIDY : If we went to the University and saw a neck we could see it ?—A. Yes.

Q. To come out the tonsil what has got to happen ?—A. It has got to get away up beside the tonsil and you have to have a huge abscess there breaking down the structures of the pharyngeal fasciae and the capsule of the tonsil with structures underneath it.

Q. What would happen to the arteries and veins of the tonsil ?—A. They would be bleeding if a thing like this came through. I am not admitting this at all.

Q. Or even a piece of rubber 2 inches long with nothing in it ?—A. It would be equally impossible.

Q. Supposing you got a suppuration which is sufficient to carry an object like that along and assume it is coming through a tonsil could it burst out suddenly ?—A. Not a thing like this.

Q. Or a tube 2 inches long ?—A. No, it would come out gradually ; just the same if you got an abscess with a splinter or something like that.

Q. And is it preceded by a collection of pus and everything around about ?—A. Yes, there would be a large amount of pus in the cavity and what would make the thing very obvious would be the tremendous amount of thickening around the tissues around the diseased cavity. You can imagine a person with a thing this size and you shut your fist over it, you would have a tremendous amount of thickened tissue lying around it, I would say there would be a swelling there the size of a small fist.

Q. Assuming that it had been put in the direction that Dr. Thompson suggests across in front and up in that direction and it was moving in pus, could a doctor or a nurse or the patient miss it ?—A. They could not miss it, they could not possibly miss it, the thing would be so obvious sticking out in front.

Q. And would a tube like that be radio opaque so that it would be shown up in an X-ray ?—A. Yes, you could see it in an X-ray.

Q. Assume it had been moving in this body of pus, take the trachea, what in your opinion would have happened ?—A. I think a foreign body this size with a large abscess around it—I am not assuming that it did burst into the trachea—I think the result would be that the patient would get broncho-pneumonia and die.

Q. Or a tube 2 inches ?—A. Yes.

Q. Let us come to the next thing, burst into the œsophagus ?—A. Those cases are almost invariably fatal ; that is my experience.

Q. And take around these arteries, the jugular vein, the carotid arteries and the arteries around there, what would be the result of a tube travelling in that area in this heavy body of pus ?—A. If the arteries and veins were involved you would get hæmorrhages.

Q. And in your opinion could it move without some of those structures being affected ?—A. Could it move ? I don't think it could move, but you are asking me to assume it did move. It could not move without some of them being affected.

Q. If a foreign body moves as the result of the destruction of tissue, does that tissue regenerate ?—A. Its place is taken by fibrous scar tissue.

Mr. SHAND : What tissue is that that would be destroyed in the neck? —.A If it came out in the forward area you would have a great scar in front of the windpipe if it burst through the skin, I don't think there would be any opportunity to see it if it burst into the trachea or the œsophagus,

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I think the patient would be dead, but assuming, which I don't for one minute admit it could do, that it worked its way through up alongside the pharynx, the only way it could, it has to go up inside the carotid sheath; I don't think for one moment that it could go outside it.

Mr. CASSIDY: That is between the carotid sheath and the artery? A. Yes, because when one is dissecting glands of the neck in malignant disease, to get the glands off the jugular vein you must cut the carotid sheath and then you can strip it up. My own opinion is that it could only go up in close proximity to the vessels inside the sheath, but it is an unthinkable thing; but assuming it gets up by the tonsil then all those tissues lateral to the tonsil would be destroyed and the thing burst in, you would get a great scar there and you would get marked limitation of movement of the pharyngeal and the palatal muscles in that region, in other words if you asked the patient to swallow, instead of getting the normal swallow you would see the palate pulled to one side.

Q. Is there any sign of limitation of movement there in the patient? A. I have not seen her since 1939, but there was no sign of it then.

Q. Has there been any suggestion at any trial of interference with the palatal muscles by any doctor?—A. No.

Q. Would that mean that you would get stiffness of the neck? A. Yes it would tend to be drawn down to the left side, you would get stiffness of the neck.

Q. You saw the X-ray that was taken on the 7th October?—A. That is the one taken at Quirindi.

Q. Does that show any swelling of the neck or interference with movement to the right?—A. No, I can see no evidence of that in that X-ray.

Q. With an abscess of such a nature that would carry that tube or a tube two inches long, in what condition would the neck be?—A. While it was travelling or afterwards?

Q. On the 7th October. Assuming for the moment that it came out on the 2nd October what would be the position on the 7th October as to swelling?—A. There would still be gross swelling then because it would not have time to go down.

Q. How are the tonsils as to size?—A. If I could get Cunningham's Anatomy again I could show them, I think that would be better. (Plate of Cunningham's Anatomy shown to jury.)

Q. About how long would it be?—A. I can't tell you offhand. If you let me look it up I will give you the exact measurements.

Q. About how long?—A. About three quarters of an inch or an inch.

His HONOR: Is the exact measurement given in Cunningham's Anatomy?—A. Yes, but of course it varies.

Mr. CASSIDY: Take the path of this thing, you told me it would lead to destruction of tissue and replacement by fibrous tissue. Will you describe what you mean by that. What are the characteristics of the fibrous tissue?—A. Fibrous tissue is just like an ordinary scar, it ties things down. If you get your neck burnt you often see patients with their heads pulled down by the scar tissue, as it gets older it contracts.

Q. How would you describe it, compared to the tissue it replaces?—A. If it replaces muscles instead of having muscles that move you have just fibrous tissue which anchors the muscles, it does not stretch.

Q. It has not elasticity ?—A. Very little.

Q. And as to function ?—A. It only holds things together.

Q. Are there any other tissues which would be similarly affected as well as muscles ?—A. The tonsil itself would be affected.

Q. Anything else ?—A. It would affect any tissue there.

Q. What are some of the others ?—A. I mentioned muscles, nerves, fascia.

Q. How about blood vessels ?—A. I said vessels.

Q. I want to go to her coming down to Sydney. You saw her at the hospital. Just tell us first of all how you would describe what you looked for and what you found ?—A. I looked for any swelling or any sign of any ulceration of the throat.

Q. What did you find ?—A. I found on one occasion slight redness of the throat.

Mr. SHAND : When was this ?—A. About the middle of the period in hospital. I considered she had a cold then and she had a superficial pharyngitis which just looked slightly red.

Mr. CASSIDY : When she first came to hospital ?—A. With the throat then I could find no abnormality at all ; no gross abnormality. I was looking for something that had come through or burst, I could see nothing to suggest that.

Q. Did you look for those things ?—A. Yes, I depressed the tongue and had a good look at the back of the throat.

Q. Was there any swelling or inflammation ?—A. No, I could not see any swelling or inflammation.

Q. What was her condition otherwise apart from the throat ?—A. I considered she was nervous, you might say very nervous perhaps, rather frightened of herself.

Q. Did you see her again from day to day ?—A. Yes.

Q. Just follow your notes and see what her condition was. If you follow the record you will see " 26th October has been fairly comfortable. Dr. Bell here. Examined chest back and neck. Encourage patient to eat. Dr. Ritchie will see patient. Has taken a fair amount of nourishment. Voice very husky. Save specimen of urine a.m. Dr. Ritchie here p.m. Will examine patient to-morrow. Does not mind patient having a sedative. Please ask Dr. Bell re same. Evening report not complaining aperient given. Night report drowsy early p.m. has slept well. Dr. Bell phoned. Night report drowsy early p.m. has slept well. Dr. Bell phoned. Patient for blood calcium test 9 a.m. No morning tea or breakfast till after test. Dr. Bell will be here 8 a.m. Specimen of urine saved this a.m. Day report 27/10 comfortable day. Dr. Bell here. No orders. Dr. Tebbutt here. Blood test done. Dr. Ritchie inquired. Eating well. Evening report 27/10 Dr. Bell here p.m. Patient may have luminol gr. 1 if necessary." What is the reason for that ?—A. It is a sedative given to make people sleep if they are nervy.

Q. " Night report 27/10. Voice seems stronger. Luminol Gr. 1 given 9.45 p.m. Has slept very well. Day report 28/10 better day. Dr. Bell here. Encourage patient to eat. May sit in chair. Give luminol. gr. 1 only if necessary nocte. Inhalation given T.D.S. Taking food well. Up in chair for time p.m. Tired on return. Dr. Ritchie here. No orders. Evening report 28/10. Comfortable. Inhalation

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given. Give luminol gr. 1 later if necessary. Night report 28/10/39. Slept well. Luminol not given." Is that for a nervous condition?—A. Yes, she must have been nervous because we were giving that practically every night.

Q. "Day report 29/10. Good day. Up in sun p.m. Dr. Bell here. Throat examined. Patient may get up and walk about. May go to bathroom etc. Taking food well. Inhalations given T.D.S. Give luminol gr. 1 nocte if necessary. Evening report 29/10. Inhalations given p.m. Luminol gr. 1 given 8.15." Up to that stage how did you regard her medical condition?—A. I could not find anything wrong with her physically.

Q. Did she show any signs of tetany spasm or anything like that?—A. No.

Q. Then we go on to the 29th night report "Complained of sore throat. Aspirin gargle given with some relief. Awake with flatulence and heartburn 11 p.m. B.M.S. pulv. given with good effect. Bowels open once. Bismuth pulv. given 5.30 a.m. Day report 30/10. Seen by Dr. Bell. Patient to walk about more. Several times a day; same done p.m. Inhalations given T.D.S. luminol gr. 1 nocte if necessary." What were the inhalations for?—A. I cannot remember well now, but she was complaining of some huskiness, I suppose it was given for that.

Q. "Evening report 30/10. Refused tea. Orange and glucose given. Complained of burning feeling in throat. Complained of nausea 7 p.m. Soda-bic. draught given with effect. Refused inhalation.

Night report 30/10. Luminol gr. 1 given 9 p.m. with no effect. Quite a lot of flatulence and complained of burning irritation down the œsophagus. Mist. A.P.C. given 12.30 a.m. with little effect. Irritation and pain increased in throat and chest. Linct. coch. co. taken with no effect. Refused inhalations (Patient says they cause the complaint). Chest and throat rubbed with menthol and camphor and luminol gr. 1 given at 2 a.m. Had no effect. Large soda bic. draught given 3.15 a.m. and returned with large amount of flatulence. Tea and food given. Feeling much better. Sponged and mist. A.P.C. given 5 a.m. Had practically no sleep. Do not disturb if asleep this a.m. Bismuth carb. given without effect." Then you see you examined her throat again the next day, the 31st. What is that irritation down the œsophagus?—A. I remember her complaining of pain, but I could not find anything to account for it and looking at her throat I thought possibly she had a slight pharyngitis, a cold, and ordered her chest to be rubbed and inhalations; just an ordinary camphor and menthol liniment for the chest. It sometimes gives relief when complaining of pain in the chest.

At 2 p.m.

Mr. CASSIDY: You were just looking for that illustration of the tonsil when the adjournment came. Have you found one?—A. Yes, I have this one here, the one I found before, showing the cross section of it and showing the little holes in it. (Shown to jury.) That is much smaller than the actual size. Those little things are referred to as crypts. That is page 558, Cunningham's Anatomy, 8th Edition.

Q. You were present in Court when Dr. Poate examined the Plaintiff's throat on the first trial?—A. Yes.

Q. I think I got up, on your notes, to the 31st October, 1939. I think I dealt with that, hadn't I—"Dr. Bell here, examined throat, patient had plenty of milk, same given two-hourly," etc.?—A. Yes.

Q. Then the evening report complaining of " burning in throat and nausea ; throat painted " ?—A. Yes.

Q. Then when did Dr. Marsh see her ?—A. On the 31st. I was not present when Dr. Marsh examined the throat.

Q. And then after that, what was her condition ? She left hospital on the 3rd ?—A. Except for nervousness she seemed to be quite all right. There was no need for her to stay in hospital. Before she and her husband went back, they saw me. They called in to see me on the 18th—about a fortnight after. She seemed to be quite all right then. There was nothing to remark about her then. There is no doubt that the 18th November is the time she came to see me ; I am sure of that. I think that is in one of those diaries—the date of that appointment.

Q. You had a letter, as you told us this morning, of the 11th October from her in which she used the words " Please don't think I blame you or anyone at the hospital." Now, on that trip to Sydney did you have any conversation with her or her husband ?—A. I must have had a conversation in the hospital up there. I saw them in the hospital.

Q. Can you remember any conversations that you had relative to the matter ?—A. I remember the husband saying something to me about the condition. It would be, as near as I can remember, towards the end of the time she was in hospital. He asked me what was the cause of the trouble ; what tetany was due to, and as far as I can remember I told him that tetany was due to interference with the blood supply, and he said " What caused the tetany," and then he said he knew what was the cause of the tetany, or something like that. There was no claim made against me at that stage. The first I heard of any claim was about Show time in 1939—they called at my rooms.

Q. Would that be 1939 ?—A. It would be 1940—Show time, 1940.

Q. Was anything said then ?—A. Yes. First of all I had a look at Mrs. Hocking. She seemed quite well. She looked very well, and I had a look at the scar on the outside of the neck and examined her neck. I listened to her heart and felt her pulse, and her pulse was quite normal. When they came in first of all I asked her whether she had come down for the Show, and there was some discussion about a mark on the outside of the neck on the left-hand side. That is the mark that I remember she showed the jury—the mark on the left ; just about this level (indicating). I said that I thought that depression was caused by the ligatures. I did not say to them the superior thyroid artery, but that is what I meant or implied.

Q. What do you mean by the ligatures ?—A. The strong catgut ligatures with which I ligated the superior thyroid artery on the left-hand side.

Q. How would they cause the depression ?—A. Well, I thought that there had been inflammation in the neck, and they were the thickest ligatures I had used, and I thought that there was inflammation in that area.

Q. Was anything else said at that time ? You did not write it down, I suppose ?—A. They asked about compensation about leaving the tube in, and I said I did not believe it. I never left a tube, and if they were not satisfied with me I thought that they should go back to Dr. Ritchie who sent her to me in the first place.

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Q. Was anything else said that you remember then ?—A. I cannot remember anything at present.

Q. Do you remember anything about a solicitor being said ?—A. I have no recollection about telling her to see a solicitor. The only recollection I have is telling her to see Dr. Ritchie.

Q. That was Easter 1940. After that did you receive any letter of claim, or anything ?—A. No, I did not receive any letter of claim. The first thing I knew was that someone came in with a writ. That is what they called it.

His HONOR : A piece of blue paper ?—A. Yes, a piece of blue paper.

Mr. CASSIDY : And the date that that was issued was the 15th January 1941. Had you seen them in between Show time 1940 and January 1941 ?—A. No.

Q. Or had you had any correspondence with them, or anything like that ?—A. No.

Q. Now, do you remember at the first trial the Plaintiff being asked about this sketch (Ex. C shown to witness) ?—A. Yes. I remember His Honor asking the Plaintiff about the size of the sketch, whether it represented what she saw.

Q. What did she say to His Honor ?—A. It is very hard to remember. I cannot remember every detail, but the impression I got was—— (Objected to.)

Q. Don't answer this. I will read page 19.

Mr. SHAND : There is no need for my friend to ask the doctor. If it is here my friend can read it.

Mr. CASSIDY : Page 19, line 34, or a little earlier :

" Q. You are about to be shown, I think, the sketch that you prepared. You can assume you are for the purpose of my question. The question I want to ask you is this : was the sketch that you prepared intended to be an exact representation as to size, shape and length of what you saw or not ?—A. No.

Q. What was it intended to be ?—A. To give my husband some idea of what I had seen.

Q. It was not intended in any way to be drawn to scale ?—A. No.

Q. Was it bigger or smaller to what you saw ?—A. I have no idea what the sketch is like. (Then the sketch is produced.)

Q. That is what I want to ask you, the object that you had taken out of the commode and sketched for your husband ; was it bigger or smaller than shown in the sketch ? (No answer.)

His HONOR : Can you remember that, whether your drawing was bigger or smaller ?—A. It was about the same size, as near as I could sketch."

Have you a rule, doctor ? You have heard it described later as an object about two inches long. Is that object about two inches long—just measure it ? (Doctor measures sketch.)

Q. I want the tube first (indicating) ?—A. This is the tube up here (indicating). (Doctor measures sketch.) It is well over two inches.

Q. Now measure the long wire which is described as $1\frac{1}{4}$ inches long—the wire protruding about $1\frac{1}{4}$ inches long. (Doctor measures sketch.)—A. It is a little over $1\frac{1}{4}$ inches.

Q. And is this (indicating) a little shorter than the other ?—A. Yes.

Q. Now I want to take you to the last part of your examination. By the time the first trial came on you had certain additional information—did you have certain additional information as to the Plaintiff's progress over the period after she left hospital ?—A. The first time ?

Q. Yes, the first time——

His HONOR : At the time of the first trial ?—A. Yes.

Mr. CASSIDY : And at this stage——

His HONOR : What stage ?

Mr. CASSIDY : You might tell us what is your opinion now on the records and the evidence as to the diagnosis of tetany ?—A. My opinion about that is that in the early stages she had parathyroid tetany. Although I had never seen it—I mean I have got to go on hearsay, mostly.

Q. You had not seen her ?—A. I mean I had not seen the patient. At St. Luke's, before she went away, there were no objective signs of tetany then, but she did complain of little pins and needles in the hands, and I assumed—there was a possibility of it, and for that reason I gave her calcium lactate.

Q. Then did you get certain information that is in evidence, from Dr. O'Hanlon ?—A. Yes.

Mr. SHAND : Is that all—what is in evidence ?

Mr. CASSIDY : After she went back you got certain information from Dr. O'Hanlon ?—A. Yes, that she was getting injections of calcium and paroidin, and that she also had calcium by the mouth.

Q. And anything else—and spasms ?—A. Yes, he mentioned spasms ; that she had had spasms. I did not see the patient myself.

Q. But other than what was told you or written you, did you have any other symptoms available on which to make a diagnosis ?—A. Not at that time.

Q. Now in coming to the end of the first trial, had you, by that time, additional information which, in your opinion is relevant to a diagnosis of the woman's condition ?—A. Yes. The first thing that struck me as very extraordinary was the fact that the spasms had ceased abruptly or more or less very soon after the 2nd October. Prior to that date I had assumed that she was having some spasms. I mean I had a letter from Dr. O'Hanlon of January 1939, and then I had a letter from Mrs. Hocking also, and I assumed that every now and then she was getting a few spasms. Sometimes these people do that.

Q. On what you know, what do you say as to the symptoms in the later stages ?—A. I think that the symptoms were those of hysterical tetany in the later stages.

Q. And is that the same as parathyroid tetany ?—A. No.

Q. Will you tell the jury why ?—A. Well, as I said, to me the most striking fact was that when she came into St. Luke's I had heard a lot about her having spasms. I had not seen any in St. Luke's the first occasion and I had not seen any on the second occasion.

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Q. And you know from the evidence that she had no further spasms after the 2nd October ?—A. Well, I assumed that.

Q. Well, that was the evidence given ?—A. Yes.

Q. What bearing has that got on tetany—the sudden cessation ?—A. Well, I cannot imagine a patient having tetany over all that time, and then it suddenly ceasing. It would not cease abruptly because in parathyroid tetany the body within a few weeks or perhaps in two or three months at the outside seems to be able to adjust itself to the lowered calcium level and the latest reading seems to be—there are some things unexplained with tetany and we still cannot explain yet—but when the thing persists like that, you should always be suspicious.

Q. You might tell us why it is from the scientific point of view—assuming as she said that the tetany spasms that she had on the 2nd were spasms that lasted, a number of them, for 24 hours, and you won't get a sudden cessation of them, will you ?—A. That is my opinion. My reason for that is that if there is some cause acting and throwing the parathyroids out of action, and it has been acting over a long period they won't suddenly get better. It would be possible for them to start to function slowly, and the patient might recover over a number of months. I have seen patients with parathyroid tetany some years after the operation, and that was my view, that once they are damaged to that extent, that it would keep the tetany going for 18 months or more ; it would be unlikely, and you cannot imagine for one moment that they would function so quickly.

Mr. SHAND : Have you got the names of those patients that had it for years after ?—A. No, only one that I saw in Sydney Hospital that had been operated on elsewhere. That was not long after I came back from the last war.

Mr. CASSIDY : Now, in hysterical tetany, what is the condition there of a sudden cessation ?—A. Well, a sudden cessation—that would be much more characteristic of hysterical tetany.

Q. Any other symptoms ?—A. Well, another symptom which made me suspicious that it was not true parathyroid tetany in the later stages was that the patient gave a history of unconsciousness, and unconsciousness in true parathyroid tetany is rare. It is referred to, I understand, when people are discussing tetany as a subject which may be due to some other causes, and it then usually comes on before death. It is what we call a terminal event.

Q. In hysteria what is the position there in regard to unconsciousness ?—A. Well, they appear to be unconscious but some of them in the milder stages can be roused, and some of the others, it is very difficult to rouse them.

Q. Now, any other symptom ?—A. Another symptom is the character of the contractions, particularly of the hands. You have seen them demonstrated in Court, the so-called accoucheur's hand—the hand in this position (indicating), and in the first trial what struck me was that both the Plaintiff and her husband described the condition as a clenching of the hands (indicating).

Mr. SHAND : There is no doubt about that—the thumb outside ?—A. Yes.

Q. You saw that ?—A. Yes, I have a distinct recollection of them holding their hands up like that (indicating) and it occurred to me, as a strange thing, as I had never seen any tetany like that. It had always been that sort of thing (indicating).

Mr. CASSIDY : Do you remember that the description was at that time that the nails were biting into the flesh ?—(Objected to as leading)—A. Yes, I don't remember the exact time, but I remember it being mentioned, the description " biting into the flesh."

Q. Now, anything else before we leave the gripping of the hands, any other matters that came to your knowledge during the trial ?—A. I remember that at the later trials this position was given by the Plaintiff and her husband (indicating).

Q. Do you remember anything about clutching ?—A. The Plaintiff ?

Q. Any evidence being given. It does not matter whether it was by the Plaintiff or not ?—A. I can remember Dr. O'Hanlon stating that at one period in Quirindi the character of the contractions appeared to change, and that she started to grip things.

Mr. SHAND : At Quirindi Hospital or at Quirindi ?—A. At Quirindi, I would say.

Mr. CASSIDY : What does that suggest to you ?—A. That suggests hysteria—hysterical tetany rather than tetany to me.

Q. Any other symptoms from the evidence ?—A. I don't remember at present.

Q. Do you remember anything about massage ?—A. Yes, I remember that. (Objected to as leading : pressed.)

His HONOR : Yes, if his recollection is exhausted it may be refreshed.

The WITNESS : Well, the only thing I recollect there is that the husband said that he massaged the spasmed limbs, and it relieved the tetany.

Q. What do you say as to that ?—A. Massage won't relieve tetany, if it is true tetany. The reason is that pressing like that (indicating) causes irritation of the nerves and muscles. The nerves and nerve junctions are in a state of irritability, and if you irritate them like that, it is just the same as tapping the face. That is the sort of thing you get to demonstrate it.

Q. Anything else ?—A. Those are the main ones that I can remember. I cannot remember any more at present. There were one or two minor things. She said—or rather it was mentioned that she was drawn up in a ball. I thought that was rather extraordinary, because some of the medical literature that was produced talked about opisthotones, and that is drawn up like that (indicating).

Q. And others that you can recollect ?—A. There were the discussions regarding the eye muscle. There was a description by the Plaintiff of holding the mirror and looking at one of her eyes turning backwards. I don't think that is at all likely in true parathyroid tetany.

Q. Say, in hysteria could it occur ?—A. Yes.

Q. In hysterical tetany ?—A. Yes.

Q. Any others that you can remember ?

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Mr. SHAND: Is the doctor producing authority for this or is it experience or just guesswork.

Mr. CASSIDY: What is your answer founded on?—A. I have not had personal experience of that eye condition. The only experience that I have had of tetanic spasms are the spasms of the hands. (Objected to by Mr. Shand.) I can make an attempt to find it. I cannot produce it straight away.

Q. For the purposes of this trial, have you read all the latest authorities you would get hold of?—A. I have read a number.

Q. And have you added those to your experience?—A. Yes, putting it that way.

Q. Now, take this—hysterical tetany. Can you say whether differential diagnosis is difficult or not?—A. I think it is difficult. I have had one particular illustration in my experience. I had a patient who had been operated on for thyroidectomy, after Mrs. Hocking, and she developed what I took to be parathyroid tetany. I gave her the ordinary intravenous injections——

Mr. SHAND: I suppose the name will be available.

His HONOR: I suppose it will be available by writing it down and calling her Mrs. B.

Mr. CASSIDY: Yes, the name will be available. The name will not be divulged; it will be written down.

Q. You were just going on to describe something?—A. I thought that this was a case of parathyroid tetany, and she did not react to large doses of calcium, and a doctor who saw her with me said——(Objected to.)

Q. The doctor said something to you?—A. Yes, and I discovered later that she was not a true tetany at all because she afterwards became, I will say, mentally deranged. She pretended to throw herself over the balcony, and she did not.

Q. Do you remember Ossler, "Principles and Practice"?—A. Yes.

Mr. SHAND: Would you mind telling us about how long ago that was—your experience with that patient?—A. It was about July, 1938.

Q. Is that the one you referred to in the last trial?—A. I think that would be the one as far as I can recollect.

Mr. CASSIDY: Now, in Ossler that you heard read earlier, is the position dealt with that very often these hysterical tetanies will have their spasm where they won't hurt themselves?—A. Yes.

Q. In Ossler, page 1111, the latest edition, the 12th, under "Manifestations of Hysteria"—"ocdema," that means swelling?—A. Yes.

Q. "Puffiness of the face, even unilateral, and swelling of the hand are not uncommon, and features of greinose disease may be met with." Is that so?—A. Yes.

Q. Without going through it in detail, do you agree with what I read to Dr. Thompson from Ossler, on "Manifestations and Symptoms of Hysteria"?—A. Yes, that is a very good description of that.

Q. Now, I am still on these symptoms that you said were indicative of hysterical tetany. Are there any others that you can remember offhand. Are there any others you can think of at the moment—manifestations?—A. What of—hysteria?

Q. Yes, symptoms in this case ?—A. I am afraid I cannot remember any at present.

Q. Is the question of charges being made against individuals, is that symptomatic of hysteria ?—A. Yes, it is described as a manifestation.

Q. And in this case did you hear and have you heard a number of charges made against various people ?—A. During the evidence, yes.

Q. You will remember in St. Luke's in 1939 that the Plaintiff described her treatment there as "Cruel, cruel treatment." Was there any such treatment which would merit that description ?—A. I have no knowledge of any treatment.

Q. She says that although it was shown that she was eating, she did not have food ? (Objected to.)

Q. Although she is recorded as being on full diet, that that would be an entry in the kitchen, or something like that ?—A. I don't know where the entries are made.

His HONOUR : My recollection is that the food never left the kitchen —is that the evidence ?

Mr. SHAND : No. She did not need it, and she states the nurses would have it.

Mr. CASSIDY : But from your knowledge of her during that period that she was there, was she showing signs of not eating things, can you remember ?—A. No, I cannot remember, but I would not be there when she had her meals.

Q. What is the effect of paroidin or calcium lactate in true parathyroid tetany ?

Mr. SHAND : Has the doctor personally used these ?

The WITNESS : I have used——

Mr. CASSIDY : You are not like Dr. Thompson. You do know tetany ?

Mr. SHAND : Just let us hear the witness. I want to know whether the witness is qualified to give his evidence.

Mr. CASSIDY : Have you had experience of tetany and the treatment that is appropriate to tetany ?

Mr. SHAND : Paroidin.

The WITNESS : I have had experience. I have never used paroidin, but I have used calcium.

Mr. CASSIDY : Do you know paroidin ?—A. I know of it. It is an extract of the parathyroid gland.

Q. And you do not use it—you use calcium ?—A. I use calcium because it acts better.

Q. Now, what is the effect of calcium on parathyroid tetany ?

Mr. SHAND : Which calcium is that ?

The WITNESS : Well, you can use calcium gluconate or calcium chloride, or the lactate by the mouth. I found that it acts rapidly, the gluconate. I have used both the chloride and the gluconate. I have

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Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 14th December 1943, Examination, *continued.*

not used chloride for a long time, but I have used gluconate and it seems to act quite well and it has certain advantages. It is not so irritating to the tissues.

Mr. CASSIDY : Assume that the spasms go on in spite of it, what does that indicate to you ?—A. Well, if the spasms persist in spite of adequate doses of calcium intraveneously, I personally would be suspicious that it was not tetany.

To Mr. CASSIDY : You asked me about the scar on the outside ; that is, on the left.

Q. You looked at that. It was shown and discussed in April, or shown in 1940 when they were down at the Show ?—A. Yes.

Q. Was there anything said to you then about scarring inside the neck ?—A. No.

His HONOUR : Is it neck or throat ?

Mr. CASSIDY : Well, inside the neck or throat ?—A. There was no reference made to the tonsil.

Q. Or any scarring inside the tonsil ?—A. No, I did not examine the inside then.

Q. Or was there any reference made to it ?—A. No.

Q. Assuming in the first trial the Plaintiff in evidence described that she picked this tube out of the chamber, squeezed it, and green pus ran out. What do you say as to that ?—A. It struck me as an important thing to happen if the discharge—if the pus had come from the throat, because it has to come down through the stomach and through over 20 feet of small intestine and 6 feet of large intestine. When it is in the small intestine it is churned up with the thin juices of the small intestine, and when it gets down to the large bowel or colon it mixes up with the fæces and anything coming out then would be brown. It would not be yellow pus, and, if it was——

Q. Green pus ?—A. Well, green pus ; if it was it would be quite obvious that it must have come from somewhere low down, from the rectum or somewhere there and not from the upper part of the alimentary canal at all. It would have come from the lower orifices of the body.

Q. Take the fact that oil is given. What effect would it have ?—A. It would certainly do away with the pus.

Q. It was said it might be bile. Could bile do that ?—A. Bile is emptied into the alimentary tract—into the duodenum. We all know of duodenal ulcers. It has then to go again through this long tract, small and large intestines, and it is not green by the time it gets that far.

Cross-examination.

Cross-examined.

Mr. SHAND : Do you dispute Chevalier Jackson's work on Diseases of the Air and Food Passages with foreign body lesion ?—A. He is a very distinguished nose and throat surgeon, but I have not read his book carefully. I do not know what is in it.

Q. " The predominant characteristics of the pathologic processes of most of the cases of prolonged sojourn of a foreign body in the bronchi were (1) Foul and dark-coloured or greenish pus indicating the presence of saprophytes and chromogenic bacteria." I do not mind if you read it (book handed to witness). You read it first ?—A. I do not think this is an analogous case. You are here talking of an abscess in the lung.

Q. What is the difference in the colour of the pus. What causes the different colour of the pus ?—A. You are talking of greenish ?

Q. But in that different position what bacteria would it be that would cause the differentiation in the colour of the pus ?—A. It should be different, because the pus might be green in the throat, but it would not be green when it came out of the rectum. Take the green pus from the lung abscess and swallow it and then look for it coming out of the rectum and it won't be green. You won't see it.

Q. It might be green in the throat ?—A. I agree that pus in the throat could be green.

Q. Have you in mind a tube closed at one end ?—A. Yes.

Q. You still swear there could be no green pus left in it ?—A. After passing through the alimentary canal ?

Q. Yes ?—A. I think it would be impossible.

Q. You said towards the end of the last, or first, trial, well you came to the conclusion that this condition was in its later stages hysterical ? —A. Yes.

Q. Was it the first time you had come to that conclusion ?—A. The end of the first trial ? I was very suspicious after she was in St. Luke's the second time.

Q. Was it the first time you were suspicious ?—A. Yes, as far as I can remember it was the first time.

Q. Suspicious that it might be hysteria ?—A. Suspicious that it was not true parathyroid tetany.

Q. Suspicious that it might be hysteria is the question ?—A. Yes, in other words, it might be functional.

Q. The first time you were suspicious was when she was in St. Luke's the second time. You thought it might be hysteria. Did you call it after that at the first trial a wicked invention ?—A. Yes, because Mr. Hardwick put it into my mouth.

Q. But you are an educated man and can think for yourself ?—A. I can think a little.

Q. It was asked you and that was your opinion. You swore that it was a wicked invention ?—A. Yes, I answered Mr. Hardwick in that way.

Q. Was it true ? Did you think it was a wicked invention ?—A. At that time ?

Q. Yes ?—A. I was not quite certain what it was.

Q. As a professional man you would be careful whether you branded something as a wicked invention, something you were not sure about ? —A. Yes.

Q. And were you careful when you gave that answer ?—A. I was as careful as I was able to be under the circumstances. I admit that the term " wicked," the word was not what I would perhaps pick out myself but I thought that the incident was untrue.

Q. But you said that ?—A. Yes.

Q. You realise that it involved a very grave charge ?—A. Yes, I did not realise it at the time when put to me in the box.

Q. As an educated man, " wicked " means " evil " ?—A. Yes, or untrue.

Q. But more than that—consciously untrue ?—A. Is that so ?

Q. What do you think—" wicked " ?—A. I should say what I intended to convey was this——

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Defendant's Evidence.

No. 19. Evidence of George Bell, (Defendant) 14th December 1943, Cross-examination, *continued.*

Q. But what does "wicked" mean to you? Does it not mean in that context "wicked invention," does it not mean deliberate invention—untrue invention?—A. Yes.

Q. With your sworn answer that was how you branded the Plaintiff?—A. Yes.

Q. You now say it was unjustified in your opinion?—A. I take a more charitable view.

Q. Is that the way you put it—more charitable?—A. If these things were imagined; well, one has heard more evidence.

Q. But you have sworn already that when she had been in St. Luke's on the second occasion the idea of this being hysteria entered your mind?—A. Yes.

Q. With that possibility in your mind you did not hesitate to brand her as the author of a wicked invention?—A. That is so.

Q. Are you really ashamed of what you said?—A. I am not ashamed altogether, because I think you are mixing up things.

Q. Are you a little ashamed of what you said?—A. I am somewhat, yes.

Q. Because these two people in your experience had always struck you as decent people?—A. Yes, they had.

Q. Very decent people?

Mr. CASSIDY: Up till when?

Mr. SHAND: Before the first trial; before any demand was made.

Mr. SHAND: Is that so; that both of them were very decent people?—A. Yes.

Q. You had already at hand an avenue for inquiries as to how they were regarded in their own town?—A. Yes.

Q. You had Dr. O'Hanlon, you had been in contact with him?—A. I had rung him.

Q. And received letters from him?—A. Yes.

Q. In a country town people's reputations are fairly well known?

(Mr. CASSIDY asks His Honor to "note these questions.")

Q. Is that so; in a country town people's reputations are pretty well generally known?—A. Yes.

Q. And the country doctor is the person who gets about it?—A. Yes.

Q. Did you make any inquiries about them?—A. When Dr. O'Hanlon came down for the first trial I asked him.

Q. Had you seen him before he came down for the first trial?—A. I cannot remember exactly when I saw him.

Q. Will you deny he was down more than once before the first trial?—A. I mean for the first trial.

Q. Will you deny you saw him more than once before the first trial?—A. I certainly saw him once.

Q. Do you admit you saw him more than once?—A. I cannot remember more than once—except about the Court here.

Q. No, discussed the matter with him, apart from the Court?—A. I did not see much of him.

Q. Will you admit you saw him more than once to discuss the matter with him?—A. I won't say more than once; but once at the outside. I cannot remember any more than that.

Q. Was he called at the first trial ?—A. No.

Q. Although you had him here ?—A. He was here.

Q. You knew that Dr. O'Hanlon had refused to give the Plaintiff any notes, any report ?—A. Before the first trial ?

Q. You knew he had written to the B.M.A. and that the B.M.A. told him not to give his own patient any notes ?—A. I would expect they would have.

Q. You are a Councillor of the B.M.A. ?—A. Yes.

Q. You tell these gentlemen that you would expect that a doctor who is attending his own patient would refuse to give that patient a report of the case ?—A. No, I do not tell them that.

Q. But do you say that ?—A. I do not understand.

Q. (The third question and answer on this page were re-read to the witness) Do you want to alter that ? Would you like to alter it ? —A. I would like to explain. The question says " his own patient." It would probably be to a solicitor.

Q. Well, his own patient's representatives, if you like ?—A. They are always warned about not giving statements to solicitors.

Q. But you knew he had refused to give anything to his patient ? —A. I am not sure about the patient. I knew he had refused to give a statement to the solicitor.

Q. Do you tell these gentlemen that you as an individual approve of a policy by which a doctor is ordered not to give a statement to his own patient's legal representative ?—A. I am not a lawyer.

Q. Do you approve of it morally ? It does not need a lawyer ? —A. If it involved any——

Q. You can answer the question Yes or No ?—A. I do not think I can.

Q. Do you approve of it as a moral thing ?—A. That a doctor should refuse to give a statement ?

Q. Of a general policy—— ?—A. For a law case ?

Q. Yes, for a law case ?—A. I am not so sure about it. I know that the late Dr. Todd—and this is perhaps a matter of policy, he was both a lawyer and a doctor, and he used to advise medical men——

Q. But I want your views on morality ? (Objected to.) Do you approve of it ?—A. I do not think I can answer the question Yes or No, because I have not given it consideration.

Q. Have you not given it consideration as a member of the Council of the B.M.A. ?—A. Given what consideration ?

Q. Don't you know what I am asking you ?—A. I never gave this particular thing consideration.

Q. But I am asking you the general policy ; you as a member of the Council ?—A. I would tell them they should consult their own solicitor first.

Q. Do you approve of this policy of refusal to give a report to the legal representative of the patient ? You can answer that ?—A. If it were a law case——

Q. But do you approve of it or not ?—A. I do not approve of it without the doctor consulting his own solicitor.

Q. Do you approve the B.M.A. should tell him not to give a report to his own client's legal representative. Leave out " consulting his own solicitor "—a point-blank direction not to ?—A. I would not approve

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Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 14th December 1943, Cross-examination, *continued.*

of giving them a point-blank refusal, but I would say this; I would put in a proviso.

Q. The action is not against that particular doctor. It is against some other doctor. Why should that doctor have to see his own legal representative?—A. Because that doctor would be attending that patient and he might consider he would make a charge against one doctor; he is also attending her and he might possibly be involved too.

Q. I see. For his own protection, you mean?—A. Yes.

Q. Not for the protection of the other doctor who is being sued?—A. No, I think for the protection of himself.

Q. It is a matter of expediency, is it not?—A. I do not know about that.

Q. Safety's sake?—A. It might be a matter of common sense.

Q. As far as that doctor is concerned, the doctor with the patient, it is only for his own protection you advise that?—A. Yes, it would be for his own protection.

Q. Supposing that doctor had this point of view, which I suggest Dr. O'Hanlon had, that he was not thinking of his own safety and did not care about it. He did not wish to consult his own solicitor. If that doctor said "I do not wish to consult my own solicitor" do you still approve of that doctor being directed not to give a report to his own patient's legal representative?—A. Are they directed or advised?

Q. I do not care which it is. Do you agree that the doctor should be either directed or advised not to give a report to his own patient's legal representative?—A. I feel I am getting into legal realms.

Q. No, this is moral?—A. I cannot quite see the point.

Q. Are you willing to answer or not. Do you approve of it or not?—A. Will you repeat it again. I am not a lawyer.

Q. Do you say you do not know what I am asking you?—A. I would like to see it written down.

Q. Do you tell these gentlemen you really do not understand what I am asking you?—A. I would like to hear it again. I do not appreciate it.

Q. Assume that Dr. O'Hanlon in this case does not want protection; he does not need to consult his own solicitor and does not want to. Do you approve of a policy by which a man in his position—that is, the doctor—should be advised or directed not to give a report of his attendances and his diagnoses—to his own patient's legal representative?—A. To his own legal representative?

Q. To his own patient's legal representative—to Mrs. Hocking's solicitor, in other words?—A. I think it is an open question. I could not answer it.

Q. Are you serious?—A. I am, because there are some things involved there. It is very involved. In some ways I should say Yes; but the doctor has to think. If the doctor was not likely to be involved in any action he might consider giving it, but if he thought there was any doubt——

Q. Never mind that; divorce from your mind that he has any fear of action? He does not want to go to his solicitor. Do you approve that he should be directed or advised not to give a report of his own client's case to the client's solicitor?—A. It would be wise to see his own solicitor first.

Q. No; leave his own solicitor out. Assume that the doctor has no fears and does not want to see his own solicitor?—A. If he does not want to; if he has no fears for himself, he would be quite within his rights to give them.

Q. But do you approve of a policy by which he should be directed not to give to his own client's representative a statement of what has happened?—A. I could not approve of that policy.

Q. But that is the policy of the B.M.A.?—A. Yes, I am practically certain it is. I think I would like to explain. This is only right, it is a vexed question. I remember speaking to the late Dr. Todd——

Q. But I want your own views? (Objected to)?—A. My views are I would have no objection to a man doing that, but I think for his own protection, if he were likely to be involved he would be always wise to see his own legal adviser.

Q. So the only proviso you make is if his own self-protection is concerned, he should see his own legal adviser. Is that the only proviso?—A. It is always wise.

Q. Is that the only proviso you make? Otherwise the patient or his legal representative should have a report on the case?—A. Yes.

Q. This matter was referred to you as a member of the Council of the B.M.A.—this very matter?—A. It was never referred to any meeting of the Council that I was at.

Q. It was referred to you?—A. It was mentioned to me, but I am quite certain I knew nothing of it, until a long time after that letter was written to Dr. O'Hanlon.

Q. Will you swear it was not mentioned to you before the letter was written. I put it to you that you were rung up?—A. I do not remember it.

Q. Will you deny it?—A. I think I will have to deny it.

Q. Will you deny you were rung up on the phone and it was put to you as to whether Dr. O'Hanlon could give a statement?—A. I have no recollection.

Q. But you could not forget that; an action about to be brought against you, or possibly an action to be brought against you?—A. But when?

Q. Before the letter was sent?—A. I have no recollection of it.

Q. Will you deny it?—A. It is so long ago; it is difficult for me to deny these things.

Q. Will you specifically deny that a draft letter was read out to you on the phone in these terms, addressed to Dr. O'Hanlon, by the B.M.A.: "In reply to your letter of the 12th instant I would advise you in view of the fact that any statement you make may be misconstrued to refuse to make any statement"?—A. I have no recollection of that at all.

Q. Is that the best you can do?—A. Yes, honestly.

Q. Do you tell these gentlemen you might have forgotten a thing like that?—A. I cannot remember a thing like that happening and that is the best I can do.

Q. Surely a matter like this, which concerns you, your own patient, and he is asked to give a report and you cannot recollect Yea or Nay whether you were rung up before this letter was sent advising him to refuse to give any statement?—A. I have no recollection, and that is the best I can do. My memory is not perfect.

Q. Dr. O'Hanlon had written to you himself, referring to the fact he had been asked for a statement?—A. I cannot remember that letter.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 14th December 1943, Cross-examination, *continued.*

Q. Telling you he had been asked to give a statement to Mrs. Hocking's solicitors ?—A. My memory is faulty on the exact time of it. I knew by the time of the first trial that Dr. O'Hanlon had refused to give a statement to her solicitor.

Q. But he had written down to you and told you he had been asked. I will remind you of the sequence. He wrote down to you and told you he had been asked to give a statement to Mrs. Hocking's solicitor. He told you he was going to write down to the Secretary of the B.M.A. to be asked as to what he should do ?—A. I cannot remember that.

Q. Will you deny it ?—A. If I cannot remember a thing, well I have no recollection of it.

Q. Dr. O'Hanlon has been attending his own patient to whom, I suppose, you will admit he owes something in loyalty and decency ?—A. Yes.

Q. You were another doctor who also attended her ?—A. Yes.

Q. She was complaining that you had negligently left a tube in her neck ?—A. Yes.

Q. Do you tell the jury you cannot remember him writing down to tell you he had been asked for a statement by her representative, and that he was going to write to the B.M.A. ?—A. I cannot remember that. All I remember is, I know it came to my knowledge at some time when the negotiations were going on that Dr. O'Hanlon had refused to give a statement to her solicitors, but as to exact times my memory is a blank.

Q. You really say you might have forgotten a thing like that ?—A. I think so. I remember the main fact, but as to when it came to my memory I do not know.

Q. This is about the time Mr. and Mrs. Hocking saw you—Show time in 1940. Do you still say you cannot remember ?—A. I cannot remember, and that is a truthful answer.

Q. And you cannot remember being consulted by the B.M.A. about this letter, which was suggested to be sent. You cannot remember one way or the other ?—A. I cannot remember that, but at some time or other I knew there was talk of an action.

Q. You cannot remember whether this letter I have read out to you that Dr. O'Hanlon should refuse to make a statement, was read out to you ?—A. I cannot remember that.

Q. Didn't you regard it as a very wrong thing for you—a person who might be sued to fall in with any plan to prevent a statement being given to the patient. It would be a most wrong thing, would it not ?—A. Yes.

Q. And still you cannot remember whether you did or did not do a most wrong thing ?—A. I cannot remember that.

Q. Do you realise what you are saying ? You cannot remember you might have done what you consider to be a most wrong thing ?—A. I do not know the exact time.

Q. But I am talking about the doing of a most wrong thing ; falling in with a suggestion to prevent a statement being given, and you cannot remember whether you did it or not ?—A. I do not think I had anything to do with that statement.

Q. Will you deny it ?—A. If not sure, I do not think I ought to deny it.

Q. There is a possibility that you did what you now characterise as a most wrong thing ?—A. I did not write the letter.

Q. But agreed that it should be sent ; there is the possibility you did ? There is the possibility you did what you have characterised as a most wrong thing ? There is a possibility you did it. You cannot remember either way ?—A. I cannot remember being consulted about any letter.

Q. If you won't deny it ?—A. It is very difficult for me. I won't deny it unless I am absolutely sure.

Q. There is a possibility that you were a party to what you have characterised as a very wrong thing ?—A. I do not think I was a party to it.

Q. Will you swear on your oath you were not ?—A. I do not want to swear anything I am not sure about.

Q. But will you swear on your oath you were not ?—A. No, I would like to make some more investigation.

Q. At the present time you won't swear you were not a party to it ? —A. No.

Q. Wouldn't you regard it as being very easy to be clear as to whether you have done a very wrong thing. Would there be any difficulty ? —A. Yes, it would be clear, that I do not want to do a wrong thing by swearing, by denying that unless I am absolutely sure.

Q. Do you regard a patient's confidence as sacred ?—A. As a rule, yes.

Q. There are exceptions to that ?—A. I am told in the court of law you have to give them.

Q. If forced, but, apart from being forced in a court of law—— ? —A. I prefer not to give them.

Q. But, apart from having to give them do you regard a patient's confidences as absolutely sacred ?—A. Yes, I do.

Q. It is the bible of the medical man that he should not divulge little confidences given to him by his patient ; that is right, isn't it ?—A. I agree with that.

Q. Will you agree that it is at the very basis of medical science that it should be so, so that the physician or surgeon may have his patient's confidence ?—A. Yes.

Q. And you get all the innermost secrets and little things that happen in our lives ?—A. Yes.

Q. I suppose you would regard it as hopelessly dishonorable to divulge those things ?—A. Except in courts of law, when you have to.

Q. You see, you can be forced out of court. Whatever it be, you would regard it as most dishonorable unless you were legally compelled ? —A. Unless you had to.

Q. Unless you were legally compelled ?—A. Perhaps you can put it that way.

Q. You know in this case out of court—(Objected to.)

Q. You used as material for your case matters that you knew Dr. O'Hanlon had obtained in confidence from his patient, Mrs. Hocking ? (Objected to.)

Mr. SHAND : I will not press it for the moment, I will ask another question.

Q. You had a statement from Dr. O'Hanlon before the first trial started, you saw a written one, didn't you ?—A. It was sent to my legal advisers.

Q. You saw it, that is all I am concerned with ?—A. I don't know whether I saw it, but I knew what was in it.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19.
Evidence of George Bell (Defendant) 14th December 1943, Cross-examination, *continued.*

Q. And you know that that statement contained private confidences ?—A. Yes.

Q. Did you approve of this, that while Dr. O'Hanlon was advised by the B.M.A. not to give a report to his own patient's solicitor, that you should get one. Did you approve of that ?—A. I was advised by my——

Q. I don't care what you were advised, you have your own sense of morals. Did you approve of it ?—A. Well, I was advised by counsel, I personally did not like the idea of it, I will put it that way.

Q. You did not stop it, did you ?—A. No, how could I ?

Q. Did it appear to you as just about as mean a thing as could be, that while Dr. O'Hanlon was advised not to give a statement to his own patient he should give a statement to you, just about as mean a thing as could be possible ?—A. I would not agree, because once you are in the hands of your legal advisers you have to be advised by them.

Q. Once you get a legal adviser you throw morality and principle to the wind, you personally, do you say—have you still got your own judgment ?—A. I still have my own judgment.

Q. I am asking for that, will you agree it is just about as mean as could be in your opinion ?—A. No, I won't.

Q. We will take a supposititious case for the moment. Doctors do make mistakes, don't they ?—A. Yes.

Q. Assume through some negligence some unfortunate person has been maimed for life and their evidence depends on their own doctor, we will say a country doctor, and the man they are suing is a Macquarie Street specialist. Do you approve that that country doctor should be advised to give no report to his own patient but should give the whole of the evidence he can to the doctor who is to be sued ?—A. Well, you see——

Q. Do you approve of it ?—A. You are getting into legal matters now.

Q. No, I am talking about the ordinary decency ?—A. I think it would be wiser——

Q. Not wiser, what do you think ?—A. I think it would be better to give the information to both sides.

Q. Both sides ?—A. I think so, if you want to get to the truth you come to the Court to get at the truth although I personally would prefer to divulge nothing, even in Court, about a patient's confidence. I think still when a case is pending you have to be advised by your legal advisers.

Q. I suppose you will agree that it is possibly the most unjust thing in the world that a doctor member of the B.M.A. should be advised not to give a statement to his patient but to give a statement to the Defendant who is also a doctor member of the B.M.A. ?—A. It certainly is not fair.

Q. And that is what happened in this case, Dr. O'Hanlon advised not to give the report to the Plaintiff's solicitors, and he gives a report to you ?—A. He gave a report to my legal advisers.

Q. You will agree that was not fair ?—A. I cannot agree to that, I mean they are preparing——

Q. Well, was it, was it fair or not, it does not matter about your legal advisers, I want your opinion as a man, was it fair or not ?—A. I think he probably wanted to give——

Q. Do you think it was fair ?—A. I think a lot of things are unfair when you get to dealing with the law.

Q. Was this fair ?—A. Well, if you——

Q. Was this fair—as a man ?—A. I don't think it was fair as a man, but when you come to——

Q. That is all I want. I want to ask you about a piece of evidence you gave to-day. You have already told these gentlemen that after the Plaintiff had been down the second time to St. Luke's you suspected it might be hysteria and that was the first time you suspected that ?—A. About that time I thought.

Q. I just want to remind you what you have sworn. You have sworn the first time you suspected it might be hysteria was when she had been down the second time to St. Luke's ?—A. Yes, I think that is quite right.

Q. And then you swore in chief to Mr. Cassidy that towards the end of the first trial your suspicions were strengthened ?—A. Yes.

Q. Now, will you agree that that is not what you have sworn before at any previous trial ?—A. That may be so because I remember trying to on one occasion in Court, trying to think out when I first got, I don't say suspicious, but perhaps a suspicion that there was a functional element in the case.

Q. You remember that, do you, and when did you think it out ? What was the time ?—A. Going over my evidence again, there were a lot of doubtful things.

Q. Do you want to alter what you have sworn to-day, that the first time you suspected hysteria was after she had been down the second time to St. Luke's ?—A. Yes, I think that is correct.

Q. Did you swear before in the third trial that the time when you changed your views as to whether it was true tetany or hysteria was about October, 1939, when you got O'Hanlon's letter ?—A. Yes, I swore that at the time.

Q. Now, is that true ?—A. At that time I did think it was true.

Q. Now do you think it is untrue ?—A. I mean, this is a very involved case.

Q. That may be so. Now do you think it is incorrect ?—A. I think a doubt was coming into my mind then.

Q. Did you think it was correct or incorrect ? You said on Friday your views changed as to whether it was true tetany or hysteria about October, 1939, when you got Dr. O'Hanlon's letter ?—A. No, that would be wrong.

His HONOR : The Friday referred to there was the Friday in 1942, not a Friday in 1943. You said on the last trial " Your views changed as to whether it was true tetany or hysteria in October, 1939, when you got Dr. O'Hanlon's letter ?—Yes."—A. That was incorrect.

Mr. SHAND : Why give that incorrect answer ?—A. I was trying to think out in the box and I gave the wrong answer.

Q. There had been two trials before that ?—A. Yes.

Q. You had capable counsel ?—A. Yes.

Q. And capable solicitors ?—A. Yes.

Q. You had available to you any man in Australia, hadn't you, any member of the B.M.A. in Australia ?—A. Any doctor—I would not say they were available, but I got Sir Allan Newton over from Melbourne.

Q. Have you seen Sir Allan Newton this time, is he about ?—A. I haven't seen him.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 14th December 1943, Cross-examination, *continued.*

Q. Have you got him over, is Sir Allan Newton going to be with us? —A. I leave that to counsel.

Q. Very well, we will hope to see him. And you gave this case, I suppose, a lot of thought before each trial?—A. Yes.

Q. So by the third trial you had given your evidence twice and been cross-examined twice?—A. Yes.

Q. Do you tell these gentlemen that you gave an untrue or incorrect statement about when you first came to the conclusion that it was hysteria and not tetany?—A. I quite admit that I got mixed there.

Q. You got mixed twice, you said it before. You were asked twice and agreed, you got mixed twice, did you?—A. I was thinking then of when I thought the functional element was coming into the case, it was about that period.

Q. We will see if you got mixed. What you have sworn here and what you have sworn before is that it was when you got Dr. O'Hanlon's letter about October that your views changed as to whether it was true tetany or hysteria. "And it would have been very easy for you if you had any suspicion to have suggested it to him?—(A.) Yes. (Q.) And the fact is you did not have any suspicion?—(A.) Not at that time. (Q.) Right up until after she had left St. Luke's the second time is not a fair way of putting it?—(A.) No, that is not fair. (Q.) Up to the time you got the letter of the 4th October?—(A.) That is fairer. (Q.) You got the letter from Dr. O'Hanlon somewhere about the 6th or 7th October?—(A.) Yes early in October." That is the reference you have sworn there, that this letter of Dr. O'Hanlon's was when you got your suspicion and it is repeated in this second reference and now I am going to read on to see whether you did make a mistake, I will repeat what I read before—"You said on Friday your views changed as to whether it was true tetany or hysteria about October, 1939, when you got Dr. O'Hanlon's letter?—(A.) Yes. (Q.) Do you think that that was hardly correct, and did not your views change when you heard the evidence given at the first trial?—(A.) No, quite truthfully, as soon as I heard she was supposed to have had tetany for this long period when it suddenly disappeared I thought it was absolutely impossible to be true tetany all the time." You see you had your mind directed to it, Mr. Hardwick was then putting to you that it could not be as you said, that it was only when you got Dr. O'Hanlon's letter, but it was after you heard the evidence in the first trial and you denied it, so you see you had your mind directed to it and now you are saying that it was at the end of the first trial that your opinion changed?—A. No, you are getting mixed up.

Q. Will you admit that to-day you were asked by my friend, towards the end of the first trial, when you had heard certain of the evidence, your views changed, do you remember that question being put to you? —A. My views changed?

Q. Yes, towards the end of the first trial after hearing certain evidence? —A. Well, during the first trial——

Q. No, do you remember that question being put to you?—A. I cannot remember the exact question.

Q. Well, is it correct that your views changed at the end of the first trial whether it was tetany or hysteria?—A. I would say that they were modified.

Q. Is it correct?—A. They were partly changed then.

Q. Was that the first time you began to suspect hysteria ?—A. I would put it this way——

Q. You can answer yes or no, can't you ; was that the first time ?—A. No, it was before that.

Q. Was it when you got Dr. O'Hanlon's letter of 7th October ?—A. As regards the tetany ?

Q. As regards thinking it was hysterical tetany rather than true tetany ?—A. It was about that period when I got Dr. O'Hanlon's letter and in October, 1939.

Q. That would be the period ?—A. Yes, in October.

Q. When you first suspected ?—A. Yes.

Q. When I put that question to you a little while ago you said that you had made a mistake and you were confused, it appears that the answer is correct ?—A. I was confused when Mr. Hardwick started to cross-examine me.

Q. And what you said to-day about making a mistake is wrong ?—A. Yes, I think you are splitting straws, we are talking about medical matters.

Q. Sometimes a straw tells which way the wind blows ?—A. I have heard that, yes.

Q. It was also wrong what you said to-day that the first suspicion that you had that it was not true tetany was after she had been in St. Luke's the second time. That was wrong because you say now it was when you got the letter ?—A. It was the October period.

Q. The letter marks a definite period of your knowledge, it was a startling letter, wasn't it ?—A. Yes.

Q. And you say that was the first time you got your suspicion ?—A. I got my suspicion that there was something untrue about the patient then.

Q. I am not asking you that, you have already sworn—do you want to withdraw it—that that was the first time you got a suspicion that it was hysterical tetany and not true tetany ?—A. I might have had a slight suspicion then because she said she had a bad tetany and the spasms were fewer.

Q. Do you suggest that when you started it was a slight suspicion ? Didn't you set out on the following page four reasons why after this letter you said your views had changed ?—A. The letter of the 7th October ?

Q. Yes, on getting that letter at that time your views changed and you thought it was hysteria rather than true tetany, and you set out four reasons for your changed views, do you remember that ?

His HONOR : It is the letter from Mrs. Hocking, isn't it ?

Mr. SHAND : It does not matter which it is, I will include both, we will include Dr. O'Hanlon's letter and her letter four days later. Do you remember setting out four reasons ?—A. I remember that was the time at which I became suspicious.

Q. You remember this, do you remember being asked what you founded your changed view on that it was hysterical tetany ?—A. I cannot remember.

Q. " Do you remember I asked you on Friday as to up to what date your views changed to it not being tetany but hysterical tetany and you said after you got that letter from her ?——Yes." And then four grounds

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Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 14th December 1943, Cross-examination, *continued.*

15th December 1943, Cross-examination, *continued.*

you were given, do you remember what the four grounds were ?—A. I don't remember them all now.

Q. What I am going to put to you is that you gave four grounds that you said were present to your mind in the middle of October and at that time you had no knowledge of any one of those grounds which you say changed your point of view, do you remember that ?—A. I cannot follow that.

Q. I will make myself very plain. You said first of all that your views changed round about the middle of October after letters from Dr. O'Hanlon and the Plaintiff from thinking it was true tetany to thinking it was hysterical tetany, and then you went on to say " Why I changed my mind was for one, two, three, four reasons." (Objected to.)

Twelfth day, Wednesday, 15th December 1943.

DEFENDANT :

Further cross-examined.

Mr. SHAND : Were you aware that since this sketch of the tube was first tendered in evidence it had been altered and darkened, details added to it ?—A. I am not aware of that.

Q. I am not suggesting you had anything to do with it, but are you aware that when it came into the hands of the people who prepared the appeal book, the printers, that they saw fit for proper reasons, so that they could properly photograph it, that they altered it, darkened it ?—A. I did not know that.

Q. I want to show you two appeal books in which the sketches appear, you know now that they are very different ?—A. One is darker.

Q. Very much darker and more detail ?—A. It extends higher up.

Q. And these that have been called " Wire-like structures " are very much thicker ?—A. Yes.

Q. You see as the matter stands, take the wire-like substance, they are very much thinner in the first appeal book ?—A. Yes, I would regard those as sketches.

Q. You have had before you the reports from St. Luke's and the reports from Quirindi Hospital ?—A. Yes, I must have had the Quirindi Hospital reports.

Q. And you knew that access to the reports was refused to Mrs. Hocking ?—A. Yes, I knew that.

Q. And you know that representations had been made by Mrs. Hocking or her representatives to see them ?—A. I would not be sure of that.

Q. Did you take any steps to ensure that she could see them ?—A. I did not take any steps to see that she could.

Q. I was cross-examining you yesterday on certain pages of the appeal book, 125, 135 and 152. Have you had a look at those since ?—A. I had a look at 152.

Q. Now, I want to ask you some questions on that subject. Is it correct that you swore yesterday you first had some suspicions that it might not be true tetany after receiving Dr. O'Hanlon's letter of 7th October and the Plaintiff's of the 11th October, is that correct ?—

A. I suspected there was something abnormally wrong then, but there was some reference in those letters to the fact that there was no cessation of tetany but the spasms were not so marked.

Q. I think you will find that is not in the letter of 7th October. You have studied those letters pretty carefully ?—A. I have read them over, yes.

Q. Do you swear there is anything in the letter of the 7th October from Dr. O'Hanlon about the spasms being not so marked ?—A. I am not quite certain, I have had to read so many things. I don't recollect that altogether ; my impression from those letters was that she was getting better, I assume that the tetany spasms were not so bad.

Q. Do you say there is anything in the letter at all to that effect ?—A. I can't remember anything.

Q. You swore a moment ago that there was something about tetany spasms growing less. That is absolutely wrong, isn't it ?—A. It is very hard to remember all documents, but my feeling is that the impression I got from the letter was that she had improved.

Q. Now, was that one of the things that caused you a suspicion, that it was not true tetany ?—A. No, that did not concern tetany so much. My feeling at that time was that the impression that I got from those letters was—I mean the impression I got from reading Dr. O'Hanlon's letter was that she complained of these things and he could not find any clinical evidence to confirm her statements and that raised a doubt in my mind about everything.

Q. You have sworn yesterday, and on the third trial, that it was following those letters that you first got the idea that it might not be true tetany but hysterical tetany. Do you wish to alter that in any way ? —A. It is very hard to remember the details of a time so long ago.

Q. You have sworn it twice, in the third trial and yesterday, do you wish to alter it ?—A. Thinking it over I think doubts were raised in my mind as to the trueness of the story about that time, and it was not until she was in St. Luke's Hospital later when she had no tetany that I realised that there had been some sudden cessation.

Q. I have not interrupted you, but will you please answer my question. Do you wish to alter the evidence given on the third trial and given yesterday that it was following these letters that you first suspected that it was not true tetany but hysterical tetany ?—A. Yes, I would like to alter that. Put it this way. I had doubts in my mind but going into the matter more closely I realise now that my great doubt as to the tetany was after she had been under observation in St. Luke's.

Q. I am not talking about your great doubt. I am speaking about your first suspicion ?—A. I wish to alter it to say after I had her under observation.

Q. So we will take it now that the evidence you gave before, twice, was inaccurate ?—A. Yes.

Q. Then this is correct, is it, that following those letters and before she went into St. Luke's the second time you did not have any suspicion about it being true tetany ?—A. I would not say that.

Q. I want you to say something, you know ?—A. I was in this position——

Q. I don't want to know what position you were in. After the letters did you suspect it might not be true tetany but hysterical tetany before

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Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

she went to St. Luke's, of course ?—A. I had suspicions then from certain consultations I had held.

Q. Consultations with whom ?—A. Dr. Ritchie.

Q. Of course he is a personal friend of yours ?—A. Yes.

Q. And he it was who was in constant consultation with you about this case ?—A. Yes.

Q. In St. Luke's the first time ?—A. Yes.

Q. In St. Luke's the second time ?—A. Yes.

Q. Before she went to St. Luke's the second time ?—A. Yes.

Q. And after she came out of St. Luke's the second time ?—A. Yes.

Q. Now I want you to tell me, was there anything in those letters that caused you to suspect it was not true tetany ?—A. Not actually in the letters.

Q. There was nothing at all ?—A. No.

Q. You don't want to go back on that ?—A. I don't want to go back on that.

Q. I will give you plenty of time to think about it. Would you like to have a look at the letters ?—A. Yes. (Letters handed to witness.)

Q. You will admit that you have altered your evidence several times ?—A. Yes, on cross-examination on this.

Q. Now I want you to take your time, because I don't want you to say you have made a mistake. Do you understand ?—A. Yes.

Q. I want you to read both those letters ?—A. The only thing referring to the tetany improvements is referring to Dr. O'Hanlon's letter so I could not have had a suspicion as to the tetany at that time, not on reading those letters because that was the first information I had for some time.

His HONOR : Have you read the letter of 11th October ?—A. Yes.

Mr. SHAND : Let me remind you that you swore this before—" You said on Friday your views changed as to whether it was true tetany or hysteria about October, 1939, when you got Dr. O'Hanlon's letter ?—Yes." That was quite incorrect, wasn't it ?—A. That is incorrect. I did not have the opportunity that you have given me, I must say, Mr. Shand.

Q. You have had every opportunity now ?—A. Yes.

Q. Did you have any suspicion when you read these letters that this was not a true case of tetany ?—A. No, not from the information I had.

Q. So that up to that date when you had read those two letters you took this, at that time, to be a genuine complaint ?—A. Yes.

Q. And there was nothing in those two letters that caused you to think other than that this was a genuine complaint on the part of Mrs. Hocking ?—A. The tetany, yes.

Q. And I suppose you must have thought that being tetany, continuing over this period of 19 months, it was a most extraordinary case ?—A. Yes.

Q. One unique in your knowledge ?—A. I would not say that, because I did see a case of chronic tetany soon after I came back from the war.

Q. That is the one you mentioned yesterday ?—A. Yes.

Q. I will be dealing with that later. A most extraordinary case ?—A. Yes.

Q. The case you saw after the war you said yesterday was not tetany it was hysteria ?—A. That was in 1938, but the one I saw after the war was tetany.

Q. Did you see anything in those letters that caused you to have the slightest suspicion of Mrs. Hocking ?—A. You mean as regards tetany ?

Q. Anything at all ?—A. Yes, when I read Dr. O'Hanlon's letter I was suspicious. The sketch came with it. I knew that I had not used anything like that and if anything of that nature had actually come through the neck I would have expected Dr. O'Hanlon when he examined her to have found something.

His HONOR : Found some clinical signs you mean ?—A. Yes.

Mr. SHAND : So the reason you had suspicion was because Dr. O'Hanlon found no clinical signs ?—A. Yes, that is the reason.

Q. Was that the reason or were there other reasons that you had suspicion ?—A. Well, it was the impossible nature of the object sketched plus the absence of any signs on clinical examination, they were the two things that made me suspicious.

Q. The impossible nature of the thing sketched ?—A. I mean I had not used anything like that, and if it had burst through into her throat I honestly thought—well, there should be some sign.

Q. Is that all you want to say about that ?—A. I think that is all I can say.

Q. Very well. What I want to ask you is this, why should you even consider there being the possibility of clinical signs when you knew you had not left part of a tube or anything in her throat ; why should you even go into the possibility of signs of it bursting through ?—A. That was another consideration.

Q. Was it, that had to be considered ?—A. Yes.

Q. To a person who was innocent of leaving anything in the neck will you agree that the obvious reaction was " I don't have to consider whether there were any signs, I know I left nothing in her neck " ? —A. I won't admit that, you have to take all the facts of the case.

Q. So, you thought it might have been possible that something was left in her neck ?—A. No, I did not.

Q. Then why bother going into the clinical proof of whether something had burst through or not ?—A. You have to consider the whole case.

Q. If you knew you had not left anything why go into the fact that Dr. O'Hanlon could not find any signs ?—A. I was confident I had not.

Q. Why bother to rely on that—were you sure you had not ?—A. Yes.

Q. It must be obvious to you, doctor, that the reaction of a man that is innocent of leaving anything in the neck is simply to say " I need not bother to see if it has burst out, it was never there, I know it was not " ? —A. I don't follow you, Mr. Shand.

Q. Do you say that honestly ?—A. Yes, I don't follow your reasoning.

Q. Do you say that ?—A. Yes, I do. When we are examining a case—

Q. This was a case that you had operated on yourself ?—A. Yes.

Q. You knew that the suggestion was that you had left a piece of drainage tube in the neck ?—A. Yes.

Q. Do you say that you don't follow this, that the normal reaction of a man who knows he has not left anything is simply to say " Well, I am not going to bother to see if Dr. O'Hanlon found where it burst out, I know I did not leave it there." Isn't that the reaction ?—A. I don't agree with that.

Q. Don't you ?—A. No, not as a medical man.

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Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Q. The medical man who did the operation ?—A. Yes.

Q. If there was no possibility of anything being left in the throat like a drainage tube why bother about scrutinising the letter to discover whether Dr. O'Hanlon had found signs of something having burst out ? —A. I think you would do that just as a matter of course. Here you get a letter from a doctor in the country describing certain happenings and in that he stated that she was ill and I was anxious to ascertain if there was anything I could do for her.

Q. Not what you could do for her, about this tube, let us keep to the point ?—A. I don't admit that that is the natural reaction.

Q. Let me put it another way. Did you regard it as out of the question that you could have left anything like a drainage tube there ? —A. Yes.

Q. Quite out of the question ?—A. Yes.

Q. Then why give as one of your reasons for suspicion that Dr. O'Hanlon had found no signs of such a thing bursting through ? —A. The suspicion as to whether the story was true.

Q. But you knew it was untrue, didn't you ?—A. I knew it was untrue.

Q. You had no doubt of it ?—A. I had no doubt that I had removed the tube.

Q. You had no doubt, therefore, that the story was untrue ? —A. Yes, I had no doubt that the story of passing a tube was untrue ; as far as passing the tube that it was alleged I left in was concerned.

Q. You knew it was alleged that the tube had been left in by you ? —A. There was another suggestion in the letter about the anæsthetic, but the main suggestion was that it had been left in at the operation.

Q. And you knew that was untrue ?—A. Yes.

Q. And yet you looked about to see if you could discover in the letter indications of whether or not some such object had passed through the throat ?—A. I think that would be the natural thing to do. Of course she had been away a long time from me.

Q. What is the suggestion there, that someone else might have put the tube in ?—A. I am not suggesting that, but that is a possibility, that passed through my mind.

Q. Is it, did it pass through your mind ?—A. I wondered whether she had any other procedures done in the country.

Q. You had been in communication with Dr. O'Hanlon, hadn't you, at different times ?—A. Yes.

Q. And you knew of no suggestion that any tube had been used ? —A. I had been in communication with Dr. O'Hanlon several times.

His HONOR : How long before you got the letter ?—A. So far as my memory goes I think the last communication I had from Dr. O'Hanlon was in January, 1939.

Q. About 10 months before ?—A. Yes.

Mr. SHAND : She had left the hospital then and the wound had closed up ?—A. That was the last letter I had.

Q. By that time the wound had closed up ?—A. Yes.

Q. So you would not have thought that anything could have got in after that time ?—A. Not into the throat.

Q. What did you say to Dr. O'Hanlon when you got that letter and when you rang him ?—A. I rang Dr. O'Hanlon up and discussed it. I said—I can't remember the exact words—I asked him how she was and

I said " It is a great pity that she did not keep the object so that we could actually see what it was." Dr. O'Hanlon thought that she had passed something because her imagination was so vivid.

Q. And that is what he said in the letter ?—A. Yes.

Q. Anything else ?—A. I can't remember anything else much besides that. I probably discussed the advisability of her coming down.

Q. That is the substance of the conversation ?—A. Yes.

Q. If you were innocent of leaving a tube this letter was a startling thing, wasn't it ?—A. Yes.

Q. Startling ?—A. It was. There was one other thing I remember he said. He said " Perhaps it was as well that she had put it away."

Q. What is the suggestion on that ?—A. I don't know what his suggestion was.

Q. What did you take it to mean ?—A. That probably it would be better that it was away but I took the other view.

Q. You took from him that it would be better for you ?—A. I said it was a pity she lost it——

Q. No, what he said ?—A. I took it as a suggestion on his part.

Q. That he thought it was better for your safety that she had lost it ?—A. Yes.

Q. Did you express your resentment on such a suggestion from another doctor ?—A. That is as far as I can remember the substance of the conversation.

Q. It was a perfectly dishonest suggestion, wasn't it ?—A. I did not express anything to that.

Q. It was, was it not, an absolutely dishonest suggestion ?—A. Well, certainly it was dishonest—well, it is very hard to answer that question.

Q. Have you any difficulty ?—A. I said it was a great pity that she lost it.

Q. I am not asking you what you said, isn't that in your opinion a hopelessly dishonest suggestion ?—A. I thought it was an untrue suggestion.

Q. " Dishonest " is the word, utterly dishonest ?—A. The word " dishonest "—I would sooner say " untrue."

Q. Well, a low-down, dirty suggestion ?—A. I would not agree to that either.

Q. This is what it meant—" It is better for you, Dr. Bell, it is a good thing she has lost it, because now she won't be able to prove her case against you." That is what he meant ?—A. I suppose that is what it meant.

Q. And won't you admit that that was in your opinion a dirty, dishonest suggestion ?—A. I don't think that is a fair question.

Q. Don't you ?—A. No, because Dr. O'Hanlon did not know so much about these things.

Q. It is not one of those things, it is an ordinary matter of life, that it is a good thing that she has lost the evidence because she cannot prove her case against you. Look, doctor, there are no two ways about it wasn't that an utterly dirty, low-down suggestion ?—A. I would say it is an untrue suggestion.

Q. It is not a question of untrue. Will you admit it was an utterly unprincipled and dishonest suggestion ?—A. I cannot admit that, I cannot admit that it was unprincipled.

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Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Q. Now, just take your time before you answer this question finally, because it is important to know what your standards of honesty are?—A. Yes, if he suggested that it was lost for the purpose of hiding the truth I would say that it was.

Q. Did the suggestion convey anything else than this: "Now that she has lost it she will have difficulty in proving her case and you will be able to swear that you did not put it in." It involved that, didn't it?—A. I don't think I can agree to that. If he had in his mind that it was a good thing that it was lost so that the truth could not be arrived at I would say that that was not an honest suggestion.

Q. It was dishonest, wasn't it?—A. Yes.

Q. What else could it mean, you said you took it to mean that?—A. Yes, if it means that——

Q. But you said that you took it to mean that?—A. Yes.

Q. Well now, what did you say to him? As an honourable man, what did you say to him?—A. I cannot remember anything more. I still think what I said then, that it was a pity that she lost it.

Q. You did not reprimand this man who had made this remark conveying a dishonest meaning?—A. I did not reprimand him.

Q. Do you claim to a high standard of honesty?—A. Yes, I do.

Q. Have you ever reprimanded him for making that statement?—A. I cannot say that I have.

Q. This is rather appalling, isn't it?—A. I would not—I mean I have to think of what Dr. O'Hanlon thought at the time.

Q. Now, what he thought at the time. There is no question about that, he thought it was a genuine case, you just told us that.

Mr. CASSIDY: That what was a genuine case?

Mr. SHAND: That the tube had come through.

Mr. CASSIDY: Through where?

Mr. SHAND: Through the throat. You have already said that his attitude was that this was a genuine case, that the tube had been left in there?—A. He seemed to think that when he rang me up.

Q. And he seemed to think that the Plaintiff was honest?—A. Yes, he did not seem to give me any other impression at that time.

Q. And displaying that belief in her honesty he made the suggestion it was a good thing for you that it was lost?—A. Yes.

Q. Is there anything you can say that you wish to say on that subject before I leave it?—A. No, except Dr. O'Hanlon could have his own opinions and he assumed that as there had been an operation in which a tube had been used he naturally would think that the mind would jump to the conclusion that the tube had been left.

Q. Is there anything you can say about your failure to reprimand him for this improper suggestion at any time?—A. The conversation was very short and I did not feel inclined to reprimand him.

Q. That is all you want to say, because I am going to close the incident?—A. Yes. I have never felt that I should reprimand him.

Q. You say that conversation was short, you have seen him plenty of times since, and you have never felt that you should reprimand him?—A. I never felt that I ought to reprimand him.

Q. You have told us about this telephone conversation, and if you are innocent of leaving the tube there you must have been firmly convinced that there was something wrong with this story ?—A. Yes, I thought there was something wrong with it.

Q. Something very radically wrong ?—A. Yes.

Q. Yet on the first occasion you spoke to Dr. O'Hanlon, the man who had visited these people and looked after this woman and had seen the events, and had been given a description of it, you never asked him one word about his knowledge of the incident, not a single word ?—A. I cannot remember cross-questioning him at any length.

Q. You never asked him a single word about his knowledge of the incident to check up ?—A. I have no recollection.

Q. With this suggestion against you wouldn't you be thirsting for knowledge ?—A. He had already given me a lot.

Q. Perhaps he had, but wouldn't you be thirsting for knowledge to see how this thing came about ?—A. I thought his description in the letter was quite full.

Q. Wouldn't you be thirsting for knowledge of every incident ?—A. I would only ask him how she was feeling and he must have told me that she was improving.

Q. But wouldn't you be thirsting for every scrap of information to test this remarkable story ?—A. Well, one would want to find out everything one could.

Q. But you did not ask him about his knowledge of the incident ?—A. It is so long ago since I had the conversation that I cannot retain everything but I must have asked some questions, but I cannot remember them.

Q. Of course you will agree as a matter of common sense that if a person in your position had known a piece of tube had been left there it would not be necessary to ask for information ?—A. I don't agree with that, if a patient is ill you want to get all the information you can.

Q. Just listen. If you knew you had left a piece of tube there you would not be concerned to test this set of facts ?—A. I don't follow.

Q. If you knew you had left a piece of tube there you would not be concerned to test the story of the Plaintiff by asking Dr. O'Hanlon all he knew about it because you would know what would be there, you would know what it was ?—A. I don't quite follow you. That is put the other way around.

Q. Yes, it is put the other way around. I am suggesting that you did not ask Dr. O'Hanlon anything about the incident because you knew it was true ?—A. Knew that I had left a tube ?

Q. Yes ?—A. No, I think that is a very sinful suggestion.

Q. Sinful, that is the Plaintiff's case, you are used to it now, aren't you ?—A. Yes.

Q. Now, will you agree that if you had—I am not asking you to admit it at the present time—but if you had left a tube there you would not be surprised on reading what Dr. O'Hanlon said, would you ?—A. If I had left a tube there I would not be surprised ? Could I have that question again ?

Q. If you had left a piece of tube in there—(interrupted).

His HONOR : Assuming you had left a piece of tube in there with a piece of wire twisted around it——

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Mr. SHAND : That is not my question, Your Honor. I will not go on with the question after Your Honor's statement.

Q. You were startled with the contents of this letter ?—A. Yes, it was certainly an amazing letter, the description of the object passed and the sketch.

Q. And the suggestion against you ?—A. Yes, there was something startling in that too, I mean that was the first reaction to it.

Q. Did you ring up Dr. O'Hanlon immediately ?—A. So far as I know I did not ring him up for some days afterwards.

Q. A week ?—A. I think there is a note on here about the 13th, I think that is the date I rang him up.

Q. There is a note, isn't there ?—A. Yes, " Telephoned Dr. O'Hanlon 13/10."

Q. In your writing ?—A. Yes.

Q. I suppose you would get a letter within a day or two ?—A. Yes.

Q. What were you doing about this matter in the meantime before you rang Dr. O'Hanlon up ?—A. I certainly mentioned it to Dr. Ritchie.

Q. You had a conference with him, did you ?—A. I would not say a conference, I probably rang him up.

Q. You said before " a consultation " ?—A. Yes, that would be right.

Q. What did you discuss with Dr. Ritchie ?—A. I gave him a brief outline of the letter and asked him his reactions to it.

Q. Is that all you did ? Now just take your time, I want you to do yourself full justice ?—A. I think that is all I discussed with Dr. Ritchie.

Q. Did you take the letter to him ?—A. I cannot say that, I don't know whether I spoke to him over the phone or saw him.

Q. You cannot remember whether you saw him or mentioned it over the phone ?—A. Yes.

Q. If you saw him you would take the letter ?—A. Yes.

Q. And if you phoned him you would read it out ?—A. Yes.

Q. What did he say ?—A. Dr. Ritchie's reaction——

Q. What did he say, not his reaction ?—A. He was suspicious.

Q. What did he say ?—A. I cannot remember his conversation, Mr. Shand.

Q. I don't want the exact words, no one expects you to remember the exact words, but I want you to give me your best recollection of what he said when you gave him this information about startling suggestion ?—A. As far as I remember he thought it was quite untrue and it was probably nothing to do with the operation.

Q. Did he ?—A. As far as I remember.

Q. Did he question you at all, put you through any sort of cross-examination ?—A. I cannot remember that at this stage.

Q. Did you give him any facts apart from reading out the letter that you told him you had got from Dr. O'Hanlon ?—A. I told him I was sure I had removed the tube.

Q. Anything else ?—A. As far as I can remember at that particular time that was all.

Q. Did he ask you whether you could possibly be mistaken as to whether you had removed it ?—A. I can't remember that.

Q. But just apparently on that and on hearing about the letter he said it was not true, it could not be due to the operation, gave you an opinion straight away ?—A. Well, Dr. Ritchie's attitude——

Q. The question is did he give you an opinion straight away at the interview or telephone conversation ?—A. His reaction to it was that it was untrue.

Q. He gave that opinion straight away during this conversation ?—A. Yes.

Q. Did he tell you why ?—A. The impression I got from him was that he was very suspicious of Mrs. Hocking.

Q. Did he tell you that ?—A. It was more on a general—his idea as to her general condition, her nervous state and so forth.

Q. What was his suggestion, if he made one, that this was a wicked invention or pure imagination ?—A. Well, he always said that there was——

Q. No, what was his suggestion to you, if he made one then, wicked invention or pure imagination ?—A. The suggestion was more that it was untrue. I don't know whether he was prepared at that stage to go as far as—Dr. Ritchie's view was that there was a large functional element in her case.

Q. That is what he told you then ?—A. That was his view, and I could never persuade him otherwise.

Q. Did you try to ?—A. Yes.

Q. You did. You tried to persuade him that there was not a functional element ?—A. That was in the early stages.

Q. What were the early stages ?—A. When she had spasms in Quirindi.

Q. In other words, is this what you are putting forward, that Dr. Ritchie never thought it was tetany ?—A. He never admitted to me it was tetany.

Q. Did he put forward the view that it never was tetany ?—A. Yes.

Q. And you know or you have learned since that in November, 1939, he prescribed calcium ?—A. Yes, I understand that is true.

Q. Did you test him on that as to whether he was putting forward a true or a false view to you ?—A. No, I did not.

Q. It only came out in the third trial that he prescribed calcium in November, 1939. It was only at the third trial, wasn't it ?—A. Yes, I have seen the prescription.

Q. You know that the prescription was not discovered until the third trial ?—A. I cannot be sure of that.

Q. That was a startling thing, wasn't it, that production of that prescription of Dr. Ritchie ?—A. It may have been startling to Dr. Ritchie, but I thought it was given for the low level blood calcium when she was in St. Luke's.

Q. You know Dr. Ritchie has never suggested that ?—A. I know he has never suggested it.

Q. What made you think that if he never suggested it ? What makes you think he gave it for that purpose when he has never suggested it was for that purpose ?—A. I don't know what he suggested, but I know——

Mr. SHAND : Dr. Ritchie was cross-examined on that, wasn't he ?—A. Well, I cannot remember.

Q. You read it ?—A. I can't remember every one of these books.

Q. You know he has never suggested it was given for low calcium ?—A. He has never suggested it. (Objected to.)

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Q. Why do you suggest that he gave it merely for low calcium if he does not ?—A. Because she had no sign of tetany when she was in St. Luke's.

Q. Before that prescription came forward, you can take it that it was on the third trial, did Dr. Ritchie ever divulge to you that he had prescribed calcium ?—A. I cannot remember him divulging it to me.

Q. He was maintaining, according to you, that it was not tetany at all ? (Objected to.)—A. What is that ? (Shorthand notes read.)

Q. He was maintaining that all along, wasn't he ?—A. Yes.

Q. Now, this calcium—the date on the prescription was the 11th November, 1939. You know that until that appeared Dr. Ritchie has always sworn that he never saw the Plaintiff at all from when she left St. Luke's in 1939 up till the case ? (Objected to.)

Q. Till the following year ?—A. I don't know that, Mr. Shand.

Q. Anyhow you never questioned him to find out why he should give calcium, if he always thought it was not tetany. You never questioned him about that ? Never at any time ?—A. He always——

Q. You never questioned him about that ?—A. About what ?

Q. That while always maintaining, according to you, that it was not tetany, how he could prescribe something which was for tetany in November, 1939. Have you ever questioned him about that ?—A. No. (Objected to.)

Q. You have never questioned him ?—A. No.

Q. And you see him and go about with him frequently, don't you ?—A. Yes.

Q. And consult him about this case ?—A. Yes.

Q. You see him every day. Every day you have little conferences with him, don't you ?—A. Every day ?

Q. Yes. There would not be a day you missed, would there ?—A. It would be every few days.

Q. Every day since 1939. And you have seen him during every case and before every case ?—A. Yes.

Q. You are a personal friend of his ?—A. Yes.

Q. And you and he considered this set of circumstances—I mean you were in consultation in St. Luke's when the Plaintiff had her first operation ?—A. Yes.

Q. And you were considering this case with him ever since Dr. O'Hanlon's letter. I don't mean every day, but on and off ?—A. Yes, at times.

Q. I think you said yesterday that we may see Sir Allan Newton who gave evidence for you in the second trial ?

His HONOR : Did he say that or did Mr. Cassidy ?

Mr. SHAND : Mr. Cassidy said it.

Q. And do I understand that there is some fresh medical blood which has been brought to consider the circumstances of this case. Mr. Cassidy mentioned some other doctors who have not given evidence before ?—A. Yes, that is so.

Q. That is Dr. Smith ?—A. I know Dr. Smith has been asked to go into the case.

Q. Anyone else ?—A. And Dr. Eadie.

Q. Of course I suppose you are perfectly aware that it is a principle of the B.M.A. that no doctor belonging to that Association should give

evidence against another doctor belonging to it ?—A. I did not know that that was a principle.

Q. I will withdraw the word "principles" for the moment. Do you know that is the custom ?—A. Well, I deny it. I don't know that that is the custom.

Q. Will you deny it ?—A. Yes, I will deny it.

Q. You have never heard it ?—A. I mean doctors don't like giving evidence against their fellow practitioners.

Q. And you know that if they do that is followed by boycott ?—A. No, not necessarily.

Q. Not necessarily, but sometimes ?—A. If the man gave untrue evidence.

Q. No, not untrue evidence—if he gives evidence ?—A. No, I would not admit that.

Q. Will you deny that it is followed by boycott ?—A. I have never known men to give—I mean men who give honest evidence being boycotted.

Q. You haven't ?—A. No.

Q. Will you deny that it is followed by these consequences, that other doctors of the B.M.A. won't go into conference with them ? That their patients——(Objected to.)

Q. Will you deny that they won't go into conference with them ?—A. That is a very sweeping statement. I could not deny that.

Q. Will you deny that in such cases where a doctor has given evidence against another member of the B.M.A. that his patients are refused admission to hospitals where B.M.A. doctors practice ?—A. I think—I don't think that that it true.

Q. Will you deny it ?—A. If the other doctors considered the man had behaved in a dishonest way, I think that many medical men would not be anxious to meet him.

Q. Cut out the dishonesty. My question is—give evidence against a fellow member of the B.M.A. ?—A. If they are subpœnaed they would have to give evidence.

Q. But give evidence voluntarily ?—A. No medical man——

Q. Will you deny that ? (Objected to.)

Q. Will you deny that their patients will not be admitted to hospitals in which B.M.A. members practice ?—A. I could not say that.

Q. Will you deny it ?—A. I think I should deny it.

Q. Will you deny it on your oath ?—A. That is too general a statement. You are putting it out as a general policy.

Q. Well, what is it ?—A. Well, there is no general policy like that.

Q. Well, what is it if it is not a general policy ?—A. I think that if a man had—I mean that they would not do that to the detriment of a patient.

Q. Well, they are the ones that judge whether it is to the detriment of a patient ?—A. Well, they have to be.

Q. And so, if they do not think it would be to the detriment of a patient they would do it ? (Objected to.)—A. I think that is an unfair question in this way, that you are putting forward a question about a general policy. I don't know any general policy.

Q. I don't care what you call it. You can call it anything you like. Will you deny that that happens ?—A. I feel that it may happen in the

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

instance of certain men whom they do not approve of, but not if a man gave evidence against another doctor and the evidence he gave was true—they would not boycott him.

Q. But if they thought it was not true they would ?—A. If they thought the evidence was untrue, and if he had not behaved in the right way, if he had not acted up to the best principles, I think that the men would be unwilling to meet him.

Q. If they thought his evidence was untrue that would follow, wouldn't it ?—A. Yes.

Q. And that would be so even though the person he was appearing for won the case—if they thought it was untrue ?—A. You mean if the medical man gave evidence——

Q. On behalf of his patient, and the patient got a verdict from the jury, if the medical men of the B.M.A. thought his evidence was untrue then he would be boycotted ?—A. If they thought his evidence——

Q. Was untrue ?—A. Yes, if they thought his medical evidence was untrue—I mean the medical men would not approve of that.

Q. And they would boycott him ?—A. I don't think boycott is the right word. They would not be anxious to meet him.

Q. So that the B.M.A. sets itself above the law of the land as a jury which——(Objected to.)

Q. You understand that a court comprised of a judge and jury is the tribunal in our country to decide who is right of two parties ? You understand that ?—A. Yes.

Q. So the B.M.A. sets itself above that tribunal and says that even though a jury has agreed that this medical man for the Plaintiff is correct, and have given the Plaintiff a verdict, " We, the B.M.A., consider his evidence is untrue and therefore we take certain steps." ?—A. They do not set themselves above the law of the land.

Q. Well, that is what it amounts to, isn't it ?—A. I don't agree with that at all.

Q. As a member of the B.M.A. do you approve that these steps should be taken against doctors, which other medical men consider——(Objected to.)

Q. Anyway, I am not going any further. It is quite sufficient. Now, I want to understand the effect of your evidence. Is it this, that Mrs. Hocking was at any stage simulating—pretending ?—A. Simulating consciously ?

Q. Anything at all. I will ask you which ever way you like to put it. You explain what you mean ?—A. Well, I think after a certain time —I am only going on the evidence that I have listened to—it would appear that there was a large functional element in the case.

Q. Explain what you mean by that. Was she consciously simulating or was she not ?—A. Well, it is very difficult.

Q. What do you think ? You are a medical man ?—A. Well, I think that a certain part of her illness was organic——

Q. That means true ?—A. Not exactly true, but there was an organic basis, and that at a certain period of her sickness a functional element came into it.

Q. Just let us get down to common language. Do you mean that at any stage she was still pretending ?—A. I think at some stages. It is very hard to think——

Q. What do you think, that is all ?—A. I think that it was probably a mixture.

Q. Well, which part was she still pretending—give us anything that in your opinion she was still pretending ?—A. I am only giving an opinion of her history as obtained during the trials, mainly.

Q. I don't care what material you are going on. I want to know your opinion ?—A. Well, my own opinion is that in the early stages of her illness she was sick and——

Q. We know she was sick. (Objected to.)

The WITNESS : And that up till about the time the wound closed —I mean my own opinion is that she, I thought she was genuinely ill.

Mr. SHAND : You have not answered the question I asked you. What incident or incidents do you believe that she was consciously pretending ?—A. At what particular period ?

Q. I don't care when. Take your pick ?—A. Do you mean during the trial ?

Q. No ; I mean during the time up till she came down to St. Luke's the second time—from the operation up till the time she came down to St. Luke's on the second occasion ?—A. From Dr. O'Hanlon's evidence—I can only speak of her in St. Luke's on the first period, and then she was away in the country, and I only got information sent to me about her——

Q. I don't care where you got it from or from whom you heard it—what incident was she, in your opinion, consciously pretending, if any ?—A. It is very difficult to know whether they are consciously pretending or not.

Q. I want to know in your opinion. You have said in your opinion that some she was consciously and some she was unconsciously pretending ?

His HONOUR : It was probably a mixture.

Mr. SHAND : Yes.

Q. I want to know any one or more in which she was consciously pretending ?—A. I think there must have been some conscious pretention when she was in St. Luke's the second time.

Q. I mean to the time she went in—was there anything before that ?—A. It is very hard for me to answer that because I have only got the evidence of other people.

Q. You have given opinion right throughout on evidence of other people ?—A. Yes.

Q. You have had from October 1939 up till 1943—over four years—to think about this. What incident or incidents do you think were consciously pretended ?—A. Well, there was one instance when she was in Quirindi Hospital where she was given an injection and had a spasm not very long after it.

Q. An injection a.m. and she had a spasm 6 p.m. ?—A. Yes.

Q. You think that that was probably pretended ?—A. Well——

Q. Do you ? That is all I want to know ?—A. I would not say it was consciously pretended, but it may have been a functional thing.

Q. That is what I am asking you—any incident consciously pretended ?—A. I could not say it was consciously pretended.

Q. You have been using calcium gluconate. That is what you use ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Q. Intravenously ?—A. Intravenously I have used it.

Q. How long does the effect of it last ?—A. Well, it usually lasts—I have always thought it would last for some hours.

Q. How many ?—A. Five or six. I mean, I have never actually carried out experiments, but my experience has been that when it is given it usually relieves for longer than that.

Q. Did you hear Mr. Cassidy open the case by saying that it lasts for two or three days ? With regard to this very incident that she had an injection in the morning, some time a.m., and at 6 p.m. she had a spasm—did you hear him open that this calcium gluconate lasts two or three days ?—A. I do not remember that.

Q. Well now, how long do you say it lasts ?—A. In cases of tetany is usually——

Q. Five or six hours ?—A. Yes, but in practice we usually find that it lasts hours. They are usually all right the next day.

Q. You were talking of practice when you said five or six hours, or did you have a guess ?—A. I knew that there was some medical literature on it.

Q. What is the medical literature. Have you ever read it ?—A. I have only heard it mentioned.

Q. Have you ever heard it mentioned before ?—A. I am sure I heard it mentioned.

His HONOR : What do you say then ?—A. I have heard it mentioned that it lasts some five or six hours, or something like that.

Mr. SHAND : Have you heard it mentioned, about the literature, in any one of these trials ?—A. I cannot recollect.

Q. Now, where have you heard it mentioned ?—A. I have heard it mentioned by some of the doctors but I cannot recall.

Q. By Dr. Poate or Dr. Ritchie ?—A. I cannot say.

Q. So what you are going on when you tell the jury that it is five or six hours is what you heard from some doctor, and you cannot remember whom, and you cannot remember when ?—A. My memory is that I heard someone refer to some book, but I don't know which book.

Q. That is all you are going on. You just heard someone refer to a book, and you answer my question from what you heard. You heard someone refer to some book and you don't know what book ?—A. I heard it discussed, and that was my impression, that I heard it mentioned from some text book.

Q. Is that all you know about it ?—A. All I know is that in practice calcium gluconate—of course one does not see very many of these cases, but I have seen it give good results.

Q. I did not ask you that. Do you know anything about the time it lasts except what you heard someone say about some book ?—A. I have carried out no experiments.

Q. So your only source of information is what you heard someone refer to in a book ?—A. Yes.

Q. Now, let me refer to a book that has not been mentioned before. It is " Endocrinology, by R. G. Hoskins."

His HONOR : What subject does that deal with ?

Mr. SHAND : The glands and their functions.

Q. Is that correct ?—A. What ?

Q. What is endocrinology ?—A. The ductless glands.

Q. This book is by R. G. Hoskins, Director of Research of the Memorial Foundation for neuro-endocrine research, and research associate in physiology of the Harvard Medical School. That is all right, isn't it?—A. It should be all right.

Q. This is on page 111, the 1941 edition : " Calcium gluconate may be used. This raises the blood calcium immediately and cuts short the attack, but the effect lasts only a few hours " ?—A. Yes.

Q. Do you suggest that there is anything remarkable in the Plaintiff having, some time a.m.—that covers of course 12 hours, doesn't it ?—A. Yes.

Q. Some time a.m., in the morning, an injection, and at 6 p.m.—that is, at least six hours afterwards and probably more—having a spasm. Is there anything remarkable in that ?—A. It is unusual.

Q. But you have had no experience ?—A. Of calcium gluconate ?

Q. You don't know how long it lasts—you have told these gentlemen except what you heard someone say from a book ?—A. But I have tried it on patients.

Q. But you told these gentlemen that you have no idea of the time it lasts. (Objected to.)

Q. But you swore a moment ago—after that—that you had never timed it in practice ?—A. Not timed it in practice. I had never conducted it by tests on the blood.

Q. On how many patients have you used it—approximately ?—A. I have used it, I should think, on half a dozen, perhaps.

Q. Have you used it on any case of severe tetany ?—A. No, not in the case of severe tetany.

Q. During the adjournment, would you think up the answer to my question—I don't want you to consult with other people, and I know you won't do that—as to any incidents that you say that in your opinion were consciously pretended, and come back and think over it and tell us.

His HONOR : You think that over and while we are having an adjournment you can do that.

(Short adjournment.)

Mr. SHAND : I had put to you that you had given the conversation when you rang Dr. O'Hanlon.

His HONOR : In October 1939, after getting his letter.

Mr. SHAND : Yes.

Q. I suppose after ringing him you saw Dr. Ritchie again ?—A. Yes, I should think so.

Q. And you had a talk over it ?—A. I should think so, yes.

Q. You got Mrs. Hocking down to the hospital ?—A. Yes.

Q. And you got her down for your own purposes, didn't you ?—A. No.

Q. Your own purposes ?—A. No, I won't admit that.

Q. You heard Dr. Ritchie swear it, didn't you, that she was brought down to the hospital for your purposes ?—A. I don't remember hearing that.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Q. You were discussing this case with Dr. Ritchie, weren't you ?—A. I don't remember——

Q. We will refer to it later. Will you deny that you and Dr. Ritchie discussed it and you thought, for your own protection, that it would be as well to get her down.

Q. You were not sure then, were you, which side Dr. O'Hanlon was going to take. You were not sure, were you ?—A. It would not have made any difference.

Q. You were not sure, were you ?—A. Well, I did not know what Dr. O'Hanlon's attitude would be at that time.

Q. But the last you had heard from him——(Objected to.)

Q. But the last you had heard from Dr. O'Hanlon led you to believe that he believed this thing—the tube being left in ?—A. He said he was nonplussed and——

Q. But you told us this, that from what he said he led you to believe that he believed that the tube was left in ?—A. Yes, I was led to believe that he jumped to that conclusion.

Q. After this telephone ring and after consultation with Dr. Ritchie you decided that Mrs. Hocking should be brought down to St. Luke's ?—A. Yes.

Q. And there she was under observation for some time ?—A. Yes.

Q. And you saw both herself and her husband ?—A. Yes.

Q. And you have told us that the husband, you have always been led to believe, was a decent individual ?—A. Yes.

Q. Now, from her stay in St. Luke's on the second occasion and during the time you saw her husband, did you ask either of them any particulars of what they knew about this tube coming through ? Did you ask them one single word ?—A. No, I cannot remember asking them about it.

Q. You doubted this at the time, didn't you ?—A. Yes.

Q. Did you find anything unusual in that conduct you have testified to ?—A. What is that ?

Q. That you did not ask either of them any single incident of how this tube is supposed to have come through ?—A. I have no recollection of asking them.

Q. But if you did not ask Dr. O'Hanlon in the telephone conversation, you were suspicious about it. You had seen Dr. Ritchie, and you told us that he was suspicious, and when they came down you asked neither of them a single incident about it to try and check up. You did not ask either of them a single word ?—A. No.

Q. Why didn't you check up ?—A. Because I had Dr. O'Hanlon's letter.

Q. But why not check up from the very person who claimed that the tube came through ?—A. I did not think there was any necessity to.

Q. Although you thought the allegation was untrue ?—A. I thought the thing was untrue.

Q. Although it was an allegation against your professional care ? (Objected to.)

Q. You knew what Dr. O'Hanlon's letter suggested ?—A. Yes, but Mrs. Hocking did not suggest that.

Q. I did not say that. Dr. O'Hanlon's letter suggested that you had left a tube in the neck. (Objected to ; pressed.)

Q. You took Dr. O'Hanlon's letter as containing a suggestion that a tube had been left by you in Mrs. Hocking's neck ?—A. He assumed that.

Q. And, moreover, when you rang him up, you came to the conclusion that he believed it—then, at any rate ?—A. I thought that he assumed it.

Q. You have said that about five times. He appeared to believe it ?—A. I will say that he assumed it. I will say that.

Q. He appeared to believe it ?—A. Yes, all right.

Q. And that, of course, would be the most serious matter ?—A. It would have been if I had left the tube there.

Q. But you did not ask a single word of Mrs. Hocking and her husband as to how this thing was supposed to have happened—not a single word ?—A. No, I did not.

Q. Why not ?—A. Well, I thought I had all the information—I spoke to them about the throat and one thing and another, but I had a very good description from Dr. O'Hanlon.

Q. Did you believe it ?—A. Dr. O'Hanlon ?

Q. Dr. O'Hanlon's letter contains largely what Mr. Hocking had told him ?—A. Yes.

Q. Did you believe what Mr. Hocking had told him—what was set out in the letter ?—A. About passing the tube ?

Q. Yes ; did you believe it ?—A. I did not believe it.

Q. Well, why didn't you think about asking a single word to check up ?—A. I did not think it was a thing that I should have gone into with her at the time.

Q. But what about Mr. Hocking ?—A. Yes, I could have gone into it with him.

Q. Why didn't you ?—A. I did not think there was any necessity to.

Q. Why not check up ?—A. I did not think there was any necessity to check up.

Q. Why didn't you check up with him as to what his wife had told him and as to what he had observed. Why didn't you check up ?—A. I just assumed the incident described by Dr. O'Hanlon.

Q. But Dr. O'Hanlon told you what Mr. Hocking had said. "Mr. Hocking gave me the following history," and then he goes on. Why didn't you check up with Mr. Hocking if you thought it was false ?—A. If I thought it was false ?

Q. If you thought the story was untrue about the tube coming through the neck ?—A. I thought the best thing to do was to look at the patient.

Q. Why not ask the history from Mr. Hocking ?—A. Well, we had the history.

Q. Why not ask him questions. You only had a statement here, second hand ?—A. I did not see very much of him.

Q. Is that the reason ?—A. One of the reasons. He had a discussion with me once.

Q. Are you putting that forward as one reason ?—A. One reason, yes.

Q. Mr. Hocking brought the subject up himself, didn't he ?—A. Yes.

Q. Do you still say that that was one reason why you did not ask him any details ?—A. He suggested the tube.

Q. Do you still say that that was one reason ?—A. I think it was one reason, yes.

Q. What was to prevent you asking him any details when he brought the thing up himself ?—A. Well, this was a strange happening.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Q. Well, I suggest that that is all the more reason why you should investigate it ?—A. And my feeling about it was that although there was no blame—although Mrs. Hocking's letter attached no blame to me, still I thought that this type of thing, some patients like this are likely to make charges against doctors and I thought the less I said the better.

Q. For you own protection ?—A. Well, possibly later on. I was trying to get the truth.

Q. Was that for your own protection ?—A. Well, I thought they might make further charges against me.

Q. It was for your own protection ?—A. Possibly, yes.

Q. But you took Mr. Hocking to be a decent man ?—A. Yes, but——

Q. Did you think he was in any conspiracy ?—A. No, not for the moment.

Q. You did not at that time ?—A. No, I did not.

Q. Why didn't you question him ?—A. I could have, I suppose.

Q. Why didn't you—for your own protection ?—A. I suppose so—in part.

Q. How was that for your own protection, that you did not question Mr. Hocking ?—A. I don't follow you there.

Q. Well, you said that it was partly for your own protection that you refrained from questioning Mr. Hocking as to the incidents. Why was it partly for your own protection ?—A. I think that this type of case where these unusual happenings take place—anyhow, it has been my custom not to discuss the matter too freely with the patients.

Q. How many occasions have you had like this, that it has been your custom to deal with ?—A. I haven't had many like this, but——

Q. But have you had any like this ?—A. Not exactly like this.

Q. Have you had accusations made against you in regard to negligence ?—A. No, I don't mean so much as regards negligence, but where one suspects that the facts may not be true. I mean certain cases I have had to deal with in hospitals and various places, patients make certain statements and I have always adopted the attitude that it is just as well not to give them leading questions.

Q. Leading questions ? I am talking about accusations against yourself. You have never had that before ?—A. I have never had accusations against myself.

Q. I am not talking about the patient now. I am talking about Mr. Hocking, a decent man—not sick ?—A. Yes.

Q. Why didn't you question him ?—A. Well, I thought it just as well to find out all I could.

Q. To find out all you could ?—A. Yes. I had a perfectly open mind.

Q. Well, why didn't you find out all you could from him ? Why didn't you ask him how this thing came about ?—A. Well, at that time I did not think he could add to it.

Q. But you did not see, did you ?—A. No.

Q. Well, why didn't you ?—A. Well, it was partly because I wanted to examine the patient and find out exactly what was the matter.

Q. That would not prevent you examining the patient if you asked Mr. Hocking ?—A. No ; that is quite true.

Q. Well, why didn't you ask him ?—A. Well, that is my attitude in those cases.

Q. You have not had a case like this before, you told us ?—A. I mean where the symptoms and signs were doubtful.

Q. Doubtful ?—A. I mean where one doubted the symptoms and signs.

Q. You did not know whether they were true or untrue ?—A. Yes; I think the less you say to the patients the better.

Q. I am not talking about the patients ?—A. And their relatives for that matter.

Q. But you said that Mr. Hocking was a sane, decent man. Why didn't you ask him if you doubted the story ?—A. Well, I wanted to find out the true position of the patient.

Q. Well, why didn't you question the man who was living with the patient ? The history was most important ?—A. Yes, but I had already had the history.

Q. Why didn't you check up on it from the man who was in the house—the husband ? Why didn't you ?—A. Well, I did not think it was necessary.

Q. You said a moment ago that it was partly for your own protection ?—A. Yes, partly for my own protection.

Q. Well, why was it partly for your own protection ?—A. Well, I thought it was possible where a happening like that took place—it was possible that there might be further extravagant statements made.

Q. By Mr. Hocking ?—A. By the patient or her husband.

Q. So you had in mind that it might be a conspiracy ?—A. No, I didn't; not as far as Mr. Hocking was concerned.

Q. You thought he was an entirely decent honourable man ?—A. At that time I did.

Q. Well, why did not you question him ? I want an answer ?—A. That is the answer. The answer is I was at that time uncertain. I had doubts in my mind. I wanted to have the patient go into the case and verify the position was true.

Q. Why did not you question Mr. Hocking, who you did not suspect to be in the conspiracy and who you took to be an honourable man ?—A. I did not think it was necessary.

Q. Why did you think it was partly for your own self-protection ?—A. Here was an allegation made and any allegation, a description of a thing which she had passed. Certain people suggested something had been left at the operation, and I thought the best thing to do was to take things as they were and have a careful examination.

Q. Why was it partly for your own self-protection that you did not question Mr. Hocking ?—A. We wanted to get the exact facts about the case.

Q. But Mr. Hocking would be the one to tell you. He had spoken to his wife and had been in the home. His wife had told him what she said had happened ?—A. Yes.

Q. Why did not you question him ? Why was it partly for your own protection ?—A. It was partly for my own protection and partly to go into the case.

Q. But why partly for your own protection ?—A. Because there had been a suggestion and Dr. O'Hanlon in a telephone conversation had asked if it could happen. I thought at a later stage there might be allegations.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination. *continued.*

Q. What did you say when he asked you whether it could happen ?—A. I submitted it could not.

Q. Will you swear you did ?—A. I won't swear.

Q. You did not suspect Mr. Hocking. You took him to be a decent honourable man then ?—A. Yes.

Q. Why was it partly for your own self-protection that you did not question him about the facts ?—A. I had a feeling at the back of my mind ; I was frankly suspicious.

Q. But not of Mr. Hocking ?—A. He was the husband of the patient.

Q. Were you suspicious of him ? You have sworn before that you were not ?—A. Not at that time.

Q. You were not suspicious ?—A. No.

Q. Why was it for your self-protection that you did not question him ?—A. The only answer I would have is, I thought it might lead to litigation later on.

Q. In trying to get the true facts from a decent man, how could you imagine it would lead to litigation ?—A. But people change.

Q. What would questioning do ? If you did question him and ask him what happened, how would it possibly involve you ?—A. I could not. I don't say it would involve me.

Q. Why was it partly for your own self-protection that you did not question Mr. Hocking ?—A. I had the idea that it was a strange happening. There was the suggestion that a tube had been passed ; I thought that in these cases the less said about it the better.

Q. Why not try and find out the facts from Mr. Hocking ?—A. I also had the facts from Dr. O'Hanlon in a letter, very fully.

Q. You agree, if you had questioned Mr. Hocking, it could not involve you. Why was it partly for your own self-protection that you did not question him ? Can you answer that ?—A. What I wanted to do was to find out all I could from the patient without getting a further history, you see.

Q. Why was it partly for your self-protection that you failed to question Mr. Hocking ?—A. I cannot see what you are driving at there.

Q. You have sworn it was partly for your self-protection that you did not question him. How was it partly for your self-protection ?—A. I cannot answer the question any more than I have.

Q. But you have not answered it at all. If you cannot think of an answer to the question I will not press you further. Is it correct that you cannot think of any answer to that question ?—A. Partly for my self-protection ?

Q. First of all, you swore that you failed to question Mr. Hocking ; why you failed was partly for your own protection ?—A. Yes.

Q. You volunteered the statement. I ask you, can you answer why it could possibly have been partly for your self-protection. If you cannot answer it, say so ?—A. In case there would be any further litigation. I mean, in case there would be litigation.

Q. You have already agreed that merely asking Mr. Hocking what had occurred could not possibly have involved you at all ?—A. Yes.

Q. Why was it partly for your self-protection ? If you cannot answer the question, tell me ?—A. I do not think I can answer it.

Q. You had the possibility in your mind that there might be litigation ? —A. Yes.

Q. Although Mrs. Hocking had written you a very nice letter ?—A. Yes.

Q. She said that a piece of drainage tube had been left in her neck, in that letter ?—A. Yes.

Q. You know it involved you ?—A. Yes, that was her allegation.

Q. Not only did she suggest that, but her husband on that second trip to St. Luke's, accused you of leaving the tube in her neck, did he not ?—A. Yes, he did practically.

Q. And to that accusation you said nothing ?—A. What I said was this. He asked me——

Q. Will you agree that when he made that accusation you made no reply ?—A. No direct reply.

Q. Do you want to say that you made an indirect reply ?—A. Yes.

Mr. CASSIDY : He wants to say what took place.

The WITNESS : Mr. Hocking brought up the question of tetany spasms.

Mr. SHAND : But take when he accused you. He said words that amount to accusing you of leaving a tube there. What do you say to that ?—A. He asked me what caused the inflammation. First of all he inquired what was the cause of tetany. I then said I considered it was due to the inflammation. So far as I remember the incident, I said it was the inflammation around the parathyroids, or words to that effect, or inflammation of the neck which had caused the tetany and he said : " What caused the inflammation." In the conversation so far as I know I said : " I don't know what caused the inflammation." I think he replied : " I do," or something like that.

Q. And alleged that the tube was there ?

Mr. CASSIDY : He has never sworn that.

Mr. SHAND : He alleged that the tube had been left there, did he not ?—A. That was the allegation.

His HONOR : Directly, or inferentially ?

Mr. SHAND : Directly ?—A. I do not remember him.

Q. You had no doubt what he meant ?—A. I had no doubt.

Q. I will put to you what you swore before. (Page 336 of trial of August 1942 referred to) :—

> " Q. You knew the infection took place in the first place ?—A. Yes, but I did not know how it occurred, its causes are unknown.
>
> Q. Do you remember him saying ' I do ' ?—A. Yes, he alleged the tube was there."

A. He alleged that the tube was the cause of the tetany.

Q. And it was quite plain, the allegation was you had left a bit of tube there ?—A. Yes.

Q. To that you said nothing ?—A. He said : " I do," and I thought——

Q. Never mind what you thought. To that you said nothing ?—A. Yes. I said nothing.

Q. You, a person who knew you had not done anything of the sort ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Q. You did not see fit to correct him, and so guard your professional standing ?—A. I said no more, because it was virtually, well, it was the accusation.

Q. And an accusation of a serious nature ?—A. Yes.

Q. Why did not you deny it ?—A. I would not deny it under those circumstances.

Q. Are you serious in that answer ?—A. I think so, in these medical matters. A man says " I do " like that. If a man says that he seems to be quite satisfied, and I thought it was no good arguing.

Q. You had in mind there might be litigation ?—A. Yes, I thought there was always a possible chance of a charge.

Q. And a direct accusation was made ?—A. Yes.

Q. And you did not deny it ?—A. There is a proper place to deny those accusations.

Q. But at the time it was made was one place ?—A. No, I do not agree with you.

Q. But do you realise at least this, that your silence may have wrongly led Mr. Hocking to think that you were guilty ?—A. I do not think so.

Q. Why ? He has made a direct accusation and you do not reply ? —A. I did not think it was wise to reply to it. That was my reaction to it. That was what I did.

Q. Did you realise it might have led Mr. Hocking to believe that, according to you wrongly, your silence meant that you were accepting the position ?—A. I do not think so.

Q. In that whole conversation, what single word did you speak, which could have led him to believe that you were innocent ? What single word or words ?—A. He was discussing the question of tetany. I said I still think the cause of the tetany was the inflammation.

Q. Is this what you said then do you mean ?—A. Yes.

Q. What single word was there which indicated your innocence ?— A. In the discussion with him he said : " What caused the tetany ?" I said : " Inflammation around the parathyroids," and then he put the question : " What caused the tetany ?" I said : " In my opinion the tetany was caused by inflammation," and then the next question was : " What caused the inflammation ?" I truthfully replied : " I don't know." Then he said : " I do."

Q. But he said further than that, he said : " The tube in there ?" (Objected to.) ?—A. He may have said that. I cannot remember, but he implied that.

Q. (Page 336 of trial of August 1942 again referred to.) " Do you remember him saying ' I do '," and then you volunteered the answer, " Yes, he alleged the tube was there " ?—A. Yes, I remember that. I took it as an allegation.

Q. That was what you swore : " Yes, he alleged the tube was there " ? —A. " I do " are the words.

Q. " Yes, he alleged the tube was there." There is no doubt you took it as an allegation that the tube was there, left there by you ?— A. He said " I do," and I took it that way.

Q. Did not you say to him : " That is a very wicked thing " ?—A. No. What I thought was when these sort of people make allegations of that kind, it is better to keep your mouth shut.

Q. But you have told these gentlemen already that he was a decent, honourable man ?—A. But it was an allegation.

Q. And a very definite allegation was it not ?—A. Yes.

Q. Don't you admit that you know perfectly well that you left a piece of tube there ?—A. I don't, I did not leave a piece of tube there.

Q. When Mrs. Hocking was in St. Luke's on the second occasion, you knew it was being suggested that a piece of rubber tube was passed on the left side of her throat through her tonsil ?—A. I have no recollection at that time of the tonsil being mentioned.

Q. Of course it was not mentioned in Dr. O'Hanlon's letter. It mentioned the neck ?—A. It was mentioned, Dr. O'Hanlon referred to the œsophagus.

Q. He did not refer to the tonsil ?—A. But I think Mrs. Hocking referred to the gullet.

Q. You can take it there is no mention of " tonsil " ?

Mr. CASSIDY : Until the first trial.

Mr. SHAND : It was first mentioned by the Plaintiff.

Q. When she was in St. Luke's, or up to the time she left there, you had no information that it was alleged a tube had passed through the left tonsil ?—A. No.

Q. Is that correct ?—A. Yes, I think it is quite correct. So far as my memory goes I think it was at the first trial, the tonsil.

Q. You examined the throat on three occasions while she was in St. Luke's ?—A. Yes.

Q. You tell these gentlemen that you did not see signs of eruption in the left tonsil ?—A. I saw no signs of eruption in the left tonsil.

Q. Dr. Marsh examined her throat while she was in St. Luke's ?—A. Yes.

Q. Did you ask Dr. Marsh to examine Mrs. Hocking because she said a piece of rubber tubing had passed on the left side of her throat through the tonsil ?—A. I cannot remember that.

Q. Will you swear you did not tell Dr. Marsh ?—A. I cannot remember that.

Q. Will you swear you did not tell him ?—A. I cannot remember it. If I cannot remember it, I cannot swear it.

Q. If you did tell him that, you could have got your information from no other source than an examination of her throat ?—A. The information I wanted to get was——

Q. I do not ask that. What I say is you could have got that information from no other source than an examination of her throat ?—A. That is so, yes.

Q. If you did tell Dr. Marsh that you must have seen traces of an eruption in her left tonsil ?—A. No, that does not follow.

Q. You could have got it from no other source but examination. No one had told you before ?—A. I understood your question to be that I got it from examination. I took your question to mean that if anything had passed into her throat, the only way he could get any definite information about it would be to examine her throat. I examined her throat carefully. I could not see anything.

Q. That is not the question. I want you to follow this carefully. You had never heard a suggestion while she was in St. Luke's on the second

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

occasion that any thing had passed through her left tonsil. No one had told you that or suggested it ?—A. I ought to say why I was interested in the left side of her neck.

Q. She said it was sore on the left side. I am talking of something coming through the left tonsil. You had never heard of that while she was in St. Luke's on the second occasion ?—A. Not the tonsil, specifying the tonsil particularly.

Q. Not specifying coming through the left tonsil ?—A. I cannot remember that then.

Q. No one had ever suggested it then ?—A. I have no recollection of it being suggested at that time.

Q. So if it was not suggested to you, the only source you could have got it from was an examination by yourself of her own throat ?—A. You are suggesting I saw a hole.

Q. If there was one, you would have seen it ?—A. If there was a hole in the left side of her throat.

Q. Tonsil ?—A. I say the left side of the throat.

Q. If there was a hole in the left side of her tonsil, at that time it was a fairly big hole ?—A. A large hole in the left side of the tonsil at that time which would have allowed passage of the object. I am quite certain I would have seen it.

Q. You won't deny that you told Dr. Marsh when she was in St. Luke's to examine her, because she said a piece of rubber tube had passed on the left side of her throat, through the tonsil ?—A. I cannot remember that.

Q. You won't deny it ?—A. I cannot deny it, because I have no distinct recollection of it. I can only tell you why I got Dr. Marsh to see her, and that was : here was a woman——

Q. I am not asking that. When you saw Dr. Marsh, you had no inkling of any suggestion that a tube had passed through the left tonsil ? —A. No. I have no recollection of suggesting it to Dr. Marsh.

Q. But you had no knowledge of or ever heard a suggestion that the tube had come through the left tonsil at that time ?—A. No.

Q. It is a truism to say if you have no knowledge, you could not have told Dr. Marsh ?—A. Yes.

Q. I put it to you it was the very direction you gave to Dr. Marsh, that she alleged that a piece of rubber tubing had passed on the left side of her throat, through the tonsil ?—A. I have no recollection of that. I know it was in my mind.

Q. If you gave such a direction, you could not explain why you referred to the left tonsil, could you ?—A. Not necessarily.

Q. Well, can you explain why you might have referred to the left tonsil, if so, let us have it ?—A. No. I might have referred to the tonsillar region.

Q. Passing through the left tonsil ?—A. I do not think I could ever have done that. My mind is an absolute blank on that.

Q. Will you swear you did not ?—A. I do not like to swear unless I am absolutely sure.

Q. But it would be impossible, because you had no knowledge of any allegation of anything coming through the tonsil ?—A. The only allegation I had was something had passed into her throat.

Q. You won't swear that you did not say that ?—A. I won't swear it this time because my memory is not good enough to remember.

Q. You have said that in your opinion it was impossible, or improbable, or virtually impossible, that this tube could pass and go through the tonsil ?—A. Yes.

Q. I will show you some illustrations. These are illustrations on regional anatomy, E. B. Jamieson, M.D., Senior Demonstrator and Lecturer, Anatomy Department, University, Edinburgh, Sec. 11, 4th Ed., 1942. You claim to thoroughly know the anatomy of the neck ?—A. I have a good working knowledge of it.

Q. Are you prepared to deny that in the space just between the top of the thyroid lobe and the tonsil there is an area which contains no blood vessels of any kind, no nerves, no muscles, but only mucous membrane. I refer to between the upper lobe of the thyroid and the tonsil ?—A. It must be a very small area.

Q. Are you prepared to dispute it ?—A. I would not admit it.

Q. Will you deny it, from your knowledge of anatomy ?—A. I think it is very unlikely.

Q. You claim to know the anatomy of the neck. Are you prepared to swear it was not so ? I say between the top of the lobe of the thyroid and the tonsil there is a space in which there are no blood vessels, no nerves, no muscles, but only mucous membrane ?—A. No, I could not believe that.

Q. Are you prepared to say it is not so ?—A. Yes, I could not admit it.

Q. Will you deny it ? Is your knowledge extensive enough to say flatly it is not so ?—A. How large is it ?

Q. First of all, is there any space ?—A. It is incredible to me. I have not done my anatomy for many years in the anatomy room.

Q. I thought you were lecturing to students ?—A. Not on anatomy—surgery.

Q. Your knowledge is not sufficiently accurate to say flatly that it is not so ?—A. Not at present, no.

Q. I show you some illustrations at page 52. Do you see the illustration there of the thyroid, that is the purple ? Do you find anything inaccurate in that illustration ? (Question withdrawn.)

Q. First of all, will you agree that the lobe of the thyroid comes up to where it is indicated there ; that is the thyroid cartilage, is it not ?—A. Yes.

Q. Is that correct ?—A. Yes.

Q. Right up to the thyroid cartilage ?—A. Yes.

Q. I show you another illustration at page 51, which shows the bony skeleton of part of the jaw ?—A. Yes.

Q. Do you see there drawn in outline the thyroid ?—A. Yes.

Q. It would correctly describe the position of the thyroid ?—A. I think it is a little high up there.

Q. There you find the superlaryngeal nerve ?—A. Yes.

Q. The Adam's apple is the thyroid cartilage ?—A. That is the Adam's apple there (indicating).

Q. This comes up where the other one is, does it not ? You thought it was a bit high ?—A. Yes, I think it is a little high, both illustrations. It is a diagram.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943. Cross-examination, *continued.*

Q. I show you a cross section of the neck in which we find the trachea, œsophagus, and one side of the thyroid. That is how it lies relevantly to the trachea ?—A. Yes.

Q. It lies right along the side ?—A. Yes.

Q. You will agree that between the thyroid and the trachea there are no blood vessels ?—A. I won't agree with that diagram.

Q. With the thyroid as it exists, do you suggest there are any blood vessels between that and the trachea ?—A. There are blood vessels running in there (indicating), small vessels, although they are not shown.

Q. No large blood vessels ?—A. There is one fairly large, the inferior thyroid artery. It runs in towards the trachea. It is right up at the back.

Q. It is underneath the thyroid ?—A. The vessels run into the thyroid gland, and they are quite a considerable size.

Q. But they are underneath the gland, the inferior ?—A. They get behind the gland. They are termed "inferior". It is only the artery which comes up from below. The other one comes from above.

Q. I show you an illustration on page 43. That shows the constrictor muscle. You will admit the tonsil is opposite the angle of the jaw ?—A. A little higher.

Q. It is shown as opposite the angle of the jaw ?—A. Yes; that is about the level, there (indicating).

Q. Will you dispute that underneath these muscles which are shown, and just at the top of the neck, there is an area of mucous membrane shown white there ?—A. I think it is wrong. There should be the pharyngeal aponeurosis.

Q. Will you swear this is wrong. Do you think it is wrong ?—A. I think it is exaggerated. Where is the mucous membrane, do you say ?

Q. I point to the white patch, below and to the right of the jaw. If that is the mucous membrane, it goes from just about where the tonsil is down to not far from the top of the lobe of the thyroid gland ?—A. If that is correct, but I very much doubt it.

Q. Do you pit your knowledge against the Lecturer, Anatomy Department, University, Edinburgh ?—A. I would not accept it.

Q. You prefer your own knowledge ?—A. I would have to see it on a dead body before I would believe it.

Q. You don't think that this book was got up for the Plaintiff, do you ?—A. No.

Q. Do you see again the indication of mucous membrane, is that wrong (page 28 referred to) ?—A. But there have been a lot of muscles which have been removed there.

Q. Will you deny there is mucous membrane where that is shown. Do you deny there is mucous membrane where that is shown under the muscle ?—A. Yes, there is mucous membrane if you go in far enough, but there is a lot between the thyroid and the mucous membrane.

Q. You won't dispute that is there, will you ?—A. There is mucous membrane there, but there are a lot of things outside it.

Q. I now show you another diagram at page 27. Will you agree in the position which is marked white, which looks something like sheeps' brains, that that is mucous membrane ?—A. I would like to see what was on the other side. That is a diagram.

Q. In the neck as indicated in a space there, there is an area comprised of mucous membrane only ?—A. If you take any area in the mouth there is an area of mucous membrane.

Q. But there is one in the neck ?—A. If you go far enough in.

Q. You have not said on any previous trial that there was ?—A. The point has never come up.

Q. That is right underneath the tonsil there ?—A. There is mucous membrane inside the whole of your throat.

Q. There is an area of mucous membrane between the tonsil and the top of the thyroid. You will admit that won't you ?—A. But I cannot admit it without qualification.

Q. There is mucous membrane ?—A. On the inside of the throat.

Q. Where it is shown here, in the illustration ?—A. But there has been a lot of structures dissected.

Q. But there is, when you get in the neck ?—A. There is mucous membrane below the tonsil.

Q. You do not positively swear but you would not admit that there was an area of mucous membrane in the neck before I showed these illustrations to you. What do you say to that ?—A. There is mucous membrane.

(At this stage witness's previous evidence beginning at question 8, page 640, was referred to.)

(Luncheon adjournment.)

At 2 p.m. :

Mr. SHAND : I have been questioning you in relation to the illustration in Jamieson's Regional Anatomy, and you remember I showed you page 52 showing the thyroid gland, amongst other things, and the thyroid cartilage ?—A. Yes.

Q. And you thought that was a bit high. Now, I want to show you Quain's Anatomy, that has been referred to before, you know that work ?—A. Yes.

Q. Here is another view of the thyroid and the thyroid cartilage. It is even a little higher in that one, if anything, isn't it ?—A. No, I think it is lower, because there is the side of the thyroid there.

Q. You think it is lower. It does not really matter very much. Now page 147 of Quain's that gives you a front view of the thyroid cartilage ?—A. Yes.

Q. And also a posterior view ?—A. Yes.

Q. Without the gland ?—A. Yes.

Q. If you squeeze your neck there (indicating) and swallow, you can feel the thyroid cartilage moving up and down, can't you ?—A. Yes.

Q. And when it moves up to this limit it is not very much below the tonsil is it ?—A. It is a fair distance.

Q. We know where the tonsil is, somewhere about the angle of the jaw ?—A. Yes, and in the position of rest, the tonsil and the upper pole of the thyroid are regarded as being 3 inches apart.

Q. We can all judge for ourselves because you can actually feel it ?—A. Yes.

Q. The cartilage is not merely the Adam's apple, it extends up each side, the Adam's apple would be represented by the " V " ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Q. And the cartilage extends up each side ?—A. Yes.

Q. So you can actually feel for yourself the movement of that and feel the way it expands when you swallow ?—A. Yes.

Q. Will you agree with this that assuming the end of a tube broke in a thyroidectomy it could get into the cavity where the thyroid gland was ? (Objected to.)

Q. Take first of all a piece of tube 2 inches long it could get into the thyroid cavity ?—A. The cavity from which the thyroid had been removed, yes.

Q. It could get there ?—A. Yes.

Q. I will come back to that presently. I want to ask you at this stage this question : I invited you at the adjournment at 11.30 to give me any incident in connection with what you heard about Mrs. Hocking's history up until the time she went to St. Luke's the second time, any incident which you considered represented a conscious pretending ? —A. Am I to limit myself to what I knew at that period ?

Q. No, what you have heard up to the present time which you think are incidents that constitute that she was pretending ?—A. What I have heard ?

Q. Yes, what you have heard, related, I suppose, mostly by herself or by Dr. O'Hanlon. All the incidents in your opinion that show conscious pretending ?—A. Does that apply to incidents which she has described in the trial ?

Q. Yes ?—A. Or which have been described by her husband ?

Q. Yes ?—A. Well, the incidents which seemed to me to not fit in with the tetany——

Q. Conscious pretending, I am talking about ?—A. Yes, I see—I cannot argue that if she had——

Q. I only want your opinion. You may have your own reasons, I only want your opinion of these incidents, if any, which, in your opinion, are conscious pretendings ?—A. It is hard for me to separate conscious pretending from, say, hysteria.

Q. Well, are there any which in your opinion as a medical expert constitute conscious pretending ?—A. Well, the described unconsciousness may have been—you can get certain hysterical manifestations which it is difficult to determine whether the patient is conscious of doing them, that is my difficulty.

Q. You may find difficulty, but are there any incidents which you consider constitute conscious pretending ?—A. You mean up till when ?

Q. I put it about six times, up until the time she went to St. Luke's on the second occasion.

His HONOR : From the 14th April, 1938, until her return to St. Luke's on the 26th October, 1939.

Mr. CASSIDY : Viewing that with to-day's knowledge ?

Mr. SHAND : Yes.

His HONOR : With all your knowledge that you have now after the three trials, take that period after discharge from St. Luke's on 14th April, 1938, prior to her readmission on the 26th October, 1939 ? —A. Well, the so-called described attacks of unconsciousness, described as such I think by Mr. Hocking, Dr. O'Hanlon in some of his evidence——

Mr. SHAND : I only want to know your opinion, I don't want to know what you are basing it on.—A. Well, he referred to the clutching of clothes, I think, and keeping the eyes sort of screwed up when he attempted to open them, and that is one thing that came out, I think, when he described it. There was another incident referred to, I cannot say in which trial, where she complained of bleeding from the neck in Quirindi hospital, and in this trial she referred to the manner in which she dealt with it by wiping the blood off with a piece of cotton wool and I think throwing it into the fire.

Q. Anything else ?—A. There were certain incidents referred to as to the disposal of the article, but I don't know whether that is a medical matter.

Q. I suppose you would regard that as rather an untruth, not a question of conscious pretending. Do not bother about that. Anything else ?—A. Certain statements that were made with regard to very extensive swelling of the neck.

Q. Conscious pretending, you would take that to be ?—A. I have never heard any confirmation of that.

Q. Let us get clear on this, I am not asking you what you considered was true or untrue. What I am asking you is this, some indications she gave that she consciously put on at the time ?—A. Well, I mean the unconsciousness.

Q. Are there any other major matters that you can think of ?—A. In the light of the present evidence the tetanic—or rather the spasms in the later periods, would appear to be—I would not like to say she is pretending, but they may have been hysterical.

Q. I am not asking you about hysteria, conscious pretending ?—A. It is very hard to say where conscious ends and hysterical begins.

Mr. SHAND : What about picking the rubber tube out of the chamber and squeezing it ?—A. That is coming to the incidents I was speaking of —that is a matter of truth.

Q. That is what I want to know—your opinion. That could not be mere hysteria, could it ?—A. No, not if she did it.

Q. But if she did not do it at all—if the incident never happened it could not be mere hysteria that she would relate such an incident ?—A. Yes, it could be.

Q. Is that your opinion, that it was hysteria ?—A. I cannot give a definite opinion as to that. You can get people——

Q. I only want to know your opinion—have you got an opinion whether it is hysteria or not—if you have not I will leave it ?—A. That is a difficult question to answer.

Q. Would you prefer not to answer it ?—A. It could be hysteria. It could be an imagined incident.

Q. You prefer not to express an opinion whether it was or not ?—A. I do not think I can, except in a general way that it might have been.

Q. Do you remember this morning I had pointed out to you that both in this trial earlier and in the previous trial, you had said that your first suspicions had arisen after Dr. O'Hanlon's letter of the 7th October and the Plaintiff's of the 11th—I pointed out to you that as what you had sworn before, and you said this morning that was incorrect ?—A. Yes—my feeling was that I had my suspicions aroused at that time because it was such an unreal happening.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Q. In the previous trial you swore that you suspected then, after those two letters, that it was not true tetany. This morning you said that you wished to correct that—that that was not correct—that you did not suspect it was not true tetany until she came into St. Luke's ?—A. Yes—thinking the matter over that is what——

Q. Is that your considered opinion now ?—A. Yes, it is.

Q. When you got those two letters you had no suspicion of litigation then, did you ?—A. No, but I think that at that time the patient had mentioned that Dr. O'Hanlon had asked if it could come through the throat—there was no mention of litigation.

Q. You had no suspicion that there might be litigation over it, at that stage, did you ?—A. I did not suspect there would be litigation.

Q. Mrs. Hocking had written to you referring to this: "You have probably heard from Dr. O'Hanlon giving you full details of the piece of drain tube that was left in my neck" ?—A. Yes.

Q. In view of the fact that you did not suspect litigation was there anything to prevent you from writing back and saying you did not leave any piece of drain tube in her neck ?—A. There was nothing to prevent me doing that.

Q. Was there any reason why you should not ?—A. Because I felt I had not.

Q. That was a good reason for telling her you had not ?—A. Yes, it would have been.

Q. You did not tell her you had not ?—A. No, I did not.

Q. Why did you not ?—A. Why did I not write back and tell her that I had not left it ?

Q. Yes—"but I did not leave any piece of drain tube in your neck" ?—A. I certainly did not do that.

Q. Why did you not ?—A. I must admit there would be a possibility of litigation.

Q. You have sworn that to your mind there was no possibility of litigation in your mind then—do you wish to go back on that ?—A. It is so long——

Q. Do you wish to go back on it ?—A. I may have had suspicions.

Q. So you do wish to go back on it ?—A. Taking the two letters into consideration there was a possibility——

Q. That is not my question. You do wish to go back on what you have just sworn a few minutes ago, that there was no possibility of litigation in your mind ?—A. I think there must have been.

Q. Well, what you said a few minutes ago was not correct ?—A. No, not correct.

Q. You are not being bustled—you are getting plenty of time ?—A. Yes.

Q. So you did then have in mind the possibility of litigation; you did have it in mind when you received those two letters ?—A. I must have had it—slight.

Q. I suppose you realise that if there is to be or may be litigation it is very important, when a suggestion is made on paper to the person who may be sued, that that person should deny it ?—A. I did not know that.

Q. Did you not ?—A. I am not a lawyer, Mr. Shand.

Q. Do you think it needs a lawyer ?—A. I think it does.

Q. Suppose a patient wrote to you and said: "You, Doctor, by negligence, left a tube in my neck," do you think it needs a lawyer to decide that it is advisable for the doctor to say "I did not"?—A. I think you have got to be very careful with those things where there is a possibility of litigation.

Q. And being careful is to put on record, when there is a suggestion against you, that you are not guilty of it—that is being careful—that is just ordinary care?—A. To deny it in writing?

Q. Yes; when it is put to you in writing, to write back and say "I did not do it"; oh, come, Doctor?—A. These things are matters—my own feeling is that it is not necessary.

Q. Advisable, I am suggesting?—A. It might be; it is a question of what you think.

Q. Advisable; do you agree that it is advisable for any man——

Mr. CASSIDY: Under what circumstances—charged with negligence; are those the circumstances?

Mr. SHAND: You know the question I asked you?—A. Yes, but I am not quite clear as to what you mean.

Q. You thought there might be litigation?—A. I thought there was a possibility.

Q. And you knew that a definite suggestion was conveyed that you had left a—— (Objected to as misquoting the letter.)

Mr. SHAND: The witness has said he thought there might be litigation; that is all I am concerned with.

Q. Thinking there might be litigation, you knew that both in Dr. O'Hanlon's letter and in the Plaintiff's letter there was the suggestion you had left a piece of tube in the neck?—A. Yes.

Q. And you had in mind the possibility of litigation?—A. I thought there was a possibility.

Q. Do you tell these gentlemen that under those circumstances it did not occur to you as being advisable to put in writing in your reply that you did not do it—that it did not occur to you as being advisable, assuming you were innocent of it, to write back and say: "There was not any tube left in when I operated"?—A. I did not consider it advisable at the time.

Q. You were considering this matter pretty deeply then?—A. Yes, I had given it thought.

Q. When you got Dr. O'Hanlon's letter you conferred with Dr. Ritchie?—A. Yes.

Q. And you waited—you had rung Dr. O'Hanlon, had you not?—A. Yes.

Q. And you had waited some time before your eplied to the Plaintiff's letter?—A. Yes.

Q. And Dr. Ritchie had told you that in his opinion it was hysteria?—A. Yes.

Q. Do you still say you did not consider it advisable to write back and say that you did not do it—deny doing it?—A. I think that, now that you mentioned that Dr. Ritchie considered it was hysteria—I think that might have been a reason why I did not write back and deny it.

Q. Is that what you say—did Dr. Ritchie advise you not to deny it?—A. He did not advise me not to deny it.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Q. Was not this the position, that you did not want then to antagonise Mrs. Hocking because you wanted to get her down to secure some evidence ?—A. No, that was not the position.

Q. Do you say in your letter in reply of the 15th October—the very letter that you suggested she should come down to Sydney for medical investigation ?—A. Yes.

Q. Was not that the position ?—A. I did not want to antagonise her ?

Q. Yes, you did not want to antagonise her because you wanted to get her down to Sydney so that you could get some of your own doctors to examine her ?—A. That was not the position.

Q. You did in your letter in reply refer to this question of drain tube; she had said in her letter "you have probably heard from Dr. O'Hanlon giving you full details of the piece of drain tube that was left in my neck" ?—A. Yes.

Q. You did refer to that in your reply ?—A. Yes.

Q. And this is what you said: "It is difficult to explain your last illness and the piece of drain tube which you say passed by the bowel" ?—A. Yes, I used her description.

Q. "Piece of drain tube" ?—A. Yes.

Mr. CASSIDY: He put it in inverted commas.

Mr. SHAND: Of course he did. What I am referring to is "it is difficult to explain" ?—A. Yes.

Q. So the position was, if what you are telling the Court is correct——

Mr. CASSIDY: "It is difficult to explain your last illness" is what he says. I object. (Original letter shown to jury.)

Mr. SHAND: I will ask you what you meant. Your letter reads: "It is difficult to explain your last illness and the piece of drain tube which you say passed by the bowel"—what you meant was that it was difficult to explain both ?—A. Yes.

Q. Now, according to you, you knew perfectly well you had never left a piece of drain tube there ?—A. Yes.

Q. At what stage had you come to the conclusion that the Plaintiff was suffering from hysteria rather than tetany ?—A. When I first got the idea was when she came down to St. Luke's, and showed no signs of tetany.

Q. Was that early in second stay at St. Luke's ?—A. It would be within a few days of her coming into St. Luke's.

Q. And you thought then that she was suffering from hysteria ?—A. I thought that——

Q. That is a simple question ?—A. I considered she was very nervous.

Q. You considered she was suffering from hysteria, that is the question ? We are all nervous at times, but we are all not hysterical ?—A. I doubted at that time—the sudden cessation of the tetanic spasms made me think very seriously that it could not be tetany right up to the 2nd October and then suddenly got better.

Q. Did you think it was hysteria within a few days of her entering the hospital ?—A. I do not think I had fully made up my mind about it.

His HONOR: Had you come to a definite conclusion on it ?—A. Not at that time.

Mr. SHAND: Did you ever come to a definite conclusion?—A. I have heard descriptions of things during the trial that suggest things.

Q. The question is, have you ever come to a definite conclusion?—A. It is very hard to come to a definite conclusion about hysteria.

Q. Well, you still have not come to one—can you answer that question yes or no—have you still not come to a definite conclusion?—A. Yes, I have come to the conclusion that during the latter stages of the illness there were hysterical manifestations.

Q. That is after the wound had closed?—A. Yes, certainly after that.

Q. When did you come to that definite conclusion?—A. If you would call some cessation of tetany——

Q. When did you come to that conclusion?—A. During her stay in St. Luke's I thought that the sudden cessation of the tetany——

Q. I only want to know when. A moment ago you said you did not come to a definite conclusion—which is it—you did or you did not come to a definite conclusion?—A. I thought that the sudden cessation——

Q. I do not want to know that. Did you come to a definite conclusion whether it was hysteria or not when she was at St. Luke's?—A. If it was not a definite conclusion—I was very suspicious about it. I did not hear all the evidence.

Q. Is it correct that you did not come to a definite conclusion—you were suspicious but it was not definite so far as you were concerned—can you not answer that question?—A. No, I do not think I could have come to a definite conclusion then.

Q. Then when did you, if ever, come to a definite conclusion?—A. At some of the trials.

Q. But you cannot say which one?—A. I cannot say which one.

Q. It might be any of them?—A. It is very hard to remember all the evidence.

Q. I want to know when you made up your mind—you are vitally interested in this litigation—you cannot say?—A. When I heard Dr. O'Hanlon's evidence—I think he gave evidence on the second trial—I do not know whether I heard any evidence—there has been evidence at all the trials.

Q. If you cannot answer when you came to a definite conclusion, tell me?—A. I was not completely, I will say, satisfied in St. Luke's—I was very——

Q. I am asking you, did you come to a definite conclusion—if you did, when was it—if you cannot tell me when it was, tell me so. I cannot be very much fairer than that?—A. I go so far as to say during some of the trials.

Q. But this is clear, that you suspected hysteria while she was in St. Luke's?—A. Yes—the sudden cessation of the tetany.

Q. Whatever it was owing to, you suspected it?—A. Yes.

Q. She was your patient?—A. Yes.

Q. And as such she had a claim on you to do your best?—A. Yes.

Q. Was she ever treated for hysteria from beginning to end?—A. She was given sedatives.

Q. Was she ever given the treatment a hysteric gets—now just think?—A. At St. Luke's in 1939 she was given sedatives.

Q. Was she ever given the treatment a hysteric gets—you know what that is——

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

His HONOR: Do you know the treatment hysterics get?—A. I know they are given sedatives.

Mr. SHAND: There is a lot more than that, is there not?—A. They may be sent to a nerve specialist or something like that.

Q. Was she ever sent to a nerve specialist?—A. No.

Q. Did you ever get any nerve specialist to examine her?—A. No.

Q. At one of the trials you did get a psychiatrist, Dr. McGeorge, to sit in the front seat to see if he could discover whether she was in any way neurotic or unbalanced?—A. He was present.

Q. He was present while she was cross-examined for nine hours?—A. I could not swear to that.

Q. He was present while she was cross-examined?—A. Yes, he was present during cross-examination.

Q. And he was not called?—A. No.

Q. If you suspected hysteria in that hospital you got in a specialist to do a blood test—you got in a throat specialist to examine her throat—why did you not get a nerve specialist in?—A. Because she settled down so well in the hospital. She seemed very nervous when she came in—with the treatment she had there she seemed to improve rapidly.

Q. There are certain tests are there not—we have heard them described—to ascertain whether a person has tetany?—A. When they have manifest tetany.

Q. And latent?—A. And latent.

Q. The Erbs test?—A. Yes.

Q. The Trousseau test?—A. Yes.

Q. And the Chvostek test?—A. Yes.

Q. You were suspicious at St. Luke's as to whether she had suffered from tetany?—A. Yes.

Q. Because you considered that the effects of tetany would continue for a longer period?—A. Yes.

Q. Did you apply one of those tests?—A. I did not apply the test then, because she had no symptoms of tetany.

Q. Did you apply one test to see whether there was any lingering tetany?—A. No, because she had no symptoms of tetany.

Q. Why not try her and make sure?—A. I have never tried them unless the patient was complaining of symptoms.

Q. But this was a case where she had been complaining of tetany right up to three weeks before—that had been suggested?—A. Yes.

Q. And you had her down there and you thought tetany would persist if she had had it?—A. Yes.

Q. And you did not have one of those tests applied?—A. That is quite true, but I have never applied them yet unless the patient had clinical signs of tetany.

Q. But in this case serious suggestions were being made?—A. Yes, but she had no symptoms of tetany.

Q. A very good method to dispel any idea would be to apply these tests—a further precaution?—A. It would have been a further precaution.

Q. You did not take it?—A. No.

Q. Let us go back a little. You have begun to doubt whether it was true tetany from some very early stage at the end of June 1938—you had begun to doubt that?—A. That was only at a later stage.

Mr. SHAND : When you had this suspicion in St. Luke's as to whether it was true tetany, how far did you suspect—how far back did you suspect as to whether it was true tetany or not ?—A. I thought that the incident where the thing disappeared—the incident of the 2nd October—that if a tetany appeared suddenly then and there were no manifestations when she came into St. Luke's, she had no clinical evidence of it.

Q. You swore yesterday that you would expect the signs to persist —your first evidence was—for about three weeks, and then you went on to say something like this—three weeks was one period you gave, wasn't it ? —A. Well, that is indefinite.

Q. That is what you have. Do you want to withdraw that ?—A. I think that——

Q. Do you want to withdraw that——(shorthand notes read.)

Q. This is on page 585—" Well, I cannot imagine a patient having tetany over all that time, and then it suddenly ceasing. It would not cease abruptly because in parathyroid tetany the body within a few weeks or perhaps in two or three months at the outside seems to be able to adjust itself to a lower calcium level." In a few weeks ?—A. I was referring there to the early stages of parathyroid tetany.

Q. Referring to the earlier stages. Just listen to this—" Well, I cannot imagine " ?—A. I meant the early stages.

Q. Listen to what you said—" Well, I cannot imagine a patient having tetany over all that time "—that is the Plaintiff ?—A. Yes.

Q. " And then it suddenly ceasing. It would not cease abruptly because in parathyroid tetany the body within a few weeks or perhaps in two or three months at the outside seems to be able to adjust itself," etc. ? —A. I did not mean to convey that. What I meant to convey was that in ordinary parathyroid tetany the body adjusts itself ; I mean the parathyroid tetany following the operation——

His HONOR : Post operative parathyroid tetany ?—A. In post operative parathyroid tetany a body usually adjusts itself within a few weeks.

Q. To a lower calcium content ?—A. Yes, to a lower calcium content, but where the tetany persists for a long time, it then cannot disappear suddenly.

Mr. SHAND : Where do you get the authority for that ?—A. For the early stages ?

Q. When it persists for a long time ?—

His HONOR : When you have post operative tetany persisting for a long time ?—A. I haven't got any authority for that, but you have got to consider what caused the parathyroid tetany in this case, and if a cause had persisted for a long time there would be fibrosis of the parathyroid glands, and they would not adjust themselves in that time. My feeling would be that it would go on.

Mr. SHAND : You have had no experience of it ?—A. I have had no experience of it.

Q. And you have never read of it ?—A. I have never read of it, but I mean——

Q. In this case. (Objected to.) ?—A. I mean that you have got to explain these things on the basis of pathology and physiology.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Q. This is a case, on what the Plaintiff has said, where the cause has suddenly been removed by the tube, and one would expect some pus, coming out?—A. Yes, but assuming for one moment that a tube had come out, the inflammation and the fibrosis around the parathyroid glands, which had persisted for 18 months—that fibrosis and strangulation of the glands, I will put it that way, could not possibly clear up in a short time.

Q. You are of course assuming that there was fibrosis. That is speculation too, isn't it?—A. It is not speculation. There has been all this talk about a foreign body in an abscess cavity, and you could not fail to have fibrosis around an abscess cavity with a foreign body, particularly the size of that foreign body which is figured here.

Q. But it need not extend to the parathyroids?—A. What need not extend?

Q. The fibrosis, if it is there?—A. But if the tetany kept going it must have extended to the parathyroids.

Q. You said yesterday that the parathyroids are attached to or sometimes embedded in the thyroid gland?—A. Yes, occasionally embedded.

Q. And at other times attached?—A. Yes, and their position is various.

Q. You have to leave a bit of the thyroid gland to see that the parathyroids are not damaged or removed?—A. It is advisable—some people advise——

Q. Do you want to say any more?—A. It is advised by some surgeons to remove the whole gland.

Q. And what happens to the parathyroid glands?—A. They are mostly outside the thyroid gland.

Q. But they are attached to it?—A. Yes, but they are at the back of the gland, and when you separate the structures back they fall back.

Q. Have you ever done that—have you ever removed the whole of the gland?—A. I haven't. I have removed practically the whole of the gland, but some surgeons do remove the whole of the gland.

Q. But that is what used to cause, in the more remote days, all the trouble. The surgeons used to remove the gland and take the parathyroids?—A. Yes, but in removing the gland they did not carry the dissection out properly, and the parathyroids—it is very hard to explain. When you are stripping the gland out, if you strip the capsule at the back of the gland, in most instances the parathyroids go with it. They go with the capsule. Occasionally they are in the gland, but occasionally they are on the back of the gland.

Q. And you don't know, when you are doing the operation, whether they are in the gland or attached to the back of it. You don't know?—A. You can see them sometimes.

Q. Sometimes, but not always?—A. Not always.

Q. So that it means this, that if you are going to take the whole of the gland you at least take the chance of taking the whole of the parathyroids if they are embedded in it?—A. Yes, but you are not going to take the whole of the parathyroids.

Q. But you might do it if you are not careful?—A. It is possible that you might, but——

Q. But supposing they are embedded in the gland?—A. I don't think they are.

Q. But the majority are?—A. I don't think the majority are—an occasional one.

Q. Wouldn't you take a risk in removing the whole gland?—A. Yes, but if you carried it out in the proper way there would not be a great risk.

Q. But there is a risk, isn't there?—A. There is a risk in every operation.

Q. But there is a risk you need not take?—A. Well, some surgeons do remove the whole gland.

Q. Can you show the court any modern authority on surgery that suggests to remove the whole gland—any one, I don't care who it is?—A. Well, I know of surgeons who do it.

Q. Can you show me any authority at all?—A. I cannot at present.

Q. But can you look it up and see if you can find it. (Objected to.)

Q. While we are on that, my friend says cancers. I am not talking about any disease of the parathyroids. Let me put something that was said yesterday. You were asked questions as to whether it would not be dangerous to operate on this lady assuming a tube had been left, and you said No, you would operate and take it out.—A. Yes.

Q. And you gave an example. You said that in one case the ligature slipped on the jugular and you operated?—A. Yes.

Q. In that case it would be operate or death. She would bleed to death if you did not operate?—A. Yes, you had to go after it. Yes, she would bleed to death, yes.

Q. That is not a good illustration.—A. That was brought up by whether there was any risk in interfering at that stage.

Q. And you put the illustration by saying that in one instance a ligature slipped on the jugular vein and you operated. That was a case where it was operate or die?—A. That was brought out by Mr. Hardwick.

Q. Don't talk about that case—we are on this?—A. That was a matter in connection with a good scar.

Q. We are not talking about scars. You were asked "Is it necessary sometimes to leave some portion of each gland," and you said "I put it this way. It is an extra safeguard to protect the parathyroids"?—A. That is right.

Q. An extra safeguard?—A. An extra safeguard.

Q. I am putting it to you that it is not an extra safeguard, but the invariable modern practice to leave some of the gland?—A. There are some surgeons who do not leave any of the gland.

Q. We will be seeing those. Dr. Poate?—A. Yes.

Q. He takes the whole gland away?—A. Yes. (Objected to.)

Q. I don't mean when it is diseased?—A. Thyrotoxicosis.

HIS HONOR: Toxicosis means a disease, doesn't it?

Mr. SHAND: Yes.

WITNESS: That is in this case.

Mr. SHAND: I am not suggesting that the parathyroids are affected. Do you know of any case where the whole parathyroid is taken away?—A. I don't quite follow you. (Objected to.)

Q. In such a case as this. That is what you say, is it?—A. Yes.

Q. When you got Dr. O'Hanlon's statement before the first trial, did you suspect then that it might be hysteria going back some time?—A. I don't know whether I saw his statement, I know that he gave a statement.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Q. Well, you said yesterday that you did?—A. Did I? Well, I must have seen it.

Q. Did you suspect hysteria then?—A. Before the first trial?

Q. Yes.—A. Well, of course I would have suspected it. I mean when she was in St. Luke's at the time of the sudden cessation of the tetany.

Q. But did you suspect that this hysteria went back some distance. Did you suspect that it possibly or probably went back some distance to 1938, or some time then?—A. Yes, because he described her sickness when she was in hospital in Quirindi prior to coming down to me.

Q. So that you suspected that hysteria went back some time?— A. Yes.

Q. And did you suspect then that hysteria had commenced some time round about when the wound healed up or some little time afterwards? —A. Well, at that time I thought there was a very neurotic background in 1937. That is the best way I can put it.

Q. I am not asking you that. Did you suspect that the hysteria either did or might go back either to 1939 or a bit of 1938?—A. It was 1937 that I was referring to then.

Q. Yes, but that was not the question I was asking you. Did you suspect then, after seeing Dr. O'Hanlon's statement, that the hysteria went back. You knew what was in it?—A. I was told by——

Q. But you knew what was in it?—A. Yes. Probably it was read over.

Q. At that time did you suspect that hysteria went back into 1938?— A. Yes. I at that time suspected that during the latter part of 1938 there were manifestations which might reasonably be supposed to be hysteria.

Q. You saw Dr. O'Hanlon before the first trial? You told me more than once?—A. Yes, I am sure I saw him.

Q. And you saw him afterwards before the second trial—and before the third?—A. Yes, when he was down I saw him.

Q. Did you ever ask him whether he had ever applied any of these tests for tetany—the Chvostek, the Trousseau, or the Erbs?—A. No, I don't think I did. I assumed he would know them.

Q. But did you ask him whether he had tried them on this lady, and how she had reacted?—A. I cannot remember that.

Q. But that would be rather an important matter, to ascertain whether he had applied these tests which would show whether it was true tetany or hysteria. Can't you remember?—A. I can't remember that, Mr. Shand.

Q. But would not that appeal to you as being one of the elementary things that you might ascertain?—A. Well, I assumed that he knew already.

Q. But did you ask him whether he had tried then, and what the result was?—A. I cannot remember asking him.

Q. Doesn't that appeal to you as a very important matter?—A. I have no recollection of asking him.

Q. I suppose if you had asked him you would have remembered what the result was, wouldn't you?—A. Yes, I would have. If he had told me, I presume I would have remembered it, but I find it very difficult to remember all the details of this case.

Q. That would be a splendid test on your suspicion as to whether it were hysteria dating from 1938. That would be a splendid test, wouldn't

it ?—A. Well, it would have been a good test to apply, but it did not occur to me to ask him.

Q. But you may have asked him ?—A. I may have asked him. I cannot remember it now. This case has gone on for years, and you are picking little bits out here and there.

Q. I am putting this to you as a very important point. Dr. Ritchie, according to you, had said from the beginning that this is a case of hysteria ?—A. Yes.

Q. Did you take any notice of what he said ?—A. I mean——

Q. Did you agree with him ?—A. I did not agree with him in the early stages.

Q. Do you agree with him still—that it is hysteria right along ?—A. Do I agree with him ? No.

Q. Do you agree with him that it is hysteria right from the start ?—A. No, I don't agree with him right from the start, but my difficulty is to know when it changed.

Q. You don't agree with him, for instance, that it was hysteria when she was in Quirindi Hospital the first time. I mean after she came back from St. Luke's ?—A. No, I assumed that that was parathyroid tetany.

Q. And you still think it is ?—A. I still think it is.

Q. Now, what I want to ask you is this, that with your suspicion after you had seen Dr. O'Hanlon and heard what was in his report, do you tell these gentlemen you cannot remember whether or not you inquired whether any of these three tests had been given to the lady ?—A. I cannot remember now, I am not going to answer untruthfully.

Q. Do you think you could forget a thing like that ?—A. Yes.

Q. Now, did you say yesterday that when you spoke to Dr. O'Hanlon on the 'phone after he had written to you his letter of the 7th October that it was a pity that this object was lost because it was so extraordinary. It is on page 571—" It is a pity that Mrs. Hocking did not keep the thing so that we could see this extraordinary object which she sketched." You regarded this, didn't you, as quite a good sketch ?—A. As a sketch.

Q. Of a tube—quite a good sketch of a drainage tube ?—A. It was a——

Q. Did you regard it as quite a good sketch of a drainage tube ?—A. Yes, it was of the rubber of course, with extra things figures in it.

Q. It was quite a good sketch of the drainage tube—leave out what was sticking in it ?—A. Yes.

Q. And you told Dr. O'Hanlon that, didn't you ?—A. I cannot remember telling him that.

Q. Will you deny it ?—A. Well, Mr. Shand, I am in this position. I am being asked questions years afterwards.

Q. Just answer the question ?—A. Well, I cannot deny it. I cannot remember. That is the position.

Q. When Mrs. Hocking was in St. Luke's the second time, you had Dr. Tebbutt ?—A. Yes.

Q. What was that for ?—A. Dr. Tebbutt was called in to do a blood count and blood examination and estimation of the calcium.

Q. Were those his first instructions ?—A. I thought that was so.

Q. Weren't his instructions these first, a blood calcium test ?—A. Yes, that is what I wanted done.

Q. That is what you want done ?—A. Yes, I wanted the blood calcium done.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Q. And that was to ascertain what you could about tetany or no tetany ?—A. Yes.

Q. And how did the blood test come in ?—A. I don't know whether Dr. Tebbutt may have done it on his own.

Q. Do you think that that is possible ?—A. I cannot remember that. I just asked him to do a blood——

Q. You gave him no further directions ?—A. I cannot remember giving him any further directions.

Q. Blood calcium only were your instructions ?—A. Yes, that is all I was instructed in.

Q. Did you personally see him or ring him up ?—A. I cannot say. I probably rang him up or rang up his secretary.

His HONOR : Or rang up his secretary ?—A. Either him or his secretary.

Q. Or did his secretary ring up to you ? (Objected to by Mr. Shand.)—A. I got a message through to Dr. Tebbutt to do a blood examination, including calcium, as far as I remember.

Mr. SHAND : You have sworn that you asked for a blood calcium test ?—A. That is included in the blood test. (Shorthand notes read.)

Q. Is that correct. Is it correct ? You don't know ?—A. I mean, I think I am entitled to explain if I asked Dr. Tebbutt to do a blood examination for a patient who had been ill, that he would do the blood count and the blood examination.

Q. Is it correct that you don't know how——A. I don't know how the message was delivered to him in this case.

Q. But you only ordered a blood calcium test ?—A. Well, I cannot say at this late stage.

Q. But you have sworn that you don't know how the blood count came about. Is that carelessness ?—A. Well, I think you are splitting straws.

Mr. SHAND : Is that carelessness. Do you answer that question that way ?—A. No, I am entitled to explain. When you have a patient who comes down to you with a history of sickness, one would order a blood count, a complete examination, and in this particular case what I was interested in was the calcium.

Q. Why did you swear you did not know how the blood count came about ?—A. I cannot remember at present.

Q. How did you come to say that ?—A. It is difficult to answer all these questions so long after.

Q. You said it only a couple of minutes ago ?—A. When you asked Dr. Tebbutt to do these blood examinations, I cannot remember whether I asked Dr. Tebbutt to do the blood count, but the thing I was interested in particularly was the calcium.

Q. This is the hospital record, the night report of the 26th October : " Patient for blood calcium test 9 a.m." There is nothing about blood count ?—A. No.

Q. What is the Wasserman test for : syphilis ?—A. That is one thing.

Q. Anything else but syphilis ?—A. Yes, syphilis.

Q. Did you get the Wasserman test done for syphilis on the Plaintiff ?—A. I cannot remember it now. The thing I was interested in was the calcium.

Q. But you could not forget it could you ?—A. Oh yes, you could.

Q. This was your patient ?—A. But you get blood tests done on these patients.

Q. But a syphilis test ?—A. I would get everything done.

Q. But what you really wanted was a calcium ?—A. Yes.

Q. I show you Exhibit Q. Dr. Tebbutt's report " Wasserman test gave a negative result " ?—A. Yes, it is a complete investigation.

Q. Was it on your directions that there was a test for syphilis of this lady ?—A. I cannot say. I probably told Dr. Tebbutt that the patient had been ill for a long time, and wanted to have it thoroughly investigated and to carry out those tests. It is quite conceivable I asked for the whole lot.

Q. What has syphilis to do with it ?—A. You want to investigate everything in any obscure disease.

Q. Have you heard any suggestion that the patient was suffering from syphilis ?—A. No.

Q. When this blood test first came along on the second trial, this was the document which was tendered, this one on the back (document shown to witness). It was the one first tendered ?—A. Yes.

Q. It had everything on it except the last bit of this one (indicating). The calcium content of the blood was estimated at 7·2. That back document which does not contain anything of the calcium was shown to Dr. Welsh, and he was cross-examined on it without any reference to calcium ?—A. I presume it was.

Q. You say there was no indication of tetany. What about the 7·2 blood content ?—A. It is well known that the body accommodates itself to a lower calcium level. When she was in St. Luke's at that time she did not have tetany.

Q. Where is the authority for that ?—A. I am the authority that she did not have tetany then.

Q. But where is the authority for the body accommodating itself ?—A. I can look that up.

Mr. CASSIDY : Do you remember the book ?—A. I have looked at so many books.

Mr. SHAND : Take your time and look it up later. What does your reading teach you. A person who has had tetany gets certain lowered calcium content in the blood, and does it stay like that ?—A. Yes, it is supposed to stay at a lower level and the body accommodated itself.

Q. It continues or does it slowly recover ?—A. The idea is it does not go back to normal level. It lasts for a long time.

Q. Is it forever or a long time ?—A. I cannot say because I have not investigated " for ever." I have not investigated it as a bio-chemist.

Q. You have read about it ?—A. Yes, in Samson, one of the latest physiology books.

Q. Is it permanently reduced, or does it recover ?—A. I think my reading goes to prove it is permanently reduced.

His HONOR : A person can go through life with only 7·2 per cent. ?—A. Yes, low.

Mr. SHAND : That was what you think in view of your reading ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Q. You have sworn that when the Plaintiff came back to the hospital. St. Luke's the second time, you examined her throat ?—A. Yes.

Q. You did not examine her neck ?—A. I mean her throat.

Q. I suppose to any medical person there is a difference between the neck and the throat ?—A. The neck includes the throat.

Q. Is it the same to examine the neck, as to examine the throat, in medical parlance ?—A. Yes, well, not in medical parlance.

Q. To examine the neck is to examine the outside; to examine the throat is the inside ?—A. Yes.

Q. I put it to you that when Mrs. Hocking came down you did not examine her throat inside for some days ?—A. I know that I did. She came down and she was complaining of this redness in the left side, and I am quite certain that I examined her throat.

Q. We will take the second trip. (Day report of 26th October, 1939, referred to.) We will see what the record has: "Has been fairly comfortable. Dr. Bell here. Examined chest back and neck." You see there is no "throat" ?—A. Yes, I see that.

Q. Look at the 29th November, day report. I suggest that the first time you examined her throat: "Good day. Up in sun p.m. Dr. Bell here, throat examined" ?—A. Yes.

Q. On 31st October there are a lot of references. The throat was painted. It says "Examined throat," on 31st as well ?—A. Yes.

Q. But no mention about an examination of the throat on the first day, the 26th ? You heard Plaintiff swear that you did not look inside her throat ?—A. I think that is untrue.

Q. The records are against you ?—A. They do not always put everything down in the records.

Q. They put something down here. They put "neck" down, but have not put down "throat" ?—A. I had a good look at her the day she came in.

Q. But the records appear to be against you ?—A. Yes.

Q. What did you give her inhalations for ?—A. She claimed she had some huskiness.

Q. Have you ever suggested before this trial that you gave her inhalations as early as 27th October, because that appears to be the first one, for huskiness, have you ever suggested that at any previous trial ?—A. No. I was asked once about that question before, and my recollection is that during part of the time, during the first few days when complaining of some burning and irritation——

Q. Never mind that. What you swore before, was it after the 29th that you gave her inhalations because she had a cold ? That was what you swore before ?—A. Yes. I am certain I did that. I was speaking from memory.

Q. This is to your own Counsel, third trial, page 124:

> "She complained at one time, I am quite sure of this, that she had some soreness in the throat. I examined her throat certainly on two occasions."

You swear it was three occasions now ?—A. Yes.

Q. "Certainly on two occasions, and on one occasion there was slight pharyngitis or redness, which I took to be due to pharyngitis, that she had contracted a cold or something like that. I prescribed certain inhalants" ?—A. Yes.

Mr. CASSIDY : You might read on. " I prescribed certain inhalants, I cannot remember the inhalant, but that is what I would do if I thought she had a cold."

Mr. SHAND : That is correct.

Mr. SHAND : We will look at the second trial now (page 298) :

" The hospital records would be correct as to the days on which I visited the Plaintiff. During the period she was there, on examining her one day I thought she had a slight cold. That would be approximately a few days after she was admitted to the hospital. If the hospital records show that on the 29th she was up in the sun, and that I was at the hospital and examined her throat, that she could get up and walk about, and also the inhalations, I would say that that is correct. That is the occasion I referred to when I examined her throat, when she complained of a slight soreness. That, of course, is the second occasion upon which I examined her. When I examined her then I thought there was some slight redness at the back of her throat, such as you would get with a common cold, and I think it was then that she ordered inhalations. There was nothing of that nature there when I saw her on the 26th."

There was no indication of cold or laryngitis ?—A. No.

Q. " When I saw her on the 29th there was no pus, just superficial redness like a person getting a cold. Otherwise she was in exactly the same condition as when I saw her on the 26th. I then prescribed inhalations for this cold, which is the usual treatment. I usually prescribe Friars Balsam inhalations." Your evidence is there was nothing to be seen, no indication of cold or laryngitis until the 29th, and no mention of huskiness did you make ?—A. No, that was my memory then.

Q. It has altered now ?—A. No, I still maintain I examined her.

Q. But I am only putting that when you saw her throat was perfectly normal, that is before the 29th, when she had no cold or laryngitis, on the 27th, evening report, you ordered inhalations ?—A. I was speaking from memory and I thought it was right.

Q. But you had been through the records ?—A. I cannot remember that. I mean, I have been through the records, but there are so many records. I was not speaking from the records.

Q. You heard Plaintiff say that she was given inhalations, and that the pus at the back of her throat cleared up, and then the throat doctor was called in. You heard her give evidence along those lines ?—A. Yes.

Q. If her throat was perfectly normal on the 26th, why did you prescribe inhalants ?—A. I think only for the huskiness.

Q. And you have never thought of that before this trial ?—A. All I can say is, there was no pus there.

Q. But you have never thought of that before this trial ?—A. Looking at it now, it is a minor matter.

Q. You have never thought of that explanation before this trial, have you ?—A. If I saw these notes, I probably thought of it. I have not said that.

Q. You have never said it before this trial ?—A. No, I do not think so.

Q. And you have been cross-examined on it ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 15th December 1943, Cross-examination, *continued.*

Q. If the throat was perfectly all right up to the 29th, why did you prescribe inhalants, and you never gave that answer before?—A. I cannot remember giving that answer.

Q. What did you get Dr. Marsh along for?—A. I got him for this reason. There was a history of this pain and redness in the neck, and the talk of a body coming through into the gullet. I examined the patient. I could not see anything there beyond at one time some pharyngitis or a cold, and I thought in view of the fact that she complained of all this trouble, she should see a nose and throat specialist.

Q. You had not seen anything yourself, nothing, when you examined her throat as you say you did on the first day she came in?—A. I saw nothing which could suggest any foreign body rupturing out.

Q. You did not see a sign of anything which was abnormal?—A. There was practically no abnormality at all.

Q. But you answered in this way here?—A. Speaking as a general surgeon I looked at the throat, and I could not find anything the matter with it.

Q. I refer to page 332, second trial:—

"Q. First of all you looked at her throat, and did not see a sign of anything?—A. No."—

A. Yes.

Q. How did you examine her throat?—A. I examined her throat with the tongue depressor, and had a good look down.

Q. It was quite clear from your examination that no foreign body could have come through?—A. I could not see any signs.

Q. Were you satisfied yourself?—A. I was satisfied as far as I could see.

Q. Was there any difficulty in seeing?—A. I could see all right, still this patient complained of this pain down the gullet, and I thought that she should be sent to a nose and throat specialist.

Q. Were you satisfied yourself?—A. I could not see anything in the upper part of the throat.

Q. Were you personally satisfied that no foreign body had come through?—A. Not in the upper regions.

Q. Did you ask her what part of the throat it was she felt this body come through?—A. I probably asked her where her throat was sore.

Q. Did you ask her where she felt this foreign body come through?—A. No, I do not think I did.

Q. That would have been a useful question?—A. Yes, I suppose it would have.

Thirteenth Day—Thursday, 16th December 1943.

16th December 1943, Cross-examination, *continued.*

DEFENDANT:

Further Cross-examined.

Mr. SHAND: I have asked you about your evidence that you examined this lady's throat on the second occasion at St. Luke's, and I pointed out to you that your evidence was against the records. Would it be correct to say that you were more concerned with the spasms than the inside of her throat?—A. Not at that time, she had not any spasms.

Q. But with her having had spasms ?—A. In St. Luke's she had no spasms and I was trying to verify if there was anything in the throat which could account for the history she gave.

Q. That was the thing you were trying to verify ?—A. Yes.

Q. You were not more concerned with the history of the spasms she had than the throat or what might have come through ?—A. I was concerned with everything concerned with the case. One was concerned with the spasms of course but when she was in St. Luke's the second time, there was no evidence of spasms so I was not concerned then.

Q. But you were more concerned with the history of her spasms than looking at the condition of the inside of her throat ?—A. I got Dr. Marsh to examine her.

Q. But do you say what I put to you is not so ? You were more concerned with the history of the spasms than you were with the condition of the inside of her throat ?—A. I do not think I was.

Q. Did you swear this before, page 325, second trial, second question : " (Q.) So the real matter which you as a doctor would be concerned would be to see whether there was any sign of anything coming into the back of her mouth ?—(A.) That is not quite true because what was concerning me more was this extraordinary history of these spasms which I could not understand." Is that correct, or incorrect ?—A. If it is there I said it.

Q. Is it correct or incorrect ?—A. I think it is correct.

Q. " And it was for that reason that I mainly advised her to come to Sydney to have her case investigated and see if there was anything we could do for her " ?—A. I think it is unfair the way you have twisted that.

Q. " (Q.) You had the report of the very happening which she has described here when she came down ?—(A.) Yes, but that was only part of the picture. (Q.) The most important part of the picture was that it was only 24 days previously that this thing which had burst into her throat, had burst ?—(A.) It was not to me." Do you say it was not the most important thing that something had burst into her throat a little while before. Do you swear it was not the most important thing, the bursting into the throat ? (The questions and answers quoted from page 325 were again read to the witness.) Do you still maintain that ?—A. I should be asked to explain.

Q. But answer the question first. Do you maintain that is a true answer ? What you said, is it true, or a lie ? Is your answer a lie ?—A. My position is this——

Q. But answer Yes or No. (The questions and answers previously read to witness were again read.) Do you maintain that is a true answer ?—A. At this stage I do not know what I was thinking. I was thinking of the whole case.

Q. Do you swear that is true now, that it was not the most important part of the picture, this thing bursting into the throat ? Was it the most important part or not ? You have answered it before. Was it not the most important part of the picture, yes or no ?—A. It was only part of the picture.

Q. Was it the most important part ? You could understand ?—A. Yes.

Q. You answered it before. Was it the most important part of the picture ?—A. If she had recovered——

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Cross-examination, *continued.*

Q. But was it or was it not ?—A. It was important.

Q. Was it the most important ?—A. I do not want to be browbeaten into answering something.

Q. If you won't answer I will refer the matter to His Honor. Was it the most important part of the picture ?—A. It was an important part.

Q. Was it the most important part of the picture ?—A. Looking at it now, I think if the spasms had discontinued——

Q. I do not want any if's. Was it the most important part of the picture ?—A. Yes, it would be.

Q. What you said before was wrong ?—A. It was wrong in this way : This patient came down from the country, the history I had was from time to time of spasms, and it was the thing which loomed largest in my mind, and I think at that time that the tetany was the most important part, but with that history, with the history of the thing breaking into the throat, I think looking at it now at this distance, I must have considered the throat condition important.

Q. The most important ?—A. I mean they were both important.

Q. The most important. You have sworn it once ?—A. I will say it is important.

Q. You have sworn it is the most important ?—A. I will let it go at that.

Q. Give us the truth, did you consider it the most important ?—A. At this stage I cannot say. Looking at it now, I think probably I would. It is very hard for me after all these years——

Q. Answer the question. You see you volunteered the answer before which you now depart from. Will you agree that you have gradually built up your evidence about examining her throat when she came down the second time to St. Luke's. You have gradually built it up and added to it as the trials have gone on ?—A. I cannot agree to that.

Q. Did you say this to your own Counsel at the first trial at page 125 :

"Q. Did you examine her neck and throat ?—A. When she came down the second time in October.

Q. Did you look inside to see the throat ?—A. Yes. I could not see anything really abnormal, and it was for that reason I advised Dr. Marsh to see her—he is a throat specialist."

Q. That was what you said ?—A. Yes.

Q. You could not detect any swelling. You were asked :

"Q. As far as you could see, was there any sign of any inflammation either outside or inside ?—A. No, there was no sign of any acute inflammation that I could see.

Q. Or any swelling about the interior portion of her throat ?—A. No, I could not detect any.

Q. In the examination you made could you see back as far as the tonsils ?—A. Yes, you could see below in the tonsillar region.

Q. Was there any sign of anything having been torn through the flesh in the region of the tonsils ?—A. No, I did not see any sign of anything to suggest that."

Now, we will see what you said on the second trial—page 297 :

"I examined her, but did not make a detailed examination that day, simply examined her throat, and neck and chest and heart. The examination of the neck disclosed that there was no swelling of the neck at all. As far as I could see the neck and throat were

normal, and I found nothing wrong with them. I examined the throat, but could find no abnormality. I examined her throat with a tongue depressor, and I would say it was a practically normal throat, there was certainly no pus or any swelling or any kind of indication of anything abnormal in the way of redness or swelling or anything of that nature, that is on 26th October when I saw her."

Q. You again said you used a tongue depressor. You said she could open her mouth, and she did not make any complaint. She did not make a complaint that she had huskiness. I am dealing with the evidence in chief you see?—A. Yes.

Q. Now take the third trial—page 124. First of all what I am putting to you you understand. The hospital records do not disclose that you examined her throat at all. I put it to you that you did not examine her throat?—A. I examined her throat.

Q. I put it to you that you did not examine her throat, because you know perfectly well you were quite convinced that this thing had come through the neck, and that there was no need to examine it?—A. It is not so. Take page 124 of the third trial:

"I saw her first on 26th October, and made an examination of her, I examined her neck and throat, and the other part of her chest, I made a careful examination of her throat, and I found no abnormality in the throat or the neck, except the scar, the same operational scar on the outside of the neck.

Q. Was there any sign of any inflammation, external or internal?—A. No, except once during that——

Q. On the 26th?—A. No, I could not find anything then.

Q. Was there any swelling of any kind?—A. I could not find any abnormality.

Q. No pus, nor swelling, nor inflammation, no redness or anything, perfectly normal neck and throat?—A. Yes."

A. With the exception of the scar.

Q. What about the hoarseness?—A. Except the hoarseness.

Q. You did not say anything about that at that trial? Did you say a single word that she had any trouble at all with the throat when you examined her?—A. That is very unfair, and I protest against that. I was giving my evidence to the best of my ability.

Q. Take the same page:

"Q. You saw her according to the hospital records on the 26th, 27th, 28th, 29th and 30th October. During that period did she complain to you, or was it reported to you that she had any kind of complaint?—A. She complained at one time, I am quite sure of this; that she had some soreness in the throat. I examined her throat certainly on two occasions, and on one occasion there was slight pharyngitis or redness which I took to be due to pharyngitis, that she had contracted a cold or something like that. I prescribed certain inhalants, I cannot remember the inhalant, but that was what I would do if I thought she had a cold."

You swore it was on the 29th that you prescribed the inhalant, and she had the cold?—A. I did at that time.

Q. When you went into it carefully, you did not mention a word about hoarseness—huskiness, I should say?—A. I may not have mentioned it. Do you think that has any significance?

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Cross-examination, *continued.*

Q. That is a matter for the jury. At this trial page 571, you added something else to it: "tell us what you did . . . I examined her head, neck and chest." Did you examine her head?—A. We use different languages. I mean head and neck and chest.

Q. You had mentioned the throat here, and the chest and the neck. Why did you mention the head?—A. I cannot say in the box here.

Q. You are a professional man. Why did you mention those times that you examined her head?—A. I am trying to do my best here.

Q. Why did you mention her head?—A. Head and neck are one part. We regard it as a region.

Q. Why mention it?—A. I did not mention it with any idea of misleading.

Q. Did you examine her head, the head itself?—A. I examined this part of her up here (indicating).

Q. Where?—A. Above here.

Q. Which is it?—A. I mean I examined the chest, neck and throat, and I used the word head as part of an anatomical region.

Q. Why mention the head?—A. It was just a region.

Q. You did not examine the head itself?—A. I examined all this part. You refer to the top of the skull? Head and neck are all one part.

Q. Why mention the head?—A. I do not know. I just described it just now when you asked me.

Q. I did not ask you? Why mention the head?—A. I think I did it inadvertently. It was the upper part of the body.

Q. On the same page: "Can you tell us when you saw her throat . . . carefully." You have never said that before, you examined the left side. You have never once said that?—A. I do not remember saying that definitely, but it was included in my other examinations.

Q. You never once said that you examined the left side of her neck and throat?—A. I cannot remember saying that.

Q. Is it something which has come to you after five years?—A. No, I mean, I would include the left right and side when I examined it.

Q. Why settle on the left this time when you had not mentioned it before?—A. It is the obvious thing. A patient complains of pain when she comes down, pain in the left side of her neck, and that is the place where you would look.

Q. Why did not you mention it?—A. I did not know what these trials were like.

Q. You have had three of them?—A. Yes, but one has to feel that one has to be more particular and get down to anatomical details.

Q. That was why you mentioned the head, is it?—A. Yes.

Q. Because you were careful and you got down to anatomical details?—A. Because I know anatomically it is impossible.

Q. What is impossible?—A. For a tube——

Q. Did I ask that question?—A. No.

Q. What has it to do with the matter?—A. Everything to do with it. It has everything to do with the truth.

Q. Has it anything to do with my question?—A. I don't say that.

Q. Why bring it in?—A. In this case, it is a special case and my hands are tied. I have to demonstrate things on pictures, some diagrams which are misleading and you cannot take the jury and show them dissections and things like that.

Q. Why mention it at this stage ?—A. Because I am protesting against the methods by which we have to put a case like this forward, and I want that down.

Q. You wanted to be anatomically exact when you mentioned the left side. If that is so, why did you mention head in distinction to the throat ?—A. I used it inadvertently. I was thinking of it as a region.

Q. But when you came to detail the examination, you were careful to be anatomically correct, and mentioned the left side. You were careful in one case and careless in the other, is that so ?—A. Yes, you cannot do everything. This is pretty difficult without notes.

Q. But you have been through every trial ?—A. Yes, you have your notes there and I have not. I have been busy in the last few years on war work.

Q. Would it be correct to say you examined her throat, from the hospital records you examined her throat about the 29th, but whenever you examined her throat, is it correct you got Dr. Marsh in just to make absolutely sure. Is that correct ?—A. Yes.

Q. Although you told these gentlemen yesterday, that you could not have missed seeing indications of the bursting through of a tube which had taken place three weeks before ?—A. Yes, but can I explain it ? What I want to add is this : The woman was still complaining of some burning in the gullet, or something like that, she had been ill a long time and I wanted to make sure I left no stone unturned to get her right, that was why I got Dr. Marsh to see if he could throw any light on this case.

Q. You really got him in to see if he could effect a cure ?—A. Not so much that, but to see if there was anything abnormal there, which I could not see.

Q. Was it not this : if there happened to be litigation, he would be a friend on your side ?—A. No.

Q. He was a personal friend ?—A. Yes, but if he saw a hole there I would have taken his word against mine, on the throat.

Q. Would it be correct to say that after you had this conversation with Mr. Hocking in which he asked the cause of the inflammation, etc., finally asked you the cause, and you did not know, and he said " I do "—you know what I am referring to ?—A. Yes.

Q. Would it be correct that you thought it might be tetany ?—A. I thought she had tetany at some time.

Q. But after that conversation did you think it might be tetany ?—A. Tetany at what time ?

Q. Tetany all along ? Yes or No ; is it correct after that conversation with Mr. Hocking you thought this complaint that the Plaintiff had might have been tetany all along ?—A. No. That would not be quite correct. You said it might be ?

Q. Yes ?—A. That is a possibility, yes.

Q. You swore that before, after that conversation ?—A. Yes.

Q. With that possibility in your mind, even then you did not get any of these tests, Chvostek, Trousseau, or Erbs tests ?—A. I did not attach importance to them.

Q. You did not do it ?—A. No, I did not do it.

Q. After you got this blood calcium report from Dr. Tebbutt, is it correct that you took measures to supply calcium ?—A. Yes.

Q. As soon as you got the report ?—A. Yes, as soon as I got the report, during the latter part of the time, halibal too.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No, 19. Evidence of George Bell (Defendant) 16th December 1943, Cross-examination, *continued.*

Q. The report was the 28th, a Saturday. You would not get it done until the Monday ?—A. I should not think so.

Q. On the next day, the 31st, Tuesday, we see : "Patient to have plenty of milk." That is a treatment for tetany or lack of calcium in the blood ?—A. Yes.

Q. And halibal, which is liver oil ?—A. It has the same effect as cod liver oil.

Q. Vitamin D ? Do you still think it is imagination ?—A. At that time I supplied that at the time, but there was a history of tetany, and her blood calcium was lower than normal, and I thought the right thing was to give her more calcium.

Q. You continued the halibal tablets right to the end ?—A. Yes, I advised her to take them.

Q. Was that your suggestion or Dr. Ritchie's ?—A. I could not remember at this stage.

Q. It was Dr. Ritchie's, was it not ?—A. I could not remember now. It would certainly be my own idea ; if I got a patient with a blood calcium lower than normal, I would prescribe that.

Q. You and Dr. Ritchie jointly got Dr. Tebbutt to do this blood calcium test ?—A. I do not say we jointly did, but it was after consultation with Dr. Ritchie.

Q. Are you sure it was not Dr. Ritchie who got the blood test and the Wasserman test ?—A. I could not be sure of those things now.

Q. You have said that any patient who has had tetany, and it has ceased, that the blood calcium level goes down and remains constant ?—A. I do not know very much about it, but that is my idea. A patient can, does, carry on with a lower blood calcium than normal without signs of tetany.

His HONOR : The body accommodates itself ?—A. Yes.

Mr. SHAND : If you thought the real tetany had ceased a good while ago, what was the idea of giving halibal, if it was going to remain constant ?—A. At that time I did not know that.

Q. You had not heard of it until Dr. Poate said something of it in the last trial ?—A. I got my knowledge of that from Sampson Wright, the book on Physiology.

Q. That is the book Dr. Poate produced to you ?—A. I do not know which book it was.

Q. About the period of the last trial ?—A. I could not say which trial.

Q. At the end of the first trip to St. Luke's you prescribed calcium tablets for the Plaintiff ?—A. Yes. I am quite sure of that.

Q. And, later on, Dr. Ritchie prescribed calcium gluconate ?—A. It is mentioned in a letter, I think, to Mr. Hocking. I think there is mention that Dr. Ritchie had advised it or something like that.

Q. That is for tetany ?—A. Yes, it was for tetany.

Q. Have you ever asked Dr. Ritchie, he to your knowledge having prescribed that, how he comes to say it was not tetany at all. Have you ever asked him that ?—A. No.

Q. It is rather difficult ?—A. He is rather incorrigible on this question of tetany.

Q. You think he is wrong ?—A. Partly. I could not shake him. He has his opinion.

His HONOR : You are a surgeon ?—A. Yes, and I have to defer to the physician.

Mr. SHAND : It would be good argument to point out to him, if you honestly thought it was not tetany, " Why prescribe calcium " ? (Objected to—question withdrawn.)

Q. On 2nd May you got a letter from Mr. Hocking which contained rather startling information. He said the Plaintiff had got home. " The whole body has been much swollen until to-day. It seems slightly less swollen to-night " ?—A. I took it to be a layman's description. I thought a patient with a completely swollen, whole body, would be in a very serious position.

Q. Have you never heard of myxœdema ?—A. Yes, but I have never known it coming on rapidly like that.

Q. It is a condition which results from the non-function of the thyroid, not the parathyroid ?—A. Yes.

Q. You had operated, removed portion of the thyroid ?—A. Yes.

Q. Didn't it strike you this might be myxœdema ?—A. It did not strike me at the time because I have removed so many thyroids in this way, and I have not seen myxœdema follow so rapidly.

Q. Have you seen myxœdema ?—A. Yes.

Q. It never struck you it might be ?—A. Not at that time. He said the——

Q. The whole body swells with myxœdema ?—A. It does not become grossly swollen.

Q. The whole body does swell with myxœdema ?—A. Slightly, they become fat and so forth.

Q. A somewhat serious condition ?—A. It is very readily amenable to treatment.

Q. But a somewhat serious condition if not treated ?—A. It can be.

Q. As the doctor who had operated, did you take the trouble to advise Dr. O'Hanlon on it ?—A. No, because at that time it did not enter my head.

Q. And you did not disbelieve Mr. Hocking whom you held in high regard ? (Objected to.)

Q. Did not you hold him in high regard ?—A. I thought him quite a decent man.

Q. You did not think he would be intentionally telling you anything but the truth ?—A. No, I did not think it for one moment, but I took it as a layman's description. Some people say their feet are swollen. You look at them and they are not swollen.

Q. It you had checked up with Dr. O'Hanlon, you would have found as a fact that her body was swollen. You have heard Dr. O'Hanlon give evidence ?—A. I do not think I have heard him say the whole body was swollen.

Q. Right down the chest ?—A. I am not too sure about that. It is so hard to remember all these things. I would take the whole body as meaning the whole body, limbs and everything.

Q. You have heard Dr. O'Hanlon swear and you have seen it on his records, that when he saw her after she returned—" face and body swollen" ?—A. Yes, but he does not say the whole body.

Q. " Face and body " ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Cross-examination, *continued.*

Q. Do you take any interest in their patients after they leave you ?—A. Yes, and in most of my thyroids I ask them to write me regularly.

Q. Right throughout 1938 you were getting from time to time reports of tetany with regard to your former patient, Mrs. Hocking, spasms of tetany ?—A. You say throughout. I was wondering how often I got reports ?

Q. You actually got some reports ?—A. In 1938 I got some reports but I think it was during the earlier part of 1938.

Q. You got a report in 1939 that the attacks were still continuing although less severe ?—A. Yes, from Dr. O'Hanlon.

Q. You had written making inquiries ?—A. I think I must have.

Q. And you had seen Allan Newton, to see what could be done, if he could suggest anything ?—A. Yes. I had seen Sir Allan Newton, oh, away back.

Q. You say it in a letter ?—A. To Mrs. Hocking. It was after I had been to a conference in Melbourne.

Q. It was in May 1939 you said it ?—A. I was there in March.

Q. It was a most extraordinary thing to you, after the operation, that this tetany was continuing ?—A. It was unusual.

Q. Did you ever attempt to go up and see Mrs. Hocking, or suggest that she should come down so you could do anything ?—A. I did not at that time.

Q. You did not until the tube was alleged to have come through ?—A. That is true, but I was in touch with Dr. O'Hanlon, and he was able to give as much treatment as I was.

Q. And it was continuing ?—A. Yes, it was continuing.

Q. And you could not understand it ?—A. I could understand it because I thought it was due to inflammation.

Q. Inflammation lasting until 1939 ?—A. The results of inflammation.

Q. And you had never known that before ?—A. Not in my experience but it is only common experience to applied pathology.

Q. It was worrying you ?—A. It was worrying me but I had been in touch with Dr. O'Hanlon and he was giving her the correct treatment.

Q. Why not suggest getting her down and making an examination, or getting her under some expert physician ?—A. Looking back on it, that is quite good advice, but at that time Dr. O'Hanlon had not suggested her coming down.

Q. He was a country practitioner ?—A. Yes, but if he thought that she should have come down I have no doubt that he would have sent her.

Q. He told you in 1938 that he could not do any more for her ?—A. I do not remember him telling me that.

Q. Will you deny that he did ?—A. I cannot recollect that.

Q. Could you forget it ?—A. I would say he was doing all he could for her.

Q. Could you forget it ?—A. I think I could with the mass of facts which we have to face.

Q. If he told you that, would not it have sprung to your mind that he cannot do any more, he is a country practitioner, and suggest that she come down under an expert. Would not that occur to you ?—A. I cannot remember him saying that.

Q. But I put it to you you could not forget it that he said that ?—A. I could.

Q. But you never once made a suggestion until told of this tube bursting through, you never once suggested that you should go up or some expert might go up, or that an X-ray might be taken, or that she might come down ?—A. I did not suggest any of those things. I did not hear a great deal of her during that time. There were considerable intervals when I did not hear, and I was quite right——

His HONOR : Quite justified ?—A. Yes, quite justified in assuming that she was not too bad.

Mr. SHAND : But every time you heard she was having tetany spasms ?—A. Yes, but I did not get a detailed description.

Q. Why did not you ask Dr. O'Hanlon about this puzzling case ? —A. I am very busy. I could not write to everyone.

Q. When the patient is suffering from some most unusual complaint, and you can get into touch with the country doctor, and she is your patient, you might be too busy to ask for details ? (Objected to.)—A. That is not fair.

Q. You do not know whether Dr. O'Hanlon was or was not seeing her, except from what you have heard from him in the letters ; that was all you knew ?—A. Yes, that was all I knew.

(Mr. Shand's cross-examination of witness objected to.)

Q. You had made inquiries of Dr. O'Hanlon according to that letter. Did you not get full details, full details of your patient ?—A. In January, 1939.

Q. This is what Dr. O'Hanlon's letter says : something about " your inquiry as to Mrs. Hocking to hand a few days ago." You must have made inquiries.—A. Yes.

Q. And you have been too busy ?—A. But you are nailing me down to one particular incident.

Q. We are dealing with one ?—A. Well, deal with that.

Mr. SHAND : So this is the position, you have never had a case like this before ?—A. I have never had a case where——

Q. You have never had a case like this before, that is the question. —A. I have never had a case where the spasms have continued.

Q. She was in charge of a country doctor and you never asked to see her ?—A. I think that is most unfair, she was in charge of a good country doctor.

Q. Oh, was he ?—A. I think he is a very good general practitioner.

Q. You have a good opinion of him, have you ?—A. Yes, I think he is a very good general practitioner.

Q. Did you know that he had never in his life before had a case of tetany ?—A. I would not doubt that, because tetany is a rare disease.

Q. And being a rare disease it might need an expert to deal with it ? —A. Not necessarily.

Q. Did he tell you before that he has never had a case of tetany ?— A. I heard him say it in evidence.

Q. Did you ask him ?—A. Not at that time.

Q. So you did not know what his experience was of tetany ?—A. No.

Q. And still you did not recommend an expert ?—A. I recommended the treatment.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Cross-examination, *continued.*

Q. You did not recommend the expert because you knew there was a bit of tube in her ?—A. That is an absolute lie.

Q. When you got this first letter from Mr. Hocking referring to the whole body being swollen did you make any inquiry of Mr. Hocking ?—A. I cannot remember.

Q. Did you swear this before : " Did you make any inquiry from Mr. Hocking ?—No, I thought he could not explain it." That is what you swore before ?—A. I could easily have sworn that before.

Q. It is down on the notes ?—A. I thought it was a layman's description and I have often had patients coming to me complaining of swelling, and spasms were the things that I was interested in, because she had these pins and needles in St. Luke's.

Q. Did you make any inquiry of Dr. O'Hanlon who was not a layman ?—A. No, because I thought Dr. O'Hanlon would be capable of dealing with a thing like that. I mean you have to trust your fellow practitioners.

Q. When she left she had indications of latent tetany ?—A. Very slight.

Q. And you gave her calcium ?—A. I gave her calcium.

Q. And you promised her you would communicate with Dr. O'Hanlon ?—A. Yes.

Q. And you didn't, did you ?—A. I have no recollection, but I don't think I did, my memory must have slipped.

Q. This is one of your patients who has had a serious operation with some indications of latent tetany, has been given calcium and you forget to communicate with the doctor ?—A. I mean I must admit that I don't always keep my correspondence up-to-date.

Q. This was a patient who had been sick ?—A. She was not seriously ill when she went out of St. Luke's.

Q. Dr. O'Hanlon's letter on the 10th May says this, only at this time apparently had you written to him—" Many thanks for your letter in reference to Mrs. Hocking. Not knowing she had returned from Sydney I did not see her until a fortnight after her return " ?—A. Yes.

Q. Was that quite customary for you to promise to let the country doctor know about the patient and fail to do it ?—A. Not customary, but I must admit that I have slipped at times.

Q. You swore a moment ago when I asked you that you did not, because this was a layman's description from the husband, you said the country doctor could look after it ?—A. I did answer that.

Q. It must have struck you at the time when on the 2nd May Mr. Hocking wrote to you and referred to the whole body being swollen, you must have remembered then that you had forgotten to carry out your promise to write to Dr. O'Hanlon, you could not have forgotten then, could you ?—A. I did not have my correspondence in very good order at the time and I had given her the treatment. You must remember that this woman went out of St. Luke's, she was practically normal except for a tiny little opening in the throat with a tiny discharge coming from it, with a dressing, and although she had had complaints of pins and needles I, at that time, gave her the calcium lactate as a preventative to try and prevent any tetany coming on.

Q. What happened when her husband wrote on the 2nd May, " The whole body has been swollen . . . the tetany has been very annoying " ? (Objected to.)

Q. She referred to still having tetany ?—A. Yes.

Q. Do you think you could have forgotten your promise to write to the country practitioner then ?—A. I probably had not forgotten it but I did not write, I mean I could not have written.

Q. It is after you got this letter from Mr. Hocking, which you apparently got on either the 3rd or 4th May, that you replied to him saying that you would drop Dr. O'Hanlon a line ?—A. Yes.

Q. Do you keep a copy of your letters ?—A. Not always—no, I don't as a matter of fact.

Q. What do you mean by "not always" ?—A. Occasionally one would keep copies of letters but I would not keep any copies of these.

Q. Now when you got this letter about the body being swollen I suppose you thought there must be, or probably was, some indication of swelling ?—A. I might not, I can only tell you my reaction to it, it is very hard going back all this time, but I took it as a layman's description. Often in my experience people come in and say that their feet are swollen and when you examine them there is no definite swelling.

Q. When you wrote to Dr. O'Hanlon did you ask him whether the body was swollen ?—A. I cannot remember.

Q. That is the letter that is missing, isn't it ?—A. Is it ? I mean, I don't know.

Q. Well, we haven't got it here, but it is referred to by Dr. O'Hanlon ? —A. I cannot remember whether I referred to swelling in that letter.

Q. You also rang him up, didn't you ?—A. I rang him up in May and June of that year.

Q. Didn't you ask him on the phone whether the body was swollen ? —A. I cannot remember the conversation at that time.

Q. Wouldn't you have remembered if he had told you that the body was swollen ?—A. I would not remember it at this time I don't think. Mr. Shand, you may have a good memory, but I am not as perfect as that.

Q. You see doctor, this was an exceptional case ?—A. Yes, it was an exceptional case.

Q. And I suppose you realise when you got Dr. O'Hanlon's letter that inflammation was still continuing ?—A. Yes, that was quite obvious, I understood there had been a flare-up.

Q. He spoke about frequent foments of the neck ?—A. Yes, I think he referred to having to open it up.

Q. And he spoke about the tetany being he thought worse ?—A. Yes.

Q. And he spoke about the good and remarkable rapid results of calcium injections ?—A. Yes. We discussed at that time, tetany.

Q. And you agree that is, was your opinion and still is that the tetany came from the infection ?—A. Yes.

Q. And you knew that she was in hospital, didn't you ?—A. I think I must have known, I cannot remember at present, my recollection is not good whether she was in hospital or not, but I know from the notes that she must have been.

Q. This is what you swore on the third trial: "Do you say that when you wrote to her husband in June, 1938, that you were unaware of the fact that she had been some weeks in Quirindi Hospital ?——I have no recollection of being aware of that fact, I know Dr. O'Hanlon was treating her but I did not know where she was."—A. I had no recollection when I gave that evidence.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Cross-examination, *continued.*

Q. In his letter of the 10th May he said " A few days after I saw her I persuaded her to go to hospital where she is at present " ?—A. I had forgotten that at the time.

Q. I suppose that may have conveyed to your mind that it was possibly serious ?—A. Yes, that she required hospital treatment.

Q. That it looked a bit serious is my question ?—A. Yes, put it that way.

Q. And in point of fact Dr. O'Hanlon's account pointed to severe tetany ?—A. Yes.

Q. And you will agree that severe tetany is very rare ?—A. It is rare.

Q. Very rare ?—A. Yes, I would say it is very rare in this country.

Q. You swore before " Did you make any inquiry as to whether there was any swelling about the neck ?——No." Is that correct, or was that just a guess ?—A. At which time ?

Q. After you got the letter saying that the body was swelling ?—A. Yes, I don't remember.

Q. Just listen to what His Honor read out about the whole body swelling—" Yes, but that swelling over the whole body could not be associated with the thyroid operation." You now disagree with that statement, you had forgotten myxœdema ?—A. I had not thought of myxœdema at that time.

Q. You had not even thought of it at the third trial ?—A. The only thing I thought about—I thought a lot about this trial.

Q. You had not thought about it at the last trial ?—A. But you are picking out the swelling——

Q. You had not thought of it at the last trial ?—A. Not with the swelling of the whole body. My impression at this stage is that Mr. Hocking referred to swelling of the whole body soon after the operation of thyroidectomy. I have not seen it come on as quickly as that.

Mr. CASSIDY : What is the time ?—A. I have seen it come on years after.

Mr. SHAND : Do you say it only comes on years after ?—A. No, because you know there must be some case in which it comes on sooner than years after.

Q. It was you who suggested paroidin, was it not, to Dr. O'Hanlon ?—A. Yes, it was one of those preparations, paroidin I think.

Q. Intravenous injections of paroidin ?—A. I don't know whether it was intravenous.

Q. " I suggest that when Mrs. Hocking was in Quirindi and you were suggesting these things you suggested paroidin ?——Yes.—Q. And you suggested these intravenous injections ?——Yes." Had you ever used paroidin at that time ?—A. I don't think I have ever used it in this case. I always found the calcium salts effective.

Q. Where did you get the paroidin from, where did you get the idea from ?—A. I knew that some preparation of parathyroid was used in these cases, as has been suggested.

Q. Who suggested it, Dr. Ritchie ?—A. Not Dr. Ritchie, I knew that from my own knowledge.

Q. Didn't Dr. Ritchie suggest this paroidin ?—A. I have no recollection of it, I don't think he did.

Q. And it was suggested by you or through you, was it not, because Dr. O'Hanlon had said that the case was so bad that he could not use any more calcium lactate ?—A. As far as my memory goes that was so.

Q. Now, myxœdema. Joll, p. 596—" The symptoms of post-operative myxœdema fairly closely resemble those expected after experimental thyroidectomy, they may not be noticed for a week or two or more after the operation." Would you doubt an authority like Joll ?—A. No, I think if he says so he has had a much larger experience than I have.

Q. Now, when you received this letter speaking about the swelling did you look up the authorities to see if it could be myxœdema ?—A. No, I did not.

Q. You don't know much about myxœdema yourself ?—A. Not a great deal. I did not look up the authorities because I know my reaction to that swelling.

Q. Now, the position is this, is it not, that you agree that in this case it was an infected thyroid that caused the tetany ?—A. Inflammation involving not the thyroid but the parathyroids.

Q. Inflammation around that area ?—A. Yes.

Q. And you have only heard of one case as bad ?—A. Yes.

Q. You have never had one yourself ?—A. No, I have never had one

Q. I think you have said that on the first occasion when Mrs. Hocking came into St. Luke's she might be regarded as a very sick woman ?—A. Yes, the first time I regarded her as a very sick woman.

Q. I just want to ask you a few questions in respect of this operation. The hospital prepares the rubber tubes, they boil them up ?—A. Yes.

Q. And you cut off such length as you desire ?—A. Yes, that is the usual procedure.

Q. And you put a diamond cut at the end for drainage ?—A. I don't altogether like the diamond cut, it has been used, it is a drainage hole in the end of the tube.

Q. You bend the tube double and cut a bit off ?—A. Yes, you cut a very little bit off, cut would be the best, out of the tube.

Q. And sometimes the sister cuts the length of the tube ?—A. Occasionally, yes, but one fits the tube to the patient as I have explained.

Q. As a rule you cut one hole ?—A. That is my invariable rule.

Q. You never do anything else ?—A. No.

Q. What did you mean by this—" And you would say the number of holes you would want in it ?—Only one hole, I cut that as a rule myself " ?—A. Yes.

Q. Of course, Dr. Poate uses a different type of tube to you, a flat tube of a corrugated type ?—A. He showed me material in court once, a kind of corrugated rubber.

Q. You always, in the case of hæmorrhage, put in pieces of swabbing, do you not ?—A. You push them into the wound, yes.

Q. Is that another term for hot gauze ?—A. You wring it out of hot saline and mop out the blood because the idea is to get the operation field perfectly dry.

Q. And when you get blood as you got blood in this case ?—A. Yes, you just get blood ; there was no—I mean in this case I had difficulty with the superior thyroid artery and there was some hæmorrhage.

Q. And the swabs are gauze squares ?—A. There are two types, there is the large swab and the small swab. The large one you use for washing out and swabbing up larger quantities, and for the smaller areas you use the smaller square.

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Q. Now will you agree that in this case you were a long time over the operation ?—A. I will agree that the operation—yes, it was a long time.

Q. A long operation, that is how you describe it ?—A. Yes, I meant the patient was a long time in the theatre.

Q. No, a long operation ?—A. Yes, but I would qualify that by saying that all the time she was in the theatre she would not have been operated on.

Q. I am putting your description of it in reference to the operation, that it was a long operation ?—A. Longer than normal.

Q. A long operation, that is what you have sworn before ?—A. It was a long operation.

Q. And the position was this, was it not, that it was a difficult case ?—A. It was a difficult case, yes.

Q. And you had difficulty in controlling the bleeding from the left superior thyroid artery ?—A. Yes.

Q. And, of course, when you have that it makes it more difficult to operate ?—A. It makes it more difficult to operate but you control your bleeding first, I had a very skilled assistant.

Q. But the point was it was not controlled, the ligature slipped ?—A. I got it immediately—very soon after.

Q. Immediately ?—A. I was not long in getting that.

Q. Didn't you say "My main difficulty was in controlling the hæmorrhage from the left superior thyroid artery" ?—A. That was my main difficulty.

Q. Now, would you agree that following the operation Mrs. Hocking was dangerously ill ?—A. I would put it this way——

Q. Will you agree with that ?—A. At one time, yes.

Q. Following the operation ?—A. Yes, but that is a long period.

Q. Just after the operation ?—A. Immediately after. I would say she was seriously ill then.

Q. Was she dangerously ill ?—A. I would not say she was dangerously ill immediately after the operation until the time of the infection.

Q. Would you say she was dangerously ill at any time ?—A. It is a question of terms, I thought when she developed—I would say she was seriously ill and dangerously ill at one period.

Q. And that period, was that just after the operation ?—A. Not long after the operation.

Q. Within a day ?—A. I would not say within a day.

Q. Within what time, do you mean when she got the temperature ?—A. The temperature was the time when I was probably more concerned.

Q. That is about three days after ?—A. About five days after.

Q. Is this true or untrue "I suppose you will agree that she was dangerously ill—she was seriously ill when she went in and she was dangerously ill after the operation" ?—A. Yes, that is right.

Q. Do you tell these gentlemen that you mean five days after the operation in answer to that question ?—A. I think that is what I meant. I am not disputing that she was dangerously ill, but if you look at the record you will see that she reacted very quickly after she came back from the operation, it is a question of degree.

Q. Do you suggest to these gentlemen that you did not mean by those words that she was dangerously ill within say a day of the operation ?—A. I would not dispute that because it is a serious operation.

Q. Did you hear my friend cross-examine Dr. Thompson for over an hour when he suggested that she was seriously ill after the operation ? (Objected to ; question withdrawn.)

Q. I want to ask you whether you agree with the evidence you gave on the second trial. You don't know into which side of the thyroid capsule the tube went ?—A. No, I cannot remember at this time. As I have said, it is put in somewhere about the middle, to one side or the other. I thought there was a scar on the neck on the right side.

Q. You said it would be ridiculous to put the tube pointing upwards ? —A. Yes, pointing up the way——

Q. You said it might be very slightly up or very slightly down ? —A. Yes.

Q. It could not be slightly down, could it, because the thyroid which you wish to drain is above the incision ?—A. It could be up because the cavity is open.

Q. You said it was ridiculous that it should be at an angle as indicated by Dr. Thompson ?—A. At the angle he put it.

Q. Have a look at Johnson's Operative Therapeutics (p. 304). Is that ridiculous ?—A. Yes, I think that is ridiculous.

His HONOR : What is a fenestrated rubber tube ?—A. That would be with openings. There are some things that I could point out about that plate in Johnson's.

Mr. SHAND : Now, what was it you wanted to say ?—A. That is not put in through the incision, it is pushed right up from below the breastbone.

Q. It goes in at the line of the incision, does it not ?—A. No, it goes through a little buttonhole down in the neck. That is an old method that was used some time ago.

Q. Supposing it went through directly in the middle of that it would still go up at a slightly less angle ?—A. I would not agree with that, you have your trachea there, you could push it up if you wanted to, but that is not a similar way of putting the tube in that I use.

Q. The other thing I want to put to you is this, you say that you don't remember which side this went in, you put it in at the centre, not in this case, but a typical case ?—A. Not right in the centre, a little to the right or the left.

Q. And if you put it in a little to the right according to you it goes in the right capsule ?—A. Yes.

Q. Now just have a look at this (page 1388, Cunningham's Anatomy). If you put it in on the same side as you inserted the tube you would get the tube kinked. Here is your trachea, there are muscles going around here, aren't there ?—A. Yes.

Q. If you put it in slightly to the right you have to put it in so that it would reach some part here. If you put it in to the right you would agree that it would have to go around the trachea ?—A. That is really misrepresenting things.

Q. You follow what I am putting ?—A. Yes, but the point is that these muscles are very soft, and there is an opening at the bottom here where the tube goes in, and you always put it to one side or other of the trachea.

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Q. If you put it in through the open muscles in that direction (indicating) you could miss the bulge of that, can't you ?—A. Miss the bulge of what ?

Q. Of the trachea ?—A. No, but that is what I say, supposing you are putting it in the left side you put it just a little to the left of the middle line and you put it into the left-hand cavity it does not kink.

Q. Right through the muscles ?—A. The muscles are not stitched closely together.

Q. At one time you said you put it in the centre ?—A. It is difficult to say ; I say somewhere about the centre, a little to the left or right of the trachea.

Q. If you put it in the centre it would have to kink, wouldn't it, because it would have to go round the trachea ?—A. I cannot say that at all, they are quite soft.

Q. What, the trachea ?—A. No, the muscles are quite soft.

Q. You have to get it in between the muscles and the trachea ?—A. Your argument is if you put it in the left-hand side and push it across you push it across in front of the trachea.

Q. I say if you put it in there where the bag is you can do it without kinking it, but if you put it on the other side, you have to kink it ?—A. I say that is not so in practice, you are looking at a picture, and that does not give the true picture of the muscles in the body, the muscles are soft.

Q. Take Jamieson's Regional Anatomy, p. 52, according to you if you took it from the centre you would have to go behind the muscles and round into the area there ?—A. No.

Q. How would it avoid the trachea ?—A. You are putting it in this left-hand side.

Q. I am suggesting in the centre ?—A. You cannot put it in the centre without pushing it around, it goes to one side or other of the trachea.

Q. You cannot put it in the centre ?—A. Not very well unless you push it right up.

Q. And you put it very slightly to one side ?—A. Yes.

Q. First of all these are muscles ?—A. It is a diagram and it is a picture, it is not life size.

Q. I am not suggesting it is life size. Now we will just see what you said. You have told the court that you would not hear of a tube pressing on the trachea or in front of it ?—A. No, not going straight in.

Q. And just listen to what you said on the second trial—" If it is put more to the right and you want to drain the whole cavity you have to have a longer tube than if you put it in the centre ?—I don't quite follow you there. Q. You put the drainage tube in the centre ?—Yes. Q. You have to pass it in front of the trachea ?—Yes, it would be in front. Q. It would go to the cavity on which side of the trachea ?—I cannot say which side I put it in, but it would go to one side or the other " ?—A. Yes, that is correct.

Q. " You put the drainage tube in the centre ?—Yes." Is that correct ?—A. I think I said in the centre, a little to one side or the other.

Q. You did not say that here. I will deal with all you said. If you did not say that, that would be wrong ?—A. Well, it is usually a little to one side or the other. I would say that in most cases it would be wrong.

Q. " You have to pass it in front of the trachea ?—Yes, it would be in front." Is that correct or incorrect ?—A. Yes, if you were passing it that way from one side to the other.

Q. " You have to pass it in front of the trachea ?—Yes, it would be in front." Is that correct or incorrect ?—A. That is, I think, correct.

Q. But if you put it to one side and slipped it into the lobe on the same side you have not to pass it in front of the trachea ?—A. In the superficial areas, those in front of the trachea where you put it through the incision would be superficial, in front of the trachea, that is what I meant.

Q. Did you ?—A. It is hard to explain these things without aid——

Q. On the next page you were asked a further question : " Which cavity did you put it in ?—I cannot remember which side I put it in, but it would go slightly to the right or left of the trachea." ?—A. Yes, that is right.

Mr. SHAND : Can you remember in this case that you looked at the tube ?—A. Yes.

Q. You can actually remember in this particular case that you looked at this particular tube ?—Oh, that is——

Q. I want to know what you mean ?—A. I know that I look at all tubes.

Q. But you don't remember this particular one ?—A. Well, my memory cannot bring it to mind.

Q. You used to use silk for your operations, did you not ?—A. A number of years ago.

Q. And Dr. Poate still uses silk ?—A. Yes, I understand so ; I have seen him use it.

Q. And silk is non-absorbent ?—A. Yes, it is described as non-absorbent.

Q. The gut you use is absorbent gut—the gut you said you used ?—A. It is plain absorbent gut, it is called. It is not called " absorbent " ; it is called " plain catgut."

Q. Are you prepared to deny that in this case you cut muscles ?—A. No, I am not prepared to deny in this case that I cut muscles up on the left side.

Q. Cut them across ?—A. Yes. There is a diagram in that——

Q. I don't mean divided them, but cut them across ?—A. Yes.

Q. Because wouldn't the fact that you were having difficulty with the superior thyroid artery—— ?—A. That is a technique that is quite common.

Q. Yes, quite common ?—A. Yes, I would not be prepared to deny that.

Q. And if you cut muscles, do you say it is not the usual thing to use some fairly non-absorbent gut ?—A. In this case if I had cut the muscles I would use stronger plain gut.

Q. Stronger than the one that is in evidence ?—A. The one in evidence was a No. 2. Well, that would be strong enough for suturing muscles.

Q. Will you swear that you did not use something other than that ?—A. Yes.

Q. I will read to you from " Joll." I want to read to you a passage that has already been read—page 591—" If fine silk or thread is used throughout thyroid operations, post-operative suppuration in the wound is exceedingly rare ; unfortunately when it does occur many of the unabsorbable ligatures become infected and are extruded gradually through the wound often at intervals of weeks or months or even longer. The process

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is associated with the formation of one or more sinuses or recurrent abscesses which have to be opened up to permit the ligatures to be cast off. For this reason unabsorbable sutures should not be used exclusively in thyroid operations. They can, however, be employed usefully for the deeper parts of the wound, that is to say, in connection with the gland tissue itself. Absorbable catgut sutures are to be preferred for the more superficial parts of the wound." Do you agree with that ?—A. I don't agree with that.

Q. Now this gut that you used—chromic gut of course is a darker colour ?—A. Chromic gut is a much darker colour.

Q. Is it a stiffer gut ?—A. It is stiff and it is usually nowadays——

Q. That is all I am asking you ?—A. Yes, it is a stiffer gut.

Q. Is the gut you used what you call an absorbent gut ?—A. It is called absorbent gut.

Q. Well, is it an absorbent gut ?—A. There are two sorts of absorbent gut that we use—plain gut and chromic gut. Chromic gut is where there is delayed absorption. The modern manufacturers have the idea of it being delayed for 24 days.

Q. It is more than that, isn't it ?—A. The modern manufacturers rarely do it more than 20 days.

Q. But the gut you use——(Objected to.)

Q. The plain gut that you are talking about is what you call absorbent ? —A. Yes, I would call it absorbent. It ultimately absorbs, not like silk, for instance.

Q. But it is supposed to be absorbed in a short time ?—A. Yes, in healthy tissues it is supposed to be absorbed within——

Q. Ten days, isn't it ?—A. Well, perhaps say ten days, and the chromic gut is supposed to last for say three weeks or something like that.

Q. More than that, isn't it ?—A. The knots may persist for longer than that, but not the actual strand of gut, because that is what they call 20 day.

Q. I am going to put to you that the London Hospital gut—the thicker gut, thicker than yours—they call that 20 day gut, not the chromogut. —A. The London Hospital has a chrome tanned gut.

Q. The ordinary London Hospital plain gut, I am talking about. They call the ordinary London Hospital plain gut, perhaps a bit thicker than yours, 20 day gut ; not the chromogut. Chromogut lasts very much longer, I am putting to you. Have you seen the book ?—A. The London Hospital book ?

Q. Yes ?—A. Not the recent London Hospital book.

Q. And do you dispute the fact that chromogut is expected to last very much longer ?—A. Well, I thought the modern view was that it should not last for more than 20 days at the outside.

Q. Do you remember being asked this question by His Honor, Mr. Justice Street, at the first trial ? (Objected to unless the whole of Mr. Justice Street's summing-up goes in as evidence—pressed—objection withdrawn.)

Q. This is page 119, the third last question. His Honor asked " I think you said the sutures you used on the skin were horse hair. What did you use in the muscle—the absorbent stitches " ? and your reply was " Yes, the so-called absorbent stitches, they are catgut which are supposed to be absorbent in time." Supposed to be ?—A. Yes.

Q. Will you deny that you had in mind then, chromogut ?—A. I did not have in mind chromic gut.

Q. You did not ?—A. No. I have never had chromic gut in mind in this operation at all.

Q. You recognise the possibility that the nurse may have given you chromogut ?—A. You would recognise it.

Q. Do you recognise the possibility that you might not recognise it ? —A. Well, I don't think you would not be likely to recognise chromic gut.

Q. But it is a possibility, isn't it ?—A. In practice it is almost impossible.

Q. You spoke in evidence about the effect of inflammation or what inflammation brings about on the lasting powers, or the length of time it takes for gut to dissolve ?

His HONOR : Infection, I think, not inflammation.

Mr. SHAND : Yes, infection.

Q. And you went so far as to say that it might take a year to dissolve in an infected area. Is that correct ?—A. I think it would last—I saw a plain catgut suture come out a year after I performed an operation, not on the thyroid.

Q. You have actually seen that ?—A. Yes, I saw that only once. That was a case of disarticulation of the thigh.

Q. Was that a case of infection ?—A. Very slight.

Q. So that is really the position in regard to medical science, that when you get an infection it is not possible to absolutely postulate how long the dissolving will take ?—A. You cannot give a definite date.

Q. In one case you were somewhat surprised to see this knot come out after a year ?—A. I was in that case.

Q. It was a case of slight infection ?—A. Very slight, yes.

Q. Is there any record of how long after those knots have come out ? —A. I don't know of any record.

Q. I suppose you will agree, will you not, that in this case after the operation there was an abnormal rise in temperature ?—A. Yes, I think I have explained that in all operations for thyro-toxicosis there is some rise of temperature.

Q. But this was an abnormal rise ?—A. Yes, I considered that an abnormal temperature.

Mr. CASSIDY : You are referring to the 20th, are you ?

Mr. SHAND : Yes.

Q. The senior sister in the operating theatre was Sister Bateman, was she not ?—A. I cannot remember the sister.

Q. But you have seen it in the hospital records. It is there, isn't it, in the hospital records ?—A. I cannot remember. Sister Bateman did work at St. Luke's.

Q. There is some contest in this case as to what kind of a tube it was that you put in ?—(Objected to.)

Q. The question has been raised. And I suppose you realise that it would be important to ascertain whether the tube was a sound one or whether it was perished ?—A. Yes, I always do that.

Q. Well, that is important matter ?—A. It is important matter.

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Q. And I suppose you endeavoured to ascertain who was in the operating theatre when the tube was put in. We haven't heard anyone give evidence as to that?—A. I haven't endeavoured to ascertain. I don't know whether my legal advisers have. They have done a lot of hunting about.

Q. In the operation register, the theatre staff is there set out—here they are?—A. Well, I have never seen that, Mr. Shand.

Q. They are available here if required.

Mr. CASSIDY: If necessary I will prove where Sister Morey is, Mr. Shand.

Mr. SHAND: I am not talking about Sister Morey. I am talking about Sister Bateman.

Q. Now the sisters there were Sister Russell, Sister Barrington and Sister Ball, according to the hospital records, at that operation?—A. Yes.

Q. Have you made any endeavour to get in touch with them?—A. I haven't personally, but——

Q. And assuming that I am correct in giving those names to you, it would have been one of those sisters who dealt with the tube before it was put into position?—A. If they were present at the operation, one of them would have got the tube out.

Q. Well now, you gave some evidence in this case—you first of all suggested, did you not, that when the operation took place you sewed up the muscles?—A. Yes.

Q. Left a hole big enough for the tube to be put in, and then pushed the tube in?—A. That is the way I lecture to the students.

Q. But that is what you said in this trial. You first of all said that, and then you said you could not remember whether you put the tube in first and sewed it up afterwards?—A. Yes, but——

Q. I thought there was some practice in this operation?—A. Yes, but you have to vary your technique a little, according to each case.

Q. That tube has to go behind some muscles, doesn't it?—A. Yes.

Q. Or between muscles?—A. Yes, between muscles.

Q. And into the bag of the thyroid?—A. Well, into the cavity.

Q. Into the capsule?—A. Into the cavity from which the thyroid is removed.

Q. And the cavity is sewn up after the operation?—A. The cavity is composed of the muscles.

Q. It is stitched up after the operation?—A. Yes.

Q. Will you tell these gentlemen how it would be possible having sewn up the capsule, the muscles having come back into position and having been sewn up with the exception of a little hole, how you could poke the tube between the muscles and into the bag that had been sewn up? How could you do that?—A. You don't sew the bag right up.

Q. But how could you aim so accurately from the outside that you could get it into the small hole opposite it—and get it in the small hole left for the tube?—A. It is not a small hole.

Q. A big one, is it?—A. It is shown quite well in that slide.

Q. You would be working in the blind, poking the tube in after it was sewn up. You would be working in the blind?—A. Not in the blind, no.

Q. How would you know, from the outside, if you had everything sewn up except a small hole, how would you know where the hole was inside ?—A. But it is not a tiny hole. You can slip your finger in to see where the tube is going.

Q. Have you ever suggested that before ?—A. I haven't suggested that before, but you cannot describe the operation in detail.

Q. But do you say you slipped your finger in ?—A. Yes, sometimes.

His HONOR : Did you on this occasion ?—A. I cannot remember that.

Mr. SHAND : How do you know you can get it in the hole from the outside ?—A. Because you know where everything is. You know where you have operated, and these muscles come together, and you just have to put it in, not very deeply but just underneath.

Q. But the bag has collapsed, you have told us, like a deflated football ?—A. Yes, it is like that but——

Q. But, Doctor——

His HONOR : Let him finish.

WITNESS : When I said it was a deflated football I was trying to convey that it was not a big cavity like this (indicating).

Mr. SHAND : It has gone absolutely flat ?—A. Not absolutely flat.

Q. But pretty well flat ?—A. Getting on to flat.

Q. If you are dealing with a thing that is more or less flat, how do you know you have got the end into the hole you have left ?—A. Well, you know it is into the right spot because it is underneath muscle.

Q. But it might not be into the hole that has been left in the cavity of the thyroid bag ?—A. You are not clear in what is there after the operation ; you are not clear.

Q. I want to know what kind of markmanship there is to enable you to be sure to get it into the bag.

His HONOR : Is it a question of markmanship ?—A. No, it is not a question of markmanship. You are putting it into an area that you know.

Mr. SHAND : This is on page 118, first trial. This is what you swore before, line 20. You went on to say first of all that you " cut through the skin and subcutaneous tissues and the fat and come on to the infrahyoid muscles, which are streaked like thin muscles—— "

Mr. CASSIDY : That is " strap like " not " streaked like." It was corrected before.

Mr. SHAND : Well, call it " strap-like thin muscles " " and you separate those, and then in finishing up the operation you place the drainage tube into the cavity from which you have removed the thyroid gland within the capsule, and you bring the tube out, and you put a few catgut sutures through the muscles just to bring them together again " ?—A. Yes.

Q. So that there you have sworn that whilst the muscles are still retracted, you put the tube in the bag through the hole and then after you have brought the tube outside the neck, you then stitch up the muscles ?—A. Well, you can do it either way.

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Q. Can you ?—A. If you think that my markmanship is not good, the latter way might be safer.

Q. But why did you only put it one way at the first trial ?—A. Well, that was a very hurried description.

His HONOR : A " bovrilised " description ?—A. Yes.

Mr. SHAND : We will see whether it was. This is on page 108 third trial—" It is my invariable practice to follow a definite routine or technique in connection with these operations " ?—A. I was referring more there to the removal of the thyroid.

Q. Were you ?—A. Yes.

Q. Just the removal ?—A. I mean that is the technique—the dangerous part of the operation is the removal of the diseased gland.

Q. As a matter of fact you were not talking about the removal of the thyroid ; you were talking about the tube. You went on to say " That is the technique that I lectured on, and I wrote about in medical books. In that technique I only used one drainage tube. I always use one drainage tube. It is of a particular type, of a maximum length of 2 inches, and often shorter. I placed it, as a rule, in the middle line of the incision, to one or other side of the trachea—the windpipe." So it was not the removal of the thyroid that you were dealing with.

His HONOR : How does that show ?—He says in that technique " I do this, that and the other." That technique must refer to the whole of the operation.

Mr. SHAND : That is what we say, but the witness, on the contrary, has sworn that it only refers to part of the operation—the removal. I quite agree with your Honor, but the witness has said something else.

Q. Haven't you ? You swore that in referring to technique you were only referring to part of the operation, the removal of the thyroid ?—A. If I said that I conveyed a wrong impression. (Shorthand notes read.)

Q. That is correct, isn't it—you did not intend the technique to cover how you put the tube in when you spoke about the technique ?—A. I am not quite clear. Technique refers to the whole of the operation.

Q. I will ask you first of all now is it your opinion that if a tube or part of a tube had been left in the thyroid it would be likely to come out through the sinus ?—A. If it was left it would be likely to come out through the sinus.

Q. That is your view ?—A. Yes.

His HONOR : Is that following the line of least resistance ?

Mr. SHAND : Yes.

Mr. CASSIDY : Is that the tube in evidence ?

Mr. SHAND : An object.

WITNESS : Yes, an object.

Mr. SHAND : And what I am putting to you is this, that when Mrs. Hocking left you, you were hoping against hope that in time this tube would come out through the wound ?—A. Well, that is an absolute lie, and I deny it absolutely.

Q. That is not a lie, that is a question ?—A. Well, the question ; it is very hard when a statement like that is made.

Q. It is very hard for the Plaintiff too ?—A. I am sorry if I have broken the laws of the court.

Q. And you have said that you would not have expected the sinus to close over infection. Is that right ?—A. I would not expect it to heal.

Q. Over infection ?—A. Over an infected tube. I am not talking of the tube—a tube.

Q. Over an infected tube ?—A. Yes.

Q. Or over a big or gross infection ?—A. Not with a tube in it—not in that area.

Q. Of course a sinus can close over gross infection, can't it ?—A. It does not heal. It may close temporarily for a short time—seal it for a few days.

Q. But this sinus did close according to what you have learnt at Quirindi Hospital, didn't it ?—A. From the evidence I have heard——

Q. Dr. O'Hanlon ?—A. Yes, that the inflammation ceased at the end of June, or something like that.

Q. No, before then—in the hospital. Will you deny this, that you gave Dr. O'Hanlon instructions to open the sinus and keep it open ?—A. A sinus is a sinus ; a sinus is not a closed thing at all. It is something open.

Q. But I am putting to you that the sinus healed up—closed ?—A. It sealed over.

Q. And you gave Dr. O'Hanlon instructions to open it and keep it open, didn't you ?—A. I cannot remember giving him those instructions.

Q. Can't you ?—A. No, I cannot remember giving him those instructions.

Q. Will you deny that you gave him those instructions ?—A. Well, I cannot remember that I gave him those instructions. I think that if that is followed in the hospital records it will give a better idea of it.

His HONOR : That is the hospital records of the 4th May 1938. Have you got a copy of them ?—A. Yes.

Q. Have a look at them.

Mr. SHAND : This is what you swore before—the third trial—page 126, and you swore it in reference to the tube with the wires in it, that was shown. In relation to this tube which appears now with wires in it, you were asked : " Take the foreign body this woman has described, Exhibit 1, in the thyroid capsule." Your answer was " That is a large foreign body. I personally don't think it would heal. It is too big " ?—A. Yes.

Q. That is as far as you went, isn't it ? You don't think it would heal ?—A. Yes.

Q. Now I want to ask you this. This is something Mr. Hocking has said he said to you at the time his wife was leaving the hospital on the first occasion ?—A. Yes.

Q. You have not been asked about it yet. This is on page 129. He said that he spoke to you about the cramps, the pins and needles, is that correct ?—A. Yes, I am sure he had a conversation or I had it with him.

Q. And he asked you what was the cause of it, and you said : " It is slight tetany " ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Cross-examination, *continued.*

Q. And you prescribed some calcium tablets, and you said to continue taking those tablets and it would take quite a while to clear up ?—A. Yes.

Q. Then he said he had a further conversation with you. This was just before he left to go home, and he said he asked you further questions about the tetany and he said : " I think I asked him was there a possibility of a recurrence of the thyroid trouble." Is that correct ?—A. Yes.

Q. And you said : " Perhaps one chance in a hundred." Is that correct ?—A. Yes, that is as far as my memory goes—that is correct.

Q. And he said he asked you was there anything—he said : " I asked him was there anything that we could do to assist," and you said : " Well, no ; but continue taking the calcium lactate " ?—A. Yes.

Q. And that he said : " Anything else," and that you said : " Well, perhaps an X-ray later on to see how the cardiac is responding—the heart cardiac." Cardiograph, I suppose. Is that correct ?—A. Yes. My impression about that section of it was that I was discussing the question of recurrence and that if you do get a recurrence of thyrotoxicosis where you remove the gland, those cases are very amenable to X-ray. He was very anxious about a recurrence, and I was able to re-assure him.

Q. Did you speak about a cardiograph ?—A. No, I am sure I did not speak about a cardiograph. It is very hard to remember these things, but I am very often asked by patients " Will this thing come back ?" and in a few cases it does.

Q. Generally speaking in regard to this tetany, if you get it after operations it clears up very quickly ?—A. Yes, most of them clear up quickly.

Q. Why did you tell him this, to continue to take these tablets and it would take quite a while to clear up. Why did you tell him that ?—A. I can't remember the conversation.

Q. Well, you have sworn that that is what you did tell him ?—A. I told him to take the——

Q. You have sworn that that is what you did tell him, that it would take quite a while to clear up ?—A. Well, I am quite hazy on that. I don't know why I told him that.

Q. But that was opposed to the whole of your experience—slight experience ?—A. No, not to the whole of my experience.

Q. Opposed to the general run of your experience ?—A. To the general run.

Q. Well, why should you single out a case and tell him that it would take quite a while to clear up ?—A. Well, the only reason I can give is that I thought that in this case as there had been an infection it would take quite a while to recover from.

Q. Did you think it was going to take quite a while to clear up ?—A. I thought it might. This woman had——

Q. Did you think it might take a while to clear up ?—A. I thought in that case that it might take longer if there was infection.

Q. But you said this morning—you have repeated it—that when she left hospital she was all right, she just had a small hole in the neck, but otherwise she was all right ?—A. But at the same time there had been infection in the hospital.

Q. But according to you that was clearing up—it gave every indication of clearing up ?—A. It was clearing up, but I thought it might last for some time.

Q. But why tell him in this case that it would take a while to clear up ?—A. Well, if I told him, I might have thought there was some factor in this case that might take quite a while.

Q. The tube ?—A. No.

Q. Well, what other factor ?—A. The infection.

Q. But you were satisfied as to the infection ?—A. But the effects on the parathyroid would remain for some time.

Q. You have just told this Court that you were very satisfied with her condition when she left the hospital ?—A. I was satisfied. She had come through a serious illness and she was going out at the end of a month.

Q. And you said that there was no record of any temperature or no indication of any infection. Isn't that correct ?—A. No.

Q. Do you say that there was no indication of infection when she left ?—A. There was no indication of acute infection. Even if you have the slightest sinus or a boil, until that clears up, there is always some infection.

Q. But they may have been only knots in this case ?—A. But if you have knots you can get inflammation.

Q. Tetany ?—A. It is the inflammation that causes tetany.

Q. Do you want to say anything further about that statement that it would take quite a while to clear up ?—A. Well, my reason was that there had been an infection and the results of that infection do not clear up straight away on a delicate organ like the parathyroid.

Q. There were these letters that were addressed to you, one from Mr. Hocking of the 2nd May ?—A. Yes, that would be right.

Q. One from Dr. O'Hanlon of the 10th May, 1938, one from Dr. O'Hanlon of the 17th January, 1939, and one of the 7th October, 1939, from Dr. O'Hanlon, and one on the 11th from the Plaintiff ?—A. Yes.

Q. Where did you keep those letters ?—A. I put them in my filing cabinet.

Q. You have a filing cabinet where you keep correspondence ?—A. Yes.

Q. Now the next matter I want to ask you is this. On the 10th May Dr. O'Hanlon writes and thanks you for your letter in reference to Mrs. Hocking ?—A. On the 10th May ?

Q. Yes ?—A. Yes.

Q. Well, we haven't got your letter. Did you keep a copy ?—A. No, I did not keep a copy.

Q. Have you made investigations from Dr. O'Hanlon as to where that letter is ?—A. No, I haven't.

Q. Now on the 29th June—that is the next letter in point of date that we have got—you write to Mr. Hocking saying "Many thanks for your letter re Mrs. Hocking, although I am sorry the news is not better concerning the spasms." Now that is a letter—a reference by you to a letter from Mr. Hocking ?—A. Yes.

Q. Where is that letter. I want to know where it is ?—A. Which letter is that ?

His HONOR : You wrote on the 29th June, 1938.

Mr. SHAND : "Many thanks for your letter."

His HONOR : That suggests that you had received a letter from him ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Cross-examination, *continued.*

Mr. SHAND : Where is that letter ?—A. I looked it up in an old diary, and I found that I had rung Dr. O'Hanlon at about that time.

Q. Where is that diary ?—A. It is in there I think (Indicating).

Q. You have refreshed your memory ?—A. Yes.

His HONOR : Mr. Shand wants to know where that letter is from Mr. Hocking. Keep your mind on that ?—A. I don't know where that letter is.

Mr. SHAND : Why wouldn't that letter have been put in the filing cabinet ?—A. I could not tell you that. I have done my best to get these letters.

Q. Have you a secretary ?—A. I did not at that time—just an attendant.

Q. Used she put the letters in the filing cabinet ?—A. No, I used to put them in myself.

Q. Now I come to a letter of the 17th January to you from Dr. O'Hanlon.

His HONOR : Starting off " Your inquiry."

Mr. SHAND : Yes, starting off " Your inquiry."

His HONOR : Have you got that one ?—A. Yes, the 17th January.

Mr. SHAND : That states : " Your inquiry in regard to Mrs. Hocking to hand a few days ago " ?—A. Yes.

Q. Have you inquired from Dr. O'Hanlon where that letter of yours is ?—A. No, I haven't inquired.

Q. Now the next letter I turn to is a letter from you to Mrs. Hocking of the 27th May 1939 ?—A. Yes.

Q. That says : " Many thanks for your letter." You are saying to Mrs. Hocking, many thanks for Mrs. Hocking's letter ?—A. Yes.

Q. Where is that one ?—A. I haven't got that one.

Q. Wouldn't that be put in the filing cabinet ?—A. Well, I did not keep it. I did not consider it very important at the time, I suppose.

Q. Reading your letter to her, doesn't it remind you that she had been apologising for the nature of her handwriting owing to her state of health ? (Objected to : pressed.)

Q. " Many thanks for your letter. I am glad to see your writing is so good." Doesn't that recall to you that she had excused her writing ? —A. No.

Q. Well, why did you put that in ?—A. I could not say at this time.

Q. And you don't know what happened to that letter ?—A. I don't know what happened to it.

Q. Did you have all these letters at the first trial ?—A. I cannot remember that.

Q. There were none of them put in evidence, were there ?—A. I would have to ask my people about that. I cannot remember that.

His HONOR : Which ones are missing ?

Mr. SHAND : None were put in evidence.

Q. There was one referred to of the 7th ?—A. I would not remember that one.

Q. Now this letter of Dr. O'Hanlon was a most striking letter?—A. It was a striking letter.

Q. And I suppose you had read it very carefully before the first trial?

His HONOR: That letter of the 27th May is not in the first trial. Which one are you referring to?

Mr. SHAND: I should have restricted it to the letters from Dr. O'Hanlon. I was wrong on that.

Q. You had read Dr. O'Hanlon's letter before the first trial?—A. Oh, yes, I must have read it.

Q. You were asked, on page 125 of the first trial, by His Honor—"Did she, the plaintiff, give you a history of swallowing some foreign body. Did she tell you the story of it or anything about it?" Your answer was this: "I have got the impression that Dr. O'Hanlon wrote me about that. I am not quite sure if she referred to it in that letter; I think she did. That is the only knowledge I have of any foreign body of any sort. I have got the impression that Dr. O'Hanlon wrote me about that." You knew he had written to you about that, didn't you?—A. I must have known at that time.

Q. Why did you merely say "I have got the impression"?—A. I suppose it is choice of language.

Q. Or is it that you did not want that letter of Dr. O'Hanlon to get in evidence?—A. I object to that. (Objected to: pressed.)

Q. Of course it was quite obvious—you heard Mr. Cassidy opening about this letter that was kept by you. Immediately after that letter, Mrs. Hocking had written to you and said: "You have probably heard from Dr. O'Hanlon, giving you full details"?—A. Yes.

Q. That is what she said?—A. Yes.

Q. And at that time you wrote back and said that you had a letter from Dr. O'Hanlon. That is your letter?—A. Yes, from Mrs. Hocking, that is right.

Q. On the 15th. So that you had made known to Mrs. Hocking that you had received this letter?—A. Yes.

Q. Before you went into court in the first trial I suppose you looked through your correspondence?—A. Oh yes, I must have looked through it.

Q. And you discovered such letters as were discoverable?—A. I brought all the letters along to my people that I could find.

Q. You came across such letters as you could?—A. I brought along all the letters that I could find.

Q. I am going to ask you whether you did not attempt to evade a question about those letters. This is on page 142 of the first trial—"Have you had letters from him from time to time," and your answer was "Yes." Then you were asked "Where are they," and your answer was "I did not get many letters from him. I am not sure whether I rang him up in the first instance. I am hazy on this point, but I am quite certain that I rang him on the telephone and discussed the case because I thought it was easier to do that than to write." That was your answer, wasn't it?—A. Yes.

(Luncheon adjournment.)

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Cross-examination, *continued.*

Mr. SHAND : Having dissected the gland what do you do ? Do you stitch up the capsule ?—A. You stitch up the cavity rather than the capsule.

Q. There is a bag ?—A. The bag itself does not get stitched up tightly. It is more or less the muscles.

Q. Have not you said before that you stitched the capsule or bag itself, leaving a hole big enough for the tube to go in ?—A. Yes, but that is a loose description. The right way would be to bring the muscles together. The capsule is not actually stitched up tightly.

Q. But the capsule, first of all before the gland is dissected, has to be cut ?—A. Yes.

Q. Is it just left ?—A. That and the muscles, you do not stitch up the muscles per se.

Q. Is the capsule stitched on to the muscles ?—A. Some of the capsules may be included with the muscles.

Q. You do not know how much ?—A. Not very much. The deeper (?) muscle is very adherent to the capsule sometimes, and in those cases you stitch some of the capsule with the muscle.

Q. At one stage when the temperature went up there was a good deal of inflammation ?—A. Yes, after the 20th.

Q. And a good deal of pus ?—A. Yes.

Q. The tube would not be likely to work up, and the consequence would be—I do not care whether the tube or suppuration around it—if the tube were left it would go down and bring about perhaps fatal results ? —A. I do not think a tube like the Exhibit——

Q. But the pus around the tube would be likely to go down ?—A. Yes.

Q. There was pus there, a good deal at one stage ?—A. Yes.

Q. It appears it did not go down ?—A. No, because it was localised to the area where the gland has been removed.

Q. Take this suggestion that if a tube were there and there was pus, it would be likely to go down the mediastinum ?—A. If the pus went down the tube would follow it.

Q. But it did not go right down ?—A. Not right into the mediastinum.

Q. It did not go down ?—A. It remained localised.

Q. But it did not go down ?—A. No, that is so.

Q. The anæsthetist was Dr. Hugh Hunter ?—A. Yes.

Q. Is he still in Sydney ?—A. Yes.

Q. He has not given evidence at any trial ?—A. No.

Q. He was there during the whole of the operation ?—A. Yes.

Q. He would be in a position to see the tube which was used ?— A. He might, it would not be fair.

Q. But I only say he would be in a position to see it ?—A. Yes, if his mind was not directed to the anæsthetic.

Q. This is the way you expressed this question of the sewing up of the bag at the first trial (page 134). You were asked at line 21 :—

> " Q. I suppose you will agree you put the drainage tube into the cavity as you are retracing your steps backwards ?—A. Yes." —A. Yes.
>
> Q. " Q. So that when you are sewing up this cavity out of which the thyroid gland has come . . . ?—A. The bag.
>
> Q. When you are sewing up the bag you have to leave an opening in the bag so as to put the drainage tube in ?—A. Yes."

Is that a fair description or a rough one?—A. That is a rough description. You sew up the cavity from which you take the gland.

Q. You remember the Plaintiff was asked about this tube, as to whether she was only a layman or a lay-woman, she was asked whether it was a fair or a rough description?—A. Yes.

Q. What you have given us as a professional man is a rough description?—A. Yes.

Q. It could be improved?—A. Yes.

Q. When you are sewing—whatever the exact process is, but I will call it roughly "sewing the bag"—you use that curved needle?—A. Yes.

Q. How did you secure this artery from which there was some bleeding?—A. I did not secure the artery with the needle. I ligated it with a ligature of strong catgut.

Q. How is it done?—A. By putting artery forceps on and tying it in the ordinary way.

Q. You used the term "strong catgut." Is that in distinction?—A. As a rule, for tying the muscles of the thyroid you use a fine catgut.

Q. But with regard to this artery, you use a strong catgut?—A. Yes.

Q. And did you use a strong catgut in securing the muscles?—A. If I divide the muscles up I would use a strong catgut.

Q. Because they would be cut across then?—A. Yes.

Q. What is that specimen of catgut, No. 2, which has been produced by you?—A. I would call it strong catgut.

Q. You use some other catgut as well as that?—A. A finer—same type.

Q. You use two types of catgut?—A. Yes.

Q. The strong and a finer?—A. Yes.

Q. Will you now admit that unconsciousness can take place with tetany—severe tetany?—A. I cannot admit it.

Q. But you have heard it read out, at least three and I think four recognised authors of medical works?—A. I will admit there are certain authors—I cannot name them. There is also the contra.

Q. Is there particular reference to parathyroid tetany? Take Osler and McCrea, "Modern Medicine," 3rd edition. That is one of the recognised books?—A. It is a good book.

Q. "Consciousness is involved only in certain forms (parathyroid tetany)", page 758?—A. Yes.

Q. You would not dispute that?—A. I would not; but I would like to know what the progress of the case was. Some people say it is followed by death.

Q. It does not say there?—A. Unless you read on.

Q. It goes on to something else. You have heard read out a number of other authors to the same effect?—A. Some authors; but the majority, I think—well, my reading has gone that the unconsciousness was rare in tetany.

Q. If it is rare it can take place?—A. Yes, it can take place.

Q. You have not dealt with cases of severe tetany, have you?—A. No, it is only on the reading.

Q. You will agree that unconsciousness would be more likely to take place in severe tetany than in less severe?—A. Yes, I understand in some books they say it is a terminal event.

His HONOR: You mean death?—A. Yes, it precedes death.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Cross-examination. *continued.*

Mr. SHAND : In what book have you ever seen that ?—A. I cannot produce the book now, but some physicians may have it.

Q. I have invited you to express authorities for several things, and I want you to keep them in mind. If you do not produce them I will comment on it ?—A. Yes, very well.

Q. I have the " British Encyclopædia "—Sir Humphrey Rolleston : " The central nervous system may be affected ; drowsiness is common, and twitchings followed by convulsions and coma may occur." Is it unconsciousness ?—A. Coma is getting pretty close to death, but they may be dying.

Q. In the great majority of diseases unconsciousness precedes death ? —A. Yes.

Q. I refer to Albutt & Rolleston, " System of Medicine," 1910, page 590 : " In cases of still more widespread spasm, when the masseters, the muscles of the tongue, the pharynx and larynx become involved and the breathing may become exceedingly difficult, the patient becomes cyanosed and for a short time consciousness may be lost." That does not suggest death ?—A. No, I agree with you there.

Q. That is a recognised work ?—A. Yes.

Q. Before the first trial you did not think that unconsciousness could occur unless it was immediately preceding death as a result of tetany ?—A. That was my opinion. Unconsciousness was very rare in tetany.

Q. And it only occurred where it was preceding death ?—A. Yes, that was my impression at that time.

Q. And it was the impression of a number of other doctors who gave evidence for you ?—A. Yes, Dr. Ritchie took that view.

Q. It would be a somewhat remarkable symptom for a woman, and an hysterical woman, to assume ?—A. French's diagnosis has something about convulsions, and I mean, unconsciousness.

Q. There were a lot of different people present at the first trial ? Counsel and doctors at different times ?—A. Yes.

Q. Will you swear definitely that when the plaintiff indicated the spasm of the hands in the first trial that she had her thumb out ?—A. My memory is——

Q. But will you swear definitely that she had her thumb out ?—A. In that position (Indicating). I do not know whether you call it out or in.

Q. Will you swear that that is definitely so ?—A. Yes.

Q. You gave your evidence after the plaintiff ?—A. Yes, I was there when she put her hand up like that.

Q. You did not say in your evidence a single word about that ?— A. I do not think I was asked.

Q. If she had done that it would have struck you at the time as one of the signs ?—A. It struck me as very suspicious that it was not tetany.

Q. You did not say a single word about it ?—A. I am sure I said a single word to someone.

Q. But I mean in court, to indicate that she had given the sign which was not indicative of true tetany, namely, the true accoucheur's hand ?——

Mr. SHAND : And you know it was never suggested to the Plaintiff that she had given an indication with the thumb out ?—A. I cannot remember that.

Q. Now, another matter you have mentioned was the fact that she described how one eye moved backwards ?—A. Yes.

Q. You did not think, did you, at any rate until after the second trial, that the symptoms of tetany could be unilateral ?—A. I would not go so far as that.

Q. Did you think they could be unilateral ?—A. They are usually described as being bilateral.

Q. And that was your impression, that they were bilateral ?—A. Yes.

Q. And you did not know at the end of the second trial that tetany signs could be localised ?—A. You mean localised to one particular limb.

Q. Or part of the body ?—A. No, I don't think I knew that. Perhaps that is not quite fair. My own impression was that I thought they were bilateral and not unilateral.

Q. Now of course you have heard a number of recognised authors say that they can be localised in different parts of the body ?—A. I heard that read out.

Q. And wasn't it you who supplied Cecil to your own counsel ?—A. No, I did not supply counsel with Cecil.

Q. Had you read Cecil ?—A. I don't think I had—in fact I am sure I hadn't.

Q. Well, where did Cecil come from ?—A. I don't know where it came from.

Q. You heard it read out of Cecil (page 1139) " The spasm is most frequently bilateral but at times only one arm or leg or one side of the body is affected. It at times involves the muscles of the larynx, face, trunk, eye and diaphragm. Frequently the spasm shifts from one part of the body to another or it may occur in many parts simultaneously."—A. I did not read it so carefully.

Q. You had not read it at all, do you mean ?—A. I had not seen it in print.

Q. I suppose you heard whenever Dr. Thompson gave an opinion on tetany he was asked for an authority to support it ?—A. He was asked for authorities.

Q. And he produced it, didn't he ?—A. I don't know whether he produced them all, there was some argument at one of the trials about something to do with tetany and Dr. Thompson.

Q. About eye spasm ?—A. Something to that.

Q. When he indicated that he was giving an example by inference ?—A. Yes, that was the only time.

Q. And we only saw this bit in Cecil when it was produced by your counsel in this trial ?—A. Yes.

Q. You have heard Dr. Thompson suggest that the inner end of the tube was probably put in the left lobe ?—A. Yes.

Q. You have heard Professor Welsh say it would not matter whether the tube was inserted in the right or the left lobe because it could work across ?—A. Yes, there is a cavity from one side to the other.

Q. You heard Professor Welsh swear that ?—A. I cannot say I did, but I presume that he did.

Q. This was the limited extent to which you were prepared to go in the first trial—" Some weeks after the stitches had been removed, assume the stitches had been removed and the object had not been taken

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Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Cross-examination, *continued.*

out ?—A. If it were on the right side it would be difficult to get across." —A. Yes. That is any tube, is it ?

Q. The object, the thing described and sketched ?—A. Yes.

Q. It would be difficult to get across ?—A. Yes.

Q. Were you aware that when the Plaintiff was up at Quirindi Hospital she had not merely one sinus but two sinuses ?—A. I did not know then.

Q. Just assume for the moment that she had two sinuses, could you explain how that would happen ?—A. In these wounds where catgut is coming out it is quite possible for another sinus to form.

Q. I refer now to the original day report of the Quirindi Hospital. I show you under date of the 7th May opposite Mrs. Hocking's name " Swelling of neck opened this a.m. under local keblings sinus . . . " and do you see a sign there ?—A. Yes.

Q. What does that mean ?—A. It looks like a 2".

Mr. CASSIDY : It is over the granulations.

Mr. SHAND : Do you suggest it is over the granulations ?

Mr. CASSIDY : Do you suggest that it is a 2" ?

Mr. SHAND : I am asking the doctor, I will afterwards prove that it is a 2".

Q. I suggest to you that that is a 2", it looks like a 2", doesn't it ? —A. Yes.

Q. I just want to call your attention to this. On the third trial you gave certain reasons for your conclusion that there was an element of hysteria ?—A. Yes.

Q. I am suggesting to you that you had formed that reason after receiving the two letters, one from Dr. O'Hanlon and one from the Plaintiff in October ?—A. Yes.

Q. These were the reasons that you suggested, the first one was a sudden cessation ?—A. Yes.

Q. The second one was unconsciousness ?—A. Yes.

Q. The third one was that there was no response to intravenous injections ?—A. Yes.

Q. When I say " No " I mean not a proper one at any rate ?—A. Yes.

Q. Dealing with that you have noted, have you not, in the Quirindi records, we will leave out one occasion that you have mentioned, on the other occasions there appears to have been a very quick response, a quarter of an hour ?—A. Yes.

Q. And on that one occasion she was given calcium glucinate a.m. ?— A. Yes.

Q. We have heard from you that it lasts about five or six hours ?— A. That is from reading.

Q. And we have heard from the text books that it lasts only a few hours ?—A. Yes.

Q. So that is not a very powerful reason, is it ?—A. No, except the fact that they do not get better with a few doses, it is always suggested that there may be some other element.

Q. It all loses its effect after a while, doesn't it ?—A. Yes, but within a few weeks it is not necessary to give it.

Q. But if you had the inflammation continuing around the para-thyroids, that is a different matter ?—A. That is another matter, yes.

Q. And I suppose you do recognise this, that it was thought at one time that the effect of calcium was discovered that they might really have the same result as insulin as in the case of diabetes, that is, provide a complete replacement of all that is lacking ?—A. Yes. I would not care to express an opinion on that.

Q. I suppose you have read enough to realise this, that the authors are unanimous on the fact that it is not like insulin, but when calcium is given it gradually loses its effect and does not replace the function of the parathyroids ?—A. It does not replace the function of the parathyroids, you have to keep on giving it.

Q. And you have to gradually increase the dose ?—A. I did not know that.

Q. Until finally you reach a stage where the patient cannot take sufficient, if the tetany continues, if she has lost the parathyroids, where the patient cannot take sufficient calcium to make up for the deficiency in the blood ?—A. That is too involved, I would not care to answer that straight off, I have not read it as closely as that.

Q. You will agree, will you, that that suggested lack of response to intravenous injections is not a very sound basis on which to found hysteria ?—A. No, but it was taken as one of the conditions on which a suspicion might be raised.

Q. Having taken into account the fact that on previous occasions she had reacted quickly, taking into account that the duration of calcium glucinate is only a few hours, it would be a very poor support in itself ?—A. Yes, in a way.

Q. In itself ?—A. In itself it was just a matter where your suspicion would be roused, a fingerpost.

Q. Now, the fourth matter you mentioned was the fact that she was massaged ?—A. Yes.

Q. Tetany results in a cramping of the muscles ?—A. Yes.

Q. And when they come out the parts affected are very sore ?—A. Yes, sometimes.

Q. And this spasm or cramping of the muscles is caused by the failure of the blood vessels to carry the calcium to the nerve ends ?—A. Well, you are getting into the realms of physiology.

His HONOR : You prefer not to express an opinion on physiological matters, you are a surgeon ?—A. I know more about tetanus than tetany.

Mr. SHAND : Let us consider the Trousseau test, does not that indicate to you the constriction of the vessels in the arm of a subject who has already a low calcium content impedes the flow of blood and causes an even lower calcium content of the blood going to the nerves lower down ?—A. I would think that there was an element there—I would not be able to express an opinion as to whether it was pressure on the blood vessels or actual irritation of the nerves by pressure of the band.

Q. Haven't you read many authors on that subject ?—A. Yes, but you have two factors coming in there, you have a very irritable nerve. I mean the Chvostek's test you don't really press on any vessels there, you really just press on the nerve.

Q. If you don't feel competent to say I will take your answer ?—A. I don't feel competent to express an opinion on what causes the reaction, whether it is the pressure on the vessels or on the nerve.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Cross-examination, *continued.*

Q. In common or garden cramp a means of relieving the condition is massaging ?—A. Yes.

Q. Now, can you see anything wrong with this, tetany brings on cramp for some reason ?—A. Yes.

Q. I am not suggesting that massage would be any good before you get a tetanic cramp, but once you have got it will you concede to me the possibility, when it has just become a cramp, that massage then might do good ?—A. No, I would not concede that, not in tetany.

Q. But the object of massage is to bring to the parts affected a good supply of blood ?—A. Not the only object.

Q. That is one of them ?—A. Yes.

Q. And if you have got an improved supply of blood to a part that is affected by lack of calcium, the calcium being in the blood, you might expect some improvement ?—A. I would not admit that.

Q. Can you show the Court one authority which says this, that when you have got the tetanic cramp massage does any harm ?—A. I have not seen any authority.

Q. Now, you don't know whether the spasm that is produced by the Trousseau test is produced by nerve pressure or starvation of blood ?—A. I don't know that, no.

Q. Will you agree then that being incompetent to deal with that question you are also incompetent to deal with this, that when the tetanic spasm or cramp has already occurred massage may do it better ?—A. I don't feel that I am capable of giving an opinion on that because the spasm of the muscle in tetany when you put the band around the arm I don't know whether it is the nerve or the blood vessel.

Q. It may be either ?—A. I don't feel I ought to express an opinion on that, I leave that for the physiologists.

Q. If you cannot express an opinion on that I suppose you will agree that it necessarily follows that you cannot express any definite opinion on whether once you have got the cramp massage may improve it ?—A. I would expect extra irritation to increase it.

Q. Why would you ?—A. Because it is causing more irritation of the nerves.

Q. But does the nerve that is irritated—if you are massaging the muscle you don't necessarily irritate the nerve ?—A. You look on the nerve and muscle as the one preparation.

Q. If you massage the muscle you don't necessarily irritate the nerve, do you ?—A. There would be some area in which you would irritate it.

Q. You would not necessarily, would you, that means in all areas ?—A. No, in all areas, but if you are massaging a particular area, a particular muscle anywhere near the nerve insertion I would expect irritation of that nerve to increase the spasms just as the Chvostek test over the nasal nerve makes the muscle contract.

Q. You don't know, do you ?—A. I do know that it is the irritation of the nerve that causes the facial twitching. When you are putting a band round the muscle you are pressing on all the nerves.

Q. You may be ?—A. But you are, you cannot help it.

Q. This is the position, isn't it, that first it was that early, up to the discovery of the phenomenon of the Trousseau sign, it was thought that it might be pressure on the nerve that caused it but all the later authorities say that it is the restriction of the blood and it has been tested ?—A. I don't know that.

Q. Modern Medicine, Vol. 5, says "Trousseau in 1894 pointed out that if the blood supply to the arm be suppressed by means of a tourniquet the typical attitude of the obstetrical hand, accoucheur's hand, can be produced within a few minutes. The more severe the tetany the more pronounced are the results and the quicker they appear if the nerves are quite hypersensitive, simple pressure on the biceptical groove will produce such a spasm. The test is very easy to apply and is considered almost pathognomonic of tetany. If a tight bandage as, for example, the cuff of an ordinary blood pressure apparatus be applied and the pressure is sufficient to interrupt the arterial flow there will appear in from one to five minutes the typical obstetrical hand. The time required to elicit the phenomenon is important, and if tetany is suspected the pressure should be applied at least five minutes before it is decided that the phenomena can be produced.

That this phenomenon is not the result of the ischemia of the nerve was shown by Von Frankl Hochwart who found that in experimental tetany the slightest pressure to the exposed nerve was sufficient to produce the contracture whereas the strongest pressure upon the blood vessels alone remained without effect. On the other hand it cannot be entirely explained as resulting from the mechanical stimulation of the nerve itself. Von Frankl Hochwart produced bilateral spasm by pressure on the nerve of a single extremity while Schlesinger showed that it is only in the mixed sensory and motor nerves that this phenomenon can be produced."

Mr. SHAND: So you will see that the supply of blood calcium has effect on producing this sign, or the restriction?—A. I could not follow that. The impression I got from that was that it referred more to irritation of the nerves.

Q. Both?—A. But I think that the nerves loom larger in that than the blood vessels. I think so.

Q. You think it does. Well, you read it in your letter. You have got the reference to it. I asked you whether you had any authority as to whether massage relieved it. Have you ever had any experience as to the effect of massage. I don't mean the Chvostek sign. That is obvious?—A. No.

Q. You have had no experience?—A. No, I haven't had experience in massaging.

Q. I asked you yesterday could you produce an authority, that when you get tetany with the consequent lowering of the calcium content, that that remains constant, and you said you could not at the time?—A. No.

Q. But can you now produce an authority?—A. I haven't been able to produce an authority. If Mr. Reimer will make a note I could get some of my physician friends to look into it.

Q. I am still inviting you to do that.

Mr. CASSIDY: Do you remember Sampson Wright?—A. Yes.

Q. Is that one you refer to?—A. That is one about the body adjusting itself to a lower level than normal. That is the latest I could get. (Produced by Mr. Cassidy.)

Mr. SHAND: Have a look at it yourself, and tell me after having looked at it if there is anything there that suggests that the calcium content of the blood remains at the same level (book handed to witness)?

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Cross-examination, *continued.*

—A. It says here: "Several points about tetany are not adequately accounted for, but after four to six weeks of such treatment (with lactate of calcium and so forth) the nervous system becomes adjusted to the altered state of the blood. If treatment is now discontinued, tetany no longer results even when the serum calcium falls to 4 mgms. per 100 cc." Then it goes on to say that a diet of meat aggravates the symptoms.

Q. That is not what I asked for. (Objected to.)

Q. It is not what I asked for. That indicates that when the body gets accustomed to a lower content of calcium you don't get tetany?—A. Yes.

Q. But what I am asking you is that when the content of the blood calcium becomes low for some time, it does not recover again?—A. It does not go up?

Q. Yes?—A. Mr. Reimer will you make a note of it.

Q. Whatever the position may be, you had no knowledge of that in 1939, did you?—A. That which I have just read out?

Q. Yes—either that or the calcium content remaining low. You had no knowledge of that then, did you?—A. No.

Q. So that when you saw Mrs. Hocking's calcium blood test, 7.2—not knowing that, you must have been pretty concerned?—A. Not necessarily, because she had no tetany. She had no symptoms of tetany.

Q. No symptoms of tetany?—A. She was not having contractions in St. Luke's.

Q. But she had what, at that time, you would have taken for a symptom of tetany—that is the low calcium content, because you did not know?—A. I did not know that.

Q. I am conceding for the moment that that is so, but if you did now know that the calcium content remained low and could be accommodated, you must have taken that as a symptom of tetany?—A. Not necessarily, because you get low calcium in other ways, but I thought it was associated with possible tetany.

Q. And that is what Halliwell and Milliken (?) describe?—A. Yes.

Q. Now if you did think that, why didn't you give the Chvostek, the Trousseau, or the Erbs test?—A. Because she had no clinical symptoms of tetany.

Q. But you said that you thought that the low blood content was a symptom of tetany? (Objected to.)

Q. An indication?—A. That is only one indication.

Q. Yes, but having one indication, this low calcium, why didn't you give her one of the tests?—A. Because she had no clinical evidence of it. I don't give tests unless I think they have got tetany.

Q. But according to you, this was one indication of tetany?—A. Yes, but you don't do these tests on people who are apparently normal.

Q. But she had the blood count and the Wasserman test?—A. I never thought of doing it.

Q. You never thought of doing it?—A. No.

Q. You said that you had entries in your diary as to when you rang up Dr. O'Hanlon?—A. Yes.

Q. Have you got those?—A. Yes. I don't know whether you can read them. There are just two rough notes to ring Dr. O'Hanlon on certain dates.

Q. Hold it in your hand, and point it out to me?—A. That is a rough note there "Ring Quirindi." That is Paratromone (?): "Ring Dr. O'Hanlon." That is the same thing as Paroidin. The date of 23rd May. Now there is another one, "22nd June, ring Dr. O'Hanlon, Quirindi. E.W." That does not refer to anything. That was someone else I had to ring.

Q. That is not relating to it?—A. No.

Q. Are those the only two entries?—A. Those are the only two I could find.

Q. Now you suggested that if a tube of this nature, floating in pus, were to come from the thyroid, it either might or probably, whatever your evidence was, injure a number of vital structures. What are the structures?—A. The structures? The structures would be the muscles.

Q. What are the names?—A. The sterno-hyoid, and the sterno-thyroid. It would be also the fascis, in the neighbourhood. It would be the omo-hyoid, also. It would be the digastric.

Mr. CASSIDY: You are dealing with all muscles first?—A. Yes, muscles. It is hard without a diagram to remember all the names.

Mr. SHAND: Well, give me what you think of?—A. It would be certain nerves. In regard to muscles it would be the constrictors of the pharynx; one of the other muscles would be the internal pterigoid.

Q. Those are some of the muscles; there may be more?—A. Yes. The styloglossus, and the stylopharyngeus.

Q. I am not suggesting that you are mentioning all the muscles. What are the blood vessels?—A. The blood vessels which you would have to take into consideration would be the vessels in the carotid sheath.

Q. That is the carotid artery?—A. Yes. The branches into which it divides. I am not going over all of these. The branches, more particularly of the external carotid, more particularly the branches of that—the superior thyroid, the lingual artery, the facial artery, the nerves, of course, and the vagus——

Q. There are a number of nerves?—A. Yes.

Q. We will pause there for a moment. Now there are plenty of abscesses in the neck, aren't there?—A. Yes.

Q. There are plenty of cases of that—well known?—A. Yes.

Q. Have you ever known an abscess of the neck to break through into the carotid artery?—A. Yes, I have known it after operations.

Q. Do you mean by suppuration?—A. Yes.

Q. In what cases have you known it?—A. Well, I can remember it in the old days when dissections were done of the glands of the neck, from malignant disease, when suppuration took place. One of the most terrifying complications that we had to deal with was hæmorrhage from those arteries.

Q. But they had been cut—the arteries had been cut?—A. No, they had not been cut.

Q. Were they quite unaffected by the malignant disease?—A. Yes.

Q. Now I want to take the ordinary case of abscess—leave out malignant disease. Have you ever known an abscess?—A. But I am talking about suppuration after an operation.

Q. Leave operation alone for a moment. Take the abscess that ordinarily occurs—isn't it a frequent occurrence?—A. I would not say a frequent occurrence.

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Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Cross-examination, *continued.*

Q. What about quinsy inside the neck ?—A. Inside the neck ?

Q. Inside the throat ?—A. Yes, you do get hæmorrhages after that sometimes.

Q. Frequently ?—A. You get it now and again.

Q. What from ?—A. Hæmorrhage I suppose from an artery—secondary hæmorrhage.

Q. Which artery ?—A. It would be one of the arteries to the tonsil.

Q. Have you ever known of a single case—quinsy—when that occurs is very close to the carotid artery, isn't it ?—A. It is close, but there are a number of things between it and the carotid artery.

Q. You have never known it to attack the carotid artery ?—A. No, because it follows the line of least resistance, and comes into the throat.

Q. The point is this, is it not, that you cannot tell if you get an abscess which particular line it will follow or which organ it may or may not attack ?—A. I would not agree with that.

Q. I suppose you heard Dr. Poate's evidence ?—A. Yes, I heard it, but I don't know the particular——

Q. Well you have read it, haven't you ?—A. I haven't read it all through.

Q. Do you agree that when you get this kind of inflammation producing pus it is quite likely to follow the fascial planes ?—A. (Objected to.)

Q. Do you agree that it is quite likely to follow the fascial planes ?—A. Pus ?

Q. Yes ?—A. Pus does not follow fascial planes like an acute inflammation.

Q. Will you deny that in regard to the fascial planes it widens them—spreads them ?——

Mr. CASSIDY : What does ?

Mr. SHAND : Pus.

The WITNESS : Under what conditions ? Under what type of abscess ?

Mr. SHAND : Pus produced by inflammation. That is all I am dealing with at present ?—A. There are different kinds of pus.

Q. Well, any kind. Will any kind do that ?—A. No, I don't think so.

Q. What do you say, that it always eats through the planes ?—A. It has a great tendency to eat through the planes, a chronic abscess.

Q. But do you say it never follows the planes ? Doesn't it follow up along the lines—widens the fascia and spreads it ?—A. I would not say that—it usually takes the line of least resistance.

Q. That hardly answers my question. Do you deny that pus does anywhere at times follow the fascial planes—widening them ?—A. Certain types of pus might.

His HONOR : Widening or separating them ?

Mr. SHAND : Separating is the better word. I should have said separating.

Q. And you said in chief that you would expect, if this inflammation existed as described, the tube being there, that it would get within the sheath of the carotid artery ?—A. I don't think that is quite right, is it ?

Q. Well, correct it if you think it is not right. Did you not say that—that you would expect it to get within the sheath. Well, what would you expect ?—A. Well, I would expect that it would be quite possible for it to get into the sheath of the carotid artery.

Q. But would you think it probable ?—A. Yes.

Q. Or would it be just as likely to follow along outside the sheath of the carotid artery ? (Objected to.)

Q. The inflammation caused by this tube——

Mr. CASSIDY : And the tube moving in it.

Mr. SHAND : No, the inflammation.

His HONOR : This tube, Exhibit P.

Mr. SHAND : Yes, and resulting in pus.

Q. You said it might go inside the sheath of the carotid artery ? (Objected to.)

Q. Pus—not the tube. That would be quite right. Or suppuration. It would not necessarily go inside the sheath of the carotid artery, would it ?—A. It would not necessarily.

Q. Yes ?—A. I think it would be quite possible with an object like that.

Q. But it would also be possible for it to go outside ?—A. Yes, it might work out towards the side of the neck.

Q. Outside the sheath ?—A. Yes, it might work out to the skin.

Q. You were asked this on page 56, second trial. Mr. Cassidy was examining you. First of all Mr. Cassidy said : " If a foreign body moves as the result of the destruction of tissue, does that tissue regenerate ? " Your answer was : " Its place is taken by fibrous scar tissue." I asked you : " What tissue is that that would be destroyed in the neck ? " and you said : " If it came out in the forward area you would have a great scar in front of the windpipe if it burst through the skin. I don't think there would be any opportunity to see if it burst into the trachea or the œsophagus. I think the patient would be dead, but assuming, which I don't for one moment admit it could do, that it worked its way through up alongside the pharynx, the only way it could, it has to go up inside the carotid sheath ; I don't think for one moment that it could go outside it." ?—A. Well, I would like to explain there.

Q. That is wrong, isn't it ?—A. No, it is not wrong.

Q. That is wrong, isn't it ?—A. No, I think it is right.

Q. It would have to go up inside the carotid sheath. I am referring to " Cunningham," page 1389. This has been dealt with quite often before. This illustration shows the trachea or windpipe, there is the thyroid, and there is the carotid sheath, isn't it (indicating) ?—A. Yes.

Q. And do you swear it would have to go up inside that sheath. It could not go up somewhere between here (indicating) ?—A. I don't think it could get up that way. You are looking at a cross-section there ; I am speaking from practical experience.

Q. That is the carotid sheath (indicating) ?—A. Yes.

Q. Do you swear that the only way it could go up would be to get inside that sheath there and it could not go up somewhere between the sheath and the trachea and the œsophagus ?—A. I don't think it could, because there are a lot of fascia muscles there. This is a diagram of the

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Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Cross-examination, *continued.*

gland. When I said that was for the thing to go up in the neck, when you are dissecting glands in the neck I know from experience that when you want to clear the glands off the carotid sheath and get up and clean all those structures, if you are on the outside here there is a lot of dense fascia and stuff there, and the only way you can strip these off (indicating) is to cut the carotid sheath and strip it up, and that is what I meant. You could imagine a thing getting in there and going up, but I don't think it could go up anywhere except in the sheath.

Q. That is your opinion ?—A. Yes, and you have a number of glands and things there as well.

Q. And the mucous membrane ?—A. The mucous membrane is right inside your mouth. It is a thing——

Q. I showed you yesterday. (Objected to.)

Q. Not inside the mouth ?—A. I looked at that picture and I don't think that is figured as mucous membrane.

Q. I showed it to you I suppose five or six times yesterday and you never once suggested it was not mucous membrane ?—A. I never found anything leading to it.

Q. You never once suggested that it was not mucous membrane ? (Objected to ; pressed.)

Q. You did not make one suggestion that it was not mucous membrane? —A. I did not make a suggestion yesterday, but——

Q. Very well ?—A. Yes, I will say that I did not make a suggestion then, but I had my grave doubts about it.

Q. Well, why didn't you mention it to these gentlemen ?—A. Well, because I thought I would do it at a later stage. That is a misleading diagram.

Q. You regard everything as misleading. (Objected to.)

Q. Do you regard everything as misleading that shows the possibility of this moving up ?—A. No, I don't. (Objected to.)

Q. This is page 643, the second last question. I showed you the illustration and you said : " But there has been a lot of structures dissected," and I asked you, " But there is, when you get in the neck," and you said, " There is mucous membrane below the tonsil " ?—A. That is right.

Q. And I showed you the illustration again, and did you have it in mind then that that was not the membrane ?—A. I thought that was representing the pharyngeal sponeurosis.

Q. Why didn't you mention it ?—A. I think I did. I remember spelling the name out to the clerk.

Q. Did you ?—A. I am sure I did.

His HONOR : This is on p. 642—" There should be the pharyngeal sponeurosis."

Mr. SHAND : You did not say that that was it ; you said : " It should be the pharyngeal sponeurosis." I put it to you that this is what you said—" Will you dispute that underneath these muscles which are shown, and just at the top of the neck, there is an area of mucous membrane shown white there " ? You said, " I think it is wrong " ?—A. Yes.

Q. You said : " I think it is wrong. There should be the pharyngeal sponeurosis " ?—A. Yes.

Q. " Will you swear this is wrong. Do you think it is wrong ?

A. I think it is exaggerated. Where is the mucous membrane ? ' and then in answer to your question I point to the white area below and to the right of the jaw. " If that is the mucous membrane it goes from just about where the tonsil is down to not far from the top of the lobe of the thyroid gland," and you said : " If that is correct, but I very much doubt it " ?—A. Yes.

Mr. SHAND : You said you would not accept it ?—A. No, I would not accept that, because there were a whole lot of structures cut away between the upper part of the thyroid gland and the tonsil region.

Q. But that is not the point. You are saying to-day that that picture was not meant to represent mucous membrane. That is what I am putting to you, that your attitude yesterday was that you admitted it was meant to represent mucous membrane but you disputed the accuracy of it. Isn't that right ?—A. Oh, no. There were a lot of things cut away there.

Q. I know, but is not that your attitude. Yesterday, you were admitting that it was supposed to be mucous membrane in the picture, but you did not agree with it ?—A. I did not agree with it because I did not think it was correct.

Q. To-day you are saying that it is not supposed to be mucous membrane ?—A. I can't say what it is supposed to be, but it is not marked with any name.

Q. What is this pharyngeal sponeurosis ?—A. It is a very tough fibrous membrane which lines the pharynx. It is beneath the mucous membrane. It is outside the mucous membrane. It is a very tough fibrous sheath.

Q. Not containing blood vessels ?—A. Yes, it contains some blood vessels.

Q. But nothing vital ?—A. No, but it is very close to some vital things.

Q. But I say, not containing any vital vessels ?—A. Not actually in the sponeurosis, because it is like tough membranes, we call them.

Q. Something like the same substance as fascia glands ?—A. Well, it is not gristly, but it is more like the tough fascia on the outside of the thigh.

Q. And fascia is one of the things you have said that suppuration will eat through, isn't it ?—A. Yes, if there is enough of it.

Re-Examination.

Re-examination.

Mr. CASSIDY : You were asked about this abscess getting in the neck. If you get in the front part of your neck what is called a retro-pharyngeal abscess, what have you to do with the patient ?—A. That is retro-pharyngeal. Well, I have had no experience of these things but I am told—— (Objected to.)

Q. But you know what the treatment is—— (Leading question, objected to.)

Q. Do you know ?—A. I know from discussing with my medical colleagues—— (Objected to.)

Q. You were asked by Mr. Shand about abscesses in the neck, and what happens to the pus. Do you know from your discussions and knowledge in regard to the retro-pharyngeal abscess, what happens with regard to the pus—— (Objected to.)

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Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Re-examination, *continued.*

Q. Do you know from your medical knowledge ?—A. Well, what does medical knowledge mean ?

Q. From reading books, and from discussions with your fellow doctors—— (Objected to.)

Mr. SHAND (on the voir dire) : Is the knowledge you have gleaned on that subject you are to be asked about from discussions with your medical colleagues, or have you had any experience yourself, or read any textbooks ?—A. I have read about the treatment of pharyngeal abscess in textbooks.

Q. Have you read sufficient in the textbooks to enable you to answer that question——

His HONOR : Do you think you are qualified to answer that question, apart from discussions with your colleagues ?—A. I have had some more recent knowledge from discussions with my colleagues.

Q. Apart from that ?—A. I know that retro-pharyngeal abscesses track downwards.

Mr. SHAND : Where did you get that information ?—A. I can't say where, but that is my medical knowledge from reading over a period of years.

Mr. CASSIDY : And what is the treatment you give to prevent that pus tracking downwards ?—A. You elevate the foot of the bed—what some people call, stand the patient on his head. You elevate so as to get the head downwards.

Q. If there were a continuing abscess in the neck sufficient to enclose Exhibit P. would the amount of pus there be very extensive ?—A. Yes, that exhibit would require there to be a large amount of pus and a large amount of inflammatory reaction, as we call it, around it. There would be a big inflammatory mass.

Q. And what would happen to the pus ?—A. The pus would track downwards.

Q. Is there any possibility that the pus could be sufficient to make a cavity to carry that up by the various structures and across through the tonsil ?—A. No. Well, I have to qualify that, in this way, that if it did, I think the patient would be dead.

Q. In the neck, as you have said, are the very vital structures that it would come in contact with ?—A. Yes, you have your carotid arteries running up on either side, and your jugular vein, and your windpipe, and so forth, and they are within a small area that is why it is so easy to hang a man.

Q. Are abscesses in that portion of the neck extremely dangerous, apart from any foreign body ?—A. Yes, abscesses in the neck are dangerous things.

Q. Mr. Shand read out from page 128, lines 6 to 8, in the first trial, a certain question, and I want the following ones—

> " Q. Some weeks after the stitches had been removed, assume the stitches had been removed, and the object not been taken out ? —A. If it were on the right side it would be difficult to get across."

And he said to you at that time, wasn't that the limit that you would go at the first trial. Now, listen to the succeeding question :—

> " Q. Could it pass at the back of the trachea, or would it have to go across the front of it ?—A. I think it would be quite

impossible for it to go behind the trachea. I think the only way it could go would be in front. The posterior route, to me, would be impossible.

Q. How close to the actual external surfaces does the trachea itself project ?—A. It is very close. You can feel it in your own throat.

Q. I am familiar with what is called the Adam's Apple ?—A. It is below that. It is quite close to the skin.

Q. And it passes across there without its presence being manifest to anyone ?—A. I don't think it could pass without its presence being very manifest.

Q. In your opinion is it a possible suggestion at all that the tube could pass from the right side of the windpipe over to the left side ?—A. No."

That is the evidence that you gave before Mr. Justice Street ?—A. Yes.

Q. You were asked a question before lunch yesterday about this book : " Jamieson, Illustrations of Regional Anatomy." Did you obtain that during the lunch hour yesterday ?—A. Yes.

Q. Did you look through it in my Chambers ?—A. Yes.

Q. Mr. Shand had put to you first of all that there was an area in which there were no blood vessels, muscles or nerves, but mucous membrane. Where is the mucous membrane ?—A. The mucous membrane is the lining membrane of the mouth. It is a very thin membrane. It lines the throat and mouth inside, the lips and cheeks, and goes right down. It is very thin, like tissue paper. It is inside and it is smooth, so that the food can slip down.

Q. Is there any other mucous membrane between that inside lining and the thyroid ?—A. No.

Q. Now I show you the picture that Mr. Shand showed you yesterday before lunch, on page 43, and he pointed there to a space that I indicate ?—A. Yes.

Q. Will you show the jury what he pointed to ?—A. Yes. (Complies.)

Q. Does that picture purport in any way to show what that is ?—A. No. It is drawn to show these muscles of the pharynx.

Q. What is that area composed of ?—A. In that area the first thing you come to is the strong pharyngeal sponeurosis.

Q. That is with the structures of the pharynx ?—A. Yes.

Q. The thing you want now is the other book, and you look in that at page 52. What are they (Indicating) ?—A. They are fair-sized muscles, one attached to the thyroid bone and the other attached to the thyroid cartilege. There is a lot of material cut away, and the moving body would have to eat through them.

Q. I think you wanted to illustrate what you were saying by showing that position about the things there near the tonsil ?—A. Yes, by the " Treatise of Human Anatomy," by Professor Testut, of Lyons. It is to show the tonsilar region. There is the tonsil (indicating) and there is the dissection (pages 62-3) which shows the structures immediately outside the tonsil. This dissection shows on the inside the lining of mucous membrane, and outside that is this pharyngeal sponeurosis sheath, and in this diagram it shows that lifted forward to display what you would come to if you went through the tonsil.

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Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 16th December 1943, Re-examination, *continued.*

His HONOR: The structures behind it?—A. Well, it is really laterally, and the position of the tonsils is indicated by the dotted lines, and that shows the vessels just on the outside of the tonsils that it has to go through.

Mr. CASSIDY: Will you explain that to the jury?—A. Yes. (Complies.) Cunningham—that is the 1943 edition, at pages 568 and 1227 and 1237, explains that in larger diagram. That is to show the vessels up here in the region of the tonsils. Some of them have been cut away.

Q. Show that to the jury, will you?—A. Yes. (Witness complies.)

Q. If there is an ulceration or suppuration with a tube making its way along there, what do you say as to serious hæmorrhage in that area?—A. You would get very serious hæmorrhage, and a man would be lucky if he survived.

Q. Has every artery got an accompanying vein?—A. Practically every artery has an accompanying vein. The blood has to get back somehow, even when it does not accompany it.

Q. You were asked about a blood calcium test—a blood count, I mean. What did it show?—A. It showed normal counts.

Q. Could that have been consistent with the story that the Plaintiff had been for three months seriously ill with pus constantly coming through?—A. I don't think so.

(Further hearing adjourned to Friday, 17th December 1943, at 10 a.m.)

17th December 1943, Re-examination, *continued.*

Fourteenth day—Friday, 17th December, 1943.

DEFENDANT.

Re-examination continued.

Mr. CASSIDY: Do you see this illustration that was shown to you by Mr. Shand, on page 304 of Operative Therapeutics (shown to witness)?—A. Yes.

Q. That is the 1915 edition of the book?—A. Yes.

Q. If a book is published in 1915, the matter that is collected for it—at what period of advance does it cover? (Objected to.)

Q. I will leave it at that. How would you describe it. Do you remember having made that cut below the neck incision (Indicating)?—A. I can remember a surgeon making a small cut here just below the breast-bone, and putting a tube in, but almost up straight, not up that way (Indicating).

Q. Would you consider that method out of date?—A. I would consider it out of date. I don't remember it, really.

Q. Have you ever seen it in the last 25 years?—A. I have never seen that method used, not the way the tube is inserted.

Q. And is the ordinary practice of the operation now to use your incision and to put your tube in the incision?—A. Yes.

Mr. SHAND: If that is the incision there (Indicating) isn't that higher than you make the incision?—A. No, not much. That is the collarbone there.

Mr. CASSIDY: Illustrating it simply, you put your tube in at the lowest point?—A. At the lowest point, to drain the bloodstained serum

which sinks to that level because that is the position it falls to naturally and also the patients are nursed during the first few days in a sitting posture because it is the most comfortable for them—for that reason.

Q. Now, this is the book that has been quoted a lot—Joll (Shown to witness.): Does that represent somewhat the way the patient sits? Perhaps I should not say sits?—A. Yes, that is the type of dressing put on, but I have never used the arms like that (Indicating).

Q. You have never used the arms extended?—A. No.

Q. That was in Joll. Is that method the method you use (Indicating)?—A. Yes, that is an approximate description of it.

Q. This is page 571?—A. Yes. I am certain that I did not divide transversely across the infrahyoid muscles on the right side, but on the left, I would say, it is almost certain I did.

Q. And that is the method you used?—A. Yes, that type of method. (Objected to.)

Q. I think you said you might have cut the muscles on one side?—A. If one has difficulty in exposing an artery, one almost invariably cuts the muscles across. You don't cut the muscles unless you have to.

Q. You don't use glass?—A. No. (Book shown to jury.)

Q. Just while I am on that—you were asked about using silk?—A. I don't use silk.

Q. And you have got a reason from your practical experience, have you? What is it?—A. Well, my experience is—I cannot say that I have had actual experience of silk going wrong myself, but I have seen cases of silk going wrong as used by other surgeons, and I have a recollection of a case over in Melbourne where the silk was used and the sinus persisted for many months.

Q. Some surgeons, I understand, do use silk. Is that so?—A. Yes quite a number of surgeons do use silk. In fact Dr. Poate, I am sure he uses it now.

Q. Then you were asked a question and you showed the gut you used?—A. Yes, I showed the type of gut. There are different strengths of it.

Q. The one you used was your strong gut?—A. Yes.

Q. And then you were cross-examined and you said that chromic gut was a 20-day or 3-week gut?—A. Yes, I think that is the usual.

Q. And then you were asked about the time of absorption of it, and about the book?—A. Yes.

Q. Do you know the handbook of ligatures and sutures, by Johnson and Johnson?—A. Yes, it is one of their pamphlets that they issue.

Mr. SHAND: Is that the London Hospital?—A. No, this is Johnson & Johnson's.

Mr. CASSIDY: And they are Sydney people, are they?—A. Well, I think they were originally an American firm and lately they have been making their material here.

Q. Well, we will call that Australian chromic. Have you got a London book available?—A. No.

Q. Do you have an Australian book available as to time of absorption of chromic gut?—A. Yes, that is the only one I have. It was given to me.

Q. Is that the handbook published by them as to the history, preparation, handling and use?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 17th December 1943, Re-examination, *continued.*

Q. Will you have a look at that and tell me does that show the time of absorption for chromic gut (handed to witness) ?—A. Yes, that—there is a paragraph there which describes the approximate time.

(Book tendered ; marked Ex. 9.)

Q. And does that say this, referring to page 12—" Time of absorption. The absorption time of chromic gut . . . muscular tissue." I think you told us that your experience was that it was about three weeks ?—A. Yes. We want it to hold for three weeks. Yes, that is so. (Objected to.)

Q. And is that your experience with it, except in the case of knots and infection ?—A. Yes, that is so.

Q. Do you use any chromic gut in these operations——

His HONOR : The evidence already, as I understand it, is that in thyroidectomies chromic gut is never used.

Mr. SHAND : He says he never used it.

The WITNESS : I never use it.

Mr. CASSIDY : And do you know anyone else that uses it ?—A. I don't know anyone who uses it.

Q. Do you remember being asked a question by Mr. Shand as to green pus, right at the start of things ?—A. Well, that is not applicable in this case, because that refers to green pus in the lung.

Q. How does that come up ?—A. That is coughed up. It might come up if a sinus of the abscess was drained—from the chest.

Q. And was that passage that Mr. Shand read directed in any way to pus coming through the rectum ?—A. No. Well, if it had gone through the alimentary canal it would be disintegrated completely.

Q. The next matter that was suggested to you was that there was a form of conspiracy between you and certain doctors. In regard to Dr. Ritchie as to the hysterical tetany aspect of this case, what was the position ? (Objected to ; pressed.)

Q. What is the position with you and Dr. Ritchie as to the aspect of this case, that is tetany and hysterical tetany ?—A. Well, as regards tetany, in the early stages Dr. Ritchie maintained that it was hysterical tetany, and my opinion was that it was true parathyroid tetany.

Q. And do you both disagree with your views about it ?—A. Yes.

Q. Have you disagreed with your views on the matter, and has he put one view and have you put another ?—A. Yes, that is so.

His HONOR : That came out yesterday.

Mr. CASSIDY : And on that matter, do you still disagree ?—A. Yes.

Q. Following that, it was put to you that a doctor if he gave evidence against another doctor would be boycotted. That was suggested to you. Have you gone into that matter and thought that matter over since those questions were asked ?—A. Yes, I have gone into it and I have thought over it and I cannot remember any doctor who has given evidence against another doctor—I mean, given evidence for the Plaintiff where the doctor was Defendant, who was boycotted in any way or censured. I can remember two instances at least—one was a doctor, Dr. John Hoets who was a well-known orthopædic surgeon in Sydney.

Q. A member of the B.M.A. ?—A. Yes, and another was Dr. Steer Bowker.

Q. Were each of those men, men well placed in your organisation ?—A. Yes. Dr. Steer Bowker was a senior honorary surgeon of Sydney Hospital, and Dr. Hoets is a senior honorary surgeon there now—— (Objected to.)

Q. I am limiting it to cases against a doctor ?—A. Yes.

Q. And were the doctors that they gave evidence against, members of the B.M.A. ?—A. Yes.

Q. Who were they ?—A. Dr. Hoets and Dr. Molesworth, and Dr. Bowker and Dr. Alroy King, of Maidland. Mr. Reimer would remember the case because he was in it.

Mr. SHAND : Who were the defendants ?—A. Dr. Molesworth was one, and Dr. Alroy King who was at Maitland for a number of years was another.

Mr. CASSIDY : And have you known other doctors who have given evidence against doctors ?—A. I know that Dr. Vickers was in some case.

Q. And any others—what was Dr. Vickers' position, by the way ?—A. I think it was a case that had something to do——

Q. What was his position. Was he in the B.M.A. ?—A. Yes, he was on the Council of the B.M.A. He had been President of the B.M.A.

Q. Do you remember a Dr. Benjafield also ?—A. Yes.

Q. Take yourself—have you ever known any instances of doctors refusing to confer with another doctor just because he gave evidence against another doctor ?—A. No, I have never known of any instance.

Q. Since Mr. Shand has asked that question, have you got in touch with the secretary of the B.M.A. ?—A. Yes. I asked him—— (Objected to). Yes, I did get in touch with him.

Q. Did you make inquiries from him ?—A. Yes, I did. (Objected to.)

Q. What was the result of those inquiries ? (Objected to ; pressed.)

Q. Let us go a little further. You were a member of the Council of the B.M.A., weren't you ?—A. I still am.

Q. Have you, at any time in your experience either as councillor or before—how long have you been a councillor, by the way ?—A. Since about the year—probably since before 1930, anyway.

Q. Have you ever known any instance of any conduct of a doctor for giving evidence against another doctor, that has come up for consideration in the whole of that time ?—A. No.

Q. Now, you were asked by Mr. Shand as to a letter that was written by the Secretary of the B.M.A. It was suggested that you were consulted in your capacity as a councillor ? (Objected to.)

Q. Well, in any capacity did you know anything about that letter before it was written, or were you consulted in any way ?—A. I have no recollection about it, and I have made inquiries of the secretary—— (Objected to ; pressed.)

Q. The next thing was that you were asked by Mr. Shand as to why you did not discuss this matter further with the husband. Do you remember being asked about that ?—A. Well, my attitude in this type of case—I mean, I remember discussing this doctor's attitude in any case that might possibly become a legal case, and his advice was to——

Mr. SHAND : Whose advice ?—A. Dr. R. H. Todd.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 17th December 1943, Re-examination, *continued.*

Q. When did Dr. Todd die ?—A. Well, he was the secretary before Dr. Hunter—some years ago.

Mr. CASSIDY : Was he not only a doctor but a lawyer ?—A. He was a lawyer and a doctor.

Q. And was he a man of very wide experience in medical matters ? —A. Yes. He used to lecture in medico-legal matters at the University.

Q. And was he a man closely associated, during all your years, in connection with advice ?—A. Yes.

His HONOUR : He was a sort of father confessor ?—A. Yes. His advice was that one should be careful not to go into very free discussions, as both discussions and letters might be liable to misconstruction. That was just the way he put it. When men used to ask him would they give statements, he used to say : " Well, you can always give your answer in the witness box."

Mr. CASSIDY : And as to discussions with your patients and their relatives when they came to talk to you ?—A. Yes. (Objected to.)

Q. The question was why you did not discuss the matter further with the husband, and I was directing your attention rather to the advice you received as to discussions with relatives and patients ?—A. Yes, what I have said is true.

Q. It was put to you that you deliberately refrained from getting other medical advice or getting the advice of an expert on this woman, because you feared that the tube that you had left behind would be found. What do you say to that ?—A. That suggestion is quite false.

Q. If a tube had been left in that region of the neck and the patient's own doctor was probing the wound and attending to it, must it have been observed ? (Objected to as leading ; rejected.)

His HONOR : You can ask a similar question but not in that form.

Mr. CASSIDY : Taking this suggestion that you were anxious to hide something, hide your mistake or hide your misdoing—if that tube had been left there for Dr. O'Hanlon's probing in the hospital or the nurses attending to it, what would have been the position as to their seeing or finding it ? (Objected to.)

His HONOR : I think you will have to get this drawing, won't you ? (Objected to further ; pressed.)

Mr. CASSIDY : I will take it this way. You yourself probed on occasions, did you not, before she left Sydney ?—A. Yes, I probed the wound at the time of that infection after the 20th.

Q. And did you probe on more than one occasion ?—A. Yes.

Q. Now, take that for the moment, during that probing would a nurse be present, would a sister be present ?—A. Yes, always present.

Q. During that period, if there had been something left what would have been its position as to its observability, if I may use that word ? —A. Well, it would depend on the something——

Q. Well, Exhibit P ?—A. Well, my opinion is that if Exhibit P was there you could not fail to find it—a large thing like that.

Q. Or a tube 2 inches long ?—A. That would not be so easy, but it would be very likely that one would find that.

Q. Now, assume that a doctor probes in May, opens the sinus and probes and that the nurses attend to it, and that there had been inflammation causing swelling, what would you say as to the observability of it if there had been a thing like Exhibit P there then ?—A. Well, I would say that they must have seen it.

Q. We have heard that infection persisted up till June in this area. Everybody is agreed that if a thing could travel at all the only way it could travel is with pus and suppuration and destruction of tissue—in the thyroid area what is the position ; what is the position as to inflammation ?

Q. What is the position as to inflammation in the neck ?—A. In the thyroid region ?

Q. Yes ?—A. Well, it remains in the thyroid region.

Mr. SHAND : You have had experience of that ?—A. Yes.

Mr. CASSIDY : Is it in the books ?—A. There are books mentioning that. (Objected to and asked to be struck out.)

Q. Have you looked it up ?—A. Yes.

Q. And does it appear in " Joll," at page 591, " Wound Infections," under that heading (shown to witness) ?—A. Yes.

Q. I will read it out. This is dealing with wound infections—thyroidectomy wound infections, page 591—" Serious infections of these wounds is fortunately almost unknown . . . or even longer " (Objected to.) ?—A. Yes.

Q. It remains local and comes through the sinus, is that so ?—A. Yes. (Objected to.)

Q. " The process is associated with the formation of one or more sinuses or of recurrent abscesses which have to be opened up to permit the ligatures to be cast off." Is that right ?—A. Yes.

Q. And these things come out through the sinus, in that area. Is that so ?—A. Yes.

Q. And as you say, remains localised there ?—A. Yes.

Q. Then in this case of Mrs. Hocking, was that a serious infection at one time ?—A. I would say it was acute, but it was never serious because the progress proved that it was not serious.

Q. And then later you knew that after going back it then had to be attended to in hospital on about the 7th May ?—A. Yes. There are notes to that effect.

Q. Well, excepting those notes for the moment ?—A. Yes.

Q. This is " De Quevain on Goitre " ?—A. That is by a Swiss professor.

Q. Do you know " De Quevain on Goitre " ?—A. Yes.

Mr. SHAND : Do you know what this is about ?—A. Yes.

Q. What is it about ?—A. It is about local infections.

Mr. CASSIDY : I don't want to read the whole article, but is the whole article important. I will read the portions of it on pages 162 and 163 ?—A. Yes, I think it is a good description.

Q. " Immediate purulent infection." That is the heading ?—A. Yes.

Q. " The slight infiltration of the tissues . . . may be streptococci," and you see there that on the 4th or 5th day the temperature goes up as described ?—A. Yes.

Q. Here it says that the temperature went up to 103.8 ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 17th December 1943, Re-examination, *continued.*

Q. "The chief trouble with these infections . . . completely eliminated" ?—A. Yes.

Q. And in this case, from the history that you have now of sutures being recovered later—is that what happened in this case ?—A. Yes, that is my opinion.

Q. You were asked questions in this case as to whether you made inquiries as to where certain nurses were or as to what happened at Quirindi. Did you do any of that yourself, or what did you do ?—A. No.

Q. What did you do ?—A. I left it to my legal advisers.

Q. Have you been an extremely busy man ?—A. I have had a very busy practice and surgery, and since the onset of the war I have been extremely busy. In the early days the Repatriation Hospital had to attend to the soldiers as they were called up, and I have been extremely busy. I was busy until then and extremely busy since.

Q. And during the last two years have you had another position ?—A. Yes ; my position in the State Medical Co-Ordination Committee has taken up a great deal of my time.

Q. Has it taken up a great deal of your time and work ?—A. Yes, doctors are ringing you up every hour of the day and night.

Q. And your memory as to incidents that happened and conversations that happened during 1938 and 1939—what do you say in regard to it ?—A. Well, a good deal of water has run under the bridge since that time. I have been very busy since that time.

Q. And is your memory good for conversations ?—A. Not good for conversations.

Q. Mr. Shand suggested yesterday that you got this woman to come to Sydney in October. Did you do anything more than write to Mrs. Hocking—when you received her letter did you do anything more than write to her, did you use any force or try to influence her will to come to Sydney ? (Objected to.)

Q. Did you do anything——

His HONOR : Apart from writing did you take any other action ?

Mr. CASSIDY : Did you take any other steps at all ?—A. No.

Q. Apart from writing the letter of the 15th October did you take any other steps ?—A. No, I have no recollection at all.

Mr. CASSIDY : You did not ring Dr. O'Hanlon ?—A. No.

Mr. SHAND : Or Dr. Cooper ?—A. I did not ring Dr. O'Hanlon.

Q. Or Dr. Cooper ?—A. I have no recollection of Dr. Cooper.

Mr. CASSIDY : Was this her letter—this is the last paragraph—"The left side of my neck is very red and hot. My voice is much improved. If you can suggest anything to help me back to health I will be thankful. But doctor, don't worry about the tube." Did you reply in these terms : "I am sorry to learn that you have been ill again. I had a letter from Dr. O'Hanlon and I spoke to him by telephone on the 13th October. It is difficult to explain your last illness and the 'piece of drain tube,' which you say passed by the bowel. I saw Dr. Ritchie this week. I think that you should come to Sydney for a medical investigation in order to see if we can advise some medical treatment to improve your health." Is that the letter you wrote ?—A. Yes, that is the letter I wrote.

Q. It was suggested that when you got Dr. Marsh you got him because he was an old friend of yours and would therefore be influenced in your favour. Is there anything in that suggestion ?—A. No, it is quite untrue.

Q. Would you expect Dr. Marsh to be a man who would lie for your sake ?—A. I am quite sure he would not.

Q. You have heard it suggested that you left it for five days before you got him ?—A. Yes.

Q. And that you gave her cruel treatment before that. Is there any truth in that suggestion ?—A. Absolutely no truth in that.

Q. Do you remember anything about the ambulance at all that brought her ?—A. I have no recollection about the ambulance, but I remember that I have always considered that she was brought by ambulance. I will put it that way.

Q. Have you made some inquiries since last trial as to how the ambulance was provided, from your solicitor ?—A. Yes, they made inquiries.

Q. What was the result of those inquiries ? (Objected to ; question withdrawn.)

Q. Is that by reason of some question you were asked that you caused your solicitors to make inquiries with respect to the ambulance ? —A. Yes, they did it themselves.

Q. When Mrs. Hocking and Mr. Hocking were in Sydney in October, November and December 1939, did you at any time take any legal advice ? —A. No.

Q. Assume that you asked for a full blood test, what is your reason for that ?—A. My reason for asking for a full blood test was that in any case where a patient states they have been ill for a long time—my reason is to ask for a full blood test for examination.

Q. For what reason ?—A. Well, it might throw some light on what is wrong with the patient. You get a lead on some line of treatment for the patient. It is done as a routine.

Q. And when you ascertain that the blood count is normal as in this case, that gives you an indication as to the general health ?—A. Yes.

Mr. SHAND : If you want to ask about the ambulance, I withdraw my objection.

Mr. CASSIDY : What has been ascertained as a result of investigation about the ambulance ?—A. Well, that I did not order it.

Q. Well, that it had been ordered by whom ?—A. That I don't know. But that is what I was informed.

Q. Is there anything unusual in a Sydney doctor ordering an ambulance if a patient is coming to hospital ?—A. Well, it is one of those things that if one is asked to order it one would do so, but in some cases the local ambulance communicates with headquarters here.

Q. It may be done either way. Is that so ?—A. Yes.

Q. Now, going back to that question of chromic gut. At the first trial the lady described it as wire. Was any question asked you as to whether it was a chromic gut—at that first trial ?—A. I was asked a number of questions, but I have no recollection of chromic gut ever having been mentioned in the first trial.

Q. You were asked a question yesterday as to the hands being observed like that (indicating) in court ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 19. Evidence of George Bell (Defendant) 17th December 1943, Re-examination, *continued.*

Q. Do you remember something happening in court after that question ?—A. I remember that there was an argument as to where the thumb was.

Q. And do you remember any particular witness being asked it in the box ?—A. I can remember Mr. Hocking being asked about it.

Q. Anybody else ?—A. And Mrs. Hocking.

Q. Anybody else—about the way she put her hands in court ?—A. Some of the medical witnesses were asked about it.

Q. Can you remember which one or ones it was ?—A. Dr. Ritchie as far as my memory goes.

Q. Do you remember this question being put to you—page 144 of the first trial, line 31—" Take the whole lot of it," and your answer was " What I mean is at that time I did not believe the tube business." You were then asked : " Perhaps you didn't, what I am putting to you is this, is that the letter of a woman who was inventing something against you ? " This was objected to. You were then asked : " Your attitude is this, would not this be a fair way to put it—that you did not leave anything there, you did not know how the inflammation arose and for her to say you left it in is a wicked invention, isn't that your attitude ? " and your answer was " Yes " ?—A. Yes.

Q. That was the question put to you by Mr. Hardwick ?—A. Yes.

Q. He said : " Wouldn't it be a fair way to put it ? " and your answer was : " It is a very difficult question to answer, I was frankly suspicious and being suspicious I suppose I thought there was a certain amount of invention about it " ?—A. Yes.

Q. You were asked certain questions on page 125 of the third trial by Mr. Shand, line 25, to page 126, line 11. Then on page 152, line 31 to line 36 only was read out. No. You were cross-examined on page 125. Now, on page 152 did you say this—lines 31 to 36—" Do you think that that was hardly correct, and did not your views change when you heard the evidence given at the first trial ? " and your answer was, " No, quite truthful, as soon as I heard she was supposed to have had tetany for this long period, when it suddenly disappeared I thought it was absolutely impossible to be true tetany all the time." ?—A. Yes.

Q. " Who told you the tetany had ceased ? " and your answer was, " in her letter." Now on page 153, line 2—" Is there anything you had heard before the first trial that led you to believe this was not true post-operative tetany ? " and your answer was, " Yes, because when she came down to St. Luke's there was no further evidence of tetany. I could not get any evidence there from inquiry that she had any further attacks after she passed this tube."

Mr. SHAND : The next one, please.

Mr. CASSIDY : " Did you give any tests ? " and the answer was, " There was no evidence of it."

Mr. SHAND : Just one question on what my friend asked. When Mrs. Hocking came down to St. Luke's the second time——

His HONOR : That is October, 1939.

Mr. SHAND : Yes.

Q. She was ill, wasn't she ?—A. She was ill. I thought she was physically not ill, but she was in a very nervous state.

Q. You knew, of course, that she had come down in an ambulance ?—A. Yes. (Objected to.)

Q. Well, come from the station in an ambulance ?—A. Yes ; I have always assumed that.

Q. Well, you don't know who ordered it ?—A. No, I don't know who ordered it.

Q. You arranged for a room in St. Luke's ?—A. Yes, I would do that. Someone must have let me know when she was coming down.

Q. Will you swear that you did not ring up Dr. Cooper and ask him to get Mrs. Hocking down ?—A. I have no recollection of Dr. Cooper at all.

Q. I am suggesting that you learned that Dr. O'Hanlon was away at the time. (Objected to) ?—A. No.

Q. Well, there was some family trouble and he was not available ?—A. I did not know at the time.

Q. Anyway, whatever the reason was, you rang Dr. Cooper ?—A. I have no recollection of Dr. Cooper at all.

His HONOR : Did you ever tell the patient that the tube was not working ?—A. No.

Mr. CASSIDY : Or that there was no time that the tube was not working ? The tube was always functioning ?—A. Yes.

(Witness retired.)

No. 20.

No. 20. Constance Amy Fall, 17th December 1943. Examination.

EVIDENCE of Constance Amy Fall.

Sworn : Examined : Deposed.

To Mr. REIMER : I am a Lieutenant-Colonel in the Australian Army Nursing Service, and at present time Principal Matron in the State of Tasmania.

Q. I think you have under your jurisdiction and administration the whole of the military hospitals——(Objected to ; His Honor does not think it matters how many hospitals witness has under her control.)

To His HONOR : I am in charge of Tasmania.

Mr. REIMER : I think you were chosen to take the first Australian General Hospital to go overseas after the outbreak of war. (Objected to.)

Q. You were formerly matron of Quirindi District Hospital ?—A. Yes. I was matron there from 1st July 1937 to the 7th December 1939.

Q. When did you go under military jurisdiction or into the Army section ?—A. 9th December 1939.

That was two days after I left Quirindi Hospital. Shortly after that I went overseas in charge of the 1st Australian General Hospital. I was in the Middle East. I was overseas for two years and four months.

Q. Since your return you have taken charge of Tasmania ?—A. Only since August 1943, I have been in Tasmania.

Q. Subsequent to your returning from overseas and prior to going to Tasmania you had certain positions in Western Australia ?—A. I was still with the 1st Australian General Hospital. It was in Western Australia for that period.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 20. Constance Amy Fall, 17th December 1943, Examination, *continued.*

As a result of war service I have been awarded the Royal Red Cross.

I remember Mrs. Hocking. I have a clear recollection of her. I remember her first admission in 1937.

Q. Tell us what you recollect with regard to her condition then ?—A. I should say she was a sick woman. She came in looking thin and somewhat emaciated, but not completely so. She looked as if she had obviously lost a considerable amount of weight. She appeared as if she had been suffering from some nervous disorder.

Q. You say she appeared to be rather thin ; do you notice anything of her bones ?—A. The bones of her chest were showing ; you could obviously see her collar-bone. It would be correct to say that the impression was one of wasting.

Q. What was her other condition at the time that you observed. How did she behave herself ?—A. She was generally emotional and of a nervous temperament.

That was evidenced by her behaviour while in the ward. She was very restless at times and quiet at other times, not the stable type that one can meet. She was put on a light diet, on things easily assimilated by people who were not very well.

Q. Did her physical condition indicate she was suffering from some form of physical disorder ?—A. After observation it was obvious she was suffering from a serious physical disability.

Q. Was there any indication that you observed as to what that condition or position might be ?—A. She had swelling in the throat which could have been a goitre. It was not so terrifically obvious as to be noticed by the general public, unless looking for such a thing ; but it was obvious to me.

Q. She was there a month. When discharged what do you say as to her condition then ?—A. She seemed to be improved in that she had put on a little weight, but otherwise her condition was unchanged.

Q. Would you say her condition had deteriorated or was about the same ?—A. About the same.

Q. When did you see her again ?—A. That would have been on her next admission to hospital ; but I cannot say the exact dates unless I look at the records.

Q. From the records it was the 4th May 1938. What do you say in regard to what you observed of her neck, or anything ?—A. She had had a thyroidectomy done. She had a wound in her neck. She had a discharging sinus.

The sinus was not very large.

Q. According to the hospital records, the hospital was advised by Dr. O'Hanlon to probe the wound and also watch the suture material. Was the wound probed ?—A. It was.

Q. You saw it done ?—A. It was reported to me it was done. It is not my job to have to watch——(Objected to.)

Q. What is your recollection of the history of that sinus ; what happened to it ?—A. It was dressed frequently, and the doctor ordered it should be opened and it was done under local anæsthetic.

Q. Before it was done did you notice anything in the way of swelling round the neck ?—A. A slight swelling, but not gross.

It extended within two inches of either side of the sinus. It was localised round the area of the sinus. There was discharge coming from

the sinus. At the time it was sero-purulent discharge. Dr. O'Hanlon, under local anæsthetic, attended to the sinus.

Q. What was the condition after that; were you present when it was done?—A. No, not that I remember.

Q. Have you had an opportunity of having a look at the records recently?—A. I have seen copies of the hospital records, but not the originals.

I remember it being reported to me that Dr. O'Hanlon did do something to the sinus. I observed the progress of the sinus thereafter. I did see some of the dressings which had been removed. The condition of the sinus following this attention by Dr. O'Hanlon was quite good. I saw the sinus from time to time.

Q. How often a day, or, how often would you go around to see the patient?—A. I always did round twice a day. That was a regular routine and frequently I went more often.

My recollection of the condition of the sinus after this attention had been given to it was that it was responding to treatment; that the amount of discharge was diminishing and that the sinus was healing slowly.

Q. Under the doctor's directions fomentations were put on; how long did they remain on?—A. Ten minutes, and then covered the wound with dry dressings.

Q. You put the hot foment on; ten minutes, and then put on the dry dressing?—A. And leave it until the next period.

That was done for some time while she was in hospital. I could not say for how long. It was discontinued at a certain stage and dry dressing was put on only.

Q. At this time what was the nature of the discharge?—A. Very little serous.

Q. Was the sinus improved or otherwise?—A. It was improved.

Q. What was the condition of the sinus when she left hospital?—A. She still had a small sinus, but, to our way of thinking, it was a wound of no consequence; there was no cause for worry. The sinus at that time was discharging slightly.

Q. What was the nature of the dry dressing?—A. A piece of gauze over the area, covered by a piece of cotton wool, reduced when it got to very little discharge to gauze.

It would have been changed in the later period once or twice a day. During the same period while she was in hospital I noticed spasms.

Q. Did you attend to her when she had them?—A. I was in the room when she had spasms.

Q. Describe them?—A. She appeared to go into a state of unconsciousness, but I did not consider her unconscious.

Q. Why not?—A. On occasions if we tried to open her eyes it was an impossibility to do so; what I mean is, the eyelids were not relaxed.

Q. In regard to this question of eyelids and unconsciousness what is the position when people really go unconscious?—A. You can do anything you like with them; pull them up, or extend them.

Q. What was the nature of the contractions?—A. The muscles in the arm appeared to be knotted, and the thumbs of the hands were turned in.

To my recollection the fingers were half extended, like I am showing. She did not close the fist up at all, that I recollect.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 20. Constance Amy Fall, 17th December 1943, Examination, *continued.*

Q. Was the spasm in any other part of the body except the arms and hands ?—A. It extended down the body for a time, but it was not as obvious there as in her arms.

Q. What do you say with regard to Mrs. Hocking's condition otherwise during that period in hospital ?—A. I should say she was temperamental, a temperamental emotional woman.

Q. How was she in comparison with what you had observed in the October period of 1937 ?—A. More so than in the 1937 period. Her nervous condition had deteriorated somewhat.

Q. Can you give us any idea what conduct on her part evidenced that ?—A. She got distressed or appeared to if her visitors did not arrive on time.

Q. In what way ?—A. She did not throw things about the room or anything like that, but she was not just our idea of a normal person.

Q. When she was discharged from Quirindi Hospital on the 9th June 1938, what do you say of her general physical condition ?—A. It was much improved.

There was no sign of any swelling in the neck, or inflammation, or redness. The appearance of the head and neck were quite normal, except that she had a small sinus, a wound of no consequence. It was not reported to me that she said she felt something pricking in her neck, and that as she turned the neck there was blood coming on to the chest.

Q. Or that she wiped it off with cotton wool ?—A. Knowing Mrs. Hocking, she would not do that——(Objected to.)

Q. But was it ever reported to you ?—A. No.

Q. She wiped it off with cotton wool and threw it into the fire there ?—A. There was a fireplace and there could have been a fire there. No such thing was ever reported to me.

Q. On that occasion and other occasions she said she rang the bell as long as half an hour or longer before anyone would come to her ?—A. I am afraid I do not believe that is so. (Objected to ; Mr. Shand asks that it be struck out, but His Honor said he does not see anything wrong with it.)

Q. What do you say with regard to that assertion ?—A. May I say what I feel about it ?

Q. Will you answer the question ? Could that have happened ?

His HONOR : Did that happen ?—A. No.

Mr. REIMER : She also said that while in Quirindi Hospital particularly in the 1937 period she was given nothing else to eat but blue sago ?—A. I have never heard of blue sago.

Q. But would it be correct ?—A. No.

Q. On the hospital records she is put on a special type of diet which you have already referred to ; was it a wide range ?—A. She had a fair range, but it excluded all stimulants. She was receiving sufficient nourishment.

Q. She also says that on occasions when she had these spasms you and other members of your staff used to massage her and the more you massaged the less the spasms became, particularly massaged her stomach and other parts of her body ?—A. There is no massage given.

Q. You personally attended on these occasions when she had the spasms ?—A. I saw her in her spasms, yes.

Q. You did not see her again until the 3rd September; that was the last occasion she was in hospital?—A. Yes.

Q. She was in there for some three or four days. What was her appearance in regard to physical condition?—A. She appeared all right; the wound was healed.

There was no swelling, no inflammation, and no redness. She did not make any complaint with regard to her head and neck that I can recollect, or in regard to the throat.

Q. She stated at one time she was unable to move her head from one side to the other—No, to the left side?—A. I have no recollection of that. Her condition was not such that she could not move her head.

Q. She states that during that period she could not swallow and could not eat proper foods; was there any evidence of that while she was in hospital?—A. No.

I noticed the spasm she had when she was admitted on that occasion; they were similar to what she had had before. Her nervous condition at that time was unchanged. I did not see the Plaintiff again after that.

Q. What do you say with regard to her general nervous condition in comparison with that of a normal person?—A. She was still emotional, temperamental and, to my way of thinking, thoroughly spoilt. It always appeared to me that she could throw a turn if she did not get her own way.

Q. When you saw her on the last occasion was the scar a good scar?—A. Quite healed. It was quite satisfactory from the medical point of view.

Cross-examined.

Cross-examination.

Mr. SHAND: Have you had much experience in thyrotoxicosis?—A. Some experience.

Q. How much had you had in 1937?—A. I cannot say.

Q. Had you had any?—A. I still do not know. I could not say, I do not think so.

Q. You think Mrs. Hocking's was the first case you came across?—A. In 1937 she probably was.

Q. Have you had any since?—A. I do not nurse cases now.

Q. Well, you have not had any since?—A. Not to handle them, not to have anything to do with them as patients.

Q. You do not know anything about it, except what you learned from Mrs. Hocking's case?—A. I have been matron of a hospital; with a hospital the size of mine I could not handle individual cases.

Q. You know nothing about it except anything you picked up in Mrs. Hocking's case?—A. I know what I learned during the course of my profession—in my training—about thyrotoxicosis.

Q. What is the effect of a person who suffers? What effect does it have?—A. They do become of a nervous temperament.

Q. That is one of the natural things; and what causes it?—A. They usually have an enlarged thyroid.

Q. But how does that act on their constitution to make them nervous? If you do not know, tell me?—A. No, it is out of the province of a nurse.

Q. You said that when this lady left on the 9th June 1938 her condition was much improved; there was no swelling and no redness when she was discharged on the second occasion; is that right?—A. Quite so.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 20. Constance Amy Fall, 17th December 1943, Cross-examination, *continued.*

Q. Can you remember that ?—A. I can.

Q. You can definitely and distinctly remember it ?—A. I can.

Q. You took that interest in the case ?—A. She was an unusual case.

Q. And therefore you can distinctly remember it ?—A. Yes.

Q. There are no notes about that ?—A. No, but she was an unusual case.

Q. Will you deny that you were away from the hospital on holidays from the 3rd to the 16th June 1938 ?—A. I do not deny anything, because I have not seen the hospital records.

Q. If you were away from the hospital on the holiday how can you swear you definitely remember that her neck was not inflamed, was not red, and the condition was much improved ?—A. You say from the 3rd to the 16th. She was discharged on the 9th. When I left, if I left that hospital, her condition was very good.

Q. You were asked as to a specific date, the 9th June ?—A. I have not answered to any specific dates.

(At this stage the witness's previous evidence on this point was read.)

Q. So that was a little unfortunate ?—A. No.

Q. You are asked about the 9th June. You swear definitely you can remember her condition then. You swore definitely you could remember her condition on her discharge on the 9th June. You described the condition of her neck then ; that was a little bit unfortunate ? (Objected to.)—A. No.

Q. Don't you regard it as an unfortunate answer ?—A. No.

Q. It was true that on the 9th June you could give that statement, you could describe her as in that condition ?—A. If it is untrue, if I was away, it would be untrue.

Q. The position is you would be only guessing ?—A. No.

Q. You swore to me you actually saw it ?—A. No, I did not.

Q. You remembered it because she was such an unusual patient ? (Witness's previous evidence on this read.)

Q. So you were misleading the court then ?—A. I do not think I was.

Q. You will agree that your evidence indicated, if I had not asked you some questions, that you actually saw her about the time she left. That is what your evidence indicated ?—A. It appears that way.

Q. And that was misleading ?—A. If you think so.

Q. Are you being careful with your evidence or have you some sense of loyalty ?—A. Have I to answer that ?

His HONOR : Yes.

Mr. SHAND : Are you being careful with your evidence ?—A. I am endeavouring to tell the truth.

Q. In that case I am putting to you that you described something you had not seen. You will agree that it was unfortunate ?

Mr. CASSIDY : Do you say she was not there ?

Mr. SHAND : Yes, I say it most definitely.

The WITNESS : Within three days ?

Mr. SHAND : Don't make any mistake ?—A. She left on the 9th It would be six days, I beg your pardon.

Q. You will agree that if you are away from the 3rd to the 16th you were not careful about your sworn evidence ?—A. I was doing the best I could to my recollection.

Q. Or is it you are prepared to swear a condition of affairs which would help the Defendant ?—A. I am prepared to do my best to tell the truth in this court.

Q. Even though it means swearing you saw a thing you did not see ? —A. I did not swear I saw anything.

Q. But it indicated that ?—A. I did not swear I saw anything.

Q. But it indicated that ?—A. You took it that way.

Q. Did not you mean it that way ?—A. I did not say I saw it.

Q. Did not you mean it to be taken that way ?—A. Not necessarily. I do not see every wound in the hospital.

Q. You meant it to be taken that way ?—A. Not necessarily.

Q. Did not you mean it to be taken that way ?—A. No.

Q. In what way did you mean it to be taken ?—A. I mean it to be taken that everything that happened in that hospital was reported to me verbally—whatever appeared in records—and that when patients are discharged their physical, mental or general condition is reported to me, whether I am there or not, when I return.

Q. No inflammation is reported to you—no swelling ?—A. There was no inflammation and no swelling when I last saw Mrs. Hocking.

Q. But on the 9th June. Did you mean the jury only to think it was reported to you ?—A. It was reported to me.

Q. Did you mean the jury only to think it was reported to you and you did not see it ?—A. I wish the jury to know that those things are reported to me.

Q. But take before. Do you swear you did not wish the jury to believe that you had witnessed this condition and that you only wished them to believe it had been reported to you ?—A. You have had more experience at the Bar. I did the best I could.

Q. It is a case of ordinary language. Which do you wish the jury to believe—that you had seen it, that you had observed it, or only that someone had told you ?—A. Apparently from my evidence the jury would believe I actually saw it, but I did not mean to interpret it that way.

Q. You did not yourself ?—A. I say from my evidence.

Q. From the evidence the jury would take it that you had seen it ? —A. Yes.

Q. But you did not mean it that way ?—A. No.

Q. So you were aware when you gave that evidence that you were away ?—A. I have no idea when I was away from the Quirindi District Hospital.

Q. Why was it, although you used an unfortunate set of words, you yourself did not indicate to the jury—why was it your point of view ?— A. I have no idea.

Q. Is that the best you can do ?—A. For the moment.

Q. Would you like a little interval ?—A. No. At the moment I cannot do any better. You have had time to think it, I have not—the right words to give.

Q. Come back this afternoon and see if you can do better. I will pass to something else. You have called the Plaintiff a neurotic type of woman ?—A. No, I did not.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 20. Constance Amy Fall, 17th December 1943, Cross-examination, *continued.*

Q. Generally emotional, nervous, temperamental ?—A. Yes.

Q. Of course, you are aware a state of nerves is produced by thyrotoxicosis ?—A. A state of nervousness, yes.

Q. Can you show these gentlemen one entry amongst the whole of the hospital records which indicates that she was generally emotional, nervous and temperamental ?—A. I do not think they are in the records.

Q. The only example you can give that she was of that temperament is that if the visitors did not come in time she used to be upset ; that is correct, is it ? That is the only indication you can give ?—A. It is the only indication I have given so far.

Q. Can you give any more ?—A. I used to go in and talk to Mrs. Hocking, and it is in general behaviour of people when talking to them that you can watch or find out what you really think of them, but those are not the things you put on paper ; those are the things you think.

Q. Give us them by word of mouth ?—A. General talk in the ward.

Q. What was the nature of it ?—A. I cannot say word for word. I was interested in her as a patient, but the conversation was not so terribly interesting that one could remember it word for word.

Q. But give some of these indications from which you say she was generally emotional, nervous and temperamental ?—A. If her visitors did not come she got upset. I do not say she cried every time.

Q. What else was there ?—A. I cannot say any more.

Q. That is all you can think of ?—A. Yes.

Q. She was very sick ?—A. Part of the time.

Q. She would not be the first lady in hospital who got upset if they did not get the company they expected ?—A. No, but they do not always demonstrate to the public.

Q. What is the public ?—A. By the " public " I mean the people in attendance. They do not demonstrate it to all and sundry. Most people have sufficient self-control to keep it to themselves.

Q. When you spoke of spasms you mentioned you could not pull back the eyelids ?—A. That is true.

Q. And you drew a distinction between a state of unconsciousness and this particular phenoma ?—A. Yes.

Q. Are you aware that in tetany the eyelids themselves can become rigid with spasm ?—A. Yes, that is quite true.

Q. Then, if that is so, it does not matter whether the person is unconscious or not ; if the spasm is there the eyelid is rigid ?—A. That is so.

Q. So that it is not a very safe test ?—A. But there is a difference between rigidity of spasm and the rigidity of a person trying to keep their eyes closed.

Q. You think she was pretending ? Do you suggest that ?—A. No, I am not suggesting she was pretending.

Q. What does it mean ? You say " trying to keep her eyes closed." That means consciously endeavouring ?—A. Yes.

Q. It means consciously endeavouring to keep the eyes closed ?—A. Yes.

Q. Your suggestion is that at that stage she was consciously endeavouring to keep her eyes closed ?—A. Yes, at one period she did.

Q. And pretending ?—A. Not necessarily pretending.

Q. What then ?—A. Very often the reaction to light is very trying when they are having a spasm. You endeavour to keep your eyes closed to keep out the light.

Q. You think it was light in her eyes ?—A. We did not have the room darkened.

Q. You think it was the reason ?—A. It could be that she was keeping her eyes closed.

Q. You did not know anything of tetany then ?—A. It was the first case of tetany I had ever seen—if it was tetany.

Q. Have you some doubts ?—A. I had never seen a tetany before. I cannot speak for previous cases.

Q. You were on friendly — quite friendly — good terms with Dr. O'Hanlon ?—A. I was on good terms with all the medical officers.

Q. There is no question what he thought it was—tetany ?—A. It is written in the books to watch for tetany spasms.

Q. You know what he thought it was ?—A. I knew he said to watch for tetany spasms.

Mr. SHAND : And you know that his opinion was that it was tetany ?—A. I don't know what his opinion was.

Q. He lectured to the hospital nurses, and you were present on those occasions, that it was a case of true tetany ?

His HONOR : Do you remember attending a lecture of Dr. O'Hanlon's ?—A. I probably did, I can't swear I did so.

Mr. SHAND : You remember him lecturing ?—A. No, I cannot say that I do.

Q. If you can remember all these things surely you cannot forget that ?—A. I don't see why not.

Q. My friend is suggesting some little loophole, do you think it might have been while you were away ?—A. No, I cannot remember attending a lecture, I may have or I might not have done.

Q. This was a most interesting case ?—A. Definitely.

Q. And that is why you said you could remember when you went there ?—A. If you must have your joke, sir.

Q. When you went around on your rounds did Nurse Aberton, now Mrs. Roberts, always accompany you ?—A. Not necessarily.

Q. Did she always accompany you ?—A. No, she did not always accompany me.

Q. Did she frequently accompany you ?—A. On occasions she did.

Q. About half the times ?—A. I cannot tell you how many times.

Q. More times than not ?—A. I should not think so.

Q. You were asked when the Plaintiff went into hospital as to her condition and you said she had then a slight swelling extending about two inches on each side of the sinus ?—A. Yes.

Q. Are you willing to swear that her body was not swollen ?—A. Yes.

Q. There is no question about that ?—A. No question.

Q. No question at all about her body being swollen ?—A. Not to my knowledge.

Q. No part of her body, excluding the part you have mentioned ?—A. Not to my knowledge.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 20. Constance Amy Fall, 17th December 1943, Cross-examination, *continued.*

Q. And no one mentioned it to you ?—A. Not to my knowledge.

Q. I suppose a doctor when his patient is admitted gives you, as far as is reasonably possible, a history of the case ?—A. Yes, he either gives it to me or the sister in charge of the ward.

Q. Will you deny that her face was swollen ?—A. Not grossly swollen, no.

Q. But to some extent ?—A. Nothing extraordinary, not sufficiently to be—I mean it could not have been or it would have been entered in the records.

Q. But it was swollen to an extent ?—A. No, I don't think so.

Q. Well, what did you mean a moment ago when you said not extraordinarily so ?—A. She had a swelling of the neck.

Q. I said the face ?—A. To my knowledge she had no swelling of the face.

Q. Did you a moment ago say "not extraordinarily," and "not grossly," why did you say that if it was not swollen ?—A. The neck was not unduly swollen.

Q. I said the face ?—A. I was thinking more in terms of the neck.

Q. I said the face ?—A. I am sorry.

Q. Is that another mistake ?—A. I would not call it a mistake.

Q. You knew I put the face to you, didn't you ?—A. I heard you say "face," yes, but I was thinking more in terms of the throat.

Q. A little far-fetched, isn't it, that answer ?—A. No.

Q. Can you do any better on that after 2 o'clock ? You see, when I asked you about the face we had excluded the throat because you had said that was swollen for an area of about two inches, why refer to the throat when I asked you about the face ? (No answer.)

Q. Why ?—A. I have no answer.

Re-examination.

Re-examined.

Mr. REIMER : If the statement Mr. Shand has made that you were away between the 3rd and the 16th is correct, what was the condition of Mrs. Hocking's face and neck and throat and so on when you last saw her ?—A. The last time I saw Mrs. Hocking she had a discharging wound and her progress was very satisfactory, her neck was healing and to our knowledge she was doing very well.

Q. When you last saw her, whenever that was, was there then any inflammation or swelling around the neck ?—A. No.

Q. Was the face or the head or any other part of the body swollen ?—A. No.

Q. Do you know Sister Sly ?—A. I remember her.

Q. Do you remember that she was up at Quirindi ?—A. Yes, she was.

Q. Do you remember her coming to the hospital at all ?—A. I cannot remember any dates.

Q. Do you remember the fact of her coming to the hospital ?—A. To take Mrs. Hocking home—no, I don't. I remember Sister Sly, because we have met.

Q. You know that she was attending Mrs. Hocking after she left the Quirindi Hospital ?—A. I believe she was.

Q. You have no recollection of the dates you were away from Quirindi Hospital ?—A. No, I explained I was away doing hospital shopping but what dates they were I don't know.

Q. Do you remember you came back to the hospital rather suddenly or earlier than expected ?—A. I think I came back because Sister Aberton developed an acute appendix.

Q. While you were away was Sister Aberton Acting Matron ?—A. Yes, she would be in charge.

Q. For how long prior to the last occasion you saw Mrs. Hocking in hospital had Mrs. Hocking been free of any swelling or inflammation or anything untoward ?—A. The swelling had subsided and she was doing very well.

Q. When would you say that the swelling disappeared ?—A. It started to disappear within a few days of the doctor opening the sinus, and from then on it did improve.

Q. How long after he opened the sinus would it be that the swelling had all gone ?—A. I cannot be definite in days.

Q. Was it some time after you last saw Mrs. Hocking ?—A. It would be some days, yes.

Mr. CASSIDY : Would there be any of your handwriting in these books ?—A. I don't know unless I saw them.

His HONOR : Do you want this witness back this afternoon, Mr. Shand ?

Mr. SHAND : No, not unless she wants to.

(Witness retired.)

No. 21.

EVIDENCE of Nell Blundell.

Sworn : examined : deposed.

To Mr. REIMER : I am a married woman living with my husband on the North Shore line. I was formerly Sister Hensman attached to the Quirindi District Hospital. I first joined the staff there on 1st June 1938, at the time when Mrs. Hocking was a patient. I remember Mrs. Hocking. When I went to the Quirindi District Hospital I was the sister in charge of the private wards, and Mrs. Hocking was one of the patients under my care at that time.

Q. What did you notice about her appearance ?—A. Nothing. She was in hospital for a post-thyroidectomy, as a patient.

Q. Did you notice anything abnormal about her appearance at all ?—A. No.

Q. When you saw her did you continue to attend to her or was she under your direct care and supervision from then on for any length of time ?—A. Yes.

Q. Until when ?—A. I am not very sure of the date.

Q. Until her discharge ?—A. Yes.

Q. And we know that she was discharged on the 9th June so at that time you would have had her under your care for approximately nine days ?—A. Yes.

Q. During that time did you notice anything abnormal in her appearance at all ?—A. No.

Q. Did she have any kind of swelling ?—A. No.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 21. Nell Blundell, 17th December 1943, Examination, *continued.*

Q. Did you notice anything about her neck at all ?—A. She had an operational scar.

Q. Anything else ?—A. No.

Q. Do you remember if there was anything in the centre of the scar ? (Objected to.)

Q. Did you notice anything about the scar ?—A. It had a sinus.

Q. Was there any swelling ?—A. No.

Q. Was there any inflammation ?—A. No.

Q. Any redness ?—A. A slight redness around the sinus.

Q. Anywhere else ?—A. No.

Q. Do you remember her actual discharge, actually leaving the hospital ?—A. Yes.

Q. What would you say was her actual physical condition at that time, referring mainly to the area of the neck and the sinus ?—A. It was quite normal.

Q. What was the condition of the operational scar ?—A. That I don't remember.

Q. Was there any sign of any swelling or inflammation at that time ?—A. No.

Q. You say it was a perfectly normal head and neck ?—A. Quite.

Q. Did you see the spasms yourself that Mrs. Hocking had ?—A. No.

Cross-examination.

Cross-examined.

Mr. CARSON : You saw no spasms at all ?—A. No.

Q. The first day you went to the hospital, the 1st June, did you see any spasms ?—A. No, I was not on duty the 1st June.

Q. You weren't on duty the first day—do you think I am going to look at the hospital notes ?—A. I don't know whether I would go on duty when I arrived or not.

Q. If the entry on the 1st June is signed "N. Hensman," that is you ?—A. Yes.

Q. And you cannot remember whether she had a spasm or not ?—A. No.

Q. Can you remember whether she had an intravenous injection or not that day ?—A. No.

Q. Then the entry for the 1st June over your signature reads this way—"Had spasm to-day, calcium glucinate 10 cc. given intravenously this a.m. Had tetany spasm 6 p.m., may have morphia, signed N. Hensman." You have no recollection at all as to those facts ?—A. No.

Q. You have no recollection at all of those happenings ?—A. No.

Q. Of course you told me before when I asked you questions that you had never seen a tetany patient before ?—A. No.

Q. And of course you had never seen a tetany spasm ?—A. No.

Q. But you can remember the appearance of her face ?—A. Yes.

Q. No doubt about that ?—A. No.

Q. Do you remember her ever having intravenous injections while you were there ?—A. Yes.

Q. Did you give them to her ?—A. No.

Q. Were you present when they were given ?—A. No.

Q. Who gave them ?—A. Dr. O'Hanlon.

Q. Who was present ?—A. Either Sister Aberton or the matron.

Q. Either of them ?—A. Yes.

Q. Or both of them ?—A. It depended who was on duty.

Q. You are quite clear that in the period from the 1st June onwards when the injections were given either the matron or Sister Aberton were present ?—A. Yes.

Q. During the whole of the time until she was discharged ?—A. Yes.

Q. Who was the matron on duty the day you arrived at the hospital ?—A. That I cannot remember.

Q. What ?—A. I can't remember.

Q. This was your first appointment after your training hospital, wasn't it ?—A. Yes.

Q. And you can't remember the woman who took you into the hospital and detailed you to your duties ?—A. Sister Spencer, she was sister in charge of the hospital that afternoon, she took me in.

His HONOR: Where did you do your training ?—A. Hornsby District Hospital.

Mr. CARSON: And you still can't tell me who the matron was ?—A. On duty that afternoon—I don't know.

Q. That day ?—A. No.

Q. Do you remember how many injections you prepared to be given to Mrs. Hocking ?—A. No.

Q. Did she ever make any complaint about her condition to you ?—A. Would you ask me that question again ?

Q. Did she ever make any complaint to you about her condition ?—A. No more than any other patient.

Q. Can you remember whether you recorded any of her complaints ?—A. I probably would in the report book, but I cannot remember.

Q. You can't remember ?—A. I can't remember the complaints she made.

Q. You can't remember the fact that she had complaints ?—A. No.

Q. Did she complain of pain ?—A. I can't remember that.

Q. Wouldn't you remember that ?—A. No.

Q. Wouldn't that be more important than whether her face was swollen, to you as her nurse ?—A. That I cannot remember, if she did it would be written in my report book.

Q. If she complained of pain ?—A. Yes.

Q. If her face was swollen would that be written in ?—A. Yes, her general appearance would be written in the report book.

Q. Is that so ?—A Yes.

Q. That is the practice at Quirindi, that if a patient is admitted to the hospital with a swelling in the throat it would be recorded in the notes ?—A Yes.

Q. Now, you said on a previous occasion you cannot remember her having any difficulty with her food ?—A. No, I don't remember her saying it.

Q. Do you remember when Mr. Loxton asked you some questions up at your own home ?—A. Yes.

Q. He was then the junior counsel for Dr. Bell ?—A. Yes.

Q. And you remember he asked you this : " Did she ever mention to you she had any difficulty in swallowing or taking her food." Do you remember that question ?—A. No, I don't remember.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 21. Nell Blundell, 17th December 1943, Cross-examination, *continued.*

Q. You don't remember the question at all ?—A No.

Q. Will you deny that you were asked that question and you answered "Not that I remember" ?—A. I might have said that.

Q. If you had said that would it be true ?—A. Yes, if I said it it would have been true.

Q. And it would have been the best of your recollection ?—A. Yes.

Q. But you won't dispute that on the hospital records of the 2nd June, again over your signature, appears: "Not feeling well to-day, taking very little nourishment, complaining of severe headache." That hospital record would be more accurate than your memory ?—A. Yes, it would.

Q. Have you seen these hospital records or copies of them ?—A. Yes.

Q. When did you see them ?—A. Three days ago.

Q. Had you ever seen them before ?—A. No.

Q. Were you given a copy ?—A. No.

Q. You were shown a copy in Mr. Cassidy's chambers, is that right ?—A. Yes.

Q. When she left do you say there was no sign of inflammation in the neck ?—A. I cannot remember that.

Q. You cannot remember whether there was or whether there was not ?—A. No.

Q. Can you remember whether there was or whether there was not swelling ?—A. There was no swelling.

Q. You can definitely remember that ?—A. Yes.

Q. But you cannot remember whether there was inflammation or whether there was no inflammation ?—A. No.

Q. But you do remember that the wound was still discharging ?—A. I don't remember that when she left the hospital.

Q. Will you deny that the wound was discharging when she left ?—A. I don't remember whether it was or not.

Q. It was still open ?—A. I don't remember that.

Q. You don't remember whether it was still open or not ?—A. No.

Re-examination.

Re-examined.

Mr. REIMER: I want to show you the original report of the 1st June. That apparently is your signature ?—A. Yes.

Q. Is the body of the report in your handwriting ?—A. Yes.

Q. The whole of the report ?—A. Yes.

Q. Where would you get that information, of your own knowledge or from other members of the staff ?—A. That I cannot tell you, but on occasions I would get it written in a doctor's report book.

Q. With regard to Mrs. Hocking, it states there that she had a tetany spasm at 6 p.m. Did you yourself see that ?—A. No.

Q. Did you attend Dr. O'Hanlon at any time when he was called in relation to any tetany spasm ?—A. No.

Q. There is no record of her having had any tetany spasm during your period at hospital in June, but there is this 1st June incident ?—A. Yes.

Q. And you say that you saw no spasm yourself ?—A. No, that would be when I was off duty.

Q. You were asked something about intravenous injections. Did you prepare those at all ?—A. Yes, I have prepared the tray. When Dr. O'Hanlon was coming to the hospital I would prepare the tray for the injection to be given.

Q. And would you attend him when it was being done ?—A. No, either Sister Aberton or matron.

Q. Do you remember the matron being away from the hospital at any time ?—A. Yes.

Q. Do you remember when that was ?—A. No, I cannot remember definitely.

Q. While she was away who was in charge ?—A. Sister Aberton.

Mr. CARSON : You said you remember Matron Fall going away on holidays ?—A. Yes.

Q. Was this question asked of you at the third trial : " Was Matron Fall there all the time in June 1938 ?—Yes." ?—A. She may have been too.

Q. You were asked was Matron Fall there all the time in June 1938 and your answer was " Yes " ?—A. Yes.

Mr. CASSIDY : Then it was put to you, " From the 1st June ?—I cannot remember whether she was there when I first went there or not because she went on holidays while I was there." ?—A. Yes, that is what I cannot remember, she may have gone on holidays in July.

(Witness retired.)

No. 22.

EVIDENCE of Anne Roberts.

Sworn : examined : deposed.

To Mr. REIMER : I am a married woman living with my husband at Penrith. Before my marriage I was Miss Aberton, a sister associated with the Quirindi District Hospital. I was on the staff of that hospital in 1938 when Mrs. Hocking was a patient there. I remember Mrs. Hocking.

Q. Have you a clear recollection of her, does she stand out in your mind ?—A. As a patient, yes.

Q. Will you tell me first of all what was her condition of admission on the 4th May 1938 ?—A. She had had a thyroidectomy performed and she was admitted to Quirindi Hospital with a discharging sinus, and we were asked to watch for spasms.

Q. What was the condition of her neck at that time ?—A. She had a sinus where the tube had been and it was discharging a sero-purulent discharge.

Q. And what about the swelling ?—A. She had a swelling around the sinus.

Q. And did Dr. O'Hanlon give you any directions or instructions as to what you were to do ?—A. Yes, the wound had to be fomented and after the foments were discontinued——

Q. On her admission, or within a short time of her admission, did Dr. O'Hanlon give you any directions as to what had to be done with this wound ?—A. Yes, it had to be probed for suture material.

Q. Did you personally probe it ?—A. No.

Q. Do you know who did ?—A. The nurse or the sister in the ward.

Q. Did you see whether any suture material was obtained or not ?—A. No, I did not see it but it was reported to me that suture material had been obtained.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 22. Anne Roberts, 17th December 1943, Examination, *continued.*

Q. You were at that time second in charge of the hospital ?—A. Yes.

Q. Do you remember something being done to this sinus some few days after her admission ?—A. I remember it being opened under a local anæsthetic by Dr. O'Hanlon.

Q. Were you present ?—A. Yes.

Q. What did Dr. O'Hanlon do ?—A. He opened it with a pair of artery forceps, just extended the sinus.

Q. Do you remember what treatment was applied to the area around the sinus ?—A. Yes, foments.

Q. According to the records they were applied at varying periods. How long would the actual hot foment remain on the sinus ?—A. About ten minutes.

Q. What would you do then ?—A. Apply a dry dressing.

Q. After Dr. O'Hanlon treated this sinus under local anæsthesia, what happened to it ?—A. The wound began to heal up and the discharge was less free.

Q. What about the swelling ?—A. The swelling was going, it was subsiding every day.

Q. Did the swelling go away altogether while Mrs. Hocking was in hospital ?—A. As far as I can remember.

Q. What about the condition of the sinus when Mrs. Hocking left, were you still at the hospital when she left ?—A. Yes, it was not quite healed.

Q. What was the nature of the discharge, if any ?—A. It was sero blood-stained discharge, I think, when she left the hospital.

Q. What kind of dressings had been applied at that stage ?—A. Dry dressings.

Q. According to the hospital reports it shows that dry dressings were applied from the 26th May. What would be the nature of that dressing ?—A. The wound would be swabbed every morning and a piece of gauze attached to a piece of strapping over that.

Q. Just a single piece of gauze ?—A. It is folded into four.

Q. What was this dry dressing you put on ?—A. It was a piece of gauze and when folded into four it was about two inches square and that was put over the sinus and that was strapped over the wound.

Q. How frequently would that be renewed ?—A. Once in 24 hours.

Q. What would you say was the condition of Mrs. Hocking with regard to her throat and so on at the time she left the hospital ?—A. I would say that she was very much improved.

Q. Did you see any of those spasms ?—A. Yes.

Q. According to the hospital reports there were a certain number mentioned there, did you see all of those ?—A. Yes.

Q. What was the nature of those spasms ?—A. Mrs. Hocking's muscles would become taut and she would clench her hands with her thumb in and her eyes would be closed very tightly and her knees would be flexed and drawn up.

Q. How far would her knees be drawn up off the bed ?—A. She had a pillow under the knees and I would say 4 to 6 inches off the pillow.

Q. And what was the nature of the spasms, were they rigid or otherwise ?—A. Rigid.

Q. Was there anything else you noticed about the spasms at all ? Did you ever see Mrs. Hocking's fingernails bite into the palm of her

hands ?—A. No, they could not, because she had the thumb across the palm.

Q. Can you say anything with regard to Mrs. Hocking otherwise as to her condition then ?—A. I think her condition then was quite satisfactory while she was in hospital.

Q. Did you notice anything about her attitude or state of mind ?—A. I think Mrs. Hocking was a very emotional type of woman.

Q. And what do you base that on ?—A. It is just my opinion, to me she was rather an emotional woman, more emotional than most people, she was not a placid individual.

Q. It has been stated by Mrs. Hocking that while she was in hospital in the early part of this particular period she had occasion to turn her head to the left and she felt something pricking inside of her throat. Was that ever reported to you ?—A. No.

Q. She says that some blood started to pour out of the sinus on to her chest or on to her nightdress. Was that ever reported to you ?—A. No.

Q. And that she then got a piece of cotton wool and swabbed it and threw it away into the fire. Was there ever a report of such an incident ?—A. I don't know anything about it.

Q. Would such an incident be reported to you ?—A. Either to me or to Matron Fall if matron was there.

Q. Did Mrs. Hocking ever report to you an incident where she took up her mirror and with one eye saw the other eye moving back ?—A. No.

Q. She states that on that occasion and also on occasion when she had this bleeding that she rang for half an hour or more and no one answered, what do you say to that ?—A. Well, the nurses are always in the wards.

Q. Mrs. Hocking has given evidence that she has from time to time had occasion to ring for assistance from the nursing staff for half an hour or more and no one would come to her. What do you say to that ?—A. I don't think it would be correct.

Q. Could it happen during the period you were there ?—A. I don't think so.

Q. Do you remember Matron Fall being away from hospital for some time ?—A. Yes.

Q. Do you remember when that was ?—A. In the beginning of June.

Q. Do you remember when she came back ?—A. Yes, about a fortnight after, about the middle of June.

Q. Do you remember any particular incident happening which is associated with her coming back to the hospital ?—A. Only that I had my appendix removed the day after she came back.

Q. And do you remember when you had your appendix removed ?—A. Yes, matron came back on the Saturday night and I had my appendix removed on the Sunday.

Q. Passing to the September period, do you remember Mrs. Hocking being in the hospital then ?—A. Yes.

Q. What was the condition of Mrs. Hocking at that time ?—A. She came in in a spasm.

Q. And what was the nature of that spasm ; did you see it ?—A. Yes, the same as what she had previously, I think they were of a bit longer duration.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 22. Anne Roberts, 17th December 1943, Examination, *continued.*

Q. Did you notice anything else about Mrs. Hocking on that occasion ?—A. Not that I remember.

Q. What was the condition of the operation scar ?—A. As far as I can remember the scar had healed by this time.

Q. Was there anything untoward to be observed so far as Mrs. Hocking's throat was concerned at that time ?—A. No, it was rather a good scar.

Q. It has been suggested by Mrs. Hocking that at that time she had a swelling in her neck ?—A. I don't remember any swelling.

Q. She says that her head was stiff and she had to move the whole of her body sideways because she could not move her head otherwise, particularly to the left ?—A. I have no recollection of that, in my opinion she had no swelling when she came in the second time.

Q. Was there anything abnormal in her condition at all ?—A. No, only the spasms.

Q. Nothing else abnormal at all ?—A. No.

Q. Do you remember anything about her food ?—A. At one time she was on a light diet.

Q. Did you ever notice any difficulty she had in taking her food ?—A. I never saw her taking any food.

Cross-examination.

Cross-examined.

Mr. SHAND : You did not always remember that the matron was away from the period from the beginning of June until whatever date it is ?—A. No, I thought matron had taken her annual holidays.

Q. Yes, and what you swore at the second trial was this : " Part of the time while Mrs. Hocking was in the hospital I was acting matron for Matron Fall when she was on holidays. The matron came back on duty on the 11th June, which I fix because I had an operation performed on myself the following day. Matron Fall had been away for a month prior to the 11th June, so that from approximately from the 11th May I had been acting matron." That is what you swore ?—A. Yes.

Q. And in your mind the importance of swearing that was if the matron were away you would take her place and do the rounds and so see Mrs. Hocking ?—A. Whether the matron was away or not, I always did the rounds.

Q. You always did the rounds ?—A. Whether the matron did or not, I always did rounds.

Q. You went around with her ?—A. No.

Q. Why did you swear that you were acting matron for a month ?—A. Matron Fall always went on holidays and that year she divided her holidays.

Q. And that was just unfortunate that you swore that it was a month. Well now, just before the adjournment, I suggest to you that so far from being as you have sworn, very emotional, do you suggest that Mrs. Hocking was depressed ?—A. No, I would not say that she was depressed.

Q. But very emotional ?—A. Yes.

Q. I suggest to you that as a patient she might be described as always bright and cheerful ?—A. She was bright.

Q. Always bright and cheerful, would that not be a very accurate description of her ?—A. Well, yes, but she was brighter than most people.

Q. You think that is a good one, do you, always bright and cheerful. That is what I am asking you. Would that be a truthful and fair description ?—A. Well, you can say most bright and cheerful.

Q. Don't bother about "most." That is not what I am asking you; always bright and cheerful. Would that be a fair description ?—A. No, it would not.

Q. Well, that is the one you used, wasn't it, to your own counsel ?—A. When I said she is bright and cheerful——

Q. No, always bright and cheerful, that is the expression you used to your own counsel in the second trial ?—A. Yes.

Q. I suppose you were telling the truth ?—A. Yes.

Q. And that is a true description ?—A. Yes.

Mr. REIMER: Some question has been put about massage at Quirindi Hospital, did you ever massage Mrs. Hocking ?—A. No.

Q. Did you ever see it done ?—A. No.

Q. And you attended at all the spasms ?—A. Yes.

(Luncheon adjournment.)

Mr. SHAND: "Always bright and cheerful." That was right, wasn't it ?—A. Yes.

Q. Will you just indicate to the jury how Mrs. Hocking's hands were during the spasm ?—A. Yes. (Witness demonstrates.)

Q. Did you state that they could not bite into the skin—the nails ?—A. Well, I should not think so.

Q. Yours might not be able to ? (Objected to; pressed.)

Q. Do you now say the fingers could not cut into the palm of the hand—the nails could not cut into the palm of the hand ?—A. Well, it may be possible, but I don't think so.

Q. This is on page 458—this is what you said last time—the second trial: "She says her fingers were cutting into the palm of her hand, which is quite possible." That is what you swore before——

His HONOR: That was taken down in narrative form at that stage, apparently.

Mr. SHAND: "She says her fingers were cutting into the palm of her hand, which is quite possible." That is what you swore before, wasn't it ?—A. I don't think it would be possible for me to do it, just the same.

Q. It is not possible for me either. That is what you swore before—"It would be quite possible" ?—A. If you have it there I must have said it.

Q. Why did you say it if you now say it is not possible ?—A. I did not have to demonstrate to a jury or anybody last time, and on a demonstration it does seem impossible to do it.

Q. You never demonstrated it before ?—A. No.

Q. To anyone ?—A. No.

Q. It appears that you did demonstrate before—on that same page—"And she used to clench her hands and have the thumb and the palm of her hand like that (indicating)." So that you did demonstrate before, didn't you ?—A. Not before I was asked that question.

Q. Yes, that is before. That was the second trial. I don't want to waste time. This is only something you have thought of this morning, isn't it ?—A. No.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 22. Anne Roberts, 17th December 1943, Cross-examination, *continued.*

Q. When did you think of the fact ?—A. That you could not ?

Q. Yes.—A. Just now in the box.

Q. You only thought about that then ?—A. Yes.

Q. The next thing I want to ask you is this. You swore, when you gave your evidence before on the second trial, on page 459, that on the 1st June she had a spasm about 6 o'clock at night and another spasm at about 9 o'clock. An intravenous injection had been given between the first and second spasms. That is what you swore before, wasn't it ?—A. Yes.

Q. And your own record showed that no injection was given between the two spasms ?—A. Yes.

Q. Why did you swear that before ?—A. Because I had it confused when she came in the second time, and I was still confused because the injection was given prior to the two——

Q. It was not your record, but you said that you were there, and having been shown the record it was clear that the injection was not given between the two, wasn't it ?—A. Yes.

Q. Why did you volunteer that—to make it appear that it was not tetany ?—A. No.

Q. Why did you volunteer that ? (Objected to.)

Q. Why did you swear that ?

His HONOR : I don't understand the word " volunteer."

Mr. SHAND : I suppose it is volunteered when it is given in chief ; it is not forced out. Why did you volunteer that ?

His HONOR : Probably she may not understand it.

Mr. SHAND : Why did you swear that ?—A. I was confused with another time, and when I was recollecting back over four years I thought that I was speaking exactly.

Q. What other time were you confused with ?—A. When she came in at a later stage, when she had the injection prior to the two spasms.

Q. That is the same day. There was only the one day when she had an injection and then two spasms ? (Objected to.)

Q. An injection and then two spasms ? (Objected to.)

Q. I will just make that clear. When do you mean, the second time ?—A. When she came into hospital on the second time when I was there.

Q. When she came back in September ?—A. Yes, I thought, if I remember rightly, that she had two spasms then, and that is why I was confused.

His HONOR : What date did she come back ?—A. I don't remember the date.

Mr. SHAND : Take the second occasion. That was the 4th September. There was a tetany spasm, and then the records are in your own writing this time—" Intravenous injection not given." " Not." " Recurrence of spasm during doctor's visit " ?—A. Yes.

Q. So you are wrong in that too ?—A. Yes.

Q. So there is no foundation for what you said at all ?—A. No.

Q. This is what you swore before—page 225 in the third trial—" At that time, in September, do you remember an occasion when she had a spasm and Dr. O'Hanlon being there and giving her an injection." Your

answer was "Yes." You were asked "What happened after the injection was given," and your answer was "Her muscles became relaxed and she was quite all right again." You were then asked "Did you go away with the doctor somewhere." Your answer was "Yes." You were asked "And did you call back," and your answer was "Yes, and she was having another spasm." After the injection. You knew that that was quite wrong, wasn't it?—A. Yes, I made a mistake. She did not.

Q. There was no occasion when there was a spasm and then an injection and then a spasm following the same day?—A. No.

Q. So you made a couple of mistakes?—A. Yes.

Q. And you know that there was some suggestion that these might not be true tetany spasms but only hysteria. You knew that, didn't you?—A. Yes.

Q. And you knew further that if a spasm followed closely on an injection of calcium that might be an indication that she did not have true tetany?—A. Yes.

Q. And I put it to you that that is why you said those two things?—A. No.

Q. Just a mistake on each occasion. That is so, isn't it?—A. Yes.

Q. Before the second trial you had been given a copy of the notes—the hospital records?—A. Yes.

Q. Including your own?—A. No, I was not given a copy of the notes; I was given my own statement to read. That was all.

Q. Your own statement? Did your own statement have these mistakes in it?—A. Well, yes, they must have had the mistakes in it if I said them.

Q. If that is so you were only given a copy of your statement. What do you say to this bit of evidence—page 460, second trial—"Did you get supplied with a copy of the hospital records from Quirindi? Is that difficult to answer?", and your answer was "No." You were then asked "Well, can you answer it." "Did you get them," and your answer was "Yes."—A. Yes, but that was just before I came to the Court.

Q. That is what I am asking you. Before the second trial—you did get a copy of the notes?—A. Yes.

Q. Well, a moment ago you swore that you didn't, you only had your statement?—A. I thought you said to take home with me and learn them.

Q. "Get them," I said?—A. Yes.

Q. You thought I meant "Did you get them to take them home with you"?—A. Yes.

Q. And therefore you answered "No"?—A. Yes.

Q. Let us see what you said before—"Why did you not say yes straight away." I won't bother about that question. "Have you got them in your pocket," and your answer was "No." You were asked: "Who gave them to you," and you answered "Mr. Reimer." You were then asked: "Did you take them home," and you replied "Yes." The question then was: "And study them," and you answered "No; I read them." So you did take them home?—A. I didn't take a copy of the hospital reports home, Mr. Shand.

Q. But you swore that you did take them home and you read them?—A. I thought he meant a statement. I did not take a copy of the report home at all.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 22. Anne Roberts, 17th December 1943, Cross-examination, *continued.*

Q. You brought the statement in to-day. What is it ?—A. I never had a copy of the report.

Q. So this is all untrue—this reference to getting a copy of the hospital records and taking it home and reading it. That is all untrue ?—A. Yes.

Q. Well, why did you come to swear something that was untrue ? Why did you ?—A. Because I get confused. The counsel confuses me.

Q. This was the first question in cross-examination—" Did you get supplied with a copy of the hospital records from Quirindi." What is confusing about that ?—A. Well, it is just confusing. You don't think you are confusing, but I do.

Q. There was nothing confusing about that question, was there ?—A. No, there was nothing confusing about it, but it was rather terrifying just the same.

Q. A terrifying question, wasn't it ?—A. No, a terrifying person.

Q. Me ?—A. Yes, and Mr. Hardwick, too.

Q. You are unfortunate in striking such horrors when you come to Court. It appears that on the third trial too, you must have been terrified. This on page 227—" You were supplied with a copy of the notes before you went in the box before," and your answer was " Yes." Were you terrified then ?—A. I was supplied with them before I came into the box, yes.

Q. What about taking them home ?—A. No.

Q. But you swore a moment ago—I don't want to terrify you ?—A. I told you I did not take them home.

Q. You swore a moment ago that you never had them at all ?—A. No, I did not. I said that I had read them.

Q. You said that all you had was a statement ? (Objected to.) (Shorthand notes read.)

Q. Now, another little error I suggest, if you like to call it that, was this, that you swore at the first trial—page 458, at the first paragraph—this: " I have mentioned a slight serous ooze that came occasionally. When Mrs. Hocking first came in she was having foments, and about three days after that she was having dry dressings " ?—A. Yes.

Q. That was hopelessly wrong, wasn't it. Do you still swear that ?—A. She had those foments for 10 minutes.

Q. I am asking you this—you have sworn that about three days later she was having dry dressings ?—A. Yes.

Mr. SHAND : It is hopelessly wrong ?—A. Yes.

Q. She went in on the 4th May. She did not start having dry dressings until the 26th May ; it was three weeks after ?—A. If I remember, she had the dry dressings before then.

Q. We have the hospital records ?

Mr. CASSIDY : 14th May, " dry dressings." (Hospital record, page 346 referred to.)

Mr. SHAND : Mr. Cassidy is quite right. On the 14th there were apparently, both. Then foments were put on. We find them on the 20th and no further dry dressings until the 26th ?

Mr. CASSIDY : Foments and dry dressings.

Mr. SHAND : Then foments on the 25th, and then dry dressings start alone on the 26th. You swore this (page 458 referred to)—" When

Mrs. Hocking first came in she was having foments and about three days after that she was having dry dressings." That is wrong. The " three days after she was having dry dressings " is wrong ?—A. Yes ; it was on the 14th—four days after.

Q. She came in on the 4th. The first dry dressing is the 14th. That was 10 days after. What you said was wrong ?—A. Yes.

Q. It goes on : " A dry dressing is a piece of gauze put over the wound and attached with a piece of strapping. We used dry dressings because the wound was healed, and there was no necessity for foments." That was what you swore (page 458) ?—A. I must have.

His HONOR : This was August last year. Can you recollect it ? —A. I must have said it if it is there.

Mr. SHAND : We know that foments went right on until the 25th May. You were trying to suggest after three days the wound was clearing up, the swelling going down ?—A. She did not have any swelling. I was not trying to suggest anything.

Q. Your suggestion was ; you were trying to convey that three days after she came in the wound was healing up and everything was going well ?—A. No.

Q. Why did you swear she was having dry dressings three days after ; and you used that because the wound was healing and there was no necessity for foments ?—A. I do not know.

Q. It was not to help the Defendant, the doctor ?—A. No.

Q. There must have been some reason for swearing what was untrue ; you cannot think of a reason ?—A. No, I have not any reason.

Q. There are three or four things. The other mistake you made was, suggesting that Mrs. Hocking was getting better. It erred in the direction of Mrs. Hocking getting better ?—A. Yes.

Re-examined.

Re-examination.

Mr. REIMER : You were asked about hospital records ? Did you see a copy of the records before you gave evidence on the first occasion on which you were called as a witness, did you have an opportunity to looking at the hospital records ?—A. Yes.

Q. A statement was prepared of the evidence you could give ?—A. Yes.

Q. You had a copy of that supplied to you for your examination and for any correction, if necessary ?—A. Yes.

Q. And that is the statement you took home with you ?—A. Yes.

Q. You never took the hospital records ?—A. No.

Q. You were asked with regard to these spasms ? (Witness handed copy of hospital reports.) Do you remember an occasion when you attended to Mrs. Hocking with Dr. O'Hanlon and she had a spasm and after you left some time later she had another spasm ?—A. Yes.

Q. I want you to look at the entry of the 1st June, day report : " Calcium glucinate 10 cc. given intravenously this a.m. Had tetany spasm 6 p.m. May have H.I. morphia gr. $\frac{1}{4}$ if absolutely necessary." That is followed by the night report, which stated : " Had tetany spasm 9.15 p.m. lasted 15 minutes." Now turn two pages further over to the 4th September, 1938, and you see " Tetany spasm this a.m. (25 minutes), seen by Dr. O'Hanlon. Intravenous injection not given. Reoccurrence of spasm during doctor's visit " ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 22. Anne Roberts, 17th December 1943, Re-examination, *continued.*

Q. In the evidence that you were cross-examined about, second trial, did you have those dates confused ?—A. Yes, that was what I tried to tell Mr. Shand a few minutes ago.

Q. There was an occasion when you remember Mrs. Hocking had a spasm and later in the day she had another spasm ?—A. Yes.

Q. On one occasion she had had that intravenous injection ?—A. Yes.

Q. On the second trial you referred to a date in September, whereas it was a date in June ?—A. Yes.

Q. You were asked whether you gave evidence that Mrs. Hocking was bright and cheerful ? (Page 460 referred to.) " After Mrs. Hocking had the spasms her condition was quite satisfactory and she was only in the hospital a couple of days after that " ?

Mr. SHAND : I did not read that. I read 457, middle of third paragraph.

Mr. REIMER : I will read on while I am on this : " When she was not actually in the spasm she looked bright and cheerful, normal. She did not look ill, but quite all right. I mentioned that she had the appearance of being an hysterical type during May and June. In September I still had the same opinion of Mrs. Hocking." Prior to that page, page 459 (middle of the page), when she was in hospital in May and June did you say this : " I did not observe anything abnormal in this woman in any shape or form, but I always regarded Mrs. Hocking as a case of hysteria or nervous origin. In my opinion, Mrs. Hocking always seemed to be terribly up in the air, an unstable sort of woman, a neurotic, really." Is that the impression she conveyed to you on both occasions when she was in hospital under your care ?—A. Yes.

His HONOR : There is a passage on page 457 : " She was not depressed when she was admitted. She was always bright and cheerful and her general condition was satisfactory. We were asked by Dr. O'Hanlon to watch for the spasms and to probe the wound for surgical material."

Mr. REIMER : You were asked about the evidence you gave of the sinus and the evidence you had given on the previous occasion. On page 457, near the bottom, you said : " The wound was not quite healed when Mrs. Hocking was discharged. It was a matter of a few days after this treatment by Dr. O'Hanlon before the swelling subsided. From a few days after the 7th May until Mrs. Hocking's discharge on the 9th June I would say the condition of her head and neck was quite satisfactory ; there was not any swelling at any time." In regard to the dressings, the position is that hot dressings or fomentations were put on during a certain period ?—A. Yes.

Q. How long were they left on ?—A. Ten minutes.

Q. What was done after that ?—A. Dry dressing was applied.

Q. How long would it remain on ?—A. Until the next foment was applied.

Q. It would be sometimes two hours and sometimes four ?—A. Yes.

Q. Were they put on right from the beginning or only at a later date ?—A. Only at a later date.

Q. How long after Dr. O'Hanlon opened the sinus was it. First of all, have a look at the records. See if it is referred to in the notes. Will

you look at the 14th May. There is a reference there to dry dressings? (Interrupted—No answer.)

Mr. REIMER: The day report of the 14th—from that time onwards what was the position?—A. She had the foments up to a certain period with the dry dressing, and the foments were discontinued and she just had the dry dressings.

Q. You were also asked something about the evidence you gave on a previous occasion in connection with the spasms that you saw. Is this the evidence that you gave, on page 458 of the second trial: "It would not be correct to say that she rolled up in a ball with her knees to her chin, or that her back was arched backwards. She says her fingers were cutting into the palm of her hand, which is quite possible. She says her legs were drawn up very much, and she was in a ball and her back curved. She said her tongue was drawn back in a lump. I did not see that, because she always had her mouth closed. She says the veins in her hand became very swollen and dark because the circulation had stopped. I did not notice it. She says the muscles used to pull her eyes back, sometimes one eye, or both. It was impossible to open Mrs. Hocking's eye. I remember Dr. O'Hanlon trying to open them and it was impossible to do so. When she was in the spasms I tried to release her hands and was unable to do so, unable to open her hand." Is that correct?—A. Yes.

(Witness retired.)

No. 23.

EVIDENCE of James George Edwards.

Sworn: examined: deposed.

To Mr. CASSIDY: My full name is James George Edwards. I am a Macquarie Street specialist in radiology. I have been carrying on my profession for something like 35 years. During that time I have had a lot of X-ray experience in regard to foreign bodies. I have had a long experience with the foreign bodies that one finds in various human beings.

(Mr. Cassidy stated that he wanted the witness to look at an X-ray; Mr. Shand said he objected to it being looked at; Mr. Cassidy said that he would undertake to prove it; Mr. Shand said that there was an objection to his dealing with Dr. O'Hanlon's notes; Mr. Cassidy said that this had been proved before and would be proved in the same way and that he could not go ahead without it. Mr. Shand withdrew his objection.)

(X-ray shown to witness.) This X-ray picture is taken facing the plate, the tube behind, with the head turned to the right. The head is fully rotated to the right. If there were any stiffness of the neck which prevented the woman from moving her head without moving the whole body that position would not be possible. If a woman says that she had such a stiffness of the neck that she could not turn to the left without moving her whole body, I would not expect that she could do that movement to the right. Most people with a badly inflamed neck tend to turn their head to the inflamed side because if they turn to the opposite side they stretch the inflamed tissue. If the inflammation is on the left-hand side the patient always tends to keep the head turned to the inflamed side

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 23. James George Edwards, 17th December 1943, Examination, *continued.*

because the muscles on that side are then rested, because if you turn to the other side you immediately stretch all those muscles. Assuming that she had a type of inflammation which left her neck so that she could not move it to the left, and she had the inflammation for three months and the head and shoulders were all one piece she could not have turned her head like that to the right.

To the JURY : It does not matter whether that is the base view or the back view, that X-ray photograph. Here is the left side and here is the right diaphragm.

To His HONOR : The patient was standing there with her head turned round to the right like that. (Shown.)

To Mr. CASSIDY : That is the chin, that is one side of the jaw, that is the other side of the jaw coming upwards here, these are the spinal bodies, those are the soft tissues under the chin, and that is the section of the muscles running up through the neck. The head is turned away and you cannot see the muscles well because they are thrown over the shadow of the spine. In that picture there is no sign of swelling. Assuming that there had been gross swelling of the neck and that it had been there for three months and it was so bad that the patient's head and neck were all one piece that would be shown in the outlines of the neck. You would expect if there were swelling present to see it in that picture. I have told you that I have had a good deal of experience of foreign bodies in tissue, also as to their movement. I could not say the number but I have seen thousands I suppose.

Mr. SHAND : Does that mean movements of bodies or have you photographed them while they are in position ?—A. I have had experience of them through the course of the condition. A man gets a foreign body in any part of his body, I may have to X-ray it half a dozen times to see how it varies and to see the condition around it.

Q. And if it has moved ?—A. There is only one body that moves embedded in tissue and that is a needle.

To Mr. CASSIDY : I have had a large experience of taking X-rays from time to time to see whether bodies do move. I would say that neck has the usual appearance of a neck taken in that position. There is nothing abnormal about it at all. I have seen pretty well every class of foreign body I should think. I would say that once a foreign body, with the exception of needles, comes to rest in tissue it stops put. (Exhibit " P " handed to witness.) This has been shown to me on previous occasions. From my knowledge and experience such an object could not move within the tissues of the body. Even if it became septic it would lie at the bottom of the septic cavity. The pus would in my opinion discharge anywhere. The foreign bodies that I have seen do vary in size very much. Usually the pus finds its way downwards, but in certain regions it will track up. In the thyroid cavity I would expect it to track downwards or out through the wound. As portion of my practice I have had to consider foreign bodies swallowed by hysterics. I have found pretty well everything there I think. Women swallow them to get a little sympathy or they think they are not being taken enough notice of and they will swallow any foreign body they can lay their hands on. It is common to find persons in jail swallowing razor blades. It is a very common thing, they want

to get into the jail hospital. I have seen it in my actual experience very often in cases associated with hysteria. I can give actual illustrations that I have had of it if asked.

Cross-examined.

Mr. SHAND: We are told this is something of the same sized neck (X-ray photograph shown)?—A. Yes.

Q. That of course is turned side on?—A. A direct side view.

Q. Have you seen this before?—A. No.

Q. I suppose for a comparison you would have to have one turned in the same position?—A. In exactly the same position.

(Further hearing adjourned until 10 a.m. on Monday, 20th December 1943.)

Fifteenth day, Monday, 20th December, 1943.

JAMES GEORGE EDWARDS.

Further cross-examined.

Mr. SHAND: You said on Friday that pus might discharge anywhere?—A. Well, I think—how do you mean anywhere? At points of the abscess.

Q. Of course, an abscess only forms when the pus is enclosed?—A. Yes.

Q. First of all you get suppuration?—A. Yes.

Q. And that might track in various directions?—A. Yes.

Q. And eventually you might get an abscess enclosing it in?—A. Yes.

Q. Before you get the abscess, when you get the suppuration as it tracks it divides the fascia?—A. Yes, divides the various tissues.

Q. And follows some course, whatever that course may be, until it may be enclosed in an abscess?—A. Yes, an abscess cavity forms and it tends to point in a certain direction.

Q. And experience does show that pus sometimes tracks a very long way?—A. Yes.

Q. I suppose this would be right, you cannot say from that X-ray whether the neck had been inflamed for some months before?—A. No.

Q. You would not be able to tell that?—A. No.

Q. And I suppose this would be so, if you will just assume for a moment that a tube such as you have seen had gone through the neck, passed through the tissues of the neck, you would not necessarily see a trace of that in the X-ray, would you?—A. No.

Q. By the way, you were speaking on Friday of cases of persons swallowing razor blades and that class of thing?—A. Yes.

Q. Did you mean male or female?—A. Both, males swallow the razor blades, females swallow other things.

Q. Hysteria is practically confined to females, isn't it?—A. Oh, no.

Q. Females or boys?—A. I think you can get hysterical people at any age and of either sex.

Q. Hysteria is from the word "hysteros," isn't it?—A. In my experience we combine hysteria and neurosis.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 23. James George Edwards, 20th December 1943, Re-examination.

Q. You are talking about both classes ?—A. Yes.

Q. But pure hysteria is practically confined to woman, isn't it ?—A. I have not a great experience in that line of medicine, I am afraid.

Q. I understand "hysteros"—the womb, in the olden days it was thought that the womb used to move around the body and produce this condition in women ?—A. Yes.

Re-examined.

Mr. CASSIDY : You were asked which way does pus track. That was a general question, you were asked if it would track a long way. Now let me take it in this case, if an abscess forms in the neck, which way does the pus track then ?—A. Usually to the closest point on the skin surface to the abscess cavity.

Q. And if there is an open wound in which way would the pus track ?—A. Through the wound.

Mr. SHAND : It would not be an abscess then.

Mr. CASSIDY : If you have pus around a foreign body in the neck, which way does the pus track if you have the open wound ?—A. It would discharge through the open wound.

Q. And then if you have pus collected around the body, an abscess in the neck, and the wound is closed temporarily, what would happen then, in your experience ?—A. You would expect it to travel along the wound, because that would be an area of less resistance.

Q. And then in a case like this if you had a piece of tube as long as you have seen in the exhibit, what class of an abscess would it be if an abscess formed, how big ?—A. It might only be enough to hold a teaspoonful of pus or it may hold a couple of tablespoons of pus.

Q. You have seen a number of foreign bodies, I think you have told us ?—A. Yes.

Q. The ones that are blunt, we have a blunt object here, and of that size, in your opinion could that move at all ?—A. No.

Q. You have brought with you, have you not, a number of X-rays of foreign bodies that you have seen ?—A. Yes.

Q. And they show various classes of foreign bodies that you have X-rayed, is that so ?—A. Yes.

Q. You told the jury on Friday that they did not move except in the case of a needle. What happens to these larger foreign bodies inside ?—A. If it is not infected it may stay in the body for years, if it is infected an abscess will form and later on the foreign body would have to be removed from the abscess.

Q. I don't think I put this question to you on Friday. The X-ray that you displayed to the jury, that was the X-ray of the neck, is that scientifically consistent. (Objected to.)

Q. That X-ray that you showed to the jury, what do you say as to its consistency with a story that there had been an eruption of a foreign body within five days before the X-ray was taken with gross swelling of the neck ?—A. Well, I would say to that that a person with gross swelling of the neck from inflammation would have pain and she would turn her head to the side of the tension rather than to the side away from it.

Q. Coming back to my question, what would you say as to the consistency of a story that she had gross swelling and eruption of the exhibit

through her neck on the 2nd October, and that X-ray picture that you see on the 7th October ?—A. I don't think that would be consistent with the history. You see, when they are taking an X-ray picture of the chest these country hospitals have not chest frames and the patient holds the plate to the chest like that (indicating), but with a swelling of the neck with the plate higher up I would expect the patient with a sore neck to be taken in that position (indicating).

Q. And you say that it is a perfectly normal neck ?—A. Yes.

His HONOR: Would you expect the head to be turned to the left and not to the right as it was in this case ?—A. Yes.

Mr. SHAND: I suppose you will agree that if you get a sudden discharge of an abscess you very often get a very quick decrease in inflammation and swelling ?—A. Yes.

Q. Some discharge, that is, with the matter coming out ?—A. Yes.

Q. You put to me like quinsey ?—A. Yes.

Q. There you get a big eruption and it goes down in a very short time ?—A. Yes.

Q. I want to put this to you for your consideration about turning to the left. You have expressed the opinion that a person with an inflamed neck on the left would tend more to turn her head that way ?—A. Yes.

Q. Would you disagree with this, that when you turn your head to the right you flex the sterno mastoid muscle, it becomes taut and the effect is, I suggest, that rather takes it off the under-surface, you raise it if you try ?—A. That would pull it closer to them.

Q. Do you think so ?—A. Yes.

Q. I suggest that the effect is rather to raise it ?—A. If you take a person with an ordinary stiff neck, they have a sub-acute inflammatory condition probably, down their muscles, and they always hold their neck on the side of the stiffness and if they tend to turn away from it it gives pain.

Q. That is in the muscle, isn't it ?—A. Yes.

Q. What I am putting to you is if you had an inflamed area under the muscles, not in the muscles——(Objected to.)

Q. What I was putting was this, that in distinction from the muscles which are sore or injured in some way you have an inflamed area underneath the muscles, then I was suggesting that if you turn your head to the right you can feel it yourself, that the sterno mastoid muscle tends rather to raise itself and would raise itself from that area of inflammation ?—A. It rather shortens itself, I don't think it raises itself, the other tissues may be themselves put forward a bit.

Q. In the case of an inflamed area, it might serve to give a certain amount of relief to turn the head the opposite way ?—A. No, I don't think so.

(Witness retired.)

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 24. Harold Seward Marsh, 20th December 1943, Examination.

No. 24.

EVIDENCE of Harold Seward Marsh.

Sworn : Examined : Deposed.

To Mr. CASSIDY : I am a legally qualified medical practitioner practising in Macquarie Street as a specialist in the diseases of the ear, nose and throat. I am a foundation member of a Fellow of the Royal Australian College of Surgeons. I was the honorary aural surgeon at Sydney Hospital for the last 30 years. I have now resigned. I have also been attached to St. Vincent's Hospital in the same capacity for a number of years, that is an honorary capacity. I have had long experience in regard to work connected with the neck and throat, the throat mainly.

Q. And you have done a good deal of work on the anatomy of the neck ?—A. Not the anatomy, surgery, when I was a resident at Sydney Hospital, not since.

Q. On the 30th October, 1939, did you attend at St. Luke's Hospital and see the Plaintiff ?—A. Yes.

Q. And was that after some conversation with Dr. Bell ?—A. Yes.

Q. What did you do ?—A. I examined her throat.

Q. Was that a careful examination ?—A. As careful an examination as I could make.

Q. At that time did you find any evidence of swelling, inflammation or anything of that nature ?—A. No.

Q. That is from the outside ?—A. Outside and inside.

Q. Did you look at the outside of the throat first ?—A. I looked at the outside.

Q. And then did you make an internal examination ?—A. Yes.

Q. How far could you see down the throat ?—A. I could see right down almost to the entrance of the food passage.

Q. Tell the jury what you discovered on examination —A. I found in the left tonsil two or three little pellets of cheesy material which was peeping out of the crypts of the tonsil on the left side.

Q. Did you discover any sign of ulceration or scarring or inflammation inside ?—A. There was none of that at all.

Q. We are told by her that she had pus, did you find any pus ?—A. There was no pus to be seen at any time.

Q. You described what you found as a cheesy material ?—A. That is so.

Q. Did you notice anything abnormal in any part of her mouth and throat ?—A. No.

Q. Just tell the jury what you did find about the tonsil ?—A. I have just told you what I found, it was simply this, these cheesy pellets peeping out of the crypts of the tonsil which are an indication of what we call chronic follicular tonsillitis, they are called follicles, crypts or lacuni.

Q. When you speak of chronic tonsillitis, what do you mean ?—A. This caseous or cheesy material sticks in the crypts of the tonsils for some considerable time and they might not give rise to much trouble except a little soreness at times, and sometimes they are extruded and it comes out and they have an unpleasant odour.

Q. Is that a condition frequently met with in tonsils that are not good ?—A. Yes.

Q. Was that condition present in one or both of the tonsils ?—A. I only saw the condition in the left tonsil then.

Q. What is this cheesy material ?—A. It consists of the dead white cells from the blood and dead cells which are thrown off from the mucous membrane of the crypts, also dead bacteria of various sorts, and it also contains a little cholestrin crystals and according to the books at times some hyaline material.

Q. Does that make an offensive odour for the breath ?—A. Yes.

Q. What would you say as to that being a common disorder or not ? —A. Yes, it is quite the common disorder.

Q. You might tell me this, you told us there were no signs of scarring or inflammation there, I want you to assume first of all that on the 2nd October the witness says that pus formed in her throat, that there was gross swelling and inflammation, and that an object of which Ex. "P", which you have in your hand, is a fair representation, erupted through her tonsil. You saw her on the 31st October. If that had occurred, in your opinion and from your experience would there have been evidence apparent then in the tonsil and in the throat ?—A. Definitely there would have been.

Q. You might tell us for an object like that to rupture through the tonsil would it necessitate an abscess ?—A. An abscess would certainly form.

Q. And would you give the jury an idea as to what the size of that abscess would be ?—A. It would be a big abscess, I would say about $1\frac{1}{2}$ inches or more in width, or perhaps more, it is very hard to say, but you would certainly have a large swelling there.

Q. If a tube like that, or anything like it, were rupturing through the tonsil could it be an immediate eruption through or what would be the position ?—A. It would take a considerable time to work through.

Q. Why ?—A. In order to get through it would have to go through by a process of ulceration and an abscess would definitely form around it and eventually in the course of time the ulceration would gradually work through to the throat.

Q. And would the patient have premonitory signs of it ?—A. There would be definite signs of it, there would be pain.

Q. And would it be apparent for some days ?—A. I would say it would be present for weeks at least, that is the acute condition.

Q. You have done a lot of tonsil surgery, I suppose, in your time ? —A. Yes.

Q. What would be the condition of the tonsil if something such as I have described, a tube like that, coming through with ulceration ?— A. It would be intensely inflamed and enlarged by inflammatory reaction, and there would be a lot of purulent material around it.

Q. And the tonsil itself, what would happen to that ?—A. It would slough where the tube went through.

Q. Would there be permanent evidence of that in the tonsil ?— A. Well, I should say there would be, at any rate for a long time.

Q. You saw the tonsil on the 31st October ?—A. Yes.

Q. Was there anything consistent with such a happening at that time ?—A. There was nothing whatsoever.

Q. You were present at the first trial, were you not ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 24. Harold Seward Marsh, 20th December 1943, Examination, *continued.*

Q. On that occasion was there any evidence given by Prof. Welsh of a punched-out hole in the tonsil sufficient to let that tube through ?—A. No.

Q. Was there any evidence from any medical man in the first trial of measurements of such a hole—— ?

Mr. SHAND : That is not suggested.

Mr. CASSIDY : Were you present when Dr. Poate made an examination in court of that tonsil ?—A. Yes.

Q. And you heard what Dr. Poate said and how he described it ?—A. Yes.

Q. Do you agree with that description that he then gave ? (Objected to.)

Q. What is your opinion of the evidence Dr. Poate gave ? (Objected to.)

His HONOR : What is your opinion of her throat at that time ?—A. I did not see her throat.

Mr. CASSIDY : Were you asked to examine it by the Plaintiff's counsel ? (Objected to.)

Q. You heard the description given of Dr. Poate's examination of her throat then ?—A. Yes.

Q. You examined her after that examination, did you not ?—A. In 1942 I did, not in 1941.

Q. Then did you examine that throat again last Saturday week ?—A. Yes.

Q. And that tonsil ?—A. Yes.

Q. I want to come to what you observed in 1942 ?—A. Well, there was a shallow opening which I considered to be, and I am sure was, the entrance of the supra tonsillar fossa or the supra tonsilla crypt, as you might call it, or supra tonsillar lacunar.

Q. What are these crypts in tonsils ?—A. They are little tubes which pass from the exterior of the tonsil right down to the capsule of the tonsil and there are 20 or 30 of them.

Q. Is the supra tonsillar fossa one of those well-known crypts ?—A. Well, it is called a crypt, it is really very much larger than an ordinary crypt.

Q. At that time what would you say was the extent of that superficial opening ?—A. I should think about one quarter inch.

Q. Was that diameter ?—A. Yes.

Q. You did not see it on the first occasion, but you heard Dr. Poate's description of what was there ?—A. Yes.

Q. On that second occasion had Dr. Thompson given evidence that he had been putting a probe into the throat ?—A. I was not there when he gave evidence.

Q. I want to read to you what Dr. Thompson says : " Q. How many examinations did you make ?—A. Since that time I have made several examinations, I suppose half a dozen. Q. When you first examined the tonsil what did you see ?—A. Nearly at the upper end of the left tonsil there was a punched-out canal. It was a quarter of an inch in diameter and three-quarters of an inch long going down to the pharyngeal wall through the tonsil. I ascertained the length with a probe and glass.

I have the glasses I used. I used this afterwards, after I got the length of the probe, this is the probe I used. I used these (indicating) to see what the diameter was, to see what I could get in. I put them in, all three. The bent end went in, they went up to the hilt three-quarter inches." You might tell us, if you are wanting to push a tube into a tonsil that has not been extracted, is the tonsil somewhat responsive to it in certain places ?—A. I don't get what you mean.

Q. The tonsil, you say, has certain crypts in it ?—A. Yes.

Q. What happens if you put a glass tube in ?—A. Of this size into the crypt ?

Q. Yes ?—A. I would say that the patient would object to it very strongly.

Q. Has the tonsil give in it ? (Objected to.)

Q. Supposing you put a glass in, what is the effect ?—A. The effect of putting a glass of this nature into the tube ?

Q. No, into the tonsil ?—A. You cannot get it into the tonsil at all.

Q. That glass tube, did you ever hear of anything like that being mentioned before Dr. Thompson gave evidence in one of the trials ?—A. No.

Q. Never heard it mentioned ?—A. No.

Q. What was the first time you saw any glass tube produced ?—A. Here, now; that is the first time I have seen it.

Q. You might tell me this, at the time you saw the throat or the tonsil was there any hole into which those tubes would go ?—A. No, there was only the mouth of the supra tonsillar fossa.

Q. I want to come next to this, you had an examination on Saturday week last ?—A. Yes.

Q. On that occasion did you ask Dr. Thompson to put a probe into the tonsil ?—A. I did.

Q. Into what he called the hole ?—A. Yes, what I call the entrance to the fossa.

Q. Where did he put it ?—A. He put it into the entrance of the fossa.

Q. Have you got the thing that he had ?—A. Yes (produced).

Q. Was he asked in the presence of yourself, Dr. Poate, Dr. Steele, to insert that into the tonsil ?—A. Yes.

Q. Did he do so ?—A. He did so.

Q. Did he have any difficulty ?—A. A fair amount.

Q. Where did he put that probe ?—A. He put the probe into the entrance of the supra tonsillar fossa.

Q. And how far did it go ?—A. One quarter inch.

Mr. SHAND: If that is the evidence we will have to have it done before the jury.

Mr. CASSIDY: That is the position, both sides want it done.

Q. I want you to read some evidence that Dr. Thompson gave—"There was some suggestion of crypts by my friend ?—I have never seen such a crypt in my life, they were all small things, I have never heard or read or seen such a thing and I have seen a few thousand tonsils in my time, I suppose, it is an absurd suggestion." Now doctor, have you an illustration here in one of the recognised books on tonsil surgery of a tonsil ?

Mr. SHAND: Is the doctor sugesting that this is a crypt ?—A. It is called a crypt, I think it is better to call it a supra tonsillar fossa because a number of crypts enter it and there are altogether 20 or 30.

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Mr. CASSIDY: I think you have referred to it in both trials that way?—A. Yes.

Q. So we will have no doubt about this, have you brought a tonsil along?—A. Yes. (Tonsils produced.)

Q. First of all before I proceed with this illustration I want to ask you what do you say to that expression of Dr. Thompson's: "I have never heard of or seen such a thing and I have seen a few thousand tonsils in my life, this is an absurd suggestion"?—A. I don't understand him at all, I think he is absolutely wrong.

Q. I show you page 24 of "Fowler on Tonsil Surgery." Is that one of the recognised textbooks, a recognised authority on tonsil surgery?—A. Yes.

Q. And is that a diagram of a tonsil?—A. Yes.

Q. And is that designed to show the supra tonsillar fossa?—A. It is designed to show the anatomy of the whole tonsil including the supra tonsillar fossa.

Q. That is enlarged, is it?—A. Yes, it is an enlargement.

Q. How would it compare for size?—A. That is regarded as the normal size.

Q. Would you show the jury what you refer to?—A. It is not designed to show crypts, only to show the supra tonsillar fossa and the general anatomy of the tonsil. That is the supra tonsillar fossa (indicating).

Q. Will you get your little exhibit out of your bottle? (Produced.)—A. That is the opening of the supra tonsillar fossa (indicating).

Q. You heard some evidence given of strands in the supra tonsillar fossa? A. Correct.

Q. Is there a strand across it?—A. There is a strand there, you can see it going across the mouth of the supra tonsillar fossa. The supra tonsillar fossa is a sort of an oblique opening with strands of tissue going across.

Q. Is there anything uncommon in strands occurring?—A. You often see one strand, not so common to see two, and I don't recollect having seen three.

Q. And the tonsils in the same body vary with regard to the area of the supra tonsillar fossa?—A. Yes. Here is the companion, here there is no definite supra tonsillar fossa opening at all, and of those there are little openings that are also crypts.

Q. Is there any doubt that what was shown by Dr. Thompson was the supra tonsillar fossa?—A. In my opinion there was no doubt at all, I could see it.

His HONOR: Are those life-size tonsils?—A. Yes, they are tonsils I removed some months ago, they are somewhat bigger than usual, but they have shrunk down being in formalin.

Mr. CASSIDY: Doesn't the size of the supra tonsillar fossa vary with the health or condition of the tonsil?—A. Yes.

Q. Will you tell the jury what occasions that?—A. What happens is this, in a case of chronic follicular tonsillitis where these cheesy masses are formed they form in the depths of the tonsil right close to the capsule, and in the course of months they come to the surface, if there are a number of these. Of course, there are a number of crypts that open into the supra tonsillar fossa and these things eventually find their way into the

fossa and gradually work their way to the surface accumulating as they come until finally you will see a large piece of this cheesy material, probably the size of a large pea, just peeping in the mouth of the supra tonsillar fossa and eventually perhaps, during the act of deglutition, swallowing, these pieces will come out and be swallowed in the food, and then if you see such a thing you will see that the mouth of the supra tonsillar fossa is quite big, much bigger than it was originally.

Q. Have you had the experience of these cheesy things getting stony, calcified ?—A. If a cheesy pellet stays in the tonsil long enough it may turn into a calculus which consists of cholestrin crystals.

Q. What is the effect when either that stony part or more commonly the cheesy part is extruded, what is the condition of the supra tonsillar fossa then ?—A. Well, after the extrusion occurs, the fossa begins to contract down again and gets down to its normal size.

Q. But after extrusion will it be a wide opening there ?—A. Yes, quite a wide opening.

Q. When you saw the patient in August 1942, what was the condition of the opening then ?—A. There was quite a wide opening.

Q. How would you describe that, superficial or otherwise ?—A. It was just a superficial shallow opening.

Q. How would it compare with the opening in the tonsil ?—A. The one I have here—it is very much bigger.

Q. When you saw the patient on the Saturday week last what was the position then ?—A. The position was that it was very much the same as the tonsil I have shown here, only not so big, the oblique opening was not as big, there was one strand.

Q. What was the condition of the tonsils and of the throat at that time ?—A. When I saw it last Saturday week ?

Q. Yes ?—A. There was, with a little gentle pressure, a considerable exudation of purulent material from the crypts.

Q. Did you try that yourself ?—A. Yes, I gently pressed it.

Q. And where was that, from one or both tonsils ?—A. Both tonsils.

Q. And how would you describe her condition then ?—A. I would say that she simply had chronic septic tonsils.

Q. And how does that compare with the condition you saw in October, 1939 ?—A. There was no pus at that time, merely cheesy material.

Q. How would you describe the condition of October, 1939 ?—A. Chronic follicular tonsillitis or chronic lacunar tonsillitis, they are synonymous.

Q. What was the condition last Saturday week ?—A. There was no cheesy material at all, the condition has advanced and the cheesy material in the crypts have set up ulcerative processes with the formation of pus.

Q. Does that apply to one tonsil or both ?—A. Both tonsils now.

Q. And in your opinion has the condition of the tonsils become worse than when you saw them in October, 1939 ?—A. Definitely.

Q. And does that apply to both ?—A. Yes.

Q. You know Logan Turner's book, "Diseases of the Nose, Throat and Ear" ?—A. Yes.

Q. I want to read you this passage on chronic lacunar tonsillitis (p. 132) "Chronic lacunar tonsillitis is only met with in adults and results from repeated attacks of acute lacunar tonsillitis. Cheesy matter collects in the crypts of the tonsils and can frequently be expressed as white particles

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which have a very offensive smell and taste. The whole tonsil may be riddled with such collections and some of the cheesy matter may accumulate in the supra tonsillar fossa." Is that right ?—A. Correct.

Q. Have you had experience of these stones being taken out of the supra tonsillar fossa ?—A. Calculi, no, I cannot say I have.

Q. Have you read of them ?—A. I have read about them, I have seen one only taken out of a tonsil in my life, it was not my own.

Mr. CASSIDY : I want to come to the area immediately behind the tonsil. I want you to assume that it is being put that a tube of the nature you have seen, Ex. " P ", is supposed to have erupted through the tonsil. Will you tell the jury what is the position as to blood vessels around the tonsil ?—A. Well, the tonsil is very well supplied with blood vessels, and outside it are a number of veins and arteries in quite close proximity to the tonsil. You can see them beating when you take the tonsil out.

Q. In removing the tonsil what is one of the things you have got to watch ?—A. Well, the chief thing, of course, is hæmorrhage.

Q. It is accompanied by a lot of bleeding ?—A. Yes, if you are not careful you may get a lot of bleeding.

Q. Immediately before you get into the tonsil, does that red illustrate the muscle area (indicating) ?—A. Yes.

Q. Has that muscle area got to be penetrated by the body that is supposed to come through ?—A. Yes. (Shown to jury.)

Q. Behind that, does that illustrate some of the blood vessels that you have got ?—A. Yes, arteries on this side and veins on the other. That is diagrammatic.

Q. Will you tell the jury what those blood vessels are and the importance of them ?—A. Well, the importance is this, that if anything goes wrong through there it is liable to ulcerate through these blood vessels, the arteries here and these veins here (indicating).

Q. What happens to them ?—A. Well, if you get an ulceration through these blood vessels and you get a very big hæmorrhage and you are liable to bleed to death.

Q. Give us the names of those blood vessels ?—A. The internal carotid, the external carotid, the ascending pharyngeal and the internal carotid. Of course that is a fair distance away. That is the ascending pharyngeal and this is the descending pharyngeal up here (indicating). The veins are all very much the same. Where you have the arteries, there are the same veins.

Q. Will you tell the jury how close they are lying to the tonsils ?—A. Well, I should think they are at least half an inch off. When you take the tonsils out you can see them pulsating.

Q. And do they form there a kind of network ?—A. Yes. Well, you don't see these things when you take the tonsil out.

Q. Well, from your anatomy ?—A. Yes, a kind of network. You get various vessels and veins going into the tonsil. You don't see these when you take the tonsil out ; they are outside.

Q. Assuming an object such as you have there, such as you have already been shown—that is Ex. " P "—in your opinion could that object get through that area, could it suppurate through that area without destroying arteries ?—A. Well, I think for that to go through the tissues there outside the tonsil, it would certainly give rise to hæmorrhage.

His HONOR: And what would be the result of the hæmorrhage? A. Well, it would be death unless the patient could be immediately got at and the arteries in the neck tied. The external carotid would have to be tied.

Q. What kind of attention would they have to get?—A. Hospital and anæsthetic, and the tying of the external carotid.

Q. Assuming that a tube of that size, or of two-inch size, is put in the right-hand side of the neck, in your opinion could it first of all get across into the left-hand side?—A. I say it is impossible.

Q. Will you tell the jury why?—A. Well——(Objected to.)

Mr. SHAND: Is this from experience?—A. I was in the Sydney Hospital for six years and the theatre for three years watching every kind of operation under the sun.

Mr. CASSIDY: You say it is impossible?—A. I say it is impossible because in the first place this tube is not a rigid body, it is apparently a quarter of an inch in width, and it is cut off there at the ends. Therefore, not being solid and not being sharp, it has a tendency to stay where it is put. I think that if a tube like that was left in the cavity where the thyroid is removed, it would stay there and either form a sinus, or if that was closed it would certainly form a deep-seated abscess and if it were opened I think you would find the tube in the middle of the abscess cavity.

Q. In your opinion would a body of that nature move at all?—A. I do not think it would. In my opinion it would not move.

Q. Now I want you to make an assumption, if you will. Your opinion is that it cannot move. I want you to make an assumption, if it tried to move across from the right to get to the left-hand side of the neck—first of all, what do you say as to that?—A. Well, if you say it is an assumption, I quite agree with that, and if it went to the other side it would have to find its way down the neck, and in the depths of the neck it would be in close proximity to the arteries and veins, and in its course it would come from a septic cavity and if it shifted from the cavity in which it was placed it would set up inflammatory and suppurative processes as it passed down and these processes must be seen by the surgeon in charge, and he would definitely open it to see what was the matter there.

Q. Now, take the front of the neck. First of all could it go behind the trachea?—A. It would impinge against the œsophagus, the food passage, and that we know is a most dangerous organ for inflammatory processes. It would eventually perforate if it was for any time in close contact with the trachea. This inflammation would spread down into the chest, down into the mediostinum cavity and cause mediostinitis. The mediostinum cavity is a space in between the heart and lungs on one side and the lungs on the other.

Q. What is the result of that?—A. Death.

Q. Now take across the front of the neck?—A. If it went in front it would hardly get through the trachea because that is a very hard object. If it did get through the trachea the patient would have a choking fit. I don't think that is possible. If it went in front of the trachea it is in a superficial area where the inflammatory area would be seen, and something would have to be done to it.

Q. If the pus were sufficient to carry it across the front of the trachea what kind of abscess would you have?—A. I would say you would have a large abscess.

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Q. And in your opinion could any person or nurse or patient miss seeing it?—A. No, they could not miss seeing it.

Q. Now the next position—If it comes across, in your opinion what do you say as to the possibility of this thing tracking up the neck?—A. Well, it would have to come up against the law of gravity. It would pass up the neck, if it got that far, just in the same way as on the right side, by a process of suppuration and inflammation.

Q. What does suppuration and inflammation mean qua the tissues?—A. Well, it is due to microbic inflammation. The effect of that on the tissues is swelling and redness and pain and temperature.

Q. If a body could travel, what must surround it, or must it have a cavity?—A. It would have to be in the middle of a cavity or in the middle of a collection of pus.

Q. Supposing that suppuration does go on to form a path, what happens to the tissue that suppurates away?—A. Well, of course it does—necrosis.

Q. That means destruction, doesn't it?—A. Yes, necrosis is destruction.

Q. And what replaces it?—A. Granulated tissue.

Q. Is that fibrous tissue?—A. Well, it eventually becomes fibrous.

Q. And what would be the effect of that on the neck as to movements?

A. Do you mean in the neck here (indicating).

Q. Yes,—A. Well, there would be definite alteration or obstruction and difficulty of movement.

Q. And would there be permanent loss of elasticity—in the neck?—A. Well, of course the parts that were destroyed would not be regenerated and there would be likely to be definitely a difficulty in the movement in the muscles of the neck.

Q. And would that persist?—A. I should say so.

Q. Still asking you to proceed on an assumption only—you say it is impossible. (Objected to.)

Q. I think you said yourself that the whole thing is based on—— (Objected to.)

His HONOR: Put it "What is your opinion?"

Mr. CASSIDY: What is your opinion as to the movement of this body at all?—A. I say it could not move.

Q. Now, I am coming back to the neck again. Did you see Dr. Edye measure the distance from where the tube was inserted to the tonsil?—A. Yes.

Q. Assume for the moment that that is $5\frac{1}{2}$ inches—did you check up what he measured?—A. I saw him measure it.

Q. What distance was it? Did you notice it?—A. He measured from the tip of the tonsil to the thyroid, and that was $3\frac{1}{2}$ inches, and from the lowest portion of the isthmus $5\frac{1}{2}$ inches.

Mr. SHAND: When was that?

His HONOR: That was last Saturday week.

Mr. SHAND: That was to the ear, wasn't it?—A. From the tonsil to the lower end of the thyroid—the lowest portion of the thyroid.

Q. How was the tip of the thyroid found—how did he find that?—A. Dr. Edye will explain that to you. (Objected to by Mr. Shand.)

Mr. CASSIDY : He made two measurements ?—A. Yes.

Q. One $5\frac{1}{2}$ inches——(Objected to—pressed.)

Q. You saw the measurement ?—A. I did not do it myself. I saw Dr Edye do it.

Q. How would you describe the Plaintiff's neck—short or long ? —A. She has a long neck.

Q. And the measurements that Dr. Edye took from the lowest point to the other point, would they in your opinion be from the lowest point of the thyroid to the tonsil ?—A. Yes, they appear to be.

Q. What were they ?—A. $5\frac{1}{2}$ inches from the lowest point of the isthmus to the tonsil, and from the thyroid to the tip $3\frac{1}{2}$ inches.

Q. Supposing that the tube got round to the left—in travelling that distance would you tell the jury first of all the general track it would have to take to come out through the tonsil. First of all the general track. Could it go straight up to the tonsil ?—A. It would go up in the region of the blood vessels and it would form these areas of suppuration, and still assuming that it goes up it would eventually reach the tonsil.

Q. Take the going up part first of all. What is the position as to blood vessels and other structures ?—A. Well, it would be in close proximity to the blood vessels in the neck.

Q. Are there any other structures ?—A. The nerves, the arteries, and the veins—the vagus nerve.

Q. Muscles ?—A. Yes.

Q. Which ones are they ?—A. The sterno mastoid.

Q. In your opinion is it possible for Ex. "P" or a tube 2 inches in length or anything of which that is a fair representation, to travel up the neck first of all ?—A. This (indicating) ?

Q. Yes.—A. Well, with these wires in it it could not travel at all.

Q. Well, without the wires in it ?—A. Well, without the wires I don't think it could travel, but assuming it does go up, it would be what I said. It would go up by a process of suppuration and she would have to be operated on, and if she was not operated on she would die.

Q. Now, going up the neck, what course must it take to get to the tonsil ?—A. Well, it would have to go right up the neck here (indicating) and get in behind the tonsil through the blood vessels and enter the tonsil.

Q. Now, what would that mean as to the direction that the tube would have to take ?—A. It would have to go in at right angles to the neck. That is what I would say.

His HONOR : It would have to change its direction left ?—A. It would have to change its direction to get into the tonsil.

Mr. CASSIDY : And what do you say to that proposition ?—A. Well, I say again it is impossible.

Q. Are there muscles there that would have to be pierced ?—A. It would not be so much the muscles there because it would go up the plane of the neck where the vessels are, but when it got up in the region of the tonsil it would have to go through a muscular region then (indicating).

Q. What muscular region is that ?—A. The muscles of the neck, the palato-pharyngeus are the principal ones.

Q. How do the surgeons regard infection of the neck ?—A. I don't quite know what you mean.

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Q. If you get serious infection of the neck, what is the surgical view of it. Is it a serious matter ?—A. Well, the surgical view of course is that it is serious, the reason being that the inflammatory spread may go down into the mediostinum. As I said before that is the principal danger.

Q. What do you say as to the direction pus will travel when it is in the neck ?—A. It will travel downwards; it will travel anywhere; it will travel around. Of course if it is a big abscess cavity, by gravity it would naturally tend to go downwards.

Q. Now, in the neck, if you have suppuration and inflammation in the thyroid—a serious heavy infection, a large body infected—can that pus easily get to the mediostinum, as you call it ?—A. From the region of the thyroid ?

Q. Yes.—A. Oh yes, it could easily get down there.

Q. When you saw the Plaintiff in St Luke's in October 1939, did you see any limitation in the movements of her back ?—A. No.

Q. Was there anything at all that you could see in the condition of the tonsil consistent with this story that a tube had ulcerated through the tonsil ?—A. No.

Q. Now I want to come to the palatal muscles. Did you examine them ?—A. I saw them. You mean the palate ?

Q. Yes. If there had been an eruption of a tube through the tonsil, would you have expected some interference with those muscles ?—A. It is possible. That is all I can say.

Q. Was there any interference observable to these palatal muscles ?

A. None.

Q. How would it have affected them had there been such eruption ? (Objected to.)

Q. Would you have expected it ? (Objected to; question withdrawn.)

Q. You did examine the palatal muscles ?—A. In examining the throat I did see the palatal muscles, and they were all right.

His HONOR: Nothing wrong with them ?—A. No, sir.

Mr. CASSIDY: Do you remember in the first trial Dr. Poate examining the tonsil in court ?—A. Yes.

Q. I want you to assume for the moment that he gave the evidence that there were three strands of tissue observable across the crypt—the supra tonsillar fossa ?—A. Yes.

Q. Had a tube——(Objected to; pressed.)

Q. That is so, isn't it ? That is what you swore at the very commencement of your evidence ?—A. Yes.

Q. And there were four people present—three other doctors present besides yourself ?—A. Was this just recently ?

His HONOR: Last Saturday week. It is page 196.

Mr. CASSIDY: The evidence is :—

"Q. I suppose if I gave you the facilities, a torch and the proper thing for looking into a throat you could look at the tonsil of this lady in Court and tell the jury what it looks like ?—A. Yes. (Witness examines Plaintiff's throat.)

Q. Now, will you tell the jury what you see ?—A. The patient has some granulation at the back of the throat, evidence of what we call a chronic pharyngitis, she has some deep niches in the tonsils

on either side, the tonsils what we term a little ragged as a result of low grade infective tonsillitis.

Q. Will you agree with this, that this is a fair description of what you saw, the superior aspect—that is the top of the left tonsil—that is the place, is it ?—A. They are both much about the same.

Q. It is between the tonsil and the arch of the soft palate, isn't it ?—A. What is ?

Q. In the superior aspect of the left tonsil between the arch of the tonsil and the soft palate you will find a depression. Will you agree there is a depression there ?—A. Yes.

Q. And bridging over the depression are strands of tissue tending to go upwards and downwards ?—A. Yes.

Q. Now, will you agree that here is evidence of scarring in the depression ?—A. No. I take it as evidence of a chronic infection in the crypt of the tonsils, the same appearance occurs on the other side.

Q. There is no bridging over the depression on the right tonsil ?—A. Yes, but it varies with the individual human beings and the extent of the trouble that they get there, the appearance of the tonsils.

* * * * *

Q. What I suggest is this, when you look at the left tonsil it is perfectly obvious there is a depression there ?—A. Yes.

Q. And over that there are fibres there, two at least of what I would call bridges of tissue ?—A. Yes.

Q. And on the other right tonsil there is no such similarity at all ?—A. They are very similar but they are not the same mirror picture.

Q. Will you dispute that on the left tonsil from what you can see it is perfectly consistent with having broken out there at that point ?—A. Something that was in the tonsil.

Q. There is evidence of sloughing there ?—A. No, I would not say that.

Q. At some time or other ?—A. No, there would be more scarring and deformity.

Q. The scarring comes down a little over the bridge of the depression ?—A. You see that in thousands of throats, there is nothing there——

Q. Supposing the woman has never had any condition at all excepting after the incident described, the foreign body coming out of the throat ?—A. Yes.

* * * * *

Q. On the assumption that on the 2nd October 1939 a foreign body was ejected from that region, is the condition of the throat consistent with that ?—A. I would say no.

Q. Although you agree that there are those two bridges of tissue ?—A. Yes.

Q. And there is a depression at the back ?—A. Yes.

Q. And you say that that is consistent with tonsillitis ?—A. Chronic tonsillitis.

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Q. Will you agree that it is consistent with discharge of an abscess ?—A. I cannot say one way or the other as regards that.

Q. Well, it might be ?—A. I don't think it is.

Q. Will you say that it is a possibility ?—A. Yes, a very remote possibility."

Now, on page 205, this is Mr. Hardwick cross-examining on this matter again :—

" Q. At this very moment on the left tonsil you can see there has been a hole there, will you agree with that ?—A. In the tonsil there are many holes in both tonsils.

Q. I don't mean a natural hole, I mean a hole caused by something coming through the tonsil ?—A. I would not say coming through the tonsil, I would say coming out of the tonsil, yes."

Is that supra tonsillar fossa a crypt that comes out of the tonsil ?—A. A crypt ? I call it a fossa.

Q. You call it a fossa ?—A. Yes.

Q. Now assume for the moment that Dr. Poate is right when he says that he saw the strands there. If a body—a tube—had erupted through the supra tonsillar fossa, what would it have done to those strands had they been there ?—A. It would have ruptured them.

(Short adjournment.)

Mr. CASSIDY : You remember that you told me that those tonsils showed some pus, did they ?—A. Yes.

Q. Could you give just an idea of what amount ?—A. Yes ; only a few drops. I don't suppose more than about 10 or 15 drops.

Q. And was that from each tonsil ?—A. Yes.

Q. Seeing the condition of the tonsil to-day, assume that the body that we have been speaking of—Ex. " P "— had erupted through, is the condition of the tonsil to-day consistent or inconsistent with that body having erupted through there ?—A. Consistent or inconsistent ?

Q. Which is it—consistent or inconsistent with any body having erupted through ?—A. Inconsistent.

Q. And so far as injury is concerned, would the injury be to the whole of the tonsil in your opinion ?—A. Would the injury involve the whole of the tonsil ?

Q. Yes ?—A. Well, it was only a quarter-inch tube. I think it would more than likely involve the upper part of the tonsil. It all depends where it went through.

(Mr. Cassidy tendered the probe and the tonsils.)

Q. That is Dr. Thompson's probe, isn't it ?—A. Yes.

Mr. SHAND : Is that the one that was used on Saturday week (indicating) ?—A. No, that was used by Dr. Thompson (indicating.)

Mr. CASSIDY : That one you just produced—is that Dr. Thompson's or yours (indicating) ?—A. That is mine.

Q. But that (indicating) was the one that was used by Dr. Thompson ?—A. Yes, on the Saturday.

Q. Now, about the tonsils—are they in formalin ?—A. No, they are not in formalin. They will last a day or two. They can be put in formalin. I will put them in formalin.

(Probe and tonsils, Exhibit 10.)

Cross-examined.

Mr. SHAND : On Saturday week you first of all endeavoured to use the probe, and you were unsuccessful ?—A. I was not unsuccessful. I passed it in ; I passed it into the supra tonsillar fossa.

Q. How far ?—A. A quarter of an inch.

Q. You asked Dr. Thompson to do it ?—A. I asked Dr. Thompson to show us where he put it in.

Q. He bent the probe at right angles ?—A. Yes, he bent that little thing at right angles (indicating). I think it had a curve, and he bent it a little bit more.

Q. When he put it in—that is how he put it in, didn't he (indicating) ? —A. Yes, something like that.

Q. Now, as the name indicates, the supra tonsillar fossa is at the back (indicating). But what I am putting to you is that the probe was not put into the supra tonsillar fossa at all, but into the tonsil itself. What do you say as to that ?—A. I say it is not true. I saw it go into the supra tonsillar fossa.

Q. Will you swear that the supra tonsillar fossa is there still and had not been eaten away ?—A. I say it is still in the patient yet.

Q. Would you swear that it is still there ?—A. Well, I saw the probe go in——

Q. Will you swear that it is still there and had not been eaten away ? A. You could only tell that by opening up. What I am telling you is that I put it in there.

Q. Now, the supra tonsillar fossa is over the tonsil itself, isn't it ?— A. Yes. Not over it—it is superior.

Q. That is what I am putting to you. I am putting to you that the probe went into the tonsil itself like that (indicating) ?—A. That is not a good picture at all.

Q. Well, does that give you an idea. It went in in that direction (indicating) ?—A. Well, if it went in there it might have gone into a crypt, that is all, but that picture shows you nothing.

Q. But to go into the supra tonsillar fossa instead of being put in that way as you put it in, it would have to be put into the top ?—A. Well, you can put it in any way you like. You can put it in that way, or that way, or that way (indicating).

Q. Will you indicate to show these gentlemen that in the supra tonsillar fossa, you can put it in that way ?—A. I can show you with my tonsil if you like.

Q. You see what I am putting to you ?—A. You have got to get that in horizontally.

Q. I suggest that you have to put it in from the top—downwards ?— A. Well, all right, I will show it to you.

Mr. CASSIDY : You say that you have got to put it in downwards ?

Mr. SHAND : Yes.

Mr. CASSIDY : From above ?

Mr. SHAND : Yes, from above.

Q. You will agree that there is a most definite distinction between a crypt and the supra tonsillar fossa ?—A. A crypt is separate from a supra tonsillar fossa, definitely.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 24.
Harold Seward Marsh, 20th December 1943, Cross-examination, *continued.*

Q. You started off by suggesting that they are more or less the same?—A. No, I did not. I said this, that the supra tonsillar fossa is sometimes called the supra tonsillar crypt which, I think, is a bad name because there are several crypts in the supra tonsillar fossa.

Q. Can you point to any authority whatsoever that gives the term supra tonsillar crypt—any authority?—A. I think Logan Turner calls it a crypt, doesn't he? I am not sure, but it is called the supra tonsillar fossa, but the later term is a supra lacuna.

Q. Will you agree that in none of the first two trials did you so much as mention the supra tonsillar fossa?—A. No.

Q. That is correct, is it?—A. Yes. I don't think I did. It is a long time ago——(Objected to.)

Q. And all you referred to was crypts and the only time you mentioned, even in the third trial, the supra tonsillar fossa, was on page 172 where you were asked "Why did you want to give something different before," and you said "This cavity could be caused by an ulceration, as I said in my previous evidence, but it is also possible to get a tonsil with that cavity in it, and with nothing the matter with it because that is the supra tonsillar fossa." It is the opening of the supra tonsillar fossa.

Q. That is the only evidence you gave of it.

Mr. CASSIDY: That ought to be corrected. At page 451 of the second trial he said this——

Mr. SHAND: I will read it:—

> "This condition which I point out was of the nature of a lacuna tonsillitis. In the course of time these little cheesy masses plus others have formed, and have made a kind of mass which is really in the region of the supra tonsillar fossa, and this mass when coming away would leave a shallow cavity which is really the entrance in my opinion of this so-called supra tonsillar fossa. This little cavity is bridged across by a single strand of tonsillar tissue."

Now, do you say that this is the natural supra tonsillar fossa or whether it is something brought about by some set of circumstances?—A. I say it is the natural supra tonsillar fossa.

Q. That is what you say it is?—A. Yes.

Q. But what you swore before was that it was near the supra tonsillar fossa——(Objected to.)?—A. No, I certainly never said that.

Q. It was near that—"And is really in the region of the supra tonsillar fossa." Just listen to this—just the ordinary entrance. This is on page 451—"And this mass, when coming away, would leave a shallow cavity which is really the entrance in my opinion of this so-called supra tonsillar fossa." A mass has come away?—A. That is exactly what I said.

Q. Some mass has come away?—A. What I said before—it was a mass of this cheesy substance which works its way to the surface of the supra tonsillar fossa, and leaves a shallow depression there.

Q. This is what you said at page 171 of the first trial:—

> "I examined her there, her throat and her larynx. As far as the throat was concerned I saw, or rather there was nothing to see except a slight degree of what we call lacuna, that is to say a couple of small pellets which occur in this disease, that was on the tonsil. There was nothing else pathologically I could see there in the

throat. There was no disease that I could see or any evidence of disease except what I have stated, that is a slight tonsillar infection, that is what is commonly called tonsillitis in a mild form. That might affect the breath."

That is your description of it ?—A. That is what I saw in 1939, and since then, not so long after that, she had an acute tonsillitis.

(Remaining portion of answer objected to and directed to be struck out by His Honor.)

Mr. SHAND : Now, I want to know what the position is here when you speak about lacuna or vassicular tonsillitis or the yellow pellets—was that in one tonsil or in both ?—A. The first time I saw her ?

Q. Yes ?—A. It was only on the left side.

Q. But did you examine the right side ?—A. Yes.

Q. That was on the first occasion ?—A. Yes.

Q. And there was nothing wrong there at all ?—A. No.

Q. Did you swear this on the third trial ? You say at the first examination you examined both tonsils but only found these pellets on the left side ?—A. Yes.

Q. Is this the evidence you gave on the first trial ? You were asked first of all about the examination on the 31st October 1939. This is on page 167. You described what you saw. You went on to say that you made an internal examination and you were asked what you noticed and then you mentioned these pellets, and you were asked this :—

" Q. Did you notice anything abnormal in any part of her mouth or throat at all ?—A. Yes. The tonsil itself was the seat of what we call a chronic lacuna, or vassicular tonsillitis, showing small yellow pellets of which I could see two sticking out the entrance of both ducts in the tonsil.

Q. Would that be on one or both tonsils ?—A. As far as I remember they were in both, but I am not quite certain about the other side."

A. I don't remember seeing them in the right side. Are you sure that is there ? I could not see any in the right side.

Q. Well, why did you swear that they were in both if you could see none ?—A. I don't remember saying that.

Q. Well, that is what you swore. What is the reason for it ?—A. No reason at all.

Q. How did you come to swear : " As far as I remember they were in both " ?—A. I do not remember saying that.

Q. How did you come to swear that ?—A. I do not think I said it.

Q. You are suggesting that the notes are wrong ?—A. All I could see was the pellets in the left side only. They may have been in the right but I did not see them.

Q. If you said that, it was most careless ?—A. I don't say it was careless, I do not remember seeing them. They may have been there for all I know.

Q. " So far as I remember they were in both." How did you come to say that ?—A. It was long after I saw her. I saw her in 1939. I think the first court case was 1941, over two years after.

Q. You mean as a matter of recollection now ?—A. Apparently.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 24. Harold Seward Marsh, 20th December 1943, Cross-examination, *continued.*

Q. Your memory has changed. You can remember that you did not see anything in the right-hand side ?—A. I cannot remember seeing anything in the right-hand side.

Q. Is your memory good or bad ?—A. Pretty good.

Q. After you examined her the second time, will you agree that you saw a hole in the tonsil which was consistent with an abscess having burst ?—A. No, I do not say it was consistent with that.

Q. Will you admit that was the effect ?—A. No.

Q. But what you saw on the second examination was consistent with an abscess having burst ?—A. No, it is not consistent with an abscess having burst. The abscess does not discharge through an enormous hole or a hole a quarter of an inch wide. It discharges through a small opening.

Q. How big was the opening ?—A. A quarter of an inch.

Q. Could you get the blunt end of a lead pencil into it ?—A. About that size.

Q. You could not get that into the supra tonsillar fossa ?—A. Into the opening, but not right into the fossa.

Q. Did you measure the depth of this hole ?—A. I did not.

Q. Why not ?—A. I did not think it was necessary.

Q. You cannot measure it with your eye ?—A. No.

Q. How do you know the depth of this hole ?—A. It was only shallow. I could see it.

Q. How far could you see ? How shallow was it ?—A. A shallow opening.

Q. What depth ?—A. In the matter of inches, I should say not more than one-eighth or one-tenth I should say.

Q. Did you try to put a probe in ?—A. No, I did not think it was necessary.

Q. The second trial was on. You, a doctor, knew it was alleged that something had burst through the tonsil ?—A. Yes.

Q. And you did not see fit to put any probe or instrument into the hole ?—A. That is so.

Q. Did it not occur to you ?—A. Yes, but I did not think it was necessary. I know the anatomy of the tonsil and where the supra tonsillar fossa goes and I have seen any amount of those before.

Q. It would have been wide enough to have allowed a tube to go through like you have in front of you ?—A. No, it was only a shallow opening.

Q. But the depth of it ?—A. It was about a quarter of an inch.

Q. It would allow a tube to fit in ?—A. Assuming the shallow hole was a tube it would be quite right, but I say it was only a shallow opening.

Q. About the same size as the end of the tube ?—A. Yes.

Q. Will you agree that what you saw on that examination indicated that some of the tissues about that area had been destroyed ?—A. Ulcerated, yes.

Q. An abscess destroys tissues ?—A. No, I say it is a mass.

Q. What I ask is, an abscess destroys tissues ?—A. Yes, quite so.

Q. When you examined this lady at the hospital the first time, did you ask her any questions ?—A. No.

Q. Did not you ask where the tube was supposed to have come through ?—A. I did not ask her any questions at all, nothing at all. I was only asked to examine her throat and I did so.

Q. Were not you asked a little more than that ?—A. Not necessarily.

Q. What did Dr. Bell tell you ?—A. He just asked me to examine her throat.

Q. Did he speak to you personally ?—A. Yes.

Q. Is that all he said ?—A. He asked me to examine her throat because she had said something had come through into her throat and that was what I was looking for.

Q. Come through where ?—A. That I do not know.

Q. Did he not tell you ?—A. He told me a tube had come through her throat.

Q. What part of her throat ?—A. He did not say, except I thought he said the left side. I think he said the left side.

Q. Through the tonsil ?—A. That I do not remember. He simply said that she had said a tube had come through the left side and I was to examine her throat and ascertain if there was anything there.

Q. Did he say " Come through the left tonsil " ?—A. That I do not remember.

Q. Will you deny it ?—A. No, I won't deny it. I cannot remember.

Q. This is the evidence from the second trial, page 452 :—

> " Before you went to St. Luke's Hospital in 1939, to make this examination of Mrs. Hocking, did Dr. Bell show you a letter he had received from Dr. O'Hanlon ?—A. No, I was not shown any communication by Dr. Bell as to anything he had got from Dr. O'Hanlon. He asked me to examine her because she said a piece of rubber tubing had passed on the left side of her throat through the tonsil."

Now that is your sworn evidence ?—A. Yes.

Q. When your memory would be fresher ?—A. It is 1939 ?

Q. This is 1943. Will you agree this would be correct ?—A. Yes.

Q. Were you aware at this time that there had been no suggestion on anyone's part that the tube had come through the tonsil ?—A. I was not aware of that. I did what Dr. Bell asked me to do—examined the throat.

Q. You examined on the left side ?—A. Altogether, everywhere.

Q. You started on the left side ?—A. If you look into the throat you see everything right away, right and left. I was looking to see whatever I could find.

Q. You admit you were told that Dr. Bell had said that she had said a piece of rubber tubing had passed on the left side of her throat, through the tonsil ?—A. Through the tonsil.

Q. It would be natural that is where you would start ?—A. Naturally I would examine her.

Q. You would start there, whatever else you may have done ? I suppose you have had experience of quinseys ?—A. Yes.

Q. Sometimes they burst and sometimes have to be operated on ?—A. Yes.

Q. Quinsey is close to some of the big blood vessels of the throat ?—A. Yes.

Q. Have you ever known a quinsey to rupture a blood vessel ?—A. I have not myself.

Q. And you have seen hundreds of them, I suppose ?—A. I have opened many.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 24. Harold Seward Marsh, 20th December 1943, Cross-examination, *continued.*

Q. It would go into hundreds ?—A. Yes.

Q. Have you ever known quinsey to eat through, what I mean is the abscess, the pus, to eat through any important muscles ?—A. Not in my experience, but I read of one the other day.

Q. And there again you are speaking of hundreds of cases in your own experience and you get other abscesses, tonsillar abscesses ?—A. You can get them right in the substance of the tonsil.

Q. And round the tonsil ?—A. I have not seen any.

Q. And retro pharyngeal ?—A. Yes, on the back of the pharynx.

Q. Have you ever known of that, the tonsillar or the retro pharyngeal abscess to rupture a blood vessel ?—A. No.

Q. Or to eat away or destroy some important muscle ?—A. I have not because they are always operated on.

Q. These abscesses result in a gathering of pus ?—A. Yes.

Q. You have known them to burst through ?—A. Peritonsillar.

Q. Abscesses ?—A. Yes, I have known them to burst.

To His HONOR : That is outside the tonsil.

Mr. SHAND : It would include the quinsey ?—A. It is quinsey.

Q. What about the deeper abscesses in the neck ? Have you had experience of them ?—A. Yes, I have opened a few at the Sydney Hospital.

Q. You have never known any of them to eat through an important blood vessel or muscle ?—A. No.

Q. Will you agree that the tendency of pus is to track along the fascia ?—A. Yes.

Q. There seems to be a definite tendency of suppuration to avoid blood vessels and muscles ?—A. I do not think so.

Q. Take your own experience ?—A. If you have pus tracking along blood vessels naturally there is reaction in the walls and they get thicker.

Q. And try to protect themselves ?—A. Yes.

Q. Your experience would be more like—not hundreds but thousands ? —A. Not thousands.

Q. You did not do the measurement in regard to the distance between the tip of the thyroid, or the bottom of it, whatever it may be, and the tonsil, but what is your idea. Did that measurement accord with your opinion of it ?—A. I saw Dr. Edye do it. I was behind him.

Q. Did it accord with your own idea, or was it surprising to you ? —A. It was not surprising to me.

Q. It was what you expected ; something about that ?—A. Somewhere about that distance.

Q. And the measurement of the tip of the thyroid, to the tonsil was what ?—A. Three and a half.

Q. Did you swear before at the second trial :—

> " Q. We have been told by some gentleman that the thyroid is one inch from the tonsil ?—A. The tip of the thyroid would be about two inches from the tonsil."

A. Yes, I made a mistake there, but I correct myself to this extent that from the tip of the thyroid in a short thick-necked person might be that size, but I think I am mistaken.

Q. But there is no qualification here ?—A. I understated it.

Q. Why ?—A. I did not have any reason for doing so. At the first trial I said three inches. That is down in black and white. On this occasion I said the wrong thing. I did not mean to do so. I should have said three inches at least.

Q. There is a 50 per cent. difference ?—A. That is so.

Q. Why did you make a mistake ?—A. Mental lapse I suppose.

Q. Are you having any mental lapses this morning when you have been giving your evidence ?—A. No.

Q. Are you sure of that ?—A. Yes.

Q. Why did you make these mental lapses before ?—A. Tired.

Q. Are you improving ?—A. That is for you to say.

Q. You made two mental lapses before ?

Mr. CASSIDY : What are the two ?

Mr. SHAND : This one, and you know what the other is ?—A. You told me before ?

Q. Don't you remember ? I asked you earlier about examining both tonsils, and to the best of your belief there were these crypts on both ?—A. They were only seen on the left side.

Q. That was another mental lapse ?—A. I would not call it that.

Q. What do you call it ?—A. I do not know what you call it.

Q. You will agree it is not too reliable. Are you sure you have not made some of these things—you don't know what you call them ?—A. I have made none.

Q. That was what you thought before I suppose ? When I put it to you before you did not remember you had sworn in one trial you had examined both tonsils and your belief was they were both infected ?—A. It is generally the case. You nearly always see it.

Q. But this was very singular that only one tonsil was infected. It was very singular ?—A. It was the one I saw the pellets in.

Q. It was singular that only one was infected ?—A. That was all that could be seen. That was all I saw.

Q. It was very singular ?—A. No.

Q. You generally expect both. You have sworn that ?—A. Nearly always, but sometimes the pellets are only to be seen in one. If you squeeze them hard enough you generally see them in the other too.

Q. Assuming they were crypts or pellets, it would be very singular if they were only in the one ?—A. They are generally in both.

Q. They are bi-lateral ?—A. Sometimes you can only see them in one.

Q. If it were the fact, assume that there were crypts or pellets only in one, it would be very singular ?—A. You sometimes see them in one only. Sometimes you see them in both, but not always in both.

Q. But you said before it was very unusual to get them in one ?—A. It is usual to see them in both but not always. That is all I can say.

Q. When you met this unusual state of affairs, did you have the curiosity to make a very thorough examination of the right tonsil and squeeze it ?—A. I saw it. Of course, I made a full examination of it.

Q. You could see trace of a crypt ?—A. I could see crypts but not cheesy material. I did not see any on the right side.

Q. If an abscess burst in the tonsil, you would expect there would be a hole left ?—A. Not necessarily.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 24. Harold Seward Marsh, 20th December 1943, Cross-examination, *continued.*

Q. But you would expect it?—A. You would not. You could see it at the time, but when the abscess heals up the hole disappears.

Q. How long does it take?—A. A week or two, a couple of weeks.

Q. They always within a week or two, when the abscess bursts through?—A. You are talking of quinsey. It generally bursts through the supra tonsillar fossa. The pus oozes through and in the course of time, a week or two, the whole thing heals up and you see nothing.

Q. Assume it was a tube that had caused the abscess, and that burst through the tonsil. You would expect a small hole to remain for some time?—A. If it burst through the tonsil, certainly there would be a scar.

Q. You would also expect traces of destruction of tissue?—A. If the tube burst through.

Q. In this case you get both, traces of destruction of tissue and a hole?—A. There was no destruction of tissue except what I spoke of before, the opening of the supra tonsillar fossa.

Q. Did you swear, at page 453, second trial:—

"You will agree that what you saw yesterday indicates that the tissue in that particular area had been destroyed?"

A. Not exactly.

Q. But your answer was "Exactly" (page 453)?—A. Destroyed by ulceration.

Q. But what you said was "Exactly"?—A. Well, destroyed by ulceration. It meant it was destroyed. It was destroyed by ulceration, cheesy mass, I meant it that way.

Q. That was not another lapse?—A. No.

Q. You will agree that if such a thing happens as a tube bursting through, as time went on the hole would tend to become smaller?—A. Yes.

Q. I have read what you said in chief in the first trial, about your first inspection at the hospital, I will put it to you clearly, I am suggesting that your account now is a very different one. I will read what you said in the second trial:—

"I was asked by Dr. Bell to examine her throat in order to ascertain if there was any trouble there. My examination was a detailed examination, and it extended down the throat right down to the larynx, at the opening of the gullet, and right down to the entrance of the æsophagus. On examination I found as I said before a condition of the tonsils which we call chronic lekonia (?) or venicular (?) tonsillitis, two small little pellets of casein material in the tonsils—a chronic condition of mild nature. Apart from that I found nothing else in the throat. Q. Was there any swelling in the throat?—A. No, there was no swelling either internal or external. There was no pus, no inflammation and no redness. I did not notice any limitation of movement either of the head or of the jaw."

and—

"Q. You mentioned the tonsil—was it in both tonsils or only on one?—A. It was only on her left one. In regard to the right tonsil, I could not see anything the matter there. The two pieces of casein material were not what the lay person describes as pus or matter. It is really a collection of dead white cells mixing up with dead bacteria and fungi which sometimes grow in these

pockets or crypts as they are called. It comes from the depths of the tonsil. They work their way to the surface. It is a common condition. It is not a condition which causes any distress or requires medical attention. It sometimes causes a little soreness, but sometimes these things are months coming out without causing any trouble whatsoever."

Have you ever seen a supra tonsillar fossa in which you could put a thing like that (showing witness), that is the largest of the glass tubes of Exhibit " R " ?—A. I have never seen an instrument like that used on a supra tonsillar fossa. If you had one of these large pellets the size of a pea, and you tried to put that in immediately afterwards, I think you might get it in by a considerable amount of force.

Q. You have never seen a supra tonsillar fossa in its natural condition, I mean that you could go anywhere near getting this glass tube into ?—A. I have not tried it myself and I do not think you would get that into the hole, the ordinary healthy supra tonsillar fossa.

Q. It would have to be one in some way eaten away ?—A. Diseased, or just immediately after the large mass had parted through it.

Q. If it were not immediately after it would soon close ?—A. Yes.

Q. How long after do you mean when you say " immediately after " ? —A. Within a few days, a day or two, I cannot say but almost immediately after its passage it would start to close.

Q. If you looked at the tonsil immediately after one of these pellets had passed, you would see some indication of its having passed ?—A. Yes, the outside parts would be big. You cannot see the inside parts, only the outside.

Q. If this glass tube were passed into the tonsil, would you agree with this : The only explanation you could give was, within a day or a couple of days previously one of these big pellets had passed through ?—A. It would have to be a very large one.

Q. Have you ever seen one big enough ?—A. Yes, I have seen one almost as big as a marble.

Q. It would have to be very large ?—A. Yes.

Q. It would have to have passed within a day or so before ?—A. Yes.

Q. And that is the only suggestion you can give, assuming that this tube was able to be placed in. It is the only one you know ?—A. Yes.

Q. If a tube the size of the one before you had passed through, you would expect that to leave a fair sized hole ?—A. If you saw it immediately afterwards.

Q. And I suggest a fair size hole for some time, gradually decreasing ? —A. It would tend to close up very quickly after a foreign body passed through it.

Q. It would depend to what extent the tissue has been eaten away ? —A. Yes, it would leave a scar there for some considerable time, many months.

Q. And there was scar tissue here ?—A. No, there was none there.

Q. Little strands ?—A. They are tonsillar tissues not scar tissue.

Q. But dead tissue ?—A. No, alive.

Q. While there were three of those strands when the throat was inspected on the second examination—— ?—A. 1941 ?

Q. Oh you did not see it. When Dr. Poate examined it, I understand he saw three. Now there is only one ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 24.
Harold Seward Marsh, 20th December 1943, Cross-examination, *continued.*

Q. You have never seen three strands in a fossa ?—A. I cannot remember any.

Q. This was even on your suggestion, a most extraordinary case, the only case in which you saw three strands in a fossa ? (Objected to.)

Q. Well, assume Dr. Poate is correct, the only case in which you have known of three strands in a fossa and unusual in this too ; as far as you could see, the right tonsil when you examined it in hospital was unaffected ? —A. Yes.

Q. You have stated there was no pus at that time when you first examined her at the hospital. Were you aware that she had been having regular inhalations for some days before ?—A. No, I did not know that.

Q. Would you agree that the effect of inhalations would be to get rid of inflammation ?—A. Yes.

Q. And pus ?—A. I do not know about pus.

Q. Inflammation causes pus ?—A. Not necessarily. You can have inflammation without pus in tonsils.

Q. But assume that you have both. If the inhalations get rid of the inflammation, the pus disappears too ?—A. It would help.

Q. But you had not been told she was having inhalations ?—A. I do not remember being told of that.

Q. Did not Dr. Bell give you a history of this patient ?—A. He told me something of her.

Q. What did he tell you of her ?—A. She had been operated on by him for thyroid, and a tube was supposed to have been left in and it had passed through her neck, according to her.

Q. Through her left tonsil ?—A. Well, her left tonsil.

Q. Is that all he told you ?—A. Yes.

Q. Nothing else ?—A. No.

Q. No further conversations ?—A. No.

Q. Are you definitely clear on that ?—A. Yes, I am.

Q. He did not deny it was left in. He said it was supposed to be left in ?—A. No, he did not say that. He said that she said it had been left in. He did not say he left it in.

Q. But he did not deny he left it in ?—A. Certainly he denied he left any tube in.

Q. I thought you had given the whole of the conversations. Now you add something ?—A. What I have said now is perfectly right. He told me he operated on her. I know it was for thyroid, and she said that a tube had been left in and had passed into her throat.

Q. And that was all that was said ?—A. That is all I can remember.

Q. Then it is correct that he asked you to examine her throat, and he did not deny he left the tube there ?—A. He said to me he did not leave any tube there. You do not want me to tell you everything do you ?

Q. I invited you to do so ?—A. That is all I can remember he said.

Q. How did he put it if he did say this ?—A. I cannot tell you how he put it. This was 1939.

Q. Give us the best of your recollections ?—A. I have told you. That is all I can say.

Q. He actually denied that he had left it there ?—A. Certainly he denied he had left it there.

Q. How did it come about ?—A. I cannot follow you. I have told you all he said.

Q. Give it to us as far as you can ?—A. I have already done so. I cannot add to it.

Q. How did he put it ?—A. I cannot add to it. What I have put to you : Dr. Bell said that Mrs. Hocking had said that he had left a tube in her neck, and he denied that he had left it there.

Q. Did he say " I did not leave it there " ?—A. I cannot tell you the exact words he used. That is impossible.

Q. How did you come to forget that when I asked you for the whole of the conversation, how did you forget that he had denied that he had left it there ?—A. There was no ulterior motive.

Q. I am suggesting you are giving your correct account ?—A. It seemed to me quite unimportant, unimportant to tell all these things. I should say the thing was obvious otherwise he would not have asked me to examine her. He asked me to examine her for a special purpose.

Q. What do you mean ?—A. He simply told me what I have told you. I cannot tell you any more.

Q. What did you mean by " Otherwise he would not have asked me to examine her " ?—A. That if this patient had not said that something came into her throat, he naturally asked me if I could see anything there, and I examined her.

Q. Have you given us all now that he told you ?—A. It is all I can recollect.

Q. Did he tell you whether he had examined her ?—A. He did not say so, so far as I remember.

Q. It is rather unusual if he had examined her, not to tell you. In practice would it not be rather unusual, for one doctor who has made an examination of a patient, and he gets another expert in and does not tell him anything of his examination ?—A. I think it is an excellent thing as a matter of fact, because otherwise you would get bias. It is better not to tell another man, because then you go to it without bias.

Q. Do you think it would be so when he told you he had not left a tube in ; would it be likely to bias you ?—A. I was looking for something, and that is all I can tell you.

Q. But would it be likely to bias you ?—A. No, why should it ?

Q. Apart from telling you the result of his examination, he did not tell you that he had examined her ?—A. I say that it does not convey anything to me or worry me in the least.

Q. He did not tell you that he had made any examination ?—A. So far as I can remember, he did not.

Q. Did he tell you why you were not called in until five days after she came down ?—A. I saw her on the 31st. She came into hospital on the 2nd I understand.

Q. On the 2nd ?—A. So I understand.

Q. 2nd October ?—A. I understand she came in about the 2nd.

Q. Where did you get that information from ?—A. I do not know, but I understand it was when she came into the hospital.

Q. Have you always understood that ?—A. It may be so, I don't know. That is what I thought, that she came in about the 2nd. I saw her three weeks after. However, it could be easily found out. I think it was three weeks after she came in.

Q. There was nothing said why it had been left so long ?—A. I did not make any notes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 24. Harold Seward Marsh, 20th December 1943, Cross-examination, *continued.*

Q. You examined her six days after she came in?—A. Was it six days?

Mr. CASSIDY: Five days.

His HONOR: She came in on the morning of the 26th.

Mr. SHAND: Did you get no further history of the matter, of this lady who had had tetany?—A. I did not go into that question at all. That is out of my line.

Q. Were you told how long before the tube was supposed to have been left in?—A. All these things I knew, but I cannot recall all these details. It is impossible.

Q. But were you told at that time how long the tube was supposed to have been left in?—A. I cannot even recollect how long she had been operated on before I saw her, some considerable time, I cannot remember all these details.

Q. Did you know then how long it was supposed to have been left in?—A. For some considerable time. That is all I can say, and I cannot tell you more than that.

Q. Will you admit that you told Mr. Hocking that his wife's left tonsil was infected, but not to tell her?—A. No, that is not true.

Q. When you were asked that question previously in the first trial, did you say this, at page 175: "I don't remember saying so"?—A. I am pretty sure I would not use such words as that.

Q. Is that what you said when you were first asked this question: "I don't remember saying so"?—A. It was a long time ago.

Q. But would not it be a matter that you could not forget if you had told the husband not to tell the wife?—A. It is not true, I am perfectly convinced of that.

Q. Are you clear?—A. I am perfectly clear on that point.

Q. Why did you only say when you were first asked: "I don't remember saying so"?—A. I would not say such a silly thing as that.

Q. Why would not you deny it like you deny it now and say "It is a lie, and not true"? When you were first asked, why did you only say "I do not remember saying so"?—A. I had no particular reason.

Q. You appeared to be indignant?—A. Why should I say a thing like that?

Q. But why did you not deny it straight out when first asked?—A. I do not know.

Q. It was put to you at page 175:—

"Q. Not to tell her the truth?—A. I beg your pardon.

Q. Did you tell Mr. Hocking that you had told his wife that the left tonsil was infected?—A. I did not tell her that.

Q. Did you tell him?—A. I did not tell him that.

Q. But did Hocking assent not to tell his wife?—A. I certainly never said anything of the sort.

Q. Did you have any conversation with Hocking over it?—A. I cannot remember if I did. I told him what I said to you, she had a slight tonsillitis.

Q. You say you did not tell Mr. Hocking his wife had an infected tonsil?—A. I cannot remember that."

You told him she had an infected tonsil?—A. After all these years I cannot

say whether I did or not, but if I said infected it means tonsillitis, exactly the same meaning.

Q. This cheesy substance : did you make any pathological examination of it ?—A. No.

Q. This " depression " as you call it, a quarter of an inch deep—— (Objected to.)

Q. Was that still on the tonsil when you had a look Saturday week ? —A. No.

Q. There is nothing like that now ?—A. No, not like it at all.

Q. I understood you never used the probe at all ?—A. I did.

Q. Until last Saturday or Saturday week ?—A. No, that is true.

Q. Or ever saw one used ?—A. Until last Saturday.

Luncheon Adjournment.

At 2 p.m.

Mr. SHAND : You were talking this morning about the supra tonsillar fossa. That is an opening, isn't it, which goes down from the top ?—A. Not exactly the top, under the top.

Q. It goes slantwise down. It is, I think you will agree, sometimes a reason for quinsey, that you get some pus there and owing to it travelling downwards it does not come out ?—A. Yes, you get a quinsey from an infection in the tonsil.

Q. I want to put to you again that in this case on the left tonsil the supra tonsillar fossa does not exist. That cavity does no longer exist. I am putting that to you ; this morning you could not be definite on it, that is the position, isn't it, you could not be definite on it this morning ?— A. You say it does not exist.

Q. I say it does not exist, and I am putting it further, that if you would like to have a further inspection that can be arranged at any convenient time ?—A. Yes, I certainly would.

Q. No longer exists because of the inflammation that existed. You realise that the matter is of some importance ?—A. Exactly.

Q. Because the probe did go in somewhere, didn't it ?—A. Yes.

Q. When you have a patient with some throat trouble do you ask them for the symptoms ?—A. Yes, if I am seeing a patient certainly.

Q. Would you ask them what symptoms they experienced ?—A. Yes.

Q. To assist your own examination ?—A. Yes.

Q. Did you ask Mrs. Hocking for any symptoms ?—A. I did not ask her for any symptoms.

Q. Why did you treat her differently to any other patient ?—A. I was simply looking for some evidence of passage of a foreign body through the throat.

Q. Didn't you think it may have been of some little assistance to you to say " Where did you feel this come through, where did you get the pain, where did you get the swelling ? " ?—A. I did not think it necessary to do any of those things, what I was looking for was evidence.

Q. Evidence ?—A. Well, evidence of the passage of some foreign body into the throat.

Q. Who did you consider that you were acting on behalf of, Dr. Bell or Mrs. Hocking ?—A. I was simply there to see what I could find.

Q. For whom ?—A. Dr. Bell asked me to examine her to see what I could find.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 24. Harold Seward Marsh, 20th December 1943, Cross-examination, *continued.*

Q. I suppose you will agree that you were doing it for him ?—A. I was simply doing it to find out what was there.

Q. At his request ?—A. Not exactly for him, he wanted to know what was there.

Q. Did you make a report ?—A. I made a report to him.

Q. A written report ?—A. I wrote him a letter.

Q. You did ?—A. As far as I remember.

Q. Do you know where that letter is ?—A. No.

Q. Did you keep a copy of it ?—A. I didn't, no.

Q. I think you, after your examination, gave some prescription, did you not ?—A. Yes.

Q. Apart from the letter did you make any notes ?—A. No, except on my own card.

Q. Have you got your card ?—A. No.

Q. Where is that ?—A. It may be in my rooms.

Q. Would you have a look for it ?—A. Yes.

Q. Has it ever been handed over to Dr. Bell's solicitors ?—A. The card, no.

Q. Now, you made a report to Dr. Bell, did you understand that there was a possibility of litigation ?—A. It was never mentioned to me.

Q. Did you have in mind that there might be ?—A. Well, naturally.

Q. You made a report to Dr. Bell, did you make any report to Mrs. Hocking or her husband ?—A. I spoke to her husband, so I was told. I spoke to her husband afterwards.

Q. So he was told ?—A. I spoke to him after I examined her.

Q. You are sure of that, are you ?—A. Well, I am not absolutely sure, but I was told I saw him afterwards, and I told him what I found.

Q. Who told you that ?—A. I think that was mentioned in the court. I cannot remember all these things, it is such a long time ago.

Q. You said you have a very good memory, this morning ?—A. Did I ?

Q. You did, yes ?—A. Not for four or five years ago.

Q. Is the point this, that you cannot remember whether you told him or not, is that right ?—A. I have been told I saw him and apparently I did.

Q. You are going on what you were told ?—A. Presumably.

Q. You don't know who told you ?—A. I don't know, I think it was at one of the previous trials.

Q. Do you mean in cross-examination ?—A. Yes, in cross-examination.

Q. I put to you something this morning that you said something to him and told him not to tell his wife ?—A. I did not say that, I will swear to that, I would not say such a thing, there is no point in it.

Q. You don't remember yourself except it was suggested to you in cross-examination, you cannot remember whether you spoke to Mr. Hocking ?—A. I am not sure about it.

Q. " Is it not possible that you may have told her husband that she had a slight infection of the tonsil ?—A. If I told him I don't recollect. Q. You have no recollection ?—A. If he were there at the time I suppose naturally he would speak to me, but I don't remember speaking to him."

His HONOR : There is another passage—" Did you have a conversation with Mr. Hocking about it ?—A. I cannot remember if I did. I told him that she had slight tonsillitis."

Mr. SHAND : Apparently after the passage that His Honor read, you said that you could not recollect. Can't you assist us in this ? Did you regard yourself as acting for Dr. Bell or for Mrs. Hocking ?—A. Well, Mrs. Hocking did not ask me to examine her.

Q. And I take it that is why you gave the report to Dr. Bell ?—A. Naturally.

Q. And sent the account to Mrs. Hocking ?—A. I sent an account to her, yes.

Q. And not to Dr. Bell ?—A. I presumed I had to send it to her.

Q. When you examined her throat and you found what you said you found at that time, knowing the allegation of a tube having come through, didn't you tell her : " Well, I understand you thought a tube came through your throat but there was no indication of it." ?—A. She did not ask me for any information.

Q. Didn't you tell her that ?—A. I did not tell her anything.

Q. You did not tell her anything at all ?—A. Not a thing.

Q. Had you seen anyone besides Dr. Bell before with regard to this matter ?—A. No.

Q. Or spoken to anybody ?—A. No, none of them.

Q. Not to Dr. Ritchie ?—A. No.

Q. Did anyone suggest to you that you should not say anything ?—A. Not a word, nobody did.

Q. So far as the incidents of what had happened to her throat were concerned you kept silence, not a single word ?—A. I did not, nor did she ask me anything.

Q. I suppose there has not been a single other case in your history where you attended to a patient for the first time who has had some throat trouble, I don't suppose there has been another case where you have not asked for some history ?—A. Any amount.

Q. Has there ?—A. Any amount.

Q. It might be that it was perfectly obvious, that might be one reason you would not ask ?—A. Yes.

Q. Of course even so this was a matter that was somewhat unusual, what you had heard about it, wasn't it ?—A. Unusual, yes, definitely.

Q. Had you been told what sized tube it was ?—A. No, nothing was said about the size of the tube.

Q. So you did not have any idea of the length ?—A. As far as I remember there was nothing said about the length.

Q. No idea of the circumference ?—A. Nothing.

Q. Nothing at all ?—A. Nothing.

Q. You were not told that it had been the subject of a sketch ?—A. At that time as far as my memory goes nothing was said about a sketch.

Q. So the only information you had was that it was a rubber tube ?—A. Yes.

Q. And you did not ask either ?—A. No.

Q. You could have asked a question to ascertain what type of hole you might have to look for ?—A. I did not ask any questions.

Q. Was there anything that was deterring you from asking questions ?—A. No, no reason whatever.

Q. You did not have the slightest reason ?—A. None whatever.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 24. Harold Seward Marsh, 20th December 1943, Cross-examination, *continued.*

Q. You did not feel that there was any reason why you should not have asked her questions ?—A. No, but I did not consider it necessary to ask her any questions.

Q. You see, she might have been able to indicate where she felt the pain when it came through, it did not occur to you to ask her that ?—A. No.

Q. And I suppose it might have assisted you too if you had known how big the swelling was ?—A. I don't think so, I was only asked to find, if anything, any objective evidence.

Q. Or how recently the swelling had occurred ?—A. None of those I considered important.

Q. You did not ?—A. No.

Q. And did you ask her when the tube was supposed to have come through ?—A. No.

Q. Did anyone tell you that ?—A. Not at the time, no.

Q. So that when you examined her, as far as you knew, it might have come through a year before or a few weeks before ?—A. It might have come at any time.

Q. Well, really, you did not seem to have much curiosity, didn't you ask Dr. Bell that ?—A. I asked him later.

Q. No, before you examined her ?—A. No.

Q. Of course, if it had come through say a year before you would not have expected perhaps to find very much indication ?—A. I might have found a scar even then.

Q. You would not have expected to find very much indication ?—A. No, not a great deal.

Q. Even under those considerations you did not ask anyone a single word as to when it happened ?—A. No, I did not.

Q. It would have been of assistance, wouldn't it, to have known whether it was supposed to be recent or a long while ago ?—A. If I had seen anything there that would have been sufficient for me.

Q. If you had seen anything, yes, but if it had been a year before you would not have seen anything, or very little ?—A. If so I would have said so.

Q. Is that the prescription that you gave Mrs. Hocking (Exhibit " M " shown to witness) ?—A. Yes.

Re-examination.

Re-examined.

Mr. CASSIDY : Can you remember exactly at this stage what was said to you by Dr. Bell or what the woman said, if anything. Can you remember as to details like that ?—A. Well, as far as I remember he asked me to examine her throat because she said that she had a tube that had passed into her throat which she said had been left in her neck.

Q. Can you remember all the details or did you examine her throat to find what you could see there ?—A. I just examined her throat to find what I could see.

Q. Does your prescription at that time recall to you what you prescribed for her throat ?—A. Yes, I remember I gave her a simple prescription for a gargle and a paint.

Q. And the date of the prescription ?—A. 31st October 1939.

Q. When you saw her throat was there anything to ask her any questions about ?—A. Nothing whatever.

Q. Was it perfectly obvious that apart from this slight tonsillitis her throat was perfectly all right ?—A. Quite all right.

Q. You remember this morning Mr. Shand said to you " Will you show me some records where the supra tonsillar fossa is referred to as a crypt " ?—A. Yes.

Q. Is this book one of the recognised authorities, " Logan Turner, Diseases of the Nose, Throat and Ear " ?—A. Yes, he is a good man.

Q. And at page 107 does he say this : " This recess persists in adult life as the tonsillar fossa, sometimes termed the supra tonsillar fossa although it is really within and not above the tonsil. Indeed, the supra tonsillar fossa may be regarded as a large crypt occupying the upper pole of the tonsil and therefore extending into the soft palate." ?—A. Yes.

Q. The next thing you were asked with regard to this cheesy material you found was did you make a pathological examination of it ?—A. No.

Q. Was there any necessity to ?—A. No, there was no need to.

Q. Why ?—A. It is a common substance and we know exactly what is in it.

Q. In the case of an abscess from quinsey, has that any analogy to an abscess of a tube endeavouring to force its way through from inside out ?—A. No analogy, no. I should say no ; a quinsey is an abscess outside the tonsil which occurs as a result of an infection inside the tonsil, and this abscess formation outside, generally above and behind it, would be about the 2 o'clock position with reference to the tonsil.

Q. Looking at page 223 of " Fowler " would you indicate where it would be ?—A. About in that position (indicating).

Q. That could be up inside the mouth ?—A. Yes, the abscess forms a great big swelling above the tonsil just about in the 2 o'clock position.

Q. If not operated on what happens ?—A. It usually bursts, in fact it does burst.

Q. And this abscess that would accompany this suppuration, where would it have been if it were possible for an abscess to be there ?—A. It would be immediately behind the tonsil or on the outer side of it, I should say it would come in laterally.

Q. You were also asked a question about a retropharyngeal abscess. With regard to that abscess, what do you do ?—A. You put the patient with the head over the end of the table so that the head is lower than the table and put a gag in and with a knife bound around with cloth or bandage or something leaving about 1½ inches of the blade exposed you make an incision in the middle line and turn the head to one side and the pus runs out.

Q. What is the idea of having the head down low ?—A. So that the pus will not run down into the larynx and choke the patient.

Q. And is that because of the tendency of pus to run down ?—A. Yes.

Q. Have you ever heard in your experience of pus being sufficient to carry a body like that and for the pus to go upwards about 5 inches ?—A. No, not in my experience.

Q. When you examined the tonsil last Saturday week did you see Dr. Thompson use that probe in that opening that he found ?—A. Yes, I saw him put it in. I was not immediately behind him but I could see from where I was where he put it in.

Q. And where did he put it in ?—A. From what I could see it went in the supra tonsillar fossa. As I say, I was not immediately behind him, but from where I was that is where it appeared to go.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 24. Harold Seward Marsh, 20th December 1943, Re-examination, *continued.*

Q. And you can, if necessary, have another look at that on your own with a proper light ?—A. Yes, it is no use trying to do it here.

Q. And is there any cavity there that would take any of these glasses ? (Objected to.)

Q. Was there any cavity there that would take any of these glasses or anything like it when you saw it last Saturday week ?—A. No.

(Witness retired.)

No. 25.

EVIDENCE of Arthur Hamilton Tebbutt.

No. 25. Arthur Hamilton Tebbutt, 20th December 1943, Examination.

Sworn : examined : deposed.

To Mr. CASSIDY : I am a medical practitioner carrying on my practice as a specialist in Macquarie Street ; as a pathologist. For many years I have been specialising in the taking of persons' blood, and examining it for various purposes, and also doing other similar work involving the detailed examination of tissues and so on.

Q. Can you remember, without looking at your card, the particulars here, or do you want to see your card ?—A. I can remember them, I think.

Q. You do not remember the date of your visit to St. Luke's. You did go to the hospital to see Mrs. Hocking ?—A. Yes. I think the date on the record is the 28th October.

Q. It is the 27th October, 1939. You attended at St. Luke's ?—A. Yes. Apparently there I took a specimen of Mrs. Hocking's blood. I don't remember it. I have a record that I did. I don't remember the individual incident. Later I made an examination in my laboratory of the contents. The document handed to me contains my original entries of the result of my examination. Following that, I made a report of the things I had to deal with. There was one portion of the matter that some other doctor dealt with.

Q. What was that ? (Objected to.)

Q. You did one part, did you not ?—A. Yes, and another doctor did another. He was Dr. Hansmann. I did what is called a blood count, and Dr. Hansmann did the blood calcium estimation, and I also did a Wasserman test.

Q. Looking at that exhibit (Exhibit "Q" handed to witness), does that contain the particulars of your blood test—first of all on the back ?—A. Yes, that is the copy of this record that I have here. This is my own personal record (indicating).

Q. And then the document in the front—did you sign the document containing the particulars of the whole thing—that is including Dr. Hansmann's portion ?—A. Yes, the blood calcium is initialled by Dr. Hansmann and I have signed the whole report. Dr. Hansmann and I are in partnership.

Q. Now, looking at that sheet (Exhibit "Q)."—A. I have the duplicate (indicating).

Q. Well, looking at your duplicate, does that show exactly what was found in that blood count ?—A. Yes.

(Exhibit "Q" handed to jury.)

Q. Will you explain to the jury what the count shows ?—A. Well, it showed that there was no anæmia—the patient had no anæmia. I was led to that conclusion by the fact that the figures given for the various blood constituents are within the normal range of normal people. It showed also that here was no change in the leucocites of the blood, the white cells of the blood. I just commented there that the leucocites show no change. That signifies that there is no evidence of any septic infection. The leucocites show a change in septic infection. They may change quantitatively—that is to say they usually increase in number—and they also show qualitative changes, that is to say some of the cells increase more than others.

Q. Was there any sign either way of any increase in quality or quantity from the normal ?—A. No, there was no change. The leucocites are the white cells. In an infection the infection stimulates the bone marrow to produce more of these cells, which are active in dealing with infection. They fight the bacterial infection.

Q. Now, looking at that blood count how do you describe it, by looking at it generally ?—A. Normal.

Q. We have been told by the Plaintiff that for some three months prior to the 2nd October, and from the 2nd October until you took a sample of her blood, she had pus coming into her mouth so that she had to spit it out and scrape it off with a toothbrush, and that she could not do anything with it at times, and that she had a gross swelling. Is that blood count in any way consistent with that account given by her ?—A. No.

Q. And if that were the condition she had been in, what would you expect at the time that you took that blood count ?—A. Well, I would expect that she would have some anæmia from the infection. You would expect with long continued infection to get some lowering of the red cells, now anæmia in other words. You would expect to get definite change in the leucocites, probably an increase in the number, almost certainly, and certainly a change in the relative numbers of the different kinds.

Q. She has added to that that for two or three months prior to the 2nd October she was only able to eat milk, arrowroot and bovril, and during the same time, up to the time she came to St. Luke's Hospital on the 26th October—during all that period, three months prior to the 2nd up to the 26th, she was only able to eat milk, arrowroot and bovril. Is that blood count consistent pathologically with that diet, when it is added to the other thing ?—A. No. I would expect that added on to the sepsis, the absence of iron in her diet would still further tend to cause anæmia. Arrowroot and bovril contain practically no iron at all ; far too little iron—practically nothing. Only the merest traces of iron, and a woman certainly requires a daily ration of iron. In three or four months she would certainly show an anæmia.

Q. What do you say as to the consistency or otherwise ?—A. Well, I should say the findings I made on that day are inconsistent with the clinical history that you have given.

Q. Is that scientifically inconsistent ?—A. Yes.

Q. And that is based on the pathological examination ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 25. Arthur Hamilton Tebbutt, 20th December 1943, Examination, *continued.*

Q. We have heard that you also gave a Wasserman test. What is the object of that test?—A. That is to show—to find out if there is any evidence of syphilis. It is done when there is any possible suggestion of syphilitic infection. It is done of course in many cases as routine in some hospitals, and it is done far oftener of course with a negative result as a finding than a positive result, because we have been taught always to do this test to see if there is any evidence of syphilis just to see if syphilis can be excluded and put right outside the diagnosis. It is done I suppose 19 times out of 20—that I do these tests with a negative result. This suggested ulceration of the throat might be syphilitic and my notes on this card say the Wasserman test, the blood count and the blood calcium estimation.

Q. Now, assume that the history given was very serious ulceration with a wall of pus in the throat, would that be the class of case in which you would do a Wasserman test?—A. Yes, it might be any kind of ulceration in the throat—it is quite common to do a Wasserman test.

Q. As to the calcium—did you have anything to do with that?—A. I took the blood for that, but Dr. Hansmann is a biochemist, and I am not a biochemist, and that is a biochemical examination.

Cross-examination.

Cross-examined.

Mr. SHAND: Who told you to do the Wasserman test?—A. I don't know.

Q. Someone told you, that is clear?—A. Nobody told me. My secretary at the time, who obviously made out this card, typed out what was to be done.

Q. Well, it is obvious that someone told your secretary?—A. Yes.

Q. I suppose you have found out now who it was?—A. No.

Q. You have gone into this thing in the last few days?—A. As to who told me? I don't know who told me. The secretary that I had at that time is gone.

Q. Have you tried to find out?—A. From whom?

A. Well, from Dr. Bell for instance?—A. Yes, I have spoken to him in the last few days.

Q. What did he tell you?—A. I think he said he did not know.

Q. Are you sure?—A. I am pretty certain that that is the answer. I certainly do not know who gave this message.

Q. I am only asking you what Dr. Bell told you?—A. I think that he said he did not know. This card has the names "Dr. Bell" and "Dr. Ritchie" on it. Those are the doctors that asked for the test.

Q. Have you asked Dr. Ritchie?—A. No, I haven't asked Dr. Ritchie.

Q. How does this report come into being (indicating Exhibit "Q")?—A. Well, that is the instruction of what is to be done, and on the 28th that was typed out by my secretary from the figures obtained.

Q. From the figures here (indicating)?—A. Yes.

Q. There is the calcium and that is the blood (indicating)?—A. Yes.

Q. That is the first entry you make?—A. No, that is written out from a writing pad.

Q. Well, I expect you make a rough entry on a writing pad?—A. Yes.

Q. And it is transferred to here?—A. Yes.

Q. And from there your secretary would make this entry?—A. Yes.

Q. Did you have anything to do with the preparation of the second document (indicating) ?—A. No, I had nothing to do with that. I haven't got that paper, I don't think.

Q. Because any report of yours would have been a full report ?—A. That is it there (shown).

Q. And that is the only one ?—A. Yes.

Q. Do you notice that in this one (indicating) it contains everything but the calcium test ?—A. Yes ; I know nothing about that.

Q. You know nothing about it ?—A. No.

Q. I take it then that you would not know that in the second trial when the document was first produced it was the second one without the calcium test on it. You would not know that ?—A. I think there was some difficulty about my card.

Q. It was handed to you, and then you pointed out something ?—A. Yes, I think my card was missing that day. It had been brought round to the court, I think.

Q. But this second document was missing, and you yourself noticed it, I think ?—A. I might have. I don't remember. What would I compare that with ?

Q. I think you had your reports ?—A. Well, I cannot be clear about that.

Q. Anyway, we can take it that you had nothing at all to do with the origination of this document (indicating), the second document that did not contain the blood calcium ?—A. No, certainly not.

Mr. CASSIDY : If there is any suggestion about that, I will ask Mr. Reimer to make an explanation.

Mr. SHAND : Yes, I make this suggestion, that it was shown to Professor Welsh in that form (indicating).

Q. In food substances, what would you say the content of 3·5 mgs. to the ounce of iron was—is that a fair iron content ?—A. That would be about 10 mgs. per cent., I think. I think that would be about 10 mgs. per cent. ; I cannot remember the figures for the iron content of various foods.

Q. That is pretty high, isn't it ?—A. I would not give a definite answer to that. That is a definite quantity, but I would not give an opinion as to whether it is high or low, or anything else.

Q. But you have given an opinion on this subject ?—A. What I have given is that the bovril and arrowroot do not contain any iron—just the merest traces of iron.

Q. Are you prepared to deny that bovril contains 3·44 mgs. to the ounce of iron ?—A. Well, I am not prepared to say what bovril contains.

Q. A moment ago you swore——(Objected to.)

His HONOR : Let him finish his answer. (Shorthand notes read.)

Mr. SHAND : Do you want to say something more ?—A. I just want to hear the question again.

Q. Is there anything you want to add ?—A. I say this, that I don't know what is the iron content of bovril——

Q. You have sworn——(Objected to.) ?—A. All I know is that meat extracts do not contain—they contain only traces of iron, and that they are not sources of iron in food.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 25. Arthur Hamilton Tebbutt, 20th December 1943, Cross-examination, *continued.*

Q. You have sworn that bovril contains practically no or the merest traces of iron ?—A. That is right.

Q. Ten per cent. is not a trace ?—A. No, that is an iron mine.

Q. That is what you said yourself ?—A. No ; there is no food that contains 10 per cent.

Q. What did you say ?—A. I worked it out in my head as 10 mgs. per cent. That is 10 parts in a 100 times 1,000.

Q. That is not a bad trace, is it ?—A. Well, it is a trace in the ordinary chemical point of view.

Q. But a trace as far as the iron content of food goes ?—A. I cannot tell you whether the figures you gave me for bovril are correct.

Q. Well, you have no idea ?—A. I cannot tell you whether it is correct or not. Meat extracts do not contain——

Q. Answer my question ?—A. Cannot I say that ?

Q. I am asking you about bovril, and I want an answer to it. You used the word bovril yourself ?—A. Because I understand that that was what was mentioned.

Q. And that is what you gave an opinion on ?—A. Yes.

Q. And the position is you don't know how much iron content it has got ?—A. No, I don't know.

Q. Well, don't you think it is rather presumptuous to offer an opinion that it only contains a trace when you do not know ?—A. I class it as amongst the meat extracts. I have looked up these figures in regard to meat extracts.

Q. I am talking about bovril ?—A. Well, I class bovril as a meat extract.

Q. The fact is you do not know what bovril contains ?—A. No, I don't.

Q. And you are prepared to come here and swear that it contains practically none or only a trace ?—A. Yes. That is from information—a year or two ago I looked up the contents of various foods, in regard to iron, and I remember that it contained only traces, and that is supported by Rigby & Britton (?).

Q. I asked you about one matter—bovril—and apparently you do not know what the iron content is. Now, what about milk—what does that contain ?—A. Only a trace.

Q. Now, you know this, do you ?—A. I said I knew about bovril, but I say about milk——

Q. We have left bovril. What does milk contain ?—A. The merest trace, it is not an iron-containing food.

Q. I did not ask you that ?—A. I am not a chemist, but I know quite definitely that it does not contain iron—only the merest trace.

Q. If you don't know, we will pass on to something else ?—A. It only contains the merest trace.

Q. You said a trace in regard to bovril, and you did not know ?—A. What I mean to say is that if you were to ash a large quantity of milk you would find a quantity in the ash. It is not a source of iron.

Q. Will you agree with this, that if you get an abscess and you get that abscess discharged—a quick discharge—the blood rapidly gets back to normal ?—A. It gets back to normal—it goes back to normal at a varying rate in different cases. Not rapidly, necessarily.

Q. But it may be rapidly ?—A. It may be rapidly, according to circumstances, yes.

Q. And once the discharge from the abscess has been completed, it is rapid then, isn't it ?—A. An abscess is under the skin, and it bursts. It can be deep seated or it can be quite superficial. It might be right inside the abdomen, or it might be deep in the thigh and if it bursts it leaves a track going under the skin. It may be a large track or a thin track, and the thing is not over until that track or sinus heals up. It is not finished as soon as it bursts at all.

Q. What would you call a large track ?—A. Well, a large track might be 3 inches ; it might be 2 inches or 1 inch. It all depends on the size of the abscess.

Q. Do you mean 3 inches in length or what ?—A. Well—I don't know—a large track ? I was thinking of the width and the length.

Q. I only want to get an idea of what would be a large track—in width for instance ?—A. Well, right in an operation, an appendicitis would, a thing like half an inch in diameter and going down 2 or 3 inches.

Q. And take cases where you get an abscess through suppuration—of course you just said it may be any length. It may travel ?—A. It may travel a distance.

Q. A good distance, and when it travels it opens up the structures—divides the fascia———(Objected to.)

Q. Whatever fascia it is passing through ?—A. I thought I was talking about the suppuration of the leucocites. I don't know what I am on to now. I was saying——

Q. Would you like to retire from the subject ?—A. No. I did not quite know where I was. (Objected to.)

Q. There are fascia all over the body, aren't there ?—A. Yes.

Q. But in constitution fascia are more or less the same ?—A. They are fibrous tissues.

Q. All the same except that they vary in thickness ?—A. They vary in thickness. They may be very thin or very thick.

Q. You will agree, will you not, that you may get suppuration resulting in abscesses which open up the different fascia of the body where they happen to penetrate ?—A. Yes, they spread along fascial planes because there is loose tissue between them and the other structures.

Q. And you can get a very big opening in certain cases, with heavy suppuration, can you not ? (Objected to.)—A. Opening on to the skin, you mean.

Q. No, before it gets to the skin. If it is travelling along the fascia, you can get quite a big division of the fascia with the suppuration ?—A. Yes, I would say that things like gas gangrene and very severe things like that, I think, open up and pass along fascial planes and may extend. It is rather out of my province, Mr. Shand. I am not a surgeon.

His HONOR : You are a pathologist ?—A. Yes.

Mr. SHAND : You can get a division of fascia of an inch or so, with a heavy infection ?—A. I do not know what you mean by division. I do not know about breaking through.

Q. But between the fascia, going between the fascial planes ? You could have them open up an inch or 2 inches ?—A. I do not know what you are talking of. I do not know what your question is, between fascial planes.

Q. But you have already used that yourself ?—A. Along the fascia, not between.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 25. Arthur Hamilton Tebbutt, 20th December 1943, Cross-examination, *continued.*

Q. It is to separate structures or eat them away ?—A. It is to separate them, yes.

His HONOR: Or eat them away ?—A. No, I do not agree with that.

Mr. SHAND: You can get a big separation if you get a heavy suppuration ?—A. If a lot of pus accumulates, it can separate a fascia from some other structure.

Q. And separate it widely with a heavy infection ?—A. Yes, it means a lot of pus accumulates.

Q. You can never be sure in which direction the pus will strike, which way it will direct itself. You know what I mean ?—A. Anatomers and surgeons know, I suppose, but I do not know. I am not really interested. They would know which way it tracks from their own experience.

Q. You have people varying. Will you agree the healthy person varies in blood count within limits ?—A. That is not the way to put it. There is a normal range.

Q. Will you agree the Plaintiff is right at the bottom of the normal range ?—A. No.

Q. Take the hæmoglobin concentration. How is the range there ?—A. The hæmoglobin concentration is 26, 31. It is generally given as that: 26, 31.

Q. Hæmoglobin concentration ?—A. I do not know whether you mean value ?

Q. " Concentration " was the word I used ?—A. It is given variously, 26 to 31, or 32 is given by some.

Q. What do you give it as ?—A. 26 to 31.

Q. You have it down in your report, is it 32 to 36 ?—A. No you are talking of something else now.

Q. I am talking of the hæmoglobin concentration.—A. I think I made a mistake. I naturally thought you were talking of the value.

Q. I have mentioned " Hæmoglobin concentration " ?—A. That is the last point in that examination. I made a mistake. I thought you meant something else.

Q. What is it normally ?—A. It is given very roughly as 30 to 40, and there is an inner range 32 to 38. Most people fall within 32 to 38. There is a range given as 30 to 40 by some authority.

Q. There is an inner range. What is Plaintiff ?—A. 32.

Q. You have 31 in your report ?—A. I do not know.

Q. You can take that. It was a case below this inner range ?—A. There is the hæmoglobin value, and the red cell count. They are really an elaboration, which is valuable in cases of anæmia.

Q. But that is what we are considering, whether there was some anæmia ?—A. I will explain the blood count ?

Q. No, I do not want that. You say the hæmoglobin concentration is of use when you are considering anæmia ?—A. Yes.

Q. That is what you are considering here ?—A. I found no anæmia in the figures—

Q. But I point out that hæmoglobin concentration is 31 whereas the inner range of normal figures is 32/38 ?—A. Yes.

Q. So it is below ?—A. But it is of no importance. The patient had no anæmia. The patient had 94 per cent. hæmoglobin, that is 94 of the

mean normal value and had over 5,000,000 red cells and hæmatocrit value of 42 per cent. Those figures establish that the woman had no anæmia. The other figures are worked out of the inter-relationship of the three figures, and they are of importance in differentiating different forms of anæmia, but were of no importance in this case. The patient had no anæmia. I put them in as a matter of routine.

Q. Nothing else is of any value?—A. The red cells count. The red cells count, hæmoglobin value, and the hæmatocrit reading are all normal.

Q. What is the range there (mean corpuscular hæmoglobin?)—A. 26/31.

Q. What is Plaintiff?—A. 26.

Q. That is the lowest?—A. Yes, the lower range but within the normal range.

Q. To whom was the account sent for this?—A. I do not know. I do not remember anything. I expect, I should think it would be to the patient.

Q. She did not ask you to make any test?—A. No, I have already said I do not know how I came to do it, except that I got a message.

Q. You would get an express direction to take the Wasserman test; it was through your secretary apparently?—A. My secretary got a telephone message I should say, and wrote down what was to be done.

Re-examined.

Re-examination.

Mr. CASSIDY: Mr. Shand put to you that there was 10 per cent. in bovril. You explained that you had said 10 millegrams?—A. It is generally expressed in that way, 10mm. per cent. It is 10mm. in 100 grammes.

Q. Is that what you call chemically a trace?—A. No, I do not know that it is a trace in the chemical sense. It is more than a trace. It is a high figure for a meat extract.

Q. Is bovril in your opinion one of the meat extracts?—A. Yes it generally is.

Q. You looked up and found confirmed something you told the jury with regard to the low iron content of bovril?—A. A year or two ago I looked up the iron content of various foods, and I remember definitely meat extracts, and even meat itself, have no iron figures. I cannot remember those figures.

Q. You could find them out?—A. Yes I could. They are all listed.

Q. And kept by you?—A. Yes, I know that milk and arrowroot have the merest trace, there is nothing so far as utility in diet is concerned. You might say they are of no value at all.

Q. Is anatomy or surgery any part of your work?—A. Only to the extent of doing post-mortem examinations. I do post-mortem examinations but I do not suppose I would be considered a good anatomist.

Q. Take your report, and look at the full blood count. Total red cells 4,950,000. What does that signify?—A. There is no anæmia.

Q. Why is that?—A. The mean figure for a woman's red cells, which are lower than men's, the mean figure I teach as the normal mean figure for women, is 4,700,000.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 25. Arthur Hamilton Tebbutt, 20th December 1943, Re-examination, *continued.*

Q. Hæmoglobin of 94 per cent. ?—A. That is quite up to the normal standard for women.

Q. Does the "color index" come into it?—A. It is one. It should be one. It is normal. It is the ratio of the red cells to the hæmoglobin.

Q. Take total leucocyte count. Does that come into consideration ?—A. Yes, it is normal between 4,000 and 10,000 and this was 5,700.

Q. What is the significance of the hæmatocrit reading ?—A. It is 42; the normal is about 40.

Q. When you get infection, do the leucocytes go up to very high figures ?—A. They may. 50,000 and even 100,000 from 5,000.

Q. Is mean corpuscular volume significant ?—A. No, it is normal.

Q. And the mean corpuscular hæmoglobin, 26 ?—A. It is in the normal range. It is the lower end of the normal range.

Q. And hæmoglobin concentration 31 per cent. ?—A. That is the lower part of the range. It is between 30 and 40.

Q. Does it mean any significance ?—A. No, they are calculated from the other figures. They are purely mathematical figures calculated from the other figures. In some anæmias they are of great value, but in normal blood count they are not because they are restating in a way some of the others.

Q. The report goes on: "These results show that there is no anæmia and in stained films the red cells show no pathological changes. The leucocytes show no significant pathological change. The reticulocytes are present in normal numbers, also platelets" ?—A. The reticulocytes are normally present in the blood. In this case they were present, and they were in normal numbers.

Q. Is that of further significance ?—A. She had no disturbance of the blood.

Mr. SHAND: What was the number of reticulocytes ?—A. You have whatever you have.

Mr. CASSIDY: I see they are "present in normal numbers." Can you remember what the numbers were ?—A. No.

Q. What are the normal numbers ?—A. From ·01 to 1 per cent., it is from one in 1,000, to one in 100. It is a wide range. In examining we count them where we find they are definitely increased. We may find them absent altogether, in which case we examine very carefully of course. When they are present in normal numbers you see one of these cells in every field, or every two or three fields, and you know they are normally present and we do not count them, it is unnecessary.

Q. "The leucocytes show no significant pathological change" ?—A. Yes.

Mr. SHAND: Take the reticulocytes. It is half to 1 per cent., is it not ?—A. In text books on blood you will find different figures given. I certainly think the range ·01 to 1 per cent. is more in accord with the truth than a half to one. I know one standard book, it is ·1 to one. In my own experience, more valuable than any book, I should say you get in normal persons less than half per cent.

Q. Take "Muir," pathology, page 438 says about 1 per cent. ?—A. It is too high.

Q. That is a mistake ?—A. Yes. If he meant there 1 per cent. to ·1 per cent. it would be all right.

Q. If you get an abscess in the throat, and you get a bursting of the abscess and consequently a discharge of the whole of the pus, the blood count could return to normal in a month ?—A. Not if there was a sinus still discharging.

Q. But the discharge has finally ceased three weeks to one month before ?—A. The sinus has to heal up right from the bottom, right to the skin before you can say there is no suppurating surface.

Q. Assume there is no suppuration, it has ceased ?—A. Assuming that the abscess has burst, and the sinus has healed up, it must discharge for a while, and then it has to heal from the bottom.

Q. Assume that has happened ?—A. It has to have no discharge.

Q. And within three weeks of that discharge ceasing, you could get the blood back to normal ?—A. Yes, when that condition is fulfilled.

Mr. CASSIDY : In this case we are told by the Plaintiff that she had gross swelling, which had her neck swollen so she could not move it, that three weeks after the tube was supposed to have gone she came to St. Luke's and still had pus in her mouth for some time after when you saw her. Could it be possible for the leucocyte to be normal ?—A. I should not think so. It would be inconsistent with my teaching experience for that to be normal.

(Witness retired.)

No. 26.

EVIDENCE of Ailsa Saunders.

No. 26. Ailsa Saunders, 20th December 1943, Examination.

Sworn : examined : deposed.

To Mr. CASSIDY : I am at present attached to the Army Nursing Service, serving in New Guinea. I am down here for the purpose of this case. I was a sister-in-charge at St. Luke's, the ward into which Mrs. Hocking was admitted on 26th October 1939.

To His HONOR : I was the sister-in-charge of the ward that Mrs. Hocking was in.

To Mr. CASSIDY : That was a private ward. I saw her very shortly after her admission.

His HONOR : This is the second admission—October 1939 ?

Mr. CASSIDY : Yes, your Honor.

Q. Did you make hospital records at that time ?—A. Yes.

Q. Can you recollect all the incidents without looking at your notes ?—A. Yes.

Q. Have you looked at your notes recently ?—A. Yes.

Q. You may take it she was admitted on 26th October 1939 ?—A. Yes.

Q. You may take it you made certain notes that day ?—A. Yes.

Q. Can you tell the jury what your idea of her was after you saw her on admission ?—A. She did not appear to me to be a very sick woman.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 26. Ailsa Saunders, 20st December 1943, Examination, *continued.*

Q. Did you notice anything particularly wrong with her from the nursing point of view ?—A. No.

Q. Would you say that when you saw her she was a surgical case in any way ?—A. No.

Q. How was she with regard to food ? You may take it that she had done a trip in the train the night before ?—A. That is so.

Q. And she arrived early in the morning ?—A. Yes. When she came in her appetite was not very good, but it improved within a day or so, when she was eating quite well.

Q. Can you remember at this stage what sort of diet ?—A. Well, she was placed on a full diet.

Q. Do the records show how the patient's condition as to eating is ?—A. Yes.

Q. Do you remember in detail what your reports are as to the day—— (Objected to.)

Q. Can you tell us the days on which reports were made as to her food, without looking at your notes ?—A. I think I could.

Q. Can you give us the sequence, so far as you can remember ?—A. When she was admitted, she was placed on a full diet, which means that she is allowed to eat anything which we are able to supply, or which she fancies. At the beginning her appetite was not very good and, by the third day, if my memory serves me correctly, she was eating a complete full diet.

Q. Would you have made notes from time to time at that period as to various matters connected with her food ?—A. Yes.

Q. She says that she had pus in her mouth. What do you say as to that ?—A. I saw no pus.

Q. What do you say as to the appearance of her neck?—A. There was nothing abnormal, to my knowledge.

Q. Do you remember whether she had any swelling of the neck ?—A. It was not apparent.

Q. If there was swelling of the neck, would that be noted in your hospital reports ?—A. Definitely.

Q. Do you remember whether she made any complaints during her stay there as regards anything ?—A. I remember that she complained at one stage of a sore throat.

Q. If that complaint were made, would that be indicated in your notes at the time ?—A. Yes.

Q. Do you remember any medicines, or anything that you gave her during the time she was there ?—A. She was ordered inhalations.

Q. Do you remember them being given ?—A. They were given for a time, but then the patient complained that they distressed her, and refused to have them.

Q. Do you remember any other treatment she had ?—A. No.

Q. Do you remember anything being given to her ?—A. She had sedatives.

Q. Do you remember what type it was ?—A. Yes, luminol.

Q. What is the purpose of that ?—A. To promote sleep.

Q. Were you present on any occasions when her throat was examined ?—A. Not that I can remember.

Q. Did you see a good deal of her in that ward ?—A. Yes.

Q. Did she ever make any complaint to you about Dr. Bell ?—A. Not at any time.

Q. Do you remember any complaints being made by her at all?—A. No, I don't remember any beyond what I have told you, the sore throat.

Q. She has told us that she was given very very cruel treatment in the hospital; is that correct?—A. Not to my knowledge, I know nothing of that.

Q. And she said that she was given drinking water, which had a very bitter taste for the purpose of removing a wall of pus from her throat. Do you know anything about that?—A. No.

Q. Did you ever see any wall of pus in the throat?—A. Never.

Q. Would it be part of your job, as the sister-in-charge, to know her condition?—A. Yes.

Q. And all treatment that she received?—A. Yes.

Q. Did you notice anything abnormal about her appearance in any shape or form?—A. No.

Q. Can you remember her being discharged?—A. Yes.

Q. At that time, what was her condition, so far as you could see it? A. She appeared to be well.

Q. Do you remember any alteration in her diet at all?—A. Not alteration; I would say addition. She was to be given a few—or rather encouraged to eat a few extra things, one of which was fish, and also milk, and such nourishing things as that.

Q. The Plaintiff has said that for months she was unable to move her head. Did you see any sign of limitation in the movement of her head?—A. No.

Q. And she says that for months after she left St. Luke's she still had limitation of movement of her head. Did you see any sign of that in hospital?—A. No.

Cross-examined.

Cross-examination.

Mr. SHAND: Do you suggest she was nervy?—A. Yes.

Q. You do?—A. Yes.

Q. She was nervy?—A. Yes.

Q. Did you forget to say that this time?—A. I beg your pardon.

Q. Did you forget to say that this time?—A. This time?

Q. You have not said it before I asked you. Did you forget about that?—A. No.

Q. Did you swear on the second trial (page 350): "I did not notice anything about her nerves"?—A. Did I swear that on the second trial?

Q. Yes?—A. Yes, I did.

Q. That was a plain untruth, was it?—A. I am sorry, I can't just get what you mean. Do you mean that Mr. Cassidy——

Q. I asked you a minute or so ago: "Do you suggest she was nervy in the hospital" and you said she was?—A. Yes.

Q. Didn't you swear on the second trial: "I did not notice anything about her nerves"?—A. Yes. Well, I say that her condition was nervy.

Q. Why did you swear "I did not notice anything about her nerves"? Was that to please the doctor?—A. I understood what was meant was the patient's condition when she left us; she was nervy at the time, because I have said in my first evidence that the patient's condition was nervy. If you read back you will find that.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 26. Ailsa Saunders, 20th December 1943, Cross-examination, *continued.*

Q. I suggest that you said in your first evidence " I did not notice anything about her nerves " ?—A. In the first, yes.

Q. And then when you came to court last time, you said she was nervy ?—A. Yes. I still say that.

Q. Well, they both can't be right ?—A. Well, when I came to this court and gave my evidence the first time, I came without the opportunity of examining my notes properly. I came from camp, and I gave my evidence without having a proper examination of my notes. The second time I was brought to court, I was able to go through the whole thing and my recollections were clearer.

Q. Have a look through your notes, and see whether there is one word about her being nervy ?—A. Yes, but I had had time to study and recollect.

Q. It was not in your notes; it was something you recollected ?—A. Yes. I said to you a moment ago that my recollections were clearer.

Q. It was not your recollections ?—A. No.

Q. So it was a mistake in your recollection when you said " I did not notice anything about her nerves " ? That was a mistake ?—A. I would not say that was a mistake; it was just something I had not recalled.

Q. Well, a mistake in your recollections is what I am putting ?—A. Yes, you can put it that way.

Q. When did you think up about her being nervy ? At the second trial in 1942, three years afterwards, you did not recollect her being nervy then, but four years afterwards you do ?—A. Yes.

Q. And you did not get it from your notes ?—A. No.

Q. Just from your recollection ?—A. Yes.

Q. Did someone suggest to you that she was nervy ?—A. No.

Q. You have said that you were not there at any time when Dr. Bell examined her throat ?—A. I said that I could not recollect being there at any time.

Q. I suppose you will admit that you have been there when he has examined her chest, her back and neck ?—A. Yes.

Q. I think this is your answer (book shown to witness). It is the 26th October—" Dr. Bell examined chest, neck and back." That is your writing ?—A. Yes.

Q. Would your memory be good enough to recollect that, or do you rely on your entry ?—A. I relied on my entry for that.

Q. Your entry would be correct ?—A. Yes.

Q. Did you make a point of making accurate entries ?—A. Certainly.

Q. I suppose if you had been present when Dr. Bell had examined the throat, you would have made a note of that ?—A. That's likely, yes.

Q. You remember now that you think you made a mistake about you thought Dr. Marsh gave the inhalation ?—A. Yes, I said that.

Q. That was clearly a mistake, it was Dr. Bell ?—A. Yes, it was Dr. Bell who did it.

Q. You corrected it when it was put to you ?—A. Yes.

Q. You agree that the object of inhalations is to clear the mouth and the throat ?—A. Yes.

Q. The hoped for effects is that if there is discharge the inhalation will clear up the discharge ?—A. That is one object.

Q. I suppose you personally never examined her throat ?—A. Well, that is something I can't remember.

Q. Well, you would make a note of it ?—A. There would have been a note made.

Q. We can assume that if there is no note made in your notes you did not do it ?—A. Yes.

Q. Do you remember her voice being husky when she came in ?—A. Yes.

Q. Very husky wasn't it ?—A. Yes.

Q. You have mentioned here being given something extra—I think you mentioned milk and fish ?—A. That's right.

Q. Can you recollect now that that, especially the milk, was given to her after she had her blood test taken ?—A. I can't remember that.

Q. Do you remember that the result would be a low calcium content ?—A. I am sorry, I can't remember that.

Q. Do you remember that soon after she came in she complained about her throat hurting, and she was given softer foods ?—A. Yes.

Q. I refer to another entry of yours, on the 27th October. (Book shown to witness.) That is your entry, isn't it ?—A. Yes.

Q. " Dr. Ritchie inquired " ?—A. Yes.

Q. That means what it says, I suppose, inquired how the patient was ?—A. Yes.

Q. I turn back to the 26th ; you will see here a similar entry—" Dr. Ritchie will see patient " ?—A. Yes.

Q. And there is another one here—" Dr. Ritchie p.m. will examine patient to-morrow " ?—A. Yes.

Q. That was apparently the intention, to put down to examine her ?—A. Yes.

Q. Well, it looks as if he did not examine her ; he merely inquired ?—A. That doesn't necessarily follow. Is that the next day ?

Q. Yes. You will find that in these other entries you have put examinations down—Dr. Bell examined patients or throat or whatever it is ?—A. Yes.

Q. So far from there being an entry of Dr. Ritchie examining the patient, you have Dr. Ritchie inquired ?—A. Yes.

Q. That looks as if he did not inquire ?—A. Yes, but that does not say that Dr. Ritchie did not see her later.

Q. There may be some other entry, but that entry itself, you will agree—— ?—A. Yes, that signifies that he asked.

Re-examined.

Re-examination.

Mr. CASSIDY : Mr. Shand asked you about Dr. Ritchie. Do you always take a record when Dr. Ritchie sees the patient ?—A. Not always.

Q. Why is that ?—A. There are times when Dr. Ritchie comes in and we are very busy, and Dr. Ritchie has very often gone in to see his patients without waiting for us, and in that case we would not have a record of it.

Q. Is it different with a surgeon ?—A. Usually a surgeon will have a look at a wound, and it is more necessary for him to have someone with him.

Q. You have been at St. Luke's for some time ?—A. I trained there.

Q. Does Dr. Ritchie make a habit of seeing patients on his own ?—A. Yes, quite often.

Q. You were asked a question by Mr. Shand, and you said you could not remember, but it was after she came in that she complained about

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 26. Ailsa Saunders, 20th December 1943, Re-examination, *continued.*

her throat. Have you looked at your notes, and is the date that she complained about her throat the 30th October, that is, four days after she came in? Look at your notes? Mr. Shand said some time after she came in. Is that the date you are referring to?—A. Yes.

Q. Was she out of hospital within three days of that?—A. Yes.

Q. On 1st November, on the day report, does it appear that she may go home at the week-end?—A. Yes.

Q. At any time there was there any sign of pus or heavy infection in that throat at all?—A. No.

Q. If you look at your notes of the 31st, evening, do you remember the only treatment that she had with regard to her throat?—A. There was a gargle given.

Q. You are the one in charge of the floor?—A. Yes.

Q. Is there any record of any treatment of her throat, after the 31st, other than gargles and throat painting?—A. No.

His HONOR: Who would paint the throat on that occasion?—A. Probably one of the sisters.

Mr. CASSIDY: Could you remember at this stage whether you painted her throat or not?—A. No, I can't remember.

Q. Mr. Shand asked you about why you said that once you did not notice any nerves. When you looked at your report, was there something in the report to refresh your mind in that connection? (Objected to; after argument objection withdrawn.)

Q. Is there anything in your report that refreshed your mind as to the nerves?—A. No.

(Witness retired.)

No. 27. John Whitton Flynn, 20th December 1943, Examination.

No. 27.

EVIDENCE of John Whitton Flynn.

Sworn: examined: deposed.

To Mr. CASSIDY: I am a legally qualified medical practitioner, practising as a specialist in skin diseases in Macquarie Street, Sydney. I am Hon. Dermatologist at a number of Sydney hospitals, and have specialised in skin for many years. At present I am a Wing Commander in the Royal Australian Air Force.

I remember being consulted by Mrs. Hocking in 1937. It was on 24th September 1937. Mrs. Hocking——

Mr. SHAND: What is that you are reading from?—A. My card.

To Mr. CASSIDY: That is my original card. The 24th September 1937 is the date of her first treatment. Mrs. Hocking brought with her something. She brought a letter. That is a letter from Dr. O'Hanlon. I think I read that letter. I do not think it contained a history of the patient, from memory. (Mr. Shand objects to what the letter contains.)

I look at document. That is the letter. It was handed to me by the Plaintiff, I would think, that is the usual procedure. It is a long time

ago. I would say definitely yes, but I can't swear to it. I am morally certain that she handed it to me. Whether she handed it to me or whether it came by post, it was a letter from Dr. O'Hanlon. I read that letter, I would say, before my treatment of the patient. I then made an examination of her myself.

(Letter tendered : objected to.)

Q. Was that letter part of the material with your examination, that you used in coming to a conclusion as to her case ?—A. No, I don't think I would use the letter very much.

Q. Did you then make an independent examination yourself ?—A. Yes.

Q. Tell us what you found on examination ?——

(Further hearing adjourned until Tuesday, 21st December 1943.)

Sixteenth Day, Tuesday, 21st December 1943.

JOHN WHITTON FLYNN :

Further examined.

Mr. CASSIDY : You were up to the position when you made your examination of the Plaintiff. Tell us what you found ?—A. I found from the lesions that she displayed, that she had a characteristic attack of a condition called Giant Urticaria or angio-neurotic œdema.

Q. What were these lesions ?—A. They are shown on the skin as swellings.

They come up sometimes quite suddenly and occasionally disappear quite suddenly, but as one disappears certain others come up and they are extremely irritable. The irritation is something very pronounced. In regard to the causes of the condition, I think I might put them into predisposing causes and exciting causes. The predisposing causes are hysteria, neurosis of a high order, thyrotoxicosis, and the exciting causes would be overwork, worry, menstrual disorders, menopausel conditions and so on. There is another important predisposing cause, that is sensitivity to the ingestion of certain foods or the inhalation of certain airborne conditions, dust, or plants, pollen and so on. So far as I can remember she was very excitable and very harassed because this irritation is pretty intense and you get a vicious circle forming. The person is nervous and highly strung and then they have sleepless nights with this condition quite often, and this intractable itching at any old time and it makes them more nervous because they do not get proper sleep. The result is, unless you hit on the cause, they have a very uncomfortable time of it. Thyrotoxicosis is one of the causes associated, I have mentioned that. I saw the rash or swellings. It fluctuates. I saw Plaintiff first on the 24th September 1937. That is the first date on my card. On that occasion I prescribed calomel, grains 1, to be taken every second day. That was with the idea that if it was caused by anything she had taken, that it may have been eliminated, and I also prescribed an anti-pruritic to relieve the irritation, something to give relief.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 27. John Whitton Flynn, 21st December 1943, Examination, *continued.*

Q. Did you give other treatment after that ?—A. The 28th was the next day I saw Mrs. Hocking, four days later.

I then gave an exhibition of superficial X-ray therapy, fractional dose, one third of a skin erythema dose. That was with the idea, well it seems to act as a charm in certain psychic conditions, in pruritus ani or pruritus vulvæ, or both, in the absence of any organic lesions, that is where there is no anatomical reason for it, there is no discharge or fissure or no abrasion of the skin per se, you get this intractable irritation and X-ray therapy in my opinion, it is outstanding in the relief it gives. That is purely of psychic value in a condition such as that. That is why I gave it.

Q. You used the words: "when there is no organic cause," or something like that. There is a difference between organic cause and nervous cause ?—A. Yes.

Q. That is the reason of your X-ray treatment in this case; because of the nervous nature of the individual ?—A. That is so.

I saw her on the 2nd October.

Q. Do you find in these nerve cases, that sometimes the X-ray treatment is dramatic in its results ?—A. In the cases I have referred to—— (Objected to.)

Q. Well, what do you find as to the application in certain nervous cases of X-ray ?—A. I have just mentioned in conditions of pruritus ani and pruritus vulvæ, in the absence of any organic lesion, that it works as a charm for the psychical part of it.

I next saw her on the 2nd of October. That would be another four days. My note says "Going on well."

I saw her on the 5th. The patient was more comfortable and I saw her on the 15th. I gave her another application of X-ray and that was the last occasion on which I saw her.

Q. This lady has sworn in court that she was severely burnt by your X-ray.

Mr. SHAND: That is not the evidence.

Mr. CASSIDY: I refer to page 30, this trial:—

> "Q. Then after Dr. Flynn, after the treatment down here, you went into hospital ?—A. Yes, and Dr. O'Hanlon called Dr. Flynn a few names when I went back, I had X-ray treatment for a slight irritation on the back of my neck and I was severely burned."

(Objected to; Mr. Cassidy says that this was opened by him to the Jury.)

I never burned her with an X-ray. That would be absolutely untrue, a lie or part of a disorderly mental attitude. There was no possible burn, and could not have been.

Q. The X-ray treatment you give is psychic ?—A. No, I did not say that.

Q. Well, it comes from psychic reasons. I am coming at the measure of the X-ray ?—A. She got a small fractional dose which could not burn anyone, and in fact did not burn anyone.

Q. Take a severe X-ray burn—what would it mean ?—A. It depends on whether it was an acute burn, or you get most severe ones at long intervals with a succession, repetition of doses.

It may get to a condition of destroying the bone, an intractable ulcer may become malignant eventually and quite frequently they do, but it is a fairly long process.

Q. Would there be signs of that? Take if there was a severe X-ray burn?—A. There would be signs of it now.

Q. You diagnosed her as suffering from angio-neurotic œdema. Oedema is the medical word for swelling?—A. Yes.

Q. Is that a condition which lasts for any length of time?—A. It varies.

If you can hit on the cause, well, like many other things, it responds quite readily. It would respond quite readily but it is often difficult because the causes are protean in number. If you get a nervous neurotic subject, I think they are the most difficult ones to deal with.

Q. How do you describe the Plaintiff?—A. At that time she fitted into that category of being difficult to handle, nervous, highly strung and neurotic.

Cross-examined.

Mr. SHAND: Has your memory improved since the last trial?—A. I do not think it varies.

Q. You were asked about that letter on the last occasion. On this occasion you gave evidence that it would be handed to you?—A. That would be the normal procedure, yes.

Q. Did you swear last time: "I do not remember whether that letter was enclosed in an envelope, or whether it was handed to me in open form"?—A. I could have said that. The envelope may have been open, I do not know.

Q. Did you give that letter to Dr. Bell?—A. No.

Q. Did you give it to his legal representatives?—A. I may have given it. I am not certain. I think it was given to Mr. Rex.

Q. That is the solicitor?—A. It would not interest me. I do not know.

Q. Did you ask permission of Mrs. Hocking?—A. I do not think so.

Q. Did you give your notes to Dr. Bell?—A. I should not think so.

Q. Would you swear you did not?—A. I do not know. I won't swear one way or other.

Q. Or to his legal representatives?—A. I am not even certain of that. I do not know. This is six years ago and I am a very busy man.

Q. You gave a statement to Dr. Bell or his representatives before the case?—A. I have a hazy recollection of Mr. Rex coming to me at some time, I do not know whether the first or second hearing or when.

Q. Did you ask Mrs. Hocking's permission before you told Mr. Rex about her?—A. I have said no.

Q. Do you consider that proper?—A. Perfectly.

Q. A lady who has employed you. You were paid?—A. Yes, I was paid.

Q. You were paid to examine her and endeavour to cure whatever trouble she had. That was it?—A. No, it was not the same actually.

Q. Were not you asked by her to examine her and do your best for her?—A. Yes.

Q. That was what you understood?—A. Yes, that is what I did.

Q. You consider yourself at liberty on all occasions to divulge to other doctors, when there is litigation——(Objected to.)

Q. Well, to divulge to Dr. Bell without the permission of your client, matters that you have discovered or think you have discovered on

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 27. John Whitton Flynn, 21st December 1943, Cross-examination, *continued.*

examination. You see nothing wrong in that ?—A. Not in the light of present knowledge, no.

Q. But you did not see anything wrong at the time you told Dr. Bell's representative—nothing wrong with it at all ?—A. No.

Q. That is without the permission of your client ?—A. I admit I did not have permission.

Q. Or I should say of your patient. You will admit in view of what subsequently happened to Mrs. Hocking that your diagnosis was wrong ?—A. I would not admit that. It was not wrong.

Q. Shortly after your examination she went into hospital and was operated on for thyrotoxicosis ?—A. What is " shortly " ?

Q. Four months ?—A. That is not shortly, in my opinion.

Q. Do you still maintain your diagnosis was correct ?—A. Most definitely.

Q. No doubt about it ?—A. None whatever.

Q. Will you not agree that her real trouble was thyroid trouble ?—A. I am not concerned with that.

Q. Will you not agree that was her trouble ?—A. She may have had that trouble as well, or it may have developed. Please don't tell me my business. She had what I said she had.

Q. Will you admit in view of what happened shortly afterwards, that the trouble was thyroid trouble ?—A. No, that question is not fair. I have mentioned the thyrotoxicosis may have been one of the predisposing causes of the condition she had.

Q. Will you produce any authority which suggests that thyrotoxicocci is a predisposing cause to this trouble that you diagnosed as angio-neurotic œdema ?—A. I could do it with the greatest of ease and elegance. I could not think of it offhand, but there are several books.

Q. You can have any time you want to do it ?—A. I would like to do a little study on that. I have not books with me.

Q. Have you seen it anywhere ?—A. Yes.

Q. How long ago ?—A. Probably 15 years, or 10, or five years ago, when I do my occasional browsing.

Q. Will you admit this : in connection with angio-neurotic œdema, angio is blood vessel ?—A. It need not necessarily be.

Q. We know what the other words are. Will you admit that trouble is caused by sensitisation to foreign proteins ?—A. It is one of the causes.

Q. The main cause ?—A. I won't say that.

Q. Is it not spoken of in every text book as the main cause ?—A. No.

A. A predisposition to be affected by certain foods, shell fish ?—A. I do not agree with what you say.

Q. You will produce authority for that ?—A. I could tell you that.

Q. But I would like the authority ?—A. I am the authority.

Q. I want another one ?—A. I think Osler might have had it.

Q. Will you admit it is a generalised condition, with lumps coming up in different parts of the body at short intervals ?—A. Maybe.

Q. And never localised in one spot ?—A. Of course it can be localised in one spot. You may only get one lesion.

Q. Can you give one case where it has been localised in one spot ?—A. I could give you a dozen.

Q. All you saw was a rash on the back of the neck ?—A. I did not say that, I said there were swellings.

Q. How many swellings ?—A. I cannot remember now.

Q. Give us an idea ?—A. I cannot remember. I would have to be a "Quiz Kid."

Q. Were they lumps ?—A. Oedema, I suppose, is the word.

Q. Or a lump ?—A. That is a swelling. I do not know the fine shade of distinction between lump and swelling.

Q. Do you remember what swelling or lumps she had ?—A. No, I cannot say I even remember that very clearly.

Q. Did she have any ?—A. Obviously she had.

Q. Have not you any notes ?—A. I have my card with the diagnosis, and the treatment given in 1937.

Q. Have you any notes of any lumps or swellings ? Have you any notes that she had any ?—A. I do not think I have, only the diagnosis.

Q. Have you any note that she had any lump ?—A. No.

Q. Have a look ?—A. I know I have not.

Q. You are sure you have not ?—A. I have not any notes. All I have is the treatment, and the date I saw her.

Q. You said: "I do not think I have" ?—A. It was a figure of speech.

Q. Did you make any examination of her to see if she had any thyroid trouble ?—A. No.

Q. I thought you said you sometimes associated it with thyrotoxicosis ?—A. Yes, possibly.

Q. Why didn't you ask some questions of the patient about that, or examine her ?—A. What could you learn ?

Q. Or examine her ?—A. I am a dermatologist.

Q. You want to discover what the trouble is if you can ?—A. I may have written to that effect.

Q. Did you examine her to see if she showed any signs ?—A. What do you do to find out thyrotoxicosis ?

Q. Don't you know ?—A. I have an idea. I am a dermatologist. she had no obvious swelling.

Q. What do you do ?—A. You look to see if she has a lump or swelling in a certain portion of the neck.

Q. It is easy to do ?—A. Sometimes there would not be a big swelling.

Q. It is easy to look ?—A. I probably did that.

Q. Do you swear you did ?—A. I do not know, but presumably when one looks at a condition on the skin you have a look pretty well nearly all over.

Q. What about the pulse, does that go with thyrotoxicosis ?—A. I understand it does.

Q. Do you know that even ?—A. Yes, I think so.

Q. Did you examine her pulse ?—A. No.

Q. You might have examined her throat ?—A. I might have looked at it.

Q. For that purpose ?—A. I might have done that.

Q. You know the thyrotoxicosis is associated with it ?—A. It is a possible predisposing cause.

Q. It may be ?—A. I will agree it may be.

Q. You made no examination to see if she had thyroid trouble ?—A. I would say that would not be correct.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 27. John Whitton Flynn, 21st December 1943, Cross-examination, *continued.*

Q. Did you swear this before at page 138, third trial :—

" Q. You did not make any examination to see if she had any thyroid trouble ?—A. No."

A. That is correct. Please don't try to catch me.

Q. You have sworn you probably did examine her ?—A. I probably looked to see if there was any swelling in the neck.

Q. In connection with thyroid was my question ?—A. It would be swelling in the front of the neck, and I probably did look at that. The pulse is not my problem, being a dermatologist.

Q. If you now say you probably examined her throat, or looked at the front of it in connection with thyroid trouble, why did you answer this way :—

" Q. You did not make any examination to see if she had any thyroid trouble ?—A. No."

A. It may have been with regard to what you asked me about the pulse rate ?

Q. No, but take the next question :—

" Q. For instance, you did not take her pulse ?—A. No."

A. And I say no to that.

Q. But why answer the first question that way if it was possible you did ?—A. There is no difference in the way I would answer it now, and the way I would answer it then. As to whether I palpated or felt it, I have to be careful.

His HONOR : You draw a distinction between an examination and looking ?—A. Yes, that is what I am trying to point out.

Mr. SHAND : It never occurred to you at that time, that this angio-neurotic œdema was associated in any way with thyrotoxicosis ?—A. I do not agree with that.

Q. You were asked did you make any examination. It was not a particular examination to see if she had any thyroid trouble and you said no. When I asked you what you looked for to ascertain thyroid trouble, the very first thing that sprang to your mind was a lump in her throat ?—A. Oh no. You are not asking the same question now.

Q. If you looked at a woman's throat to discover if she had thyrotoxicosis, you would not call it an examination ?—A. No, I do not think you would, that is right.

Q. Do you seriously say that ?—A. Certainly. You cannot pick thyrotoxicosis by merely looking at it.

Q. I think you said the first thing you look for in thyrotoxicosis is goitre or swelling ?—A. No, I am not a specialist or trained in thyrotoxicosis. It just comes in as one of a protean number of predisposing causes to the condition she had.

Q. What do you mean by protean ?—A. Thousands.

Mr. SHAND : It does not mean thousands, does it ?—A. I think it does, protean in number.

Q. If you looked at a woman's throat to ascertain if she had thyrotoxicosis you would not call it an examination ?—A. I did not look at her throat to see if she had thyrotoxicosis.

Q. If you looked at the outside of the throat to see if she had a swelling or goitre, you would not call it an examination ?—A. Not complete.

Q. You would not call it an examination ?—A. I do not think it is a fair question. It is an unfair question and you know it.

Q. What is unfair about it ?—A. You ask " If I looked at a person's throat was it an examination for thyrotoxicosis " and I say no.

Q. If you looked at her throat to ascertain whether she had goitre or swelling, would you call it an examination ?—A. No.

Q. What is it ?—A. It is a " look-see."

Q. If you were making a record of what you had done, you would put down in your notes : " I had a look-see at Mrs. Hocking " ?—A. I may have written that the way you put the question.

Q. Are you serious ?—A. Yes, very serious.

Q. That is the best you can do ?—A. I am a dermatologist.

Q. But this is only a matter of plain language ?—A. And I am pretty good at English.

Q. As to what is an examination ?—A. I say it would not be an examination.

Q. It would be a look-see ?—A. Yes, I have already said that.

Q. Would you also produce an authority which indicates that X-ray treatment is ever applied to angio-neurotic œdema ?—A. No, I do not think it would be a regular procedure.

Q. Because it is subcutaneous ?—A. Yes.

Q. It is something you have in your blood ?—A. Oh no. The cause of it is, the stimulating cause——

Q. I am suggesting to you, you will find no authority to suggest that superficial X-ray therapy is any cure for this subcutaneous trouble of angio-neurotic œdema ?—A. I do not think it would be recorded in books, no. The fact remains that the Plaintiff got more comfortable.

Q. Sometimes time does it ?—A. That may be so. That was why I said four months was a long time.

Q. Will you agree with this, in view of the fact she was found some four months later to be suffering from thyrotoxicosis, would you not now consign her trouble to thyroid trouble ?—A. There is a possibility of that, yes.

Q. In point of fact is not this correct, you are unable to say what the trouble was, what the cause of it was ?—A. Yes, I am unable to say the cause of it.

Q. Were you aware that thyrotoxicosis produced a nervous condition ?—A. Yes.

Q. I suppose you will agree in view of the fact it turned out she had thyrotoxicosis, that any nervousness you saw may have been caused by that condition of thyrotoxicosis ?—A. It may have been, yes.

Q. You say you cannot remember what swellings you saw ?—A. Yes.

Q. Will you swear that she had any swellings apart from rash ?—A. She had swellings associated with the diagnosis of angio-neurotic œdema. It is obvious she had because that is the diagnosis that is written down.

Q. I suggest it may not be correct, that all she had was a rash ?—A. It would be incorrect.

Q. Have you any record ?—A. I have the diagnosis. It is quite obvious what she had.

Q. You say so. Will you agree with this description of angio-neurotic œdema : " This is another curious affection apparently connected with the

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 27.
John Whitton Flynn, 21st December 1943, Cross-examination, *continued.*

vasomotor apparatus " ?—A. Yes, it is a funny book. It must be pretty old.

Q. " Curious " ?—A. That is the word.

Q. Is it not a curious affection ?—A. I do not think so.

Q. Is it not an affection in connection with which it is very hard to find the cause ?—A. That is true. It is a very common affection though.

Q. " Circumscribed swellings appear on various parts of the body, for instance, on the face, the eyelids, the hands or legs, or in the throat " ?—A. Not necessarily all at the one time.

Q. " They are not inflammatory and not dependent upon gravity ; they are accompanied by burning, pricking and itching "—is that correct ?—A. Reasonably.

Q. " They appear suddenly, are of short duration, recur frequently and even daily ; they are generally harmless but œdema of the larynx has sometimes proved fatal. Gastro intestinal symptoms are usually present, such as colic, nausea and vomiting " ?—A. No, I do not agree with that.

Q. " The disease is often hereditary and very intractable." This is " Taylor's Practical Medicine, 1901," page 608 ?—A. It seemed to be in the year Sir Henry Parkes was born by the sound of it. It is contradictory in itself.

Q. Now take 1925, is that better ?—A. Yes.

Q. " Angio-neurotic œdema : This is an affection apparently connected with the vasomotor apparatus and closely allied to urticaria ; but the lesions are larger. Circumscribed swellings appear in various parts of the body—for instance on the face, the eyelids, the hands or legs, in the throat or in the tongue. They are not inflammatory and not dependent upon gravity ; they are not painful but may be accompanied by burning, pricking and itching. They appear suddenly, last from two to six hours or more, and recur frequently, even daily ; on the skin they are generally harmless but œdema of the larynx has frequently proved fatal. Gastro intestinal symptoms are usually present such as colic, nausea and vomiting, and are attributable to an acute œdema of the gastric or intestinal mucus membrane. The disease is often hereditary, occurring in several members of the same family in two or three generations. It is one of the toxic idiopathies, like asthma, and is due to sensitisation to a foreign protein."

There is nothing about the predisposing cause being neurosis or thyrotoxicosis and nothing about the exciting cause being menstruation or menopause. That is, change of life ?—A. Yes.

Q. The only predisposing cause is given as " sensitisation to a foreign protein " ?—A. Of course poison in the blood stream in thyrotoxicosis might be regarded as a foreign protein.

Q. You are going to produce an authority for that ?—A. I am leaving that to someone more competent.

Q. But you promised to produce an authority ?—A. Which said that thyrotoxicosis was one of the predisposing causes. I will do that all right.

Q. " The treatment consists in finding out and avoiding the particular protein to which the individual is sensitive." Did you try to do that ?—A. No.

Q. There is nothing wrong with " Taylor " ?—A. He would not be regarded as a dermatologist. 1925 is pretty old. It is almost copied from the previous thing.

Q. Take sensitisation. You try to eradicate the cause ?—A. It is a big generic sort of thing.

Q. Don't you try to find out what the person is eating ?—A. No, not necessarily. Is it an all-important thing in angio-neurotic œdema ?

Q. You mentioned giant urticaria. You still find out the cause whether it was giant or pigmy ?—A. Yes.

Q. You did not in this case ?—A. I think I probably did.

Q. What efforts did you make to find out the cause ?—A. I have no doubt I asked the patient when these things came on, how long she had had them, and if she noticed any particular food which had caused them, or if she had a garden or if she was sensitive to pollen of plants, but six years ago is a long time.

Q. " Quinine, nitro glycerine, and thyroid extract had given relief in a few cases. Laryngeal œdema may require intubation or tracheotomy." (Referring to page 383, 13th edition, " Taylor's Practice of Medicine.") When I asked you before you swore you did not ask her for any symptoms. Now you say you asked all these questions about what food she had, and what plants she went near ?—A. I do not think I ever swore I never asked her any questions.

Q. I asked you some time ago about it ?—A. I do not remember your even asking, and I would like to challenge it.

(Witness' previous evidence referred to.)

Q. You would not ask about pollen, flowers ?—A. I think I would have.

Q. It has nothing to do with angio-neurotic œdema ?—A. Yes, a lot.

Q. Hay fever ?—A. Oh no. I do not know who your adviser is but he does not know much.

Q. I suppose this is a dig at Dr. Thompson ?—A. I do not know, I would know him if he stood in front of me. I have never met him in my life.

Q. Is that what you are aiming at ?—A. I would not know him if he stood in front of me.

Q. You have known that he has given evidence in this trial ?—A. I know very little of this case——

Q. Yes, that is what I am suggesting ?—A. Oh no you are not. It is not that easy.

Q. Pollen has nothing to do with this condition ?—A. I say it has a lot to do with it.

Q. This is a complaint which affects the intestinal tract ?—A. It has a great deal to do with it. Please don't tell me my business.

Q. Will you find an authority for that too ?—A. Sensitivity to pollen causes angio-neurotic œdema, everyone knows it.

Q. Will you find an authority for it ?—A. Yes, I can do that with great ease.

Q. And will you find the other authorities ?—A. You have asked me for two, about thyrotoxicosis being a predisposing cause, and sensitivity to pollen of plants having no effect and I say it has a great effect in many cases.

Re-examined.

Re-examination,

Mr. CASSIDY : Take you yourself as a dermatologist. When the patient came to you, you looked for the complaints ? (Objected to.)

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 27.
John Whitton Flynn, 21st December 1943, Re-examination, *continued.*

Q. You are not a surgeon or physician, is that so ?—A. I do not practice as such, no.

Q. Take a diagnosis of thyrotoxicosis. Was it anything to do with that ?—A. No, not the diagnosis of it.

Q. You were cross-examined by Mr. Shand as to what you said last time. Is this what you said to Mr. Hardwick (page 137) :—

> " I think you said last time that this angio-neurotic œdema has many causes—hysteria, melancholia, thyrotoxicosis, Graves' disease and several other conditions ?—A. Yes."

His HONOR : Is that correct ?—A. Predisposing causes, yes.

Mr. CASSIDY : When you come to your treatment, what is it you deal with, the thing you see there, or do you try to eliminate all the other things ? (Objected to.)

WITNESS : I will answer the question Mr. Shand puts. In a position like this, as I did in the first place, as I told you, I treated it empirically, that is with a lotion, to try and give some, even temporary, relief from this irritation. I, at the same time, to see if anything had been ingested, gave calomel, and I have no doubt that I asked about the pollens of plants—that is a cause of this condition—also probably feathers in pillows and mattresses and so on. Then seeing that she would probably be from the country and her own doctor would presumably be looking after the general condition of pulse and so forth and so on, then we gave her the X-ray treatment and also there was a possibility of being in Sydney away from worry or a mental upset which may have been in existence somewhere else and may not have been existent on this holiday and I don't see that anyone could have treated her better.

Mr. CASSIDY : You were asked a question next about a book, a passage dealing with angio neurotic œdema. Have you been in practice now as a skin specialist for many years ?—A. 18 years.

Q. And have there been considerable advances in skin work in that 18 years ?—A. There have been great advances in certain branches of it, yes.

Q. You see this book devotes that passage to angio neurotic œdema, 16 lines. Mr. Shand said to you, reading from that book, was not the disease very intractable, and you answered that you did not agree with that. Did you notice in the 1925 edition the words " very intractable " are omitted ?—A. Yes, I noticed that.

Q. And did you notice also in the 1925 edition the addition of the word " toxic " to a certain part as it was read to you ?—A. Yes, I think I noticed that.

Q. And that contribution of angio neurotic œdema in this book is confined, is it not, to the bottom part of the page and the top part of the next page, a matter of about 20 to 25 lines ?—A. Yes.

Q. I have a note here that Mr. Shand referred to the swelling of the throat. Can that come with angio neurotic œdema ?—A. Yes.

Q. Have you seen that actual thing, swelling in the throat ?—A. Yes.

Q. Would you describe what it is like ?—A. It has been read out a couple of times, that it is the only dangerous part if you get the swelling of the larynx or the tongue and you would perhaps even go so far as to do a tracheotomy in some cases, very rarely that happens, thank God.

Q. But that might be part of the condition ?—A. Yes, that is so.

Mr. SHAND: Would you bring also authorities for two other propositions that menstrual disorders and the menopause are predisposing causes ?—A. Yes, I think I could do that.

Q. Supposing four days after your last examination Dr. O'Hanlon had discovered that the thyroid was very prominent, there was a coarse tremor and a clammy skin and diagnosed thyrotoxicosis, do you think you could have missed that, very prominent four days later ?—A. I told you I did not examine for goitre or thyrotoxicosis.

Q. I thought you said you looked over the throat ?—A. It may have been a very small swelling.

Q. Very prominent I suggest four days later ?—A. Yes.

HIS HONOR: When can you come back with those authorities ?—A. Would you allow me a little latitude ? Would it be all right after the holidays ? In fact I will try and do it for you this evening.

Mr. SHAND: After the holidays will do, there is no hurry so long as you don't forget.

(Witness retired.)

No. 28.

EVIDENCE of Kevin Charles O'Hanlon.

Sworn, examined, deposed:

To Mr. CASSIDY: I am a legally qualified medical practitioner, practising at Quirindi. I first attended Mrs. Hocking on the 23rd August 1937. My notes are here in Court. On that occasion I was called in to see Mrs. Hocking because she was complaining of a rash between the shoulder, blades in the region of the back of the neck. I prescribed a certain treatment which was unsatisfactory, the condition did not respond to treatment. I then gave her certain advice and I wrote a letter to Dr. Flynn of Sydney and sent it to him by post.

Q. What was her condition at that time, August 1937, when you saw her ?—A. This rash between her shoulder-blades and the back of her neck consisted of raised red lumps which seemed to be very irritable, there were small patches of dried blood where she had been scratching them and she complained, I remember, of what we call formication, that is the feeling of insects crawling under the skin. Apart from that her general condition impressed me as being very neurotic, neurasthenic, highly strung.

Q. Could you give us an idea from what you got that impression ?

A. By her demeanour, her conversation, her general attitude.

Q. And your letter to Dr. Flynn at that time would contain what you indicated to him ?—A. Yes, I told Dr. Flynn—(Objected to.)

Q. Did you see her after she came back from Dr. Flynn ?—A. Yes.

Q. At that time did she make any complaint to you about being burned by Dr. Flynn by an X-ray ?—A. No.

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Q. Can you tell us from looking at your records what was the position generally when she returned ?—A. I have a note here, that the patient had X-ray treatment with good results, she had lost much weight, the thyroid was very prominent, there was a coarse tremor, the skin was clammy and I queried the diagnosis of thyrotoxicosis. That was in my mind, thyrotoxicosis.

Q. What is thyrotoxicosis ?—A. A condition brought about by the thyroid gland producing an excess of thyroxin and is evidenced by loss of weight, clammy skin, general neurasthenia and nervous symptoms and of course prominent thyroid.

Q. Can you tell us at this time anything else about her condition, you have told us about her weight ?—A. She had a very rapid heart rate.

Q. Can you tell us what it was ?—A. In the vicinity of 150.

Q. Have you got a note there of it ?—A. I cannot say that I can see it here.

Q. But you say it was about 150 ?—A. I remember well that it was in the vicinity of 150.

Q. What is normal ?—A. 72.

Q. Anything else that you noticed about her. Speaking generally for a start, how would you say that she compared with before she went to Sydney ?—A. Vastly different, her condition had changed a lot, she had lost a lot of weight, I was very impressed by that and the prominence of the thyroid impressed me quite a lot too.

Q. Any other indications that you noticed about this thyroid condition ?—A. I think I have covered it.

Q. As to nerves, what was the position ?—A. I would say that her condition from a nervous point of view was worse than before she went away to see Dr. Flynn.

Q. Did you give her any advice ?—A. Yes, I considered that she should go into hospital for complete rest and to enable me to observe her condition.

Q. And do you know from your notes when she went into hospital, or would you have to check that from the hospital notes ?—A. I have a note here where she went in on the 18th October 1937.

Q. Did you give any instructions as to what treatment she was to have ?—A. Yes, I instructed the hospital staff that she was to be kept at complete rest, she was not to have any visitors, and she was on a restricted diet.

Q. Did you attend her in hospital from time to time ?—A. Yes.

Q. And is this the fact, that her weight declined and at one stage, on the 2nd November, that is after a couple of weeks in hospital, her weight was 6 stone 13 ?—A. I don't remember the exact weight.

Q. You may take that from the records. What would you say as to her condition after she left hospital ?—A. If anything I would say her condition had deteriorated.

Q. Anything with regard to weight ?—A. If I remember rightly she had gained 2 pounds over that period but nevertheless there was still evidence, I considered, of thyrotoxicosis.

Q. From the time she came out of hospital until she left did you attend her ?—A. Yes, I did.

Q. You might tell the jury how her condition was during that period or what was her progress or otherwise during that period ?—A. There was

still all the evidence of thyroid trouble, loss of weight, rapid pulse, neurasthenic or a neurotic condition, her heart rate was still very much elevated and I considered that her condition had not improved and I felt then that I should refer her for expert advice.

Q. Did you send her to Dr. Ritchie ?—A. Yes.

Q. Did you send a letter to Dr. Ritchie ?—A. I know I wrote a letter.

Q. Do you remember whether you posted it or otherwise, what is your memory about that ?—A. Vague, I may have given it to her or I may have posted it.

Q. Will you look at the letter dated 22nd September 1937, is that your letter to Dr. Flynn first of all (handed to witness) ?—A. Yes.

(Letter m.f.i. 1.)

Q. Look at the letter dated 12th February 1938, is that your letter to Dr. Ritchie ?—A. Yes.

(Letter m.f.i. 2.)

Q. Can you give the full details of her condition at that time without looking at the letter, that is on the 12th February when you wrote ?—A. As I have already described, all the evidence of increased metabolism, a large thyroid, loss of weight, rapid pulse and general nervous symptoms.

Q. Do you remember anything about her pulse rate at that time ?

A. It was still elevated.

Q. Do you remember what it was ?—A. Around about 150.

Q. And did you indicate to Dr. Ritchie in writing the history of the patient up to the date she left ? (Objected to.)

Q. Is that all you remember at the moment of her condition ?—A. I well remember that I considered the nervous element in her case was, to my way of thinking, not in keeping with the thyroid condition.

Q. Can you remember, without looking at anything to refresh your memory, what her pulse rate was at that time ?—A. I still maintain that it was round about 150.

Q. What is the next time you saw her after her return from Sydney ?

A. On the 30th April 1938.

Q. Were you sent for then or did you call ?—A. I was sent for.

Q. And where did you see her ?—A. At her home.

Q. Did you have any conversation with her then ?—A. Yes.

Q. What did she tell you ?—A. She told me that she had been home a fortnight and that she had been operated on by Dr. George Bell on the 15th March. Following the operation, infection developed near the operation region and there was considerable discharge from the operation wound during her stay in hospital, some suture material had been recovered, that before she had left hospital the discharge had considerably decreased and some days after her operation she had experienced pins and needles and tingling sensation in her hands and feet which Dr. Bell had told her were suggestive of tetany.

Q. At that time did she make any complaint to you in connection with any trouble about a tube being removed from her neck ?—A. No.

Q. Had you known up to that time who had performed the operation ?—A. No.

Q. Did you examine her that day ?—A. I did.

Q. What did you find ?—A. I found on looking at her that her face and neck and upper portion of her shoulders was quite puffy, her wound

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had healed except for a small sinus in the centre of the scar which was discharging freely a sero purulent matter and round about that sinus there was definite inflammatory swelling.

Q. You said there was puffing around the face ?—A. Her face was puffy.

Q. Was that of an inflammatory nature ?—A. No.

Q. Anything else you found on examination or from what she told you then as to any other condition ?—A. The evidence of tetany as far as I can recollect was not very evident at the time. I feel that Mrs. Hocking did intimate to me that she had this tingling sensation, pins and needles.

Q. And did you give her certain advice ?—A. Yes, I considered that she should go into Quirindi Hospital.

Q. Can you give me the date when you saw her as to going into hospital ?—A. I know I suggested to her on the 30th April, the first day I saw her, that she should go into hospital.

Q. When did you see her next after the 30th April ?—A. 3rd May.

Q. What was the complaint then ?—A. The same as when I had seen her on the 30th.

Q. Anything about spasms then ?—A. Not that I can recollect.

Q. What was her nervous condition then ?—A. I don't know that it had improved very much since before the operation.

Q. Well now, she went to hospital, did she ?—A. Yes.

Q. What was the purpose of putting her into hospital ?—A. Because I was not satisfied with her general condition. I considered that the wound in the neck needed skilled attention.

Q. When you say her general condition, what do you mean by that ?—A. Her general nervous condition, her general weakness.

Q. She was admitted, we have it, on the 4th May. Did you give any directions then as to what was to be done ?—A. Yes, I gave instructions to the nursing staff that they should attend to the sinus in the neck and that they should particularly watch for any evidence of tetany.

Q. Anything else that you remember about sutures ?—A. Yes, I gave instructions that the sinus should be probed with the object of seeing—(Objected to.)

Q. You were telling me what the instructions were ?—A. Yes, I instructed the nurse to probe the wound to see if any suture material could be liberated.

Q. Did you see her after that ?—A. I saw her daily after her admission to hospital.

Q. You see a note on the 4th May " Wound probed." Can you say whether you did that yourself or not ?—A. I would say I did not.

Q. Then we have a note " To have own capsules immediately any twitching occurs." Does that recall anything to your mind ?—A. I think those capsules contained a sedative.

Q. Do you remember at this stage whether she had any twitching or not ?—A. Yes, I think she did.

Q. You see the day report of the 5th May—" Had twitchings in body and face." That is what your impression is, that she had twitchings. Did you notice some twitchings ?—A. Yes.

Q. You find on the 6th "Feeling comfortable, sitting mostly in the chair all day. No ill effects." What does that mean ?—A. That means with no ill effects.

Q. "Wound probed, little oozing of pus from same." Did you yourself do anything on the 7th ?—A. Yes.

Q. What was that ?—A. I inserted sinus forceps into the sinus, having frozen the area with ethyl chloride and inserted the sinus forceps in and while they were inside opened them to sort of stretch the sinus.

Q. What is the object of that ?—A. To promote freer drainage.

Q. What was the result of that opening ?—A. Probably increased drainage.

Q. And what was the response so far as the neck was concerned ? —A. I know subsequently more suture material was recovered.

Q. By that you mean knots. What do you mean by suture material ? —A. What the different layers have been sewn up with, usually the knots are the last to dissolve.

Q. Up till that time had there been any spasms in hospital ?—A. Now, what date are you at ?

Q. I am up to the 7th, I think the day you opened the swelling of the neck ?—A. No.

Q. Then we have on the 8th "Patient comfortable, wound probed, bloodstained oozing from same." Then on the 9th "Had tetany spasm at 12.45." Is that the first ?—A. That is the first I recollect.

Q. Is that the first tetany spasm that you had seen with her ? —A. What I would call the major spasms, yes.

Q. It has here "Seen by Dr. O'Hanlon." Do you remember that ? —A. Yes.

Q. What did you do ?—A. I gave her an intravenous injection of 10 cc. of a 10 per cent. solution of calcium chloride.

Q. Would you describe the spasm she had then ?—A. The arms were in a state of tonic contraction, the elbows were flexed at approximately right angles across her chest, the fingers were flexed at this joint (indicating), the fingers came together with the thumb across the hand like that (indicating). The legs were also in a state of tonic contracture, the knees were partially flexed and about that far off the bed (indicating).

Q. What is that, a foot ?—A. Nine or ten inches.

Q. What was the effect of the intravenous injection ?—A. Dramatic in its effect, she responded straight away.

Q. Was that the first one you had given her ?—A. Yes.

Q. You might tell us, did you give her intravenous injections regularly after that ?—A. Very regularly. (Objected to.)

Q. Have your notes been here in Court on both trials, ever since you have given evidence ?—A. Yes.

Q. And are you reading from your notes that have been here in Court, here all the time ?—A. Yes.

Q. Have you said before and is it in your notes how many times you gave intravenous injections ?—A. Might I quote from my notes of May that I have given 23 intravenous injections from the 9th.

Q. In May ?—A. Yes.

Mr. SHAND : Could those notes be identified, I have not seen them.

Mr. CASSIDY : Have those notes been out of your possession ever since the trial ?—A. Yes.

Q. And have you given the same evidence about that reading from your notes every time ?—A. Yes.

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Q. You said your first intravenous injection was the 9th, and after the 9th you gave 23 ?—A. That is according to my notes here.

Q. You said the effect of the intravenous injection was dramatic ?—A. Yes.

Q. Can you tell us how frequently you gave the intravenous injections following the 9th May ?—A. My recollection is that they were given daily.

Q. We have in the hospital notes the 10th "No tetany spasm, injection given, calcium chloride to be given daily—intravenous injection calcium chloride 12 m.d. to be given daily." ?—A. That was given at 12 mid-day and instructions to the rest of the staff that it was to be given daily.

Q. On the 11th—"Wound probed by the doctor." What was the condition at that time of the wound ?—A. Still discharging, less inflammatory inflammation around it, tending to close.

Q. And we have there on the day report of the 11th "Foments three hourly, last applied 6 p.m." I don't want to go through each one, but taking the wound, do you remember the progress of the wound after say the 11th May ?—A. My recollection of the sinus—the wound across on each side of the sinus was beautifully healed, the little sinus persisted about a third the size of threepence, the inflammation had disappeared as far as I recollect but still this sero purulent discharge was present.

Q. Can you remember at this stage how it was when she left hospital, you may take it she left hospital on the 9th June ?—A. It had not healed, it was smaller in diameter and no evidence of inflammation about it, there was still this sero purulent discharge to a less extent.

Q. At that time what was the position as to inflammation and swelling ?—A. There was none.

Q. And you might tell me what was the position about her going home ?—A. Well, there had been no more fomenting, the wound was discharging, her general condition had improved, and I suggested that if she had a trained nurse with her there was no object in keeping her in hospital any longer ; financial reasons, I felt, should be considered.

Q. What form of dressing was being used during the last portion of her stay in hospital ?—A. Just dry sterile gauze.

Q. I want to come back to the spasms. You said there was one on the 9th ; can you tell me when the next spasm was ?—A. On the 17th May 1938.

Q. Is that reading from your own notes or the hospital notes ?—A. My own notes, she had a severe spasm.

Q. And what did you do ?—A. The spasm was so severe that until the calcium chloride could be prepared I controlled the spasm with a very light chloroform anæsthetic.

Q. Would you have a look at the hospital records there. Is that what you are referring to when you say you controlled it with chloroform ?—A. Yes.

Q. After that first spasm on the 9th May is that the letter that you wrote to Dr. Bell (part of Exhibit "D" dated 10th May shown to witness) ?—A. Yes.

Q. And would the particulars contained in that letter be correct ?—A. Yes.

Q. On the 17th May the nature of the spasm ?—A. Much the same as the one I described on the 9th May.

Q. And the next spasm, can you remember without looking at your notes ?—A. No.

Q. Would you look it up ?—A. 1st June.

Q. What happened then ?—A. A light chloroform anæsthesia.

Q. Can you tell us whether or not you had given anything that day to counteract the tetany ?—A. Following the chloroform I think I did.

Q. Have you anything in your notes to help you on that ?—A. Yes, 1st June 1938, patient had severe spasm, chloroform and calcium chloride.

Q. Will you read out what you have there ?—A. " 1st June 1938, patient had severe spasm. Chloroform and calcium chloride." I have two copies here ; if you would like one of them you may have it. I made a copy first, and at the second trial they were not acceptable, and I had to send home for the original.

HIS HONOR : You brought your copy down and you left the original at home ?—A. Yes. (Copy handed to Mr. Cassidy.)

Mr. CASSIDY : Counsel insisted that the original had to be sent for ?—A. Yes. The two of them were then pinned together and put in as one exhibit.

Q. Would you have a look at your hospital records ?—A. The 1st June ?

Q. Yes. How many spasms that day ?—A. 6 p.m.—one is mentioned.

Q. Will you look at the night report of the same day ?—A. Yes. She had another one at 9.15. That would include the night staff's report.

Q. What was the nature of those ?—A. Much the same as the previous one ; much the same as previously.

Q. Have you anything to show at what time you gave the intravenous injection ?—A. The day report of the hospital shows that I gave an intravenous injection in the a.m., and that evening she had a spasm.

Q. Can you tell us one way or the other is that the only intravenous injection you gave her that day ?—A. Yes, I think it is.

Q. I notice that after the 9.15 spasm you gave her morphia ? A. Yes, and that controlled it. I think that was the last spasm in the hospital.

Q. During any of those spasms was there any clenching of finger nails that had cut into her flesh ?—A. No.

Q. And the knees being drawn up to the chin and doubled up in a tight ball ?—A. That is incorrect.

Q. She says you permitted massage to be given ?—A. Never at any time.

Q. Or did you massage her ?—A. Never.

Q. Can you remember at this stage the twitchings of the face—as to whether it was confined to any side or not ?—A. No ; I can only say that I do remember twitchings of the face but I cannot remember which side.

Q. Now as to unconsciousness—what was the position as to that ?

A. I was quite sure she was not conscious of what was going on around her ; I don't say that she was unconscious in the generally accepted term.

Q. You say that she was not unconscious in the proper acceptance of the term. Did you make any tests ?—A. Yes, frequently. I usually made them when I saw her in a spasm. The tests consisted of pulling the hair at the back of the neck, the tender part, and pinching her and

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endeavouring to open her eyes, and her eyes were so closed that you had to use strength to force them apart, which you do not get in the usually accepted unconsciousness.

Q. During her period in hospital did she report to you at any time that she felt a pricking in the neck which caused bleeding ?—A. No.

Q. Or that she on one occasion felt this pricking in the neck when she turned her head suddenly and the blood started to run down her neck which she wiped away with a piece of wadding which she threw into the fire ?—A. No.

Q. Did you see her after she had left hospital and when she was at home ?—A. Yes.

Q. And we have been told that Sister Sly was there then ?—A. Yes.

Q. You might tell us what was the condition of her neck and the swelling ?—A. She had returned to normal as regards the swelling—the puffiness I described when she first went into hospital. That had all disappeared and the inflammatory swelling around the sinus, that had gone too.

Q. And as to soreness of the neck—what was that position ?—A. Not that I can remember.

Q. And qua neck, did she make any complaint ?—A. No. She did tell me that she had recovered suture material after leaving the hospital.

Q. What was the position as to complaints as to soreness or soreness of the neck or inflammation of the neck ?—A. None.

Q. After she left hospital—can you give me the times you saw her in her home ?—A. Every day for the rest of June. From the 9th June I saw her every day at her home for that month. Her condition during that time was much the same as when she came home.

Q. When was the first spasm after return that you know of ?—A. Twenty-seventh (27th) June.

Q. Did she say anything to you as to whether or not she had had spasms in between ?—A. Mrs. Hocking used to frequently complain of what she called " staticky " sensations.

Q. That was the first you saw, on the 27th June ?—A. Yes.

Q. What was the nature of that ?—A. Very much the same as the ones in the hospital.

Q. During that period what was the position as to injections ?—A. She was getting them daily all through June.

Q. Did that alter at some stage—that daily intravenous injection ?—A. Yes ; I eventually came to the time when further intravenous injections were impossible. I would say that that was about the 30th June. We then had to resort to paroiden. I saw her in July. I saw her on the 1st, 2nd, 3rd, 6th, 16th and 21st. The sinus was completely closed then.

Q. And as to evidence of swelling or inflammation ?—A. None whatever.

Q. In July what was the position as to spasms ?—A. The " staticky sensations " were still in evidence.

Q. Did you see any spasms yourself during July ?—A. I cannot recollect any at all.

Q. You saw her in July—what was the next period of your seeing her ?—A. August—the 10th, 18th and the 20th August.

Q. And what was her condition then ?—A. Generally I felt she was improving, but I remember round about that time I did notice that she

was inclined to clutch at my coat or clutch at the top of her night dress and clutch at the bedclothes, which was not the position of her hands previously.

Q. How would you describe that clutching?—A. Well, it was sufficiently firm that I would have to use some force to get my coat away or to release her hands from her night clothes or her bedclothes.

Q. Did you notice any other change in the nature of the spasms?—A. I think they involved larger areas of the body.

Q. What do you mean by that exactly?—A. Well, the arms, possibly, would not be in the same position, and she was more inclined to throw herself about. The abdominal muscles would possibly be in a state of increased tonus. That means tonic contraction—increased tone of the muscles.

Q. What treatment did you give her at this time?—A. We were depending mainly on paroiden then.

Q. And how often was she given that?—A. At varying intervals. Sometimes she would get it every day, depending on how "staticky" she felt. At other times—it was at that time that I instructed Mr. Hocking how to give that, and he used to tell me when I saw him that it was given as indicated according to her condition.

Q. When did you see her next after August?—A. September—on the 3rd September.

Q. And during September how often did you see her?—A. Well, it was on the 3rd September that I admitted her to hospital.

Q. What was the position then?—A. She was in a spasm. The clutching was evident. The unconscious condition was present. I remember carrying her out with Mr. Hocking to the car. We made a chair of our hands, and we carried her out to the car and she was generally rigid, and I felt that she was not conscious of what we were doing.

Q. What would you say as to whether that was real or unconscious?—A. I would say it was not the accepted unconsciousness as we understand it. I attended her in hospital after that.

Q. And what was her condition in hospital during that period, as to spasms?—A. Well, vastly improved on when she was there before. I considered that the spasms necessitated the giving of further calcium chloride. There was no swelling. She was——

Q. Take her neck at that time?—A. Well, I was very impressed, I remember, with the very neat scar that she had.

Q. And as to inflammation or swelling, what was the position?—A. None whatsoever.

Q. You might tell me this generally. From the end of June 1938—about the end of June 1938, up till October, up till the time of the passage of this tube, did you ever see her in regard to any trouble about her neck?—A. Mrs. Hocking frequently complained to me of soreness and swelling on the left side of her neck.

Q. Did you see her at any time about it?—A. When she complained to me I invariably examined it.

Q. But the last examination that we have got—the last time you saw her in 1938 was the 10th October 1938. Is that right?—A. Yes, the 10th October, that is right.

Q. From that period up till October 1939, on how many occasions did you see her?—A. I saw her on the 1st February—that is professionally

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—1939. I saw her on the 19th September, and then I saw her again when the tube incident was related to me.

Q. Now during the whole of that time from October 1938 up till October 1939, did you ever examine her neck at all during that period ? —A. Yes, I am sure I did.

Q. And what do you say as to her neck ?—A. There was no evidence whatever of any swelling. The only thing I ever detected on a couple of occasions was a reddish blush where she had been rubbing.

Mr. SHAND : Where was that reddish blush ? (Witness indicates.)

Q. On the left side of the neck ?

Mr. CASSIDY : When you examined her neck, just what did you do at any time, can you tell us ?—A. Nothing. There was nothing to do. There was no indication to do anything.

Q. Was there any evidence of any swelling, or anything there ? —A. None whatsoever.

Q. Had you ever felt her neck at all during any time in hospital that first time, or at home ?—A. Oh, certainly. She had complained, and I would invariably palpate her neck.

HIS HONOR : What does palpate mean ?—A. Feeling, Your Honor—feeling different parts.

Mr. CASSIDY : And on those occasions, did she complain of any pain or anything like that ?—A. Not that I can recollect.

Q. Was there any sign of any abscess or anything like that in the neck at any time after June 1938 ?—A. No.

Q. Or after she was in hospital ?—A. No.

Q. 1938. Now coming back to September 1938, how long did she remain in hospital ?—A. From the 3rd to the 7th.

Q. And how many spasms while in hospital. Can you remember without looking at your notes ?—A. The one she went in with. I don't recollect any others.

HIS HONOR : How about the day reports of the next day ?

Mr. CASSIDY : There is 4th September 1938 " Seen by Dr. O'Hanlon " ?—A. She never took any spasm that day, according to the hospital notes.

Q. " Recurrence of spasm," according to the hospital records. " Calcium lactate " . . .

HIS HONOR : Do you recollect that ?—A. Yes, I can recollect that.

Mr. CASSIDY : About that particular one ?—A. The day after admission ?

Q. Yes. If you haven't any clear recollection, it doesn't matter ? —A. No, I haven't got a clear recollection.

Q. Now I want you to look at these prescriptions. Now you told us that your last visit in 1938 was on the 10th October, 1938, and that the next visit was the 1st February 1939. What was the condition then ? —A. I haven't a clear recollection of that, but I don't think there was any spasm.

Q. Will you have a look at this prescription of the 1st February 1939 (handed to witness) ?—A. That is just a general tonic to stimulate appetite—a general tonic.

Q. Now in January of this year—January 1939—did you see the Plaintiff at all ?—A. Not professionally. I saw her at the picture show.

Q. And how would you describe her then as to condition ?—A. To me she looked very well.

Q. And did you write to Dr. Bell about that time—on the 17th January 1939 ?—A. Yes.

Q. You said in the letter—" She certainly looks very well, and I can't help thinking there is a big functional element in her trouble." What do you mean by " functional element ? "—A. Well, I considered then that her trouble was not organic ; it was functional, she had neurosis, neurasthenia, or she was nervy.

Q. What was the next visit ?—A. Following September the 19th I was next called on the 6th October. I visited her on the 19th September. Her condition then was much the same as I had seen her before.

Q. From the 10th October 1938 up till September 1939, had you seen any spasms ?—A. No.

Q. Now on the 19th September did you give her a prescription, and is that it (handed to witness) ?—A. Yes, there are two articles there, a medicine and a powder. The medicine is a sedative, and the powder is a simple A.P.C. powder.

Q. At that time she says that she was suffering with a wall of pus in the throat. That her neck was swollen and her head and neck all one piece. What do you say as to that ?—A. I know that to be incorrect.

Q. That she was unable to turn her head without turning the whole of the body ? (Objected to.) A. That is incorrect.

Q. To the left. That is incorrect ?—A. That is incorrect.

Q. You might give me what was the condition of the head and neck at that time ?—A. Normal.

Q. What was the next occasion that you heard from her or from the house ?—A. On the evening of the 6th October at a quarter past eight. I went immediately to her house. I was at the pictures at the time, and I went to her house immediately.

Q. You might tell us what you found when you got there ?—A. I know I was admitted by Mr Hocking, and went directly to the lounge room. Mrs. Hocking was not there. He told me how on the previous Monday she had had a severe tetanoid spasm—as severe a spasm as ever experienced. She had a severe attack of coughing and complained of—following that she complained of a soreness down her chest. He, thinking that she had symptoms of indigestion, gave her aperients, and on the Thursday morning—on the Friday morning—she having had occasion to use the commode——

Q. You say on the Friday morning. Do you remember the dates ?

A. That was the 6th. I was called to her on the 6th. No, on the Thursday, the previous day, she had occasion to use the commode, and she had taken the receptacle of the commode out to empty it in the lavatory, and in the contents of the pan she saw what she took to be a rubber tube, a grey rubber tube, squarely cut at one end, ragged at the other end, and cut all along the lumen of the tube. From the ragged end was sticking two pieces of wire. They were wrapped around what she took to be a piece of marine sponge. Just at that time she heard somebody coming up the back steps. She thought it was a tradesman, and she immediately tipped the contents into the pan of the lavatory and pulled the chain on it. It turned out to be her husband, and not a tradesman.

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No. 28. Kevin Charles O'Hanlon, 21st December 1943, Examination, *continued.*

Q. After her husband told you that, did you see her ?—A. Yes, we went to her bedroom. I had a conversation with her, and she corroborated what her husband had already told me, but she added that in the coughing spasm she felt something burst into her mouth which she could not do anything else but swallow.

Q. Did you have a look at her mouth then ?—A. I did not look inside her mouth then.

Q. Did you make an examination of her ?—A. Externally.

Q. Could you see any sign of swelling or inflammation ?—A. No, she looked the same to me as she always had.

Q. She said that that night she could not open her mouth sufficiently for you to look in. What do you say as to that ?—A. I did not try to look in that night, but she spoke to me and her voice was weakish, but her voice was always weakish following a spasm. That did not impress me at all.

Q. Any sign of limitation of movement in her neck or head ?—A. No, not that I observed.

Q. You say you did not look into her throat that night ?—A. That is correct.

Q. You have given us all she told you, have you ?—A. Concerning the tube, yes.

Q. You had come, you told us, from the picture show. Is that so ?—A. Yes. I did not look in her throat because I had no means of examining her because I usually like to have a little electric light, and the light in the bedroom was covered by a silk sort of shade, and totally inadequate to make an examination of the throat. I made an examination the following day. (Question objected to as leading.)

Q. In any event you did not see her throat that night ?—A. No.

Q. What was her condition as to treatment—as to necessity for treatment ?—A. I did not think that she needed any special treatment.

Q. And did you give her any special treatment or any prescriptions ?—A. Not that night.

Q. Now you told us that you saw her in her room. Mrs. Hocking says—she has sworn in court that she lifted this tube out of the pan and squeezed it in her fingers and saw green pus run out. Was anything to that effect told you that night ?—A. No.

Q. She says that she had a gross swelling in her neck for months. Was there any evidence of that ? (Objected to.)

Q. For three months. Was there any evidence of that ?—A. No.

Q. Or did she tell you that ?—A. No, I know it to be incorrect. (Objected to.)

His HONOR : Just answer the question, doctor.

WITNESS : No.

His HONOR : She did not tell you that at that time ?—A. No.

Mr. CASSIDY : That on the 2nd October she had been unconscious several times, drawn up in a ball for two days, and on the second day she could not open her mouth because it was locked, and her husband forced water between her clenched teeth with a spoon ?—A. No.

Q. That she could not open her mouth or spit out the alleged body because of the pus in her mouth and because her jaws were locked ?—A. No, she did not tell me that.

Q. That after the second (2nd) October she could feel the object moving in her stomach and feel the prickings in her stomach ?—A. No.

Q. Feel the prickings of the wire in her stomach ?—A. No.

Q. Did she tell you that she took the aperients for the purpose of discovering the foreign body or the tube ?—A. No.

Q. Or that she felt the object break through her flesh through the tonsil ?—A. No. (Objected to ; pressed.)

Mr. CASSIDY : There is something on page 22, but that is not what I mean. I will read page 22, and I will look up the other in the luncheon adjournment. I will put these questions on page 22—" Something burst into the left side of my face. I felt something knock through as it were." Those are the exact words that she swears. Did she say that to you on the night of the 6th ?—A. No.

Q. Or anything like that ?—A. No.

Q. " I took a terrific lurch, and the muscles seemed to tighten up dreadfully hard. Something burst into the left side of my face. I felt something knock through, as it were. I felt a sensation like something bursting. I had something on my tongue, and I swallowed it, whatever it was." Was there any other conversation that night ?—A. Yes, concerning what this object might be. I remember Mr. Hocking asking me would it be possible for a piece of tube to be left behind in the administration of the anæsthetic during the operation, and I replied that I considered that impossible because if a piece of tube, if it had passed into the stomach, would certainly not linger there for eighteen months, and of course if it had got into her airway it would have obstructed it and asphyxiated her.

Q. Was there any other conversation that you can remember ?—A. Yes, Mr. Hocking mentioned " drainage tube," and I said that it might be a piece of drainage tube.

Q. Yes, anything else that you remember that night ?—A. No.

Q. Is that all your memory at the moment. Do you remember a sketch ?—A. Oh yes, I think it was at Mrs. Hocking's suggestion that Mr. Hocking went out into the other room and brought in a sketch to me.

Q. Is that it ? (Handed to witness.)—A. If I remember rightly Mr. Hocking before—it may have been in the lounge or in her bedroom—but I remember he pulled an envelope out and made a sketch himself.

Q. But is that the sketch she showed you (indicating) ?—A. Yes. I would take that to be the original sketch.

Q. Which bedroom did you see her in that night ?—A. I have only ever seen Mrs. Hocking in the one room, and that is the one on the left, as you pass into a short hall from the front door.

Q. And where is that in the house—the back portion or the front portion ?—A. That is the front side portion. The windows open on to the front street.

Q. Would you mark it on the plan—the rough sketch of the house. While that is being obtained, was there any other discussion that you remember that night ?—A. About Mr. Hocking's suggestion that an X-ray should be taken ?

Q. Tell us what happened on the next day. That is the 7th ?—A. The next day I went up in the car and Mr. Hocking and I helped Mrs. Hocking into the car, and we drove up to the District Hospital, and I remember driving the car as close up to the entrance as I could so that

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No. 28. Kevin Charles O'Hanlon, 21st December 1943, Examination, *continued.*

she would not have any undue distance to walk. I took her to the X-ray room and X-rayed her chest and the lower part of the face; that I remember, the neck and chest.

Q. Is that the X-ray that you took (handed to witness)?—A. Yes, that is it.

Q. How far away from the tube was that X-ray taken?—A. Forty-eight inches to the cassette.

Q. Will you show the jury the position in which the X-ray was taken?—A. Well, the X-ray film is carried in a metal container—a metal envelope—and in Quirindi at the local hospital we haven't got the facilities that they have in the big hospitals. We have to get the cassette up against the patient's chest, and the patient leans up against a brick wall, and the tube is 48 inches behind. The patient usually supports the film like that, and to get the tube up against the cassette it is necessary to turn the head that way (indicating) to bring the chest up as close against the cassette as possible to get a better definition.

Q. At that time can you say whether there was any limitation in the patient's neck?—A. She had no difficulty in turning her head round to the right.

Q. And was there any swelling at that time?—A. No.

Q. And you saw the X-ray, of course, after it was taken?—A. Oh, yes.

Q. And what do you say as to the outline of the neck as shown there?—A. The outline appears to be perfectly normal.

(X-ray tendered and marked Exhibit "11.")

Q. Did anything further happen that day with regard to the Plaintiff?—A. I examined the inside of her mouth. I remember sending for a spatula, something to depress the tongue, and I took her down to the window of the X-ray room where there was most light, and I remember examining the inside of her mouth and throat as far as I could see.

Q. And how far could you see?—A. Just back to the base of the tongue.

Q. You might tell me what you say that examination disclosed?—A. It revealed nothing.

Q. You might tell us whether or not there was anything abnormal inside her throat?—A. Nothing whatever.

Q. Was there any swelling or wall of pus?—A. No.

Q. Any inflammation or redness?—A. None whatsoever.

Q. Or any hole consistent with a tube having come through?—A. No.

Q. Or any sign of any abscess?—A. No.

(Sketch plan of Plaintiff's residence at Quirindi, previously m.f.i.3, tendered and marked Exhibit "12.")

Mr. CASSIDY: You just told me that there was no evidence of anything abnormal in the throat, and that you examined the throat?

His HONOR: Are you going to overlook the plan?

Mr. CASSIDY: No, Your Honor, I just want to finish this portion first.

Q. Now, on the 7th October you have just told us you examined her throat in the hospital. Now, from that time until she left for Sydney did she ask you to attend her again ?—A. Yes.

Q. And did you see her again ?—A. No.

Q. Why was that ?—A. That was the day my daughter died. That was the 23rd October.

Q. Until the 23rd you had not been asked to see her ?—A. No.

Q. Or prescribe for her in any way ?—A. No.

Q. And did you get another doctor to attend ?—A. Yes. My colleague got Dr. Cooper to attend her.

His HONOR : Now fix up this matter in regard to the plan. Which room was she in ?

Mr. CASSIDY : Mark that room in which you saw her. (Plan handed to witness) ?—A. There is the entrance steps. This is the door, and this is the room I always saw her in (indicating).

His HONOR : You had better mark it " X " ?—A. (Witness marks plan.) Those are the three rooms I only ever entered—the bathroom, the lounge and the bedroom (indicating).

(Sketch shown to Jury.)

Mr. CASSIDY : That is the room in which she says she was when the commode was used (indicating).

Q. Now, up till the 25th October when she left for Sydney—after the 23rd you did not see her ?—A. No.

Q. And between the 7th and the time she came to Sydney you did not see her ?—A. No.

Q. Nor were you requested to see her ?—A. No.

(Luncheon adjournment.)

At 2 p.m.

Q. I now turn to page 102, middle of the page :—

" Q. On the last occasion you agreed with that statement, that he said you had a slight infection ?—A. I may have.

" Q. The next question was page 135, I will read, ' The only thing said to you was there was a slight infection in one tonsil ' and you said ' He said that, something like that.' Is that right ?—A. Yes, he said something to that effect.

" Q. When Dr. Marsh said that to you, it was the first occasion you knew or thought that this tube had ruptured through your tonsil, and you said ' yes ' ?—A. I may have said yes.

" Q. You meant it ?—A. No, I did not. I was sent to Sydney for treatment to my tonsils."

Did you ever send her to Sydney for treatment to her tonsils ?—A. No.

Q. She came to Sydney on the 25th October and went into St. Lukes. After that occasion were you ever called in. How long was it before you were called in professionally to attend the Plaintiff again ?—A. I was not called to her home. She consulted me at my surgery early in 1940.

Q. What was it about ?—A. She came down and drew my attention to what she said was a scar in the back of her throat.

I looked at it. I say in regard to the spot which she indicated, all I could see was an elongated piece of lynthoid tissue on the posterior

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No. 28. Kevin Charles O'Hanlon, 21st December 1943, Examination, *continued.*

pharangeal wall. She did not say anything of a hole in her throat, but a scar. I could not see any scar there whatever. There was no abnormality I could see on that occasion. I have no clear recollection how her tonsils were. They did not impress me.

Q. Mrs. Hocking has given evidence she had abscesses there, and you showed her how to press them. Is that correct ?—A. No.

Q. What was the next occasion on which you saw her ?—A. I was called to her home on the 3rd April 1941. That was concerning dislocation of her jaw while being treated by a dentist.

That was what she told me. I examined her, and apart from some slight evidence in the region of the joint where the lower jaw articulates with the other jaw, all I could detect was possibly a little tenderness and nothing else. I did not consider it was anything to do with the throat. I considered it possibly due to dislocation of the jaw. I conferred with the dentist later and he confirmed what Mrs. Hocking told me.

The next occasion after that was the 13th April same year, 1941.

Q. Tell the court what she said to you then ?—A. I was being consulted then concerning an allegation that she was making . . . (Objected to.)

Q. What did she say ?—A. That her husband was putting poison in her food with the intention she said, of doing away with her.

She also said that her husband struck her on several occasions. I was indignant about it because I considered . . . (not objected to). I told her I did not believe it. There was something said at that time on the 13th. Mrs. Hocking accused her husband of interfering with her while she was in a drugged state and primarily I understood I was called in to ascertain if she was pregnant or not.

I saw her again that month, the 17th I think. The same was said on that occasion as she had told me before, the substance being poisoning food, interference. I told her I did not believe it, that I considered her husband was not that type of man, that I was really annoyed about it. I said I would not believe it. She maintained that what she had said was correct.

Q. Did she do anything about it. Do you remember anything else being done ?—A. Yes, I remember she said her daughter could verify her statement that her husband struck her, and I immediately called the daughter in.

The daughter admitted she had seen her father strike her mother on one occasion. I did not see her after that, the 17th April 1941. I have not had any other conversations that I can remember which I have not told you of, of the tube, conversations with Mrs. Hocking. I do remember conversation as to the removal of the tube, as to who removed the tube. I cannot fix the date but I remember she did say that a nurse removed it in St. Lukes. I cannot give the jury an idea when it was said. I have looked through these prescriptions at a previous trial.

Q. Amongst those prescriptions, what have we. After she came back from St. Luke's or after she came back from Quirindi hospital, are there any prescriptions for her throat or neck ?—A. No.

I never gave any medical attention or treatment after she came out of St. Luke's, at least Quirindi hospital.

Q. I mean when she came out of Quirindi hospital. Which time was that ?—A. I am referring to the time when the sinus closed, June 1938.

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Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 21st December 1943, Cross-examination.

Cross-Examined.

Mr. SHAND : When you were told this story about something coming out of the neck on the 6th October did you believe it ?—A. At the moment I admit I did.

Q. How long did the moment last ?—A. For some days following that, when I had the opportunity to consult books of reference.

Q. How long ?—A. About four or five days. I was starting to doubt it.

Q. Did you eventually disbelieve it ?—A. Yes.

Q. How long after ; within what limit of time ?—A. I felt fairly convinced at the end of possibly the following week. I will not nail myself down to a particular day.

Q. Would a fortnight cover it ?—A. Yes, I should think it would pretty well.

Q. If there is any doubt I want some period which undoubtedly covers the matter ?—A. I will go so far as to say that possibly I might not have been thoroughly convinced until the first trial.

Q. You did not give evidence then ?—A. No.

Q. Were you in Court ?—A. I was in the precincts of the Court, waiting.

Q. You might not have been thoroughly convinced until then. It would be a long while after a week or a fortnight ?—A. I have to depend on my books. That is all I have to consult with.

Q. You said first of all a week, and then you would not bind yourself. I suggested the fortnight, and you agreed ?—A. I won't say I was thoroughly convinced of the impossibility of the story until the vicinity of the first trial.

Q. What do you mean by mentioning a week and when I mention a fortnight, agreeing with it ?—A. Because I considered my mind was more or less made up, but as I say I cannot be bound down to that definite period.

Q. It was more or less made up as to disbelief of the story within a fortnight of the 6th of October ?—A. Not completely.

Q. Was it more or less made up ?—A. Yes.

Q. You will agree I suppose that one of the most sacred things is the secrecy that a patient can expect in any confidences that he or she gives to a doctor ?—A. I do agree with that.

Q. There is no doubt about it ?—A. No.

Q. And particularly when confidences are given concerning intimate things of the home ?—A. Not more particularly than other incidents.

Q. When incidents of family life are spoken of, you will agree that very often incidents of family life are spoken of to doctors which would not have been spoken of to anyone else ?—A. Yes.

Q. And they are spoken in the trust and confidence that they are spoken to an honourable man ?—A. Yes.

Q. And that means that they won't be divulged ?—A. Not under all circumstances.

Q. You think a patient might expect them to be divulged if she were to bring an action against a fellow medico ?—A. I do not know what she would expect.

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Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 21st December 1943, Cross-examination, *continued.*

Q. Do you suggest that it is not your opinion that any patient would expect those confidences not to be divulged under any circumstances ?—A. In a court of law I maintain that they would have to be divulged.

Q. Before you ever came to a court of law you divulged them, did you not ?—A. I did.

Q. We are not talking about a court of law. Do you tell these gentlemen that it is not your opinion that any patient would not expect those sacred confidences not to be divulged under any circumstances ?—A. I consider she would expect them to be kept confidential.

Q. And you would agree that they are given on that basis ?—A. Yes, presumably.

Q. And you have broken that sacred confidence of a doctor ?—A. For a very good reason, I have.

Q. We will see if it is a good reason. You have broken that sacred confidence of a doctor ?—A. I have.

Q. I am going to put to you that you have not only broken it but you have broken it—and I am going to indicate to you where—in a misleading and dirty way. Will you deny that—misleading and dirty ?—A. No, I won't admit that.

Q. Well, we will see. When you gave your evidence in the second and the last trials you gave evidence of certain incidents suggestive of hysterical condition of the plaintiff ?—A. Yes.

Q. You know what they are—one of them was suggested sexual intercourse ?—A. Yes.

Q. One was the complaint about the dislocation of the jaw—the sore jaw ?—A. That was not a suggestion on my part of hysteria.

Q. Wasn't it ?—A. No. That was a fact.

Q. We know it is a fact now. In both cases when you gave it you said nothing about having verified it, until cross-examined, by visiting the dentist ?—A. I do not remember.

Q. Let me read your evidence—page 178 in the first volume, and also in the second trial :—

> " Q. What did she say to you when you saw her on the third April 1941 ?—A. She said she had been to the dentist and the dentist in his treatment had dislocated her jaw, and I was called in to see her because of that.
>
> " Q. Did you examine her ?—A. I did.
>
> " Q. What did you find ?—A. I found nothing very much. The jaw certainly was not dislocated when I saw it, and there was nothing very much, perhaps a little bit of tenderness round the joints.
>
> " Q. When did you next see her ? "——

Then follow the suggestions about interfering with her food and the sexual matter. You will agree, will you not, that left as it was put there it might well have been thought that that was an exaggerated or imaginary incident ?—A. I did not wish to convey that.

Q. I am not asking that—you will agree that as it was left there it could be taken to be an imaginary incident, perhaps as the result of hysteria ?—A. I will not admit that.

Q. You say she has complained that her jaw was dislocated—you say it was certainly not dislocated then when you saw it and there was nothing much except a little bit of tenderness ?—A. I will not admit offering that as evidence of hysteria.

Q. Let me deal with the second trial, page 376—the first time you gave evidence—in April :—

"She told me something. She said that some days previously she was at the dentist and he had dislocated her jaw. I then made an examination. I did not find anything very much. Mrs. Hocking complained of a little tenderness here in the region of the joint. Later in the same month I saw her again on the 13th April 1941. Mrs. Hocking complained that her husband was interfering with her food "——

Mr. CASSIDY : I object—that is not the context. That is the first time she was seen, on the 3rd April. There is a paragraph between.

Mr. SHAND : Will you deny that that was being put in the same category as the incident suggested about the food ?—A. I definitely deny it.

Q. Why did you give that evidence about the jaw ?—A. Because I was asked why I attended her.

Q. Were you ?—A. Not in court, I do not mean.

Q. What did you think that had to do with anything ?—A. Nothing.

Q. Now will you say why you did not then and why you did not at the last trial follow that up with the fact that you had been to the dentist and verified the fact that her jaw had been dislocated ?—A. Because I was not asked.

Q. But you were not asked this morning—you came forward and volunteered——

Mr. CASSIDY : That is not right—I asked the question myself.

Mr. SHAND : I may be wrong, but I am quite clear in my own mind.

Q. Let us follow this. In the second trial you followed on after the incident of interfering with her food with a statement in the same paragraph :—

"She also told me her husband had struck her. As far as I recollect she said that Mr. Hocking struck her with his open hand."

That is what you said in the second trial ?—A. I will accept what you have read out.

Q. And you did not say a word—that was being put forward as an incident of hysteria, was it not—will you deny that—A. No.

Q. That is correct, is it not ?—A. I expect Mrs. Hocking——

Q. Do you say that was not being put forward——(Objected to, withdrawn.)

Q. Do you say you did not have in your mind when you said that, hysteria ? (Objected to, witness must only answer questions, deductions are for Counsel.)

Mr. SHAND : Could the witness leave the room, please ?

His HONOR : You mean the witness and the jury ?

Mr. SHAND : There is no need for the jury to go out. The witness can stay if Your Honor does not wish the jury to go.

(Witness directed to leave the Court.)

Mr. SHAND : I am asking the witness whether he did not have in his mind that this was indicative of hysteria, and so having it in his mind——

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Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 21st December 1943, Cross-examination, *continued.*

His HONOR : At what stage—when he gave the evidence, or when the consultation took place ?

Mr. SHAND : When he gave the evidence, but he gave it dishonestly —he knew this was a genuine incident because he called the daughter in to verify it. That is page 378.

Mr. CASSIDY : That does not go to admissibility.

Mr. SHAND : To prove a witness is dishonest—on credit ? I can assure Your Honor there is nothing of it in the second trial.

His HONOR : Let me get exactly the question you wish to ask.

Mr. SHAND : The question is this : " Will you admit that when you gave this evidence you had in mind that it bore on the question of hysteria."

His HONOR : What evidence are you referring to ?

Mr. SHAND : The evidence by the Plaintiff about striking.

His HONOR : I should like to hear Mr. Cassidy on that.

Mr. CASSIDY : The witness cannot be asked his reason for answering questions—the witness is in the position that he must answer questions whether he wishes to or not, and nothing can be suggested against the credit of a witness from the fact that he answers a question in the box. His mind in the box as to what he is asked is entirely irrelevant on his credit.

His HONOR : I will allow the question. Mr. Cassidy's objection will be noted.

(Witness recalled to Court.)

Mr. SHAND : When you gave that evidence : " She also told me her husband had struck her. As far as I recollect she said that Mr. Hocking struck her with his open hand "—did you have that in mind as an indication of hysteria ?—A. No.

Q. Not at all ?—A. No, because I had verified it as a fact.

Q. But you did not say a word about verifying it when you first gave your evidence, or at any time at the second trial ?—A. I verified it by asking his daughter.

Q. You did not tell the jury that in the second trial ?—A. That came out in my evidence.

Q. It did not come out at all in the second trial ?—A. I do not know. I am confused possibly between the second and third trials.

Q. The second was the first trial in which you gave evidence. On the third trial you were cross-examined on it ?—A. It possibly came out then.

Q. Tell the jury what was the relevance in your mind of that incident —had it any bearing on anything ?—A. The striking incident—not so much.

Q. Did it have any bearing at all on anything, unless it was indicative of hysteria ?—A. If you put it that way, it did not have any bearing, because I had proved it was correct.

Q. No bearing at all ?—A. No bearing at all.

Q. So it must have puzzled you why you were asked the question about the striking ?—A. I do not think I was puzzled.

Q. But you are puzzled now, are you not ?—A. No, I am not puzzled.

Q. It has no bearing on anything you can think of ?—A. I cannot understand the devious minds of counsel.

Q. If it had nothing to do with anything you confided it to the Defendant's legal advisers apparently ?—A. Because I was asked.

Q. You could not have been asked before you told, because they would not know ?—A. I was asked why I went there.

Q. How did they know you went there on the 13th April ?—A. They saw my entry—I have an entry here as having visited. (Diary shown to Mr. Shand.)

Q. And you could remember what happened on that date ?—A. Yes.

Q. Although it would be how long after when you said it—about a year after——

His HONOR: When were you asked ?—A. I think it was in December 1941.

Mr. SHAND: This was April—eight months after. You could remember what happened, and the only record you have got is a little " b " ?—A. Yes—" a " I call the husband, " b " the wife, " c " and " d " the children. That is to the wife.

Q. What does " v " mean ?—A. That means " visit," as against " c " " consultation."

Q. All you have got is two little signs indicating a visit to the wife ?—A. Yes.

Q. And eight months afterwards you could remember what happened ?—A. I could.

Q. Now let us look at the other side of the sheet—I see here on the 3rd April you have got an express statement, " visit—soreness following dislocation of jaw by dentist " ?—A. Yes.

Q. You have set that out in detail ?—A. No, not detail.

Q. Sufficient for anyone to know ?—A. There is nothing there to indicate what I found.

Q. It says in words " visit—soreness following dislocation of jaw by dentist " ?—A. That is the reason I was called.

Q. Why did you not put down this one on the 13th in the same way ?—A. I may have been too busy—I may not have bothered—I am not going to say why.

Q. I suppose an unfounded allegation that a husband was murdering a wife is more important to put down than soreness following dislocation of jaw by dentist ?—A. It would be more impressed on my mind.

Q. Why did you not write it down as you did the dislocation of the jaw ?—A. I may have omitted to do it—I may have been busy, or any other reason. I am not suggesting I had any reasons for not writing that down.

Q. According to you she said that twice, once on the 13th and once a few days later ?—A. That is true.

Q. And in neither case have you any details ?—A. No details whatever.

Q. You just rely on your recollection ?—A. Absolutely.

Q. You were busy on both occasions ?—A. I do not remember.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 21st December 1943, Cross-examination, *continued.*

Q. So you do not remember why it is you have not put down details of those things ?—A. I do not remember.

Q. Now, you have sworn to-day that you were told by Mrs. Hocking that her husband had struck her several times on the face or struck her on several occasions ?—A. Yes.

Q. Has your memory improved since the second trial ?—A. Possibly deteriorated.

Q. Yes, in the last two years. Just let us see what you have said. " She also told me that her husband had struck her. As far as I recollect she stated that Mr. Hocking struck her with his open hand." You will agree that there is no suggestion there that she was complaining of several occasions ?—(No answer.)

Q. No suggestion, is there ?—A. No. Would you read that again, please ?

Q. I will read it for the fourth time—" And she also told me that her husband had struck her, as far as I recollect she stated that Mr. Hocking struck her with his open hand " ?—A. No, that does not suggest that she was struck more than once.

Q. What is this increase in the number of occasions, how does that come about ?—A. Because if I remember correctly on talking with the counsel or the solicitor of Dr. Bell that I had stated then that she had been struck on several occasions because I can verify that by calling in the daughter, and she said : " I remember him striking her once."

Q. Why did you, in your sworn evidence, make this statement that suggests no more than once ?—A. I have no ulterior motive for not saying it.

Q. What I am putting to you is this, that you had an ulterior motive at the third and this trial for saying that it was several occasions ?—A. I maintain I was told on several occasions.

Q. So it is wrong what you swore on the second trial ?—A. No, I did not try to dodge.

Q. But it is wrong what you swore at the second trial ?—A. No, it is not wrong.

Q. You agree it suggests no more than once ?—A. Yes, I agree with that.

Q. And now you say that you were told it was several times ?—A. I maintain now that I was told several times.

Q. And you will agree that your evidence at the second trial was wrong ?—A. No, I was not asked.

Q. You are putting forward a statement that her husband only once ?—A. Yes, that is what it suggests.

Q. And that and that only, isn't it ?—A. No, I don't know that.

Q. Don't you ?—A. If I had been questioned further——

Q. I am not asking you if you were questioned further, those are your own words, it is suggestive of only once ?—A. All right, yes.

Q. Well, how did you come to make that statement that it was several times ?—A. I made the statement when I first discussed the case——

Q. I am not asking you that ; how did you come in your sworn evidence to give it that way ?—A. I probably was not asked how many times she was struck.

Q. Those are your own words——

Mr. CASSIDY : Read them and see.

Mr. SHAND : Your Honor——

His HONOR : Yes, read them, Mr. Shand.

Mr. SHAND : I beg your pardon, I have already read them several times, and these interruptions make it very hard. I do not propose to read them again.

Q. You know what words I have read, I have read them to you five times, haven't I ?—A. I have not counted the number of times.

Q. A number of times ?—A. Yes.

Q. And you understand them ?—A. Yes.

Q. And you remember them sufficiently to answer my question ?—A. Yes.

Q. And you agree that those words indicate that you were told that the Plaintiff had been struck on one occasion only ?—A. That reading there would indicate it.

Q. Do you remember this also, that on the third trial and on this trial you omitted the words " open hand," omitted that it was the open hand ?—A. I don't remember this morning mentioning the open hand.

Q. You can take it you didn't and you did not mention it in chief at the last trial ?—A. Maybe I did not.

Q. Why not ?—A. Because I did not think it made that much difference.

Q. You think there is no substantial difference between being struck with the fist and the open hand, is that what you say as a doctor ?—A. Oh, there is.

Q. How did you come to omit that ? When you gave your story, you see, I am putting to you that it gets worse against the Plaintiff. You mentioned several occasions on the later trials, and you omit the " open hand," how is it ?—A. Because I maintain that in this case it did not matter whether it was open or closed, it was the act of striking that I was most concerned with.

Q. Were you ? I thought you said it had no importance at all so far as the case is concerned ?—A. I don't say that it had.

Q. Of course at a certain stage in these proceedings you started to work on behalf of Dr. Bell ?—A. No.

Q. What, didn't you try and persuade the Plaintiff not to go on ?—A. No.

Q. Didn't you tell her husband that the evidence that you would now be able to give would do their case no good ?—A. Yes, I told him that.

Q. Did you think that might discourage him from going on ?—A. I had no intention——

Q. I am not asking you that. Did you think it might discourage him from going on ?—A. Yes, I did.

Q. So you told him something the effect of which you thought might be to discourage him from going on ?—A. I did.

Q. And that was after you had been in consultation with Dr. Bell ?—A. I have never been in consultation with Dr. Bell.

Q. Or his solicitors ?—A. I find it difficult to fix the exact date.

Q. Will you deny it was after you had been spoken to by Dr. Bell's solicitors ?—A. No, I won't deny it, and I won't admit it.

Q. And do you think it is honourable conduct ?—A. Yes, perfectly honourable.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 21st December 1943, Cross-examination, *continued.*

Q. Perfectly honourable ?—A. Yes.

Q. You, who were the family doctor of these two people ?—A. Yes, well no—of Mrs. Hocking.

Q. Mr. Hocking you knew for an extremely honourable and reputable man ?—A. I admit I considered he was an honourable man.

Q. You considered it honourable conduct on your part to put to them, knowing that it might have the effect of dissuading them from going on, that your evidence would not do their case any good ?—A. I consider that completely honourable because of the motives I had.

Q. I suppose that was a motive to help Mr. and Mrs. Hocking, was it ?—A. Believe me, it was.

Q. It was, was it ?—A. It was to help Mr. Hocking.

Q. It wasn't to help Dr. Bell ?—A. No, Dr. Bell never entered my mind.

Q. Not to help Dr. Bell, sir ?—A. It was not to help Dr. Bell, sir.

Q. What you told Mr. Hocking was that your evidence would have a deleterious effect on his case ?—A. No.

Q. Didn't you ?—A. May I tell you——

Q. No, did you tell him that ?—A. I said no.

Q. Isn't that really in substance what you told him ?—A. No.

Q. Do I understand you to say that you would not have said anything like that to him ?—A. No, you need not understand that.

Q. Well, you might have said something like that to him ?—A. May I tell you what I said——

Q. No, just answer the question ?—A. I find it difficult to answer your question.

Q. You have admitted that you said in substance to him that your evidence would have a deleterious effect on your case ?—A. I deny that—well, pardon me, if you include in that the incident of the poisoning and the striking, that would come in my evidence, well, in that I will admit now that if you include that in my evidence that would have a deleterious effect on his case.

Q. I am not asking you that, I have asked you and you have admitted, and I am asking you if you still adhere to the denial that you said to him that your evidence would have a deleterious effect on his case ? (Objected to.)

Q. You have denied that you said to him that, is that correct, or do you want to change your evidence ?—A. I don't want to change it.

Q. You deny that you did say in substance to him that your evidence would have a deleterious effect on his case ?—A. What do you mean by in substance, I am not going to answer it yes or no.

Q. What, you don't know ?—A. I do know, but you won't give me a chance to say.

Q. Did you tell him it would finish his case ?—A. I never used those words.

Q. Something like it ?—A. I said it would have a deleterious effect on his case.

Q. So you did say that ?—A. Yes, if that evidence came out it must sort of go against his case, I can't remember the words.

Q. If it came out ?—A. Yes.

Q. But you had already given it to Dr. Bell's solicitors, hadn't you ? —A. But how did I know it would come out, as it happened I was not called in the first case.

Q. But you had made up your mind, hadn't you, who you were going to give evidence for ? (Objected to.)

Q. You expected to be called by Dr. Bell, didn't you ?—A. Presumably yes.

Q. And this is the position, you had already refused to give a statement to Mrs. Hocking's representatives ?—A. I had.

Q. Your own patient ?—A. Yes.

Q. Was there anything to hide ?—A. Nothing whatever.

Q. Nothing that you had ?—A. Nothing whatever.

Q. What was it, the B.M.A. prevented you doing it, was it ?—A. I was advised——

Q. Was it the B.M.A. who influenced you not to do it ?—A. Partly.

Q. What was the other part ?—A. Other legal advice that I had obtained.

Q. Partly the B.M.A., was it ?—A. I have answered that question.

Q. So this is the position, that apart from that you were quite satisfied to give your account of the happenings to Mrs. Hocking's advisers ?—A. Perfectly prepared to tell them everything I knew.

Q. And if you had not received this advice from the B.M.A. would you have ?—A. Yes.

Q. But you felt that you had to follow the advice of your Association ?—A. Naturally.

Q. Even though you will agree, will you not, in your own mind it would have been fair to give to the representatives of your own patient a report of what had happened ?—A. I agree with you.

Q. You agree with that ?—A. Yes.

Q. That would have been fairer ?—A. Yes.

Q. But owing to being bound by the rules of this Association—— ?—A. I will not admit that.

Q. Owing to being a member of the Association ?—A. No, that did not stop me either.

Q. Well, owing to having received advice from the Association you did what was the unfair thing in your opinion ?—A. Yes.

Q. Now, if that was unfair, you went a little further, didn't you ?—A. Will you make yourself clearer ?

Q. I will make myself very clear. You not only refused a report to Mrs. Hocking's legal advisers but you gave a report to Dr. Bell ?—A. I did.

Q. And a statement to Dr. Bell ?—A. No.

Q. Well, to his legal advisers ?—A. Yes.

Q. You draw a distinction there, do you ?—A. You are too with me.

Q. Will you agree that if one thing was unfair, that is refraining from giving a statement to Mrs. Hocking's legal advisers, that constituted something more unfair ?—A. I agree with you, I should have given one to both sides.

Q. Was there pressure brought to bear on you to do the thing which was even more unfair ?—A. None whatever.

Q. How did you, of your own volition, come to do a thing which was even more unfair than what you did on advice from the B.M.A. ?—A. Because I considered it would be unwise of me to go against legal advice. I have no knowledge of legal affairs, and naturally I would be guided by the advice I got.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 21st December 1943, Cross-examination, *continued.*

Q. You knew it was unfair, you had no doubt in your own mind?—A. Yes, it was unfair.

Q. More unfair than not giving a statement to Mrs. Hocking?—A. I did not consider that the unfairness had been added to; it was unfair not to give one to Mrs. Hocking, but the fact of giving one to Dr. Bell did not add to the unfairness, I did not consider it in that light.

Q. It could not be any worse, was that your view?—A. I did not take any view as regards that.

Q. It is one thing to refuse to give a statement to your own patient—will you agree it is going a bit further when you refrain from giving that statement but to go over to the other side and give them one?—A. Yes, I agree with you.

Q. That is a bit further?—A. Yes.

Q. You have been talking about legal advice. Do you suggest any legal advice was given to you that you should give it to Dr. Bell and not to Mrs. Hocking?—A. That advice was not given to me.

Q. It was not?—A. No.

Q. Well, how did you come to give the statement? What brought you to do this unfair thing of giving the statement to Dr. Bell?—A. Because I was approached by Dr. Bell's junior counsel now and Mr. Rex.

Q. That is Mr. Reimer?—A. Yes, Mr. Reimer and Mr. Rex, and I made a statement to them.

Q. Why make it when you knew it was more unfair than you had been?—A. Because I was advised legally not to give a statement to the other side.

Q. Why did that make you give a statement to Dr. Bell?—A. I can't answer that.

Q. Can't you?—A. I was asked to give it.

Q. And you simply gave it?—A. Yes.

Q. And that was doing something that you have already admitted was more unfair?—A. Yes.

Q. And you gave it without compulsion?—A. I was not obliged to give it.

Q. Of your own free will?—A. Yes.

Q. And of your own free will you did something more unfair?—A. Yes.

Q. Are you a little bit ashamed of it?—A. Not a bit.

Q. You don't mind being unfair?—A. Oh yes, I say it depends on the circumstances of the unfairness.

Q. Oh, I see. Is this really your standard of morality?—A. Is what my standard of morality?

Q. You don't mind doing unfair things?—A. I do mind very much.

Q. It hurt you, did it? Did it hurt you to give this statement to Dr. Bell's representative?—A. It caused me no physical or mental pain.

Q. None at all?—A. No.

Q. You were not ashamed of it?—A. No.

Q. And you are not ashamed of it now?—A. No.

Q. Although it was, as you have admitted yourself, unfair?—A. It was unfair.

Q. You are not ashamed of that standard of conduct that is indicated by what you have said?—A. No.

Q. You are serious about that, are you?—A. Quite serious.

Q. I suppose if it had not been a doctor you would not have given it, would you ?—A. I would have given it to anybody if I considered that they were in the right.

Q. You are to be the judge of that, are you ? You are to be the judge of whether they are in the right or not ?—A. I am entitled to form my own opinion as to whether I am right or wrong.

Q. If you are to be the judge of what is right or wrong, as to whether you will give a statement or not, why was it you wrote to the B.M.A. and asked whether or not you should give a statement ?—A. I am a member of the British Medical Association, and I considered that they would be the ones to advise me——

Q. But you are the one——

His HONOR : Let him finish.

WITNESS : Advise me on a question that would possibly involve law.

Mr. SHAND : But I thought you said that you, in your own mind, were the one to judge as to what was right ?—A. No, you were asking me would I give a statement to anybody else. If I was concerned in, say, a non-medical case, I don't suppose I would write to the B.M.A.

Q. Well, supposing you are concerned in a medical case and you are considering whether you are going to give this statement to Dr. Bell's representative, who is going to judge then whether it is right or wrong ? —A. I would still be advised—I would still heed the advice I would obtain from the British Medical Association.

Q. And did you get any advice from the B.M.A. to give Dr. Bell's representative a statement ?—A. The question was not raised.

Q. So you did not get one ?—A. No.

Q. So you did that of your own free will ?—A. Yes.

Q. So that on that occasion it was you who judged what was the right thing to do, and you alone ?—A. I considered that Dr. Bell was in the right.

Q. But you were the one that considered that ?—A. Yes.

Q. And all that you had done was to read a few books on foreign bodies ?—A. I had looked up my books of reference, certainly.

Q. And on that you had decided that Dr. Bell was right ?—A. Yes.

Q. And you had decided that—well, you had come to a pretty firm conclusion, say within a couple of weeks ?—A. A firm conclusion, that would be right.

Q. If you thought that Dr. Bell was in the right after this couple of weeks, why did you not write to the B.M.A. as to whether you should give a statement to Mrs. Hocking ? If you thought she was in the wrong why write to the B.M.A. ?—A. Because I am very ignorant on anything touching on legal matters, and as I belong to an Association, isn't it right that I should consult that Association ?

Q. But if you thought she was wrong, what need was there to write to the B.M.A. ? You would not have given her a statement at all if you thought she was in the wrong ?—A. I would give her a statement if I thought she was in the wrong, definitely. I would give her a statement as to facts.

Q. If you thought she was in the wrong ?—A. Most certainly I would.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 21st December, 1943, Cross-examination, *continued.*

Q. You said that the reason why you did this unfair thing and gave Dr. Bell a statement was because you thought he was in the right ?—A. That was all after I thought he was in the right.

Q. Did the advice you obtained cause you to give the statement to Dr. Bell ?—A. The advice deferred me giving it to Mrs. Hocking.

Q. This is a letter you wrote to the British Medical Association, on the 12th April 1940 : " Dear Sir,—On the 13th March 1938 . . . desperately ill." Nothing so far that indicates that you thought she was wrong, is there ?—A. No.

Q. And you had done your reading by this time ?—A. The occasion had not arisen——

Q. You had done your reading by this time, hadn't you ?—A. Yes.

Q. " On the 2nd October 1939 . . . by way of the lavatory." (Objected to.)

His HONOR : Perhaps it might be found out in whose handwriting the red ink is.

Q. In whose handwriting is that (indicating) ?—A. I don't recognise it.

His HONOR : The words " For opinion on case," are not in the Doctor's handwriting. That is in somebody else's handwriting. (Documents handed to jury.)

Q. " Mr. and Mrs. Hocking are of the opinion . . . report." You will agree that there is not the faintest suggestion there that Mrs. Hocking's story was untrue or that you believed it was untrue ?—A. It was not for me to make any suggestions.

Q. But there is not, is there ?—A. No.

Q. And you got a letter—you got the reply : " In reply to your letter of the 12th instant I would advise you of the fact that any statement . . . to refuse to make any statements " ?—A. Yes.

Q. Did you consider that a nice reply ?—A. I did not consider whether it was nice or not.

Q. You did not ?—A. No.

Q. You wrote down to Dr. Bell—after this account had been given to you of this tube coming through ?—A. Yes, I did.

Q. And you got a reply on the telephone ?—A. Yes.

Q. And have you heard lately what Dr. Bell has sworn that you said to him ?—A. I have.

Q. Is what you heard true ?—A. It depends on what I heard.

Q. Well, what have you heard from Dr. Bell ? Have you heard something from Dr. Bell that he said ?—A. Nothing from Dr. Bell.

Q. Well, what have you heard that you said on the 'phone ?—A. Is there any particular item, Mr. Shand ?

Q. Just tell me all that you heard that you said on the 'phone to Dr. Bell ?—A. I know what you are after, that is that Dr. Bell said : " It is a pity that the object was not kept," and I said : " Perhaps it is just as well it was not." Is that what you want ?

Q. Yes. Is that true ?—A. Yes. (Objected to.)

Q. Give us what else there was ?—A. Dr. Bell went on to say just how impossible the whole story was. That he had removed the tube.

Q. Yes ?—A. I can't remember anything else. There was probably quite a lot more than that but I know that that was definitely part of the conversation.

Q. Turn back to what you said. Will you agree that that was entirely and hopelessly dishonest—your suggestion ?—A. That it was dishonest ?

Q. That your suggestion was ?—A. No. Might I say that that was said purely as a jest, and I said it laughingly to the doctor, and I am on oath, and that is my contention.

Q. When did you think that out, that you said it laughingly ? (Objected to)—A. Mr. Shand, I said it laughingly, and I have a clear recollection of saying it.

Q. That was just a joke, was it ?—A. Absolutely just a joke.

Q. A funny kind of joke to make about a patient, wasn't it ?—A. It was not to any detriment of the patient at all.

Q. Just tell these gentlemen about the humour of the joke. Where is the point in it ?—A. Perhaps it was pointless. It was just a crack at Dr. Bell.

Q. A crack at Dr. Bell ?—A. Yes. Don't misinterpret the word " crack " at all. It was just a " dig " at Dr. Bell, and a joke.

Q. Although at this time you thoroughly believed it, didn't you—at this time ?—A. No, I did not thoroughly believe it.

Q. You did not doubt it at this time, did you ?—A. I did doubt it at this time.

Q. I thought it was something like a week or a fortnight afterwards ? (Objected to.)—A. But the doubts could have started two days afterwards.

Q. You had a doubt, did you ?—A. The doubts could have entered the day after, couldn't they ?

Q. You had a doubt, did you ?—A. Yes, very much. I doubted the night the story was told to me.

Q. Did you ?—A. I did.

Q. You doubted it when it was told to you ?—A. Yes.

Q. And it was you, that when the object was drawn, suggested " Oh, that is a drain tube " ?—A. No.

Q. Did you express any doubt to Mr. and Mrs. Hocking ?—A. I said " It might be a drain tube." I said I considered the whole thing inconceivable.

Q. When ?—A. That night at their residence.

Q. Did you say that in your letter to Dr. Bell ?—A. No.

Q. Didn't you ?—A. No, I don't think so.

Q. Isn't this the fact, that when the drawing was made—this sketch—by Mrs. Hocking on an envelope, you said : " That might be a piece of drain tube " ?—A. Yes.

Q. And you were the one that mentioned the drain tube first ?—A. No ; we were discussing——

Q. Will you deny that you were the one that mentioned the drain tube first ?—A. I am not clear about that.

Q. Will you deny it ?—A. I won't admit it.

Q. Will you deny it ?—A. I think I will deny it.

Q. You just think, do you ? What is it ?—A. I haven't got a clear recollection, and if you want an honest answer you must take that into consideration.

Q. You have not a clear recollection, although your impression was that it was inconceivable ?—A. Yes.

Q. I will just get what you said to him. This is on page 200 in the last trial, line 26. Now I put it to you that you said :—

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 21st December 1943, Cross-examination, *continued.*

" Q. Now I put it to you that you said ' What are you asking the question for ? '—Did you put a query like that to him ?—A. I do not remember doing so.

" Q. You probably would if a layman asked a thing like that ?—A. If the conversation opened with it, I would say ' What is your idea in asking me this ? '

" Q. And I suggest that is what you did say to him ?—A. That is if I accept that that is the way he opened the conversation.

" Q. And Mr. Hocking then said when you put a query to him : ' Mrs. Hocking passed a piece of tube ? '—A. Yes, I will admit that.

" Q. Then do you remember he drew an envelope out of his pocket and showed you the sort of thing it was ?—A. Yes.

" Q. And when he drew this thing out you said ' A piece of drain tube ' ?—A. No, I did not.

" Q. Do you swear you did not say that ?—A. I said ' that might be a piece of drain tube.' "

Is that correct ?—A. If it is there it is correct.

Mr. CASSIDY : That is not the whole of it.

Mr. SHAND : Will you admit that when you wrote the letter you thoroughly believed that this drain tube had in some way been left in the neck ?—A. No, I won't admit that.

Q. " Mrs. Hocking's description (this is in your letter) is too vivid for the article to be imaginary " ?—A. Yes, that is in the letter. I remember that.

Q. Didn't it indicate your belief that this was a reality ?—A. Not wholly.

Q. Not wholly ?—A. No, not wholly.

Q. Where is there any doubt expressed in that ?—A. At the moment that I was told the story I considered the possibility.

Q. This was when you were writing a letter ?—A. Yes.

Q. The following night ?—A. The following night ; her description of the article was so vivid that I considered she could not have imagined it and yet I was asking Dr. Bell could it have occurred. I was looking for information.

Q. Yes, exactly. Do you suggest that you did not believe that it had happened then ?—A. Not entirely. I was taken in. I will grant you that I——

Q. What do you mean by " taken in " ?—A. By the story on the night I was called out.

Q. What do you mean by " taken in " ?—A. Perhaps they were ill-chosen words.

Q. What do you mean by " taken in " ?—A. Well, that I was partly convinced.

Q. You are now saying that they deceived you ?—A. I do.

Q. You do ?—A. Yes.

Q. And that is what you meant by " taken in " ?—A. I don't say " they "——

Q. Mrs. Hocking ?—A. Yes.

Q. Deceived you ?—A. Yes.

Q. That is what you meant by " taken in " ?—A. Yes.

Q. But you are not suggesting Mr. Hocking ?—A. I think that up to a point Mr. Hocking's intentions were perfectly honourable.

Q. Where is the point where they were not, any point ?—A. Yes, in previous trials I considered that things said were not true, and there I considered the point you asked me.

Q. Your suggestion is that at certain points Mr. Hocking has concocted the story ?—A. No, I am not suggesting that.

Q. What are you suggesting ?—A. I am suggesting that Mr. Hocking in his evidence was not correct as far as I was concerned.

Q. In other words, telling something that was untrue ?—A. I can instance one particular point.

Q. Telling something that was untrue ?—A. Yes.

Q. And deliberately untrue ?—A. I don't know about deliberately untrue ; I would not say that.

Q. Is not that your suggestion ?—A. No. I have a lot of respect for Mr. Hocking.

Q. He may have been making a mistake ?—A. Yes, it may have been his impression at the time. I would not sit in judgment against him that way.

Q. " If a foreign body had remained in the neck all this time do you think it may have been a possible cause of the tetany." Do you still say that you had any doubt about the matter then ?—A. There is a question mark after that, isn't there, Mr. Shand ?

Q. There is a question mark present ?—A. Yes. I am asking a question. I am not admitting anything.

Q. Do you suggest that that does not indicate your belief in this occurrence ?—A. Not entirely.

Q. " And could we now expect an improvement in her general condition " ?—A. Assuming that a foreign body were in the neck.

Q. " Of which the description was too vivid for the article to be imaginary " ?—A. Yes.

Q. You understand that this question is based on an assumption only ?—A. Yes.

Q. I suppose you were somewhat abashed at putting up to a Macquarie Street expert this event ?—A. No, I was not, because I was perfectly satisfied that a man like Dr. Bell would not leave a tube in and then send the patient back to me.

Q. Were you ?—A. Absolutely.

Q. If that were so, you must have been convinced all along that this story was wrong ?—A. Bear in mind——

Q. Is not that correct ?—A. I won't answer that.

Q. I think you will ?—A. Not in that way.

Q. Did you think all along that Dr. Bell would never leave a tube in and send the patient back ?—A. Certainly. It was never suggested to me that Dr. Bell removed the tube. As a matter of fact, I consider that is unusual.

Q. You consider that unusual ?—A. In my own practice. I invariably leave the removal of the tube to the nurse.

Q. When did it strike you that Dr. Bell would never send the patient back and leave the tube in ?—A. I won't nail myself down to a day at all.

Q. Give us an idea ?—A. I could not.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 21st December 1943, Cross-examination, *continued.*

Q. Do you mean you could not tell us within a year ?—A. Well, presumably within the year following the incident, when I would consider the matter. I had never considered the matter in that light before, it had never occurred to me.

His HONOR : Do you mean the year after October 1939 ?—A. Before October 1939. No suggestion of a foreign body ever entered my mind.

Mr. SHAND : I am suggesting that the first time that the possibility of a foreign body entered your mind was when you were told the story ? —A. Yes, but if I had known then that Dr. Bell had removed the tube, that would have been enough for me.

Q. If that is so, you did not have any doubts about it after the conversation with Dr. Bell on the phone ?—A. Not after Dr. Bell told me that he had removed the tube.

Q. Why have you sworn that it might be a couple of weeks before you came to some kind of a conclusion and you were not definitely satisfied in your own mind that it did not happen until the first trial ?—A. I will admit that I omitted to consider that aspect when I tried to answer you then.

Q. But surely you could not have forgotten such an epoch-making event ?—A. I remember now that once Dr. Bell had told me that he had removed the tube I would accept that.

Q. You did not want any more ?—A. I should not think so.

Q. You did not have to look up your books ?—A. I have frequently looked up my books.

Q. You did not have to in order to become convinced that this had not happened, the telephone conversation ?—A. I looked up the books in reference to the passage of a foreign body.

Q. Once Dr. Bell had told you that he had removed the tube, that was the end you had no more doubts ?—A. No.

Q. So you did not have to look up books ?—A. But I still did look up books.

Q. I am suggesting that you were trying to find a way out for Dr. Bell ; is that the reason ?—A. No.

Q. There is no doubt that after that telephone conversation you were thoroughly convinced that it could not have happened ; is that correct ? —A. Yes.

Q. You don't want to alter that ?—A. I think that is reasonable.

Q. It is not a question of what is reasonable. Is it a lie or is it the truth ?—A. I say it is truth.

Q. You don't want to depart from that ?—A. No, I will stick to that.

Q. Because you have been saying that it was as a result of looking up your books that you came to the conclusion ; that is what you stated first ?—A. Well, in conjunction.

Q. But you said you forgot about this conversation ?—A. Yes.

Q. But anyway you don't want to alter that ?—A. I will stick to that.

Q. Don't do it to oblige me ; we are after the truth here ?—A. That is what I want to help you with.

Q. Is that the truth ?—A. Yes, I will admit that is the truth.

Q. You have thought about it ? I don't want you to forget anything. Just think about it. I suggest that you give it very careful consideration. Now have you had time to consider it ?—A. Yes.

Q. You don't wish to depart from that? Now before I come back to that, I want to ask you this. On the 6th October do you remember telling Mr. Hocking (page 424) that you sometimes cut windows in a tube for drainage purposes?—A. Yes.

Q. That is when he had drawn the sketch of the tube for you?—A. It might have been after he brought the sketch in.

Q. Did you not say: "Apparently this tube was broken where the hole was cut"?—A. Are you quoting word for word?

Q. I don't expect you to remember word for word, but meaning that as close as possible word for word?—A. What I wanted to convey was, that where a tube would break would naturally be at its weakest point where the window had been cut out.

Q. You were indicating that with regard to this tube?—A. I won't bind myself to that.

Q. Will you deny it?—A. I won't admit one way or the other. It was just a general discussion as to where a tube would break.

Q. Do you deny that you used these words: "Apparently this tube was broken where the hole was cut"?—A. I won't deny it.

Q. There is no doubt that if those words were said, that would indicate your belief?—A. Not necessarily.

Q. Referring to this tube breaking?—A. That could have been made in reference to tubes in general.

Q. "This tube," I am putting to you?—A. I never saw any tube.

Q. The one that was supposed to be in Mrs. Hocking's neck?—A. I still maintain that in discussing those windows I was speaking of generalities.

Q. But you won't admit using those words?—A. I will not admit or deny it.

Q. You will admit that if you used those words it indicated your belief in the occurrence?—A. If I used them.

Q. (Page 431). Do you remember in August 1941 Mr. Hocking calling on you and telling you that he had received a letter from Dr. Bell's solicitors?—A. No, I don't remember that.

Q. Do you remember this? He told you that the letter asked why Mrs. Hocking went back or was re-admitted to Quirindi Hospital in September 1938?—A. I don't remember that.

Q. And do you remember that you told him this: "To Quirindi Hospital because of the severity of the tetany spasm and to receive proper treatment"?—A. I have no recollection of it.

Q. "And to St. Luke's in 1939 because of the discharge in the throat and because of the alleged passing of the tube"?—A. I almost certainly did not say that.

Q. On an occasion at the time I have mentioned, you said to him this: "I don't blame you for taking action. I would do the same." Did you say that to him?—A. I won't accept that word for word; in substance, yes.

Q. Do you wish to add to or explain that?—A. Yes. If Mr. Hocking believed that that had happened, then I would do the same myself. The "if" is most important.

Q. If it is true. Is that how you put it?—A. No.

Q. Is this what you said last time: "I said to Mr. Hocking 'If it is true that a tube was left behind, all my sympathies are with you'"?—A. I would agree to that.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 21st December 1943, Cross-examination, *continued.*

Q. Although at this time, when you were saying this, you had not the slightest doubt in your mind that no tube had been left behind ?—A. I had no doubt.

Q. None at all ?—A. No.

Q. And you did not say a word to him about that ?—A. I am sure I did.

Q. And yet you agree that you said this : " If it is true that a tube was left behind, my sympathies are with you " ?—A. Absolutely. I agree with that.

Q. Although that was quite out of the question as far as you were concerned, that any tube had been left behind ?—A. Yes, as far as I was concerned, I did not believe it had been.

Q. Yet you were making statements of that kind to Mr. Hocking ?—A. Are you inferring that I was encouraging him to go on ?

Q. I am inferring that you were making a statement of that kind to Mr. Hocking ?—A. Yes, most certainly I was saying it.

Q. Did you think it might be of importance when you wrote to the B.M.A. to tell them ? You will agree that your letter to the B.M.A. contained nothing that suggested that you did not believe the story ?—A. I did not think there was any occasion——

Q. You will agree that it contained nothing that suggested that you did not believe the story ?—A. Yes.

Q. And in your own mind you wished this jury to believe that you did not believe it ?—A. At what period ?

Q. At that period when you wrote down ?—A. Yes.

Q. You did not believe it ?—A. On the night of the tube incident, I believed it.

Q. When you wrote down in 1940 you did not believe it ?—A. No.

Q. And you wrote a letter which indicated on its face value the truth of Mrs. Hocking's story ? You wrote a letter which indicated on its face value your belief ?—A. I wrote in that letter what I considered were the facts as given me.

Q. And indicating on the face value your belief in that happening ?—A. I don't think that follows.

Q. You may be able to tell us now, if you swear you did not believe that this happened, what is your explanation of the tetany that continued, you will agree, right up to October 1939. Will you agree with that ?—A. No.

Q. Until when did it continue ?—A. I could not fix a definite date.

Q. Do the best you can do ?—A. The best I could do would be around about October 1938. Remember that there would be no clear line of demarcation between the two.

Q. First of all deal with October 1939. Will you admit that you knew that tetany was continuing until October 1939——

Mr. CASSIDY : When ?

Mr. SHAND : You always knew. At any time after October 1939 you knew it continued up till then ?—A. I felt that the element of tetany was not so strong in the latter part of it.

Q. The latter part is ending with the incident in October 1939 ?—A. 1939.

Q. Ending with the incident in October 1939 ?—A. Yes. In my evidence this morning I indicated that I considered that there were changes which would naturally make it doubtful whether that was a true tetany. I considered it was a tetany when she came home, and went on for several months. I had no reason to doubt it.

Q. When did it cease to be tetany ? Give us an idea ?—A. No, I would not.

Q. You have been in conference with these other doctors ?—A. I have had no experience of tetany.

Q. You have been in conference with these other doctors ?—A. No.

Q. You heard their theories ?—A. Not necessarily.

Q. You have read their evidence ?—A. No, I have not.

Q. Dr. Bate, have you never read his ?—A. I heard his. I was in court.

Q. You have been in conference with Dr. Ritchie ?—A. What do you mean by conference ?

Q. Discussion ?—A. No, I have never discussed it with Dr. Ritchie, I do not think. I may have heard him but I never actually entered into a discussion with him about it.

Q. Are you sure of that ?—A. Reasonably sure.

Q. You saw him before the case ?—A. Yes.

Q. Where did you see him ?—A. I think in his rooms.

Q. Who was there ?—A. I do not know.

Q. Do your best ?—A. No, I could not. Dr. Ritchie and I, that is as far as I will go.

Q. That is all you remember ?—A. That is as far as I will go.

Q. How long were you there ?—A. I do not know.

Q. Give us an idea. Two hours ?—A. No, approximately 20 minutes, half an hour.

Q. Discussing the case ?—A. No.

Q. By the case, I mean the condition of Mrs. Hocking ?—A. No, I will not admit that.

Q. Do you remember mentioning that ?—A. No, I will not admit that. There may have been some reference.

Q. What did you go there for ?—A. Dr. Ritchie is a friend of mine. If I remember rightly my wife was with me.

Q. This was before the first case ?—A. I think it was.

Q. And you tell these gentlemen you did not discuss the history of Mrs. Hocking ?—A. I have no clear recollection of doing so.

Q. Will you deny it ?—A. I will not admit it either, or I will not deny it.

Q. Is your memory bad ?—A. Average, very average.

Q. Surely you can do a bit better than that ?—A. I am sorry, I cannot.

Q. Was this the first time you had seen Dr. Ritchie after the incidents concerning Mrs. Hocking ?—A. I think possibly it would be the first time.

Q. How many times did you see him before the first case ?—A. I do not know. I would not attempt to say.

Q. What is the best you can do ?—A. I would not attempt to make a guess even.

Q. Was it six times ?—A. I would not say so.

Q. Something less than that ?—A. It may be.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 21st December 1943, Cross-examination, *continued.*

Q. It may be more ?—A. It may be more. I never purposely went to discuss the case with Dr. Ritchie.

Q. It may be more and it may be six times. Do you tell these gentlemen that you never discussed the case with him ?—A. I will not say that.

Q. Didn't you go into it in detail ?—A. No, certainly not, not with Dr. Ritchie.

Q. Why not ? He is a friend of yours ?—A. He is a friend of mine. No need to inflict this on your friends.

Q. He was a witness in the case ?—A. He may have been. All the more reason why I would not discuss it with him.

Q. Do you say that because he was going to be a witness in the case was all the more reason why you would not discuss it ?—A. As I was sent out of the box a while ago I was not allowed to speak to anybody.

Q. Do you say before the case that was all the more reason why you would not discuss it with him, a professional man ?—A. Well——

Q. Do you say that ? Do you maintain that that is so ?—A. No.

Q. Why did you swear it was so if it was not correct ?—A. What ? You are confusing me.

Q. You said because he was to be a witness that was all the more reason why you would not discuss it with him ?—A. Yes, my impression would be " Best not to discuss these things with a witness," because I would imagine that counsel may take some ulterior view of it.

Q. Just like the B.M.A. said statements may be misconstrued ?—A. That is the opinion of the B.M.A., not mine.

Q. You do not agree with that ?—A. I told you a while ago that I considered that it was unfair. Further than that, I have nothing to say.

Q. Didn't you consider until October 1939, this tetany was continuing ? A. I could not make up my mind.

Q. Did you write this to the B.M.A., the letter of 12th April 1940 : " On 30th March 1938 a patient of mine, Mrs. Hocking, was operated on for thyroidectomy by a Sydney surgeon. From approximately that time until October 1939 the patient was very distressed by tetanic spasms which came on very frequently. At times she was very ill." ? Is that what you wrote ?—A. I wrote that, yes.

Q. Is that correct ?—A. If it is there, it is true. I trust you to read it out correctly.

Q. If you have any doubt you can have a look at it ?—A. No.

Q. If you wrote that, was what you wrote correct ?—A. Yes.

Mr. SHAND : It may be noted that the copy is incorrect.

Q. You mentioned 30th March 1938 a patient was operated on by a Sydney surgeon——

His HONOR : That is not right.

Mr. SHAND : That is in the doctor's letter. That is the original I am reading. That does not matter.

Q. " From approximately that time until October 1939 the patient was very distressed by tetanic spasms which came on very frequently. At times she was desperately ill " ?—A. Yes.

Q. That is a true statement of the facts as you believed them at that time ?—A. Yes.

Q. So that you considered that this tetany did persist right up to October 1939 ?—A. No, I do not admit that.

Q. That is what your letter says and that is what you have said is correct ?—A. Did I say that the tetany persisted up to 1939 ?

Q. I will read it again : " On the 30th March, Mrs. Hocking was operated on by a Sydney surgeon. From approximately that time," that is from March 1938, " until October 1939, the patient was very distressed by tetanic spasms which came on very frequently. At times she was desparately ill " ?—A. Yes.

Q. That is what you have said ?—A. I have written that, yes.

Q. Is that right ?—A. To my knowledge it was true for the first part, and the latter part, not being an expert on tetany——

Q. I am not asking you that. Is that what you believed to be true ? —A. Yes.

Q. You draw a distinction later on. You go on to say that from the passing of the tube on 5th October, " from that date she has been quite well." So there are two limits : October 1939 on the one hand, and March 1938 on the other. It is quite clear, is it not ? I suppose since this matter, the action, has been brought against Dr. Bell you have changed your views on tetany ?—A. No, I do not know enough about tetany.

Q. Have you changed your views ?—A. Not since this action was brought. Not necessarily. I always considered that a big functional element entered into it all. I expressed that opinion throughout.

Q. Whether any functional element entered into it or not, have you changed your view as to whether it was true tetany or not right up to October 1939 ?—A. I maintained that it was not true tetany all the way through.

Q. You mentioned a date when you said somewhere about October 1939 ?—A. Approximately.

Q. This letter was somewhat misleading ?—A. Yes, you could read it as misleading.

Q. Not " could read it." To any person not knowing the facts and reading it it would be misleading ?—A. They would assume she had true tetany right up to the tube incident.

Q. And was desperately ill ?—A. Was ill, yes.

Q. Right through ?—A. I consider she was always very ill up to that incident, every time I saw her.

Q. Up to the incident of the alleged passing of the tube ?—A. Not just on any occasion.

Q. On and off ?—A. Yes.

Q. She was desperately ill right through ?—A. No, not right through.

Q. On and off up to that incident ?—A. When I used the words " desperately ill " it was these spasms.

Q. She had them intermittently up to the tube incident ?—A. Yes.

Q. And you considered on those occasions that she was desperately ill ?—A. Yes.

Q. Did you at the time you wrote this letter suspect that it was not true tetany from about October 1938 ?—A. I would not pin myself down to a date, but I know that it was in my mind.

Q. When you wrote this letter ?—A. That it was not a true tetany.

Q. Why mislead ?—A. I did not consider at the time of writing that that had any great bearing on the subject.

(Original letter of 12th April 1940, m.f.i. B.)

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 21st December 1943, Cross-examination, *continued.*

Q. You wrote a letter to Dr. Bell ?—A. When ?

Q. In February 1940. Mr. Hocking had seen you as to whether, in your opinion, he should be entitled to compensation. Do you remember him seeing you as to whether you thought he would be entitled to compensation ?—A. Yes.

Q. And during the course of the conversation, for instance, he was asking you, on the question of what he had lost, as to what your fees would be if there had not been tetany ?—A. Yes.

Q. And I think you said " if there had not been tetany about three guineas " and he said to you : " Well, consider it 10 " ?—A. Yes. That occurred in the store.

Q. And you said " that would be too much. I would not have charged that without tetany," and you suggested that he should go down, or they should go down and see Dr. Bell, and you told them he would be a fair man and deal with them justly ?—A. I do not recollect that.

Q. Will you deny it ?—A. I cannot do one way or the other. I cannot recollect it.

Q. That is what you told him. You never regarded either of these people as being greedy people ?—A. No.

Q. And you told Mr. Hocking that you were sure Dr. Bell would do the proper thing and deal with it fairly ?—A. I have no recollection of that.

Q. Will you deny it ?—A. I have no recollection of it.

Q. Will you deny it ?—A. I cannot help to deny it.

Q. I want you to tell me the truth ?—A. I am trying to.

Q. You will not deny it ?—A. I will not admit it.

Q. You wrote down to Dr. Bell ?—A. I have no recollection of writing that letter either.

Q. I will remind you of it all if you have forgotten. Mr. Hocking said he would take your advice and go down and see Dr. Bell ?—A. I have no recollection of it.

Q. Will you deny it ?—A. I will not deny it or admit it.

Q. Will you deny that you wrote down to Dr. Bell and told him it would be advisable to pay compensation ?—A. I deny it most emphatically.

Q. Didn't you tell Mr. Hocking that you had written down ? Just think ?—A. I am thinking.

Q. Well, give us the answer ?—A. Absolutely. Never for one second did I insinuate that Dr. Bell would pay.

Q. That what ?—A. No suggestion ever passed my lips that Dr. Bell would pay compensation, treat them fairly. (Argument ensued.)

Q. Will you deny you wrote to Dr. Bell ?—A. I will not deny it and I will not admit it.

Q. Will you deny you wrote to him telling him that Mr. and Mrs. Hocking were coming down to see him ?—A. I will not deny it or admit it.

Q. Will you deny telling him in your letter that they were reasonable people ?—A. No, I do not admit writing the letter so how could I ?

Q. Will you deny it ?—A. I will not either, because I do not admit or deny that I wrote the letter.

Q. Will you deny telling Mr. Hocking after he had come back from Sydney and had seen Dr. Bell that Dr. Bell had not had the courtesy to reply to a letter ?—A. Yes, to a letter.

Q. Written to you ?—A. Yes. Which one ?

Q. Tell me ?—A. It was the letter I wrote about the tube incident.

His HONOR : 7th October 1939 ?

Mr. SHAND : It was ?—A. That was the one I wrote. Dr. Bell did not acknowledge it.

Q. You said he never had the courtesy to reply ?—A. I never talked about courtesy. I will not admit the courtesy part. All I will accept is that I may have told Hocking——

Q. You swore you did tell him ?—A. Well, I probably said it.

Q. You swore you said it ?—A. I will say I said it, that Dr. Bell did not answer my letter.

Q, You did say it ?—A. Say what ?

Q. That Dr. Bell did not have the courtesy to answer your letter ?—A. No, I will not admit the courtesy part of it at all.

Q. Will you deny it ?—A. Yes.

Q. You told him he did not answer your letter ?—A. Yes.

Q. You told him that in 1940 ?—A. I do not know when I told him.

Q. Do you swear that that is the letter ?—A. That is the letter I wrote to Dr. Bell about the tube incident.

Q. You are quite clear about that ?—A. Yes.

Q. Why tell him that ? If he had not answered that, he had rung you up about the letter ?—A. Yes, but he did not answer the letter.

Q. What had that to do with it, if he had answered by telephone ?—A. Nothing to do with it as far as I know.

Q. He answered it by telephone ?—A. Yes.

Q. If that was the letter, why bother telling Mr. Hocking that he had not answered your letter but he rang you up ?—A. At the time I told Mr. Hocking he may not have rung me up.

Q. You will not deny that it was in 1940 you told him that ?—A. I do not know when it was.

Q. The conversation in the store ?—A. I will not admit when that was.

(Further hearing adjourned until Wednesday, 22nd December 1943.)

Seventeenth Day—Wednesday, 22nd December 1943.

22nd December 1943, Cross-examination, *continued.*

KEVIN CHARLES O'HANLON

Further Cross-examined.

Mr. SHAND : I suppose you have discussed this case with the Defendant, Dr. Bell, since yesterday. That is a simple question—an easy question ?—A. Yes, quite easy.

Q. Well, will you answer it please ?—A. When I said I discussed it I might have mentioned a few points in it.

Q. I thought you said yesterday that the reason why you did not discuss the matter with Dr. Ritchie was that you did not think it proper to speak to another witness. That did not apply in this case, I suppose ? You considered it not proper ?—A. Yes.

Q. Do you want to alter that evidence ?—A. No.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 22nd December 1943, Cross-examination, *continued.*

Q. You have got a different standard now, have you ?—A. No. (Objected to.)

Q. You saw Mr. Hocking in April 1940 at the picture show ?—A. Is that a question ?

Q. Yes, that is a question ?—A. I have got no clear recollection of that.

Q. You said to him this, did you not : " You know all the doctors, Dr. Bell will have, and what kind of counsel he will have " ?—A. I emphatically deny it.

Q. You are quite clear ?—A. I would not say that sort of thing.

Q. You are quite clear on it ?—A. I deny absolutely that I said it.

Q. You deny it, do you ?—A. Yes.

Q. It is not what you said yesterday, that you won't admit or you won't deny it ?—A. I deny absolutely that I said such a thing.

Q. Did anyone tell you that when you came into the court and if you got an awkward question, you should say that you would not admit or you would not deny it ?—A. No.

Q. Do you know what the doctors' " mental reservation " is ?—A. No.

Q. Have you never heard of it ?—A. No.

Q. Is that so ?—A. Yes.

Q. You were asked that question that I put to you : " You know all the doctors that Dr. Bell will have and the counsel he will have." You were asked that before ?—A. In a previous trial ?

Q. Yes ?—A. Yes.

Q. This is at page 429. That is what you said " I have no recollection of it " ?—A. Yes.

Q. And you said that you emphatically deny it ?—A. I am denying it now.

Q. Your recollection as to the incident not having happened has improved ?—A. It may be.

Q. Can you answer the question ?—A. Yes.

Q. It has ?—A. Yes.

Q. Do you remember telling Mrs. Hocking that she would get a pulling about if she gave evidence ?—A. I don't remember telling her that.

Q. Will you deny it ?—A. I won't deny it.

Q. Will you deny that from the time you refused to give a statement you were working for Dr. Bell, in his interests, to try and prevent Mrs. Hocking bringing a case ?—A. I deny that.

Q. When this telephone conversation occurred, when you had written your letter of the 7th October—you know the one where you addressed this humorous remark to the doctor ?—A. Yes, I know the one you refer to.

Q. You have been told what Dr. Bell's account of that conversation was ?—A. Before yesterday.

Q. Yes, before you came into the box. Is it correct that you indicated to him in that conversation your belief that this tube had been left there ? —A. I would say that is incorrect.

Q. You have been told that he has sworn that ?—A. All I know is what I am supposed to have said to Dr. Bell after he made a remark " It is a pity that the object was not kept." I don't know the subject of the rest of his evidence in connection with that letter.

Q. Is this clear, whether you know it or not, that you did not indicate to him that it was your belief that this tube had been left there ?—A. I had not made up my mind. I was seeking information from Dr. Bell.

Q. Do you think that is an answer to the question ?—A. It was not my belief, Mr. Shand——

Q. Do you think that is an answer to the question ?—A. Yes.

Q. Well, I will repeat it. Is it correct that you did not indicate to Dr. Bell your belief that the tube had been left there ?—A. I did not indicate to Dr. Bell.

Q. That is quite clear ?—A. Yes, I did not indicate to Dr. Bell.

Q. What did you say to him when he told you that it was he that had withdrawn the tube ?—A. I don't remember.

Q. Well, give us the best you can ?—A. I would not have any answer to that. Possibly I might say " Well, if you removed it that is the end of it."

Q. I suppose on the present attitude you have indicated, namely, that once you knew that Dr. Bell had removed the tube, that was the end of any doubts in your mind ?—A. Yes.

Q. I suppose it would be natural that you should give such an answer. I don't mean in those words, but an answer to that effect ?—A. I would say it would be natural.

Q. And it would be not improbable that you would indicate to him that you believed that the tube had still been left there ?—A. Yes, most improbable.

Q. You have not been told what Dr. Bell swore in the box ?—A. No.

Q. Do you remember my putting to you yesterday that you had indicated to Mr. Hocking that the evidence that you could give would be deleterious to his case ?—A. I remember that.

Q. I want to bring you back to that. At that interview, you will admit, will you not, that Mr. Hocking said to you, " I believe my wife's account of it " ?—A. I won't admit that.

Q. Will you deny it ?—A. No, I won't deny it.

Q. You won't do one thing or the other ?—A. Because I have no clear recollection of that particular part of the conversation.

Q. And you said, " It is possible it might have happened." ?—A. I have no recollection of that.

Q. Will you deny it ?—A. Yes, I deny it.

Q. Well, how do you deny it if you have no recollection of it ?—A. Well, you asked me to.

Q. I am not inviting you to deny it ?—A. Because that is not the sort of thing I would say to him.

Q. How can you deny it if you have no recollection of it ?—A. I deny it because that is not the sort of thing I would say to him because by that time I had made up my mind that the story was not correct.

Q. But you have no recollection ?—A. I remember discussing with Mr. Hocking in the street—I well recollect Mr. Hocking saying " Doctor, that is not true." I am very clear about that.

Q. But you are not clear about other things I am asking you about ?—A. That is true.

Q. Although you do not recollect, you will swear definitely that it did not take place ?—A. Well, I would say, Mr. Shand——

Q. Are you swearing definitely that it would not take place ?—A. Well, I will swear definitely that it did not take place.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 22nd December 1943, Cross-examination, *continued.*

Q. I am not inviting you ?—A. You are not giving me a chance to explain.

Q. Are you swearing definitely that it did not take place ?—A. I do.

Q. It has taken a good while. Do you feel any compunction about swearing definitely ?—A. No.

Q. Why didn't you at first ?—A. Because you badgered me into it, I consider.

Q. Badgered you into swearing ?—A. Into making that admission.

Q. Into making the denial, you mean ?—A. Yes.

Q. Have I ? So the denial is not really the truth. You have been badgered into it ?—A. I maintain now——

Q. Answer the question. (Objected to.)

Q. You can give an explanation if you want to, afterwards. So that what you have given is not the truth because I have badgered you into it ?—A. No, I won't admit it.

Q. Well, is it the truth ?—A. It is the truth, what I say.

Q. Your denial ?—A. You are getting me confused.

Q. You have denied it ?—A. I say I have no clear recollection of it. You said " You will not deny it " and I said, " I will deny it."

Q. Is it correct that you just have no recollection ?—A. I don't remember that particular phrase that you used.

Q. Well, will you deny that you used something like it ?—A. Yes, I will.

Q. Well, is it because you are absolutely clear in your denial or because you do not recollect ?—A. No, because it is not the thing I would say to him, having then made up my mind.

Q. Did you ever say for this to have happened—that is the tube being left and coming through somewhere in the throat. Did you ever say it was possible or even probable ?—A. At the time of the October incident, round about that time, I considered that it may have been possible for a tube to pass from the cavity that remained behind after removal of the thyroid, directly by the shortest possible route into the œsophagus. That was my impression.

Q. Did you consider, from what you had heard of the account, that it was possible ?—A. I considered in my own mind that it may have been possible for that tube to pass.

Q. And in fact quite probable ?—A. No, I won't say probable.

Q. Quite probable ?—A. I would say it was possible.

Q. This is at the last trial, page 209. It was put to you with reference to an earlier, or a later interview, and you put it as being at the 6th October. " Did he not ask you was it possible for it to have happened as she described, and did you say it was possible," and your answer was : " Presumably, yes, quite probable." (Objected to.)

Q. That is what you swore ?—A. At the last trial, is it ?

Q. Yes ?—A. All right, I swore it. (Objected to.)

Q. That is what you swore ?—A. Yes.

Q. And you placed that incident as, when you said that, being when you were at the house in October ?—A. Did I ? You are asking me did I ?

Q. I am telling you that you did. I want to make it quite clear to you. Now, you have this morning sworn that you never thought it was probable. You had in mind the possibility, but not that it was probable ?—A. I did not consider it was probable.

Q. Well, why did you swear on the last trial in answer to a question, "Did you say it was possible?" Why did you swear "Presumably, yes, quite probable." Was that a deliberate lie?—A. No.

Q. Well, what was it?—A. I don't know. That was an error. I would not tell a deliberate lie.

Q. Wouldn't you?—A. No.

Q. It is a funny kind of error when you are giving evidence for the Defendant. It is a funny kind of error to make, isn't it?—A. How do you mean, funny.

Q. Well, can you explain how you fell into such an error that you actually admitted it was quite probable when you did not think so?—A. Perhaps I should have said it was possible. I considered at the time that I thought it was possible.

Q. Possible?—A. Yes.

Q. Not quite possible?—A. No.

Q. So the two words are wrong—the "quite" and the "probable"?—A. Yes.

Q. How did you come to swear that?—A. I might have used the wrong words just as I used them now.

Q. That is quite wrong, is it?—A. In this trial I would like to say that my attitude then was that it was possible——

Q. That is not my question. That answer was quite wrong?—A. Yes.

Q. You say you had in mind that it was possible—not quite possible, but that it was possible?—A. Yes, it was possible.

Q. That is right, isn't it?—A. Yes.

Q. You are not being badgered into saying that?—A. No.

Q. That is quite of your own free will?—A. That was my impression at the time of the interview with Mr. and Mrs. Hocking.

Q. You do not want to alter that?—A. No, I will stick to that.

Q. That was your impression on the 6th October when you had been told of the incident and had some discussion on it?—A. Yes.

Q. Did you swear in this trial that you told the Hockings it was inconceivable?—A. Yes.

Q. You did not swear that when you first gave evidence at the second trial, did you?—A. I don't remember.

Q. But you did swear it on the last trial?—A. I don't remember that, no; I fancy I did in the last trial.

Q. In the last trial but not in the first one, and do you think those two expressions (1) that you said it was possible, and (2) that you said it was inconceivable—do you think they run together?—A. Yes.

Q. You do?—A. I do.

Q. Anything that is possible is conceivable, isn't it?—A. Yes.

Q. And this, according to you, was inconceivable?—A. Yes—considering the circumstances.

Q. But still, considering the circumstances, possible?—A. Yes.

Q. Because you were considering the circumstances when you said it was possible?—A. Yes.

Q. There is something wrong there, isn't there? (Objected to.)

His HONOR: You can bring that out in re-examination.

Mr. SHAND: You said it in this trial?—A. May I explain to you what I mean?

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 22nd December 1943, Cross-examination, *continued.*

Q. Yes, you may try ?—A. It was in my mind on the evening of the 6th, the possibility of the tube passing by the shortest possible route into the œsophagus. That is what I considered was possible, but it was inconceivable that a tube would be left behind.

Q. Inconceivable that it would be left behind ?—A. Inconceivable that a tube would be left behind.

Q. Have you never heard of tubes slipping into the lung ?—A. Not into the lung.

Q. Haven't you ?—A. What do you mean—the chest cavity or the lung tissue itself ?

Q. The pleural cavity ?—A. Oh yes, I have.

Q. Of course if it was inconceivable that a tube had been left behind it was also inconceivable that a tube should have appeared in the mouth. If there was no tube it could not have appeared ?—A. No.

Q. Are you still satisfied with that explanation ?—A. If there was no tube it could not certainly appear in the mouth.

Q. If there was no tube left there——?—A. It could not appear in the mouth.

Q. This is what you swore on the third trial, wasn't it, page 210. " Did you say to Mr. Hocking in respect to the story of the tube coming into the mouth that that happening was possible," and your answer was " I considered it was possible." ?—A. Yes, I still think in view of that which I described, that the tube, if it burst into the œsophagus, may be regurgitated up into the mouth.

Q. You swore yesterday that when you gave the statement to Dr. Bell or his representatives you were acting under instructions ?—A. I swore that.

Q. You did it of your own free will ?—A. No compulsion was used whatever.

Q. And no instructions ?—A. No instructions whatever.

Q. And Mr. Reimer and Mr. Rex, the solicitor, approached you, and that is how you came to give it ?—A. Yes.

Q. Will you tell these gentlemen how you explain this passage in the third trial, page 207, line 17. You were asked " Is it the fact that you gave all the information in your possession to Dr. Bell or his solicitor ? " and your answer was " Yes." You were asked " Do you think that that was a fair thing after she had been your patient all these months ? " Your answer was " I was acting under instructions." What about that doctor ?—A. If it is there it is correct. (Objected to.)

Mr. SHAND : No, I won't read on.

Q. If it is there it is correct ?—A. Yes.

Q. But you have sworn yesterday and just a moment ago to this Court, that you were not acting under instructions ?—A. I was not acting under instructions as regards making a statement to Mr. Reimer and Mr. Rex.

Q. That is giving all your information to Dr. Bell ?—A. I did that voluntarily.

Q. Well, why did you swear that you were acting under instructions ——? (Objected to.)

His HONOR : You can read that out in re-examination, and then you can make your comment, Mr. Cassidy.

Mr. SHAND: What did you mean?—A. I mean that when I gave my evidence or my statement to Mr. Rex and Mr. Reimer I did it purely of my own free will.

Q. Then, what did you mean by the answer you gave to this question —"It is the fact that you gave all the information in your possession to Dr. Bell or his solicitor." That was the statement, wasn't it? And you said "Yes"?—A. Yes.

Q. That was the statement you gave to the representatives of Dr. Bell? —A. Yes.

Q. You were asked "Do you think that that was a fair thing after she had been your patient all these months?" and your answer was "I was acting under instructions"?—A. And my explanation of that I had received advice not to make a statement.

Q. But that is not to make a statement. That had been dealt with. This is giving all your information—making a statement to Dr. Bell, not refraining?—A. No, I——

Q. Doctor, you claim to have some ordinary intelligence?—A. I hope so.

Q. You are quite aware of the meaning of these words—"It is the fact that you gave all the information in your possession to Dr. Bell or his solicitor," and that is giving information, not withholding it. That is, giving it to Dr. Bell?—A. I gave it.

Q. Those words are plain, aren't they?—A. Yes, quite plain.

Q. And to you they convey one meaning only?—A. That I gave the facts to Dr. Bell's solicitor.

Q. It does not mean refraining from giving one to Mrs. Hocking or her representatives, does it?—A. No.

Q. Then you were asked whether you thought it a fair thing, and you said "I was acting under instructions"?—A. I was acting under instructions about the giving of any information I had to Mrs. Hocking's side.

Q. But that is not the question. Are you trying not to understand? —A. No, I certainly am trying.

Q. Would you like to have the record before you?—A. No, I think you can explain it.

Q. Are you quite clear. You quite realise that your answer "I was acting under instructions" was in reference to a question that it was unfair to give information to Dr. Bell?—A. I was acting under instructions.

Q. Just answer my question. Are you trying to be dense?—A. No, I am not.

Q. Just have a look at it (handed to witness); you can read on if you like, if my friend suggests that something ought to be read——

Q. Look at line 17, page 207: "It is the fact that you gave all the information in your possession to Dr. Bell or his solicitor"?—A. And "Do you think that was a fair thing after she had been your patient all these months" and I answered "I was acting under instructions."

Q. It was in reference to giving information to Dr. Bell?

His HONOR: It is suggested you read on?—A. I see it goes on:—

"Q. Were you frightened?—A. I had nothing whatever to hide.

"Q. I am not talking about hiding anything in connection with her illness?—A. No, I had nothing to be afraid of.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 22nd December 1943, Cross-examination, *continued.*

"Q. Did you take instructions?—A. I did, as legal advice.

"Q. Did you think something would happen to you?—A. It could not happen to me.

"Q. If you did not obey instructions were you afraid something would happen?—A. No."

Mr. SHAND: What have you to say about your answer: "I was acting under instructions" in reference to a question about giving Dr. Bell information?—A. I maintain the answer is correct. Did I think it was a fair thing after she had been my patient that I should not give her a statement?

Q. But that is not the question?—A. That is practically what I am reading out.

Q. "It is the fact that you gave all the information in your possession to Dr. Bell or his solicitor." That is the question, and it goes on:—"Do you think that was a fair thing after she had been your patient all these months."

That is do you think it was fair to give to Dr. Bell all your information?—A. I think it was a fair thing.

Q. You swore you were acting under instructions?—A. I was acting under instructions not to make a statement.

Q. That is not what you said?—A. I was acting under instructions.

Q. In giving the information to Dr. Bell?—A. It was a straight-out question: "It is the fact that you gave all the information in your possession to Dr. Bell or his solicitor" and my answer was "Yes." It is the fact I gave it to him.

Q. Do you think it was a fair thing. You said you were "acting under instructions." That clearly means in giving it to Dr. Bell?—A. I can see what you mean now.

Q. Only now?—A. I have not been trying to hold up the court. You are insinuating that I am dodging it.

Q. You say it is only now you understood that?—A. Yes.

Q. Now you do understand it, why did you give that answer?—A. Because I apparently misunderstood the question then.

Q. No one gave you instructions, according to you, to give information to Dr. Bell?—A. That is correct.

Q. Are you sure it was not the B.M.A.?—A. The only communication I had with them is that letter you have.

Q. You were anxious before you wrote that letter to give information to Mrs. Hocking or her representative?—A. No, I do not say that.

Q. Well you were quite willing?—A. Yes, quite willing.

Q. You did know Dr. Bell was a member of the Council of the B.M.A.?—A. I did not.

Q. You have read there, I suppose: "I know he is now." Did you not know anything different to that. Do you swear now you did not know that Dr. Bell was a member of the Council of the B.M.A. when you wrote down to them in 1940?—A. I won't swear it but I did not consider it.

Q. You swore you did not know previously?—A. Well, I did not know.

Q. Do you care what you say on your oath?—A. Very much.

Q. A moment ago you said you did not know that he was a member?—A. I did not know he was a member of the Council. (Witness' previous evidence on this point read.)

Q. Are you trying to tell us the truth ?—A. Yes.

Q. How did you come to swear definitely at one moment that you did not know he was a member of the Council of the B.M.A. and then the next moment say that you won't swear that you did not know that but you did not consider it. How do you come to give these statements ?—A. It is possible I may have known. I might have seen it on a circular that he was a member of the Council. It did not place itself very firmly in my mind.

Q. Why did you swear definitely on your oath that you did not know he was a member if there was the possibility that you knew ?—A. Because I had no recollection of him being a member of the Council.

Q. Why didn't you say so. Why did you swear definitely ?—A. Because I did not know at the time.

Q. Why did you swear definitely ?—A. Because I did not know that he was.

Q. Are you trying to tell us the truth ?—A. Absolutely.

Q. I asked you a question yesterday and I will now repeat it : Is it correct that you regarded the position as being this, that you had to write down to the B.M.A. ?—A. I have denied that I had to write to the B.M.A.

Q. You know what " had to " means. It is different from it being advisable to write ?—A. Yes it depends how you interpret " had to " or " have to."

Q. If you used the words you know how to interpret them ?—A. Yes.

Q. And the position in which you use the words is that you did not regard that you had to write to the B.M.A. ?—A. I was not obliged to, no.

Q. You did not regard it that you had to write ?—A. No.

Q. Do you remember being asked this in the second trial, at page 382. Mr. Hocking was asking you to make a statement. Did not you say this to Mr. Hocking or to Mr. Thomas, the solicitor : " Before I can make a statement to you I have got to write down to the B.M.A. and find out what my position is." You said there : " I think I made that remark to Mr. Thomas." Is that correct ?—A. Yes.

Q. " Q. Mr. Thomas or Mr. Hocking, did not you say, ' Before I can give you a statement I have got to write down to the B.M.A. ' " ? And your answer was " Yes." ?—A. Yes.

Q. Were you frightened you might be boycotted ?—A. No, I had no one else to advise me and naturally I turned to my Association.

Q. You had your own conscience and your own sense of fairness to guide you ?—A. Yes.

Q. When you were having this discussion on the 6th October when the matter of the tube came up—and you are aware of when I am speaking of ?—A. Yes.

Q. You explained that a rubber tube is used for drainage purposes ?—A. Yes.

Q. And you also explained that there was a diamond out, towards the end of it ?—A. Yes.

Q. You actually demonstrated ?—A. I did not have any tube to demonstrate on.

Q. On paper ?—A. Probably I did, I may have.

Q. The expression you used was " We cut windows in a tube for drainage purposes " ?—A. Yes, that is a fact.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 22nd December 1943, Cross-examination, *continued.*

Q. You said "Apparently this tube was broken where the hole was cut"?—A. I won't admit that.

Q. Will you deny it?—A. I probably said that was the spot at which a tube would break.

Q. At that time we can take it you were talking in this way: You thought you had solved the mystery of Mrs. Hocking's condition?—A. I won't admit that.

Q. You would not be talking of the possibility of tubes breaking and explaining how diamond cuts are put in them?—A. Yes, I would. I considered the Hockings were telling me the truth.

Q. At that time you considered you had the secret solved of Mrs. Hocking's case?—A. No.

Q. It was a secret you had not solved; it was a most baffling case?—A. I had an explanation for it.

Q. You had never seen a case like it before?—A. Never.

Q. And you had never heard of one; you have sworn that?—A. No, I have never heard of one.

Q. You had never known of this inflammation continuing anything like this length of time after a thyroidectomy?—A. But the inflammation did not continue.

Q. Well, tetany spasms; you had never known that?—A. No.

Q. You were so puzzled that you had Dr. Searl of San Francisco written to. He is a noted expert on thyroids?—A. Yes.

Q. To see if he could solve it, to see if he could give you some tips?—A. To see if he could give me some help. It was long before the tube incident.

Q. Before then it was puzzling you?—A. I did not write to Dr. Searl direct.

Q. You had him written to?—A. Yes.

Q. Do you think it matters whether you wrote to him direct?—A. Yes.

Q. You had him written to for a purpose?—A. I was writing to another doctor in San Francisco and I asked him to mention it to him, a doctor who worked in the same hospital with him.

Q. It was a baffling case?—A. I had my explanation for it.

Q. And what was it?—A. My explanation was as a result of all the inflammation which had occurred after operation that it had interfered with the blood supply to the para-thyroid.

Q. But you had never heard of such a case?—A. I never heard of a case but I knew the possibilities.

Q. Where is the letter you got from Dr. Searl?—A. I do not know.

Q. Have not you looked for it?—A. Yes, I have and it has apparently been destroyed.

Q. You reached a stage in 1938 when you told Mr. Hocking that you could do nothing further for his wife?—A. Yes.

Q. That he could do anything which you were able to do?—A. Yes.

Q. After telling him that you put it to him quite fairly, I suggest—of course, there was a lot of expense?—A. Yes.

Q. And I give you credit for the fact that you were considering that?—A. I was considering that.

Q. And after that, of course, you were called in very much less?—A. Yes.

Q. In what books did you get assistance. You said you read up certain books about foreign bodies in helping you to come to the conclusion

that this story was not accurate. What were the books ?—A. Russell Howard's "Surgery" was one in particular. I think the "British Encyclopædia of Medicine" was another.

Q. What volume ?—A. The one dealing with the œsophagus. Actually my findings were negative.

Q. It did not help you. They did not help you ?——A. I have read that injuries to the œsophagus are practically always accompanied by death.

Q. But you did not merely rest your judgment on it having come through the œsophagus ?—A. I did. I considered only the passage of the tube straight into the œsophagus.

Q. You considered no other possibility than that ?—A. No, it never entered my mind. The possibility of entering through the tonsil, of course it would have clinched it more than ever, how highly impossible it was.

Q. You told these gentlemen when Mrs. Hocking came back from the second visit to St. Luke's she told you she had a scar on her tonsil ? —A. That is correct.

Q. Did you tell her she hadn't ?—A. She did not say she had a scar on her tonsil. She directed my attention to an area on the back wall of her throat on the left side.

Q. Did not she say there was a scar there ?— A. Yes, she considered it was a scar on the back wall of her throat.

Q. Did you tell her there was not one ?— A. I am sure I must have, because there was none.

Q. Do you swear you told her ?—A. I swear I told her I could not see anything.

Q. There is no doubt about it ?—A. I did not see anything.

Q. But you did see something ?—A. I saw a piece of lymphoid tissue, the commonest thing you see in any throat.

Q. Did you test it with a probe ?—A. No.

Q. Did you see whether the supra tonsillar fossa was there ?—A. I was not directed to the tonsil at all.

Q. Did you look at the tonsil ?—A. Most certainly I would.

Q. Was this piece of tissue just above the tonsil ?—A. No.

Q. Where was it ?—A. On the posterior pharyngeal wall, a long way from the tonsil.

Q. Where ? Below or at the side ?—A. At the back.

Q. But on the wall ?—A. The back wall.

Q. And a bit higher up ?—A. No.

Q. Higher than the tonsil ?—A. No, on the same level as the tonsil.

Q. Did it occur to you that inflammation might have caused destruction of tissue ?—A. No, destruction of tissue where, on the posterior pharyngeal wall ?

Q. Yes ?—A. No, it did not.

Q. On the wall ?—A. I am not speaking of the vicinity of the tonsil at all.

Q. On the wall and above the tonsil ?—A. No, I won't admit that.

Q. It did not occur to you ?—A. The posterior pharyngeal wall is not near the tonsil.

Q. It is at the back of the tonsil ?—A. It depends what you mean by back. This is the tonsil, and here is the soft palate, and this is the posterior pharyngeal wall (indicating).

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 22nd December 1943, Cross-examination, *continued.*

Q. How far away ?—A. Possibly that far, three-quarters of an inch. It depends on the position of the soft palate.

Q. You have said that Mrs. Hocking used to quite frequently complain of soreness and swelling on the left side of her throat ?—A. I have.

Q. Or the neck, I should say. Did you ever tell her there was no indication. Will you swear you ever told her that there was no indication of swelling, or anything to indicate soreness ?—A. Presumably I did.

Q. Will you swear you did ?—A. Yes.

Q. You have no doubt of that ?—A. I have never told her I found anything positive.

Q. Did you say there was nothing visible or nothing to be found ? —A. " I cannot find anything," yes, except, of course, a red blush.

His HONOR : Did you say " I cannot find anything " ?—A. In substance.

Mr. SHAND : Do you swear you said that or anything like that, in any words you like ?—A. I will swear I never told her I found anything.

Q. Will you swear definitely that you told her on any occasion in any form of words that you found nothing ?—A. Yes, I will swear that.

Q. There is no doubt about it ?—A. No.

Q. You understood my question ?—A. Yes, I had a different way of answering it, that is all.

Q. It was not an answer ?—A. It was the same thing to me.

Q. It is the same thing not telling her that you found something and telling her you found nothing ; you think it is the same, you, as an educated man ?—A. It implies the same.

Q. Will you admit that on the 6th February in Rowntree's store you had a conversation in which one of the things was about how much you would have charged if there had not been tetany ?—A. Yes.

Q. On that occasion will you admit you told Mr. Hocking you had a long conference in Sydney with Dr. Bell's solicitors ?—A. I will admit that.

Q. And " They asked for the truth " and you said " I told them all about her suffering " ?—A. That is very probable, I said that.

Q. And you said further that the solicitors had suggested to you that it was the hospital and not the doctor who may have removed the tube ?—A. The solicitors put that to me ?

Q. Yes ?—A. I cannot clearly recollect telling Mr. Hocking that.

Q. It was put to you by the solicitors ?—A. No, at that conference no, it was not put to me.

Q. But you cannot recollect clearly ?—A. I volunteered to tell them that Mrs. Hocking told me at some time——

Q. I am not putting that. You cannot clearly recollect you told Mr. Hocking that the solicitors had suggested that the hospital, in distinction to the defendant, may have removed the tube. You cannot clearly recollect that ?—A. I do not remember telling him that.

Q. You cannot clearly recollect ?—A. I cannot clearly recollect telling him that.

Q. And you said, you pointed out " But Dr. Bell has already said he removed the tube " ?—A. I do not recollect that. It is quite probable I did.

Q. And Mr. Hocking said to you, " Well, could they suggest the hospital did it," that is remove the tube " when Dr. Bell said he did it." I suggest he rejoined to you in that way ?—A. I won't be defiinte about it. I cannot be sure of that.

Q. By the way, it is correct, is it not, that you gave to the defendant, and when I say defendant I am including his representatives, the hospital record of the Quirindi Hospital as well ?—A. I deny that.

Q. Well, you had them given to him ?—A. I deny that.

Q. Didn't you have anything to do with it ?—A. What do you mean by that ?

Q. Having anything to do with the hospital records ?—A. I have nothing to do with the hospital records.

Q. Being given to Dr. Bell or his advisers ?—A. I introduced Mr. Reimer and Mr. Rex to the acting matron, that is all I had to do with it.

Q. Oh, I see. You took both these gentlemen—you drove them all around town to see different witnesses ?—A. No.

Q. To see possible witnesses ?—A. No.

Q. Will you swear you did not ?—A. I will definitely swear I did not drive them around to see possible witnesses.

Q. Did you drive them around ?—A. I drove them up to the hospital, ordinary courtesy.

Q. Anywhere else ?—A. I might have driven them around but——

Q. To see the Hockings' place ?—A. No.

Q. Didn't you show them Hockings' place ?—A. Bear in mind that the Hockings' place is in a direct line with the hospital and I pass it many times a day.

Q. Did you point it out to them ?—A. I pointed it out as Mrs. Hocking's place.

Q. And did you know that they were going to pull down a bit of the paling fence and take photographs ?—A. I will swear that I did not know that they pulled a paling down to take a photograph.

Q. You know there was trouble about the hospital records being given to these gentlemen ?—A. I did hear that there was some trouble.

Q. You have sworn that you had nothing to do with that beyond introducing these two gentlemen to the matron over the hospital records ? —A. Yes, I probably introduced them and said they were concerned with the Hocking case, that is all.

Q. Will you deny that you asked the matron or whoever was the senior sister to give them access to the records ?—A. I have no right to ask that.

Q. Will you deny it ?—A. I will deny it.

Q. Is this a won't admit and won't deny ?—A. I will deny that I asked them to hand the records over to Mr. Rex and Mr. Reimer.

Q. Or to give them access to the records ?—A. I will deny that too ; they stated their business when they went there.

Q. Do you remember giving this evidence, you were asked first of all " From that date in April, 1940, is it not right that you took up the attitude that anything that was said to you that you thought might be helpful to Dr. Bell you would pass on, is that not right ?—A. No, not necessarily. Q. Did you not get the notes of her sickness in Quirindi Hospital and post them on ?—A. No. Q. Do you say you never got any

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 22nd December 1943, Cross-examination. *continued.*

information from Quirindi as to what the condition of her illness was, the original notes ?—A. I do not remember personally getting the hospital records. Q. But you were a doctor at the hospital ?—A. Yes, I possibly asked the matron or the senior sister." Is that a lie ?—A. Possibly asked them for the records ? I never looked at the records.

Q. What did you give that answer for ? I did not ask you whether you looked at the records, I put it to you did you ever ask the matron or the sister that they be given access to the records ? (Objected to.)—A. I had all the information about Mrs. Hocking's illness seeing that I attended her.

Q. Of course you did, but you were being asked in relation to notes of the sickness and giving them to someone, that is what you are being asked about ?—A. I did not ask for the notes to be given.

Q. Why did you introduce these gentlemen to the matron ?—A. Because I knew perfectly well that they wanted to get any information about Mrs. Hocking's stay in hospital, I would not take them up and turn them loose.

Q. Did you tell the matron to give them anything they asked for ? —A. It is not for me to tell the matron, she is in charge of the hospital and all the records.

Q. Mrs. Hocking was your patient ?—A. That does not matter.

Q. That would be in April 1940 ?—A. When Mr. Rex and Mr. Reimer came up ?

Q. Yes ?—A. I cannot fix the definite date.

Q. This may fix it in your mind, it was before proceedings had actually commenced ?—A. Well, what do you mean by "actually commenced" ?

Q. Before action had actually been taken ?—A. I think it was following that, that is my view.

Q. Was it soon after the proceedings were started ?—A. Soon after the writ was issued, I should think it would be within a couple of months.

Q. Mrs. Hocking saw you in April about the dislocation of her jaw, was it before that ?—A. No, I think it was after that.

Q. Just after ?—A. I don't remember how soon after.

Q. It was before she had any subpœnas issued on you ?—A. Yes.

Q. I asked you about this scar that Mrs. Hocking said was on the back of her throat. I want to ask you again will you swear in any shape or form that you told her there was not a scar there ?—A. I will swear it.

Q. You did tell her that there was no scar ?—A. Yes.

Q. Will you explain to the Court why, at the second trial, in your evidence in chief you said : "I could see no evidence of a throat . . ." ?—A. What, no evidence of a throat ?

Q. That is what it has here, we won't worry about that ?—A. I want to worry about that.

Q. "I did not tell Mrs. Hocking I did not see a scar——"

His HONOR : That is not in the original. "I did not tell Mrs. Hocking I did see a scar. There was no other conversation on the subject at that time that I remember."

Mr. SHAND : No other conversation ?—A. Not that I remember.

Q. You now remember, do you ?—A. Not that I remember.

Q. Not that you remembered then, but you now remember that you did tell her that there was no scar ?—A. Yes.

Q. Well, how was it you could not remember it at this earlier date ?—A. I told her I did not see a scar. If she asked me did I see a scar, what would my answer be ? " No, certainly not, there is no scar."

Q. What you swore was " I did not tell Mrs. Hocking I did see a scar "?—A. I did not see a scar.

Q. " There was no other conversation on the subject at that time, not that I remember." No other conversation ; you now swear that you told her that there was no scar ?—A. I cannot remember word for word what I said.

Q. But you did not remember any other conversation before ?—A. I did not remember any other conversation about the weather or about her general health or anything like that.

Q. You never suggested last time that you told her that there was no scar ?—A. If it is there in the evidence.

His HONOR : It is taken down in narrative form.

Mr. SHAND : You now swear that there was other conversation ?—A. Mr. Shand, can you imagine a woman——

Q. Don't ask me questions. You say now that you do remember that you did tell her that there was no scar ?—A. Well, I will say that I told her there was no scar because I did not see a scar.

Q. I don't care why it is but you will swear it now ?—A. Yes, I will swear it.

Q. Although you did not remember it before ?—A. In the last trial ?

Q. In the second trial ?—A. Possibly I did not.

Q. When did you think of it ?—A. I don't know, I have had plenty of time to think it over.

Q. Your memory is getting better as the years go on ?—A. Possibly, in some things.

Q. Will you agree with this, that the piece of lymphoid tissue was growing on the left side just below the soft palate on the back wall ?—A. Yes.

Q. That would be correct ?—A. Yes.

Q. That is an accurate description ?—A. Yes, I will say so.

Q. And take the tonsil, you have described where it is, but in relation to the tonsil although just behind it would it be above it ?—A. No, I would say it was about three-quarter-inch long and the bulk of it would be about the level of the middle of the tonsil as far as I can remember.

Q. Do you mean stretching from the middle down, or stretching from the top to the middle ?—A. Could I demonstrate on a sketch for you ? (Witness draws sketch.) With the mouth open, that is the back of the tongue here, here is the soft palate, the uvula, the little fleshy piece that hangs down the back, that is the tonsil hanging down here, this is the back wall of the pharynx, behind that is the vertebræ or the bones of the neck, and here was this piece of lymphoid tissue and also it is a most common thing to find——

Q. You are only asked to sketch it at present. Is that between the pillars and the fauces ?—A. No, the tonsil lies between the pillars of the fauces.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 22nd December 1943, Cross-examination, *continued.*

Q. You wrote down to the Defendant on the 7th October 1939 that is the day after you had been told about this incident about something coming into the throat?—A. Yes.

Q. And you wrote "Last evening I was called in to see Mrs. Hocking who was complaining of pain in her left chest and down the middle of the chest. Clinical examination revealed nothing definite." That was the clinical examination on the night of the 6th?—A. Yes.

His HONOR: Would that necessarily be so, doctor?

Mr. SHAND: Really, your Honor, the witness has sworn that it was the examination on the night of the 6th.

His HONOR: Can't I get it clear, he examined her the next day, he wrote the letter after the examination.

Mr. SHAND: That is the very point. Your question could have assisted the witness. The witness has sworn that it was that night and the witness knows perhaps better than Your Honor that it was that night.

Q. It was that night, wasn't it?—A. Yes.

Q. No doubt about it?—A. No doubt.

Q. You went on then to describe what Mr. Hocking had told you and then you made a few remarks of your own, I am not dealing with them in detail—"Assuming that it was a piece of drainage tube that was accidentally left behind I suppose it is possible that it could work its way into the œsophagus," etc. I am not reading the whole thing out. You said "If a foreign body has remained in the neck all this time do you think that it may be a possible cause of the tetany and could we now expect an improvement in her general condition"?—A. That was my question to Dr. Bell.

Q. Yes, I am only reminding you of the note. Then you say "Mr. Hocking had worked out the foregoing explanation for himself though he did ask me if it were possible for a piece of tubing to get into her alimentary tract during the administration of oxygen. To-day I X-rayed Mrs. Hocking's chest and neck, her heart shadow does not seem normal to me, also the transverse processes of the cervical vertebræ on the right side appear rather indistinct and blurred though this I think is due to faulty posture, I could detect no f.b. in the neck or lung fields." Of course you would not expect a foreign body if it had passed through?—A. No, not if it had passed through.

Q. This was a letter in which you were conveying to Dr. Bell as much information as you could reasonably convey to him to get his opinion on the matter?—A. Yes, the information I wanted I consider I dealt with in those questions.

Q. Why didn't you put in that letter that you had made a clinical examination of the throat on the next day, the 7th, and could detect no signs of anything? Why didn't you put that in if you made the examination?—A. Because I did not consider that it had any bearing. Bear in mind that where that tube could come through, in my mind, was well below the range of my vision.

Q. Well, why did you put in, in the beginning of the letter, that you had made a clinical examination on the 6th and that revealed nothing definite, why put that in?—A. It was to indicate to Dr. Bell that her condition was all right.

Q. Why not tell him that your clinical examination of the throat, because she had been complaining, hadn't she, that this thing had come through ?—A. She had what ?

Q. She had complained that this thing had come through somewhere and she had to swallow it ?—A. No, stick to that, she complained of what ?

Q. She had complained that something had come into her neck and she had to swallow it ?—A. No, something had come into her mouth.

Q. Well, her mouth then, and she had to swallow it ?—A. Yes.

Q. Of course you know Mrs. Hocking has sworn and Mr. Hocking also that you did not examine her throat at all on the 7th ?—A. I know that.

Q. But you will agree that there is not one word in your letter of having examined her throat on the 7th ?—A. There is not one word.

Q. You have said to my friend that when you saw Mrs. Hocking on the 6th there was no swelling of the neck ?—A. There was not, I said that.

Q. You are quite definite on that ?—A. Yes.

Q. Not a question of you won't admit and you won't deny ?—A. No, I will be most definite of that.

Q. "Mr. Hocking gave me the following history. Last Monday she had as bad an attack of tetanic spasm as she has ever had, she complained of pain in the neck, which was swollen."

Mr. CASSIDY : Read it.

Mr. SHAND : I am reading it.

Mr. CASSIDY : This is trickery.

Mr. SHAND : Is your Honor going to allow my friend to say that ?

His HONOR : No, I am not.

Mr. SHAND : Well, your Honor is not doing anything. You dealt with me rather severely when I offended.

His HONOR : What more can I do unless you ask that I order Mr. Cassidy to leave the court.

Mr. SHAND : No, I don't want that, I would rather have him here.

HIS HONOR : Continue with your questions, Mr. Shand, but at the same time I must say that if Mr. Cassidy does not refrain from this conduct I will relieve him of his right to defend and the matter can be handled by Mr. Reimer.

Mr. SHAND : "Mr. Hocking gave me the following history. Last Monday she had as bad an attack of tetanic spasm as she has ever had, she complained of pain in the neck, which was swollen." What about that ?—A. Mr. Hocking's history.

Q. What, his history ?—A. That is what I say, he gave me the following history.

Q. "Which was swollen." Is that the way you put a history given by Mr. Hocking ?—A. That is what I intended to convey, that is the history given to me by Mr. Hocking.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28.
Kevin Charles O'Hanlon, 22nd December 1943, Cross-examination, *continued.*

Q. Putting it at its lowest you will agree that it is rather inaptly expressed ?—A. Perhaps I should have said "She complained of pain in the neck which he said was swollen." Are you inferring——

Q. Don't you bother about what I am inferring, just answer the questions. Will you agree, putting it at its lowest, it is rather inaptly expressed ?—A. No, I won't, I am quite contented with what I have there.

Q. It was not swollen, was it ?—A. No.

Q. You never saw any traces of it ?—A. No.

Q. Why did you not tell Dr. Bell that it was not swollen if this was the truth ?—A. "Clinical examination revealed nothing definite."

Q. Is that your answer ?—A. Is not that enough ? If it was swollen I would say "Clinical examination revealed that it was swollen."

Q. "Mrs. Hocking on a few occasions did complain of soreness of the neck"—that is not merely on this occasion ?—A. She frequently complained of soreness.

Q. You told Dr. Bell that on a few occasions she complained of soreness in the neck—did you deny to Dr. Bell that was correct—did you tell him there was nothing to be found on these other occasions ?—A. I do not mention it here.

Q. That would leave him or anybody reading it to infer that there was something to base a complaint on ?—A. That is not my interpretation of it.

Q. When you tell him Mrs. Hocking on a few occasions did complain of soreness in the neck, and you do not disabuse—— ?—A. Wait a while.

Mr. CASSIDY : I ask that the jury be allowed to see this letter.

His HONOR : We will let the jury have a copy of the appeal book. We will fix it up during the short adjournment.

———

Mr. SHAND : I was pointing out that you said in your letter that Mrs. Hocking on a few occasions did complain of soreness—I am reading the middle of the third paragraph on page 367 : "Assuming it was a piece of drain pipe," and so on—that would be on the second page of the letter. About six lines down "Mrs. Hocking on a few occasions did complain of soreness in the neck." You did not tell the doctor that there were no symptoms or indications of that soreness ?—A. I think the next line.

Q. "At no time did I ever detect any symptoms that would indicate an X-ray examination"—you are not suggesting there that the soreness in your opinion did not exist ?—A. Oh no.

Q. Perhaps you will agree with me that the soreness did exist ?—A. I frequently found that Mrs. Hocking had soreness following a spasm, and I had my explanation for it.

Q. And soreness on the left side of the neck ?—A. Yes, she usually complained of the left side of the neck. I had my explanation for it.

Q. "At no time did I ever detect symptoms that would indicate an X-ray examination. Naturally the possibility of a foreign body being the cause never entered my mind"—you were suggesting that in your opinion, having heard what had happened, the foreign body was the cause of the soreness ?—A. Not necessarily.

Q. But you were indicating that—you had that in mind ?—A. No, because that was not why I considered she complained of soreness previously.

Q. I will not bother reading it again—you were not suggesting that, now that you had heard what had happened, you realised that possibly it was the foreign body that had caused the soreness ?—A. I will not admit that.

Q. Will you deny it ?—A. Yes, I will deny it.

Q. What did you mean by that—perhaps you could explain it—" Naturally the possibility of a foreign body being the cause never entered my mind "—the cause of what ?—A. All her trouble.

Q. Tetany ?—A. Yes.

Q. I suppose you will agree that at that time when you wrote the letter Mrs. Hocking was not at all well ?—A. No.

Q. You have told us that you had seen Dr. Ritchie on a number of occasions—you will not say whether six or more—on a number of occasions before the first trial—I am not binding you to a number of occasions ?—A. I should like to modify " before the first trial."

Q. That is what you swore yesterday ?—A. Yes, but I have been thinking over it.

Q. Have you spoken to Dr. Ritchie ?—A. Yes.

Q. He is a witness who is going to give evidence in this case ?—A. Yes.

Q. You did not have any compunction in speaking to him ?—A. No, not over a minor thing like that.

Q. You have discussed with Dr. Ritchie how many times you saw him ?—A. Yes.

Q. Did you tell him what you said yesterday ?—A. No.

Q. Did he ask you ?—A. No.

Q. How did it come up ?—A. It was discussed by somebody else.

Q. Who was the somebody ?—A. Mr. Cassidy.

Q. How many times do you say now, before the first trial ?—A. I should say I saw him in Mr. Reimer's chambers on several occasions.

Q. And in his own rooms, how many times ?—A. Only once that I can remember.

Q. In Mr. Monahan's chambers ?—A. He conducted the first trial—I think there were possibly one or two occasions in Mr. Monahan's chambers.

Q. You have seen Dr. Bell on a number of occasions before the first trial and before other trials ?—A. Yes.

Q. Will you admit this, that never has Dr. Ritchie told you or suggested to you that this was not tetany that this lady had ?—A. I do not recollect Dr. Ritchie ever discussing it with me.

Q. He had not told you or suggested to you that it was not tetany ?—A. No, not Dr. Ritchie.

Q. Nor Dr. Bell ?—A. Dr. Bell certainly did not suggest that it was not tetany.

Q. He did not suggest it was not tetany at any time ?—A. No.

Q. I mean, he had not suggested at any time that it was not tetany at any time; you understand what I mean ?—A. Yes. He did not suggest it.

Q. He did not suggest that this complaint of the Plaintiff's did not constitute tetany at any period ?—A. No.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28.
Kevin Charles O'Hanlon, 22nd December 1943, Cross-examination, *continued.*

Q. You are clear what I mean—he has never said it ?—A. No.

Q. And he never said it was never tetany limited to any period ?—A. No.

Q. Has he told you that he has never in his life had a case like it ?—A. He did not tell me that.

Q. Will you deny that he said that ?—A. I say he did not tell me that.

Q. You are denying it ?—A. Definitely—that is a denial.

Q. Do you remember being asked this (page 416, second trial): "Did not Dr. Bell tell you that he had never had a case like this in the whole of his experience ?—I have no recollection of that." "Q. Will you dispute that he said that to you ?—No, I won't dispute it." Now you are denying it ?—A. I am denying it now.

Q. Is your memory better now ?—A. Possibly it is.

Q. Have you run over that with Dr. Bell ?—A. No.

Q. How does it come that your memory is improved on a thing like that ?—A. I cannot explain it.

Q. Not a desire to help Dr. Bell ?—A. No.

Q. Nor to keep in with the B.M.A. ?—A. I am not afraid of the B.M.A. a bit.

Q. Is that why you took that advice ?—A. I looked for advice and followed it.

Q. Although you thought it unfair ?—A. Yes.

Q. Is it correct that it was Dr. Bell who advised the use of paroidin ?—A. He did.

Q. I am going to ask you this—you have sworn that there was no swelling in Mrs. Hocking's throat in 1939 ?—A. Yes.

Q. Will you deny that you have seen Mrs. Hocking's daughter propping her mother's head up with pillows ?—A. I deny that.

Q. Are you clear on that—that you have never seen the daughter propping her mother's head up with pillows ?—A. That is my present recollection—I have no recollection of seeing her do it.

Q. Page 420, two-thirds of the way down—do you remember this question :—

> "Q. Do you dispute that in September 1939, when you went there the daughter put pillows to prop her mother up in bed—will you dispute that fact ?—A. No, I won't."

Do you dispute it now ?—A. If it is there I said it. I say now I have no recollection of her doing it.

Mr. CASSIDY : I object—is that fair having regard to the following two questions ?

His HONOR : The following questions relate to the swelling.

Mr. SHAND : Yes—I am asking about the pillows.

Q. You would not dispute that before ?—A. I swear now I have no recollection of her doing it.

Q. You swear to-day that she did not do it in your presence ?—A. Yes, I have no recollection of her doing it.

Q. It may be that in that matter your memory has got worse instead of better ?—A. Possibly it has.

Q. In some things it is better and in some things worse ?—A. Yes.

His HONOR: The previous question might refer to his state of recollection.

Mr. SHAND: "Q. When you went there do you remember the daughter being there?—A. The only occasion I can clearly recollect the daughter being there was in April 1941."

His HONOR: Then he cannot remember the other—that is the 19th September.

WITNESS: Might I state that up till now the only recollection I have of seeing the daughter was when I called her about the occasion of the striking.

His HONOR: That is in April 1941?—A. Yes.

Mr. SHAND: Have you applied the Chvostek test and the Trousseau test?—A. On occasions, yes.

Q. And you in fact continued those tests in 1939, didn't you—I do not mean regularly?—A. I would not bind myself definitely to saying Yes. I considered the diagnosis of tetany had been established.

Q. And in point of fact when you applied those tests you got positive reactions?—A. I considered I did.

Q. Indicating tetany?—A. Yes.

Q. It is correct, is it not, that you actually applied those tests in 1939?—A. I do not want to bind myself down to that. I want to be honest—I do not want to commit myself to anything I am not definitely sure about.

Q. What is the best of your recollection?—A. I remember well doing it on the occasions when I used to give the intravenous injections at her home.

Q. You were doing that in 1939——

His HONOR: That is not according to the evidence. He only saw her twice in 1939—1st February and 19th September.

Mr. SHAND: Well, up to the end of 1938?—A. Yes, I should say on several occasions I applied those tests.

Q. But for 1939 you would not commit yourself?—A. I should not like to—no.

Q. It is correct, is it not, that you used to lecture the masseurs on tetany giving Mrs. Hocking as an example?—A. I did on one occasion.

Q. Does that refer to the operation?—A. Oh no.

Q. It would be correct that when you saw Mrs. Hocking when she had come home after operation at St. Luke's Hospital—when you saw her I think on the 30th April she looked to be in a fairly bad condition?—A. Yes.

Q. So bad that you thought she should go into hospital?—A. Yes.

Q. You had never known a wound to discharge like that after a thyroid operation, had you?—A. No.

(Copies of witness's notes handed to His Honor, and with His Honor's permission to the jury.)

Q. On the 4th May there is an entry: "To have own capsules."?—A. That is a hospital record.

Q. Take the hospital record; I will tell you what they are and you can correct me (p. 345). Night report on the 4th May—your answer to my friend yesterday was "The capsules were sedatives"?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 22nd December 1943, Cross-examination, *continued.*

Q. You will alter that evidence you gave ?—A. Why ?

Q. "To have own capsules"—you said yesterday: "Q. Then we have a note 'To have own capsules immediately any twitching occurs.' Does that recall anything to your mind ?—A. I think those capsules contained a sedative" ?—A. Yes, I still think that they contained a sedative.

Q. Would you think calcium lactate ?—A. I do not recollect they were—perhaps you are right, they may have been calcium; perhaps you are right about that.

Q. It is the admitted fact, that you may recollect, that Dr. Bell had given these capsules to be taken ?—A. Yes, she had been taking calcium lactate at St. Luke's.

Q. If you want any further indication of that you will look at the day report of the 16th May. There you will see the capsules were suspended ?—A. Yes, that is right.

Q. You might remember this, after they had been suspended on the 17th May she had a tetany spasm ?—A. Yes, it is there.

Q. And I take it that at the time—I am not suggesting you would remember this now—would you see the significance of the fact that when the tablets were suspended a tetany spasm came on ?—A. Yes, but bear in mind that she was getting intravenous injections at the time.

Q. Will you deny that the hospital records are correct about when she had intravenous injections ?—A. I cannot put myself in the position to swear or deny about the hospital records.

Q. When there was an intravenous injection, a sister or nurse had to prepare the injection ?—A. Yes.

Q. And prepare the instrument ?—A. Yes.

Q. And the tray ?—A. Yes.

Q. And it would be the duty of one of the appropriate sisters to make an entry about the injection ?—A. Not necessarily.

Q. Let me see your original record of injections ?—A. They are lumped together.

Q. That is what I am putting to you. All you have here is not injections given on each day but all lumped together, 23 injections at 5/-; that is only for the purpose of costing ?—A. That is all; for that month. How many days are left of that month ?

Q. That is all you have got ?—A. Yes.

Q. All you have in the daily record ?—A. No.

Q. I suppose you notice that the hospital records indicate intravenous injections ?—A. Sometimes they do, others do not.

Q. Was not that entry an after-thought of yours, just a rough estimate of what you would charge for ?—A. When do you suggest I made that entry ?

Q. When do you suggest you made it ?—A. Oh, no, it is up to you to suggest that.

Q. You answer my question: when do you suggest you made that entry ?—A. When I was probably preparing—at the end of the month, I would say at the end of May.

Q. Look at this record of yours again; is this correct, that it was only on the 9th June that you made an entry of daily injections from the 9th May ?—A. Here you mean ?

Q. Here it is 9th June, daily intravenous injections from the 9th May (showing) ?—A. Yes.

Q. It was only then you put them down, and this would be for the material or for your particular work ?—A. My services.

Q. Only ?—A. Yes.

Q. And the hospital, of course, I suppose, would charge for the material ?—A. I do not know.

Q. They would have to, wouldn't they ?—A. I don't know; the Hockings may have had the material sent by the chemist direct to the hospital.

Q. Don't you know what happened ?—A. That does not concern me, that part of it.

Q. Of course if the hospital supplied the material I take it they would charge and they would have to have records ?—A. I do not know.

Q. You know now the hospital records refer to intravenous injections nothing like daily ?—A. I know that.

Q. And I suppose you have noticed in the hospital records that when there is a gap between the intravenous injections there appears a spasm—have you noticed that ?—A. I have not noticed that; if it is there I will accept that.

Q. You associated these two facts, that if the patient were given or not given an intravenous injection or it was lessened in quantity, that she appeared to have a spasm ?—A. I won't admit that because I gave her daily intravenous injections in hospital. On one occasion the dose was lessened.

Q. And what happened ?—A. She had a spasm that evening I think.

Q. Did you put that down that it was because of the lessening ?—A. Yes, I think I did.

Q. And your own notes, the 27th June 1938: "P.T. had severe spasms as calcium was reduced to 5 cc." and you gave her chloroform and intravenous injections. Will you admit that when you first saw the Plaintiff when she first came back from Sydney after the operation that she appeared to be in a swollen state ?—A. Yes.

Q. Not only her face but her body ?—A. The upper part of her body, face and neck; that is what I can recollect.

Q. You swore yesterday, at page 870, at the top, I asked you was there anything you found when you examined her: "The evidence of tetany as far as I can recollect was not very evident at the time. I feel that Mrs. Hocking did intimate to me that she had this tingling sensation, pins and needles" ?—A. Yes.

Q. Would you like to alter that ?—A. Why ? I do not think so.

Q. You thought that was accurate; it was not very evident ?—A. There was evidence of it there.

Q. It was not very evident ?—A. If I said that, yes, it was not very evident.

Q. What was the evidence you saw on the 30th April ?—A. Not actually what I saw but what she complained of.

Q. What did you see that was evident ?—A. As regards the tetany you mean ?

Q. Was there anything evident ?—A. If I remember rightly there was slight increased tonus in the muscles of the forearm.

Q. That is rigidity ?—A. Yes, it would be rigidity.

Q. And was there considerable swelling and puffiness of the face ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 22nd December 1943, Cross-examination, *continued.*

Q. Would this be correct—I am reading your notes of the 30th April —" Plaintiff had thyroidectomy in Sydney (Dr. G. Bell), apparently parathyroids disturbed—has marked tetany and discharging and discharging sinus over operation scar. Face and body swollen." First of all marked tetany. Would that be correct ?—A. That was apparently my impression then.

Q. Face and body swollen ?—A. Yes, that is correct.

Q. And you ordered her into hospital and when she went into hospital she was still swollen ?—A. Yes, on admission to hospital.

Q. It went down after a time but it was quite obvious when she went into hospital ?—A. It was.

Q. How far down ?—A. I would not like to go further than there (indicating).

Q. Clearly that far ?— A. Yes, that is my impression.

Q. It would be quite obvious to a trained sister at the hospital ?—A. I would think so ; although of course if a person had not seen Mrs. Hocking before it may not be so obvious.

Q. And you have said this before (p. 545) that the spasms that the Plaintiff had in September were the same as those she had when she was in Quirindi just before ; is that correct ?—A. As far as I recollect, they were very similar.

Q. This is what you said before, tell me whether you agree with it (p. 545)—You are talking about September (p. 545) and then I go to the last question :—

" Q. You did not give her an intravenous injection and the note of the hospital is she had a recurrence of the spasm during the visit of the doctor. On those two important days, the 3rd and 4th September, are you able to give the jury any information at all as to the position of Mrs. Hocking's hands or fingers ?—A. All I can say is that it was a spasm very similar to what I had seen before.

" Q. And what you described in your evidence before as having the thumb across the palm ?—A. As far as I am able to recollect, that is so.

" Q. And the hands flexed at an angle across the body ?—A. I will not swear to the exact position.

" Q. But it was similar to that ?—A. Yes.

" Q. And what you had seen were all more or less identical, up to September ?—A. As far as I am able to recollect."

Q. Would that be correct ?—A. I think so.

Q. In this trial you swore that there was a difference, p. 876, in the spasms in September ?—A. I did not bind myself down to that definite month, did I ?

Q. About then ?—A. August, September, October, round about that time.

Q. Was that because you heard Dr. Bell or Dr. Poate suggest that it was not true tetany somewhere after that time ?—A. No.

Q. Because you know that they have suggested that, don't you ? —A. Yes.

Q. You swore before as to the tetany being approximately the same (Objected to.)

Q. This is at p. 545 :—

" Q. Did not you tell the court in evidence in answer to a question the other day—' However, there was a difference between the spasms during July, August, September, October, from what I had seen in the Quirindi Hospital. I can well recollect the gripping of the clothing, the gripping of the top of her nightgown, the gripping of the bedclothes, and it would take a little push to open her hand to release it ' ?—A. I well remember that.

" Q. When did you first observe that alteration taking place in the nature of the spasm ?—A. That is my difficulty—to definitely say the exact time I noticed the difference, but it is somewhere in that vicinity. I might include it possibly in July, August or September, but I cannot be nailed down to a definite day."

The only difference you mentioned was this gripping of the clothes ?—A. That is all I mentioned.

Q. In your evidence yesterday you mentioned not only that but you were asked did you notice any other change in the nature of the spasms and you said " I think they involved larger areas of the body " ?—A. Yes, I think I said that (p. 876).

Q. " Q. What do you mean by that exactly ?—A. Well, the arms, possibly, would not be in the same position and she was more inclined to throw herself about. The abdominal muscles would probably be a state of increasing tonus. That means tonic contraction, increased tone of the muscles."

Q. You had never said anything about that before ?—A. No, I probably was not asked.

Q. Why this additional in the change ?—A. I was asked the question : " Did you notice anything else," and I probably was not asked that question in the previous trial.

Q. In the second trial you only gave one difference and that was the clutching, and now you have added a few others ?—A. Yes.

Q. Do you suggest that you are quite unaffected by your knowledge that the Defendant and Dr. Poate had expressed an opinion that it was not true tetany at a certain stage ?—A. I am not influenced by that information at all.

Q. How did you recollect it ?—A. As I say, I was asked a question which brought that further evidence out.

Q. What instrument did you use to open the wound ?—A. An instrument we call the sinus forceps.

Q. That is the correct instrument for opening a sinus ?—A. Yes.

Q. You have described that it acts on the principle of a glove stretcher ?—A. A glove stretcher is fixed, is it not ?

Q. It stretches evenly ?—A. That is what I mean.

Q. I am not suggesting that you had any idea that there was a foreign body there, but that is an instrument you can use for extracting foreign bodies ?—A. I have extracted foreign bodies like bullets with a pair of sinus forceps—or a splinter, it could be used.

Q. You realise that I am making no suggestion that you had any idea there was a foreign body there ?—A. I realise that.

Q. But supposing a doctor did have an idea that there was a foreign body there, would he use that or a probe ?—A. I should imagine he would

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 22nd December, 1943, Cross-examination, *continued.*

use an instrument that had a ratchet on it that once it would close it would grip and then extract it A sinus instrument has not a ratchet on it.

Q. Not a probe ?—A. You would not be able to pull anything out with that.

Q. Did you notice when the Plaintiff got these spasms when she appeared to be unconscious of what was going on, when you raised the eyelids did you see the eyeball rolled backwards ?—A. My recollection is that they were slightly turned upwards.

Q. And I suppose you will agree with this that although in true unconsciousness you get a relaxed state ?— A. Yes.

Q. Assuming that the spasm went to the eyelid, you would not get any relaxing then ?—A. No, that was my explaining of that contraction, that it was the tetany affecting those muscles.

Q. When the Plaintiff left the Quirindi Hospital after she had been there following the operation, I think you said that as a matter of expense you thought she should go home ?— A. Yes ; actually it would be cheaper for her to be at home with a trained nurse than paying the private ward fee.

Q. You regarded it as absolutely essential that she should have a trained nurse ?—A. I think those were the conditions I allowed her to go home, that she have a trained nurse.

Q. On the 10th May you wrote to Dr. Bell——

Q. That letter starts off : " Many thanks for your letter in reference to Mrs. Hocking." What has happened to that letter ?— A. I do not know.

Q. Have you looked for it ?— A. Yes— a very long time ago, when the war first started.

Q. Do you ordinarily keep correspondence ?— A. No. After a while it gets thrown out.

Q. You say : " Not knowing she had returned from Sydney I did not see her until a fortnight after she returned " ?— A. Yes.

Q. Dr. Bell had not communicated with you at all ?—A. No.

Q. What did he say in that letter ?— A. I do not remember.

Q. Can you give us an idea ?— A. I have not the vaguest recollection.

Q. Did he tell you she might get tetany ?— A. I have not the vaguest recollection.

Q. Do you remember Mr. Hocking saying, after his wife had come back from the hospital, that Dr. Bell had told his wife that she would probably have tetany for a long time ?—A. Yes.

Q. He also told you, did he not, that Dr. Bell said that an X-ray might be of use later on ?—A. I deny that emphatically.

Q. That is clear, you completely deny it—it is not a question of recollection ?—A. I deny it now.

Q. When this was told you, that Dr. Bell was supposed to have said that the tetany might last for a long time, I suppose you thought that was curious ?—A. No ; I had my explanation immediately.

Q. Ordinarily, tetany does not last for a long time in your experience ? —A. I have not had any experience of tetany.

Q. I suppose you endeavoured to qualify yourself when this case came up ?— A. I considered that tetany might well last for a long time after the inflammation had subsided.

Q. I suppose you did some reading to qualify yourself to deal with Mrs. Hocking ?— A. Presumably I would.

Q. Did you discover that ordinarily tetany does not last long ?—A. Depending on the cause. I had to consider the cause in this case.

Q. But ordinarily— after an operation ?—A. I have had no experience of it.

Q. You have read that, have you not ?—A. I probably have.

Q. Did not you think it strange that a doctor should suggest that in a case where he had just had an operation, that the tetany should last for a long time ?—A. I did not think that strange.

Q. You did not know anything about the case ?—A. I know the wound had broken down, and that there was a lot of inflammation and discharge.

Q. Did you not think that was unusual ?—A. That was unusual, yes.

Q. Did it appear to you that Dr. Bell had expected it would break down ?—A. No, it did not appear to me at all.

Q. Did not you connect that with what he was supposed to have said ?—A. No. It is a most unusual thing for a thyroid to break down.

Q. Dr. Bell, according to Mr. Hocking, had expected that tetany would last for a long time ?—A. I would too.

Q. Why ?—A. Because of the inflammation that had involved the parathyroid glands, putting them out of action.

Q. You would not think that a patient would have been put out of St. Luke's in that condition, would you ?—A. It is possibly not usual, but the doctor may have considered the same way as I did.

His HONOR : Do you mean as to the expense ?— A. Yes, expense. I do not know, but I am suggesting that.

Mr. SHAND : You can take it it is not put that way. I want to ask you this. On 17th January there is another letter—you probably need not look at it. I will read you the first line of it (p. 365) : " Dear Dr. Bell, Your inquiry as regards Mrs. Hocking to hand a few days ago." Has that letter gone too ?— A. Yes, I have no letters of Dr. Bell's whatever.

Q. How often was Dr. Bell in touch with you by telephone ?—A. I would say approximately on three or four occasions.

Q. Over what years ?—A. I should imagine the bulk of that three or four would be in the year that Mrs. Hocking was so ill following the operation, 1938.

Q. What about the next year ?—A. I cannot recollect any other telephonic communication except after he got my letter about the tube.

Q. Apparently he wrote to you in January 1939, as that indicates ? —A. Yes.

Q. Are you prepared to say he was not in telephone communication with you ?—A. At this time ?

Q. Yes, or after that, between that and when the tube incident occurred ?—A. I have no recollection of it.

Q. But you cannot be sure—is that the position ?—A. Well, that is the fact.

Q. Is it correct that on 3rd September 1938, when the Plaintiff went into the hospital for the second time, she was carried to the car ?— A. Mr. Hocking and I carried her to the car.

Q. What do you say about any difficulty she had in moving her head from one side to the other ?—A. I never detected any difficulties.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 22nd December 1943, Cross-examination, *continued.*

Q. Would you be prepared to swear she had no difficulty?—A. Possibly after a spasm she may have complained of the soreness in her neck, which would cause her to keep her head fairly quiet. That is the only explanation I can give.

Q. When she spoke about the swelling it was always on the left side that she complained?—A. Yes, any time my attention was drawn to it, it was always on the left side.

Q. You used to palpate the neck?—A. Yes.

Q. On frequent occasions?—A. Every time Mrs. Hocking complained.

Q. And you said that was frequent?—A. Yes, she frequently did.

Q. What about massage; did you massage her?—A. No, I did not massage her.

Q. Is that a matter that you are clear on or that you do not recollect?—A. I am clear on it.

Q. You are very clear on it?—A. I am clear on it.

Q. Is this the way you put it on the second trial (p. 369):—

"Q. During that period we are told that she was receiving constant massage for those spasms?—A. Not under my instructions."

"Q. Did you know anything about it; did they ever tell you they were massaging her for these spasms?—A. Not that I recollect."

Would that be a fair statement?—A. I did not recollect it at the time.

Q. Is that as far as you could go at the time, that you did not recollect whether you were ever told that other people massaged her?—A. I do not recollect that I was told that.

Q. That is still your attitude?—A. Yes.

Re-examination.

Re-examined.

Mr. CASSIDY: The jury have been handed a typed copy of your notes. On 9th June that copy shows: "Nurse at home, daily intravenous injections from 9th May," and the following entry: "10th June . . . Intravenous injections daily at home"?—A. Yes.

Q. Did you instruct anybody how to do those?—A. No, we never delegate that to anybody but a doctor.

Q. Did you do that yourself?—A. Yes.

Q. Do you know why they were knocked off?—A. Yes; there were no more veins accessible.

Q. Do you know the date they finished?—A. From my notes, 29th June.

Q. At p. 545 of the second trial it was suggested to you that you might have altered your evidence—certain evidence was read that you gave, and it was suggested that you had added some additional things on this occasion because you had heard Dr. Poate and Dr. Bell and others say that it was tetany first and hysteria later?—A. Which trial is that?

Q. The second trial. Mr. Shand read something you said at the second trial about the clutching of the bedclothes, etc. He suggested you have altered your evidence because Dr. Poate and Dr. Bell had said it was tetany first, and changed to hysterical tetany, a different form?—A. Yes.

Q. When you gave your evidence on the second trial, did you already know the opinions expressed by Dr. Poate and Dr. Bell at the first trial?—A. No.

Q. Were you in court during the first trial ?—A. Not in the court. I was in the precincts.

Q. Did you have a subpœna from the Plaintiff's solicitors as well as from the Defendant's solicitors ?—A. Yes.

Q. Were you seen by the Plaintiff's solicitors during the case ? —A. Yes.

Q. What did he tell you ? (Objected to.)

Q. Did you have a conversation with him ?—A. Yes, on the front verandah.

Q. What did he tell you ? (Objected to.)

Q. You were not called on that occasion ?—A. No.

Q. You were asked a question about whether that lymphoid tissue shown on the sketch was between the pillars of the fauces, and you said "No." Will you describe again what you meant by the pillar of the fauces ?—A. There are two pillars, anterior and the posterior, and the tonsil lies in between them.

Q. To describe it as between the pillars of the fauces, is that anatomically very inaccurate ?—A. Very inaccurate.

Q. You told the court that on 7th October you examined the Plaintiff in Quirindi Hospital ?—A. Yes.

Q. You examined her throat ?—A. Yes.

Q. You also said you examined her again in 1940 after she came back from the Show ?—A. Yes.

Q. At that time you spoke of this lymphoid tissue—that is the occasion which you bring your mind to ?—A. Yes.

Q. On that occasion was there anything like a hole sufficient for those three glass probes (indicating) to be put in in the tonsils, or any part of the neck——

Mr. SHAND : He did not look at the tonsils.

WITNESS : I was not interested in the tonsils.

Mr. CASSIDY : Could you have missed a hole like that ?—A. I do not think so.

Q. Did you look inside her throat for any sign of eruption inside her throat when she came back from Dr. Bell and was pointing out the scar ?—A. Yes.

Q. You saw her in 1941—you visited her in her home ?—A. Yes.

Q. On any of those occasions did she ever suggest to you anything like a hole in her tonsil or any portion of her throat ?—A. No.

Q. What she suggested to you when she saw you early in 1940 was the hole gone with a scar there ?—A. She suggested there was a scar.

Q. Did you hear Dr. Thompson give evidence on the second trial ? —A. I heard part of it. I think he followed me. He was called back again perhaps.

Q. You heard no evidence at the first trial ?—A. No.

Mr. CASSIDY : I will withdraw the question.

Q. You were asked questions about the records at Quirindi Hospital that were seen. Is there a secretary at Quirindi Hospital ?—A. Not at the hospital—there is a secretary.

Q. Was there a secretary at that time ? Do you remember his name if there was one ?—A. I cannot remember his name.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28.
Kevin Charles O'Hanlon, 22nd December 1943, Re-examination, *continued.*

Q. A question was put to you by Mr. Shand as to whether a subpœna was served on the hospital; do you know anything about that?—A. No.

Q. The next thing I want to put to you is this. Do you remember that the word "inconceivable" was used at one stage, and the words "possible" and "probable"?—A. Yes.

Q. Do you remember a little academic discussion over the use of those words?—A. Yes.

Q. Do you remember certain portions of your evidence were read?—A. Yes.

Q. Is this the rest of the evidence (p. 310 of third trial):— 10

"Q. Did he not ask you was it possible for it to have happened as she described, and did you say it was possible?—A. Presumably, yes, quite probable."?

—A. Yes.

Q. Did you then go on:—

"Q. You did say it was possible last time when I put these questions to you?—A. At the time when I was called up at the house in October.

"Q. No, you see; you told him about these things which would destroy his case, and then I put it to you Mr. Hocking turned 20 on you and said, 'Well, Dr. O'Hanlon, do you believe in her story as to what happened?' and you said 'It is possible that it might have happened'?—A. What story, though?

"Q. The story about the piece of tube having come into her mouth, been swallowed and then passed out through her rectum?—A. What about the other story, too?"

His Honor then asked:—

"Q. Did you say to Mr. Hocking in respect to the story of the tube coming into the mouth that that happening was possible?—A. I considered it was possible." 30

And then further down did you give this evidence:—

"Q. I put these questions to you last time—'Did he not say "Dr. what do you think about it . . . the story she had given about the bit of broken tube?"—A. He may have asked me that.

"Q. And you said you did not recollect? I said 'Will you swear you did not . . . Did you see it at any time?' Do you remember saying that?—A. If it is there, I said it. I said it was a possible happening at the time of the incident because I had not had time to think over or go into the subject at all.

"Q. Did he not then turn to you and say 'Dr., I believe my 40 wife, and I am going on with the case'?—A. Yes, in effect."

(Luncheon adjournment.)

At 2 p.m.

Mr. CASSIDY: I was reading at page 210 of the third trial when we adjourned. Then there was this question at line 40—"You were cross-examined as to what you said on a previous occasion in regard to your answer when that suggestion was put to you at page 373—'I said that it was possible that a piece of drainage tube could be left, but to me under all the circumstances it seemed inconceivable.' Did you say to Mr. Hocking at any time that you conceived this question of it being a drainage tube 50 as a possibility on any other occasion apart from that night," and your

answer was "Not that I remember. That is the only occasion I ever remember mentioning the possibility." I want to come to this next. On the 7th when you wrote to Dr. Bell, you specifically put in your letter, did you, the possibility of its working its way into the œsophagus?—A. Yes.

Q. And at that time had you heard any suggestion of it rupturing through the tonsil?—A. None whatever.

Q. Or the mouth?—A. None whatever.

Q. After that letter was written, I think you told Mr. Shand that you had a look into some of the authorities concerning the œsophagus?—A. Yes.

Q. Up till that time had you had any experience of a breaking through into the œsophagus?—A. No.

Q. And since the 7th October have you seen a case?—A. Yes.

Q. And what do you know as to a rupture into the œsophagus now?—A. May I quote the case in question?

Q. We don't want to go into details?—A. Actually there was no perforation of the œsophagus; just an ulceration which caused the death of the patient due to hæmorrhage.

Mr. SHAND: An ulceration? Wasn't it a piece of hard liver?—A. A piece of hard liver became impacted in the gullet.

Mr. CASSIDY: And did that even break right through?—A. We have no evidence that it did.

Q. What was the length of time in which the patient died?—A. From the time of admission with the hæmorrhage, the patient was dead within 12 hours.

Q. In view of your reading and your knowledge, what do you say now as to the possibility of the tube or any foreign body—of that tube coming up the neck and through the tonsil as suggested in this case? (Objected to; question withdrawn.)

Q. I will leave the tonsil for the moment. I will confine it to the œsophagus. What do you say now?—A. I am of the opinion that death must invariably follow.

Mr. SHAND: Is that from reading or from this case?—A. From reading.

Mr. CASSIDY: I think you mentioned to Mr. Shand the books you looked at?—A. Yes.

Mr. SHAND: It does not matter because this was not the œsophagus.

Mr. CASSIDY: We know now it was not the œsophagus, but at the time were you considering the œsophagus—the time you wrote this letter?—A. The œsophagus only.

Q. Do you remember that on your notes that have been typed and put in evidence you have the entry "Plaintiff had X-ray treatment"—this is the 10th October 1937. "Plaintiff had X-ray treatment, good result"?—A. Yes.

Q. When the Plaintiff returned to Quirindi did she ever tell you that Dr. Flynn had severely burnt her with his X-ray?—A. No.

Q. Have you ever heard that suggestion made before?—A. No.

Q. Did you say to her anything—did you use harsh words about Dr. Flynn?—A. Certainly not.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 28. Kevin Charles O'Hanlon, 22nd December 1943, Re-examination, *continued.*

Q. And did you see any sign in her skin then of a burning by an X-ray ?—A. None whatever.

Q. This is on page 186, third trial. Is this the full answer that you gave when you used the word " inconceivable " ? This is at line 20 : " Was there any other suggestion made that night by anybody," and your answer was : " Yes, Mr. Hocking suggested it was a piece of drainage tube." You were asked " What did you say ? " and your answer was : " I said it might be a piece of drainage tube, but taking everything into consideration I considered it was inconceivable that it would be so " ? —A. Yes.

Q. What was the last spasm you saw with your own eyes ? I don't want what you were told about ?—A. I think it was the day after Mrs. Hocking was admitted, in September.

Q. In September 1938 ?—A. Yes.

Q. In your letter of the 7th October, for the information in the history—the information given in your history to Dr. Bell, you took from Mr. Hocking ?—A. Yes.

Q. At page 424 of the second trial there was one question read to you and I want to read the context. Mr. Shand read portion, and I start at the second question :—

" Q. I suggest that you said to him, ' The hole is cut diamond shape, and apparently this tube was broken where the hole was cut out ' ?—A. Does it matter where I said it ? This discussion took place in Mrs. Hocking's bedroom as far as I remember. I told Mr. Hocking that we cut windows in a tube for drainage purposes.

" Q. And you said ' Apparently this tube was broken where the hole was cut ' ?—A. I do not remember it, but I will not deny it.

" Q. Did you say ' Now I can understand why Dr. Bell wanted an X-ray because of this tetany, why he was so worried ' ?—A. I don't remember Dr. Bell asking for an X-ray.

" Q. You did not say to Mr. Hocking that you could understand why Dr. Bell wanted an X-ray ?—A. I will definitely say that I did not say it because Dr. Bell did not ask for an X-ray as far as I recollect."

Mr. SHAND : At some convenient time, Mr. Cassidy, you were going to indicate where I used the word " conspiracy."

Mr. CASSIDY : Well, I told you I found one.

Mr. SHAND : Well, give us that one. I don't want to interrupt you now.

His HONOR : After this witness is finished.

Mr. CASSIDY : I am just reminded that you were asked a question about why you made a statement to Dr. Bell, and did you also say this, at page 209 of the third trial :—

" Q. Was it because you belonged to the B.M.A. you thought you ought to tell it ? (Objected to.)

" Q. Did you think it would be helpful to Dr. Bell ?—A. Yes.

" Q. Did you tell it because you felt you were under an obligation to Dr. Bell or to the B.M.A. ?—A. I felt it was my duty to tell in the interests of justice."

—A. Yes.

Q. Now, you wrote a letter to the B.M.A. and it has been put in evidence dated 12th April 1940 ?—A. Yes.

Q. In that letter did you state that on 2nd October Mrs. Hocking maintained something and did you put Mrs. Hocking's contention in your letter ?—A. Yes.

Q. And were you trying yourself——(Objected to as leading.)

Q. Were you endeavouring to put the facts as they had been disclosed to you by the patient ? (Objected to as leading—pressed ; objection withdrawn.)

Q. Was there any attempt on your part in your letter to the B.M.A. to colour the facts in any way ?—A. None whatsoever.

Mr. CASSIDY : What did you do with the sketch you drew this morning ?—A. It was taken from me.

(M.f.i. " c " tendered and marked Exhibit 13.)

Q. It was suggested to you by Mr. Shand that the reason for speaking to Mr. Hocking was merely to help Dr. Bell and to force him off taking action. What do you say to that ?—A. That is incorrect. My interest, my reason, was for Mr. Hocking's sake and not for Dr. Bell's.

Q. You were asked when you talked to Dr. Ritchie. You were asked did you speak to him yesterday as to when you saw him. Has that refreshed your memory as to some other time you saw him ?—A. I saw Dr. Ritchie in Mr. Reimer's Chambers on several occasions.

Q. During this trial have you been present at any conferences in my chambers ?—A. Do you mean was I involved in the conference ?

Q. Yes ?—A. No.

Q. You have been down here and back to Quirindi—— ?—A. On two occasions.

Q. Since this case started ?—A. Yes.

Q. Mistakes were made in regard to the time you were to be called ? —A. Yes, I returned to Quirindi on two separate occasions.

Q. Professional work is heavy in the district ?—A. Yes, I had to go home.

(Witness retired.)

No. 29.

EVIDENCE of Harold John Ritchie.

Sworn : examined : deposed.

To Mr. CASSIDY : I am a legally qualified medical practitioner practising in Macquarie Street as a consulting physician. I am Honorary Physician to the Sydney Hospital and have been since 1910. I have been Lecturer in Clinical Medicine at the Sydney University for a number of years. I am a member of the Medical Board of N.S.W. I am also a Member of the National Health and Medical Research Council.

Q. And Vice-President of the Royal Australian College of Physicians ? —A. No, I am President-elect.

I think I can justly say that I have had an extensive practice in Sydney for a great number of years. That work has brought me particularly into questions of diagnosis.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 22nd December 1943, Examination, *continued.*

Q. Have you had extensive experience as a diagnostician?—A. I suppose that is largely my work.

It is correct that I am called in by the medical profession generally on questions of consultation. Quite a number of them have called me.

I saw Plaintiff on the 21st February 1938. She brought a letter from Dr. O'Hanlon.

Q. You know Dr. O'Hanlon? He was the local practitioner at Quirindi?—A. Yes.

(Document shown to witness): This is the letter. I read that letter. That letter was certainly part of the material on which I made my diagnosis.

(Letter dated 12th February 1938 addressed to witness, previously m.f.i. 2, now tendered, read to the jury, and marked Exhibit 14.)

Q. Evidence of increased metabolism persisted. What does it mean?—A. It means symptoms suggestive of thyrotoxicosis persisted.

Q. Heart rate 150. What does that signify?—A. It signifies thyrotoxicosis.

In addition to that history, I examined her. I cannot at this moment recall exactly what she told me. I put her through the usual examination that one would put such a patient through.

Q. Without refreshing your memory from a card, what do you remember; can you remember anything that she told you, anything as to age?—A. I think she told me she was 35.

Q. If you cannot remember details, what was the result of the examination?—A. The result of the examination was that I decided it was a severe case of thyrotoxicosis.

Q. What do you say as to the condition she had. How do you describe her condition at that time which was on the 21st February 1938?—A. She was a highly strung nervous woman exhibiting most of the classical signs of thryotoxicosis.

Q. As to the degree of her illness, what do you say?—A. She was very ill indeed.

Q. And her outlook, or the prognosis?—A. If she hadn't been operated on she would have died.

I gave her certain advice. I advised her to consult a surgeon and have the operation.

I think I next saw her in St. Luke's Hospital.

Q. As a physician what do you say. What are the effects of thyrotoxicosis—and what is it and what are the effects?—A. Thyrotoxicosis is a series of symptons produced by over-secretion of the thyroid gland. It produces an extreme degree of nervousness. It produces hot flushes, palpitations, moodiness, nerviness and a tendency to emotional disturbance and in many instances also causes protrusion of the eyes. It also causes a progressive and rapid loss of weight.

She was in a state of extreme nervous debility. I saw her in hospital.

Q. Do you remember her ante-operation period. How long was it?—A. I think about three weeks or about that. It might have been a little longer.

I saw her after her operation. I saw her the day after the operation.

Q. What do you say as to her condition then?—A. I thought, considering how ill she had been, that her condition was very satisfactory.

I saw her prior to operation once or twice.

Q. Do you remember whether you had any consultations or not ?—A. I think I saw her when Dr. Bell was present but about that I cannot be sure at this distance of time.

I have seen a great number of cases of thyroidectomy.

Q. What was her condition. What do you say as to this particular case ?—A. I thought her condition was very satisfactory.

In cases of thyroidectomy I have seen infection.

Q. In this case do you remember her progress ?—A. She pursued the normal course so far as I can remember for a few days and then she got a red neck and got a temperature and so on.

Q. We have taken these temperatures out in the form of a document which has been put in. I want to show you a copy of the hospital notes ?

Mr. SHAND : Can the witness remember without them first of all ?

Mr. CASSIDY : Can you remember the details without them or can you only remember certain things ?

Mr. SHAND : I only want to know what the witness' recollection is first. I have no objection to notes being used.

Mr. CASSIDY : Give us your recollection first before you go to your notes ?—A. My recollection is the day after operation she seemed very well. Then I did not see her for some days. When I saw her on the next occasion she showed signs of inflammation in the wound. I looked at her chart in the meantime and I noted she had the usual rise of temperature which these thyroid cases get whether they are infected or not. When I saw her she had definitely quite an elevated temperature, and she had signs of inflammation in the neck.

Q. Can you remember the progress after that ?—A. Well, she had quite a discharge from the neck for just a few days, quite a noticeable discharge, but the temperature fell I think within 48 or 72 hours.

Q. Did you see her after that up till the time she left hospital ?—A. Yes, not regularly but from time to time.

Q. And what do you say as to the balance of her time there, from recollection first ?—A. I would say that as a woman who had been through a severe operation, who had started off with a debilitated condition, that she made an extraordinarily good recovery, but she was still suffering from a slight discharge from the centre of the wound.

Q. You remember her leaving or just about the time she left ?—A. I do, yes.

Q. And what was the sinus at that time ?—A. It was only a trifling thing more or less.

Q. Did you have any conversation with her ?—A. On a number of occasions, yes.

Q. Prior to leaving do you remember any conversation with her ?—A. I advised her not to leave.

Q. Why was that ?—A. Because she was a very highly strung, nervous, temperamental woman, and I think it is the greatest mistake on any doctor's part to let such a type go out of hospital with a wound unhealed.

Q. Have you had experience of and seen instances of wounds breaking down ?—A. Yes, every doctor has, unfortunately.

Q. What happens, what causes it ?—A. They break down as a rule, well, in the sense that you are using the word, they break down through infection, through a germ getting into the wound.

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Defendant's Evidence.

No. 29. Harold John Ritchie, 22nd December 1943, Examination, *continued.*

Q. What do you say as to the possibilities of guarding against infection, is it difficult or otherwise ?—A. Oh well, there is a most complicated ritual gone through in every operation to prevent germs entering the field of operation, it is not invariably successful, but nowadays almost invariably so.

Q. But despite that ?—A. Every now and again one becomes infected.

Q. Could you sum them up for us, could you tell us whether or not there are many ways by which infection may come into a wound ?—A. A great number of ways.

Q. What are they ?—A. They can come in from droplets, the breath of the surgeon, the surgeon's assistant, of the nurses present at the operation ; they can come in from the fact that a ligature may not have been completely sterilised in the preparation ; they may also come in through the fact of the nurses who are actually in attendance on the patient by the bedside when they do the dressings have bacteria in their throats which are not doing them any harm but which if sprayed out in globules and it only takes a very minute globule, you infect a wound, but while all of those things are recognised, to say how any wound is infected is purely problematical.

Q. Visitors at the bedside too ?—A. Yes, of course visitors too.

Q. And when you get infection of the wound what happens ?—A. You get an acute inflammation which may only remain as inflammation or may go on to abscess formation.

Q. And as to persistence of inflammation, would you limit it as to the length of time ?—A. In this particular case do you mean.

Q. Yes ?—A. Well, I would expect the wound would not fully heal until all the catgut which had been used for tying off the vessels had been extruded.

Q. What is your experience as to how long that infection will last having regard to the fact that there may be knots and other things in the wound ?—A. Well, that is rather a hard question to answer, you know, six weeks perhaps.

Q. May it be longer ?——A. It might be longer.

Q. Is it possible for you to put a limit on the time ?—A. None.

Q. I want you to pass back to the hospital notes and will you take a sheet which is in evidence which summarises the temperatures. Look at that sheet you see summarised there the temperatures, pulse rates and respiration rates over the period from say 11th March to 22nd March. You will see in the hospital notes that on the 16th March you and Dr. Bell attended—" Pleased with patient's condition, dressings changed." You might tell me, looking at that chart and the record is there anything abnormal in the temperatures—that is the first sign of any real abnormality in temperature there having regard to it as a case of thyroidectomy ?—A. I should think in the night report of the 19th March.

Q. In arriving at a decision as to the severity of the position what are the factors you take into consideration ?—A. Well, the height of the temperature, the rapidity of the pulse and generally speaking what one would call the patient's general condition.

Q. Now, looking through those records you find that at 4 a.m. on the morning of the 20th it is 103.8. What do you say as to the progress after that ?—A. Well, I should say that at that moment there was pus pent up in the wound and that the rapid fall of the temperature afterwards indicated what I knew to be true, of course, that the pus discharged out of the wound.

Q. Reading the story set out by the temperatures and pulse, what do you say by 4 a.m. on the night of the 22nd ?—A. I should say the patient was back to normal.

Q. The temperature was 97, pulse 76. Does that temperature of 97 suggest anything wrong at all ?—A. Not a single thing ; actually, happy is the man whose temperature is 97 at 4 a.m. in the morning.

Q. It has been said by Dr. Welsh that that was the indication of a very heavy blood infection, what do you say to that ?—A. There is no indication whatever of any kind in any sense of a blood infection.

Q. Dr. Thompson describes it as a moderately serious blood infection ?—A. It is not a blood infection, it is a localised abscess. Now, if it had been a blood infection—a blood infection means that the organisms get into the blood stream and this woman would have had septicæmia or something like that and she would have run temperatures for weeks and probably would have died. She started off handicapped, she had a big operation.

Q. You told me generally that her condition improved and the reports will show the times when you saw her. When she left was there any swelling, suppuration or inflammation ?—A. Yes, there was a little discharge from the sinus and there may have been a little puffiness of the neck, but it was minimal in extent.

Q. The Plaintiff has said at this trial that her neck was inflamed and angry ; is that correct ?—A. No. Well, I want to say this, that there were the remnants of the inflammation, that there was a chronic or more or less sinus discharging pus, but the acuteness of the inflammation had completely subsided.

Q. Did you see her when she came to hospital in October, 1939 ?—A. Yes, I did.

Q. In between that had you heard anything about her ?—A. Yes, I had heard from Dr. Bell and I had a letter from her.

Q. And is the letter dated the 6th May, 1939, the letter you had from her ? You have not seen it for a long, long time ?—A. No.

Q. You see that letter (Exhibit " J " shown to witness). In that you notice there is nothing said about any swelling or any trouble in the neck ?—A. No.

Q. The letter said : " You were right when you said I should not leave St. Luke's." That refers to the conversation you had at that time ?—A. Yes, that is so.

Q. Had you had some conversation with Dr. Bell before you saw her ?—A. Yes.

Q. And where did you see her ?—A. In St. Luke's.

Q. And can you tell us whether you saw her once or more than once ?—A. I saw her on three, possibly four, occasions. It may have been two or three or three or four, I cannot be sure.

Q. Did you have any conversation with her ?—A. In the ordinary way, yes.

Q. What did you do ?—A. On one occasion I examined her throat externally and internally.

Q. And you heard something from her about something happening ?—A. I think I heard it before.

Q. But you also heard something from her ?—A. I think I did.

Q. What is your recollection ?—A. I am not sure.

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Defendant's Evidence.

No. 29. Harold John Ritchie, 22nd December 1943, Examination, *continued.*

Q. And in any event what did you do ?—A. I examined her throat.

Q. Tell us what you found ?—A. I found she had some chronic tonsilitis.

Q. What knowledge did you have at that time when you examined her throat as to what she was complaining about ?—A. Well, at this length of time it is very hard to be certain of the chronology of these things, but I seem to have been led to believe that she had had a tube which had ulcerated out, I think she said, through her gullet.

Q. Will you look at the tube Exhibit " F " that has been shown in evidence. For a tube like that to ulcerate through the throat what kind of a condition would it mean ?—A. There would not have been any Hocking case.

Mr. SHAND : Exactly what does that mean in medical terms ?—A. It means the patient would have died.

Mr. CASSIDY : Her story now is that on the 2nd October, 1939, a tube of which that is a fair representation had ulcerated through a tonsil—that ulceration was accompanied by a wall of pus in the throat for three months—and that her neck was swollen so that her head and neck were all like one part of the body. When you saw her what was the condition as to her neck, first of all externally ?—A. The contours of her neck were normal.

Q. Inside the neck what was the position as to swelling ?—A. There was no swelling inside the neck.

Q. And as to inflammation ?—A. She had some chronic tonsilitis, which a large number of people have got.

Q. Any sign of any pus or redness ?—A. There was no sign of pus but there might have been a little redness.

Q. Had an incident such as she described occurred, would you have expected there to be some evidence of it on the date in October when you examined her ?—A. Of course there must have been gross evidence.

Q. What do you say as to the compatibility of her condition then with an incident such as she described as happening on the 2nd October ?—A. I think they are completely incompatible.

Q. During her stay there tell us what her general condition was ?—A. She was nervy—she was complaining particularly of her throat, and she was given a number of inhalations I think.

Q. On leaving what was in your opinion her condition as to capacity to leave the hospital ?—A. There was no reason at all why she should not leave.

Q. It has been sworn by Dr. Thompson that in 1942 there was a hole there into which he could get a glass probe. Will you look at Exhibit " R" ? —A. Yes.

Q. Was there any hole anything like that ?—A. No.

Q. Were you present throughout the first trial ?—A. No, I was present throughout portion of it.

Q. You may assume for the purpose of this question that Professor Welsh gave no evidence of any such hole or of any scarring. If such an incident had occurred would there have been scarring there ?—A. Of course there would have been.

Q. Could you explain pictorially, so that the jury will understand, what it would look like ?—A. You are asking me to explain to the jury

what a throat would look like if a tube like this had passed through the tonsil ?

Q. Yes ?—A. This is purely suppositious, is it not ?

Q. Yes, purely suppositious for the moment ?—A. Actually there would have been very gross scarring where the thing came through, and there would have been a spread of the inflammation to the surrounding muscles, so that the muscles of the palate and the other muscles would have been involved in the fibrous tissue and they would have been dragged out of position.

Q. You say there was no sign of any such hole or scarring ?—A. No.

Q. What do you say as to whether that scarring would be permanent or not ?—A. Yes, it would be permanent, and the traction on the surrounding muscles like the palate muscles would tend to increase as the years went on.

Q. Did you see any sign of any restriction of movement of the palatal muscles ?—A. None whatever.

Q. From time to time in these cases have you seen her head movements ?—A. Yes.

Q. From your observation at any time in hospital or since have you seen evidence of limitation of movement of the head ?—A. None whatever.

Q. You see Exhibit " P "—have you ever seen an object like that used in a thyroidectomy operation ?—A. No.

Q. I want to come next to this position—you know the thyroid capsule ?—A. Yes—I should like to qualify that by saying that I am not a surgeon nor am I an anatomist except in the most general sense of the word.

Q. What do you say as to the possibility of an object like that being within the thyroid capsule ?—A. Well, it is too silly for words.

His HONOR : What does that mean—it is impossible ?—A. Impossible. Let me explain myself. I wish to say that if this or something like it is supposed to have been introduced by a surgeon to drain the thyroid capsule after thyroidectomy, that is impossible.

Mr. SHAND : That was not the question asked—it is an answer to some other question.

Mr. CASSIDY : That is the answer you wish to give ?—A. Yes.

Q. The tube with wires in it and that swab in it—what would it do ?—A. I do not know what it would do—there are never any wires or swabs put in a thyroidectomy tube under any circumstances.

Q. Assume for the moment that that thing left in there became infected—what do you say would happen ?—A. I should say that it would eventually discharge through the sinus in the great majority of cases. If it did not discharge out through the sinuses, and the suppuration spread, it would in almost all instances spread into the mediastinum, down underneath the breast-bone, because the thyroid capsule communicated directly with the mediastinum.

Q. What would result then—you would get pus and suppuration ?—A. She would die.

Q. I am putting this still as assumption only—with a foreign body of that size in the cavity, in your opinion would it be possible for the wound to heal up ?—A. No.

Q. What would you say as to the size of the abscess were there such a thing left in an infected area ?—A. I would expect a very large abscess.

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Defendant's Evidence.

No. 29. Harold John Ritchie, 22nd December 1943, Examination, *continued.*

Q. The next position I want to take you to is this—this is assumption again—assume the tube is put in on the right, what do you say as to the possibility—— ?—A. Which tube ?

Q. That tube, or something of which that is a fair representation or even a tube 2 inches long. What would you say as to the possibility of that getting from the right across the neck and then making its way up to the tonsil ?—A. I think that is fantastic.

Q. In your opinion could a rubber tube such as that move in that direction ?—A. It would only move at all as the pool of pus in which it was extended.

Q. What does that mean—the movement, if there could be movement ?—A. It would be passive movement on the part of the tube floating more or less in the abscess cavity.

Q. And with what result, if you did get a movement starting in the region where it is said this was left—you are assuming for the moment that it did move—you say it could only move in pus ?—A. Yes.

Q. What does the pus do if there is movement ?—A. I would expect the pus to track downwards into the mediastinum.

Q. I know you say it goes down, but assume for the moment that the tube can move across the neck and up, to go through that movement what would have to happen ?—A. It would have to get across this narrow part over the front of the trachea or the front of the larynx.

Q. What do you say as to that ?—A. It is only a potential space.

Q. In the course of passing there would it be observable ?—A. Yes.

Q. You have told me the matter or suppuration round it would cause a big abscess. What is your opinion as to abscesses in the neck—as to their seriousness ?—A. Following thyroid operations the superficial ones are not of any great importance whatever. The very acute and severe ones, according to the authorities, occasionally give rise to mediastinal abscess—I have never seen one following a thyroid operation, but the authorities say that from time to time a severe abscess in the thyroid capsule will spread downwards into the mediastinum. Actually, of course, I would go further than that and say that from time to time cases have been reported in which they have ulcerated through the trachea—that is the windpipe.

Mr. SHAND: Do you mean thyroidectomy ?—A. No, I mean abscesses.

Mr. CASSIDY: What do you call that complaint ?—A. Acute suppurative thyroiditis.

Q. What happens in that case ?—A. The bulk of cases of acute suppurative thyroiditis get better. Some of them go on to mediatinitis, which is the commonest sequel. In rare instances, they have been known to ulcerate through the trachea, that is the windpipe, or the gullet. But in such cases all those cases die.

Q. Take the cases of obstruction of the windpipe—what is the position as to their importance ?—A. If you have an ulceration through into the windpipe you get a septic pneumonia, either single or double. If it ulcerates through into the œsophagus you get a progressive downward invasion of the tissues round about the œsophagus spreading down into the centre of the tube.

Q. As the infected cavity holding this tube becomes enlarged what happens—I mean if for a moment you can contemplate a thing like this

moving in an abscess cavity—what happens before it can get a course to move in—assume that it is put that it can move—you say it does not—what makes the path for the body to move ?—A. Progressive destruction of the tissue. The pus is partly formed from the white cells of the blood and partly from the congested and degenerated tissues which are forming the abscess wall.

Q. What kind of destruction of tissue does that mean ?—A. You may get complete destruction or you may get partial destruction and it all depends on the type of tissue as to the end result of that process. If the patient survives then there is regeneration to some extent, which takes the form of replacing more highly specialised tissue, like muscle tissues or gland tissue, by a more lowly tissue which is called fibrous tissue.

Q. Take Exhibit " P," the area we are dealing with, the neck, what are the classes of tissues or structures there that would have to be destroyed ?—A. In order that it may pass up and through the tonsil it would have to go through all the jugular vein and the carotid artery and the vagus nerve—actually all of these are walled off in a pretty thick fibrous coating, and the common carotid artery is just behind the tonsil.

Mr. SHAND : Do you say it would have to go through them ?—A. It has to go through these, or come into such close contact with them as there would be ulceration of them, of which the result would be death.

Q. As to the muscle, you said it had to pass through muscle ; what happens to the fibrous tissues, what is the nature of it, that replaces what has been done away with ?—A. It is not muscle tissue and has not the power of muscle tissue to gradually contract and causes disruption in the pull and play of the muscle involved.

Q. If this had happened, that that tube crossed from here up the throat and out through the tonsil, what do you say as to the position of movement in that neck at the present time ?—A. You are asking me to conceive something which I cannot very well conceive.

Q. What is your opinion as to the consistency of the Plaintiff's present condition with the story that is told as to the path that tube took ?—A. It is totally inconsistent.

(Witness stood down.)

Dr. FLYNN.

Dr. Flynn, Recalled.

Recalled :

To Mr. CASSIDY : I was asked some questions as to my authority for the propositions which I stated. I went immediately last evening to my library and I found what I thought was a fairly representative lot. I think they corroborate and confirm what I said. The question I was asked from memory was my authority, apart from my own, " for the fact that thyrotoxicosis was a predisposing cause of . . . " I read from a book called " Diseases of the Skin," by Ormsby—an American book published in 1921 ; he has several editions but this is about the time I was a student and I was interested particularly in the study of it ; page 153 of this book, it starts with a description of the condition known as angio neurotic œdema ; on page 155 " amongst the predisposing causes various factors are recorded such as nervous influences, which Osler believes most important

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No. 29. Dr. Flynn, Recalled, 22nd December 1943, *continued.*

and which are accepted, as migraine, neuralgia, ex-ophthalmic goitre, and melancholic tendency." The ex-ophthalmic goitre is thyrotoxicosis and melancholic tendencies. It also goes on the same lines as I gave evidence, as to factors: menstrual disturbances, emotional disturbances, overwork—more or less, the evidence I gave. That is one of the best modern books. I have not the latest edition.

The next one in order is one by Sequiria who, it can be claimed, is the greatest English-speaking exponent of dermatology—and I hope I learnt something from him. On page 411 from the edition "Diseases of the Skin" —he was the chief at the London Hospital, probably the largest hospital in England; at page 411, under the title "Angio neurotic œdema, giant urticaria or Quincke's œdema, under the sub-title of Aetology—that is causation—" other predisposing causes are menstruation, hysteria, melancholy and Graves Disease." The latter being the answer to the question I was asked. Graves Disease can be described as the same as thyrotoxicosis.

The date of this book is 1932, written by C. C. Roxburgh who was in charge of the Dermatological Department of St. Bartholomews, which is a very big centre in London; at page 220, in which neurotic œdema, giant urticaria, it mentions it is most frequent in neurotic individuals. I was asked for thyrotoxicosis, menstruation and menopause, both of those are more or less inter-related.

We have another book here, this is McLeod, this is the most detailed book on dermatology in my opinion that has ever been printed. McLeod was the dermatologist at Charing Cross Hospital, and this is the most complete book on dermatology I have known. At page 695 of this it mentions nervous instability in connection with Graves Disease—which was one of the questions I was asked. Nervous derangement, and so on.

Mr. SHAND: What about Follen?—A. I could bring those too—I will do that too. I could bring you more than that if you like. In Osler, there is a further one but I could not find my copy (book handed to witness)?—A. I do not know this book. I do not recognise that book.

Q. Dr. Ritchie handed you something?—A. He showed me nothing, he handed me a book. I do not think he pointed to anything.

To Mr. CASSIDY: It is not the one I mean; Osler and McRae is one. The one I was handed was not Osler.

(Witness retired.)

Harold John Ritchie, Examination, Resumed.

DR. RITCHIE

Resumed.

Mr. CASSIDY: I want to take you now to another allegation of Mrs. Hocking's; she alleges between the 2nd and the 5th October she could feel an object pricking or scratching her stomach. What do you say as to that?—A. The lining of the stomach is completely insensitive to touch. Actually if you had an operation under a local anæsthetic, on the stomach, you have to anæsthetise the skin and the muscles and below the muscles, and then you cut the thin layer called the peritonum, on the upper surface of which there is a ramification of nerve fibres, and then the actual stomach itself; the inside of the stomach is completely insensitive to touch, and is not aware of being touched; the technical term is no

tactile sensation. The pain that you feel in the stomach is from contraction of the muscle and a violent over-contraction of the muscle in the wall of the stomach, what you call the colic—or vulgarly known as the gripes.

Q. I want to pass to the question of tetany. Have you had experience of tetany ?—A. Yes. I have also had experience of hysterical tetany. Tetany is a condition in which there is extreme irritability of the muscles and of the junctions between the nerves and the muscles, causing the muscles to go into spasm.

Q. Is tetany limited only to disorders following parathyroidectomy ?—A. By no means, although in this country the commonest cause is post-operative parathyroidectomy.

Q. What are some of the disorders and conditions with which it is associated ?—A. Pregnancy, in which the demands of the fœtis for lime are more than the mother can meet; lactation, in which the demands of the living child or lime in the milk are more than the mother can meet. Certain poisons, chloroform and others, may give rise to tetany; and there is another one altogether, quite dissociated with calcium arising from taking too much alkali. If I may explain that further, actually persons who suffer from duodenal ulcer, being given to self-medication, very often give themselves very large doses of alkali, and I have actually seen a fatal case of tetany in a man who over-doses himself with alkali under the impression that he was suffering from a duodenal ulcer.

Q. Is there any other condition—in children ?—A. Their name is legion.

Q. You get it from malnutrition ?—A. Yes, and then there is epidemic tetany, which has been described in Europe.

Q. That is associated with febrile conditions ?—A. Yes.

Q. Can tetany be associated with parathyroid interference ?—A. Yes, certainly.

Q. Have you seen tetany in some form or other after a thyroidectomy ?—A. Yes.

Q. In those cases what causes it in your opinion ?—A. The parathyroid glands secrete a substance which extracts lime from the bones of the body and keeps the level of the lime in the blood at a certain figure.

Q. What are the ways in which you can get tetany in a thyroidectomy ?—A. You are talking about manifest tetany in which the patient is going into spasms.

Q. Yes ?—A. It may arise (A) from the removal of some of the parathyroid glands. The anatomy of the parathyroids is very peculiar inasmuch as they do not conform to situation in the way most of the organs of the body do. They may be situated anywhere from the top of the thyroid right down into the chest itself. Sometimes they are actually embedded in the body of the thyroid gland itself, one or two of them.

Q. If the parathyroids are removed can you get over it ?—A. If all the parathyroids are removed, no.

Q. Is there anything else that can cause parathyroid tetany ?—A. Actually at the time of the operation there is some interference with the blood supply. That may cause transient tetany.

Q. Is there anything else ?—A. Severe inflammation may also cause it.

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Defendant's Evidence.

No. 29. Harold John Ritchie, 22nd December 1943, Examination, *continued.*

Q. You have read Mrs. Hocking's evidence in this case, and you have read the evidence of Dr. O'Hanlon, seen the hospital records as to the nature of the spasms that the Plaintiff says she had in Quirindi, and the treatment she received ?—A. Yes.

Q. What do you say as to the conditions she had ?—A. I am very doubtful whether she had tetany.

Q. What are the reasons for that ?—A. There are quite a large number of reasons. In Mrs. Hocking's case the inference would be, I presume, that the tetany was caused by the suppuration.

Q. Yes ?—A. Well, the fact that, although she was curled up like a ball for 24 hours or more before this tube passed into her throat, and that after that she never had a single spasm, of course indicates it could not be tetany, because the suppuration would still be going on ; the damage to the parathyroids would not recover in the twinkle of an eye—it would take weeks and months to get better.

Q. That is to say, if the inflammation is so severe that it produces spasms such as she says, and they suddenly cease, you think that is inconsistent with tetany ?—A. Quite.

Q. You regard that as fundamental ?—A. I do indeed.

Q. What do you say as to the others ?—A. Actually I also think that the frequent attacks of unconsciousness are not compatible with the diagnosis of parathyroid tetany. Actually unconsciousness does occur in parathyroid tetany, and it occurs in two particular ways. It occurs commonly, or more commonly, I should say, in young children who get laryngeal spasm, and who choke and cannot get their breath and who go blue and finally become unconscious.

Q. We have heard here used the word " cyanose " ?—A. Yes that means going blue.

Q. As to unconsciousness, what do you say as to the second condition ? —A. The second condition under which one sees unconsciousness is a terminal phenomenon prior to death.

Q. Have you had practical experience of that ?—A. I have.

Q. How would you describe the Plaintiff's condition here ; would you call it a parathyroid tetany or not ?—A. No.

Q. What would you call it ?—A. I would call it an hysterical tetany.

Q. You might tell me this before I proceed to the other reasons ; in this hysterical tetany is it organic ?—A. No, except that in the ultimate analysis everything is organic and everything is bio-chemical.

Q. What do you say as to this : that it may start as an organic disease, and then when people recover from that organic disease the symptoms might persist ?—A. Yes ; that is a commonplace.

Q. As to the person having those symptoms persisting, are they necessarily conscious of them—to them are they genuine symptoms ?— A. You mean, are they malingering or not ?

Q. Yes ?—A. They are not malingering.

Q. You gave me what you call two of the matters, unconsciousness being the last. In this particular case are there other indicia ?—A. There are a number. First of all, one of the most striking features is that in the so-called unconsciousness she resisted lifting her eyelids. Every hospital resident is taught that if a presumably unconscious patient resists lifting the lids, that patient is still conscious.

Mr. SHAND : Even in a tetanic spasm ?—A. They do not have tetanic spasms when they are unconscious.

Mr. CASSIDY : You remember in this instance this lady has said that at one time she swallowed this thing that burst into her mouth. If she was unconscious would she be able to give that account ?—A. No.

Mr. SHAND : She does not say she was unconscious.

Mr. CASSIDY : We will have that evidence read later.

Q. If she said she was unconscious at one time and then said she felt the thing burst into her mouth and she swallowed it, could that be consistent ?—A. Feeling a thing bursting in your mouth is not consistent with unconsciousness. I should think that would be self-evident.

Q. Are there any other indicia ?—A. The fact that although she was very efficiently treated with calcium salts, and particularly with paroidin, she still continued to get attacks.

Q. Is that consistent with parathyroid tetany ?—A. No.

Q. What happens ?—A. In parathyroid tetany, if a patient recovers, as Mrs. Hocking has done, the damage to the parathyroids, if any, could have been only moderate in degree ; and if the symptoms were due to the parathyroid damage the amount of lime and the amount of paroidin she had should have been sufficient to control her attacks.

Q. Are there any other indicia ?—A. Another very striking thing is the fact that apparently after May or June of the year of operation she had a long period in which she did not have any attacks, and to have it recur is extremely difficult to explain.

Mr. SHAND : That long period was after May or June 1938 ?—A. Yes.

Mr. CASSIDY : Are there any other indicia—massage— ?—A. That did not occur to me. Tetany is a disease of intense irritability of muscle. It is extremely irritable. It is so irritable that one of the tests or so-called tests for its presence is the provoking of an attack by a sharp simple tap on the cheek. If you were to apply massage to a person in a tetanoid spasm you would increase the stimulii which brought about the spasm.

Q. I want you to assume that the Plaintiff has said she was massaged and the more she was massaged the more relief she got ; what do you say as to the consistency of that statement with parathyroid tetany ?—A. I think that is quite incompatible.

(Further hearing adjourned until 10 a.m. on Thursday, 23rd December 1943.)

Eighteenth Day, Thursday, 23rd December 1943.

23rd December 1943.

HAROLD JOHN RITCHIE.

Further Examined.

Mr. CASSIDY : You had spoken yesterday of certain factors that you have heard in evidence and you spoke of some of them being certain indicia of hysteria ?—A. Yes.

Q. And not parathyroid tetany ?—A. Yes.

Q. Have you arranged the authorities on unconsciousness ?—A. Yes, I have.

Q. Do you agree with what those authorities say ?—A. I do.

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Q. Reinhoff, page 79: "By tetany is meant a clinical syndrome resulting from a functional insufficiency of the parathyroid glands which is characterised by a heightened excitability of the central and autonomic nervous system manifested by clonic and tonic spasm without an accompanying loss of consciousness." Is he an authority of repute ?—A. He is the greatest authority in America on goitre and thyrotoxicosis.

Mr. SHAND: That is the surgery of it ?—A. No, the anatomy and physiology of it.

Mr. CASSIDY: You say he is one of the greatest authorities in America ?—A. Yes, he won the gold medal for goitre presented by the American Goitre Association.

Q. Sloane on the Thyroid at page 386: "General symptoms: It seems to us the mental condition of a patient in tetany has not been sufficiently emphasised, neurasthenia and melancholia at times become marked and sufficient control of the patient is impossible without sanatorium environment and some special attendance. The patient remains conscious throughout the attack and frequently when the attack is at all severe has a fear of impending death. This feeling naturally brings about a neurasthenic condition which makes treatment very difficult." Is Sloane an authority of repute ?—A. Yes.

Q. Barr, you have heard him referred to earlier ?—A. Yes. I know him. He is an American of very high repute.

Q. Reading from Vol. 3, page 3129: "During the spasms the muscles are firm, release is accomplished only by exerting considerable force which often leads to a more violent contraction. In severe attacks the patient may experience excruciating cramp-like pains. Consciousness is seldom lost." Are there certain classes of tetany in which consciousness is lost ?—A. Yes, in infantile tetany in children very often the brunt of the paroxysm falls upon the larynx and causes spasm of the vocal cords; it is really an exaggerated form of croup that some children get and they get this spasm and they are unable to breathe, they go blue and in very severe cases they become unconscious. Those are the particular types of tetany in which unconsciousness may occur in a series of attacks, but actually unconsciousness in ordinary tetany only occurs as terminal phenomena when the patient is about to die.

Q. During Dr. Thompson's evidence you heard him use the word "coma." What is the medical significance of the word "coma"?—A. Coma is a stage of such deep unconsciousness that the patient cannot be roused from it by any ordinary methods and as a rule it is a precursor of death.

Mr. SHAND: As a rule ?—A. Yes.

Mr. CASSIDY: You yourself, have you seen unconsciousness in tetany ?—A. In two cases, yes—they both died.

Q. Next I want to pass to the question of responsiveness to the Trousseau sign. I think you remember Dr. Thompson gave evidence that this response only occurred in true parathyroid tetany. Is that your opinion ?—A. No.

Q. What do you say ?—A. Actually Trousseau sign, Erb sign, Chvostek sign, are only signs of extreme neuromuscular instability due to any cause whatever.

Q. And do you say the Trousseau sign can occur in both hysteria and tetany ?—A. Yes, I can give you an authority for that. That is Osler's "Modern Medicine," page 803, Vol. 7. Osler is a very well-known writer.

Q. There are a number of publications by Osler ?—A. Yes, that is so, and under his editorship. As a matter of fact that particular article is by a man named Jallack, who is one of the leading neurologists in New York.

Q. And is this what that says at page 803: "The real difficulty lies in the hyper-excitability of the nerve impulses, Trousseau's phenomenon is often well marked in hysterical patients and in the more classic types of hysteria." What does that mean, the more classic types of hysteria ?—A. That means those which present classic pattern, in other words full of disturbances of a psychical nature.

Q. In Osler's "Principles and Practice of Medicine," edited by Christian, in the portion dealing with functional disorders of the nervous system, you know the article there dealing with hysteria ?—A. Yes, on pages 14, 15, 16, 19 and 21.

Q. In the chapter dealing with hysteria the author classifies the matter into two headings, convulsive hysteria, minor forms and major forms. Do you agree with the whole of that article ?—A. I do.

Q. As being consistent with your experience and your knowledge with regard to hysteria ?—A. That is so.

Q. "During the attack the abdomen may be much distended with flatus and subsequently a large amount of clear urine may be passed. These attacks vary greatly, there may be scarcely any movements of the limbs, but after a nerve storm the patient sinks into a torpid semi-unconscious condition from which she is aroused with difficulty. In some cases the patient passes from this state into a condition of catalepsy." Then under major forms, "Hystero-epilepsy," it gives a typical instance, and then this passage—"Visions are seen, voices heard and conversations held with imaginary persons. In this stage patients will relate imaginary events and make extraordinary and serious charges aginst individuals. This sometimes gives a grave aspect to these seizures, for not only does the patient make and believe the statement but when recovery is complete the hallucinations sometimes persist and after an attack a patient may remain for days in a state of lethargy or trance." Then page 16, under Contractures and Spasms, "The hysterical contractures may attack almost any group of voluntary muscles and be of hemiplegic, paraplegic or monoplegic types" ?—A. That means it may affect arm and leg on one side, both legs, both arms or one limb only. "They may come on suddenly or slowly persist for months or years or disappear rapidly. The contracture is most common in the arm which is flexed at the elbow and the wrist while the fingers tightly grasp the thumb in the palm of the hand. More rarely the terminal phalanges are hyper-extended, it may occur in one or both legs, more commonly in one."

Q. Assume for the moment that Dr. Thompson says that has nothing to do with hysteria, what do you say to that ?—A. Well, I cannot believe he said it, you must have misunderstood him.

Q. While that is being looked for will you read on ?—A. "Mental symptoms: A morbid craving for sympathy may lead to the commission of all sorts of foolish things, puffiness of the face, if it is unilateral, and swelling of the hand are not uncommon and the features of Reynaud's

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Disease may be met with. A blue and a white type of œdema is recognised and these may be associated with paralysis, motor and sensory."

Q. Do you remember Dr. Flynn in his diagnosis of October 1937, diagnosed a condition of angio neurotic œdema ? —A. That is so.

His HONOR : Or giant urticaria ?—A. That is so. That is a type of puffiness due to nervous causes which may occur either in thyreotogicosis or in hysteria.

Mr. CASSIDY : Next page ?—A. The last quotation is as follows from page 21—" The practitioner has to bear in mind constantly the strong tendency in hysterical patients to practice deception. The very elect have been fooled by these patients, their abilities in this regard are to be respected."

Q. You may take it that during the Plaintiff's stay in hospital at St. Luke's in October 1939, a blood count was taken ? You have seen that blood count. What do you say as to that ?—A. I would say it is an absolutely normal blood count.

Q. Is it consistent or inconsistent with her story ?—A. It is inconsistent with the story of the severe abscess suppurating in the neck and a tube bursting through into her throat some three or four weeks before.

Q. Added to that fact that you had a diet of arrowroot and bovril ? —A. That makes it more— —

Q. Had there been serious suppuration such as suggested by the Plaintiff what would have been the position of the blood count in your opinion ?—A. She would have had a very definite anæmia and there would have been alteration in the white cells, phagocytes.

Q. And is there any evidence of any such thing in that blood count ? —A. None whatever.

Q. Assume for the moment that what was put to Dr. Tebbutt by Mr. Shand was correct, that in bovril there was 3.44 milligrammes of iron to the ounce. From your experience of these extracts what would that mean as to giving iron to a person ?—A. It would be quite negligible.

Q. Would you just explain that ?—A. Well, actually the normal man who is not anæmic, a well man, only requires about 10 or 12 milligrammes of iron per day to keep him going, but if you have a severe anæmia it is everybody's experience that you must give very large doses of iron to correct a severe anæmia, and the common preparation of iron, the commonest preparation of iron that is given to correct anæmia is what is called " Scale iron," ferri et ammon. cit., and the optimum dose recommended by everybody is about 90 grains a day.

Q. And take a woman, does she want more iron ?—A. She requires more iron than a man—at least, until the menopause.

Q. What is her requirement ?—A. Until the change of life a woman wants about 15 milligrammes. That is a normal woman.

Q. Then a person who is low in health would want more iron ?—A. A person who is anæmic, you have got to give them large doses of iron for the reason that the bulk of the iron that is swallowed is not absorbed.

Q. First of all, take the normal woman. What minimum grains must she get a day ?—A. 15 milligrammes will keep her going.

Q. Can you put that in grains ?—A. I can work it out.

Q. Don't bother. I think I can get it in another way. Take Mr. Shand's figure for the moment, 3.44 for an ounce of bovril——(Objected to.)

Q. Just get back to this calculation. 3.44 milligrammes for an ounce of bovril ?—A. Yes.

Q. What does that mean in administering bovril ?—A. How much would they get out of it ?—Take a cup of bovril at a time ?—A. That is a teaspoonful to the cup ?

Q. Yes ?—A. And 3.44 to an ounce ?

Q. Yes ?—A. .43 of a milligramme.

Q. And how much is that in grains ?—A. A little over 6/1000ths of a grain.

Q. So is that anything at all ? If the person has suppuration, what is the position then so far as iron is concerned ?—A. Well, as a rule iron is not administered during periods of suppuration because the destructive process is still going on, but it is administered once the suppuration has ceased. Actually modern practice is that if you have a patient who is very anæmic, in the course of a suppurative illness you would give them a blood transfusion rather than attempt to administer iron.

Q. Iron is not absorbed when suppuration is present—excessively ? —A. It is not absorbed very well. (Objected to.) Well, actually it is not absorbed very well.

Q. This is what I asked you about Dr. Thompson. This is on page 413. This is what he said : " Let us get the next thing, major forms. You have dealt with the minor forms." His answer was : " I am not admitting that this is hysteria at all ?"—A. He is not admitting what is hysteria ?

Q. Hystero-epilepsy. What do you say as to that ?—A. Well, I think he stands alone in Sydney in that belief.

Mr. SHAND : Can we have an answer to the question.

Mr. CASSIDY : Do you agree with that ?—A. No.

Q. If I sum this up, his attitude is that it is not hysteria at all ?—A. That hysteria-epilepsy is not hysteria ?

Q. Yes ?—A. Well, I think it is ridiculous. (Objected to.)

Mr. SHAND : He says : " I say you can have hysteria and epilepsy."

Mr. CASSIDY : Now, I want to come on to the calcium now. You know the calcium count ?—A. Yes.

Q. You see the blood calcium there shown as 7.2 ?—A. Yes.

Q. What do you say as to that ?—A. I think that is a low blood calcium but she did not drink milk, she had thyrotoxicosis, which causes a very severe drain on the calcium of the body, and she had had thyrotoxicosis unrecognised for some years ; she had had a serious operation, she had had some septic trouble in her wound, and I think that she had been living apparently, as you said, on bovril and arrowroot. Then also, actually people's blood calcium does vary. There is no doubt about that, and after thyrotoxicosis it is not uncommon to find—after an operation it is not uncommon to find some diminution in the level of calcium in the blood.

Q. Take the 7.2 alone. Is that of itself any evidence of tetany ? —A. None whatever. Actually, of course, you could get blood calcium down below 6 and 5 in certain diseases without any signs of tetany whatever.

Q. And you have had a lot of experience——?

Mr. SHAND : What are those diseases ?—A. Chronic Bright's Disease.

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Mr. CASSIDY: Now, calcium associated with hysteria—what is the position there?—A. Well, there are authorities to show that, whereas the blood calcium remains fairly constant in normal individuals, in neurotic individuals there is a very definite alteration in blood calcium.

Q. And have you got those authorities?—A. Yes.

Q. This is "Emotions and Bodily Changes," by Dunbar. Is that so—(book handed to witness)?—A. Yes. This is on pages 174 and 175: "F. Glaser refers to the striking constancy of the serum calcium level in normal individuals, giving figures for five normals, calcium being tested on three different days. This constancy is not found, however, in 'nervous' individuals. Glaser showed that by suggestive influences in the direction of quieting, the calcium content of the blood can be considerably lowered. In one patient, for instance, the calcium content was brought down by hypnotic quieting from 10.56 to 8.40 milligrammes per cent. (a difference of 2.16 milligrammes per cent.). By artificially exciting the patient on one day and suggestively quieting her on another day, these variations could be increased by a difference of 3.53 milligrammes per cent. Glaser comments: 'variations in tonus of the vegetative nervous system brought about by artificial excitation and subsequent hypnotic quieting, act on the calcium content of the blood because sympathetic stimulation is accompanied by concentration of calcium ions in the tissues, thus drawing the calcium from the blood.' In 1926 Poverinskij and Mjassiszew carried out similar experiments with a change of blood calcium under the influence of various emotions of fear. They observed lowering of the calcium content by 2.82, 6, and 1.2 milligrammes respectively. Glaser's findings were also confirmed by M. Kretschmer and R. Kruger. In three cases showing an abnormal calcium content of the blood it was possible to increase the level by suggested excitement and to decrease it by quieting." You were asking me about the level of the blood calcium?

Q. Yes?—A. Well, actually of course the level of the blood calcium is not necessarily an index of the amount of available calcium. The blood calcium falls into three groups or three sub-divisions. The largest group is possibly linked up with the protein in the plasma, and only from 1.5, I think, to 2.8 milligrammes per cent. of the blood calcium is required to perform the phenomena necessary for the prevention of neuro-muscular activity. Do I make myself clear?

Q. Yes?—A. Therefore, you see in addition the volume of calcium in the blood is dependent also on the amount of phosphorus in the blood and upon a number of other factors.

Q. So this is the position, is it, that one to two per cent. I think you said——?—A. 1.5 to 2.8.

Q. That that is the portion of the 10 that is doing the work?—A. Yes.

Q. That is the important part?—A. Yes.

Q. Or if she is down to 7, the important part of the 7. Is that so?—A. That is so.

Q. And what is the further thing you have to know before you know whether there is sufficient in say a low blood calcium before you know the thing is doing the work properly—what further thing do you have to know. Its ionisation?—A. Yes, actually it is the ionised calcium that does the work.

Q. And that is that 1.5 to 2.8?—A. Yes.

Q. Do you remember seeing the patient after she left St. Luke's?—A. Yes.

Q. On how many occasions ?—A. On two occasions.

Q. Can you remember, without reference, the first date you saw her ?—A. Well, I saw her shortly after she left St. Luke's.

Q. And where did you see her ?—A. In my rooms.

Q. Did you have any conversation with her that you remember ?—A. Yes. I don't remember one single word of what I said to her, but I did have some conversation with her, but she actually did not have an appointment and she was very anxious to see me and was put in.

Q. You saw her—you fitted her in ?—A. Yes, fitted her in.

Q. Did you give her anything ?—A. Well, actually I did. I had forgotten giving it to her at the last trial, but I gave her a prescription for calcium gluconate.

Q. And would the date be on the prescription ?—A. Yes.

Q. Is that it (handed to witness) ?—A. Yes.

Q. That is the 10th November, isn't it—— ?

His HONOR : The 10th November 1939.

Mr. CASSIDY : Did she tell you where she was staying at that time ?—A. Well, I am not sure. I have got some idea that she said she was either going to or was staying at Manly, but I am not sure.

Q. Did you see her again after that ?—A. In the following year.

Q. Just tell His Honor and the jury what took place. You saw her in the following year ?—A. Yes.

Q. I don't suppose you remember the date ?—A. No, I don't.

Q. Can you tell His Honor and the jury what took place then ?—A. She informed me that she was proposing to bring a suit against Dr. Bell for negligence, and she was accompanied by her husband, and I told her it was ridiculous—the charge was ridiculous, and that the case would not stand up, and I did not want to have anything to do with her.

Q. Did you see her after that at all ?—A. No.

Q. That was the last occasion you saw her ?—A. Yes.

Q. I think your conclusion was—have you come to a conclusion ? I want to come now to this evidence of what we call the " eye incident." I think you know something about it being given in previous trials ?—A. Yes.

Q. We are told that she says that she had a spasm and with a mirror in one hand she was able to watch her eye, and that sort of thing, with the other. What do you say as to that, in reference to tetany ?—A. I think that was an hysterical manifestation.

Q. You remember that on one occasion it was explained by Dr. Thompson by a reference to limbs. On this occasion he explains that manifestation by saying that the tube must have been pressing against the carotid artery. Do you remember that ?—A. Yes.

Q. The carotid artery ?—A. Yes.

Q. And that the effect of the pressure of the tube against the carotid artery would be to cause a spasm. What is your opinion as to that ?—A. I think that is quite absurd.

Q. Will you just explain to His Honor and the jury the position there. We have got it that the tube pressed against the artery, and she has the spasm ?—A. In other words it was a Trousseau sign.

Q. Yes, they were his words. It pressed against the artery—the spasm occurs and it is gone. Will you give me your opinion as to that

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being a possibility or an explanation ?—A. Well, there are a number of objections to it which are quite fatal objections——(Objected to.)

His HONOR : Answer the question.

Mr. CASSIDY : Just explain the position as to the carotid artery ?—A. No, I prefer to take it another way.

Q. Yes, very well ?—A. I prefer to point out that if anybody has their blood pressure taken, a cuff is put around their arm and it takes a pressure of 120 milligrammes of mercury to obliterate the pulsation of the artery in the arm. If you have high blood pressure it may take 220 or 260, but in the normal person you put a cuff round a person's arm and you have to blow it up until you completely compress the brachial artery against the bone of the arm. Now, the blood pressure in the carotid artery is higher than the blood pressure in the artery in the arm. Therefore it would take greater pressure to compress the carotid artery than it would the brachial artery, the artery of the arm. Now, you have got to assume that a tube which is rubber and resilient has one end applied to the artery to compress it and the other end is in thin air or in thick pus, but it has no pivotal point on which it can push. To imagine that a tube can be pushed in an abscess cavity to a pressure sufficient to obliterate the carotid artery is childish.

Q. Supposing you wanted to compress it, what would you have to do to compress it sufficiently ?—A. I would have to put my thumb in and make digital pressure against the transverse processes of the sixth cervical vertebræ.

Q. That is in there somewhere (indicating) ?—A. Yes.

Q. Now, is there another thing as to the pressure—the spasm comes and it goes ?—A. Yes.

Q. Is there any other feature which shows the impossibility of that ?—A. Yes. There is anatomical reason, and that is that both carotid arteries and both vertebral arteries unite to make a vascular union at the base of the brain, and if one of them is blocked the circulation is carried on by the other three. In actual operations I have seen both common carotid arteries clamped and the operation go on quite well.

Q. That is what you call the collateral system there ?—A. Yes.

Q. Now, there is one other aspect. It has been said that this pressure is something that only lasted for a short time—the pressure was there and it went ?—A. Well, how could it ? It would have to be persistent.

Q. The pressure of your digit has to be a pressure that holds ?—A. Yes. (Objected to.)

Q. If the pressure is applied there it has to be hard ?—A. Yes. Something has to push the rubber tube on to the artery.

Q. And if one could imagine that what the doctor says is right, you have it there just while this spasm lasts, and then it is gone again ?—A. Yes.

Q. What do you say as to the possibility of watching the other eye go back—a person in that condition watching the other eye go back. What do you say as to that ?—A. Well, I think that it was an hysterical attack.

Mr. SHAND : You mean an altogether imaginary incident. Is that what that means ?—A. No.

Q. Well, I don't understand——

Mr. CASSIDY : Well, explain it to him ?—A. Well, these things can happen to people due to hysteria.

Mr. SHAND : So it may have happened ?—A. I agree that it may have happened as an hysterical phenomenon, but not as a happening of parathyroid tetany.

Mr. CASSIDY : It could not be due, you say, to an organic condition ? —A. No.

Q. Such as pressure on that carotid artery ?—A. Oh no.

Q. You told us earlier that thyrotoxicosis patients in a severe form were emotionally unstable, and you said you agree with the passage that serious charges may be made against individuals, and persisted in ?—A. Yes.

Q. I want you to listen to the list of these charges and to tell me whether a consideration of them enters into your diagnosis that there was hysteria in this case— —

Q. In September 1937 she says that Dr. Flynn severely burnt her with X-ray, when the other evidence is that no such incident occurred and (2) that the Quirindi Hospital was badly run, she was only allowed blue sago, and was not made a fuss of ?

Mr. SHAND : That is not the evidence.

Mr. CASSIDY : The evidence is : " I could not eat the blue sago, it was so blue and tough." (Objected to.)

Q. " I could not eat the hospital food. I could not eat the blue sago, it was so blue and tough, it was the colour, it was impossible to eat it. It was not the only food, but that was the bulk of the food." It goes on :—

" Q. That hospital at Quirindi is a very well run hospital is it not ?—A. It is supposed to be a little better now.

" Q. When did it start to get better ?—A. I do not know but it was very bad at that stage."

Now at the third trial . . . (Mr. Shand objects to " anything being read which is not evidence here." Mr. Cassidy says that he will put the Plaintiff back if necessary to ask the question.)

Q. At two previous trials she swore that the blue sago was the only food she had. (Objected to.)

(Mr. Shand takes the point that this evidence is not before this jury at this stage. Mr. Cassidy said he will ask for leave to put the Plaintiff back.)

Q. Well assume it were right. In this trial first of all she swears she could not eat the hospital food. " I could not eat the blue sago, it was so blue and tough, it was the colour, it was impossible to eat it. It was not the only food but that was the bulk of the food." It goes on :—

" Q. That hospital at Quirindi is a very well run hospital is it not ?—A. It is supposed to be a little better now.

" Q. When did it start to get better ?—A. I do not know but it was very bad at that stage.

" Q. You have been there on three different occasions ?—A. Yes.

" Q. And received the best of treatment there ?—A. No, I did not receive the best of treatment."

Assume also that she has also said that the only food she had there was blue sago, and she was not made a fuss of. (Objected to.)

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Q. The next thing is she felt something stick in her throat. She turned her head, something stuck in her throat, and the blood started to come down the front of her throat, when the evidence is no such thing—— (Objected to.)

Q. Well, assume that. Take the next charge, one against Dr. Bell, that he tore off a tube in the way shown by the sketch, that the piece which comes out is a piece where the rubber had been torn for a distance of nearly over 1 inch, and there came off in his hand a piece of irregular thing showing the torn portion and he pulled it out with very rough treatment and then threw it away without giving any dressing, that thereafter he made no attempt to recover it and that thereafter although he knew it was there according to her, he made no attempt to advise the local doctor, or himself do anything about it; next in St. Luke's in 1939 she was given cruel, cruel treatment, and something put in her drinking water, that she had milk, arrowroot, and arrowroot biscuits soaked in milk and a little porridge and milk, that that is all she had, that she could not eat the food and used to send it back to the kitchen; next, that Dr. Bell deliberately kept her from seeing Dr. Marsh so he could get the pus out of her throat, before Dr. Marsh saw her; that in 1941 she makes these charges against her husband; (1) that he was tampering with her food, attempting to poison her; (2) that he had drugged her and taken advantage of her under drug; and (3) that he had assaulted her. The next thing is Dr. Bell deliberately destroyed or withheld a letter which she wrote to him, that although she did not mention it before she now says that it was deliberately destroyed for some reason connected with this case. If those facts are untrue, having regard to the nature and gravity of the charges made there, do they assist you, with the other matters, in coming to a diagnosis as to the temperament of this woman?—A. There is no doubt the charges, such as a number of those charges, are hysterical in nature.

Q. Have you had experience, with your patients, of hysterics?—A. Yes.

Q. And of their capacity . . . ?—A. Oh, we all have.

(Short adjournment.)

Cross-examination.

Cross-Examined.

Mr. SHAND: I suppose you will agree that when you get a case of tetany arising from inflammation affecting the parathyroids, the blood supply to them, ordinarily the ordinary case gets lesser, better, you get post-operational tetany where the parathyroids are affected?—A. Yes, but that is not due to inflammation.

Q. Never?—A. Not as a rule.

Q. Never is the question?—A. The answer is not as a rule.

Q. It is sometimes?—A. Yes.

Q. As a rule when you get that condition it gets gradually better?—A. Which condition?

Q. The tetany arising from that post-operational interference by inflammation to the parathyroids?—A. Yes, as a rule it tends to get better.

Q. And I suppose you get, when it is bad, spasms?—A. Yes.

Q. And gradually, as conditions improve, I suppose at one stage in the improvement she has really latent tetany?—A. Maybe, yes.

Q. And then that disappears and the patient is completely cured. You were on terms of personal friendship with Dr. Bell ?—A. I have known him for 30 years.

Q. On terms of personal friendship ?—A. Yes.

Q. And I suppose you discussed this case with him in its minute details ?—A. Only since there was a threat of an action.

Q. Not from the time that she came down to St. Luke's on the second occasion, in October ?—A. Yes, possibly since then.

Q. What information did you have in your possession by the time that she had left St. Luke's on the second occasion, about this case ?—A. How do you mean ?

Q. Just what I say ?—A. I would like you to emphasise that a bit more.

Q. What was your information as to what happenings had gone on as to what the state of her health was, and what was supposed to have happened ?—A. What I was told had happened.

Q. Yes ?—A. I was told that a tube had ulcerated through a tonsil and that prior to that she had been doubled up like a ball for almost 24 hours ; and she felt something in her throat ; and there had been a discharge of pus from her throat ; and she felt something come into her throat, which she swallowed ; and from that moment she had no more tetany.

Q. That was to your knowledge ?—A. No, I would go farther than that and say this, that I had been given to understand that she had been keeping—that she had been admitted into Quirindi Hospital shortly after her return from Sydney, but she was complaining of certain symptoms there, and she was in Quirindi Hospital until June 1938 and subsequently she was at home, more or less an invalid.

Q. And that she had gone back to Quirindi Hospital ?—A. I think she did in September.

Q. And that was the information you had by the time that she left St. Luke's on the second occasion ?—A. That is so.

Q. You are framing your evidence as accurately as you can ?—A. Yes ; of course there is a lapse of time.

Q. I can realise there are some things you have forgotten, but what you have put forward you have put forward substantially correctly ?—A. Yes, that is so.

Q. Were you aware that unless Dr. Bell or Dr. Marsh had seen some indications in the left tonsil, no one, not the Plaintiff, and no one ever knew that anything was supposed to have erupted through the left tonsil at that time ?—A. I do not agree with that.

Q. Don't you ?—A. No.

Q. Why ?—A. Because I was informed, I think, by the patient herself that it had come from her tonsil.

Q. Do you know that, as Mr. Cassidy put it earlier, no one ever suggested—not even the Plaintiff—before the first trial, that anything had come from her left tonsil ; are you aware of that ?—A. I believe that is so.

Q. But nevertheless you were told, and told by Bell, something that was supposed to have erupted through the left tonsil ?—A. Or to have erupted into her throat.

Q. Through the left tonsil ? It is difficult, isn't it ?—A. Not a bit.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 23rd December 1943, Cross-examination, *continued.*

Q. Through the left tonsil ?—A. Not a bit.
Q. Through the left tonsil ?—A. Yes.
Q. That is right, is it not ?—A. That is so.
Q. And that is what Dr. Bell told you ?—A. No, I am not sure at all Bell told me.
Q. Who told you, you agreed a moment ago—(Objected to.)
Q. Will you swear that the Plaintiff told you ?—A. No.
Q. It was not the Plaintiff was it ?—A. I won't swear who told me.
Q. You know it was not the Plainiff ?—A. I do not.
Q. You have known all along that up to the first trial there was no suggestion that it had come through the left tonsil ?—A. That is so.
Q. If that is so, the Plaintiff could not have told you ?—A. I am not sure about that.
Q. If there had been no suggestion about it coming from the left tonsil, up to the first trial, the Plaintiff could not have told you at that time, in 1939, could she ?—A. Why not ?
Q. Will you agree that the Plaintiff could not have told you ?—A. No, I won't.
Q. Because there had been no suggestion of it; you remember that at every trial a point has been made the first time the Plaintiff ever mentioned the coming through the left tonsil was at the first trial, you know that ?—A. I think she may have said through the gullet.
Q. You have sworn through the left tonsil ?—A. No, I have not.
Q. Do you say you have not sworn it was through the left tonsil you were informed, do you say you have not already sworn that twice ?—A. I think I may have, yes.
Q. Do you remember me asking you whether you were careful to put forward what was correct, not that you may not have forgotten something ?—A. Yes, that is so.
Q. Do you remember me putting to you a second time, that it was through the left tonsil, the part just read out by the court reporter ?—A. Yes.
Q. And you agree. That is twice you have agreed. Do you wish to withdraw that ?—A. No, I am convinced that there was some talk about the tonsil.
Q. The left tonsil ?—A. The left tonsil, at the time that she came down to St. Lukes.
Q. After she came down, you mean, do you ?—A. I could not tell whether it was before or after; but at the time I am sure.
Q. Will you deny that it was Dr. Bell who told you ?—A. I do not know who told me.
Q. Will you deny that it was Dr. Bell who told you ?—A. No, I won't deny it.
Q. I suppose you realise the significance of it, if Dr. Bell told you ?—A. No.
Q. Don't you ? That no one before, not even the Plaintiff, had known what part of the throat it had come through; I can put it to you, the significance is : if Dr. Bell told you he must have seen it when he examined it. You see the significance now of what I am putting to you ?—A. Yes, I do.
Q. Now had you been told that she had had tetany spasms ?—A. Yes.
Q. During her stay at Quirindi Hospital ?—A. Yes.

Q. And after that ?—A. That is so.

Q. Who told you that ?—A. Well, I think Dr. Bell must have told me that.

Q. Had you been told that Dr. O'Hanlon had written down a letter ?—A. Yes.

Q. And what the contents of the letter were ?—A. At this length of time I do not know whether I saw any letters, but I was told about them.

Q. And that Dr. O'Hanlon had by his letter suggested that that was a real happening—were you told that ?—A. Are you referring to the tube ?

Q. Yes ?—A. Yes, that is so.

Q. Dr. O'Hanlon, according to him there appears to be a real happening, that is correct ?—A. Yes more or less.

Q. And I suppose Dr. Bell told you that O'Hanlon had put it that it was too realistic to be imagined ?—A. Yes.

Q. Would it be correct that Dr. Bell consulted you as to what he should do after he got that letter ?—A. We certainly talked about it.

Q. It was a pretty serious position—it appeared to be ?—A. It appeared as if it might be.

Q. What did you think was the best thing to do ?—A. The obvious thing to do was to bring her down to Sydney.

Q. For whose sake was that to be ?—A. For everybody's sake.

Q. For Dr. Bell's sake ?—A. Yes.

Q. And for his alone, you have sworn, have you not ? Do you remember swearing that ?—A. I qualified it.

Q. Perhaps you did in the next trial. Did you swear that it was for his sake, for Dr. Bell's sake—did you ?—A. I want to be quite frank with you——

Q. Just answer the question : did you swear that ?—A. I think I did, yes.

Q. Was that true ?—A. I think it was.

Q. So that it was not for her sake ?—A. It was for her sake as well.

Q. Was it ?—A. Yes.

Q. You are quite clear on that ?—A. Quite.

Q. Were you asked for this at page 525A of the second trial : " Did you not discuss with Dr. Bell the advisability of her coming down to Sydney ? "—and you answered, " Certainly " ? Then the question was : " And will you suggest it was for the patient's benefit, or for Dr. Bell's ? " and you answered, " Dr. Bell's "—no qualification ; is that true ?—A. That is what I swore, yes.

Q. Is that true ?—A. There was a qualification, it was not expressed.

Q. It was true as you swore it ?—A. I swore that, and that is perfectly correct ; but there was a qualification in my mind.

Q. There is no qualification there ?—A. No, there is not.

Q. It is not true, as you swore it there ?—A. That is so.

Q. You choose your words rather carefully, don't you ?—A. I try to.

Q. And that was a plain question, was it not—a plain question ?—A. Yes.

Q. " And will you suggest it was for the patient's benefit, or for Dr. Bell's—as plain as it could be made ?—A. Yes, quite plain.

Q. And if you had meant for both it would have been very easy to say " for both " ?—A. That is so.

Q. But you did not ?—A. That is so ; I thought the other was self-evident.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 23rd December 1943, Cross-examination, *continued.*

Q. Self-evident, when you are invited to say which it was, and you confine it to one—do you say that is self-evident ?—A. I should think so.

Q. Would you ?—A. Yes.

Q. I will put it to you again : " And will you suggest it was for the patient's benefit, or for Dr. Bell's ?—A. Dr. Bell." You say that that answer makes it self-evident that it was for Dr. Bell and for the patient ?—A. No, I did not say that answer said that.

Q. The answer said just the opposite ?—A. No, it does not.

Q. The answer says for Dr. Bell, meaning Dr. Bell only ?—A. It does not say Dr. Bell and not for the patient's sake.

Q. Don't let us play with words ?—A. That is what you are doing.

Q. You are asked : " For the patient's benefit, or for Dr. Bell's " ? There is no doubt about your meaning there, is there—no doubt at all ?—A. No, I would not agree with that ; I do agree that the meaning of that is perfectly clear, but I said Dr. Bell ; and the main thought in my mind was Dr. Bell.

Q. So that you had so little thought it was for her benefit that you did not think it worth while mentioning ?—A. No, I would not agree with that.

Q. The main thought in your mind was Dr. Bell ?—A. That is so.

Q. Of course, if this had been true, by some unfortunate accident a tube had been left there, the patient would have been deserving of a little consideration ?—A. That is so.

Q. I think you were telling me that you had heard that the Plaintiff was stated to have tetany spasms at the hospital up there and later at her home ?—A. That is so.

Q. And were the tetany spasms described to you ?—A. I have heard them described in court.

Q. No, by that time ?—A. No.

Q. You simply knew them described as tetany spasms ?—A. Yes.

Q. Of course you knew the history of the Plaintiff while she was in the hospital under Dr. Bell's care ?—A. Yes.

Q. And you have told us that when she left the sinus was discharging slightly ?—A. That is so.

Q. I suppose you heard that when she had gone back to Quirindi it had to be opened up again ?—A. Yes.

Q. And at the stage when she entered hospital up there it was discharging freely and inflamed ?—A. Yes.

Q. So that it was not, whatever be the cause, it was not the usual case, the usual sequilæ which follow thyroidectomy ?—A. No.

Q. It was something unusual ?—A. That is so.

Q. And it was unusual in its physical symptoms, in its physical indications, I am talking of the discharge and the swollen wound ?—A. Many wounds become infected.

Q. I am talking about the physical things at present, not the traumatic ?—A. Many operations——

Q. I am not discussing that at present. Then there was this history as you knew it then, a long history of tetany spasms covering a long space ?—A. Of what were called tetany spasms.

Q. And it would be correct to say that in your experience you have never known tetany to persist for anything like that time after thyroidectomy ?—A. No, that would be incorrect.

Q. Had you known it to persist in any cases—and I might want to know them later ?—A. Yes, sometimes it persists for years.

Q. In anything like this degree ?—A. I would have to consult the Sydney Hospital records to get them.

Q. You have no need to persist for years ?—A. That is so.

Q. That is the spasms ?—A. Spasms at intervals, yes.

Q. Would that be because the parathyroids had been removed ?—A. Yes, or damaged, or severely damaged.

Q. Am I correct in saying that you have known of no case of tetany which has been caused by merely inflammation round the parathyroids that would persist for that length of time ?—A. As a rule, post-operational parathyroid tetany lasts six weeks.

Q. So that this was an unusual case ?—A. If it was tetany, yes.

Q. Further than that, I suppose you had been told by Dr. Bell that the Plaintiff in the hospital had complained of tingling in the fingers, like cramps ?—A. That is so.

Q. So that was indicative of latent tetany ?—A. It might be. It occurs in a large number of things. It occurs in acute infections.

Q. With an operation to the thyroid, it is quite probable it would be ? A. I would not agree it was probable it would be, in the face of the temperature. She is running a high temperature—then she could quite easily get pins and needles quite apart from tetany.

Q. I suppose you were told by Dr. Bell that when she left he had given her calcium ?—A. I did not know that then.

Q. Did he not tell you that ?—A. No. I know it now.

Q. To you, that would be indicative that he suspected tetany ?—A. That is so.

Q. When did he first tell you that ?—A. I cannot say.

Q. Did you tell him that you had given her calcium—later on before the first trial did you tell him that you had also given her calcium ?—A. When ?

Q. Whenever you like—did you tell him before the first trial ?—A. Not that I am aware of.

Q. You are close friends ?—A. No, we are not close friends.

Q. Friends ?—A. We are on friendly relations.

Q. You have been discussing the case together at different times ?—A. Yes, but not very much.

Q. The facts of the case—the patient I mean—the facts concerning Mrs. Hocking ?—A. Prior to Mrs. Hocking's return to Sydney, and prior to the letter stating that she had an ulceration in her throat, I discussed the case very little indeed with Dr. Bell.

Q. No, I am asking about after she came to Sydney. I am taking it up to the first case ?—A. I see.

Q. You had discussed it considerably ?—A. Oh yes.

Q. And you had prescribed calcium glutinate for her ?—A. That is so.

Q. And you know now that he had prescribed it for her when she left St. Lukes on the first occasion ?—A. No—actually, in a letter Dr. Bell wrote quite early in the piece, I suggested that Dr. O'Hanlon substitute calcium glutinate for something else.

Q. We know that, but that was not the only occasion on which you prescribed it ?—A. No, I prescribed it for her in 1939.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 23rd December 1943, Cross-examination, *continued.*

Q. And although you were discussing the case together, this was the state of facts—on the one hand he did not tell you that he had prescribed calcium, while she was in St. Lukes and when she left ?—A. No.

Q. And on the other hand, you did not tell him that you had prescribed it in November 1939 ?—A. No, I am sure I did not tell him.

Q. Do you tell the jury that you did not know calcium was being prescribed in St. Lukes——

Mr. CASSIDY : What date do you suggest at St. Lukes ?

Mr. SHAND : I am not suggesting any date at present ?—A. No, I do not remember calcium being prescribed for her. I certainly did not prescribe it.

Q. On the very day that you were there—" Dr. Ritchie here, 12 April 1938. Lugol and calcium lactate tablets " ?—A. That would not be me.

Q. You were not consulted ?—A. No.

Q. You did not even know that ?—A. No, I did not know that.

Q. It is correct that tetany comes within the province of a physician more than a surgeon ?—A. I should think both.

Q. More of a physician than a surgeon ?—A. Probably it is.

Q. And you are a physician ?—A. Yes.

Q. Are you sure Dr. Bell never asked you about that ?—A. No, I do not remember anything about that.

Q. We have been told by Dr. Bell, and I think you expressed something the same, that you never thought it was tetany ?—A. That is so.

Q. Never at any time ?—A. No.

Q. That would be from the time you first heard of it ?—A. That is so.

Q. When did you first hear of it ?—A. I first heard of it—Dr. Bell met me in St. Lukes and told me he had a letter from Dr. O'Hanlon in which he said she was having tetany. I said : " I don't believe it."

Q. He told you Dr. O'Hanlon appeared to believe it ?—A. Oh yes.

Mr. CASSIDY : Getting back to the 12th April, Mr. Shand, you said to Dr. Ritchie did he not order calcium on the 12th—it says here : " Dr. Ritchie, no orders." That is the day report of the 12th April.

Mr. SHAND : I am sorry—I did not notice that.

Q. That is when you first heard of the allegation of tetany—some time shortly after Dr. O'Hanlon's letter ?—A. Yes. I cannot place it, but you could by the letter.

Q. You said you did not believe it ?—A. Yes.

Q. Did you form a firm opinion then ?—A. Yes, I formed a firm opinion.

Q. What did you form it on ?—A. I beg to correct that.

Q. Now, what is it ?—A. My opinion was then that it probably was not tetany.

Q. Why did you swear that you formed a firm opinion ?—A. I corrected it immediately.

Q. Why you corrected it was, because I asked you on what you founded it ?—A. No, it was not.

Q. You did not correct it until after I asked you on what you had founded that opinion—that is correct, is it not ?—A. That is so, yes.

Q. So you say now that you formed a strong suspicion ?—A. Yes.

Q. What was the strong suspicion founded on ?—A. On my estimation of the Plaintiff.

Q. What about it—on what estimation did you found it ?—A. She was a highly strung, neurotic, unstable type of woman.

Q. Anything more ?—A. No.

Q. And I suppose you know that neurotic, highly strung women can have tetany ?—A. That is so.

Q. You knew at this time that there had been some trouble at St. Lukes, with inflammation at one period ?—A. Yes.

Q. Which was something out of the usual ?—A. That is so.

Q. You knew that she had indications of latent tetany ?—A. No, I did not.

Q. You have just told us that Dr. Bell told you she had tingling of the fingers ?—A. Yes, but I do not agree——

Q. Well, consistent with latent tetany ?—A. Yes.

Q. You knew that her wound after she had been at St. Lukes had to be opened and her face and neck were swollen—you knew she had what Dr. O'Hanlon considered were facial spasms ?—A. Yes.

Q. You knew that Dr. O'Hanlon considered it was tetany, whether right or wrong ?—A. Yes.

Q. And yet on the one factor that she was a neurotic, highly strung woman, you formed a strong opinion that it was not tetany ?—A. That is so.

Q. Are you accustomed to diagnosing in that way ?—A. Sometimes.

Q. You have a high regard for Dr. O'Hanlon ?—A. Yes, I like him.

Q. You will agree that the man who is in attendance on the patient is in the best position to judge ?—A. Not always.

Q. A man who has a chance, for instance, of seeing tetany spasms and applying such tests as there are—the Chvostek, Trousseau or the Erbs—would have a better chance than a man who had only seen the woman once in conference, and a number of times when she was in hospital—you must agree with that ?—A. Yes, I would agree generally.

Q. But on that one thing, because she was highly strung and neurotic, although apparently her own doctor believed she had tetany, you formed a strong suspicion ?—A. That is so.

Q. You were asked before, were you not, on what basis you judged she was highly strung and neurotic, and you said she first of all came in to see you before she came into hospital ? You judged it on that interview ?—A. No—and subsequently in the hospital.

Q. Did you not confine it to that interview ?—A. I do not think so.

Q. What was there in the hospital—while we are just turning up what you said ?—A. She confirmed my opinion——

Q. How was she giving indications of being highly strung and neurotic ?—A. She was difficult and——

Q. How difficult—I want to know what that means ?—A. She had a great number of complaints.

Q. What were they ?—A. I cannot remember at this length of time.

Q. What kind of complaints ?—A. All sorts of complaints.

Q. About what ?—A. About the hospital and about her nurses and——

Q. Have you ever mentioned that before on any case ?—A. I do not know.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 23rd December 1943, Cross-examination, *continued.*

Q. I put to you that you have never suggested before that you ever heard of any complaints by her at the hospital ?—A. That may be so.

Q. Have you just thought of it ?—A. No.

Q. Can you imagine why you would not have put it forward in support of this highly neurotic—it must be a valuable thing to put forward ?—A. Well, no. This might serve—I strongly advised the patient not to go out of hospital, and I strongly advised Dr. Bell not to let her go out of hospital, because I thought with her type of temperament it was dangerous to let her go out with the wound still discharging.

Q. You have never put that reason before ?—A. Yes, I have.

Q. Wait until I finish—at any prior trial you have never put forward as being a reason for not letting her go out of hospital, that she was neurotic or highly strung ?—A. I should like to see what I did say

Q. My friend will be able to look it up——

Mr. CASSIDY : We will put his evidence in—that will save looking up.

Mr. SHAND : It is mentioned in the second trial, page 433—" Because she was neurotic and unbalanced I thought it unwise to leave the hospital "—I withdraw that suggestion. In what other ways did she show she was neurotic and highly strung ?—A. At this length of time I cannot remember details.

Q. This is the way you put it on the first occasion, page 152, about leaving the hospital—to your own counsel, Mr. Monahan :—

> " Q. Your view was that you would have preferred that she stopped a bit longer but she wanted to go and you could not see any actual objection ?—A. No, there was no profound objection."

You swore—" no profound objection "—yesterday is this what you swore ?

> " I advised her not to leave because she was a bundle of nerves, temperamental, and it was the greatest mistake for any doctor to allow such a woman to leave hospital with a wound unhealed " ?

—A. That is so.

Q. In the first trial you swore there was no profound objection—do you think they go well together ?—A. No, they do not exactly.

Q. Do you think this is funny ?—A. No.

Q. How do you reconcile—first of all you swore there was no profound objection, and then you swore it is the greatest mistake a doctor could make ?—A. I think in the first trial I understated it.

Q. What you said was wrong ?—A. It was understated.

Mr. CASSIDY : I object. I have to lead at a later stage when all this is forgotten. It becomes pointless when I get up to read " You also said."

His HONOR : Is not that necessary under cross-examination ?

Mr. CASSIDY : Very well.

Mr. SHAND : " Understated "—there was, according to you now, a profound objection ?—A. That is so.

Q. So what you said before was wrong ?—A. It was understated.

Q. It was wrong ?—A. I would not agree with that.

Q. You agree there was a profound objection, and you had previously sworn there was not a profound objection—they are direct opposites—what you said was wrong ?—A. That is so.

Q. How do you come to swear a wrong statement—how do you come to swear a wrong statement ?—A. It was not consciously wrong at the moment I swore it.

Q. But you were in conference with Dr. Bell's counsel, Mr. Monahan ?—A. Yes.

Q. And you went through these matters ?—A. That is so.

Q. Do you still say it was not consciously wrong ?—A. I certainly made a mistake when I said it.

Q. It was not the only mistake—it was perpetuated—page 152, a little above, a question by Dr. Bell's counsel :—

> " Q. As far as you could see and notwithstanding that fact (that the infection had not quite healed up) was there anything wrong in her going home ?—A. Well I advised her to stay a little longer as a matter of fact."

Again giving a wrong impression according to your evidence now—twice you made a mistake ?—A. That is so.

Q. I want to put to you, have you not brought that in now just the opposite to what you said before, because you wanted to put it forward as evidence that she was an unbalanced woman ?—A. No.

Q. Why did you make those two mistakes ?—A. I do not profess to explain that.

Q. You cannot explain it—A. No.

Q. Do you think you may have made a few similar ones this time ?—A. I may have, if you point them out to me.

Q. You regard this as a serious matter for the Plaintiff ?—A. Very serious.

Q. And a matter in which you will agree that a witness should not, if it can be avoided, make a mistake by stating what is the direct opposite to the truth, you agree with that ?—A. That is so, yes.

Q. When did you form this opinion that she was a neurotic, unbalanced woman ?—A. I originally formed it when I saw her in my rooms.

Q. Have you got your card there ?—A. No, it is in the port somewhere.

Mr. SHAND : Perhaps we could have a look at it ?

Mr. CASSIDY : It is not with us.

His HONOR : Was it put in at any other trial ?—A. Yes, somebody had it at the Bar table.

Q. You have not got it yourself ?—A. No, I never got it back.

(Search is made by Mr. Cassidy.)

Mr. SHAND : You formed it when you first saw her in your rooms before she went into St. Lukes ?—A. Yes.

Q. Did she say one single thing to you during the conversation that seemed unbalanced or wild ?—A. At this length of time I cannot remember one single detail of the conversation I had with her.

Q. You were able to remember it before. Do you suggest that she made one single statement that was wild ?—A. I am repeating the answer that I gave before, that I cannot remember one single detail of the conversation.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 23rd December 1943, Cross-examination, *continued.*

Q. Let me remind you of what you swore before, in the second trial, page 524 :—

" Q. I just wanted to know whether your examination would have entailed much conversation with her about her condition ?—A. Yes.

" Q. You still agree with that ?—A. Yes.

" Q. Why I asked you that was because you said from your examinations, you came to the conclusion that she was a very unbalanced and neurotic woman. Did she say anything to you in conversation which, for instance, led you to believe that she made wild, extravagant statements ?—A. One does not depend on what she says.

" Q. I did not ask you that, I asked you a simple question upon a statement you have made—did she make one statement that was a wild statement ?—A. No."

So apparently you could remember then ?—A. I should think that meant that I could not remember.

Q. Are you trying to do your best ?—A. Certainly—why not ?

Q. " Q. I asked you a simple question upon a statement you have made—did she make one statement that was a wild statement ?—A. No." Do you tell this jury that you were indicating you did not remember ?—A. No, I would not.

Q. Why did you a moment ago ?—A. Because I misunderstood it.

Q. It is a very simple question—how could you have misunderstood it when you heard me read out your answer, " No " ?—A. Because I did misunderstand it.

Q. What did you think I had read ?—A. I thought that " No " meant that I could not remember any specific example.

Q. How could you possibly have thought that on that ?—A. Well I did think so.

Q. Is that true, what I have read to you ?—A. I think so, yes.

Q. So at that time you did recollect that she had not made one wild statement ?—A. That is so.

Q. That is in August 1942. Then how was she neurotic or unbalanced, or whatever the expression may be—tell these gentlemen on what you founded that opinion ?—A. The diagnosis of being neurotic and unbalanced, does not depend only upon fantastic or funny answers to questions.

Q. You heard me read that out—I am giving you the whole area ?—A. It depends on the recognition of a type.

Q. What were the indications—what were you relying on ?—A. I relied upon all sorts of things which are impalpable and difficult to describe.

Q. Do your best—you have been describing a lot of things—give us the less difficult ones ?—A. Rapid pulse rate, tremulous hands, tremulous tongue, the general picture.

Q. The general picture does not tell us much—do you swear she had a tremulous tongue ?—A. Yes, I do.

Q. I suppose you noted these things ?—A. No, I made no note—at least I do not think so.

Q. Assuming for the moment that you saw these things, these are matters that all follow thyrotoxicosis of thyroid cases ?—A. That is so.

Q. They are the fundamental signs of it ?—A. Yes.

Q. And they can happen to a person who has not thyrotoxicosis ?—A. Actually the bulk of the people who have thyrotoxicosis are neurotic types.

Q. Don't you get complete recovery from thyrotoxicosis—from people who are not neurotic at all ?—A. Sometimes.

Q. So it does not always follow that they are neurotics ?—A. Not always.

Q. Do you tell the jury that because she was suffering from thyrotoxicosis and its indications, you concluded that because neurotic people are frequently unbalanced, she was unbalanced—is that the groundwork ?—A. That is in part the groundwork.

Q. What was the groundwork ?—A. The general picture—the way I sized the woman up.

Q. I want to know what the indications were ?—A. One cannot give the indications—if you say a certain man is a stolid type, you would be very hard put to it to say why he is stolid.

Q. You cannot give any further indications ?—A. No.

Q. Do you think she is a neurotic type now ?—A. I think she is an hysteric.

Q. And neurotic ?—A. Yes.

Q. And always has been ?—A. Always has been type, yes.

Q. And always has been subject, whether it be latent or patent, to hysteria ?—A. Yes.

Q. Have you seen her under cross-examination ?—A. Yes.

Q. You know that Dr. McGeorge, psychiatrist, and Dr. Arnott have been brought to court especially to watch her ?—A. Yes.

Q. You know that they have not given evidence after watching her ?—A. I did not know that they had been brought to court.

Q. You said "Yes" ?—A. No.

Q. Do you swear that you did not know that Dr. McGeorge was brought to court by Dr. Bell's representatives, sitting in the front seat to be able to watch her ?—A. I will swear that absolutely.

Q. Did you know he was in court ?—A. No.

(Relevant evidence read.)

Q. What is the meaning of this ? You swear "Yes," and now the opposite ?—A. And meaning "No."

Q. What is the reason for it ?—A. That I can——

Q. What is the reason for it ?—A. The reason for what ?

Q. For answering "Yes" and meaning "No" ?—Q. Purely a slip.

Q. Could you make a slip in an answer to a question like that ?—A. One can do those things. Perhaps you do not.

Q. How could you possibly ? It was a very plain question ?—A. Yes, it was.

Q. And it was a fairly long one. You were not puzzled on it ?—A. No.

Q. How did you come to swear what was not true ?—A. It was purely accidental.

Mr. CASSIDY: He said "conscious" yesterday when he meant "unconscious."

Mr. SHAND: This is "Yes" and "No." Which is it ?—A. The answer is "No."

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 23rd December 1943, Cross-examination, *continued.*

Q. Knew nothing about it ?—A. Nothing whatever.

Q. Have you observed her ?—A. No, I have not seen her. I have seen her in previous trials, not in this one.

Q. You have seen her also under cross-examination ?—A. In previous trials.

Q. Lengthy cross-examination ?—A. Yes.

Q. Tell these gentlemen what indications if any she gave of hysteria ? —A. She gave none.

Q. None at all ?—A. None at all.

Q. In fact, she appeared to be most collected, almost a stolid type ? —A. Well, she has had a thyroid operation.

Q. That is what you think may have cured her ?—A. Helped her.

Q. So she was not a real hysterical type ? She was only hysterical because of the thyroid ?—A. I said that the operation helped her. I did not say it cured her.

Q. Is that what you mean, that she was not the truly hysterical type ?—A. No, that is not what I mean.

Q. It helped her, greatly improved her ?—A. Yes.

Q. But it is a fact : once a hysteric, always a hysteric ?—A. That is so.

Q. And a hysterical person—it is a hereditary thing ?—A. Not necessarily.

Q. Is it not recognised as being hereditary ?—A. I did not say that. I said it was a hereditary factor.

Q. It is recognised as being a hereditary disease ?—A. It is a mixture of heredity and upbringing.

Q. And when you get hysteria, I put it to you you invariably find it in the forbears ?—A. I would not agree with that, no.

Q. Will you dispute it ?—A. Yes, I would.

Q. Will you agree that in practically all cases you find it in the forbears ?—A. No.

Q. Do you disagree ? Do you say that you do not usually ?—A. No, I say that in a certain number of cases——

Q. Usually ?—A. No.

Q. I invite you to produce any authority which suggests that it is not almost the invariable rule that you find it in the forbears, in other words it is hereditary. Can you produce any ?—A. Would you allow me to make an explanation ?

Q. You can make any explanation you like, but first of all can you produce any ?—A. I think so, yes.

Q. I am inviting you to do it. Produce authority which suggests that it is not almost invariably hereditary that you get in the forbears either pure hysteria or some marked form of neurosis ?—A. Now you are modifying it.

Q. Would you agree with that ?—A. No, I would not quite agree with that.

Q. What is the explanation you want to make ?—A. What I would say is that hysteria occurs most commonly in stocks whose ancestors have been neurotic, or neurasthenic, or psychopathic.

Q. And you will agree that, as expressed in that way, it is hereditary ? —A. Yes, the tendency is hereditary.

Q. Tetany is not ?—A. No. Hysterical cases might be.

Q. When the Plaintiff came down to St. Lukes, you thought it was not tetany. Did you consider applying any of the tests, whether the Chvostek, the Trousseau or the Erbs ?—A. I did not even actually apply those tests to a hysterical tetany. They will give the tests.

His HONOR : They would give responses ?—A. Yes.

Q. You did not apply them because you would get the same responses ?

Mr. SHAND : The answers ?—A. Not necessarily the Erbs test.

Q. The Erbs is recognised as a definite test ?—A. As a matter of fact none of them are necessarily diagnostic of tetany.

Q. The Erbs is recognised as a definite test between hysteria and tetany ?—A. Well——

Q. Answer the question. It is recognised as a definite test between hysteria and tetany ?—A. It is the best of the three.

Q. Why did not you try it ?—A. Because I have not the mechanisms to try it.

Q. Do you suggest you could not get it in Sydney ?—A. You could send her and get it done probably.

Q. This was very important for Dr. Bell to establish whether it was tetany or hysterics. It was very important to establish whether it was hysterical tetany or just plain tetany, was it not, in your opinion ?—A. No. (Objected to.)

Q. You were maintaining here all along that this was not true tetany, it was hysteria ?—A. That is so, hysterical tetany.

Q. Dr. Bell was maintaining that it was anyway originally. Do you agree with that ?—A. Yes, it might be.

Q. Extending for some time. You were very interested in protecting Dr. Bell against an unjust claim ?—A. There was no claim made then.

Q. The possibility of an unjust claim, weren't you ?—A. Yes, that is so.

Q. The Erbs test might have indicated whether this was hysteria or hysterical tetany or true tetany ?—A. It might have.

Q. But you never suggested applying it ?—A. That is so.

Q. I am putting it to you that you knew in your own mind from Dr. O'Hanlon's letter of the history you had got of this tube being in there ?—A. No.

Q. Why not apply the test——

Mr. CASSIDY : What has that got to do with it ?

WITNESS : What has that got to do with the tube being there ?

Mr. SHAND : You heard what Mr. Cassidy said ?—A. Yes.

Q. You cannot see what it has got to do with it ? The difference between this, if she had true tetany and if she had only hysterical tetany. You cannot see what that has got to do with it ?—A. With what ?

Q. With the tube, do you swear that ?—A. Actually——

Q. Do you answer that you cannot see what it has got to do with it ?—A. Yes, I can see.

Q. Why did you ask me a moment ago " What has it got to do with it " if you could see what it had to do with it ? Why did you ask me, take my friend's cue and say " What has that got to do with it " when you knew what it had to do with it ?—A. I still do not understand you.

(Relevant evidence read.)

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 23rd December 1943, Cross-examination, *continued.*

Q. You followed my friend's cue?—A. Yes.

Q. And you just admitted to me that you know the significance it has with regard to the tube being there. Why did you adopt my friend's suggestion?—A. In what particular way?

Q. I just want the truth?—A. I am sure you do.

Q. What is it?—A. Actually hysterical tetany can arise in relationship to an inflamed and septic abscess just as real tetany can.

Q. That is not my question. You have already said you know what the significance is about the distinction between these two?—A. No.

(Relevant evidence read.)

Q. You can see and yet you have just sworn a moment ago that you cannot see what it has got to do with it. Which is it, that you can see what it has got to do with it, or that you cannot see what it has got to do with it, the tube being there? Which is it?—A. I should say this——

Q. Which is it? (Objected to.) (Question read.) Which is it, that you can see, or cannot see?—A. I cannot see.

Q. Why did you swear that you could see——

Mr. CASSIDY: Now he is entitled to give his explanation.

Mr. SHAND: What is your explanation? Give any explanation you like and I will come back to the question again?—A. Actually a person can have a severe inflammation in the throat, and in the thyroid capsule, and they may either get real tetany or they may get hysterical tetany.

Q. Is that all you want to say?——

Q. Why did you swear that you could see what it had to do with it?—A. That is the answer.

Q. What is it? You can see what it has to do with it or you cannot see what it has to do with it?—A. I cannot see what it has to do with it.

Q. Why did you swear that you could see what it had to do with it? This is not a laughing matter. You are treating it apparently lightly?—A. No.

Q. You are smiling. Why did you swear that you could see what it had to do with it when you now say you cannot see?—A. Well, I made a mistake.

Q. That is another mistake?—A. Yes.

(Luncheon adjournment.)

At 2 p.m.

Mr. SHAND: When you say now that Mrs. Hocking was brought down largely for Dr. Bell's benefit but also for hers—it was not altogether his but partly hers?—A. Yes, partly hers.

Q. How was it going to benefit her?—A. If such a serious accident had befallen her she could be better looked after here than in Quirindi.

Q. So you did contemplate the possibility that there had been an accident with the tube?—A. I thought it was a possibility—it was alleged to be so.

Q. So you did contemplate the possibility?—A. A remote possibility.

Q. And what you had been told, I am not suggesting in the exact words, was in effect that a piece of rubber tube cut in a certain way, one end being ragged, had, following a tetanic spasm, been passed—roughly, I mean, I am not suggesting they are the full details?—A. Yes.

Q. I am reading parts of Dr. O'Hanlon's letter—did you see the letter ?—A. I have seen it.

Q. Did you see it when it came down ?—A. No.

Q. You were told about the contents ?—A. Yes.

Q. I take it you were told in effect, I am not asking you the exact words, but she had complained of pain in the neck which was swollen, something to that effect ?—A. Yes, I think so.

Q. And that she had a bowel action and had passed a rubber tube ?—A. Yes, that is so.

Q. And stuck in the lumen of the tube was what she took to be a small piece of marine sponge about which was twisted a piece of wire ?—A. Yes.

Q. And did you see the sketch ?—A. I think I saw the sketch at the trial.

Q. Did you see the sketch the first time Dr. Bell discussed the matter ?—A. No.

Q. I suppose he told you there was a sketch ?—A. I cannot remember that.

Q. And I suppose you were told, without these being the exact words, that Dr. O'Hanlon had inquired if a foreign body had remained in the neck the whole of the time could that be a possible cause of tetany ? A. No, I don't remember that. Is that in the letter ?

Q. Yes. "Could we now expect an improvement in the general condition ?" Do you remember Dr. Bell telling you that Dr. O'Hanlon had queried whether her condition might not get better ?—A. I can't remember that.

Q. Anyway, you were told about a tube which was supposed to have passed through some part of the throat and been discharged in the bowel action ?—A. That is so.

Q. And you thought that was a remote possibility ?—A. Very remote.

Q. And was that the only benefit she would get, I mean what exactly would be the benefit in that remote possibility ?—A. Conceding anything had ulcerated through which was, in my opinion, extremely unlikely, in fact highly improbable, that serious damage would be done at the point of exit and she could be better treated for that in Sydney than in Quirindi.

Q. Of course in the event of that what you call remote possibility, it would be necessary to get her down at once, wouldn't it, as soon as possible ?—A. As soon as she was able to travel.

Q. You saw the letter that Dr. Bell wrote to her ?—A. I don't remember it.

Q. You see, Dr. O'Hanlon had written down a letter dated 7th October, Mrs. Hocking had written to Dr. Bell on the 11th October, and in Dr. Bell's letter in reply to Mrs. Hocking he says that he saw you during the week, so it appears to be after he got her letter she saw you ?—A. I don't know.

Q. I suppose he told you that he got a letter from her ?—A. I don't remember.

Q. Well, let me remind you whether he showed you the letter or told you the effect of it. Do you remember him telling you that she had written down referring to a piece of drain tube which she said had been left in her neck ?—A. I don't remember that.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 23rd December 1943, Cross-examination, *continued.*

Q. I will read this letter to you from Dr. Bell, and I want to know whether you are prepared to admit or deny that you saw it before it went. "Dear Mrs. Hocking, I am sorry to learn that you have been ill again. I had a letter from Dr. O'Hanlon and I spoke to him by telephone on 13th October. It is difficult to explain your last illness and the 'piece of drain tube' which you say passed by the bowel. I saw Dr. Ritchie during the week. I think you should come to Sydney for a medical investigation in order to see if we can advise some medical treatment to improve your health." ?—A. I do not concede I saw that letter and I did not know it had gone.

Q. Didn't he tell you apart from the contents that he had written to her ?—A. He may have, but I don't remember.

Q. I suppose you learned that she was coming down before she came ?—A. Yes.

Q. You have told us the only benefit it could be to Mrs. Hocking, you thought, was a very remote possibility of any benefit at all ?—A. That is so.

Q. You said you thought there was a remote possibility of the tube coming through as suggested ?—A. Did I say "remote" or "very remote" ?

Q. Whatever it was, I want to be sure about that. Of course, if it had not come through there would not have been any benefit for her ?—A. I would not say that.

Q. Well, was there ? I am inviting you to tell us any benefit she would have ?—A. Because she was complaining of very profound ill-health and I thought she would be better in Sydney on general grounds.

Q. General for her health ?—A. Yes.

Q. Did you have anything in mind ?—A. No.

Q. Not hysteria, for instance ?—A. Yes, that certainly was in my mind.

Q. I asked you if you had anything in your mind and you said "No." I established that if your evidence is correct that that would have been the first thing you would have had in your mind, wouldn't it ?—A. That certainly was in my mind.

Q. Would not that be the first thing ?—A. Yes, it would be.

Q. You forgot to tell the court what was the first thing that was in your mind ?—A. I omitted to do it.

Q. Is that because you forgot ?—A. No, it was not.

Q. Why didn't you mention it ?—A. It was because you were firing questions at me so quickly.

Q. Really ?—A. Yes, that is so.

Q. You said on general grounds, I asked you if you had any in mind, and you said "No". Do you suggest I was firing questions at you quickly ?—A. Yes.

Q. And that is the reason why you failed to mention the matter that was foremost in your mind ?—A. Yes.

Q. When she came down did she have hysteria in your opinion ?—A. I think she still is hysterical.

Q. I did not ask you that. When she came down did she have hysteria ?—A. Yes.

Q. Did you give her any treatment for hysteria ? (No answer.)

Q. Did you give her any treatment for hysteria ?—A. She had some sedatives.

Q. Any treatment, as you know it as a physician, for hysteria ?—A. Yes, she had some sedatives.

Q. Nothing else ?—A. That is all.

Q. Is that all you give for hysteria ?—A. There are no specific drugs.

Q. Is that all that you give for hysteria ?—A. That plus a verbal suggestion.

Q. Did you give her any verbal suggestion ?—A. No, I did not.

Q. What you have for nervous patients is quietness and seclusion ?—A. Sometimes.

Q. And you advise them that they should take life easily ?—A. Not necessarily, no.

Q. Well, generally ?—A. Yes, very often.

Q. And they should not over-exert themselves ?—A. Yes, up to a point.

Q. Rest themselves as much as is reasonably possible. Did you give any of that advice to Mrs. Hocking ?—A. At this particular moment I cannot exactly recall what I have said to Mrs. Hocking.

Q. Didn't you say a moment ago that you did not give her verbal suggestion ?—A. No, I did not give suggestion, verbal treatment, which is a specific method of treating hysteria.

Q. Do you suggest that you gave her any of this suggestion which I put to you ?—A. I thought she was fairly well and I advised her to go to the seaside.

Q. You advised her to go ?—A. Yes.

Q. Anything else ?—A. And we gave her sedatives.

Q. That is all ?—A. And she was given some treatment, inhalation for her throat, I did not give her that.

Q. That is not for hysteria, is it ?—A. No.

Q. So all she had for hysteria was sedatives and advice to go to the seaside ?—A. That is so.

Q. You got her down partly for her own benefit ?—A. That is so.

Q. Now, one of the matters you said, and I suppose it would affect Dr. Bell and herself, is whether something had come through the throat ?—A. Would you repeat that again ?

Q. One of the matters, and I suppose it would affect both Dr. Bell and herself, is whether something had come through her throat ?—A. That is so, yes.

Q. And when you got her down you never examined her throat, did you ?—A. I did.

Q. Did you ?—A. I did.

Q. First of all you always examine a patient in the presence of a sister, don't you ?—A. No.

Q. Don't you ?—A. No.

Q. Sometimes you examine in the absence of a sister ?—A. Yes. (Hospital records handed to witness.)

Q. You will notice on the 26th that it states : " Dr. Ritchie here, will examine the patient to-morrow " ?—A. Yes.

Q. You will agree that you did not examine her on the 26th ?—A. I am sure I did not examine her on the first day she came in.

Q. That is the 26th ?—A. No, I am sure of that.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 23rd December 1943. Cross-examination, *continued.*

Q. But you would not examine a patient without a sister, would you ?—A. Yes, I have often done so.

Q. Is that quite unusual ?—A. It is not uncommon.

Q. Anyhow, it is your experience that you do ?—A. Yes.

Q. Will you explain your evidence given in the first trial, at page 158, line 45 :—

"Q. I suppose this is accurate. Any time you were there a sister was present with you ?—A. Yes, I think so.

"Q. You would not go in and examine a patient without a sister ?—A. No." ?

What about that ?—A. Well, I don't think that that was quite accurate.

Q. It was totally inaccurate, wasn't it, on your present evidence ?—A. It is inaccurate, yes.

Q. Totally inaccurate ?—A. No, I disagree with the "totally."

Q. "You would not go in and examine a patient without a sister," and your answer was "No." Will you deny that on your present answer that is totally inaccurate—totally, isn't it ?—A. Yes, I think it is.

Q. That is not the first time——(Objected to.)

Q. How did you come to make that totally inaccurate answer ?—A. It is very hard to say; because as a general rule I would see a patient in company with a nurse.

Q. But this is not as a general rule—"You would not go in and examine a patient without a sister," and your answer was "No." That does not come in the general rule, does it—with exceptions ?—A. That original statement was inaccurate, and I have often done so.

Q. That is not the first time. How did you come to make that totally inaccurate statement ? Can you explain it ?—A. I was speaking generally.

Q. You say you were speaking generally ?—A. Yes.

Q. It was being put to you, wasn't it, at the time, that the hospital records disclosed no evidence of your examining Mrs. Hocking's throat ? That is what was being put to you, wasn't it ?—A. I don't remember.

Q. Don't you ?—A. No.

Q. Well, listen to the context. I will read a little before—line 40 :—

"Q. Can you tell the jury what day or days you actually saw Mrs. Hocking when she was in St. Lukes Hospital the second time ?—A. No, I could not.

"Q. You kept no records yourself ?—A. No.

"Q. I suppose this is accurate, any time you were there a sister was present with you ?—A. Yes, I think so".

That is any time you were there ?—A. Yes, I think so.

Q. "You would not go in and examine a patient without a sister," and your answer was "No." What are you reading there ?—A. This is your report (indicating), what you are reading.

Q. Is that your evidence ?—A. No, the hospital records.

Q. I am reading your evidence. Then it goes on :—

"Q. We have got the records of St. Luke's Hospital. How many times do you say you saw the patient ?—A. Two or three.

"Q. If there is no record in the St. Luke's records about you ever having made one examination of Mrs. Hocking, would you say they are wrong ?—A. Yes."

So it was quite clear you were examining Mrs. Hocking ?—A. Yes.

Q. And in answer to questions appearing on that subject, that you would not go in to examine the patient without a sister, that was quite clear to you, what the context was ?—A. That is so, yes.

Q. And you did not qualify it as you are doing now ?—A. No.

Q. You would be alive to what was the purpose ?—A. Yes, I think I would.

Q. Well then, how was it that if it is true that you do at times go in without a nurse, how was it that you made that answer ?—A. Because in the great majority of times I do go in with a nurse.

Q. But you were not being asked about the great majority ?—A. But that is the qualification I make.

Q. You make it now, but you did not make it before ?—A. No, I did not make it before, but I do make it now.

Q. Why didn't you make it before ?—A. It never occurred to me.

Q. Although you knew why you were being questioned ?—A. Actually these reports are all incomplete.

Q. I am not asking you that. Can you explain why you gave that totally incorrect answer ?—A. It is not a totally incorrect answer.

Q. Well, you have sworn already that it was ?—A. It is not.

Q. You have sworn that it was a totally incorrect answer ?—A. My statement is——

Q. One thing at a time. You have sworn that it was a totally incorrect answer. Do you wish to withdraw that ?—A. It is incorrect in one sense.

Q. Totally incorrect ?—A. It is only incorrect in one sense.

Q. Do you want to withdraw what you swore, that it was a totally incorrect answer ?—A. I don't want to withdraw anything.

Q. Well then, it was a totally inaccurate answer. That is the position ?—A. No.

Q. Well, do you want to withdraw it or not ?—A. No; I want to qualify it.

Q. Well, I suppose that you want to withdraw it ?—A. No; a qualification and a withdrawal are not the same.

Q. Well, can you explain how you came to give what was an unqualified answer when it should have been qualified ?—A. No.

Q. You cannot ?—A. No.

Q. Well, will you agree with me now that it would be improbable that you would see her without a sister or nurse ?—A. It might be.

Q. Would it be improbable ?—A. On the whole, I think, yes.

Q. Well, now, just let us have a look at these incomplete reports that my friend has been putting forward ? (Objected to by Mr. Cassidy.)

Q. We will have a look at them. On the 26th you admit that you did not examine her ?—A. Yes, that is right.

Q. Why not ? Why didn't you examine her then ?—A. I could not tell you why. I was agreeably surprised to see how well she was.

Q. I suppose that this curious state of facts which you did not believe, which you thought very improbable, and facts which, if true, reflected on the care of Dr. Bell—you would have been anxious, I suppose, at the first opportunity to have a look ?—A. I cannot remember the circumstances as to why I did not examine her. I might have been in a hurry. All I know is that she looked surprisingly well.

Q. We will look at the next day, the 27th, day report—"Dr. Ritchie inquired." Do you suggest that you examined her then ?—A. I could not tell you.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 23rd December 1943. Cross-examination, *continued.*

Q. Well, that does not appear to indicate it, does it?—A. No, it does not.

Q. And you will have noticed no doubt that on examinations—for instance, on the 26th, the day report had reference to an examination by Dr. Bell—"Examined chest, back and neck," and various other examinations are reported. You have been through these (indicating) I suppose, pretty carefully?—A. Not recently, no.

Q. But you have been through them, haven't you?—A. Yes.

Q. The next time your name is mentioned, on the 28th—the next day——

His HONOR: I see here that they give a day report, evening report and a night report—three reports on the one day.

Mr. SHAND: Yes, I understand that there was some new system then.

Q. Day report, 28th—"Dr. Ritchie here, no orders." No record of an examination?—A. No. (Objected to.)

Q. And the 2nd November, day report—"Please get Dr. Ritchie to see patient"?—A. Yes.

Q. So there is no record of any examination by you?—A. That is so, yes.

Q. Now, will you admit that you did not examine her?—A. No.

Q. Do you assert that you did examine her?—A. I assert that I did examine her.

Q. And you are clear on that?—A. Yes, I am quite clear.

Q. It is not a matter of recollection?—A. No, I am quite clear.

Q. You just told these gentlemen what you found—slight tonsilitis?—A. Yes.

Q. Did you make any notes?—A. No, I never make notes.

Q. But this is a matter of some importance?—A. I made no notes.

Q. Now you have pledged your recollection that you did see her, and you have described what you saw?—A. Yes.

Q. Now, this is on page 159 of the first trial. Various notes that I have put to you were put to you:—

> "Q. The first note on the first day is 'Will examine patient to-morrow,' and all we have on the morrow is 'Dr. Ritchie inquired'?—A. Yes.
>
> "Q. In the face of that do you pledge your recollection that you did examine her?—A. No, but the record does not say I did not examine her."

So you would not pledge your recollection on the first trial that you did examine her? (Objected to.)

Q. You would not pledge your recollection that you did examine her?—A. Now go on.

Q. What do you want?—A. Isn't there any more that I examined her later?

Q. This covers not merely the first day as my friend suggested——

Mr. CASSIDY: Read it.

Mr. SHAND: I will read it.

Q. This is at page 159 of the first trial :—

" Q. The first record here is the 26th October where the nurse records ' Dr. Ritchie here in the afternoon, will examine patient to-morrow ' ?—A. Yes.

" Q. And on the 27th the note about you is ' Blood test done. Dr. Ritchie inquired.' It does not show you were present at all. It is consistent with your being and making an inquiry and consistent with your ringing up ?—A. Yes, but I am in there every day.

" Q. The first note on the first day is ' Will examine patient to-morrow ' and all we have on the morrow is ' Dr. Ritchie inquired ' ? —A. Yes.

" Q. In the face of that do you pledge your recollection that you did examine her ?—A. No, but the record does not say I did not examine her."

What about that ?—A. How does it go on from there ?

Q. " Have you looked at the record ? " Your answer was——

His HONOR : No, that is a question, isn't it ?

Mr. SHAND : This is what the transcript says :—

" Q. Have you looked at the record ? There is nothing there to inform you whether you in fact examined or did not ?—A. There is nothing in the record to say whether I did or not.

" Q. And you have no notes ?—A. No.

" Q. You came into the hospital to see Mrs. Hocking on the second day of her arrival there and I suggest you said then to her you did not wish to hear anything about the matter. Will you dispute that statement ? "

By the way, will you dispute it ?—A. Yes.

Q. Do you dispute that when you came in you sat on a chair and put your hand like that (indicating) and said " I don't want to hear anything about the matter " ?—A. Yes, I do dispute that completely. I deny it.

Q. You could not forget that ?—A. I deny it.

Q. You could not forget it ?—A. No.

Q. If that happened you could not forget it ?—A. I could not forget it.

Q. That would be rather an unusual thing to do—" I don't want to know anything about it " ?—A. Yes.

Q. You could not forget it ?—A. No.

Q. You were asked : " Will you dispute that statement ? You sat down on a chair and put your hand up and said ' I don't want to hear anything about the matter,' looked at her and went away," and your answer was : " I have no memory of that at all." " I have no memory of it " ? —A. That is another way of saying——

Q. Is that another way of saying " I absolutely deny it " ?—A. More or less, yes.

Q. But it would be less, wouldn't it ?—A. I would not think so.

Q. But that is a most striking thing that should be put to you that you should hold up your hand and say " I don't want to hear anything more about it " ?—A. Yes.

Q. And I suppose it is a matter that you could have denied forthwith and said " Certainly not " ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 23rd December 1943, Cross-examination, *continued.*

Q. Well, how was it that you simply said "I have no memory of that at all" ?—A. Because I am not at home in the witness box, I presume.

Q. But you have been in a lot, doctor ?—A. Not very much.

Q. Well, let me read the next two questions :—

"Q. I suggest to you as a medical man you did not want to discuss with Mrs. Hocking anything that might reflect on a brother professional man ?—A. No, that is not it.

"Q. Is not that the attitude you took up ?—A. No, I don't think so."

Now, I want to put it to you, will you agree that you would not pledge your recollection in this trial that you examined Mrs. Hocking ?—A. Say that again.

Q. Will you agree that in this first trial you would not pledge your recollection that you had examined Mrs. Hocking ?—A. If you read the answer again I will answer the question.

Q. "In the face of that, do you pledge your recollection that you did examine her," and your answer was "No, but the record does not say I did not examine her" ?—A. That would seem so, yes.

Q. Yet you are able to swear definitely now that you saw her, and you described to these gentlemen what you saw ?—A. Yes, that is so. (Objected to.)

Q. You were examined in chief before by Dr. Bell's counsel ?—A. Yes.

Q. This is what you were asked by your own counsel : "You saw her when she came back to St. Luke's Hospital towards the end of October 1939 ?—A. Yes. Q. Did you examine her then pretty thoroughly ?—A. I made an examination of her throat. Q. What did you find as to the condition of her mouth and throat ?—A. There was very little wrong with it, she had mild tonsilitis on the left side. That would be apt to cause bad breath and offensive breath" ?—A. Yes.

Q. When it was put to you in cross-examination later on that there was no record of you having examined her, you were asked whether you would pledge your recollection as to whether you did examine her, and you said "No." After you were faced with the hospital records you were not willing to pledge your recollection that you had seen her. That is clear, is it not ?—A. But may I point this out first——

Q. But is that not clear that after you were faced with the hospital records you would not pledge your recollection ?—A. No, I would not agree with that.

Q. When I read that out to you a moment ago, I put it to you you would not pledge your recollection on that trial, did not you say : "Yes, it looks like it" ?—A. What do you mean ?

Q. This passage looks as if you would not pledge your recollection ?—A. Oh yes, that is so.

Q. And that is correct, is it not ?—A. That is so.

Q. On the first trial you were not willing to pledge your recollection, but you are now ?—A. Yes.

Q. Why the improvement ? Why do you become more definite now ?—A. Because I have thought more about it.

Q. It would be fresher in your memory then ?—A. Yes, it would be, but I would like to point out now, if I may, in these hospital reports there is no record of Dr. Marsh having examined her.

Q. You said this morning the first time you heard of these tetany spasms was after the letter came down from Dr. O'Hanlon ?—A. Early in 1938.

Q. It was early in 1938 you heard ?—A. Yes.

Q. And you all along thought it was not tetany ?—A. That is so.

Q. I suppose you had heard early in 1938—do you remember Mr. Hocking had written down to Dr. Bell ?—A. No, I do not remember that.

Q. Do you remember Dr. Bell telling you that he had had a communication to the effect that her body had been swollen and the tetany was annoying ?—A. I do not remember that.

Q. What did you hear ?—A. The only thing I have any distinct memory of is a letter from Dr. O'Hanlon to Dr. Bell which I did not see, in which Dr. Bell told me that Dr. O'Hanlon thought she was having tetanic spasms.

Q. That is not the last one ?—A. No, I think it was quite early in 1938.

Q. We have such a letter of the 10th May, 1938 : " However, I think the tetany is worse." It says a lot more than that, but he mentions that. Before that letter I put it to you, you had heard of it ?—A. If so I have no memory of it.

Q. But at any rate whatever you heard you did not think it was tetany ?—A. No.

Q. Did you prescribe for tetany ?—A. No, I did not, but may I explain ?

Q. You may later. Did you suggest that she should take calcium glucinate ?—A. I did, and this is the explanation : When Dr. Bell told me that Dr. O'Hanlon had said she had symptoms of tetany and that he was giving her calcium chloride and calcium lactate I said, " I don't think she has got tetany but if he wants to give her calcium, give her calcium glucinate which won't upset her stomach."

Q. That was when Dr. Bell told you that ?—A. Yes.

Q. He told you that Dr. O'Hanlon was giving her what ?—A. Calcium lactate or chloride.

Q. Won't you admit it is entirely wrong ? By the time you have prescribed calcium glucinate Dr. Bell had never heard from Dr. O'Hanlon ?—A. That is not true.

Q. Have a look at these letters. I invite your attention first of all to the letter of the 10th May. Look at this document. You will agree that is the first letter sent by Dr. O'Hanlon, as appears on the face of it. It says : " Many thanks for your letter in reference to Mrs. Hocking . . . after her return." You see that at the very beginning of the letter ?—A. Yes.

Q. You will see that it is internal evidence, it is the first communication of Dr. O'Hanlon that he did not know anything of it ?—A. That is so.

Q. Have a look now at Dr. Bell's letter of the 4th May, dated six days before, to Mr. Hocking : " I was talking to Dr. Ritchie to-day . . . calcium glucinate " ?—A. That is so.

Q. Will you now agree that you had recommended calcium glucinate before you had ever heard what Dr. O'Hanlon was doing ?—A. That is so. yes.

Q. So you are wrong ?—A. That is right.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 23rd December 1943, Cross-examination, *continued.*

Q. Why did you give her calcium glucinate? Your other answer does not work?—A. She was apparently taking calcium from Dr. Bell. Dr. Bell told me she was having calcium. I said: "If you are going to give her calcium give her calcium glucinate."

Q. You swore this morning that Dr. Bell did not tell you?—A. I do not remember.

Q. I asked you whether he had given her calcium at St. Luke's and when she left?—A. It suggests so.

Q. So you were wrong this morning?—A. I do not know.

Q. We have the notes. If you said that this morning you were wrong. How did you come to swear this morning that you did not know? I put it to you you were friends, discussed the case at a later date, and yet you did not learn from Dr. Bell that he had prescribed calcium glucinate, I mean calcium, and you did not tell him. I put that to you this morning, do you remember?—A. I believe so, yes.

Q. How did it come about? You now say you must have heard from Dr. Bell that he was giving her calcium?—A. Yes, that is the answer, I must have heard from Dr. Bell.

Q. Why the answer this morning?—A. I thought the first reference to the giving of calcium was in that letter, but my memory was at fault.

Q. You were very definite this morning that you had not heard of that?—A. I do not know, I would like to hear what I said.

Q. You did hear that Dr. Bell was giving her calcium, you say. Why should you suggest it, calcium glucinate?—A. I am suggesting the glucinate rather than the chloride or lactate because it is less liable to upset her stomach.

Q. But it would be better she did not have any of these things?—A. No, because calcium is a nerve sedative.

Q. Do you suggest you gave it as a nerve sedative?—A. I thought it would do no harm and might do good.

Q. Do you suggest you gave it as a nerve sedative?—A. I did not give it. I suggested an alteration in the form.

Q. Was the suggestion of alteration only as a nerve sedative?—A. I would not have given her calcium.

Q. Was the suggested alteration only because of a nerve sedative?—A. No, because less liable to upset her stomach.

Q. Do you say it was not for tetany?—A. I would not have prescribed it for her tetany, but Dr. Bell prescribed it.

Q. Did not you have tetany in mind?—A. No.

Q. Not even the possibility of it?—A. No.

Q. Dr. Bell thought it was tetany?—A. No, I do not think so. I think he thought it might be.

Q. Do you know what Dr. Bell has sworn?—A. No.

Q. That up to a certain stage——(Objected to; question withdrawn.)

Q. You say Dr. Bell only thought it might be tetany?—A. Yes.

Q. Did he express doubts to you?—A. He did not make a definite diagnosis of tetany.

Q. Did he suggest doubts to you?—A. I cannot remember what the exact phraseology of our conversation was five years ago.

Q. Not the exact phraseology?—A. But what I am trying to put to you is this: Dr. Bell thought to be on the safe side he would give her some calcium.

Q. Is that the way he put it ?—A. It may not have been the way he put it but it was the sense of how he put it.

Q. He did not convey to you the impression that he really and genuinely believed it was tetany ?—A. No.

Q. Why did you give her calcium in November 1939 ?—A. Because she had a low blood calcium content.

Q. In the first two trials you said nothing of having given her calcium in November 1939 ?—A. That is so.

Q. Then before the third trial as the result of conversation between counsel you learned that the Plaintiff had come across a prescription that you had given her ?—A. Yes.

Q. In the first trial you denied seeing the Plaintiff between the time she left St. Luke's until the following March, that is when she left St. Luke's in 1938 until the following March 1940 ?—A. I have forgotten that.

Q. (Referring to p. 155): " When she left the hospital at the end of about eight days as we have heard, did you see her just about the time she was leaving ?—A. No, I cannot recall whether I saw her. Q. Did you subsequently see her again some interval after that ?—A. I saw her in March of the following year, she was referred to me by Dr. Bell." That was your evidence then ?—A. Yes.

Q. So nothing was said at any interview when you gave her this prescription which turned up later on ?—A. No, that is so.

Q. At the second trial, still before this prescription had turned up, p. 519: " You have been told she was brought to the hospital in an ambulance. Assuming that that is true she could have come equally well and much quicker in a taxi. There was no necessity whatever for an ambulance. The next time I saw her was some time in the following year, somewhere round about Easter time " ?—A. I would like to explain that.

Q. But that is correct ?—A. Yes, first of all Mrs. Hocking saw me in I think a little time after she went out of St. Luke's. She had no appointment. She was only in my rooms a few moments. There was no record in my rooms of the appointment.

Q. Would you think it likely that it was easy to forget that you had given in 1939 to a patient whom you thought, you were convinced was suffering only of hysteria, calcium glucinate; could you forget that? —A. Yes, of course.

Q. Although the fact was that in both trials, that is to say the first and the second, by this time in each case you had known the result of the blood calcium test ?—A. Yes.

Q. And had given evidence on it ?—A. Yes.

Q. And you did not mention a word about giving this prescription ?— A. She was taking that.

Q. But you did not give any evidence about having given her this prescription ?—A. No.

Q. Will you admit this: you have never before to-day in court put forward as a reason for giving her this prescription that she had a low blood calcium content ?—A. I was not asked.

Q. It was suggested to you, this was what was said you give it to them for, just like you inject some harmless substance, water, on to a person's veins to give them the feeling that something is being done to them ?— A. That is possible.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 23rd December 1943, Cross-examination, *continued.*

Q. Not what you have given to-day. You have not given the one you have given to-day ?—A. I would like to hear about it.

Q. You have spoken of an occasion on which she and her husband came to you and mentioned the possibility of litigation against Dr. Bell ? A. Yes.

Q. This is what you said to her (p. 529): "If you go to court you won't get a doctor to support you" ?—A. That is untrue.

Q. "It will be only a doctor who is a marked man" ?—A. That is also untrue.

Q. And you said: "All these marked doctors are well known to the judges" ?—A. It is also untrue.

Q. "In fact, you have not got a leg to stand on" ?—A. I may have said something to that effect.

Q. Did not you say: "I feel I must tell you this: it is only going to be painful for both sides" ?—A. I may have said something of that kind.

Q. You were endeavouring to deter her from proceeding ?—A. That is so, yes.

(Further hearing adjourned to Wednesday, 29th December 1943.)

29th December 1943. Cross-examination, *continued.*

Nineteenth Day, Wednesday, 29th December, 1943.

HAROLD JOHN RITCHIE.

Cross-examination continued:

Mr. SHAND: I was asking you about the Erbs test ?—A. Yes.

Q. I am reading to you from Rienhoff, page 10, chapter 2, Vol. 6: "It does not occur in any other disease yet known and therefore is a very important diagnostic test, as it almost invariably can be elicited to some degree in all cases of tetany." Do you agree with that ?—A. Actually I never saw the Erbs test performed.

Q. So you won't agree with it ?—A. No, I would not.

Q. What is the condition known as objective anæsthesia ?—A. I must confess that I have never heard that term.

Q. Have you no idea what it is ?—A. Unless I saw it in the context.

Q. It would be a form of unconsciousness ?—A. I should not think so.

Q. Is it not a form of unconsciousness ?—A. No, anæsthesia in its technical sense means loss of sensation.

Q. You said in your evidence-in-chief at page 972:—

> "Q. Can you remember the progress after that ?—A. Well, she had quite a discharge from the neck for just a few days, quite a noticeable discharge, but the temperature fell I think within 48 or 72 hours."

Would you agree that she had a noticeable discharge for a very fair number of days ?—A. Yes, I think there was a discharge for quite a, well, there was still a tiny discharge when she left the hospital.

Q. But quite a large discharge for a number of days ?—A. Yes, that is possible.

Q. The operation was on the 15th. The night report of the 29th is "Large amount of discharge from the wound," and on the 31st "still some purulent discharge," 4th April night report, "Some purulent discharge,"

and the 5th April night report, "Fair amount of purulent discharge," and 8th April, "Still some purulent discharge," so there was a condition of purulent discharge apparently until the 8th April at any rate ?—A. Yes.

Q. Would you agree with me that this could be properly termed an acute affection of the suppurative type ?—A. I would say it was an acute suppurative affection for the period that she was running a temperature.

Q. Does it mean during that period some blood infection ?—A. No blood infection.

Q. What part of the brain is it that controls the temperature ; the medulla ?—A. The thermogenetic centres in the medulla.

Q. It is affected by the blood which passes through it ?—A. Yes.

Q. You were concerned with the condition of Mrs. Hocking when she was in St. Lukes on the first occasion ?—A. What is "concerned" ?

Q. Anxious about her ?—A. No.

Q. Never at any time ?—A. When she started to run a temperature one felt a certain amount of anxiety.

Q. But when that temperature subsided you had no further anxiety ?—A. I had no further anxiety about her wound.

Q. Well about anything else ?—A. I had anxiety about her as a temperamental.

Q. That is why it was the greatest mistake a doctor could make to let her go out of the hospital with that wound open ?—A. Yes, that is so.

Q. So you think Dr. Bell made that mistake ?—A. Yes, I think so.

Q. Did you urge him strongly against it ?—A. I advised him not to let her go, and I advised her not to go.

Q. And did you advise him strongly ?—A. I think I did.

Q. You remember the evidence I asked you on the first trial, about leaving the hospital ?—A. Yes.

Q. Did you have in mind then that you had urged him strongly ?—A. I'll say I understated it on the first occasion.

Q. Did you have in mind when you understated it that you had urged him strongly not to let her go ?—A. Yes, I think so.

Q. After this inflammation had started, after the temperature had gone up after the operation, you were in frequent conference with Dr. Bell ?—A. Yes, I think so. I should think I was.

Q. Will you also agree that even after the date when you say the temperature had gone down to a state that anyone would be lucky to have it at that time in the morning—you remember the 97 on the 22nd March—you were still in frequent conference with Dr. Bell ?—A. I am not so sure about that.

Q. On the 22nd March when the temperature had gone down to 97 ?—A. Yes.

Q. 24th, "Dr. Ritchie here," and you prescribed Prontosil tablets ?—A. Yes.

Q. It was for inflammation ?—A. Yes.

Q. 25th, "Drs. Bell and Ritchie here." I have dealt with the day report of the 25th. Have you that ?—A. Yes, but that day report on the 25th does not necessarily mean that Dr. Bell and I saw her together.

Q. I am not so much concerned with that ?—A. But you were asking about frequent conferences.

Q. At any rate you were there ; whether you saw Dr. Bell or not, you saw the patient ?—A. Yes, from these notes I should presume so. I have no memory.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 29th December 1943, Cross-examination, *continued.*

Q. You had prescribed Prontosil tablets for temperature. Now we have the 27th, "Drs. Bell and Ritchie here." Prontosil tablets again ?—A. May I point out: The Prontosil were originally prescribed according to these notes on the 22nd.

Q. But I point out to you that they are still being prescribed ?—A. That is so.

Q. You were there on the 24th. "Continue Prontosil tablets." That would be your direction would it not ?—A. I could not say really. It might be mine or it might be Dr. Bell's.

Q. On the 25th there was another visit by you, Prontosil tablets. On the 27th you were there again. Prontosil tablets are still being given. On the 28th you were there again. You will note "Prontosil tablets finished. Ask Dr. Ritchie before ordering more" ?—A. That is so.

Q. According to the record you were directing the giving of this combative measure for temperature ?—A. Yes.

Q. I thought you were quite satisfied with the temperature. First of all I will read the next: "29th, Prontosil tablets were given". You have told these gentlemen that on the 22nd you were quite satisfied with the temperature ?—A. Yes.

Q. You know that these temperature charts of the hospital are preserved ?—A. I do not know that they are.

Q. Then what are you giving her Prontosil tablets for ?—A. Because she had a purulent discharge from the wound.

Q. I thought they were given for temperature ?—A. No, for any pus infection you give them.

Q. You were there again on the 21st. You were there on the 2nd. You were there on the 4th, 5th, 6th, and I think the 11th ?—A. And also the 12th.

Q. Will you dispute that during this time you were concerned as to her condition ?—A. I felt some concern for the first 48 hours of her infection.

Q. But none after ?—A. None afterwards.

Q. Were your visits unnecessary, or what were they for ?—A. She was my patient as well as Dr. Bell's, and I have a number of patients in there. I went in to see her.

Q. I suppose she was charged with the visit ?—A. No, she was not.

Q. Was not charged at all ?—A. Actually, I charged her seven guineas.

Q. Did you consider there was any need for your visits ?—A. No, there was no absolute need.

Q. Not even during the period that you were prescribing Prontosil tablets ?—A. Well, at the beginning of that.

Q. But up to the end ?—A. Not up to the end of it, there was no need then.

Q. When she had come back to the hospital, second occasion, next year, St. Lukes, you prescribed Halivol ?—A. No, I did not.

Q. Will you swear you did not ?—A. I will swear. I am absolutely definite.

Q. Has your memory improved on that ?—A. As a matter of fact Dr. Bell prescribed Halivol.

Q. Has your memory improved on that since you last gave evidence. Do you claim that your memory has improved ?—A. No, I make no claim. I told you my present recollection. My firm belief is that I did not prescribe Halivol.

Q. That is your definite belief ?—A. Yes.

Q. You are quite definite ?—A. Yes.

Q. You were asked at page 261 on the last trial, at line 34 :—

"Q. And what you gave her in 1938 was the same thing as you gave her in 1939 after she came out of St. Lukes hospital ?—A. That is so.

"Q. Will you dispute that you gave her Halivol ?—A. I do not remember it."

That was the length you went then ?—A. Yes.

"Q. You gave her these tablets of calcium glucenate and Halivol ?—A. There is no Halivol on that.

"Q. Do you sometimes use Halivol and calcium glucenate in cases of people having tetany ?—A. I do not.

"Q. Do you give calcium glucenate ?—A. I have done.

"Q. Do you remember discussing the matter with Dr. Bell in 1938 when Dr. O'Hanlon had apparently expressed the view that she had tetany ?—A. That is so.

"Q. And what you gave her in 1938 was the same thing as you gave her in 1939 after she came out of St. Luke's Hospital ?—A. That is so.

"Q. Will you dispute that you gave her Halivol ?—A. I do not remember it."

That was the extent of your recollection then. When I asked you this morning you said : "I did not. I am quite definite on it" ?—A. No, I do not remember having done so. I do not believe I did so.

Q. That is your recollection now ?—A. Yes.

Q. So when you said "I did not, I am definite on that" you went too far ?—A. No, I would not think so.

Q. As an educated man you can see the distinction between "I do not remember it. I do not believe it" and saying "I did not. I am certain of it." You see the distinction ?—A. Yes, there is a difference in degree.

Q. Leaving out treatment after the operation, before the temperature the only treatment you gave her was on two occasions : in 1938 calcium glucenate and in 1939 after she had come out of the hospital the second time, calcium glucenate. Apart from treatment given to her following on the operation, the only treatment you gave her was calcium glucenate twice ?—A. I did not give it to her twice.

Q. You recommended it once ?—A. I recommended it should be substituted.

Q. You gave it yourself in November 1939 ?—A. Yes.

Q. And it was the only treatment apart from post-operative treatment that you gave her ?—A. I think she had some sedatives when she was in St. Luke's on the second occasion.

Q. Did you prescribe them or Dr. Bell ?—A. At this length of time I do not remember.

Q. You will agree that that calcium glucenate treatment is for tetany ?—A. Amongst other things, yes.

Q. What other things ?—A. It is extensively given.

Q. What other things did you give it to her for ?—A. I gave it to her because she had a low blood calcium.

Q. And it was the only reason ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 29. Harold John Ritchie, 29th December 1943, Cross-examination, *continued.*

Q. I refer to page 266 at the bottom, and page 267, last trial. This was to your own counsel :—

"Q. You were questioned in regard to a prescription you gave in November 1939 and also with regard to the administration of calcium to a person in a condition such as she was in at the time. What would be the position there?—A. Hysteria is a condition in which patients are extremely amenable to suggestion, and any dramatic procedure such as injection into a vein of any substance would conceivably, if they thought it was going to do them good, do them good. Just as you get a patient who says 'I cannot sleep,' you do not wish to give him morphia, so you give him an injection of sterile water and it has the desired effect and he goes to sleep."

That was in re-examination, your suggestion as to why you had given this calcium glucenate. Is it wrong?—A. No, they are both true.

Q. I asked you about it this morning. You swore that the only reason was because of low calcium content. Which is it?—A. I gave it to her for both reasons.

Q. So your answer to me this morning that you only gave it for the low blood content was incorrect?—A. Incorrect, that is so.

Q. Why?—A. Because it was incorrect.

Q. Why did you, on your oath in a matter of importance, give an incorrect answer like that?—A. Because I had not thoroughly considered all the reasons why when you put the question to me.

Q. You cannot even remember her visiting you when you gave her this prescription?—A. That is so.

Q. You cannot remember any conversation you had with her?—A. No, she only saw me for a few minutes.

Q. You had forgotten that you ever gave her this prescription?—A. Yes.

Q. How is it you can now say why you gave it to her, if you cannot remember the incident?—A. I know all about the case and the circumstances of the case.

Q. Are you satisfied that you gave it to her for that reason?—A. Yes.

Q. You do not really remember the incident at all?—A. No.

Q. Because you did not mention the incident in the first two trials, the prescription?—A. That is so.

Q. Until your counsel had given you some information that Mrs. Hocking's representative had found this prescription, is that so. It came through Dr. Bell's counsel or someone representing him?—A. I do not know how it came out. I think Mr. Hardwick produced it.

Q. It was laid down to you before that?—A. I do not remember that.

Q. You swore on Friday that it was. First of all I will read your evidence from page 261, last trial, line 7 :—

"Q. After Mrs. Hocking left St. Luke's Hospital she came back and saw you on the 10th November, do you remember that?—A. I think she saw me twice.

"Q. Will you agree that you had been told of the prescriptions before you went into the box?—A. Yes.

"Q. You were told by Mr. Reimer that you had found a prescription of 10th November?—A. That is so.

"Q. Did you look up any of the records?—A. Yes.

"Q. And did you have a copy of it?—A. No. As a matter of fact she had no appointment."

It would be correct that you had been told by Mr. Reimer before the trial? A. It would be so.

Q. So you came back into the box on the last trial, with the knowledge that there was this prescription in existence?—A. That is so.

Q. Do you remember when the prescription was produced on the last trial asking to have a look at it because you wanted to see if it had ever been made up?—A. Yes.

Q. What was in your mind then?—A. I was anxious to know whether it had been made up or not. I was anxious to know whether she had taken it.

Q. Why?—A. Naturally enough, why not?

Q. What effect did you think it might have on her?—A. I thought it might help in raising her blood calcium, and it might help steady her nerves.

Q. The psychological effect?—A. Not entirely psychological.

Q. Partly?—A. Yes, partly.

Q. You thought it might raise her blood calcium, did you?—A. Yes.

Q. Permanently or temporarily or what?—A. For the time being.

Q. Only for the time being?—A. Yes.

Q. Then it would drop again?—A. No. I think her blood calcium would continue to improve.

Q. You said for the time being, which is it?—A. It would only do it while she was taking it.

Q. Then would it drop again?—A. It may or it may not.

Q. What would you expect to be the position?—A. As a rule it would drop.

Q. And you would expect her to become used to a low calcium blood content?—A. That is so.

Q. Have you had experience of that?—A. Yes.

Q. And you would expect her to-day to be of a low blood calcium content?—A. Well——

Q. Would you, doctor?—A. I am trying to answer the question.

Q. Well, do your best?—A. Well, don't interrupt me.

Q. You can answer yes or no?—A. I think possibly her blood calcium has improved.

Q. How long do you think it would take to improve?—A. It varies a great deal.

Q. How long would you think, what is your best estimate?—A. This is not a guessing competition.

Q. What is your best estimate?—(Objected to.)

Q. You have heard evidence given as to what has happened to her, you have heard evidence given in some of these trials as to what her history was?—A. About what?

Q. What her history was, these alleged tetany spasms, if you like?—A. Yes.

Q. And you saw her in hospital on two occasions?—A. Yes.

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Defendant's Evidence.

No. 29. Harold John Ritchie, 29th December 1943, Cross-examination, *continued.*

Q. Well now, are you willing to say or are you in a position to say, if you like, whether you would expect her blood calcium content, we will say last year, to regain normal or anything like normal ?—A. I would not be prepared to say.

Q. Either way ?—A. Either way.

Q. You were prepared to say at the last hearing, were you not ? You see, my friend has objected about having put material to you but you were prepared to swear an opinion last year ?—A. What did I say ?

Q. Don't you remember ?—A. No.

Q. The real position is that you are not in a position to say, is that so ?—A. That is so—with this proviso, that the tendency is for the blood calcium progessively to rise.

Q. Would you be prepared to state whether a year ago she would still have a low blood calcium content or not ?—A. It is probable but I could not be sure.

Q. Would you be willing, not a guess, but willing to give your sworn opinion of the matter ?—A. I should think it was low last year.

Q. And that is what you swore last time ?—A. I don't remember.

Q. " In your opinion if a test were made at this stage of her blood calcium what would you expect to find ?—A. I would still expect to find that she had a low blood calcium." That is what you swore ?—A. Yes.

Q. " Similar to what she had in 1939 ?—A. Yes. The only thing her general health is better now, she had been apparently on a pretty low diet and probably a diet lacking in calcium prior to that test being done." The test referred to there is the 7 2. That was your sworn opinion then ? —A. Yes.

Q. And what do you think now ?—A. Well, I should think she probably still has a low blood calcium.

Q. Similar to what she had in 1939 ?—A. There, or thereabouts, it might be a bit higher, probably a bit higher.

Q. What do you call a bit ?—A. It may be 8 or 9. You see, this is purely hypothetical.

Q. You have sworn an opinion last year on what was hypothetical, and I want to test it. By the way, will you agree that one manifestation of tetany is hoarseness ?—A. Yes.

Q. I suppose you recognise Albutt and Rolleston as a work of standing ? —A. Which edition is it, what year ?

Q. 1910 ?—A. In 1910 it was a standard work of reference.

Q. And I need not ask you about Osler and McRae, Modern Medicine, 1928 Edition, that is the one you used yourself ?—A. Yes.

Q. I am reading you a passage dealing with the loss of consciousness : " Consciousness is involved only in certain forms (parathyroid tetany)." Now I will read you a passage from Albutt and Rolleston : " In cases of still more widespread spasm when the masseters, the muscles of the tongue, pharynx and larynx become involved and the breathing may become exceedingly difficult the patient becomes cyanosed and for a short time consciousness may be lost." And then at p. 594 : " Evidence of similar vaso dilation within the cranial cavity is found in giddiness, loss of consciousness, subjective sensations in the ear and fleeting defects of vision." Now I want to ask you whether it is not correct that you, during these trials, have learned something about symptoms and signs of tetany ?—A. That is so, yes.

Q. You swore, did you not, on the first trial, that you were not able to find in any textbook any authority for the fact that consciousness is lost ?—A. That is so.

Q. And what you swore : " Some of the symptons alluded to by the Plaintiff have been that at times she was unconscious when these tetany spasms were on. Is that usually associated with tetany or not ?—A. Well, I have never seen a patient in tetany become unconscious and I don't think any textbook describes unconsciousness as a symptom of it." Apparently you had not read those authorities I have mentioned to you ?—A. No, probably not.

Q. Do you want to add anything ?—A. Yes, first of all the description on p. 798 of the 1928 edition says that consciousness is involved only in certain forms, parathyroid tetany. Now, actually, unconsciousness supervenes as a terminal event.

Q. Where is the authority for that ?—A. Well, I can find that.

Q. Now finish whatever you want to say ?—A. Next the description you read from Albutt & Rolleston was a description of laryngo spasm occurring in young children and the other reference—what was the other reference.

Q. Do you want to add anything more ?—A. I would like to see Albutt & Rolleston.

Q. Now, p. 590 first of all, where does that refer to children (Albutt and Rolleston handed to witness) ?—A. No, that does not apparently refer to children.

Q. My friend seems very anxious that you look at p. 594. Any mention of children ?—A. No.

Q. Now, you had not read either of those authorities, had you ?—A. No.

Q. And before the trial you had never mentioned at any trial unconsciousness occurring in the case of children ?—A. I cannot remember whether I did or not.

Q. You can take it subject to my friend's correction that you never mentioned it at all ?—A. That may be so, but I don't think the patient ever was unconscious.

Q. But in the first trial you were indicating that the patient was not unconscious when suffering from tetany ?—A. That would be a strong indication to me.

Q. You did not think that she was unconscious ?—A. No, I do not think she was, but if she were unconscious it was an argument against tetany.

Q. You did not put it forward on that basis, you put it forward as unconsciousness being one indication that she did not have tetany ?—A. I said if she were unconscious.

Q. And you have never before at any trial and never before to-day in this trial suggested that you thought she was not unconscious ?—A. I think I have.

Q. Have you ? Well, I invite that to be found. Now, just listen to this. You swore a moment ago that you had said in this trial that if she had unconsciousness that would be an indication that she did not have tetany. This is your evidence in this trial at p. 984. You first of all mentioned the fact that the sudden cessation of tetany was one indication that she had not got it, then you were asked : " Do you regard that as

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Defendant's Evidence.

No. 29. Harold John Ritchie, 29th December 1943, Cross-examination, *continued.*

fundamental ?—A. I do, indeed. Q. What do you say as to the others ?—A. Actually I also think that the frequent attacks of unconsciousness are not compatible with a diagnosis of parathyroid tetany." Where is the " if " in that ?—A. There is no " if " in that.

Q. This is putting forward a statement that these frequent attacks of unconsciousness are not compatible with parathyroid tetany, that is what you have sworn ?—A. Yes, that is right, but—— (Objected to.)

Q. Do you want to add anything, I am very patient this morning. (No answer.)

Q. This is the question, " What do you say as to the others ? " 10

His HONOR : That is the other matters that have been put forward that the Plaintiff suffered from.

Mr. SHAND : " Actually I also think that the frequent attacks of unconsciousness are not compatible with a diagnosis of parathyroid tetany." " The frequent attacks of unconsciousness." Will you admit that those words indicate that you are dealing with them there as real attacks of unconsciousness ?—A. They were put to me as real.

Q. Will you admit that those words which you volunteered were dealing with the real attacks of unconsciousness ? (Objected to ; question withdrawn.) 20

Q. Do you agree that your answer indicated that you were dealing with these attacks of unconsciousness as real ?—A. I answered the question——

Q. Now look, you can answer that ?—A. Oh well——

Q. Do you agree that your answer indicated that you were dealing with the attacks of unconsciousness as being real?—A. Not necessarily.

Q. But it might have indicated that, it might have indicated one thing or it might have indicated the other. You said not necessarily ?—A. Well, I repeat not necessarily.

Q. And that indicates that not necessarily you thought they were 30 real but that they might have been ?—A. Yes.

Q. Did you not think it your duty as a professional man and a witness to add to the answer your belief that they were not real ?—A. I have said that somewhere or other.

Q. You swear you have ?—A. Yes, to the best of my knowledge I have said something like that.

Q. Well, I invite any reference to where you said that, but you will agree, will you not, that as a professional man, as a witness, it was your duty to indicate your belief that they were not real ?—(Objected to.)

Q. In the last trial you gave this evidence : " What would you say 40 as to the nature of the spasm that she had in Quirindi ?—A. Well, I don't believe that they were due to tetany. There are a number of reasons, first of all the fact that some of them ended in unconsciousness. Q. Unconsciousness is associated with tetany very rarely in those cases in which death rapidly supervenes ?—A. Well, I don't believe that they were due to tetany. There are a number of reasons why they were not. First of all the fact that some of them ended in unconsciousness." That is your own statement and will you agree that that indicated this and nothing else, that your belief was that she had become unconscious ? (Objected to) ?—A. No. 50

Q. I have read you your answer to the question and your answer was : " Well, I don't believe that they were due to tetany. There are a number of reasons, first of all the fact that some of them ended in unconsciousness. Unconsciousness is associated with tetany very rarely in those cases in which death rapidly supervenes." Will you agree that you intended by your answer to indicate a belief in the fact that this unconsciousness was real ?—A. No, my answer to that was this. What was present in my mind was if the attacks of unconsciousness were real that it was not tetany.

Q. I am inviting you or your representatives to find any passage in your evidence in the last three trials in which you stated that you did not believe that this unconsciousness was real. I want to ask you—you have sworn that when Mrs. Hocking came down to St. Luke's on the second occasion you examined her throat ?—A. That is so.

Q. Did you examine it with a probe ?—A. No.

Q. I put it to you on Friday that you did not examine it at all ?—A. That is so.

Q. You did not examine it with a probe ?—A. No.

Q. What did you examine it with ?—A. A torch.

Q. Is that all ?—A. That is all.

Q. Only a torch ?—A. That is so.

Q. Not even a spatula ?—A. Not even a spatula.

Q. It is pretty hard to see the back of the throat properly, isn't it, unless you depress the tongue ?—A. Sometimes it is and sometimes it is quite easy.

Q. Was it quite easy in this case ?—A. It was quite easy in this case.

Q. You can remember that incident ?—A. I cannot remember that incident, but I don't remember using a spatula.

Q. Well, now, what questions did you ask Mrs. Hocking ?—A. I cannot remember at this length of time.

Q. Did you ask her where this tube was supposed to have come from ?—A. I cannot remember what I asked her.

Q. Well, did you ask her anything ?—A. I must have asked her something. What I asked her specifically I cannot tell you. There was nothing at that time to——

Q. What ?—A. That specifically impressed itself on my mind about her at all, except that she was much better than I expected.

Q. But, just a moment ; it was alleged that a tube had come through ? A. Yes.

Q. That was a rather dramatic allegation, was it not ?—A. Yes.

Q. Well, did you ask her where she thought the tube had come from ? —A. I do not remember what I asked her.

Q. You don't ?—A. No.

Q. On the second trial you know you were asked—(p. 528)—" Did you ask her any questions about where she thought the tube came from," and your answer was " No." Would that be correct ?—A. I do not know.

Q. The answer was " No," not " I do not know." The answer was " No." Is that correct ?—A. Is what correct ?

Q. Your answer ?—A. Which answer ?

Q. Do you really suggest that you did not know what I was asking you ?—A. I don't know now what you are asking.

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Defendant's Evidence.

No. 29. Harold John Ritchie, 29th December 1943, Cross-examination, *continued.*

Q. I will read it again. In the second trial you were asked: "Did you ask her any questions about where she thought the tube came from," and you answered "No." Is the answer you gave then correct?—A. At this length of time I cannot tell you.

Q. Well, it might have been incorrect?—A. It might have been, yes.

Q. So you might have sworn something then that was incorrect?—A. That is so.

Q. You had the course open to you then if you did not remember to say "I don't remember." (Objected to; pressed.)

Q. I will make it quite clear. I am directing the question to any time she was in St. Luke's the second time—I am putting to you now: Did you ask her any question about where she thought the tube came from and you say now that you cannot remember?—A. That is so.

Q. You said before, in relation to a period when she was in that hospital: "No"?—A. Did I say before that I did not ask her any questions as to where the tube came from?

Q. The question was, "Did you ask her any questions about where she thought the tube came from." (Objected to.)

Q. Any time, and your answer was "No." (Objected to.)

Q. It refers to a time when she was in the hospital. (Objected to; pressed.)

Q. I will put it specifically to you if there is any question about it; do you remember my putting to you on Friday this; that when you saw her in the hospital——

His HONOR: What page?

Mr. SHAND: I don't remember.

Q. You put up your hand and you said you did not want to discuss the matter. Do you remember my putting that to you?—A. That is so.

Q. And you said that did not occur?—A. Yes, I denied that.

Mr. SHAND: Your Honor will see that I cannot put it on that occasion. I have to cover the whole period.

Q. You saw Dr. O'Hanlon a number of times before the first trial?—A. No. I may have seen him once.

Q. Did you see him in Counsel's chamber a number of times?—A. Yes.

Q. And you saw him after the first trial, before the second?—A. I probably did.

Q. Now, we will take up to the first trial. Did you ever on one occasion tell Dr. O'Hanlon that you did not consider that this was tetany?—A. I cannot remember any specific occasion having done so, but I must have done so.

Q. You must have?—A. Yes.

Q. Because after she had been in St. Luke's the second time you had a firm conviction?—A. Yes.

Q. And that is your answer; that you must have told him that?—A. Yes, or that I must have expressed that opinion in his hearing.

Mr. SHAND: There is one matter here that I mentioned which is on page 980. Your Honor will remember that none of my remarks were taken down.

His HONOR: It was agreed that the note should be amended, and these words were written in: "Mr. Shand: Do you say you have to go

through them ?" That is my recollection of that. Isn't that your recollection, Mr. Cassidy ?

Mr. CASSIDY : Yes.

Mr. SHAND : Do you remember swearing at that page—you were asked what classes of tissue Exhibit "P" would have to go through ?—"Take Exhibit P. The area we are dealing with, the neck—what are the classes of tissue or structures there that would have to be destroyed," and your answer was : "In order that it may pass up and through the tonsil it would have to go through all the jugular vein and the carotid artery and the vagus nerve—actually all of these are walled off in a pretty thick fibrous coating, and the common carotid artery is just behind the tonsil." Do you remember swearing that ? "It has to go through all the jugular vein and the carotid artery and the vagus nerve." You don't still maintain that, do you ?—A. I corrected that a little later, or I amended it.

Q. After I had interjected ?—A. Yes, I amended it.

Q. There would be no necessary destruction, would there, of any of those vessels ?—A. Yes, there would be.

Q. Would there ?—A. There would certainly be grave damage.

Q. Wouldn't it be the case that they might only be affected to some extent—one or more of them ?—A. I cannot tell you how much each particular structure would be affected.

Q. It is clear that it is not necessary that each one would be affected ?—A. I think they all would be, to some extent.

Q. All of them ?—A. Yes.

Q. But the extent you cannot say ?—A. I think the extent would be of a very serious nature.

Q. It would not be correct to say that you would expect them to be affected to some extent ?—A. No.

Q. This is what you swore before—(p. 168 of the First Trial)—"If there had been such a breaking down of the muscular tissues of the neck as to permit of an object passing up like that to the mouth near the tonsil, would that have been possible without the other blood vessels and nerves in the locality being affected," and your answer was : "I would expect them to be affected to some extent." Does that convey an incorrect picture ?—A. Well, it depends on the interpretation of the word "some."

Q. They are your words ?—A. Yes.

Q. In your opinion does that convey an incorrect picture ? (Objected to.)

His HONOR : You can get that out in re-examination, Mr. Cassidy.

Mr. SHAND : Do those words, in your opinion, convey an incorrect picture of the damage that would be done ?—A. I would say an insufficient picture.

Q. That is more the question for a surgeon, isn't it ?—A. That is so.

Q. And I think you did in point of fact expressly disclaim that you were that ?—A. Yes.

Q. And there were a very large number of questions asked you by Mr. Cassidy that were really the province of the surgeon ?—A. More particularly the province.

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Defendant's Evidence.

No. 29. Harold John Ritchie, 29th December 1943, Cross-examination, *continued.*

His HONOR : Mr. Shand, in the sixth line of Dr. Flynn's evidence, the words " The fact that thyrotoxicosis was a *previous* cause " should read " . . . A *predisposing* cause."

Mr. SHAND : Yes.

Q. Now, I invited you to secure authorities for your proposition that massaging is a very bad thing. Have you got that ?—A. (Witness produces book and points out passage.)

His HONOR : What book is that ?—A. It is Osler's Modern Medicine, 1928.

Q. Edited by——

Mr. SHAND : McCrae—page 761.

His HONOR : I notice in the notes that there is one by Christian. Is that the latest ?

Mr. CASSIDY : 1942.

Mr. SHAND : I will read the passage :—

> " Mechanical irritability of nerves and muscles. Chvostek first showed that simple mechanical stimulation of a nerve trunk is sufficient to induce a spasm. Sharp tapping over a nerve trunk, or even over a muscle, is capable of inducing a typical flexor spasm. The favourite site for bringing out this Chvostek's sign is over the facial nerve in front of the nerve. It is not always present, and in 40 of Howard's patients tested, only 15 per cent. responded positively, but the figures of Chvostek and Franki Hochwart are much more definite. The latter author classes it as one of the most important signs of the tetany reaction, although it is not always present. He further distinguishes three grades of the Chvostek phenomenon. In the more severe reactions a tap in front of the ear will cause contractures in the entire facial inervated musculature. Even light stroking might start muscular contractures (Schulte's phenomenon). In the middle grade (2) a stroke of the hammer causes contraction of the naso-labial folds while in the lighter grades (3) the corner of the mouth alone contracts after percussion in the classical spot. Chvostek's phenomenon has been found in other conditions, and its frequent occurrence in entereroptosis is of particular significance in reviewing the relation of gastric disturbances to the tetany reaction."

That is the passage ?—A. Yes.

Q. That is based on this ; that you are dealing with the disturbance of a nerve ?—A. " Nerve and muscle." That is the heading.

Q. That involves that if you are touching the muscle you are exciting a nerve ?—A. No.

Q. On the assumption for the moment that it is only the touching of the muscle, is there any authority that suggests that once the spasm has come on and the contractures come on, massage will either cause it to continue or grow worse. Do you understand the distinction ?—A. Yes, I do. Well, I will put it to you this way in reply, that the idea of massage is so repugnant to the theory of heightened neuromuscular excitability that no book would dream of mentioning it.

Q. But what about, for instance, ordinary cramp ?—A. That is not similar to this. It is a different phenomenon altogether.

Q. You will agree that for an ordinary cramp massage helps to relax it ?—A. That is so ; but ordinary cramp is not due to a heightened neuro-muscular excitability.

Q. But you have not an authority for the position that once the spasm is on then massage increases it—beyond what you have said by inference ?—A. No, but it is so obviously true.

Q. Would you not agree that massage may help to restore the circulation of the blood and so bring more calcium to the nerve centres that have been starved for it ?—A. But there is no evidence that the circulation has be enimpaired.

Q. What ?—when you get a locking of the muscles ?—A. No.

Q. Not impaired ?—A. No.

Q. When you get a cramp with the muscles actually tied up there would not be any impairment of the circulation ?—A. Yes, there might be, that is true ; there might be.

Q. Just let me read you Osler's Principles and Practice of Medicine : Christian. This is the 1942 edition, page 1174. This is dealing with tetany, pathology, symptoms, diagnosis, prognosis, treatment. "In children the condition with which the tetany is associated should be treated. Baths and cold sponging often relieve the spasms as promptly as in 'child crowing.' Calcium should be given freely." What about that ?—A. Yes.

Q. "Cold sponging" ?—A. Actually I personally would not agree with that, but that is a form of treatment—cold sponging. But that is not massaging, is it ?

Q. We all know what cold sponging is ; have you any authority. I invited you to produce an authority that unconsciousness is a terminal event of tetany. Of course, unconsciousness is a terminal event of a great variety of diseases ?—A. Yes, that is so.

Q. Because it means that when the human resistance has sunk to a certain low ebb then you get unconsciousness before death ?—A. Yes.

Q. Have you an authority for the statement you now make that unconsciousness occurs in the case of children ?—A. I should think that Barr, Vol. III, indirectly would imply that. (Book handed to witness.) Page 3128 at the bottom—"Larynospasm, or laryngism, is seen most frequently in the tetany of children. With the spastic narrowing of the glotus, there is a loud inspiratory crowing sound." Actually in its milder form this is known as croup. "Although in most instances the attacks are mild and intermittent, they have on occasions persisted and have resulted in extreme cyanosis, coma, and death."

Q. Of course, you had not realised that there was unconsciousness, even in the case of children, on the 1st, 2nd and 3rd trials, had you ?—(Objected to.)—A. No.

Q. Is that correct ?—A. No.

Q. When did you realise that ?—A. The statement I have consistently made, and still make, is that in almost every case, if not every case, of tetany, when the patient becomes unconscious it is a terminal event.

Q. I am not asking you that. The question is now, had you ever suggested before in any trial that unconsciousness occurred in the case of children ?—A. No, I do not remember having done so ; but I was aware of it.

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Defendant's Evidence.

No. 29. Harold John Ritchie, 29th December 1943, Cross-examination, *continued.*

Q. But the process, as far as you were concerned, is this: first of all, in the first trial you said that unconsciousness did not occur, and you were able to find no trace of it in the text books. That is what you first said?—A. Yes, that is so.

Q. And following on that, you said that it occurred rarely, and in those cases it was followed by death?—A. Yes.

Q. And finally, in this case you said it occurred rarely in cases of death, and also in cases of children?—A. Sometimes.

Q. So, Mrs. Hocking indirectly has been the means of adding to your knowledge of this subject?—A. Yes, certainly she has. Reinhoff (Vol. of Reinhoff handed to witness). The actual definition of tetany given by Reinhoff runs as follows—Reinhoff has been chosen to specially write this article.

Q. We have heard what he is?—A. What is he, Mr. Shand?

Q. You gave it in chief?—A. "By tetany is meant a clinical syndrome resulting from a functional insufficiency of the parathyroid glands which is characterised by a heightened excitability of the central and autonomic nervous system, manifested by clonic and tonic spasm, without an accompanying loss of consciousness."

Q. We have heard that. That is what you read before. I suppose you will agree with this, that whatever form hysteria takes it does not give you second sight. It does not give you—I don't mean double vision—but I mean second sight?—A. How do you define second sight?

Q. I will put it this way. It does not add to the sum total of a person's knowledge?—A. That is such a vague question. Perhaps you could make it a bit more specific.

Q. Yes. It would not enable a person who had never seen a drainage tube cut in a certain way to draw a very good likeness of it, would it?—A. I don't admit that that drawing in any way resembles a drainage tube.

Q. That is not the question?—A. Well, that is the answer.

Q. It would not enable a person who had never seen a drainage tube cut in a certain manner to draw a very good representation of it?—A. A good representation of—what?

Q. Of the drain tube?—A. But it is not a good representation.

Q. Leave that aside. It would not enable a person——?—A. No.

Q. Hysteria would have nothing to do with it?—A. Hysteria would not have anything to do with it; previous knowledge might have.

Q. A matter that you mentioned as not being either consistent with tetany, or possible, whichever way you like to put it, was the fingers being driven over the thumb and the nails digging into the hand?—A. No, I did not say that.

Q. At page 530 of the second trial:

> "Q. You said in your account of the hand movement that the nails could not possibly get into the palm of the hand?—A. I said that the nails could not get into the palm over the thumb."

—A. Yes, unless the nails were very long.

Q. That is what you swore—you made no provision about "very long," did you?—A. I had forgotten for the moment the length to which women wear their nails.

Q. Did you also forget the length of their fingers?—A. No.

Q. Do you remember having a passage read out to you from Fegge: "The nails may be driven into the skin so violently as to produce marks

or even it is said to give rise to sloughs." Would you say that was not possible in parathyroid tetany ?—A. I have never seen nor read of it before " ?—A. That is so.

Q. You have sworn that you examined this lady's throat on the second occasion in St. Luke's—you have said you found only a slight——? —A. Some chronic tonsilitis.

Q. Did you see a piece of lymphoid tissue ?—A. I do not remember at this length of time.

Q. You would not forget that ?—A. Why not—you might easily.

Q. Even though you were looking in the throat to see if anything had come through ?—A. Lymphoid tissue is found in everybody's throat.

Q. A piece of lymphoid tissue hanging down ?—A. Do you mean in relation to the tonsil ?

Q. Anywhere near the tonsil ?—A. I do not remember anything about that.

Q. I think you dealt on Friday with an authority, Dunbar, in relation to lessening or increase of the calcium content of the blood ; you read out a passage ?—A. Yes.

Q. Will you agree that the effect of what you read out was this, that when the individual has been influenced in the direction of quietening, the calcium content was brought down ?—A. That is so.

Q. And when the effect of the influence was excitement, the calcium content rose ?—A. That is so.

Q. So that, with regard to a neurotic person who is apt to get into a state of excitement, you would expect the tendency would be that the calcium content would rise ?—A. When ?

Q. At different times, under stress of excitement ?—A. Yes, I should think that would be so.

Q. You swore on Friday, p. 995, that you had seen Mrs. Hocking on two occasions after she left St. Luke's ?—A. Yes.

Q. That is incorrect, is it not ?—A. No, I do not think so.

Q. First of all, there was an occasion which you now know where you gave her a prescription ?—A. That is so.

Q. Then were there not two occasions when you spoke certain words to her indicating that she should not go home ?—A. No, only one occasion, to the best of my memory.

Q. At the second trial, p. 519, you spoke about seeing her before she went to hospital and when she went to hospital on the second occasion : " The next time I saw her was some time in the following year, somewhere about Easter time. I think her husband was with her," and she repeated the story and proposed to sue Dr. Bell ?—A. Actually I had completely forgotten the incident. She came to my rooms without an appointment for a few moments.

Q. That is the prescription ; I am not dealing with that ; I am dealing with about Easter, which was one occasion ; then you say : " I think I saw Mrs. Hocking again later on in May. I saw her twice " ; this is without the incident of the prescription : " On the second occasion I did not ask her to come back and see me. She made an appointment in the usual way and reiterated that she was going to proceed against Dr. Bell " ; that is two occasions without the prescription ?—A. According to the evidence, yes.

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Defendant's Evidence.

No. 29. Harold John Ritchie, 29th December 1943, Cross-examination, *continued.*

Q. According to the evidence you saw her on three occasions, and not two, as you swore in the evidence in this case. Now in this case, in answer to an interjection by myself, pp. 989–90, you have said that this incident that is sworn to, about the eye turning back—you swore at this trial :

" I agree that it may have happened as an hysterical phenomenon, but not as a happening of parathyroid tetany."

You say it may actually have happened as the result of hysteria ?—A. Yes.

Q. Have you always been of that opinion ?—A. I think so, yes.

Q. Is this what you swore at the third trial, p. 253, line 40 :

" Q. She told us on one occasion that she watched with one eye a spasm in the other—what do you say as to that ?—A. All I can say about that is that it is incredible.

" Q. Is it medically consistent with true tetany ?—A. No."

—A. I can explain that, without any difficulty whatever. I was being examined on the basis that this eye phenomenon was due to true tetany. Actually the eye muscles are only affected in very severe cases of tetany, and it would be physically impossible for a woman in the throes of a severe tetany spasm to examine her eye.

Q. Although you have heard now that the spasm can be localised in different parts of the body ?—A. They may be, yes.

Q. On the eye I want to read you a passage from Joll on the thyroid gland. He gives the case of monkeys :—

" In monkeys carpopedal spasms may be conspicuous features and the eyelids may be forcibly closed, the eyeball receding within the orbit."

Do you agree with that ?—A. I do not know anything about monkeys.

Q. Do you suggest that there is any difference in the mechanism—the effect ?—A. You cannot argue from the animal to the human.

Q. Do you suggest that Joll puts into this book the example of monkeys when it has nothing to do with human beings ?—A. No.

Q. What do you want to put ?—A. I ask you to read that again so that His Honor and the Jury can hear exactly what is said—that a carpopedal spasm and eye troubles go together, and if a woman or a monkey has a carpopedal spasm they cannot look at their eyes.

Q. You cannot get localisation in one eye and not in the other ?—A. I think it is highly improbable.

Q. Now you want me to read it ?—A. Yes.

Q. " In monkeys carpopedal spasms may be conspicuous features and the eyelids may be forcibly closed, the eyeball receding within the orbit " ?—A. That is exactly what he says—the monkey gets carpopedal spasms and at the same time gets ocular disturbance.

Q. It has nothing to do with the eye ?—A. It is part of it.

His HONOR : What do you mean by carpopedal spasms ?—A. It is the accoucheur's hands—and a similar disturbance in the feet.

Re-examination.

Re-examined.

Mr. CASSIDY : Dealing with that last question, is that passage read from Joll any authority for the statement that you can have this spasm confined to one eye and not appearing in any other part of the body ?—A. No.

Q. Is it an authority to the contrary ?—A. It would suggest the contrary.

Q. At p. 253 of the Third Trial, lines 40 to 43, and then at lines 40 to 42, inclusive :—

" Q. She told us on one occasion that she watched with one eye a spasm in the other—what would you say as to that ?—A. All I can say about that is that it is incredible.

" Q. Is it medically consistent with true tetany ?—A. No."

Is that right ?—A. That is so.

Q. It was suggested to you that you might have had the Erbs test done. You have had a good deal of experience in tetany, have you not ?—A. Yes, over 30 years I have seen a number of cases.

Q. Have you ever seen an Erbs test applied in Sydney ?—A. I have never known of one.

Q. Do you know any apparatus at all, or any person competent to do it ?—A. It could probably be done after preparation in a University laboratory.

Q. In the hospitals that you are associated with have you known of it being used ?—A. No. I might say this—they actually did get some machine out, I think, at Prince Henry, for testing that particular thing, but they found it was so difficult to work that they gave it up.

Q. And is it apparently a machine that requires very expert knowledge before it can be used ?—A. Yes, highly expert knowledge.

Q. Could the ordinary doctor handle it ?—A. No.

Q. I mean the ordinary specialist ?—A. No.

Q. Has your association in honorary capacity and otherwise been with all the chief hospitals around Sydney ?—A. No—my only honorary job——

Q. Taking all your work, honorary and private work, between them, have you been in most of the hospitals around Sydney ?—A. I should think so, yes. I should like to make this clear—actually the only public hospital to which I am attached is the Sydney Hospital—and the only public hospital to which I have any access.

Q. But you have been in the other hospitals to know their equipment ?—A. More or less.

Q. Still on the tests that are suggested—the Chvostek, Erbs and Trousseau—are they infallible tests for tetany ?—A. The Trousseau and the Chvostek occur in all sorts of conditions. The Erbs test——

Q. Take hysteria ?—A. Yes.

Q. Have you authority for that, if wanted ?—A. Osler, Modern Medicine.

Q. And as to the Erbs test ?—A. That is in Nelson's Looseleaf Medicine. He states : " Latent tetany. The increase in neuromuscular irritability may be so slight as to be wholly asymptomatic. This condition, not uncommon in infancy and early childhood, is detected by direct measurements at motor points, of the current required to produce muscle contraction. Stimuli which are sub-liminal under normal conditions suffice to induce a definite muscle response when a state of neuromuscular hyper-excitability obtains (Erb's Phenomenon). Extensive investigation of this method has shown that normal galvanic thresh holds vary according to the technic, the age of the subject, the motor point investigated, and may fluctuate widely in different patients or in the same patient at

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different times. It appears to be the consensus of opinion, however, that in the hands of experienced observers, a cathodal opening contraction or cathodal closing tetanus elicited with a current of less than 5 milliamperes in children under five years of age provides a delicate and certain indication of tetany. Minimal increases in neuromuscular excitability may be also detected by the determination at motor points of the time an arbitrary galvanic stimulus—twice the rheobase—must be applied to produce a muscle response (chronaxic). The chronaxie is decreased in tetany."

Mr. CASSIDY: Sum that up in your own words?—A. It simply means that it is a difficult test to apply, that the response varies tremendously from time to time, and in the hands of certain skilled observers you may get a definite response with very minute currents in children with tetany.

Q. The passage in Osler is at page 803. I think we have had sufficient already in the notes on that. The Trousseau phenomenon is often well marked in hysterical patients and in the more classical types of hysteria?—A. Yes.

Q. Mr. Shand put to you the question: Was hoarseness a manifestation of tetany? You said "Yes." Is it also a manifestation of hysteria?—A. Yes. I think the reference is to Oppenheim (book shown to witness). In Oppenheim in dealing with hysteria, Volume 2, page 1084, it states "Hoarseness, usually associated with a piping voice, is less common than hysterical aphonia." That means complete loss of voice.

Q. How do they talk in aphonia?—A. Sort of like this (demonstrating). They cannot make the ordinary vocal sounds. There is a sort of—— (demonstrating).

Q. You heard the patient describe in this case that after this tube erupted on the morning of the 2nd, or after something went into her throat on the morning of the 2nd, and she did not tell her husband because she was unable to talk. (Argument ensued.) You may assume that that was the evidence she gave. Would that, in your opinion, be another link in the chain?—A. Quite probably.

Q. Deal now with Oppenheim, page 1342, dealing with the complications of thyrotoxicosis. Can you tell us whether hysteria is one of the complications of thyrotoxicosis?—A. Yes.

Q. Have you the authority for that?—A. Yes. Talking about thyrotoxicosis, "The disease develops chiefly in middle life—in the third or fourth decade—but it has been observed much earlier and often in childhood. Women are much more frequently affected than men. Hereditary influences can be detected in the majority of cases, although the disease is seldom directly inherited. Dejerine quotes one case in which Basedow's disease"—that is thyrotoxicosis—"was transmitted through four generations, and Brower found it in four brothers and sisters. But as a rule there is some other nervous disease in the family, and I have very often found a predisposition for the vasomotor neuroses."

Q. Can you give me in this case anything that is included in those vasomotor neuroses?—A. The giant urticaria. "The neuropathic tendency has often shown itself by signs of nervousness or hysteria long before the onset of the disease."

Q. The disease being thyrotoxicosis?—A. Yes.

Q. On page 1348 is there another matter relevant to that?—A. Yes, complications of thyrotoxicosis: "The disease is most often associated with hysteria, sometimes with epilepsy, occasionally with myasthenic

paralysis," occasionally with tetany, diabetes and other diseases of the nervous system.

Q. You were asked about an authority for clutching of surrounding objects being sign of hysteria. I think you said it was your opinion that it was. Is there an authority which supports what you say ?—A. There may be one. I think Brain, possibly (book shown to witness). Russell Brain, Diseases of the Nervous System, 1933, page 785 : " The movements of the hysterical fit are not of a low order like the clonic movements of epilepsy, but are co-ordinated and purposive. The hysteric clutches at surrounding objects, struggles, and may attempt to fall out of bed or to tear off his clothes."

Q. You were asked by Mr. Shand if the Plaintiff showed signs of hysteria in the box and you said no. Would you have expected her to do so ?—A. No.

Q. Why ?—A. Because while she is the centre of the stage and the observed of all observers she would not manifest any signs of hysteria.

Q. Is that one of the definite results of your experience with hysterics, that under such circumstances they are free from signs of hysteria ?—A. Yes.

Q. Is it possible in your opinion that in those conditions a hysteric can reach high intellectual levels ?—A. They do, quite common.

Q. Dealing with the question of the calcium level, I have a reference you referred me to, Nelson's Loose Leaf Medicine ?—A. I think it was " Hypertension and Nephritis," by Fishburn.

Q. I think you wanted Nelson first. (Book shown to witness.) It was page 3120 ?—A. That is so : " The serum calcium may fall to very low levels (3 to 4 mg. per cent.) in certain kidney diseases, yet tetany rarely occurs. In the nephrotic syndrome, the fall in serum protein results in a decrease in calcium bound to protein, and consequently in total serum calcium, but the concentration of ionized calcium remains within normal limits. In curemia, phosphate retention is associated with marked lowering of the serum calcium, but tetany is uncommon. In renal rickets, in which there is obvious derangement of the calcium metabolism as manifested by skeletal abnormalities, marked depression of the serum calcium associated with phosphate retention may persist for years, yet tetany is rarely observed."

Q. Sum that up in your own words ?—A. In other words, certain diseases give rise to a very low calcium content without giving rise to tetany.

Q. I think you said before that with 7 per cent. calcium you need not necessarily have tetany ?—A. Oh, no.

Q. Do you remember what Fishburn was an authority on ?—A. It was merely confirmation of the fact that very low calcium values are present in kidney disease without the production of tetany.

Q. That is page 26. I have not it with me, but I will bring it across. You were asked a question as to whether you had known tetany persist in cases and you said " Yes." You were asked could you recollect a case happening and you said you would look at the Sydney Hospital records. Have you found such a case ?—A. I have found a case, I would sooner her name was not mentioned.

His HONOR : Call her Mrs. " Y " ?—A. It was Miss " Y."

Mr. CASSIDY : You have the records if they are wanted, but, without reading them, what was the position ?—A. She had had tetany following a thyroid operation for, I think, seven years.

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Q. Give me the history ?—A. It persisted for seven years and she died in coma.

Q. In this period of seven years did she have periods free from spasm ?—A. It is very difficult to get a complete history over the seven years. She was more or less constantly under treatment in that period.

Q. Did it persist during that period ?—A. Yes.

Q. Was that following a thyroidectomy ?—A. Yes.

Mr. SHAND : Have you those records ?—A. They are here.

Mr. CASSIDY : A series of questions was asked of you as to the possibility, at the time you heard from Dr. Bell something Dr. O'Hanlon had written, of the tube passing. What do you say as to that ?—A. Actually, I toyed with the idea for a very short period and then dismissed it as ridiculous.

Q. Taking Exhibit " P " as a fair representation of the object that passes, or anything of which Exhibit " P " is a fair representation, what do you say as to the possibility of such a thing ?—A. I think fantastic.

Q. You were asked why you did not give treatment for hysteria. What do you say as to the treatment for hysteria in this case having regard to the circumstances under which she left the hospital ?—A. Actually, the text books of medicine, I suppose of the world, specifically state that there is no drug treatment worth mentioning and that even sedatives should, as far as possible, be avoided, that you might treat them by hydrotherapy and by re-education and so on.

Q. Would it be a wise type of treatment to suggest to a hysteric that they had hysteria ?—A. No.

Q. Three passages were read to you this morning, one at page 758 of Osler and McCrae, one at page 590 of Allbutt and Rolleston, and one at page 594 of Allbutt and Rolleston. Then no question was put to you exactly on those three passages and you dealt with them to some extent. What have you to say about those three passages ?—A. Are those the questions which referred to unconsciousness ?

Q. Yes ?—A. I think I have fully answered that.

Mr. SHAND : In case we call Miss " Y," apparently she came under your attention in 1942 ?—A. That is so.

Q. You treated her with calcium gluconate ?—A. The hospital did.

Q. Under your instructions ?—A. Under my supervision. The actual treatment was parathorma.

Q. From the history can you recollect about how long she was under your observation ?—A. I think not very long. About a fortnight or so. I could not definitely say, but I could tell you immediately if you let me have the sheet.

Q. From your recollection was it a case where the whole of the parathyroid had been removed ?—A. We would not know that.

Q. Did you suspect that the whole—— ?—A. We suspected that the parathyroid glands, the great proportion of them——

Q. I suppose that sometimes has been done with disease ?—A. Sometimes malignant disease, and sometimes done when the patient has too much parathyroid secretion and you operate on them if they get a tumour on one of the parathyroid glands, and you remove that tumour for the purpose of diminishing the amount of circulating lime. Actually, of course, a number of people have bilaterial stones of the kidney.

Q. The removal of the whole of the gland is something to be avoided if possible ?—A. I do not know that the whole of the gland is removed.

Q. First of all, the removal of the whole of the gland is something to be avoided ?—A. Which gland ?

Q. The parathyroid. That means death, doesn't it ?—A. Probably.

Q. It is a fact recognised in medicine that, should the whole of the parathyroid gland be removed, you cannot permanently make up for the deficiency of calcium in the blood by injections ?—A. That is so.

Q. It is not like insulin in diabetes ?—A. No. Actually the effect of the parathorma or paroiden or whatever you like to call it gradually wears off.

Q. The result is unless there is some form of malignant disease or some other greater evil than the removal of the parathyroid you would never remove them completely ?—A. They would never be removed completely.

Q. Never ?—A. No.

Q. Even if you had some malignant growth you would still leave something ?—A. One would endeavour to leave it. Are you talking of malignancy of the thyroid or of the parathyroid ?

Q. I am dealing with either. What I want is this : If you remove them it means eventual death ?—A. If you remove them all, yes.

Q. The result is you try to save a sufficiency of parathyroid gland ? —A. That is so.

Q. Varying with different patients ?—A. That is so.

Q. It appears that on 2nd September 1942, this lady's calcium was 6.7 (document shown to witness).—A. Yes.

Q. On the next page, check if this is on the day she died, it had gone down to 5.2 on the 8th ?—A. She died on the 9th.

Q. That is the day before she died it had gone down to 5.2 ?—A. Yes, actually, of course, she was having parathorma.

Q. What is that ? A question mark (indicating on document) ?—A. That is only a mistake.

Q. It appears that this lady lost consciousness on two occasions ? —A. As a result of the epileptic fits, she was never left.

Q. She had epilepsy as well ?—A. Yes, she was an epileptic.

Q. At the second trial in August 1942, at page 532, your experience then was apparently this : You were asked :—

"Q. Have you ever seen a case of severe post-operative tetany ?—A. Yes.

"Q. How many ?—A. Well, I have certainly seen one.

"Q. Did that end in death ?—A. No.

"Q. Can you tell us how long it lasted ?—A. It is some years ago now and I have only a hazy recollection of the details.

"Q. Did it last months ?—A. No, about four or five or six weeks."

That was your experience at that time of severe post-operative tetany ? —A. Yes.

Q. Then at page 533 you were asked :—

"I suppose you will agree that it is only in rare cases that you see even transitory tetany ?—A. Relatively rarely."

That is correct, is it not ?—A. I think so, yes.

(Witness retired.)

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 30. Ernest McAustin Steel, 29th December 1943, Examination.

No. 30.

EVIDENCE of Dr. Ernest McAustin Steel.

Sworn, examined, deposed:

To Mr. CASSIDY: I am a legally qualified medical practitioner, specialising in the ear, nose and throat, and practising in Macquarie Street, Sydney. I have had a long experience and on the 24th and 25th August 1942 I examined Mrs. Hocking, together with Dr. Thompson and Dr. Marsh. That was the first occasion I had anything to do with this case.

On examination, I found a common condition of ordinary chronic lacumal or chronic fallicular tonsilitis, which is a condition in which crypts —that is the small recesses which pass down into the tonsil—have become chronically infected and debris or unhealthy material collects in those crypts and is visible on examination. That was present in this case. This cheesy material forms masses in the lobes or recesses of the tonsil and consists of broken down epithelium or lining of the crypt. These epithelial cells may contain dead bacteria or dead white cells, and sometimes a chemical substance called cholescerin and sometimes calcium. In most cases, the breath is particularly offensive.

Dealing specifically with the left tonsil, at the upper portion of the tonsil was a large crypt which is known as a supra tonsillar fossa, a tonsillar fossa, or just as a large crypt, and in this case and in all cases as a rule this opening is a common opening for a number of smaller crypts. In this case this condition was present and there was one strand of tissue stretching across the opening of this large crypt. This chronic follicular fossa is a common condition with tonsilitis, very common, and to illustrate how common it is I have brought three specimen pairs of tonsils removed on my last operating day at Prince Alfred. That operation took place on Friday, 17th December, and I think I examined the Plaintiff this time on the 11th December. These tonsils were taken during a routine operation at Prince Alfred. They were completely unselected cases, and we do not know what cases are admitted for our operations until an hour before when the resident medical officer rings us, and they were three cases operated on in succession.

In this case there was a large crypt in the left tonsil which I described as a supra tonsillar fossa. This would be an illustration of the vicinity of the supra tonsillar fossa, in the upper pole of the tonsil (indicates). This illustrates the presence of a strand of tissue similar to that one of the Plaintiff. I have passed a red strand of thread underneath and you can see in that area the strand of tissue (indicating strand of tissue at the entrance of the large crypt). This other companion tonsil is in a similar condition. The strand there is thicker than the other side and this is the large crypt (indicating).

To Mr. SHAND: The situation of the tonsil in the neck is relatively in that position (indicating) and the level would be approximately the angle of the jaw.

To Mr. CASSIDY: If that were alive in the tonsil and you pushed something in, it would be definitely distensible (demonstrates).

(Pair of tonsils in bottle tendered and marked Exhibit " 15 ".)

The strand I am speaking of is similar to the strand that I observed in the Plaintiff's tonsil.

To Mr. SHAND: Running in approximately the same direction, straight down.

To Mr. CASSIDY: When I examined the Plaintiff's throat on the 25th August 1942, I looked at the right tonsil too and expressed some debris from the crypts of the right tonsil. The condition of chronic lacunal or fallicular tonsilitis was present.

Coming to the next specimen, this is another pair of companion tonsils which demonstrates again another strand of tissue. This is the large crypt referred to and that is the strand (indicates). I passed the probe underneath. If there had been the irruption of a tube in that area, it would have very definitely broken those strands.

(Luncheon adjournment.)

At 2 p.m.

Mr. CASSIDY: You dealt with the second set?—A. I have not completed that. This is the second pair of tonsils and in one case there is a strand of tissue in one. You will notice this piece of match passes into the large crypt. In this case the strand of coloured cotton passes under the strand of tissue—that is the corresponding recess in the other tonsil with no strand of tissue visible. Two of these cases are from adults and one from a girl of 17.

Mr. SHAND: How far does that match go in?—A. Over a quarter-of-an-inch.

(Set of tonsils tendered, initial "R," marked Exhibit "16".)

Mr. CASSIDY: Are strands on that crypt common in tonsils?—A. Quite common.

Q. How did those tonsils compare for fallicular tonsilitis with those of the Plaintiff?—A. All three cases were operated on for the similar condition that the Plaintiff has in her, chronic fallicular tonsilitis.

Q. You made that examination and at that time did you look for scarring?—A. I made a careful examination of the scarring including the soft palate on both sides, particularly in the area of the left tonsil. No area of limitation of movement or scarring, tonsil freely mobile in its bed, which is an indication of the absence of scarring, because if it is fixed by scarring you cannot move it. I examined the upper surface of the soft palate as far as one could see with a mirror and it was normal. I examined the laringo pharynx and detected no abnormality.

Q. The palatal muscles?—A. The palate moved from time to time, normally. If there is any scarring you would expect constriction of movement and there was none of that.

Q. Was Dr. Thompson present throughout that examination?—A. Yes.

Q. Was he present when you took the history from the patient?—A. Yes, the whole time.

Q. Did you write down the notes of the history?—A. Yes, on one of my cards, and I have the cards here.

Q. What did she tell you? (Objected to)—A. I cannot remember word for word without my card—I have "Thyroidectomy 15th March 1938, first noticed pins and needles in fingers and feet. Throat and neck swollen from time of operation. Swelled off and on for 18 months, sometimes

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skin was red. Both sides were swollen especially the left side. Has difficulty in swallowing, more feeling of a lump than actual pain. States lump in tonsil area used to come and go, left tonsil. Description given suggests lump about the size of a pigeon's egg. Finally throat became very swollen, difficult to open mouth, burst, not sure about swallowing any f.b. (foreign body). Swelling took some days to go down (indefinite as to time)."

Q. That is the history taken in the doctor's presence ?—A. Yes, in August 1942.

Q. Before I go on to that, when you examined, at that time, could you tell the jury what you found in the tonsil ?—A. The tonsil surface had numerous crypts in which debris or caseinous material was expressed and the other portion of the tonsil had a large crypt with a strand of tissue across it and considerable amount of debris was expressed from that region. The entrance to the crypt was actually more a diagonal slit, slightly open, and when it was pressed on it would be approximately a $\frac{1}{4}$-inch in diameter and on pressing it you would make that crypt gape. The crypts leading into the recesses or the large crypt exuded a cheesy debris.

Q. Show, with regard to a lead pencil, how big superficially was that crypt ?—A. The end of a lead pencil could have just fitted into it, superficially.

Q. As to depth ?—A. The actual superficial part you could see was the shelving mucous membrane going in $\frac{1}{8}$-inch or slightly more, but the edges were shelving into a narrowing space.

Q. Assume that area, when seen by Dr. Poate in December 1941, there was evidence of at least three strands across the tip. If there had been an eruption through the tonsil of an article like Exhibit " P," what would have happened to those strands ?—A. They would have been ruptured, broken.

Q. Or of something of which Exhibit " P " is a fair representation ?—A. It would rupture them.

Q. When you saw it there was only one strand left ?—A. Yes, of tissue.

Q. You do not know what had ruptured the other two in between ?—A. No.

Q. On that occasion did you give evidence with regard to that crypt, the first time, on the second trial in August 1942—you did not give evidence at the first trial ?—A. No, the second trial.

Q. Look at those glass tubes in evidence ?—A. Yes.

Q. Were those produced by Dr. Thompson at that time ?—A. Not at the second trial.

Q. When did you see these for the first time ?—A. At the third trial.

Q. Remaining at this occasion when you saw these things, assume that the story given in this court is that this tube, Exhibit " P," or something of which that is a fair representation, had been in a body of pus and had escaped through a tonsil and then been swallowed by the Plaintiff. What would have happened to the tonsil ?—A. Assuming it was an abscess formation there must be gross destruction of the tonsil tissue.

Q. Was that present in this case ?—A. No evidence of gross destruction at all.

Q. What would have happened to the palatal muscles ?—A. In the presence of a big abscess formation they would undergo a considerable

degree of destruction, they would become scarred and tend to become immobile and hard and alter the movement of the soft palate.

Q. Was there any evidence of that ?—A. None whatsoever.

Q. The condition of the Plaintiff in August 1942, as you saw it, was that consistent with any such thing having happened ?—A. There was no evidence of any big abscess formation or eruption or any foreign body having taken a path through the tonsil itself.

Q. Was the condition consistent or inconsistent with the Plaintiff's statement ?—A. Inconsistent.

Q. You said the large crypts may be enlarged by these accretions ?—A. Accretions of caseinous material.

Q. Have you seen examples of that ?—A. I have expressed large pieces from various tonsils, the largest piece being about the size of the first joint of the little finger. There are cases of concretions in the tonsil and one case on record in Logan and Turner is over 1 inch in diameter.

Q. What is the effect of these things in the tonsil ?—A. They accumulate in the crypts of the tonsil and as they get bigger they stretch and enlarge the crypt.

Q. Will you find a tonsil always showing some enlargement of crypt ?—A. No, if a large piece is expressed then after that has been removed it would tend to go back to its normal size.

Q. Come to the third set of tonsils ?—A. Yes.

Q. Does that set illustrate a large crypt ?—A. Both of them do.

Q. Show that to the jury ?—A. These two specimens are from the same patient and they illustrate the large crypt, the superior crypt, there it is (demonstrating).

Q. Would you use one of those glass tubes on it ?—A. Yes, this other one has the match running into it. It is in the same condition. These tonsils have been preserved in formalin which makes the tonsils rigid and hard. In a normal tonsil the tissues are much softer. You will see the smooth lining of that recess which indicates it is the normal lining found in the crypt of the tonsil.

Q. You have tried that black one in it ?—A. Yes.

Q. Does that go comfortably into it ?—A. Yes, it goes in approximately over a $\frac{1}{4}$-inch.

Q. Show us the other side now ?—A. Yes (indicating).

Q. On August 24th or 25th were you able to see the inside of that crypt ?—A. I could see—the portion visible to the naked eye was lined by the ordinary epythelium of the crypt of the tonsil and it showed no evidence of scarring whatsoever.

Q. What is the effect of its being lined with epythelium ?—A. That it is a normal recess of the tonsil and not an artificially created opening.

Q. Does that negative any ulceration through that portion ?—A. In my opinion, yes.

(Certain tonsils marked with the initial "I" tendered and marked Exhibit "17".)

Q. Did you again look at the Plaintiff's tonsil on the 11th December this year ?—A. Yes, in the presence of Drs. Poate, Edye, Marsh and Thompson.

Q. Did Dr. Thompson point out something, using a probe ?—A. He placed a probe into the entrance of the large crypt of the tonsil.

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Q. Describe what the condition of the Plaintiff's throat was at that time ?—A. On examination on that date she had a condition of sub-acute inflammation of the tonsils and fauces, the tonsil surface, and the adjacent part of the soft palate was inflamed.

Q. What was the condition then ?—A. The only difference was that the opening to this crypt of the tonsil was slightly less apparent on account of the swelling of the surface of the tonsil and the lining of the crypt itself.

Q. What was wrong ?—A. Sub-acute exacerbation of chronic tonsillitis.

Q. On the two occasions you have seen her has that condition been present in different degrees, tonsillitis ?—A. On the first occasion it was chronic, not inflamed. On the second occasion it had a superimposed sub-acute inflammation that was present in both tonsils.

Q. Did you notice anything on pressure ?—A. Still a considerable amount of secretion expressed from the crypt but more fluid than was found in the chronic condition. That was on both sides.

Q. Was a probe inserted ?—A. On the last examination something was inserted by various doctors, including Dr. Thompson, Dr. Marsh and myself.

Q. Did you see where Dr. Thompson put the probe ?—A. Yes, at the entrance to this large crypt.

Q. Was that exactly the same position as you put the probe in ? —A. Yes.

Q. Is there now any evidence of scarring ?—A. No evidence of scarring whatsoever on the last examination.

Q. Is the strand still present ?—A. Yes.

Q. Do you remember the type of probe you used when you put it in ?—A. I would not recognise it if I saw it again.

Q. Could you give the jury an idea of the size of the crypt on the 11th December examination ?—A. It was more of a transverse slit appearance than previously and it would be approximately a $\frac{1}{4}$-inch or perhaps a shade more in the diagonal direction.

Q. Did you try as to depth ?—A. When I used the probe it went in approximately a $\frac{1}{4}$-inch.

Q. Was there anything in that tonsil at that time consistent with the story that the tube we have spoken of had escaped through it some years before ?—A. In my opinion, no.

Q. Did you see, at the upper end of the left tonsil, a punched-out canal a $\frac{1}{4}$-inch in diameter, $\frac{3}{4}$-inches long, going down to the pharyngeal wall through the tonsil ?—A. I could not say. It is impossible to see it visually, that depth. As regards being a punched-out opening, it is not, the presence of a strand of tissue is against that.

Q. Did you ever see at the upper end of the left tonsil a punched-out canal a $\frac{1}{4}$-inch in diameter, $\frac{3}{4}$-inches long, going down to the pharyngeal wall through the tonsil ?—A. I think I answered that.

Q. There still exists, when you saw the hole, which would extend to about the pencil end, there was still a strand, in that cavity ?—A. One strand of tissue.

Q. This is the next thing you speak of, Dr. Thompson, page 320 : " There is clear evidence of sloughing, that is to say the tonsillar tissue, except that portion, has been killed in some way or other and had sloughed

away" ?—A. There is no evidence of that whatsoever. The actual surface of the tonsil, as opposed to the opening of crypts, the tonsil is, or was, normal in appearance, in my examination in 1942.

Q. And the other day ?—A. It was slightly inflamed then. There was no evidence of any sloughing.

Q. "To-day a probe will go through the tonsil down to the pharyngeal wall." Is that so to-day ?—A. I think it would be impossible to tell where the point of the probe was in soft tissues, to know whether it was at the pharyngeal wall or not is a human impossibility. You are passing a probe down a recess of soft tissues which yield—to know exactly where the point of that is in relation to the bed of the tonsil is absolutely impossible. The only way one could possibly ever detect where the end of a recess like that is would be by the injection of some opaque material, and X-ray of the opaque fluid.

Q. The next matter is page 320—"There was some suggestion about crypts by my friend"—that is Mr. Shand—and his reply: "I have never seen such a crypt in my life. They were all small things. I have never heard of, read or seen such a thing and I have seen a few thousand tonsils in my time I suppose. It is an absurd suggestion." What do you say as to that ?—A. It implies either lack of observation or ignorance of anatomy of tonsils. These tonsils showed very definite crypts.

Mr. SHAND: Like that—a crypt like that ?

Mr. CASSIDY: "I have never seen such a crypt in my life. They were all small things." What do you say ?—A. All those tonsils, the three of them showed large crypts. The last pair particularly large ones which could not be missed.

Q. And other tonsils you have operated over a period of years—what do you say to having seen it ?—A. I will say thousands of them.

Mr. SHAND: This is "punched out."

Mr. CASSIDY: I will read it again: "There was some suggestion by my friend——

Mr. SHAND: Three lines before that is a description of it.

Mr. CASSIDY: I will read that:

> "Q. Could this punctured hole through the tonsil be caused by any natural cause ?—A. I said punched out. I did not say punctured."
>
> "His Honor: What is the difference ?—A. If you punch a thing out a distinct canal would remain."

Is there a distinct canal there ? There is a strand over it ?—A. Yes, to my knowledge, three strands.

Q. Come to the question I asked you. Mr. Shand put this to the doctor:—

> "Q. There was some suggestion about crypts by my friend ?—A. I have never seen such a crypt in my life. They were all small things. I have never heard of, read or seen such a thing and I have seen a few thousand tonsils in my time I suppose. It is an absurd suggestion."

(Objected to.)

Mr. CASSIDY: Are crypts all small things ?—A. No, definitely not.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 30. Ernest McAustin Steel, 29th December 1943, Examination, *continued.*

Q. Are there abundant instances of crypts being large, such as you saw in this case?—A. Abundant instances. All three specimens demonstrated that.

Q. You have had experience of suppuration and abscesses in and around the throat, have you not, and the tonsils?—A. The tonsil area.

Q. Have you had a good long experience of that sort of thing?—A. A long experience.

Q. If you had a tube such as Exhibit "P," or a tube even 2 inches long, or anything of which that Exhibit "P" could be a fair representation and that were in pus in the tonsil, what kind of abscess would you have?—A. You would have an enormous abscess.

Q. I am not asking you to say it can, but assuming it were travelling laterally across, what would you expect to find?—A. A large abscess formation with consequent large destruction, gross destruction of the tissues.

Q. Before that thing finally erupts, if it were possible to erupt, what would be the condition of that throat?—A. It would be tremendously swollen—tremendously swollen.

Q. And in that area—you might tell the jury—what is the position as to muscles found, if you have anything to get through the tonsil—the position as to muscles and blood vessels?—A. I am speaking in relation to the tissues, in relation more to the tonsil than the other part of it. To approach anywhere near the tonsil it must pass through the area in which there are multiple blood vessels, nerves and blood vessels including arteries and veins, and muscles; and in the area it would have to traverse would be the large vessels of the neck, the internal and external carotid, the internal jugular vein, a number of nerves such as axillary and vagus, and a number of muscles also, such as the stylohyoid and stylopharyngeus, the styloglossus, the genioglossus; a number of muscles, and the digastric muscle, and an abscess would have to lie in relation to all those tissues.

Q. Speaking of that area, does this sketch show the blood vessels in and about the area of that tonsil?—A. Yes.

Q. This is "Atlas of human anatomy" by Sobotta McMurrich, page 520?—A. In this case the angle of the jaw-bone has been cut away and turned up. You can see the apparatus there. The out jaw is down here. The position of the tonsil lies approximately level with the angle of the jaw. If that were turned down the tonsil would lie about this area here (indicating). These are the great blood vessels to the neck—the carotid arteries, internal and external, the veins of the neck, the internal jugular running down with the facial joining it up at that level; and that area is the one that would lie in relation to the outer surface or capsule of the tonsil.

Q. That is the area the thing has to go through?—A. Yes.

Mr. SHAND: Those blood vessels are on the outside of the tonsil?—A. Naturally.

Mr. CASSIDY: They are on the outside of the neck?—A. You can feel them pulsating by putting your finger there and your tonsil lies in there (indicating) and you can feel them pulsating by putting your finger in that area.

Q. This tube, has it got to go through these (indicating)?—A. Yes, it has to pass them in relation to the large vessel.

Mr. SHAND : Pass through them ?—A. In relation to them, not pass through that.

A JUROR : What is the distance between them (indicating) ?—A. The nearest it is given in text books—it is quoted in Sinclair Thompson as being anything from three quarters of an inch to an inch, that is the average, depending on the individuals, whether with a thick neck or a thin neck. That is the average, from the outer posterior surface of the tonsil.

Mr. CASSIDY : To what part of the tonsil ?—A. The tonsil lies in a recess like that, and the other surface is there ; on the right side the tonsils would lie approximately in that area, a little back and out (indicating). (Book shown to Jury.)

Q. In the tonsil itself, have you veins going into the tonsil ?—A. Both arteries and veins.

Q. That is apart from those you have shown there as lying outside ?—A. Lying outside.

Q. Does that sketch in Fowler on Tonsil Surgery, page 38, illustrate those ?—A. Yes, these are the branches of the various great vessels which supply the tonsils.

Q. Does that thing there represent the tonsil, showing it diagrammatically ?—A. Yes, that is the outer side of the tonsil, looking from the outside of the neck, and the various branches, branches from the ascending pharyngeal, and branches from the facial, which go outside, and branches from the artery going to the tongue itself, the lingual artery.

Q. It is blue on the one side and red on the right—that is the veins ?—A. Yes.

Q. The red represents arteries ?—A. Yes. They run together.

Q. So you have veins and arteries in the one vessel ?—A. Yes, the arteries taking it to and the veins returning it.

Q. The sketch on the left-hand side omits the arteries ?—A. Yes.

Q. And the right-hand side omits the veins ?—A. Yes, for clarity.

Q. In a tonsilectomy, is that one of the things you have to watch very carefully ?—A. You always have to be very careful in dealing with hæmorrhage in the case of a tonsilectomy of the vessels approaching or leaving the tonsil.

Q. In your opinion what do you say as to the anatomical possibility of a tube, of which Exhibit " P " is a fair representation, or a piece of rubber such as Exhibit " P " going through, suppurating this—what do you say as to the possibility of that erupting through that area into the throat ?—A. I say there is no evidence whatsoever of that having happened.

Q. What do you say as to the possibility or otherwise ?—A. As regards its happening in abscess formation I do not think it is possible.

Q. You told me these crypts were enlarged by this cheesy material which aggregates and you gave one instance the size of the top of your finger. Have you seen numerous other large ones, not so large as that ?—A. I have expressed numerous large pieces of debris from tonsil crypts, varying sizes.

Q. Compare with that one quarter inch diameter cavity you saw on 24th August, how would they compare ?—A. Quite a number have been of that calibre—diameter.

Cross-examined.

Cross-examination,

Mr. SHAND : Do you know the retropharyngeal abscess ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 30. Ernest McAustin Steel, 29th December 1943, Cross-examination, *continued.*

Q. Where is that ?—A. It occurs on the posterior pharyngeal wall, a bit to one side of the posterior pharyngeal wall.

Q. And it spreads ?—A. It tends to spread down chiefly towards the larynx.

Q. And in close proximity to the arteries, the carotid, for instance ?—A. The nearest one it usually approaches is the ascending pharyngeal.

Q. In close proximity ?—A. It is all in close proximity.

Q. Have you ever known of a rupture through the artery ?—A. Not a retropharyngeal abscess.

Q. Beazley & Johnson Manual of Surgery, 1922 Edition, page 114, look at that (shown). This is a transverse section through the neck, the level of the seventh cervical vertebræ; where is that ?—A. Right down here, low down in the throat.

Q. Right down where ?—A. The lower part of the larynx, the voice box.

Q. "Pus breaking through the pre-vertebral fascia"—that black there—that is what that indicates ?—A. That line there I think would be the pre-vertebral fascia (indicating).

Q. And here is the illustration which first of all shows the pus breaking through, doesn't it—the fascia ?—A. Yes.

Q. That is what it purports to show ?—A. Laterally.

Q. And here you have various things, the inferior thyroid artery is here; is that right ?—A. Yes.

Q. And of course it can break to either side, can't it ?—A. It can travel in either direction.

Q. And you will agree, without going into detail, you will find it sets out various blood vessels, and there are a number of important blood vessels in the vicinity of that black space showing where the pus is, are there not ?—A. They are fairly well away from the point of view of the fascia still separating them.

Q. It does not go through the fascia there ?—A. It is rupturing through there.

Q. It has not gone through that part of the fascia (indicating) ?—A. No.

Q. But it has gone through the part on the left-hand side ?—A. Yes, well laterally.

Q. And you cannot tell whether it is going through part of the fascia or not ?—A. You cannot tell where it is going to burst out. It usually takes the line of least resistance.

Q. Except the carotid is more strongly protected than any blood vessels in the body ?—A. It has a good protection.

Q. There is the trachea, the windpipe, and the œsophagus, and in that case the pus is shown breaking really along the edge of the œsophagus, but with the fascia between ?—A. It is between the œsophagus.

Q. But the fascia is between that and the œsophagus ?—A. But it takes the line of least resistance striking a hard basis behind it. It cannot go this way because it is a bony column.

Q. It would go through there (indicating) ?—A. It might erode it a bit but would not go through it.

Q. On the left side a tubercular abscess is shown originating in the body of the vertebra and spreading laterally behind the pre-vertebral fascia ?—A. A tubercular abscess is very different to a retropharyngeal abscess, very different.

Q. A retropharyngeal abscess is shown here at the level of the third cervical vertebra—where is that ?—A. That would be just approximately about the level of the posterior wall—approximately that level (indicating) just about the angle of the jaw.

Q. Just about the angle of the tonsil ?—A. Yes.

Q. Here it is shown. Would you agree that the illustration shows a dividing of the passage ?—A. Yes, I agree with that, for the very obvious reason I am agreeing with you it divides the fascia.

Q. What is the obvious reason ?—A. An acute retropharyngeal abscess arises in lymph glands, whereas a tubercular disease arises in bone tissues. There is a very big difference.

Q. An abscess is shown in the retropharnygeal space originating in one of the lymph glands in that situation—that is what is shown there. You will agree, being near a tonsil, that a retropharyngeal abscess is also near many blood vessels, veins and arteries ?—A. It is not in very close proximity to those.

Q. Why not ?—A. Because it is lying in front of your vertebral column and those vessels are all to one side, and those tend to travel not so much laterally but downwards.

Q. Would you agree that there that abscess is in fairly close contact to many veins and blood vessels and nerves ?—A. No, it is not in fairly close contact—quite a fair distance.

Q. How close ?—A. This retropharyngeal abscess is further away from the great blood vessels of the neck and the tonsil itself, and the inner nerve is three-quarters of an inch to an inch, therefore it is still further away.

Q. How far ?—A. I should say at least another inch further away.

Q. But not necessarily ?—A. As a rule it is.

Q. It could be closer ?—A. Only if it extends laterally.

Q. It can extend laterally ?—A. Before an abscess extends laterally the patient is dead.

Q. This has extended to some extent laterally ?—A. No, it has not.

Q. Do you swear that illustration does not indicate it spread laterally ?—A. Not this cavity itself, and they arise normally slightly to the left or right of the mid-line of the pharyngeal or the wall.

Q. It does not matter as far as the power of the pus to divide the plastea or destroy the tissues is concerned whether there is a foreign body in it or not ?—A. No, that does not enter into it at all.

Q. Have you ever known a retrophalangeal abscess to destroy one of the large blood vessels ?—A. No, for the reason I gave.

Q. How many of them have you known ?—A. I have opened three or four retrophalangeal abscesses, they are very uncommon conditions, I have heard of others too.

Q. I suppose amongst other things you have heard of quinsy ?—A. Yes, frequently.

Q. And quinsy can, in a severe case, spread half-way along the roof of the mouth ?—A. That is what it usually does, the soft tissues.

Q. And some distance backwards ?—A. Well, it is usually limited to the soft palate, it does not travel very far back at all.

Q. You got as much as half a pint of pus out of it sometimes ?—A. That is nonsense, you perhaps get an egg cup full of pus, very little more.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 30.
Ernest McAustin Steel, 29th December 1943, Cross-examination, *continued.*

Q. You have not heard of any case which has anything substantially more than an egg cup full ?—A. It may be more or less, but never half a pint, that is ridiculous.

Q. Have you ever known pus from quinsy to first of all paralyse any part of the muscles of the palate ?—A. Not paralyse, but impair the movement with the scarring after it.

Q. How many cases of quinsy have you known ?—A. I have treated hundreds of them.

Q. In how many cases out of the hundreds have you known the muscles of the palate to be impaired ?—A. Quite frequently.

Q. What proportion would you say ?—A. It is a very difficult thing to say. The best way I can describe it, it operates for this reason, the tissue is invariably scarred, it is not in the supra-tonsillar fossa the abscess has been, that would impair some movement of the palatal muscles.

Q. In how many cases can you say which you have handled there has been an impairment of the muscles ?—A. That is impossible to answer.

Q. You cannot give any idea at all ?—A. No, it is impossible to answer it. I have never seen anyone else's record of them either.

Q. Can you give one case in which you can say from your experience there has been some definite impairment of the muscular action owing to quinsy ?—A. I have seen more than one.

Q. Can you give one ?—A. How can I give one specific case, you are taking——

Q. Can you write down the name of one case we can check up on ?—A. That is a very difficult problem with the names of hundreds of patients.

His HONOR : Can you do it by looking at your records ?—A. I can say it is possible, but I cannot swear I will find any.

Mr. SHAND : I invite you to give as many cases as you can to check up on, but what I am asking you now is, are you prepared to admit that in the great majority of cases there is no impairment whatever that is visible, any way ?—A. Well, I cannot say the great majority, but the great number do not show any signs, but some do.

Q. Is there any record or authority of anyone in any of the books on this subject of the suppuration from quinsy having caused any visible impairment of the muscles of the palate ?—A. I cannot quote any authority on that, but I can speak from experience.

Q. Can you give us any case in the hundreds of cases you have had where there has been a visible impairment of the palate. What about septic sedulitis of the neck ?—A. Yes, a very serious condition.

Q. Accompanied by pus ?—A. Very often there is no pus with it, there may be small locules of pus with it.

Q. And very often a considerable amount of pus ?—A. There may be.

Q. And that condition can occur in close proximity to the external and internal carotids ?—A. It can go in relation to those. I may point out I am not a specialist in diseases of the neck, but I am a specialist in diseases of the throat. Diseases of the neck are not my province.

Q. You are only going one storey up ?—A. Not a bit of it.

Q. Do you not deal with cellulitis ?—A. Only in collaboration with the general surgeon as to conditions inside the throat, I do not deal with the surgery of it.

Q. And you have read it up ?—A. I know the broad principles, but I have not read it up specifically for this case.

Q. Do you say in giving your evidence as to what structures are likely to be injured, evidence which you gave to my friend, you are only dealing with structures above a certain point ?—A. Structures in close relation to the throat.

Q. Where do you confine yourself to when you are cross-examined on it ?—A. That is too big a question to answer.

Q. Where do you confine your evidence to, you say you are not an expert on one part of the neck, but half an inch above you are ?—A. I am a specialist on diseases inside the throat.

Q. Do you claim to be an expert as to what happens with regard to to abscesses affecting the reduction of abscesses inside the structure of the neck ?—A. In certain conditions, mostly quinsy or tonsillar abscesses.

Q. You do not claim to be an expert for a tube passed through the structure of the neck ?—A. I am dealing with the question of the tonsil and the structures immediately in relation to the tonsil.

Q. You will not claim any expert knowledge or authority beyond what would happen with regard to the tonsil ?—A. Or anything inside the throat.

Q. You mean in the open part of the throat ?—A. The pharynx.

Q. You are not dealing with what would happen in the space behind the tonsil ?—A. Only in close relation to the tonsil.

Q. You do not claim to be an authority on anything beyond that ? —A. Not beyond those limits.

Q. That is a very small area you are covering ?—A. That is the area limited to the ear, nose and throat surgeon, but it is a pretty big area when you have to know it.

Q. I think you suggested you get these little cheese formations that can come through out of the tonsil as big as the end of the little finger ? —A. That is quite correct.

Q. That can happen ?—A. Yes.

Q. That would be bigger in circumference than this tube ?—A. It is quite possible.

Q. When you made the other examination, I think it was during the second trial, your first examination of the Plaintiff's throat, would you agree that a piece of tube like that, leaving out the wires, of that diameter coming out lengthways could have caused the condition of things which you saw on your examination ?—A. Mechanically it could pass through that, but not if there was pus or suppuration present, otherwise the scar would close up.

Q. The scar would heal up ?—A. Close up completely.

Q. Heal up, would you adopt that ?—A. That is a correct term also.

Q. So that it would take some time to heal up ?—A. Soft tissues abscesses heal fairly quickly providing the cause has been removed. Pari-tonsillar abscesses, the nearest thing to what you are speaking of, can be healed up and closed even within five or six days, but it invariably leaves a scar.

Q. For how long ?—A. Permanently, usually.

Q. Usually, you will not swear to invariably ? (Objected to.)—Which is it, usually or invariably ?—A. Invariably.

Q. Why did you say usually and invariably ?—A. They are almost synonymous, it is only quibbling with words.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 30. Ernest McAustin Steel, 29th December 1943, Cross-examination, *continued.*

Q. Are you trying to be exact ?—A. No, I think you are being facetious.

Q. You swear that in your opinion as an educated man invariably means always ?—A. Yes.

Q. Without exception ?—A. Yes, invariably, without variation.

Q. And usually means in most cases ?—A. Yes.

Q. Do you seriously swear they mean the same ?—A. They are very close.

Q. It is invariably ?—A. Invariably for them to burst through the soft palate, yes.

Q. Will you agree that there has been a destruction of the tissues when you examined ?—A. There was no gross destruction of the tissues.

Q. I did not ask you about gross destruction. Did you understand the question ?—A. Yes, perfectly.

Q. Will you answer it properly ? (Objected to.)—A. I am answering the question in the way I think is correct.

Q. Will you agree that there was some destruction of the tissues ? —A. A slight amount.

Q. Will you agree that the condition you saw was consistent as a possibility with an abscess having burst through ?—A. A very vague possibility, a vague possibility.

Q. Now let us come to the supra-tonsillar fossa ?—A. Which I prefer to call a crypt tonsillar fossa.

Q. Why ?—A. Because it has three names that are accepted——

Q. Why mention it in this case ?—A. I mention it as an alternative name.

Q. Why put it in at all. Will you agree—I think practically every time you have mentioned those alternatives you have mentioned them as crypts or supra-tonsillar fossa ?—(Objected to.)

Q. We have got what you said first, sometimes you said supra-tonsillar fossa is a crypt or other times a crypt is a supra-tonsillar fossa ? —A. I have only used crypt as an alternative to the other cases, it is used in the text-books.

Q. You think the correct name is crypt ?—A. Large crypt or tonsillar.

Q. It is in your opinion the correct thing ?—A. In my opinion it is always known as supra-tonsillar fossa or crypt.

His HONOR : Have you seen it used by others ?—A. The alternative is given in text-books as crypt tonsillar fossa, supra-tonsillar fossa and follicular tonsillar fossa.

Mr. SHAND : Why do you use this ?—A. For clarity sake.

Q. Have you used in any previous trial the words " Supra-tonsillar fossa " ?—A. No, I have not.

Q. Except in the fourth trial ?—A. For clarity, to make it clear that my interpretation is the same as other people's.

Q. Is not this the case, that at no previous trial have you ever suggested that the opening which was found in the tonsil was really a supra-tonsillar fossa, you have never suggested that ?—A. I have not, other people have.

Q. Do you think so ? We have read out the actual reference that Dr. Marsh ever made to that.—(Objected to.)

Q. It is correct, is it not, that for the first occasion of this trial and you have told us you used those words, that name, and for clarity you used it at least the alternative three times ?—A. I have used it as an alternative.

Q. Did you not think you would be clear in that the first time ?—A. No, I think that is an explanation and that is quite correct.

Q. I am going to put it to you quite plainly that it never occurred to you before this trial that that opening was mechanically big enough to allow this tube to come out ?—(Objected to.)

Q. Do you agree it was mechanically big enough to allow the tube to come through ?—A. The entrance was.

Q. I put it to you that never before this trial did it occur to you that the opening which you saw that that was what is known as the supra-tonsillar fossa ?—A. I disagree with your statement.

Q. You have always before called the opening you saw a crypt ?—A. As I have stated it is a common opening for other crypts which correspond exactly with the description of the so-called supra-tonsillar fossa.

Q. You have read your evidence through very carefully ?—A. Obviously.

Q. You have been through with Mr. Cassidy ?—A. I don't think those points are material.

Q. Please don't you bother to say what you think is material. Have you been through with Mr. Cassidy ?—A. Portions of the evidence.

Q. I suppose you knew that Dr. Marsh referred in this trial at any rate to the supra-tonsillar fossa ?—A. Quite correct.

Q. I put it to you that you had discussed it with Dr. Marsh before this trial came on ?—A. I had no discussion apart from Mr. Cassidy's office.

Q. You have looked up authorities to discover whether this cavity has one or more names ?—A. I have known that always since I have been doing this work.

Q. Why did not you in other trials for clarity refer to the fact that it was known by those names ?—A. At the other trials I preferred to use my own term always.

Q. Why start all this here at this trial ?—A. The question has cropped up and I have simply given it as an alternative name to the one I prefer.

Q. How do you know it has cropped up ?—A. I have heard the evidence given.

Q. You were in court ?—A. I have been on several occasions.

Q. Were you in court when Dr. Marsh gave evidence ?—A. No.

Q. How did you know it cropped up ?—A. Because I know what evidence was given.

Q. Who gave the evidence when you knew it had cropped up ?—A. I presume Dr. Marsh had given it.

Q. You mean you read his evidence ?—A. Mr. Cassidy discussed it.

Q. So you did discuss the supra-tonsillar fossa ?—A. It was mentioned.

Q. It is owing to that discussion that you for the first time in four trials bring up that name ?—A. Three trials.

Q. Three trials. Did you ever measure this cavity or crypt ?—A. Only the superficial part by the eye.

Q. Did not you try it with a probe ?—A. I don't think it is possible to measure it accurately.

Q. Did not you try it—to see how far the probe could go in without pressure ?—A. No, I think it is a dangerous procedure to probe this crypt.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 30. Ernest McAustin Steel, 29th December 1943, Cross-examination, *continued.*

Q. Was that what prevented you doing it ?—A. That is one of the reasons I did not use it.

Q. You thought it was dangerous ?—A. Yes.

Q. You did it the other day ?—A. Only very lightly.

Q. You could have done it lightly before ?—A. Yes, but it is not a habit of mine to pass probes down crypts of the tonsil of a living subject.

Q. Why did not you do it before ?—A. Because I did not think it was necessary.

Q. Although you could not see the depth ?—A. No, and you cannot measure it accurately with a probe either.

Q. But you could not see the depth ?—A. The superficial part you could.

Q. What you knew was that it was an opening large enough, anyway, from the surface where you could see, to take the round end of a pencil ?—A. The superficial portion, yes.

Q. You could not really tell the depth, could you ?—A. Not the limits of it because these channels narrow down as they pass into the tonsil.

Q. What depth did you think it was ?—A. That is impossible to say.

Q. Did you think it was deep or shallow or could you say ?—A. I would say from my experience that the average depth of this might be anywhere from a quarter to half an inch the crypt in the tonsil.

Q. That is something more than superficial ?—A. Yes, but you cannot measure it accurately.

Q. I am not suggesting whether you can. It is more than superficial ?—A. Yes, but the term superficial is used. There is no involvement of the tonsil itself.

Q. Would you call it a superficial cavity ?—A. From that angle you would.

Q. You said the crypt could be from—— ?—A. Maybe a quarter or half an inch.

Q. I want to put this to you specifically, will you agree that this was a possibility from your knowledge of the structures of the neck, when you saw that opening, that an abscess may have burst and a tube such as that. excluding the wire, may have come through ?—A. I said that was a vague possibility but if it had been so there would be scars.

Q. When you speak of this crypt, you are speaking of the big crypt ? A. Yes.

Q. That is sometimes, you think less correctly termed the supra-tonsillar fossa ?—A. Yes.

Q. But you are speaking of a particular crypt ?—A. The crypt of the tonsil, yes.

Q. Unlike the other crypts ?—A. It is invariably larger and invariably an opening for other crypts.

Q. You understand perfectly, I take it, my suggestion that you never had in mind before this thing less correctly called the supra-tonsillar fossa ?—A. I don't agree with that.

Q. You have in mind what I am putting to you. Now I want to ask you this, did you swear this on the last occasion (p. 174, line 16)—you were shown a glass tube resembling one of these ?—A. Yes.

Q. And you were asked " You see this piece of glass tube, a bent end. In August last when you saw it it was as deep as that ?—A. Yes, but that probe passed down one of the crypts of the tonsil " ?—A. Yes.

Q. That is what you swore ?—A. Yes.

Q. Not the crypt of the tonsil ?—A. Not necessarily.

Q. But one of the crypts ?—A. Yes.

Q. So when you answered that question you were not necessarily referring to this type of crypt that is sometimes called the supra tonsillar fossa ?—A. Not necessarily, I was referring to the other crypts which open into it.

Q. To what ?—A. The other crypts which open into it.

Q. Did you find any crypts opening into this ?—A. There are other crypts opening into it.

Q. Did you find them ?—A. I saw them. I saw the stuff come out of them.

Q. How big were those crypts ?—A. They are smaller crypts.

Q. How deep ?—A. That is a matter of impossibility.

Q. I want to know. You said you saw them ?—A. I saw the debris come out of them.

Q. Were they sufficiently big to get this probe, Exhibit 10, in ?—A. Yes, a probe like that would pass down them.

Q. But nothing big enough to get any of these glass tubes in ?—A. I saw the debris come out of their entrance.

Q. I suggest to you they were nowhere big enough to get these glass tubes in ?—A. Not the glass tubes.

Q. Will you agree now when you answered this question " You see this piece of glass tube with the bent end, in August last when you saw it, it was as deep as that ?—A. Yes, but that probe passed down one of the crypts of the tonsil." You will agree——

Mr. CASSIDY : Which glass tube is that ?

Mr. SHAND : It was one like this one shown to you ?—A. It is one of those, I cannot say which one.

Q. Will you agree when you referred to the tube possibly passing down one of the crypts you were not referring to the crypt which is sometimes called the supra-tonsillar fossa—you were not referring to that ?—A. Not specifically, it could have passed down, I cannot say where it went.

Q. Now you have put to this jury that it was that crypt, sometimes by the unitiated called the supra-tonsillar fossa—you are now putting it that that was where this cavity was ?—A. I don't follow that question.

Q. Have not you been suggesting or giving evidence this morning that the opening in the tonsil which was referred to by Dr. Thompson and which he put the probe in just a week or so ago, was that opening which is sometimes known as the supra-tonsillar fossa ?—A. Yes.

Q. I put this further question on that. Will you agree after what I have put to you that you have now altered the nature of your evidence ?—A. Not necessarily.

Q. But perhaps ?—A. Not necessarily. Dr. Thompson cannot say he put that in that crypt either.

Q. Not necessarily, but perhaps ?—A. Not necessarily is my answer.

Q. You may have, that means, you may have altered your evidence ?—A. Not necessarily is my answer.

Q. That means you may have ?—A. Again, not necessarily.

Q. That is the best, as a professional man, that you will give us ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 30. Ernest McAustin Steel, 29th December 1943, Cross-examination, *continued.*

Re-examination,

Q. Don't you consider it in a case like this of some consequence that you cannot go further than to say " I did not necessarily alter my evidence " ?—A. No.

Q. You don't consider that of importance ?—A. No.

Q. Don't you really ?—A. I did not catch your question.

Q. (Relevant Question read.) Don't you consider that of some importance ?—A. If you alter your evidence it is of some importance, but I did not say I did.

Mr. CASSIDY : Allow him to explain.

Mr. SHAND : (After argument.) Do you want to explain ?—A. I don't see there is any explanation called for.

Q. Because if you do want to explain, you explain.

Re-examined.

Mr. CASSIDY : You were asked this : " If you had never mentioned supra-tonsillar fossa before." Is this the position that when Dr. Marsh gave evidence on the second trial you were in Court ?—A. That is correct.

Q. And on that occasion you heard his evidence ?—A. I did.

Q. Did he say this, dealing with the examination at which he and you attended " In the course of time these little cheesy masses plus others have formed and have made a kind of mass which is really in the region of the supra-tonsillar fossa and this mass when coming away would leave a shallow cavity which is really the entrance in my opinion of this so-called supra-tonsillar fossa. This little cavity is bridged across by a single strand of tonsillar tissue. You see that condition occasionally." Then when you were called was your evidence shortly this : " Prior to yesterday afternoon I have never seen the Plaintiff. I examined her there with Dr. Thompson. I heard Dr. Marsh's evidence this morning, with what he said in Court on what was disclosed on examination I agree in principle. There was no depth to the cavity on the surface of the tonsil, it is a superficial excavation and in my opinion it is a process of chronic lacunar follicular tonsillitis." ?—A. That is correct.

Q. And did he use the words " supra-tonsillar fossa " ?—A. That is correct.

Q. And in his case did he again use it ?—A. Yes.

Q. Is this the way you described it on the third trial (p. 173) : "At the upper part of the tonsil was a larger crypt, it is larger than most others and invariably it is a common opening for a number of those small crypts which I mentioned previously " ?—A. Yes.

Q. Is that the same thing as you are speaking of to-day ?—A. Yes.

Q. And did it have what we have described as this strand over it ?—A. It did.

Q. And is that the thing Dr. Thompson put his probe into ?—A. The same.

Q. That superficial area, you said, was large enough to take the pencil ?—A. Yes.

Q. Once it gets in there (indicating) are there other crypts coming in that it might go into ?—A. If they are large enough.

Q. And once you put that in your opening, can Dr. Thompson or anyone else say where that end is going ?—A. They cannot exactly. You cannot see which one it goes into.

Q. You were asked about the retropharyngeal abscess, and Mr. Shand showed you two illustrations, and then a question was asked, and you were going to say the reason of a certain thing?—A. Yes.

Q. What was that?—A. There are two types of retropharyngeal abscess: one a chronic and the other an acute type. The chronic type is tubercular and arises from tubercular disease of the spinal column anterior surface, and in that case the thing is slow and does not occasion acute inflammation. In the case of the acute type, it arises in an infection of the lymph glands on the posterior pharyngeal wall which occur a bit to one side of the mid-line, and that is a very acute culminating type of disease, dangerous to life.

Mr. SHAND: That is the one on the right-hand page?—A. Yes.

Mr. CASSIDY: What is the result?—A. Those cases invariably mean death because they get a blockage of the respiration.

Q. Does quinsy require early treatment?—A. They are not usually open until the abscess is properly developed. In the first stages there is only a small area of abscess inflammation and it would be difficult to find it to open it, but when the abscess extends, that is the time to open it.

Q. Assume you allowed an abscess to remain with a foreign body inside it the size of the exhibit, and that continued in a suppurating condition, what would happen to the patient without an operation?—A. There would be very serious risk to the patient's life. It would be imperative that it should have surgical attention. Failing surgical attention there would be several possibilities: the question of destruction of tissue, the question of injury to blood vessels and inflammation of their walls—and I speak particularly of the internal jugular vein in that area which is prone to become what they call "thrombosed" or filled with a septic clot, which is a very serious and would be a fatal condition.

(Witness retired.)

No. 31.

EVIDENCE of Joseph Lexton Shellshear.

Sworn, examined, deposed.

To Mr. REIMER: I am Research Professor of Anatomy within the University of Sydney. I am a Doctor of Medicine of Sydney University and Master of Surgery of Adelaide. I had the rank of Lieutenant-Colonel during the last war, and later served with the Army Medical Corps at Dartford in England. I received the D.S.O. for services in the last war.

Q. I understand you have an international reputation in regard to your work in anatomy and your publications?—A. My publications are recognised throughout the world and have been referred to in practically every language in the world. I was a Fellow of the Rockefeller Foundation of New York for one year. I was invited after the last war, when I was in University College, London, with Sir Grafton Elliott Smith, then Professor Smith, to proceed to New York, to go through all the Universities, and to spend a year there to see if we could modify or change the method of teaching in England as compared with America. I have lectured in

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 29th December 1943, Examination, *continued.*

anatomy in the United States. I have had four papers published by the Royal Society of London. I was Professor of Anatomy for thirteen years in the University of Hongkong.

Since I have returned to Australia I have studied or researched into a method of helping in the teaching of anatomy by X-ray, and with that end in view have for some time been preparing or had prepared under my supervision a large number of X-ray plates upon which are superimposed diagrammatically the various structures of the human body. These X-rays are part of a series which covers practically, though not quite, the whole of the body.

Q. I understand you have samples of other X-rays similar to those other parts of the body with you in Court ?—A. Yes, there is a regular series of them.

Q. What does that X-ray show (exhibiting one to witness)—(Objected to by Mr. Shand on the ground that witness has not prepared it.)

Q. How was this one prepared ?—A. In the usual way.—(Objected to.)

Q. What way was that ?—A. That was done by making those bony points as survey or datum points, as is done in ordinary survey work. That one was actually completed by Farrell, the artist in the anatomy department, under my continuous supervision.

Q. Does that anatomy represent the structures ?—(Objected to by Mr. Shand.)

Q. Did you supervise this one ?—A. Yes, certainly. (Mr. Shand withdraws his objection.)

Mr. REIMER : Did you supervise the preparation and final completion of all processes for the production of that plate ?—A. I did.

Q. What would you say as to the correctness or otherwise of what is represented on that plate ?—A. It is within the range of human accuracy.

His HONOR : Do you mean by that that it is as accurate as you can make it ?—A. Yes. I do not contend that any picture or anything we can do is comparable with the human body for knowledge. These are merely accessory to teaching, but the body is the only thing from which to learn anatomy, not these pictures.

Mr. REIMER : Take the relative positions of organs and structures as shown there. What do you say as to their accuracy or otherwise as to location ?—A. They are accurate. If I were to make, looking at it now, a slight alteration, I might push the upper part of the hyoid a quarter of an inch or less upwards.

Mr. SHAND : Then they are not as accurate as humanly possible ?—A. No, I will take that as it is, sir—the oblique line. I see where the oblique line should be.

Mr. REIMER : You say that that is as accurate as human skill can make it ?—A. Yes, within the range of variability that one gets. The essential things shown here are, first the soft palate which is visible in most X-ray pictures on the lateral side. There is a slight outline of the tongue, the tonsil, and there the posterior wall of the pharynx, the hyoid bone, and the thyroid cartilage, and the thyroid lateral lobe of the thyroid. Those transverse lines are the rings of the trachea—the windpipe as a layman calls it.

No. 84 of 1946.

In the Privy Council.

ON APPEAL

FROM THE HIGH COURT OF AUSTRALIA.

BETWEEN

STELLA EILEEN HOCKING (Plaintiff) - - - - *Appellant*

AND

GEORGE BELL (Defendant) - - - - - - *Respondent.*

RECORD OF PROCEEDINGS

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