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 3

(Pages 977 to 1546)

BLYTH, DUTTON, WRIGHT & BENNETT,
112 GRESHAM HOUSE, E.C.2,
Solicitors for the Appellant.

LIGHT & FULTON,
24 JOHN STREET,
BEDFORD ROW, W.C.1,
Solicitors for the Respondent.

The Solicitors' Law Stationery Society, Limited, Law and Parliamentary Printers, Abbey House, S.W.1.
WL1319-5970

Q. Where is the œsophagus in relation to that?—A. That is that dark shadow extending at the back coming to there (indicating).

Q. You see the position in which the tonsil is drawn there, and the thyroid. What would you say as to whether that correctly represents the average distance between those two structures in the human neck? —A. Yes, I should think, looking at it, that it might be half an inch above the average, that particular one, but that is making a guess.

Q. Is there a variation in human beings as to that distance?—A. There is a variation. The human body is remarkable for its bewildering degree of variability; but that does give a correct representation of the appropriate distance.

(X-ray photograph above referred to tendered and marked Exhibit "18.")

Q. Now, here is a further X-ray (exhibiting to witness). The evidence you have given with regard to the preparation and accuracy of the first one, does that apply equally to this one?—A. Equally. As far as the supra thyroid artery is concerned, I would say it is somewhat diagrammatic, but it is correctly placed.

Q. What is shown there, other than what you have already described on the other plate?—A. There is shown first of all the large parotid gland filling up the space between the skull at that point just behind the ear—the mastoid process as it is called—and the lower jaw which is shown by the dotted line there. That is the large parotid gland, which is on this side of the face here (indicating). The palate is shown as well as an indication of some of the muscles of the pharynx, the tonsil and the digastric muscle——

Q. Stopping there. What is that digastric muscle. Where does it lie in relation to the tonsil?—A. Lying below it, it rises deep to the mastoid process and passes down at the angle of the jaw there, just under cover of it in most instances, and hooks on to the hyoid bone there, and shoots up on to the end part of the jaw there (indicating). The muscle is indicated there. This also shows the submaxillary gland diagrammatically which is under there in what is known as the digastric triangle. It indicates also there the position of the external maxillary or facial artery which is passing between the parotid and the sub-mandibular gland in that region (indicating).

(Further hearing adjourned to Thursday, the 30th December 1943.)

Twentieth Day—Thursday, 30th December 1943.

30th December 1943, Examination, *continued.*

Professor SHELLSHEAR further examined.

Mr. REIMER: You were dealing with this X-ray, at the adjournment yesterday, and pointing out the position of the parotid gland and submaxillary gland, and the tonsil and the thyroid?—A. Yes.

Q. What does this portion of the diagram represent?—A. That is a diagrammatic representation of the carotid sheath.

Q. Within that sheath what structures are contained?—A. There is the common carotid artery, shown red; the internal jugular vein, shown in blue; and there is also shown there the vagus nerve—one of the most important nerves of the body as far as visceral function is concerned. The

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 30th December 1943, Examination, *continued.*

internal jugular and the internal carotid arteries are the principal arteries of supply to the head and neck. Of course, this represents only one side; you get a corresponding carotid sheath containing the same structures on both sides of the neck.

Q. Dr. Thompson has given evidence that the distance of the tonsil from the top of the thyroid gland varies from half an inch to an inch?—A. That is incorrect.

Q. What is the average distance between the two in an adult human being?—A. I should put it at from 3 to 5 inches—5 being an absolute maximum. It depends on whether the person has a long or a short, thick-set neck, in great measure.

Q. The Plaintiff is in court, and if required by Mr. Shand, you could measure the distance between her tonsils and her glands?—A. Yes.

(X-ray above referred to, showing the carotid artery and the glands in the area, tendered and marked Exhibit "19.")

Q. I now show you a third X-ray (producing same), and will you be good enough to tell me whether that is equally accurate and prepared in the same way as the evidence you gave with regard to the other two? A. That is so. That is also diagrammatically accurate.

Q. What is shown on that?—A. That is a composite picture which shows the tonsil, the thyroid gland, and an indication of the principal nerves.

Q. You have prepared, and we have in court, three X-rays: one showing the arteries only, another showing the veins only, and a third showing the nerves only?—A. Yes.

Q. But for brevity's sake, that is a composite one showing all the relevant structures?—A. Yes, superimposed.

(X-ray referred to, showing veins, arteries and nerves superimposed, tendered and marked Exhibit "20.")

Q. Are those X-rays drawn from diagrams or sketches which are prepared under your supervision?—A. Yes.

Q. And you have samples of them in court if anyone should care to see them?—A. Yes, they are in serial number.

Q. Are they being used by the University in any particular way at present?—A. All the X-ray pictures are used in the Department of Anatomy as an auxiliary method to the teaching of anatomy. With regard to the sketches, the method of teaching which I have to adopt is to have tissue paper put over the top of a plain X-ray in order that the candidate might draw in on that the features for himself.

Q. With regard to post-graduate work for the Degree of Master of Surgery in connection with members of the medical profession who are overseas, are these being used?—(Objected to; question not pressed.)

Q. Could you give me in a general form the principal structures between the thyroid and the tonsil. In this action, the Plaintiff alleges that a rubber tube was left in the thyroid area, and that after 18 months it was alleged to have erupted through her left tonsil?—A. Yes.

Q. Will you tell His Honor and the jury the principal structures between those two areas which would have been involved in something going from the one area to the other, if it were possible?—(Objected to by Mr. Shand.)

Mr. SHAND (on the voir dire): Have you any experience, when you get an abscess in the human body, as to which way the pus is likely to track ?—(Objected to as irrelevant on the objection; Mr. Shand's question rejected.)

Q. Have you had experience in the movements of foreign bodies in a living human being ?—(Objected to by Mr. Reimer; question rejected.)

His HONOR: I will allow the other question.

Mr. REIMER: Will you answer that question, and, in answering that question, I do not want you to rush it ?—A. In general, the structures are arteries, veins and nerves, muscles, organs, lymphatics and fibrous tissue, septa and planes.

Q. Will you give us in more detail the structures going gradually up from the thyroid area to the tonsillar area ?—A. The difficulty, if I may say so, is that I have got to picture the line of travel, and I don't believe there is one.

Q. What are the structures which lie immediately around the thyroid capsule ?—A. The structures which are lying immediately around the thyroid capsule are, firstly, anteriorly there are veins, the thyroid veins almost completely surrounding it and piercing it; secondly, the sterno-thyroid, the thyro-hyoid, and the omo-hyoid, superficially to which may be the platysma. Those four structures I have mentioned are muscles.

Q. From these diagrams in Sobotta and McMurrich, will you point out to the jury the structures that you have mentioned ?—A. Yes (Witness refers to pp. 460, 463, 464, and 470, 471).—Here (indicating) the sterno-mastoid has been removed and is revealed there in the posterior or back part of the thyroid gland, and then there are all these vessels (indicating): there is the internal jugular vein, here is the nerve, here is the descending branch hypoglossal or twelfth nerve which supplies all these muscles, and posteriorly you have the vagus and behind that the nerve called the sympathetic nerve, the sympathetic trunk which is to the left of these muscles, and the thyroid is separated from inside those vessels. Superiorly the area above the thyroid is limited by the origin of this muscle, the sterno-thyroid, from line on the thyroid cartilage, the superior thyroid artery there (indicating) and the branch of the artery coming up, and the nerve there, and the external laryngeal nerve that is firmly fixed along the oblique line of the thyroid cartilage.

Q. What is the thyroid cartilage ?—A. It is at the Adam's apple which you can feel here (indicating)—that cartilage of the neck which gives attachment to these muscles here (indicating).

Q. Do you mean the sterno-hyoid ? Is that attached on to the thyroid cartilage ?—A. The term attachment is used to give the origin and insertion. The muscle arises from one bone and goes to another for movement, and the point of origin is spoken of as the least moving part, the point of insertion the greatest moving part. Those muscles as they are fixed on this breast-bone or sternum, that naturally is the more fixed part, and the name sterno-hyoid means that they go from the sternum to the hyoid bone.

Q. Where is the hyoid bone ?—A. The hyoid bone is situated above the level of the thyroid cartilage. There is a very good picture of it in Cunningham (Exhibits to jury diagram in Cunningham's Anatomy, p. 660).

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 30th December 1943, Examination, *continued.*

I can give a small Cunningham to each member of the jury so that they may follow this more clearly (does so). It is at p. 332 in this edition. The portion in blue is the thyroid cartilage.

His HONOR: They show the same thing, do they, only that one is coloured?—A. Yes, well, they show different aspects. This is the thyroid from the front (indicating) and that is the thyroid cartilage from the side, with the oblique line showing. The hyoid bone is there (indicating), the curved bone which you can feel which arises above the Adam's apple.

Q. You were mentioning the sterno-hyoid muscles and that they were attached. Does that mean that they are attached at one end to the hyoid bone and at the other end to the sternum?—A. Yes.

Q. I think you mentioned that they were attached obliquely to the sterno-hyoid bone?—A. No. I said that the oblique line on the thyroid cartilage is where the sterno-thyroid is inserted.

Q. What do you mean by the oblique line on the thyroid cartilage?—A. It is that line which is labelled there "oblique line," running on the surface.

Q. You have mentioned these muscles. Now, what is the next relevant structure in relation to the thyroid gland?—A. There are structures, of course, below here (indicating). It is resting there tightly on the trachea. The thyroid is moved up and down the trachea. The trachea is directly behind it. Then we have running up the superior thyroid artery to join with the external carotid going across that fairly dense fibrous membrane known as the thyro-hyoid membrane, between the thyroid and the hyoid. There it is (indicating), dense membrane. It is pierced here (indicating) by a nerve which you can see there (indicating) and an artery. That nerve is the internal laryngeal nerve, and the artery is the internal laryngeal branch of the superior thyroid. Then here, at about this level, this long thin nerve is the external laryngeal branch of the superiorly laryngeal branch of the vagus. Then, above that, we have these minor branches, the hyoid bone. The hyoid bone gives rise to the muscles of the tongue.

Q. Before you go any further up, you have mentioned certain muscles, one the sterno-thyroid, which is attached in the upper portion to the thyroid cartilage and the sterno-hyoid, which is attached to the hyoid bone. Now, assuming you have got anything inside the thyroid capsule have you got to get through those muscles before you get past the hyoid bone?—A. You cannot get upwards unless you went through the capsule of the thyroid and in that direction you would have to separate those muscles from their origin superiorly.

Q. That is to say they would have to be separated off, one from the thyroid cartilage and the other from the hyoid bone?—A. Yes.

Q. Without separating them off is there any other way in which you could get past them or around them or would you have to go through them?—A. How do you mean, what with?

Q. A pen, a knife, or anything. I mean, is there any way or not to get around them or have you got to go through?—A. The thyroid is completely enveloped in its own sheath of fibrous tissue.

Q. Would you have to get outside that sheath to separate them?—A. Yes.

Q. What is the next obstruction or difficulty in its progress?—A. If you went posteriorly you have got the muscles in front of the vertebral

column, they are almost immediately in contact only having this artery —you see the distance is practically nil, it would have to push back, it could not go on far before it hit the bone of the vertebræ, unless, of course——

Q. That is taking it posteriorly ?—A. Yes.

Q. Supposing it went upwards. First of all you have the thyroid capsule or the sheath which contains the thyroid gland and that would have to be got through first of all ?—A. We have mentioned upwards, it could not leave the thyroid, it would have to run into a great sheath of vessels there, the superior thyroid coming in, the superior thyroid above and it would hit also the tissues in relationship to the internal laryngeal and it could not go up there.

Q. I don't want you to deal with the arteries, veins and nerves, because I want to deal with that separately. I want to deal with the main anatomical structures. Supposing you have to make an opening to get out of the thyroid capsule, you have mentioned the sterno thyroid and the sterno hyoid muscles, is there any way of getting around them other than getting through them ?—A. I cannot see it; I mean, you would have to go backwards.

Q. And to go backwards in what direction would you go ?—A. Towards the vertebral column.

Q. And what is there there ?—A. The carotid sheath, the longus capitis muscle, the bodies of the vertebræ—I know it is difficult, but a section through the neck on this would reveal everything and I am not frightened of sections, I think the jury would understand a section.

Q. If the jury were disposed to see a section you could have that available and explain it to them ?—A. Yes.

Q. If they give any intimation of their willingness to do so ?—A. Yes.

Q. And you consider that is a far more apt way of seeing the relevant structures than seeing mere diagrams ?—A. The body is the way.

Q. From the hyoid bone you told us you would have to get through the two muscles that you mentioned, then you go on to the hyoid bone. What is internal to the hyoid bone, underneath it ?—A. Internal to the hyoid bone and that thyro-hyoid ligament is the beginning of the larynx, a part which is called the pyriform fossa, just at the line of junction between what we call loosely the windpipe and the gullet, we call that the œsophagus.

Q. You have mentioned the pharynx, using layman's language, does that mean the end of the throat, the voice box or what ?—A. No, the pharynx in anatomy is that part of the alimentary tube which extends from the back of the nose and mouth to a level in the neck below the cricoid cartilage, above this it is called the pharynx, below that it is called the œsophagus, the larynx is the windpipe, the pharynx is common to both the larynx and the gullet, the pharynx is the upper part.

Q. So that you say internal to the hyoid bone you have the pharynx ? —A. That part of the pharynx at the entrance to the larynx.

Q. In other words immediately internal to the hyoid bone you have the open portion of the pharynx ?—A. Could I show you exactly what you have internally ?—In Cunningham it shows the pyriform fossa and there is the membrane (indicating).

Q. To make it clear, that portion where I point the pen, that is the voice box ?—A. That is the opening into the voice box, you are looking into it from behind, the pharyngeal wall has been cut down the middle, opened up from behind, and you are looking forward into it, the base of the tongue is there, there is the epiglottis and there is the hyoid bone.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 30th December 1943, Examination, *continued.*

Q. Now putting it in perhaps inapt but simple language, if you went beneath the hyoid bone you would get into the pharynx ?—A. You would get into that point of junction between the pharynx and the larynx, it is just a transition area to make it into both.

Q. You would not go into other structures, you would get into that part colloquially known as the throat which you say is between the larynx and the pharynx ?—A. Yes.

Q. That is outside the hyoid bone ?—A. Outside the hyoid bone is, first of all at this position of the neck (indicating) the digastric triangle which is a dense band of fascia running from the jaw across the mastoid process coming across and down like that (indicating) and is fixed in the upper border of the hyoid bone, then we have numerous arteries——

Q. Leave the arteries out for a moment. I have a reason for doing that ?—A. Then you have here your posterior belly of the digastric coming there and the anterior belly forward.

Q. Have you a diagram there in either of those books where you can show that ?—A. Yes, that is a good picture of that (indicating). The anterior belly of the digastric coming down there with its common tendon to the hyoid bone and then right up there posteriorly and that triangle is known as the digastric triangle, these are some of the arteries which I mentioned just know and it has a fibrous band and is filled up by the big gland the submandibular gland for saliva.

Q. With regard to that digastric muscle, how would you describe it from the point of view of density or strength or capability of being perforated or penetrated ?—A. I don't understand you. It is just a muscle like every other muscle, the posterior belly is thicker than the anterior here, there is no——

Q. Passing up from the area where we have got to and the hyoid bone, can you get from there above the digastric muscle other than going through it ?—A. No.

Q. Can you get around it ?—A. If you went over the top of it you would have to pierce the fascia covering the triangle and you can go above it in the triangle and then you would hit the tissue here (indicating).

Q. That is the submandibular gland ?—A. Yes.

Q. If you went under the digastric muscle ?—A. You cannot.

Q. Why ?—A. Because it is firmly tied down to the hyoid bone with its fascia and if you went under it you would be into the larynx.

Q. Having got through the digastric muscle what is the next obstruction of a major nature apart from the veins, nerves and arteries ? A. There are first of all muscles coming down, first the hyoglossus muscle, the hyoglossus is a sheet of muscle which runs from the hyoid bone to the tongue.

Q. I don't think it is necessary to ask you the names of all the various muscles in that area, but does that X-ray plate show them ?—A. That shows the muscles in diagrammatic fashion but accurately represented.

Q. And are those muscles between those two areas I have been asking you about ?—A. They are between those two areas.

Q. If one presupposes the possibility of something coming from the one area to the other would it have to find its way through those sheaths of muscles to get to the tonsil ?—A. Have you got it in there yet ?

Q. Perhaps I have left something out. I will come to the fascia in a minute, but I am speaking of muscles for the moment. Would you have

to go through those muscles before you would get to the tonsillar area ? A. This is so hypothetical it is so difficult to get at.

His HONOR : As I understand the position Professor Shellshear says this, it is anatomically impossible for the thing to move from the thyroid to the tonsils.

Mr. SHAND : Your Honor is giving the evidence. As Mr. Reimer observed, he has not asked that question.

His HONOR : He has not asked the question, but Professor Shellshear prefaces his remarks by saying that.

Mr. SHAND : I don't know whether he is qualified to say it could happen or not.

Mr. REIMER : I don't suppose you have had the experience of a tennis ball coming out of the skull either ?—A. No.

Q. I asked you whether those muscles there would have to be penetrated to get from the area we have been discussing to what I call the tonsillar area ?—A. If anything went through that area those muscles would have to be penetrated.

Q. Is there any muscle lying immediately beneath the tonsil ?—A. Yes.

Q. What is that muscle ?—A. There are two muscles.

Q. Are they shown on this (indicating X-ray) ?—A. There is one only faintly indicated.

Q. Could you show those two muscles immediately beneath the tonsil on some other diagram ?—A. This paper is by Professor Todd, a very famous anatomist, in which he did the anatomy of the tonsil. On page 361 there is the tonsil with the muscular diagram showing the palate pharyngeus muscle as a large sheath coming from the palate.

Q. What is the other muscle ?—A. The other muscle on its surface, the superior constrictor muscle of the pharynx.

Q. Where does that lie ?—A. The superior constrictor of the pharynx lies outside the tonsil but separated from the tonsil in the main by these fibres of the palate pharyngeus muscle.

Q. When you say outside the tonsil, looking at it from the layman's point of view, looking down the person's mouth, it would be behind the tonsil ?—A. Lateral to it. The tonsil has nothing medial to it on the inside.

Q. For anything to come from below the human neck into the tonsil would it have to penetrate both of those two muscular structures ?—A. It would have to.

Mr. SHAND : And the two being what ?—A. The palato pharyngeus muscle and the superior constrictor muscle of the pharynx.

Mr. REIMER : And they are in addition to what are shown here ?—A. Part is shown there. There is the palato pharyngeus and those fibres covering it are the superior constrictor, that muscle is deep to it and in the main covers it.

Q. And where would the tonsil lie there ?—A. It is dotted in there.

(X-ray plate showing muscles tendered and marked Exhibit " 21.")

Q. You have mentioned the major muscular structures and the hyoid bone and hyoid cartilage which are in this area, if it were investigated. Now, have these muscles a covering of any kind ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 30th December 1943, Examination, *continued.*

Q. What is the nature of that covering ?—A. The nature of the covering is fascia, white fibrous tissue.

Q. Do those also have to be penetrated, this fascia ?—A. Yes.

Q. Are there any areas where the fascia are in different compartments, as it were ?—A. Fascia surrounds every structure, practically, in the body. It surrounds arteries, veins, nerves and muscles, and it also stretches across the spaces between muscles and it is generally found in the lines of movement.

Q. Now it has been suggested here by Dr. Thompson that a foreign body, of the nature which I will show you in a few minutes, found its way from the thyroid to the tonsillar area along fascial planes. Are there any fascial planes or any connections of fascial planes which run from the one area to the other ?—A. No.

Q. Would you explain to the jury what structures there are if there are no fascial planes ?—A. It is such a complication of structure. First of all we have the fascia which lines the whole of the inner side of the pharynx and its muscles, that is a dense fascia, part of which forms the capsule of the tonsil itself. That dense fascia finds its surfaces in between the two different constrictors, the other side of the superior constrictor is covered also by a fascia, each of these has a name. Then they run into the region of these muscles, there are muscles there, each have their fascias which act as barriers. Everything would have to be moving exactly in the same direction in order that this could happen. When they do, as for instance down here with respiration, then the fascial planes tend to keep on the line of movement but here the movement is up those planes.

Q. Is there a fascia which divided the upper and the lower portion of the human neck ?—A. Yes.

Q. What is that ?—A. On the surface here there is a fascia which separates them from the parotid gland, and is adherent to the posterior belly of the digastric, becomes fixed on to a definite firm ligamentous piece of fascia known as the style mandibular from a little bone called the stylo to the mandible which is the jawbone. It separates the two big glands here, the parotid and the sub-maxillary. They themselves are enclosed in their own band here so that to the hyoid you have only got one line which is not really possible where the plane is the posterior plane behind the pharynx called the retropharyngeal space. The term "space" is a difficult one, I don't like it, but there I think it is a space, although interspersed with fine fibres because in swallowing you cannot have any resistance to this movement of up and down of the œsophagus.

Q. When you referred to retropharyngeal, that is behind the back of the throat ?—A. Yes.

Q. Not near the tonsil area ?—A. No.

Q. Referring to the fascia, it divides the neck into two parts ?—A. Might I just get that straight, to divide the neck into two portions is a decapitation practically.

Q. Now, from the one area we have mentioned to another area, there is a fascia across ?—A. It is interwoven, it is like passing through a net rather than a plane separating the two halves of the neck running from one place to another

Q. The fascia which surrounds the thyroid has that any fascia joining on to it going up or down ?—A. Every fascia is connected with some other fascia on its surface, but inside it is closed off except where the vessels

pierce it, and then the fascias run off on those vessels, all fascias are continuous.

Q. The fascia surrounding the thyroid, does that open into another fascia above or not ?—A. No.

Q. Where does the fascia of the thyroid go down ?—A. Only as far as the lowest part of the thyroid, it is at the level of the sixth ring of the windpipe, maybe the fifth, there is a variation.

Q. It has been suggested in this case that a foreign body has passed by some means or other from the area of the thyroid to the area of the tonsil. Now, as an anatomist, is that anatomically possible ?—A. No.

Q. The Plaintiff alleges that a piece of rubber tube some two inches long with two bits of wire, one about one and a quarter inches long and the other about one inch long, protruded from one end and in the lumen, as she calls it, of the rubber, a piece of marine sponge or a bit of swab, and she says that that object which you have in your hand is a fair representation of the object that she alleges. Now, what do you say as to the possibility or otherwise of an object such as you have before you, or anything of which that could be a fair representation, being involved in this area anatomically ? (Objected to ; allowed.)—A. It is absolutely impossible.

Q. And if the jury were willing or prepared to do so you could show it on a specimen ?—A. Certainly.

Q. It had been suggested that between the area of the thyroid and the area of that tonsil, there is a space filled with mucous membrane. What do you say to that ?—A. It has no meaning to me at the moment. Could you make it more explicit ?

Q. What is the mucous membrane ?—A. The definition of it is somewhat complicated. In anatomy the mucous membrane is the fine interlining. This is mucous membrane, that soft tissue on the lining of the whole of the alimentary tract and the whole of the respiratory system and other internal organs, and in histology or microspical anatomy they speak not only of the skin on the surface but a little of the connective tissue which binds it. There is confusion in the definition but it is the inner lining of those organs.

Q. Is there any mucous membrane anywhere else. Are there any other areas ?—A. It lines all internal organs.

Q. What area would they cover. How thick is it ?—A. From within outwards, it varies depending on the organ. In the œsophagus itself it might be about one-sixteenth of an inch. It may be less in other places. It is a surface of " tripe," that is what it is. It is a folded-up area. That is apart altogether from the muscle underneath it. It varies.

Q. Apart from the lining of the mouth, are there any other places where there is mucous membrane between the tonsil and the thyroid ? —A. The pharynx——

Q. But inside, blood vessels, nerves, glands, take anywhere there, is there any other place ?—A. No, there is no hollow organ there.

Q. There is no mucous membrane in that area ?—A. Mucous membrane does not exist there.

Q. Will you look at this book, illustrations : Jamieson's illustrations of Regional Anatomy. Do you know the publication ?—A. Well.

Q. Do you know the author ?—A. Very well.

Q. You see that diagram (page 43). There are two little white spaces. It has been suggested they are areas of mucous membrane ?—

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 30th December 1943, Examination, *continued.*

A. Then they have removed entirely from there the thick fascial plane which is known as the pharyngo-basilar fascia which lines the inner surface of the constrictor muscles, which I think I have previously mentioned and anchors the pharynx firmly to the base of the skull.

Q. Does that diagram represent areas of mucous membrane?—A. Not unless they have removed everything down to the mucous membrane in those areas. The picture is a diagram and it is to me the pharyngo-basilar fascia, but I cannot say where he has cut that out in his diagram. There is no evidence of it. It is a diagram for students.

Q. You used the words "inner surface" (constrictor muscles). It means towards the mouth?—A. Yes.

Q. Assume that some object, knife or anything else, were being penetrated from beneath through the area, through the tissues to the tonsil, would you pass through any mucous membrane until you got to the tonsils? —A. The tonsil itself is a modified mucous membrane. That is the first time you would hit the mucous membrane.

Q. I see, it would be the first time, when you got into the tonsil. I refer now to page 520 of Sobotta-McMurrish (Atlas of Human Anatomy). What is the diagram showing?—A. That shows the distribution of the branches of the internal maxillary artery, branches of the temporal arteries, and this, the venous ploxus which accompanies the arteries and is shown there lying on the surface of the internal ptorygoid muscle at that point.

Q. Take the accompanying muscles. Does it mean for every vein shown there is a corresponding artery?—A. The veins do not necessarily follow the arteries closely, but they drain in a somewhat different manner, but generally arteries and veins accompany one another.

Q. Will you indicate whereabouts the tonsil would lie in that diagram? —A. In this diagram to get to the tonsil there, you have to go first through the muscle which is shown under there, which is called the internal ptorygoid and then you would get to a muscle coming from there known as the styloglossus. Then you would get through the superior constrictor and then the palate pharyngeus. The tonsil would lie on that plane.

Q. Dealing with the particular problem that this action deals with, to get to the area suggested, the tonsil, would they have to go through what you have mentioned?—A. No.

Q. What other way could they go?—A. That area would bring us, bring it between the jaw and the internal ptorygoid.

Q. But if you go beneath that?—A. You go through the digastric triangle which has numerous arteries and veins and nerves in relationship to the tonsil, and overlying them.

Q. Are there certain arteries and veins in immediate juxtaposition to the tonsil?—A. The fascial artery or internal maxillary takes a sweep up beneath the jaw and may come into close, well into lateral position in relation to it, a large artery; also you have branches of it because they are the fascial arteries and ascending palatine arteries.

Q. Are those veins and arteries shown in this diagram?—A. Yes that is the external maxillary or fascial artery which is here (indicating) almost lower than usual. It may lie right on to the level of that corner. There is always variation. There are branches passing in and there are the ascending palatine.

Q. What is the distance from the tonsil to the blood vessels in the ordinary human being? A.—They would be separated from those blood vessels by the muscles already mentioned.

Q. But what is the distance?—A. It would be about a quarter of an inch. It is like "What is the distance between here and the post office?" I know where the post office is. I am really giving you what I call an estimate and I should say about a quarter of an inch.

Q. For the proposition put forward here to happen, for the tube to have gone from one area to the other, leaving aside muscles to be penetrated, would it have to find its way through those blood vessels and nerves shown on that diagram?—A. Either that, or to completely separate them with their fascias.

Q. If you took a section across the neck, what area is there on the one side for that tube. Take what I am now showing you? (Objected to; not pressed.)—A. This is one. I think it is 1507. (Cunningham's Anatomy referred to.)

Q. I refer to 1424 and 1429. With regard to the 1429 diagram, how does that in actual size compare with the size of the average human neck?—A. That picture looks to be nearly life size.

Q. There is variation in human beings as to the size of the neck?—A. There are the lateral and lineal types.

Q. The area we are concerned with is the area on one side from the front of a line where you have the muscles alongside the vertebræ. Take this area. What would be the average size of this area?—A. From front backwards?

Q. From the front hereto where you get to the muscles of the back of the neck?—A. I cannot do it without a mirror. I say an inch and a half.

Q. Although there may be variations in human beings, those variations do not extend very far?—A. There is a remarkable degree of constancy with a bewildering degree of variability.

Q. One and a half inches would be a fair average?—A. Yes.

Q. What do you mean by, if the fascia were completely separated?—A. They are all filled up by a network of fascia. You would have to break through all that and anatomically you could not do it.

Mr. SHAND: You could not break through the fascia?—A. Not in that way; with a knife, yes.

Mr. REIMER: Could you pass anything, whether a rubber tube, or stiletto, through that area from one to the other, without destruction of those tissues that you have mentioned?—A. No, not anatomically.

Q. They would necessarily be destroyed?—A. Yes.

Cross-examined.

Cross-examination.

Mr. SHAND: When were you invited to give evidence?—A. I was invited to give evidence in this case and the last case. They asked me.

Q. When were you invited to give evidence in this case or previous trials?—A. I cannot fix the date because there was no definite invitation given to me. I have had association with Mr. Reimer from the very commencement when he came to the anatomy school.

Q. Before the first trial?—A. I think so.

Q. You have never given evidence so far?—A. No, I have not given evidence so far.

Q. When were you invited to give evidence in this trial?—A. I think I was invited if I remember——

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31.
Joseph Lexton Shellshear, 30th December 1943, Cross-examination, *continued.*

Q. Yes, that is what I asked. When were you invited ?— A. The question was this. I would like to make my position quite clear. Mr. Reimer came to me——

His HONOR : But the question is, whether you were invited or asked, when was that done ? When were you asked to give evidence ?—A. I cannot remember. I did request that I be not asked to give evidence for health reasons in the first instance, so there was no invitation.

Q. You did not want to give evidence. When were you asked to give evidence ?—A. I think in the last trial and that would be the third trial.

Mr. SHAND : You are giving evidence now. When were you invited or when was it suggested you should give evidence as regards this trial ?—A. I cannot remember. I think it was quite recently. I think it was understood that I was not going to give evidence and I was asked if I would prove those pictures, if I remember rightly. That was the invitation. They took my word for health reasons I did not wish to give evidence. I volunteered a statement that I would help.

Q. You were not invited to give evidence before ?—A. No, I had already asked not to give it.

Q. What do you know of the movements of foreign bodies in the living human being ?—A. In that matter I can only speak on general principles.

Q. Have you had any experience at all ?—A. I was in practice for five years.

Q. Have you had any experience of the movements of foreign bodies at all ?—A. I have had no experience in the actual movement of foreign bodies in human beings.

Q. Have you had any experience of the effect of internal suppuration ? —A. Yes, certainly.

Q. Where have you had that ?—A. I was in practice for five years before 1915. I am not an authority on those things.

Q. How many cases have you had of internal abscesses ?—A. I could not say. I was acting with Sir Alan Newton in the last war with the third Auxiliary Hospital.

Q. Have you had any experience of the effects of moving suppuration in the living human body ?—A. I cannot recall after all these years, definite cases, but I must have had it in my clinical experience.

Q. You do not know much of it ?—A. I know the first principles of it.

Q. What are they ?—A. That suppuration always travels the course of least resistance from a higher pressure to a lower pressure.

Q. That would be more or less elementary ?—A. Absolutely.

Q. Do you know it is not possible to say in which direction suppuration will be likely to spread ?—A. I would not admit that.

Q. Will you deny it ?—A. It depends on the position in the body. You name place to place. Which part of the body do you refer to. I am not an authority on this.

Q. What about the psoas abscess. Do you know that ?—A. Yes.

Q. How does it travel ?—A. Along the sheath of the psoas muscles.

Q. The sheath in the fascia ?—A. Yes.

Q. The psoas abscess travels a long way ?—A. There is one muscle. It follows that muscle.

Q. Does the psoas abscess travel a long way ?—A. It depends which vertebræ is involved. I should say it goes 10 to 14 inches.

Q. Have you never known or read of psoas abscess starting in the vertebræ and coming out behind the knee ?—A. It might easily do it by a very destructive process.

Q. And that process would cover a lot more than one line of muscle or fascia ?—A. An abscess could——

Q. But if it came out behind the knee, travelling from the vertebræ of the back, it would cut across more than one muscle and line of fascia ? —A. Can you give me any indication as to which point you regard it as having burst out of the psoas muscle. Is it out of the sheath ?

Q. No, it comes out behind the knee. It travels from the middle of the back and bursts out behind the knee ?—A. That is hypothetical. We all know that suppuration will track——

Q. Can you answer the question ? What muscles and fascias would it have to pass through ?—A. Yes, I can name those.

Q. What muscles would it have to pass along before it came out behind the knee——

His HONOR : Have you got sufficient data on which to answer that question ?—A. I feel like Alice in Wonderland—it is very unreal.

His HONOR : The question as I understand it is this—if a psoas abscess starts at the vertebræ in the back and comes out behind the knee, what muscles does it pass through ?

Mr. SHAND : And structures—nerves, blood vessels—start from the psoas muscle ?—A. If it came down from the psoas muscle it would arrive at the tendon of insertion in the lesser tuberosity of the femur. Behind that is the abductor magnus. It is possible that an abscess might go right through the structures into the sheath of the abductor muscle, follow down the abductor muscle without any further change, and, going by the line of least resistance, come out at the back of the knee. But I have never seen one.

Q. You have read of it ?—A. I do not remember ever having read it.

Q. Take a simple case—how it works is that the suppuration divides up the fascia—you understand that ?—A. No, I certainly do not.

Q. Do you tell these gentlemen you do not understand that question ? —A. I do not. What do you mean by " divides up the fascia " ?

Q. Separates the fascia from the structure to which it is connected—the two fascias ?—A. It can separate those fascias. If it is inside the sheath of the psoas it is eating its way down inside that sheath, and it will track along a plane of least resistance.

Q. But if it is outside the fascias ?—A. There is nothing outside the fascias. These fascias are all joined. I want to know which plane ?

Q. Any plane you like, coming down from the psoas muscle—do you say there are not planes of fascia there ?—A. Certainly there are planes of fascia there.

Q. I am putting to you that if the abscess gets between those planes it separates them ?—A. It is within the sheath of the muscle.

Q. But it can get through ?—A. Only by a suppurative process eating through.

Q. You know that does happen ?—A. Yes, of course it happens.

Q. And if it happens it can get between the planes of the fascia ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 30th December 1943, Cross-examination, *continued.*

Q. If it gets between the planes of the fascia it can divide them ?—A. I should like to get this clear—I do not want to answer that, because it is not the full truth. There is a big inflammatory thing going on—all sorts of pathology on which I am not an authority. It is making an anatomical interpretation of a pathological process.

Q. You cannot answer for the pathological process ?—A. I am not an expert on these pathological processes.

Q. I just want to find out how far your evidence goes—you have expressed the impossibility of a tube to travel from the thyroid through the tonsil ?—A. Yes.

Q. And yet you do not know anything about the pathological processes ?—(Objected to.)

Q. Do you know sufficient about the pathological processes to answer for what you go on if suppuration tended to spread upwards ?—A. Upwards where ?

Q. Upwards from the thyroid in the direction of the tonsils—do you know sufficient for that ?—A. Absolutely I know sufficient for that.

Q. What pathological processes go on if the psoas abscess spreads downwards—you said you preferred not to answer that ?—A. That is true.

Q. How is it you cannot answer for the pathological processes of the psoas abscess going downwards, and yet you can answer for the pathological processes of pus going upwards ? (Mr. Reimer objects—witness has not said he knows nothing about the reason the psoas abscess goes down—question unfair.)

Q. I will put it in another way, to save time. Can you answer for the pathological processes that would occur if pus spread upwards from the thyroid up towards the tonsil ?—A. I can, but not as an authority on the subject.

Q. Very well, that is the position. Do you feel qualified as an authority to say what would happen if in fact suppuration spread upwards in the neck, from the thyroid ?—A. Death.

Q. As an authority ?—A. Yes—death.

Q. And what processes would take place ?—A. The suppuration would pass down the planes of least resistance into the mediastinum and right down to the diaphragm. It might burst into the trachea. It might eat anywhere, but it would go down there—it is a most fatal thing.

Q. It would go down there in every case ?—A. I am not going to say in every case—there may be some previous pathological process which may prevent it.

Q. You gave it rather dramatically that it would go down to the mediastinum ?—A. Yes.

Q. How many cases have you known of abscesses of the thyroid, first of all ?—A. I do not know of any cases of the thyroid.

Q. You know that you do get abscesses of the thyroid ?—A. Of the thyroid itself—I suppose so.

Q. Have you ever known of a case of the pus going down to the mediastinum from such an abscess ?—A. If it got into the retropharyngeal space it would go downwards, but I have not heard of such cases.

Q. What about the retropharyngeal abscesses ?—A. They go down to the posterior mediastinum.

Q. Are you able as an expert to say that ?—A. No. I am saying it from my knowledge of the area. I am quite prepared to accept the fact that you can produce evidence that there have been localised abscesses.

Q. Why did you say they would go downwards ?—A. I say they would go down if they got into the retropharyngeal space. That is my opinion.

Q. Where do you think the retropharyngeal abscesses are ?—A. Behind the pharynx.

Q. How close to the retropharyngeal space ?—A. They are in it.

Q. You have sworn that it is your opinion that if they get into that space they would go downwards—that is from your knowledge of anatomy ? —A. Yes, and my experience.

Q. I suppose you have known of a good few retropharyngeal abscesses ? —A. Yes.

Q. Have you heard of one going down into the mediastinum ?—A. Yes. In the East, in Hong Kong there are at least seven cases of death from retropharyngeal abscesses a year from them going downwards.

Q. What proportion go down ?—A. I could not tell you that.

Q. You know Beasley and Johnson ?—A. No.

Q. Beasley is F.R.C.S. Edinburgh, surgeon, Chambers Hospital, Edinburgh, Lecturer on Surgery and Operative Surgery, Edinburgh School of Medicine for Women, Lecturer on Applied Anatomy, Examiner in Anatomy, Royal College of Surgeons, Edinburgh ; and Johnson is M.B., C.H.B., Professor of Anatomy, University of London, Guy's Hospital Medical School—that is not a bad record ?—A. No.

Q. Almost as good as yours ?—A. Better. I think it is rather personal, if I am asked these questions about my qualifications.

Q. Don't worry about it. (Book shown to witness.) Here is the retropharyngeal abscess originating in one of the lymph glands ?—A. Yes.

Q. This is of course a tuberculous abscess—it is packing through the fascia at the side ?—A. Yes, it is arising in the vertebræ.

Q. In this case it has burst through the fascia ?—A. Yes.

Q. Now just consider that—I will read you from page 116. Turning for the moment to the tubercular abscess, that is also very close to the retropharyngeal space or in it ?—A. It is not shown whether it is in it or not. It looks to be there behind it. They have not put in both layers.

Q. It may be that the fascia is between it ?—A. There is no fascia this side of it.

Q. There is no space there ?—A. No.

Q. So it must be within ?—A. Not necessarily. They have not drawn the two layers of fascia in. That plan is diagrammatic. There are two layers of fascia there.

Q. There may be ?—A. No—there are.

(Luncheon adjournment.)

At 2 p.m.

Mr. SHAND : I suppose you recognise that Professor Welsh is an authority on anatomy, do you ?—A. On anatomy ?

Q. Pathology ?—A. Did you say anatomy ?

Q. I did say anatomy first of all—pathology ?—A. He was a Professor of Pathology, but from my own knowledge I could not say about anatomy.

Q. Do you know that he is a Professor of Anatomy ?—A. I could not say that.

Q. Do you know that he was previously Professor of Anatomy and Pathology ?—A. No, I was not aware of that. (Objected to.)

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 30th December 1943, Cross-examination, *continued.*

Q. I am sorry. I was wrong. It is correct, is it not, that each muscle and each blood vessel and the glands each have their own capsule of fascia ?—A. Fascia or sheath, yes.

Q. And would you agree with this, that when a surgeon operates in the neck he is able, when he gets inside the skin, to divide muscles without cutting them. Is that correct ?—A. Whereabouts ? It varies.— The amount of adhesion between them varies in different parts.

Q. Of course it does. For instance, when he is operating in regard to the thyroid he can divide muscles without cutting them—separating them ?—A. Not without tearing the connective tissues holding together the folds of muscle. That is the fascia.

Q. And it is not a very difficult job to tear apart the fascia ?—A. With the handle of a knife you can tear it apart.

Q. You can do it with a blunt dissector ?—A. Yes.

Q. Just by dividing it ?—A. Yes.

Q. And when suppuration spreads, that is one way in which it spreads, does it not—it divides the fascia ?—A. It may spread along a fascial plane from a point of higher pressure to a point of lower pressure by that separation.

Q. And in doing that it separates the fascia ?—A. Yes.

Q. And it can do that in the neck, can it not. It can do that in the neck ?—A. I presume there would be a separation of tissues.

Q. And turning again to Beasley and Johnston, I suppose you would agree that that is a fair diagram of the neck, on page 114 (shown to witness), at the level of the thyroid gland ?—A. At the level of the thyroid gland, yes.

Q. At page 115 at the level of the tonsils (indicating) ?—A. At the level of the tonsils, yes.

Q. I think you have agreed that the gentleman who wrote this book has very high qualifications ?—A. Johnston is a very well-known man in London. He is the editor of Grey's Anatomy—a very well-known man.

Q. Would you agree that those are good diagrams of those situations in the neck ?—A. They are good diagrams of those situations in the neck.

Q. And will you agree with me that taking the diagram at p. 114 there is shown an amount of fatty tissue around the omo-hyoid muscle. Is that correct ?—A. That diagram there is not accurate.

Q. I thought you said that it was a fair diagram ?—A. I was looking at it as a whole, but there is no fascial plane shown there at all. It is quite indefinite there—(indicating). I was looking at the general picture of the muscles and the bones and the trachea and œsophagus and so on.

Q. Do you agree that there is any fatty tissues round the omo-hyoid on the left lateral aspect ?—A. That picture is wrong. So far as the omo-hyoid is concerned, there is no fatty tissue round it. It is enclosed in its own sheath and it has no fascia.

Q. And there is no fatty tissue at all ?—A. There is no fatty tissue at all. There is fatty tissue in these spaces (indicating), but not where shown there.

Q. In what spaces ?—A. These spaces (indicating) are not empty caverns emitting sonorous sounds, but they are like the bark of a tree——

Q. Leave out the sonorous sounds ?—A. They are not wide open spaces. It is like the bark on a tree.

Q. But according to you they are all bunched close together ?—A. Yes.

Q. There is no space at all ?—A. Except with the amount of room there (indicating) there is a space behind there—the retropharyngeal.

Q. Do you swear there is no fatty substance round the omo-hyoid ?—A. Not in direct contact with the omo-hyoid as that is shown there (indicating). It is separating from it. It is sheathed from it.

Q. I have put to you that every muscle has its own sheath ?—A. Yes.

Q. You agreed with that ?—A. Yes.

Q. I assume that there is a sheath round that ?—A. Yes.

Q. Outside the sheath is there fatty tissue ?—A. It depends on the individual. Some have more fat than others. There may be no fat round it.

Q. And in other cases there might be quite an amount ?—A. Yes.

Q. And according to the build of the person, that follows with practically all the vessels of the neck ?—A. How do you mean ?

Q. Varying with the person, there might be an amount of fatty tissue between the various vessels ?—A. Once you get beyond the superficial fascia it is not there in abundance. That is why I am objecting to that picture at that particular point.

Q. But it varies with the different individuals ?—A. Yes.

Q. Did you mention the presence of any fatty tissue this morning ?—A. Yes, I mentioned the fascial sheath, and all these tissues, they must have fat in them.

Q. But did you mention that there was fatty tissue connecting the tissue. Did you mention it this morning ?—A. Yes, by innuendo.

Q. By innuendo ?—A. Yes, it is there.

Q. Do you know that you are addressing men who have no knowledge of these matters ?—A. Yes, but if you come up and see the bodies, you would see it.

Q. But you said that before ?—A. Yes.

Q. Are you anxious to plead the cause of the defendant ?—A. No. But my evidence has been disputed.

Q. Have you seen the defendant since before the first case ?—A. I have been giving them the anatomy that they have asked me for.

Q. From before the first case ?—A. I am not sure whether the first case had started ; I am not sure when Mr. Reimer first came to me.

Q. And I suppose you made available to them everything, apparently ?—A. Yes.

Q. And everything that was available to you at the University ?—A. They asked me for it and they got it.

Q. You were saying something this morning about pus going down the mediastinum ?—A. Yes.

Q. And I showed you these two pages in Beasley & Johnston that I have referred to ?—A. Yes.

His HONOR : You were just about to read them to him, weren't you ?

Mr. SHAND : Yes.

Q. I will just read you this. This is on p. 115—" Pus arising from tuberculous disease of the upper cervical vertebræ lies behind the prevertebral fascia " ?—A. Absolutely I agree with that.

Q. I am not asking that ?—A. You did.

Q. No, I did not. What I was just going to say was this——

His HONOR : Listen to the question.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 30th December 1943, Cross-examination, *continued.*

Mr. SHAND: Just restrain yourself until I ask you a question. I read you that, and will you agree that pus arising as I have read you, "from tuberculous disease of the upper cervical vertebræ lies behind the prevertebral fascia" and would you agree that that may work its way upwards?—A. Yes.

Q. I will go on reading: "It forms a swelling on the posterior wall"—— ?—A. May I see that book afterwards, Your Honor? I don't know the context.

Q. You understood that I did not read you that portion about the pus may work its way upwards?—A. Yes.

Q. Now I am reading straight on: "It forms a swelling on the posterior wall of the pharynx, which causes difficulty in swallowing and respiration. Owing to the strength of the fascia in the median plane, the pus travels downwards and laterally behind the carotid sheath and reaches the posterior triangle. In this situation the fascia is much weaker and the abscess points behind the sterno-mastoid. It is best approached by an incision along the posterior border of the muscle, which is then retracted forward together with the carotid sheath. A search is made for the transverse processes of the cervical vertebræ, which provide the deep land marks to the site of the abscess. Rarely, the pus travels downwards behind the prevertebral fascia and enters the mediastinal space." Do you agree with that—rarely?—A. I agree with every word you have said.

Q. That is the tubercular abscess, I understand?—A. Yes. That is not a retropharyngeal abscess. That is entirely posterior to it.

Q. Didn't I show you two pictures this morning?—A. Yes.

Q. One of the tubercular abscess and one of the retropharyngeal abscess. Didn't I show you two pictures?—A. Yes.

Q. And didn't I point out that I was distinguishing between them?—A. I don't remember that.

Q. Don't you?—A. No, sir, I don't.

Q. Have you got a good memory?—A. Fairly good.

Q. Well, we will go on—— ?—A. I take your word for it. (Objected to: pressed.)

Q. I am going on: "This variety of abscess must be distinguished from abscess originating in the lymph glands." That is the retropharyngeal abscess. "Which occupy the interval between the prevertebral fascia and the buccapharyngeal fascia on the outer surface of the constrictor muscles. They drain the nasopharynx and their efferents pass laterally to open into the upper group of the deep cervical lymph glands"?—A. Those statements are true.

Q. Nothing about going down the mediastinal space?—A. Why should they? They are mentioning the direction of the lymph drainage.

Q. Nothing about going down the mediastinal space?—A. It is not relevant, what you are reading.

Q. Isn't it?—A. No.

Q. "An abscess arising in connection with the retropharyngeal lymph glands causes a swelling on the posterior wall of the pharynx, usually to one or other side of the median plane. Should it rupture into the pharynx during sleep, it may lead to suffocation. Abscesses in front of the prevertebral fascia should be opened from the mouth with the patient's head inverted"?—A. Absolutely.

Q. Do you still say it has got nothing to do with the direction of where the pus may go ?—A. The warning there of inverting the head is to open it at once so that it won't go downwards.

Q. Do you still say that it has nothing to do with where the pus may go ?—A. It does not mention whether it goes upwards or downwards. It is common knowledge in medicine that it goes downwards from there.

Q. But it may go upwards ?—A. Yes, if the person is standing on his head.

Q. Is that the only way ?—A. Yes.

Q. That is the only way ?—A. Yes. That is the treatment for them —stand them on their heads quickly.

Q. Is that the only way that pus can go upwards ?—A. That is the way to save these people, sir.

Q. Is that the only way—that is gravity ?—A. In that retropharyngeal space gravity would take it upwards only, sir.

Q. I think you have agreed already. (Shorthand notes read.)

Q. Will you agree that in the neck pus can travel upwards against the laws of gravity ?—A. If the pressure behind it is in such a position that it would force it upwards such as two muscles contracting and doing that. It is on that principle. I can only speak of principles. I have no case that I can think about. If I can think of pressure fully—but I cannot.

Q. But there is a good deal of muscular pressure in the neck, isn't there ?—A. Mostly downwards. There is here (indicating) a very variable line of pressure up higher in the region of the tongue.

Q. What about the thyroid cartilage—that moves upwards and downwards ?—A. Yes, in respiration and in swallowing and movements of the tongue.

Q. How far does it move up ?—A. I should think that it would move—I have never measured it, but I should put it at somewhere about half an inch or perhaps maybe—I would have to look at a person. It moves upwards and downwards to a considerable degree, but I could not say——

Q. Up to what part ?—A. The upper border is fairly constantly placed at the upper pair of the fourth cervical vertebræ.

Q. And how far would it move upwards ?—A. I think in the greatest movements you would get an average of perhaps half an inch. I could not say exactly. I haven't measured it.

Q. What does it move in ?—A. Everything moves, like this, in fascial planes—there is no resistance to movement.

Q. I am dealing now with the prevertebral fascia ?—A. Yes.

Q. That is called in this authority—" The third layer, the prevertebral fascia is connected above to the base of the skull." So far that is correct, isn't it ?—A. Yes.

Q. Just listen to this—" Pus forming into this layer "—where do you think that would go ?—A. At what level would the pus be forming there, because you have a whole collection of muscles behind that prevertebral fascia, going in different directions. I can make a suggestion only. At what level ?

Mr. CASSIDY : I ask for the page.

Mr. SHAND : I do not propose to give it at present.

His HONOR : It is only a matter of fairness that it should be given.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 30th December 1943, Cross-examination, *continued.*

Mr. SHAND : Very well, as long as it is not given to the witness. (Page number given to Mr. Cassidy.)

Q. I am referring to pus forming " In cases of caries of the body of the cervical vertebræ " ?—A. Which ones ?

Q. Any of them ?—A. Then the action would be different depending on the origin and insertions of the muscles in relation to the vertebræ.

Q. Well, give us the possibilities ?—A. Well, I would first have to give you the anatomy of the muscle origins.

Q. Would you mind giving us the possibilities of where pus would point ?—A. That is not a thing that I have had experience on, that I can state that. It is away back in the neck on the plane behind the prevertebral fascia. It may go anywhere there. Everything is tight there. The fascia is tight on those muscles. These muscles at the back are very firm and rigid.

Q. But may it divide the fascia ?—A. It might, I should think there, but the muscles are very tight in the neck. The prevertebral muscles are jammed up.

Q. It might divide them ?—A. If it is a tubercular abscess it would probably more eat it out, but if it is not tubercular I am not sure.

Q. If it is not tubercular it might divide it ?—A. I could not say. I have had no experience of that,

Q. I don't want you to tell us anything that you don't feel qualified to tell us——(Objected to.)

Q. If you don't feel qualified to tell us you understand I don't want you to answer ?—A. It is not a question of qualification. If I just ask a person where an abscess would most likely go, he will answer that they get to the skin as quickly as they can.

Q. If you have had no experience you can tell us that ?—A. They would follow the line of least resistance.

Q. Well, if it is in that position, it will go anywhere ?—(Objected to : shorthand notes read.)

Q. I will make it clear. In the cervical region if the pus were gathering there, might it not go anywhere ?—A. I would say no to the cervical region.

Q. You have already said once ?—A. I said in the region behind the precervical fascia. That is entirely a different story altogether.

His HONOR : You say that is a different area altogether ?—A. Yes, absolutely. The cervical region at the back is behind. We must distinguish between the cervical and precervical.

Q. Prevertebral ?—A. Yes.

Mr. SHAND : Unfortunately the questions I was asking you I read from this authority, and what I read was—" The third layer, the prevertebral fascia " ?—A. Yes.

Q. So we are at one on that, are we ?—A. Yes.

Q. And so suppuration forming there might go anywhere ?—A. Behind that fascia. That is what we are dealing with.

Q. Behind that fascia it might go anywhere ?—A. Depending on where it started, which I want to know—at what level, which vertebræ?

Q. Just a moment——?—A. I asked you which vertebræ.

His HONOR : Yes, and Mr. Shand wants you to take any one you like.

Mr. SHAND: Yes, take any one you like. I said, for instance, "Caries of the body of the cervical vertebræ"——

His HONOR: And his answer was that he never heard of any one in that case.

The WITNESS: Tubercular caries does exist there, sir, but I know this that it does work its way up, eating along any direction, but it always works to the surface. Tubercular caries is another story.

Mr. SHAND: Do you want to alter your answer that it might go anywhere?—A. I don't remember saying that it might go anywhere.

Q. Do you want to alter your answer that it might go anywhere?—A. Might I have that read again? (Shorthand notes read.)

Q. Do you accept that?—A. Yes. I wanted the context. I wanted to know where I was. Might I know what this book is?

Q. No; I am not going to give it to you yet. "The third layer (the prevertebral fascia) is connected above to the base of the skull. Pus forming beneath this layer, in cases, for instance, of caries of the bodies of the cervical vertebræ"—would you indicate to the jury where the cervical vertebræ are, they extend from where to where?—A. These cervical vertebræ extend from the base of the skull. I think if we had an X-ray picture, I could illustrate it better.

Q. No, give us your very best?—A. They extend from here, until the first rib comes off, and that is the vertebræ moving the neck.

Q. "Pus forming beneath this layer, in cases, for instance, of caries of the bodies of the cervical vertebræ might extend towards the posterior and lateral part of the neck and point in this situation, or might perforate this layer of fascia, and the pharyngeal fascia, and point into the pharynx (post pharyngeal abscess)." That would be right?—A. Yes, caries will go anywhere.

Q. "Or might perforate this layer of fascia and the pharyngeal fascia." It might do that?—A. Yes.

Q. "And point into the pharynx." That would be going upwards?—A. No, forwards.

Q. From the back forwards?—A. Yes.

Q. I have been reading from Grey's Anatomy, Descriptive and Surgical?—A. What date?

Q. A good old one, 1897, but apparently you think it is right?—A. I am perfectly satisfied with it and I am not going to dispute it.

Q. I have read from page 407. Now I am going to show you an illustration from Cunningham's. That is an accepted text book?—A. Yes. I have got the very latest one here, which only came out about a week ago.

Q. I think it is exactly the same illustration on page 1389 of the 1917 edition. Do you agree that that is a good diagram?—A. It is only a diagram, and incomplete in that these areas are left as though they were in fact definite spaces, which they are not.

Q. You mean these pieces of white?—A. Yes. It is a pure diagram, and a good diagram, illustrating what it is meant to, only the relation of the cervical fascia to the thyroid gland.

Q. I was asking you something about the psoas abscess. That is what is known as a cold abscess?—A. Yes, it is a very old name for it. It is a tubercular abscess of the lumbar vertebræ.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 30th December 1943, Cross-examination, *continued.*

Q. And you get of course a number of different cold abscesses of different types in various parts of the body ?—A. Yes.

Q. And do you agree that, generally speaking, a cold abscess may move in any direction ?—A. I do not remember my tubercular abscesses too well, but I think they will go in any direction. I doubt if they would go against gravity, and of course they are governed by the principle of pressure, but the connected tissues are also infiltrated by a very great mass of cells, as far as I remember, but I am not certain of it. It is hard to answer absolutely correctly from memory of 30 years ago.

Q. This is Boyd on Pathology, page 952. You have heard of that before ?—A. Yes.

Q. " A cold abscess often develops and this may trek in almost any direction " ?—A. Yes.

Q. " Although it is unable to travel directly backwards owing to the posterior common ligaments." Do you agree with that ?—A. Yes.

Q. " It soon escapes at the side of the vertebræ and is then free to travel at will " ?—A. Yes.

Q. " In the cervical region, it may form a retropharyngeal abscess or may appear at the side of the neck. In the dorsal region, it may spread along a rib." Is that correct ?—A. Yes.

Q. " When it comes to the surface, it is very liable to be mistaken for primary disease of the rib, unless the spine is carefully examined. In the lumbar region, the pus enters the sheath of the psoas muscle and passes down as a psoas abscess " ?—A. Yes, every word of that is in accordance with what I think is right.

Q. To get out of the psoas muscle, it has to eat its way through the sheath ?—A. Yes.

Q. Where does it go then ?—A. I think it will get into another plane and follow that.

Q. What about the iliac fossa ? Will it get in there ?—A. It may undermine the iliacus muscle. The two muscles are very closely associated with one another, and in fact the muscle is called the iliac psoas muscle because they are practically one.

Q. It would have to go through another fossa, would it not ?—A. These cold abscesses do. Between every microscopic piece of muscle there is fossa, and it must go through fossa.

Q. Now I will read on : " And passes down as a psoas abscess into the iliac fossa and under pouparts ligament " ?—A. Yes.

Q. " And it may then point to the saphenous opening." Is that right ?—A. Yes.

Q. And does it go through anywhere else ?—A. It is the part of least resistance and they often pass through that.

Q. " Or may pass down the thigh as far as the popliteal space " ?—A. Yes.

Q. " The pus may enter the sheath of the iliacus instead of the psoas, and it will then point above pouparts ligament or may pass down into the pelvis." Do you agree with that ?—A. Yes, I take their word for it.

Q. And in doing that, of course, it passes in close proximity to various blood vessels, does it not ?—A. Yes.

Q. And it does not necessarily penetrate the walls of those vessels ?—A. Not necessarily at all.

Q. That would in fact be extremely rare ?—A. With tubercular abscesses you get enormous destruction and scarring all those things, and vessels are not as far as I remember commonly involved. There is such a lot of cells surrounding but, of course, you do get a ruptured vessel, such as in the lung, for instance, with tuberculosis. I mean, it is tuberculosis you are talking about.

Q. Although you will agree that the tubercular abscess is more destructive than other types of abscess ?—A. I will not go as far as that.

Q. Is it about the same ?—A. I am not going to make a comparison like that.

Q. Do not get excited about it ?—A. I am not excited. I am just awake that is all.

Q. Now that you are awake, will you give me an answer ? I thought you were rather putting it forward that tubercular abscesses were more destructive than others ?—A. I never said anything of the sort. I have been agreeing with what you read out that is all.

Q. Did you not say that a tubercular abscess would make its way anywhere ?—A. So it does. It depends upon what is the cause.

Q. Do all abscesses ?—A. No, they are not all the same.

Q. That is what I am trying to get a comparison with ?—A. Give me the organisms involved and I will answer you. I can only speak on general principles.

Q. Just let us go back to it and tell me whether you can answer the question or not. Do you regard tubercular abscesses as more destructive of tissues than other types ?—A. I cannot state that offhand. Some other types of abscesses are very destructive of tissue. For instance, you get a very serious abscess from gas gangrene which is going to cause a terrible lot of destruction.

Q. You do not regard it as being a particular type of abscess ?—A. Look at the hips we see walking about, the amount of scarring. They destroy tissue with intense scarring, but I will not say they are particularly destructive. I say they are destructive of tissue but it depends on the type of individual. Some people are more resistant than others.

Q. Am I correct in saying that you gave evidence to the effect this morning that if you got an abscess in the neck caused by the passage of a tube you would expect suppuration ? You understand my question, do you not ?—A. I think I can understand.

Q. Were you swearing this morning that if a tube passed from the thyroid up to the tonsils, suppuration would come down the mediastinum space and cause death ?—A. That is my opinion.

Q. Let me deal again with the retropharyngeal abscess ?—A. I mean, you have to open them at once.

Q. Dealing with the retropharyngeal abscess, it occurs over and above the mediastinum space ?—A. It continues into the posterior mediastinum.

Q. I am now quoting from Rose and Carless, page 814 : " In the cervical region, a chronic retropharyngeal abscess is first formed. It pushes the posterior pharyngeal wall forward, and may be detected from the mouth as an elastic fluctuating swelling which by its size often leads to some difficulty in swallowing and breathing, while œdemia of the glottis may be induced. Left to itself, it may burst into the pharynx, and suffocate the child, or at best pyococcal infection follows, and the osseous lesion is thereby aggravated. Not infrequently, the pus finds its way to

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 30th December 1943, Cross-examination, *continued.*

the side of the neck, behind the vessels of the sternomastoid, being guided to the posterior triangle by the prevertebral fascia behind which it is situated." Do you agree with that ?—A. No, I want to know more about that.

Q. "Less frequently it pierces this fascia, and presents itself in the anterior triangle or travels down towards the mediastinum" ?—A. I am not certain what sort of abscess we are talking about. You started on a chronic abscess.

Q. A retropharyngeal abscess ?—A. What due to ?

Q. Have a look at the book, and find out if you like. I was reading from the left-hand page down at the bottom ?—A. This again is a case of abscess of the spine behind the post-vertebral fascia.

Q. It is a retropharyngeal abscess ?—A. So they name it there, but a retropharyngeal abscess in this space between the prevertebral fascia, and the pharyngeal fascia is a different story. This is a chronic disease of the spine, the cervical vertebræ again.

Q. Why could not that come down ?—A. There is such a walling off.

Q. But it can eat through ?—A. It says it goes into the mediastinum.

Q. Less frequently ?—A. Yes, because this is a chronic condition of tubercular disease. We are on the same case as you read from the other book, with which I agreed.

Q. They are a type that do eat through, are they not ?—A. Yes, but they leave a tremendous lot of scarring.

Q. These X-rays are as accurate as you can make them, are they not ?—A. Yes, in the ordinary human way. They are done by an artist under my supervision.

Q. Have you taken them as being as far as possible the average ?—A. They were taken on the average, yes.

Q. When were they made ?—A. I am not sure, but I think about a year ago.

Q. With this case in view ?—A. Yes, it was by virtue of Mr. Reimer coming to me. We were on this as a matter of research, and I said I might just as well do the head and neck as we had already done the arm and leg.

Q. Did you not wish these gentlemen of the jury by your evidence to believe they were simply done by you for University students ?—A. No, not in any connection whatever. I said I was using them for teaching purposes, and I am still doing so, and they are hung up in our room. If I have done that, I never intended it, not on any condition.

Q. This is what you swore: "Since I have returned to Australia, I have studied all research 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 various structures of the human body. Those X-rays are part of a series which cover practically, though not quite, the whole of the body" ?—A. Yes, that is what I said, and I hold to it. If you will look at the number of that, I think it is about 27.

Q. These were done specially for the case ?—A. No, they were not. Mr. Reimer had to come to me at that time and I said "I will add this now and you might as well use them because they are part of the series I am going into," and they were done for the case in that way, but also they are University property. They are part of my scheme of teaching.

Q. How many had you done before ?—A. If you tell me the number on it I can tell you at once, because those numbers are kept at the University.

Q. 25 is one number ?—A. I think 25 was done for the first case, but I cannot remember now for sure.

Q. 25 would be an early one ?—A. I think I am up to 42 and it would be right in the middle.

Q. Would you say that was about the first case ?—A. I have been doing them for about eighteen months.

Q. So you only started them eighteen months ago ?—A. No, eighteen months before the first case.

Q. How many did you do a year ?—A. It varies a lot. At the present time we are going very hard on this post-graduate work.

Q. Do not bother about that. How many did you do a year ?—A. About eight or ten, or perhaps more. No, we did more, I am only speaking offhand. Fifteen a year, something of that sort, but I am not sure.

Q. What year was that done, there is " 43 " on there ?—A. That must have been done in the early part of this year.

Q. Have a look at the number of it ?—A. There is something wrong there—absolutely that is wrong.

Q. What is wrong with it ?—A. That is not the way we number them, there is a " 1 " on there.

Q. No, that is not the number, this is it ?—A. That is " 25."

Mr. REIMER : I object to that.

Mr. SHAND : Do you deny that was done in 1943 ?—A. That " 43 " surprises me, absolutely it surprises me because I did not put that " 43 " on and I have not noticed it before.

Q. Did you put the " 25 " on ?—A. No, Mr. Farrell, who paints these, has to put his number on as soon as he gets the University payments.

Q. " David Farrell, 43 and 25." What is the explanation of that ?—A. I think it is something Mr. Farrell has done and I think he would have to be asked. Probably these were in the hands of the Court and he put his name on afterwards.

Q. What about that one (indicating) ?—A. This must have been in the Court and he did not put the consecutive numbers on them. This is the same, these two were done in the Court—he said the other day when I asked of them " They are still down with the barrister."

His HONOR : The last time was December, 1942, and they have not been in the possession of the Court since then.

Mr. REIMER : Two of them have. The whole five were then tendered before Mr. Justice Herron and he allowed them to be handed back to the University.

Mr. SHAND : What is this ?—A. No. 5 and 6——

Q. No. 24 has " 42 " on it ?—A. Yes.

Q. No. 5——?—A. This is the explanation, this is the number " 32 " following the date " 42." These others must have been done at the Court. These were done here and I said " You must keep them numbered because they are valuable and they are stock," and this lot has been done in the Court and we have missed these two out.

Q. The University pays for them but you gave the Defendant the benefit of them ?—A. They also paid him some fee because of his working

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 30th December 1943, Cross-examination, *continued.*

overtime, but we made a definite arrangement that these would be University property.

Q. The University paid for them but you gave full use of them to the Defendant ?—A. The Defendant also paid the artist for overtime when he was working on them.

Q. In regard to No. 5, what does that mean ?—A. It is a case which was R.C. 481 Royal Prince Alfred Hospital, I can paint them but I have given that up now.

Q. This was done in 1942 ?—A. Yes, it may have been done in 1941 and that date put on when finished. No. 2 is shown as " 41."

Q. You have No. 1 there ?—A. Yes, and it is " 41."

Q. You started these in 1941 ?—A. Yes, I think so.

Q. The distance between the nearest points of the tonsil and the thyroid are 3½ to 5 inches ?—A. My recollection is that I said 5 inches was an absolute maximum.

Q. 3½ inches to 5 inches ?—A. Yes, I would like—I would like to put it as less than 5 inches.

Q. You considered this evidence carefully before you came to Court ? (No answer.)

Q. Do you swear you did not know that you were going to be asked what the distance was ?—A. I knew that.

Q. You considered it carefully ?—A. Yes.

Q. You measured it ?—A. Yes.

Q. On what ?—A. Bodies up there.

Q. You went to the box and swore 3½ inches to 5 inches ?—A. Yes, that 5 inches is an absolute maximum.

Q. Now you want to modify that ?—A. If we can change, for the absolute maximum, 4½ inches.

Q. Is 4½ inches now the maximum ?—A. Well——

Q. What is it that you measure, what is the maximum ?—A. Maybe I measured——

Q. What is the maximum—as a Professor of the University ? (No answer.)

His HONOR : I have a note " 3 inches to 5 inches."

Mr. SHAND : What is the maximum ?—A. I would take 5 inches in certain cases as an absolute maximum.

Q. Why did you want to modify it ?—A. I wanted to be absolutely certain on it, we do not measure these distances.

Q. Why did you want to modify it—because you had seen this ? —A. No, nothing to do with that.

Q. Why ?—A. I just wondered whether five was a little too much.

Q. Had not you wondered before ?—A. No, I just thought it.

Q. Had not you thought before what was the maximum ?—A. Of course I thought what was the maximum.

Q. But you suddenly wished to modify your considered view ?— A. I would be happy if somebody said " 5 inches is a bit wrong."

Q. What about 2½ inches ?—A. I do not think we will get one like that.

Q. Will you swear it ?—A. No.

Q. With an adult will you swear you would not get one 2½ inches ? —A. No.

Q. Will you swear you would not get one 2 inches ?—A. I cannot swear to these measurements I have not taken—I have not measured everybody's thyroid. My impression and feeling is that it is between 3 inches and 5 inches as a minimum and maximum.

Q. That is just your feeling ?—A. No, a long experience and knowledge of it——(Objected to—allowed.)

Q. Will you swear it is not 2 inches ?—A. Yes.

Q. Are these supposed to be accurate ?—A. They are not as accurate as the human body but they are as accurate as we can get them.

Q. What position is the tonsil in—an upright vertical or a slanting position in the human body ?—A. It is a slight slant from above, downwards and backwards.

Q. How slight ?—A. Just about that (indicating).

Q. There are plenty of diagrams in the text books ?—A. Yes.

Q. Are the sizes of the tonsils correct ?—A. They vary.

Q. They are supposed to be reasonably correct ?—A. Yes.

Q. They are not supposed to be smaller than any tonsil there ever was in a human being ?—A. That is within the range, it is not smaller than any tonsil.

Q. They are not supposed to be smaller than any healthy tonsil ?—A. No, they are not smaller than any healthy tonsil.

Q. They are a fair representation of what a tonsil is ?—A. I consider so. They are diagrammatic.

Q. They might be in the wrong position ?—A. No, I think they are in the right position.

Q. Is the tonsil opposite the angle of the jawbone ?—A. Yes, certainly.

Q. Are those X-rays taken of the same person ?—A. I think they are all of the same person, a female.

Q. Aged ?—A. I think 18.

Q. They are the same person ?—A. As far as I remember.

Q. Have a look at this (showing X-ray plate). They are the same person ?—A. Yes.

Q. And this one indicates the same person ?—A. Yes.

Q. You chose that one yourself ?—A. You will never get superimposition like that.

Q. Well, adjust it yourself ?—A. You cannot do it, I am not going to do that.

Q. You refuse ?—A. It is not possible.

Q. Will you agree that the tonsil is at a different angle ?—A. In those two, yes—the tonsil has not been drawn there.

Q. Will you agree that with regard to the tonsils one is in quite a different position to the other ?—A. I am not going to superimpose X-ray pictures, they are within a range of variations of X-rays but we cannot make X-rays superimpose because you do not get the person in exactly the same position.

Q. They are the same person ?—A. Yes.

Q. Will you agree——?—A. I think they are within the range of variation but we cannot make it absolutely certain. I don't like these pictures, I like the body.

Q. Do you suggest that tonsil is anywhere near the right position (Exhibit 19) ?—A. Yes, I do. In doing it again I may put that back one-eighth of an inch or something, that is as near as we can get it.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 30th December 1943, Cross-examination, *continued.*

Q. Where is the angle of the jaw ?—A. There (indicating). The tonsil is not at the angle of the jaw, it is there. It is above the level of the angle of the jaw, the tonsil.

Q. Is it ?—A. Yes, certainly.

Q. Is there any one text book you can produce which says that the tonsil is above the level of the angle of the jaw ?—A. Yes, Cunningham.

Q. Where is the rest of it ?—A. There is the tonsil there, in the horizontal section of the teeth with the tonsil on the level with the back of the teeth, and there is the mandible in section and it is on that level that the tonsil always is.

Q. Can you produce a single text book that describes the tonsil as being in any other position than opposite the angle of the jaw ?—A. I have not looked for it in text books. It would not make any difference, however, there is the section and I have studied it in that section and in every way.

Q. Will you agree that the tonsil was vertical ?— (No answer.)

Q. " The palative tonsils are oval in shape with the long axis directed vertically." That is up and down ?—A. Yes, I will take it that it is vertical if you like.

Q. That is p. 1146 in the 17th edition ?—A. Yes.

Q. Looking at Exhibit 19, do you call that " vertical " ?—A. It is in the vertical direction but obliquely from the above downwards.

Q. Do you call that vertical ?—A. Yes.

Q. You agree with what Cunningham said ?—A. I am taking it on its broad outline as being vertical.

Q. That is not correct ?—A. There is a picture showing the tonsil placed in that oblique plane.

His HONOR : It is not uniform with everybody ?—A. No, I do not see the point of this verticality, I will accept it every way.

Mr. SHAND : That picture is shown on an angle ?—A. It is not shown on very much of an angle, I am satisfied that is on a slight oblique plane because tonsils vary enormously.

Q. In view of that picture (X-ray) do you suggest that that tonsil is in a correct position with a view to the line of the jaw ?—A. Yes.

Q. Now here is a tonsil which is part of Exhibit 17. Do you suggest that thing there (indicating X-ray picture) is a fair representation of a tonsil ?—A. Yes, but that is not a normal tonsil, it is an enlarged tonsil removed.

Q. Is that a grossly enlarged tonsil ?—A. I should say it is definitely enlarged.

Q. What about this one also produced by Dr. Steel ?—A. That is very enlarged also, but I would like to to know the age of those.

Q. Look at Exhibit 15 ?—A. Yes, that may be somewhat enlarged. What age was the person from whom it came ? They all look definitely enlarged.

Q. Take one of these not quite so enlarged. Do you still say that little wart-like thing shown on there is a fair representation of a tonsil ? —A. Yes, but it is within the range of smallness.

Q. These superimposes where put on to provide some kind of assistance to Dr. Bell. You suggested you could have them made for Dr. Bell for the case ?—A. Yes, at the suggestion of Mr. Reimer.

Q. Dr. Bell apparently paid the gentleman to put the colours on. Will you agree that that is smaller than any healthy tonsil you have seen ?—A. No.

Q. Will you agree it is far below the normal size ?—A. No.

Q. That it is below the normal size ?—A. No, I think there is no real normal size for the tonsil, it is variable. You may put it twice as wide and it still may be normal.

Q. You have not any twice as wide ?—A. No.

Q. But you have none that are anything like the smallest I showed you ? —A. Some are large that you see in the dissecting room. They are much larger than you ever see in the dissecting room.

Q. The tonsil is on an average about one inch long at a conservative figure ?—A. Three-quarters of an inch to one inch.

Q. Do you agree that a conservative average would be one inch ?—A. Between three-quarter inch and one inch I would put it.

Q. I am reading from Crane's Anatomy, p. 59, 1898, " The tonsils are two prominent bodies situated in the recess between the anterior and posterior palatine arches. They are usually from 20 to 25 mm. in vertical extent." 20 mm. is an inch, or 25 ?—A. I can never remember.

Q. Can you check that ?—A. 25 is an inch. Two centimetres is just about three-quarters of an inch.

Q. You mean 20 centimetres ?—A. 20 mm.

Q. That one (indicating), you will agree, is—— ?—A. That is 2 centimetres long and 1 centimetre wide.

Q. What is that in inches ?—A. Two centimetres is three-quarters of an inch long and one centimetre is not quite half an inch in width.

Q. Take Exhibit " 18." You were asked yesterday, page 1098, the third last question, in reference to this Exhibit : " You see the position in which the tonsil is drawn there and the thyroid. What would you say as to whether that correctly represents the average distance between those two structures in the human neck ? " You said : " Yes, I should think, looking at it, that it might be half an inch above the average, that particular one, but that is making a guess " ?—A. Yes, I think I remember saying that. I cannot remember all these things.

Q. If you will check this (indicating), perhaps measure that yourself ? —A. I will take that 3 inches.

Q. I suggest it is not 3. I am taking it from the tip. I suggest it is about $2\frac{2}{3}$ or $2\frac{3}{4}$, taking tip to tip ?—A. It looks about $2\frac{3}{4}$.

Q. So that in your evidence you said that might be half an inch above the average ?—A. Did I say it might be half an inch above the average ?

Q. Yes : " Yes, I should think, looking at it." You added, " That might be half an inch above the average, that particular one, but that is making a guess " ?—A. I think I would have to put that again. In the dissecting room I measured it as $3\frac{1}{2}$ inches.

Q. Do you wish to withdraw the guess ?—A. No.

Q. If that guess is about correct it would make the average $2\frac{1}{4}$?—A. No, the average is not $2\frac{1}{4}$. The average is at least 3 because I have measured them in the dissecting room.

Q. If that is so, the guess that you don't want to withdraw was three-quarters of an inch out ?—A. Quite.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 30th December 1943, Cross-examination, *continued.*

Q. How many of these X-rays were made for the purpose of enabling Dr. Bell to use them ?—A. I do not know. I think we did about 10 of them. I do not remember offhand. They are all here.

Q. Would you be able to pick out those that you did ?—A. I think so. I think they are all of this same person.

Q. Would you mind putting aside after the Court adjourns all those that were done to enable Dr. Bell to use them. You will do that ?—A. Yes.

Q. I think you agreed that the human body was remarkable for its bewildering variability ?—A. Yes.

His HONOR : Bewildering degree of variability ?—A. Yes, and a remarkable constancy. I think if I remember rightly I said that the body is constructed with a remarkable constancy accompanied by a bewildering degree of variability, and to that I hold.

Mr. SHAND : Let us know what it means ?—A. It means no two people are the same in measurements and measurements are of no use.

Q. Each person is different ?—A. Each particular person is different, yet everybody is the same. We can make a text book which you can read out there and they give an average. There you have it, and everybody is entirely different.

Q. One thing it means is that the organs in each person's body can be expected to vary greatly in relation to the distances from each other ?—A. In particular types of persons that is so.

Q. Do you say that there is a type of person in which type the organs are similarly placed ?—A. They conform to type. Recent work by Mills in America divided bodies into the hyper-æsthenic type, large, broad, big angles, nothing in their pelvis or abdomen up to the top, and long, æsthenic, miserable, normal and below normal, and between the two we have æsthenic and hyper-æsthenic types.

Q. You have variable degrees ?—A. Variable degrees of the bodies.

(Short adjournment.)

Q. I do not quite understand yet how this X-ray Exhibit 18 seems to have 1943 on it ?—A. I told you that was put on by Mr. Farrell. As far as I can see it must have been put on after the case at some time. It had been taken away. We have a book. We keep count of these things for the purpose of the University. These are valuable things for teaching.

His HONOR : Would you like him to get the book, Mr. Shand ?

Mr. SHAND : Yes.

His HONOR : Would you do that ? Find out how it was 1942 ?—A. There is 1943 on it instead of 1942. It has been put on by Mr. Farrell. It is a consecutive number. Mr. Farrell has put that on afterwards. That is all I can think of. I can get Mr. Farrell or I can find out. I am not sure. I do not put the number on it.

Mr. SHAND : Where is the thyroid cartilage on that exhibit ?—A. The thyroid cartilage is dotted in there (indicating), below the cricoid cartilage. There is a dotting-in, indicating it diagrammatically.

Q. Point it out to the jury ?—A. That is intended for the thyroid cartilage, that dotting there, and this is intended for the cricoid.

Q. It is bigger I suppose ?—A. That is there (indicating). That dotted line indicates the position of the thyroid cartilage and that is just an indication on this neck where it is supposed to be. The cricoid cartilage is the one below the thyroid.

Q. That is a lateral view ?—A. Yes.

Q. The thyroid cartilage has wings on it ?—A. It has two greater cornuæ on either side.

Q. You indicated that to the jury ?—A. Yes. There are those cartilages there (indicating in book shown to jury).

Q. You can feel in your own throat when you swallow how high they come both sides of the throat, the wings ?—A. The wings are there (indicating).

Q. You can feel how far they move up when you swallow ?—A. Yes.

Q. In Crane's Anatomy, p. 311, this is where the lobes of the thyroid go to (showing to jury). There is the thyroid gland and there is the thyroid cartilage ?—A. Yes, that is correct. I think that is a little bit higher up.

Q. How much ?—A. It might be a quarter of an inch. It goes up and down. It varies.

Q. It varies with the individual ?—A. To a certain extent it does.

Q. You see it there and there. The capsule at the side goes right up on to the thyroid cartilage ?—A. I am sure I have an entirely different picture in the body from what is there.

Q. That is what it shows in Crane's Anatomy ?—A. Yes, I will agree that that is in Crane's Anatomy.

Q. You do not show it anywhere like that here (indicating X-ray) ?—A. It is not far from being the same.

Q. Isn't it ?—A. My word it is not. This is up there, and that is there (indicating). The difference between those two is not any more than within the normal range of variability.

Q. But you will agree that the top of the lobe is very close to the tip of the cornea ?—A. No. This is the cornea up here, half-way up the oblique line.

Q. You call this the tip here ?—A. No, there is the cornea of the thyroid. This is right down the body, down there.

Q. What are you calling the tip of the cornea ?—A. That there (indicating).

Q. Up here ?—A. Most certainly.

Q. You will agree that this is within a very small fraction correct as depicted there ?—A. Yes.

Q. In Exhibit 19, where is the thyroid cartilage ?—A. It is labelled there in faint blue. That is the cricoid below it.

Q. This dotted line ?—A. That is the lower jaw.

Q. The angle of the jaw ?—A. That is the lower jaw.

Q. There is the angle around there ?—A. Yes.

Q. How far do you say, if any distance, is the top of the lobe of the thyroid from the pharynx ?—A. The shortest distance ?

Q. Yes ?—A. I should think about a quarter of an inch or less.

Q. Where is it ?—A. It lies over the top of the cricoid and that part goes practically on to the pharynx. In fact some books give it as a lateral relation.

Q. Will you explain what is the pharynx ?—A. The pharynx is that part of the alimentary canal which extends from the level of the fauces

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 31. Joseph Lexton Shellshear, 30th December 1943, Cross-examination, *continued.*

Re-examination.

at the entrance or the mouth to the lower border of the cricoid cartilage, at the level of the upper top of the sixth cervical vertebræ. It is absolutely a defined position.

Q. Extending how far ?—A. It extends from a level corresponding above to the level of the articulation mandible down to the level of the cricoid cartilage.

Re-examined.

Mr. REIMER: You were asked certain questions by Mr. Shand in reference to suppuration travelling, and you mentioned that a suppuration if it travels at all travels from a higher to a lower pressure area ?—A. That is as far as I know—that is first principles.

Q. That refers to elementary principles ?—A. Yes.

Q. With regard to this particular area that we are concerned with here, is there any variation between the muscular pressure in the tonsular area and the thyroid area ?—A. It is a different type of pressure. I have never measured it. One can only form a sort of estimate of it, but with these muscles coming in in all directions (indicating), and these muscles going in one direction (indicating), I should say the degree of pressure with the movements here (indicating) were very much greater than the simple up and down movement of respiration.

Q. Would the area around the thyroid be a lower pressure area than the area around the tonsils and between the two ?—A. I know no exact measurements to give on that. I can only say I have the feeling that there must be the difference; I have no measured estimate to make of it.

Q. You were asked certain questions with regard to tubercular abscesses, and you mentioned that they were cold abscesses ?—A. Yes, I was told they were.

Q. Is there a recognised distinction between cold abscesses and other types of abscess ?—A. As far as I know the term "cold" came into being a very long time ago, about the time of John Hunter, in 1700 odd, or before, to illustrate those types of abscesses which are very slow forming, without that very acute red inflammatory hot appearance of an acute abscess. That is my impression.

Q. Any question of suppuration would vary or depend upon the nature of the particular abscess concerned ?—A. And the particular organism and other factors.

Q. And the area involved, and where the inflammation is, and what it is affecting ?—A. Yes.

Q. You mentioned in cases of tubercular abscesses there is a destruction of tissue ?—A. Yes.

Q. Do you consider that the development of suppuration through the tissues necessarily involves destruction of tissue ?—A. I do not think you can have any abscess without destruction of tissues.

Q. You were asked certain questions with regard to the passage in Crane's Anatomy—an old edition, at page 407. I would like you to have a look at that. (Book handed to witness.) This is the portion that was read to you (indicating). Will you glance at that. That is a passage dealing with three different areas ?—A. I would like to have a look at this book (indicating).

Q. With regard to the second section it says "If the pus is contained in the anterior triangle it might find its way into the anterior medias tinum,

being situated in front of the lower fascia which passes down into the thrax." Then it goes on to the part that Mr. Shand referred to, which is prefaced by this "The third layer from the prevertebral fascia is connected above to the base of the skull"?—A. Yes.

Q. "Pus forming beneath this layer in cases for instance of caries of the body of the cervical vertebræ might extend towards the posterior and lateral part of the neck and point in this situation or might perforate this layer of fascia and the pharyngeal fascia and point into the pharynx (post pharyngeal) abscess"?—A. Yes.

Q. Has that anything to do with a retropharyngeal abscess?—A. Nothing whatever.

(At this stage it was decided that the witness should clear up the question raised with regard to the X-rays. The witness accordingly retired for this purpose.)

(Mr. Shand said he wanted all that work prepared at Mr. Reimer's request. Mr. Reimer said that the evidence was that these would have been prepared eventually in any case, but that they were accelerated. Mr. Shand said that he did not agree that that was the evidence. Mr. Reimer said that these were all available in Court on the last trial and the trial in August 1942. Mr. Shand agreed that some were, but said he wanted it explained about the 1943 ones.)

No. 32.

EVIDENCE of Benjamin Thomas Edye.

Sworn, examined, deposed.

To Mr. CASSIDY: I am a legally qualified medical practitioner carrying on my practice at Macquarie Street, Sydney. I am a graduate in medicine and surgery at the University of Sydney. I am a Fellow of the Royal College of Surgeons, England, and a foundation Fellow of the Australian College of Surgeons, and I had experience in France in the last war on wounds and injuries. I was a demonstrator in pathology at Sydney University for 10 years, and a demonstrator in anatomy at the University of Sydney for several years. I was acting Professor of Surgery in the University of Sydney before the present occupant of the Chair. I am Lecturer and Examiner in Clinical Surgery at the University of Sydney, Honorary Surgeon at St. Vincent's, Honorary Surgeon at the Royal Prince Alfred Hospital since 1928, Honorary Surgeon at the Rachael Forster Hospital, and Honorary Consulting Surgeon at the St. George District Hospital, the Ryde Soldiers Memorial Hospital, the Manly District Hospital, and the Hornsby District Hospital. I studied abroad in 1936 in addition to my other experience. There I paid special attention to the surgery of the thyroid gland. I watched Sir Thomas Dunhill, and I worked with Mr. Judd in London. I also visited three of the best known thyroid clinics of the United States, in Boston and Cleveland, and the Mayo Clinic in Rochester, Minnesota. I have seen a great deal of thyroidectomy, and studied thyroidectomy abroad. In Australia I have had a large surgical practice. For the purposes of this case I have made a rough

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 32. Benjamin Thomas Edye, 30th December 1943, Examination, *continued.*

check on the major operations, and in the last two years I have averaged about 1,000 major operations per year, leaving out of account all minor operations. I have been a busy man. Particularly in thyroidectomy I have had a large number of cases.

Q. You have not given evidence in these proceedings before ?—A. No.

Q. Do you know the condition thyrotoxicosis ?—A. Yes.

Q. What is that condition, shortly ?—A. It is, briefly, a condition due to over-activity of the thyroid gland, which affects particularly the heart and the nervous system and the body generally.

Q. From your experience of that condition of thyrotoxicosis what would you say as to the possible aftermath in cases of thyrotoxicosis ?—A. In what respect ?

Q. What do you say as to the aftermath with patients suffering from thyrotoxicosis ?—A. The effects may vary. Sometimes the effect falls principally on the heart, and ultimately the patient develops heart failure, and ultimately will die from that condition. Then again the effects may fall on the nervous system and produce various effects, even to the condition of insanity.

Q. Take the nervous condition of those people ; is there any common nervous condition of those people who have acute thyrotoxicosis ?— A. They get very unstable and irritable.

Q. What is the purpose of the operation ?—A. The removal of so much of the thyroid gland as to reduce the activity to very low limits, and so get rid of the poison. The method of performing that operation is usually to make an incision across the lower part of the neck for cosmetic reasons.

Q. You have seen the scar in the neck of the Plaintiff ?—A. Yes, and that is about the usual position.

Q. What is the next step ?—A. The muscles in the middle line are separated by making a vertical incision, which allows the muscles to be separated. The next step is to isolate the thyroid gland, which is frequently surrounded by one layer of muscle together with the fascia which is referred to as the capsule of the thyroid gland. That capsule is separated. It is difficult to separate it in this particular disease, because it adheres rather firmly and takes some time to separate. The next step in the operation is to ligature the blood vessels, particularly that coming from above into the upper pole of the gland, called the superior thyroid arteries. That vessel is ligatured very carefully and it allows the upper pole of the gland to be delivered into the wound. The next step is to ligature some veins which enter the side of the lobe, the left side of the lobe, and some which leave the lower pole that is the end of the lobe. After that the lobe is divided as one would judge to be a sufficient amount to supply the needs of the patient. That has to be done by a rough estimate. You have to do it by judgment, and from the nature of one's experience as to how much should be left. When that is done, all bleeding is secured most carefully, and the portion of the gland remaining is oversewn, the raw surface, partly with the object of covering the raw surface, and preventing the escape of the secretion, and partly with the object of controlling any further hæmorrhage. The control of hæmorrhage must be most meticulous. After dealing with the right lobe, the next step is to deal with the left lobe, and the part which bridges across to the left lobe. Then the left lobe is dealt with in exactly the same way. The same care has to be taken

in controlling hæmorrhage. In no case should any operation be completed before the hæmorrhage is completely controlled, because hæmorrhage in this situation may mean the death of the patient. Having done all that we have to reconstruct the parts which have been severed, in the first instance where the layer of muscle in the middle——

Q. Before you start to bring the muscles together, what do you do ?—A. Before doing that all hæmorrhage must be completely controlled. Great care must be taken at this stage. Over and over again the parts are looked at, first one side and then the other, back again, and then back again, so that every tiny vessel is ligatured.

Q. Does that mean that there are a great many ligatures ?—A. Yes, a great number. The material used by me is what we call fine plain catgut, and we use a little stronger for the larger vessel. In stitching the muscles—still plain catgut—the muscles are brought together because they tend to lie apart when they have split down the middle. In order to bring them together, you have to stitch them ; otherwise they would expose the trachea. You bring them together over the front of the windpipe or the trachea. In stitching them, a small gap is left to insert the tube. When the stitching is complete I usually insert the tube. The question of inserting the tube is an important one.

Q. Before you deal with that can you give the jury an idea of the size and weight of the average thyroid ?—A. The thyroid gland varies a great deal in size in this disease. A normal gland measures each lobe about 2 inches, and across from one side to the other is about $2\frac{1}{4}$ inches. The vertical length of the lobe is approximately 2 inches in a normal subject. In this disease the gland is frequently not enlarged at all, though it becomes active. Usually it does enlarge to some extent, a variable amount, sometimes quite normal or more.

Q. The next thing I want to get is after you have got your thyroid out, when your thyroid is extended in the normal person moderately enlarged, what would be approximately the depth of the thyroid capsule ?—A. After the gland is removed the parts tend to fall together and there is very little really remaining. The depth measuring from the surface would be approximately $1\frac{1}{2}$ inches in a thinnish person, but in a stout person it would be about 2 inches.

Q. That is from the outside surface. How far does the tube go in before it starts to go into the thyroid capsule ?—A. It is $1\frac{1}{2}$ to 2 inches from the surface. Before you start to go into the capsule from the surface of the skin to the muscles, would vary according to the stoutness of the patient.

Q. Take the Plaintiff ?—A. It may be an inch.

Mr. SHAND : Perhaps my friend would be prepared to admit, in order to obviate calling Dr. Marsh and Dr. Steele, that in no case before have tonsils ever been produced.

Mr. REIMER : That is so.

(Further hearing adjourned to Friday, 31st December 1943.)

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 33. Joseph Laxton Shellshear, 31st December 1943, Further Examination.

Twenty-first day—Friday, 31st December, 1943.

No. 33.

FURTHER EVIDENCE of Joseph Laxton Shellshear.

Further Examined :

His HONOR : Before we continue I would like to say that at p. 111 there is a statement in the evidence which is to be corrected. " Indication" should be " invitation."

(At this state the jury made an application for fees to be increased—His Honor stated that consideration would be given to the request. The jury also stated that they were prepared to view an autopsy or operation on the thyroid.)

Mr. REIMER : You have made certain inquiries with regard to the reason why some of these X-ray plates have " 43 " on them ?—A. Yes. The result of those inquiries is that I went to the University this morning and got out the card index of these plates which are here and these were written out by an assistant in December, 1942, or the first week in January, 1943. All these show of the head and neck is a blank, but from 25 onwards they show a blank because these were at the Court in the previous case. When I spoke to the artist and asked him for an explanation he said : " I remember it well, they came back from the Court and I put my name on them with a number and in accordance with your instructions I automatically put ' 43 '—some time in January or February, 1943." I said, " Have you your list ? " and he said " Yes." These are the lists which were not prepared for the purposes of the case (showing lists).

Q. Those made available to me on the second trial in August, 1942, when were they in fact done ?—A. They were done for that trial.

Q. Are they put in the order in which the X-rays were done ?—A. Very often there will be three or four of these done at the one time. As they are finished we draw them. These were numbered after those previous proofs had been there because the papers show it so. Also here this same series are independent with those which are bare and blank and they could not be written out later than the first week in January, 1943. Then there is a book, I don't know when it has been written, but it is also the artist's own copy of all the pictures he made, in their consecutive numbers.

Q. You know of your own personal knowledge when those X-rays were made available to me prior to the second trial in August, 1943 ?—A. Yes, I have no memories of the dates but these are the same as we prepared then, there have been no others prepared.

Mr. SHAND : Could I see that artist's book ?—A. Yes. (Showing book.)

Q. This is a verbal description of the plates ?—A. Yes, I have an idea that was written from the other sheets but I do not know.

Q. This is one identified by the number 29 (showing witness X-ray picture) ?—A. Yes.

Q. The distance between the tonsil and the top of the thyroid is what ?—A. Two and three-eighths inches.

Q. It is not two and three-eighths inches, is it ?—A. I would give that as two and three-eighths inches.

Q. That is less than any one we have seen so far ?—A. Yes.

Q. Where did that come from ?—A. The same series.

Q. Where did you get it ?—A. I thought it was in the Court.

Q. Where did it come from ?—A. From the room I think, I was looking for it everywhere.

Q. Where did you find it ?—A. I did not find it, it came into the Court.

Q. Did you get it in Mr. Cassidy's chambers ?—A. No.

Q. Where did it come from ?—A. I think somebody brought it over. I was chasing that, I said, " Where is this other one ? "

Mr. REIMER : As a matter of fact that was left in Mr. Cassidy's chambers on the table. Our instructing solicitor went to Mr. Cassidy's chambers and looked for it and brought it back.

The WITNESS : I have been looking for this, it is a very nice picture.

Mr. SHAND : Not too close ?—A. I think they are too close, they have the lower part of the tonsil within a quarter of an inch of the lower border of the angle of the mandible, whereas it lies at least half an inch above it.

Q. I thought these were as close as you could reasonably make them ? —A. Well, let us take that.

Q. You say it is not ?—A. That is the explanation, it shows that each one is not copied definitely from the other.

Q. The tonsil is a little bigger than the others, too ?—A. Yes.

Q. Do you know why this was not shown ?—A. I have no idea, I can only suggest because it was lost, because I would not mind bringing that in any time at all.

Q. It is wrong ?—A. The tonsil is lower than the others, it shows that they could not have been drawn with any sort of prejudice.

Q. I did not ask that ?—A. But I am saying it because my honour is being attacked and I won't have it.

Q. Was this produced at any time and shown to any jury ? (Objected to.)

Mr. CASSIDY : Mr. Carson came to my room and I gave him the whole of these to look at.

Mr. CARSON : I have not seen that before, you handed me four X-rays only.

Mr. CASSIDY : You walked into my room and I said, " There they are on the top shelf." This suggestion has something improper about it. Mr. Carson came to my room and asked me where they were. They were on my shelf and I said " Take them " ; I treated him with the greatest courtesy and he took the packet.

Mr. CARSON : I took four ; there were four there.

Mr. SHAND : Four were brought to me.

Mr. CASSIDY : They were all there and I protest against this suggestion.

His HONOR : It is very unfortunate that any suggestion was made against a man of your reputation, Mr. Cassidy. I do not know if there is any suggestion against Professor Shellshear.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 33.
Joseph Laxton Shellshear, 31st December 1943, Further Examination, *continued.*

Mr. SHAND : What is this (showing witness X-ray picture) ?—A. That is the sub-mandilla or sub-maxilla gland. The tonsil is showing between the anterior and the posterior pillars of the fauces on the lateral side of the palate. That one is $2\frac{3}{8}$ inches.

Mr. SHAND : I must say I have never seen this before.

His HONOR : I don't know what significance there is in that remark. Do you say they were not produced on the second trial, the whole lot ?

Mr. CARSON : I am not prepared to say either way.

Mr. SHAND : Were all these prepared by August 1942—are you prepared to swear that ?—A. No.

Q. They were not all prepared ?—A. I am not prepared to say that. I cannot remember them.

Q. Will you check it up ?—A. I might be able to, but the administration offices were not open this morning to enable me to find the vouchers and accounts, but from the list . . . these were not paid for till the 29th February 1943. It will be very difficult to get that information.

Q. Didn't you say that some were made in December 1942 or January 1943 ?—A. Not these, I have no idea of these. The making of this type of picture had been going on since 1941.

Q. You mentioned December 1942 or January 1943 ; what was that ?—A. That was when I can take it this card index was made, because it was made up at a time I was away from the University and when I came back it was there.

Q. You might check up that ?—A. I will see if I can, but I do not know where the list was produced or whether it was produced in the second trial. That went on with the series.

Q. And this one too ?—A. I have no doubt whatever about that one.

Mr. REIMER : With regard to this one, what does it represent ? —A. Those are the two thyroid glands in the capsule diagrammatically represented.

Q. Why is there a difference between one side and the other ?—A. There is a variation between the height of the top of the lobes.

Q. Why is one coloured and the other not ?—A. The thyroid gland is diagrammatically represented as having been removed.

Q. One shows the gland in position and the other shows the structure beneath the gland ?—A. Yes.

Q. You heard what the jury said this morning ?—A. Yes.

Q. Can you make arrangements——?—A. I am going on holidays——

His HONOR : When will you be back, Professor ?—A. In a fortnight. This was very awkward because the postgraduate course has to be got on with very fast for the service men and unless I get this chance I cannot carry on.

Q. You could give instructions to the artist ?—A. I will do my utmost about that, but I am practically certain there will be no date on that.

Mr. REIMER : Do you remember, shortly before the first time these were used, I was at the University, and in one of the lecture rooms you demonstrated on a board with coloured chalks the various muscular tissues ? —A. Yes.

Q. There were certain other members of the teaching staff there? —A. Yes.

Q. Professor Stump and certain others?—A. Yes.

Q. Do you remember my saying I did not have any plate showing the muscles near or beneath the tonsil and one was prepared and during the course of the trial Farrell was working on it. Do you remember bringing that one to my chambers one day by itself?—A. Yes. That is one that never came back to the University. I think we will find that is No. 20 something. I was not satisfied with that, here is No. 24 and this one I have described, I don't know what it is doing here—that is the one without any number on it—it is so dark it is very hard to see.

Q. If it could be arranged——(Objected to.)

(Witness retired.)

No. 33. Joseph Laxton Shellshear, 31st December 1943, Further Examination, *continued*.

No. 34.

FURTHER EVIDENCE of Benjamin Thomas Edye.

No. 34. Benjamin Thomas Edye, 31st December 1943, Further Examination.

Recalled.

Mr. CASSIDY: You have heard a lot of discussion as to the relative positions in individuals of the tonsil and thyroid?—A. Yes.

Q. Have you measured it in the case of the Plaintiff?—A. Yes.

Q. Will you measure it now?—A. I will. (Measures certain portions of the Plaintiff's face and head.)

Q. When you pressed just there what did you press for?—A. The Adam's apple. The angle of the jaw is here and the tonsil is about one inch above and in front of the angle of the jaw. That measures three inches.

Mr. SHAND: Would not it be measured from the lobe?—A. This is where the upper part of it would be. It would be about that position (indicating on Plaintiff).

Q. Did you measure to the centre of the tonsil?—A. I was measuring to what I took to be the centre of the tonsil.

Q. To the edge would be two inches?—A. To the upper end where the hole was it would be another half-inch.

Q. The lower end would be two inches?—A. Yes.

Mr. CASSIDY: Where this alleged hole is?—A. That is the "alleged" which was pointed out by Dr. Thompson.

Q. That would be what distance?—A. Another half-inch, about three inches.

Q. Where is that book you brought describing the position about which there was some argument yesterday?—A. That is Massie's Surgical Anatomy.

Q. (Handing witness book in question): Does this describe the position of the tonsil?—A. Yes (referring to p. 64)—"The faucial tonsil is situated vertically between the pillars of the fauces and lies about one inch above and in front of the angle of the jaw."

Q. An illustration is given?—A. Yes.

Q. We dealt yesterday with the operation and the tube. What is the purpose of the tube?—A. For drainage.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Further Examination, *continued.*

Q. Where is it inserted ?—A. Generally in the middle line or as near to it as possible. (Objected to.)

Q. What is the length of the tube ordinarily used as a matter of practice in these operations, in thyroidectomy ? (Objected to.)

Mr. SHAND (by permission) : Will you agree that different surgeons use different lengths of tubes ?—A. No, I won't agree to that.

Q. All surgeons use exactly the same length ?—A. Practically the same. There may be variations because of the build of the patient, but they are practically the same length.

His HONOR : It depends upon the build of the patient ?—A. Yes, with very little variation. (Evidence still objected to : admitted.)

Mr. CASSIDY : You have seen this patient's neck ?—A. Yes.

Q. With a neck like that what is the length of the tube used ?—A. Usually an inch and a half, not more than two inches.

Q. We have been told by Defendant that the tube was inserted just to the right of the middle line. Is that the ordinary and usual place for it to be inserted ?—A. Slightly to the right or slightly to the left it may happen.

Q. What is the reason of placing it there ?—A. After suturing the muscles a small gap is left to insert the tube. It is placed in position, it is placed in the middle line and allowed to rest. Then the skin is stitched around. The tube may go a little to the one side or to the other of the actual mid-point of the incision. That is done because you don't want to kink the tube or bend it. You want it to lie comfortably, that is the reason.

Q. Have you ever seen it put across the trachea from right to left ?—A. No, never, that would be ridiculous.

Q. Dr. Thompson has described it as being put across from right to left and pointing upwards——(Objected to.)

Q. Were you in Court when Dr. Thompson illustrated how it was placed ?—A. I remember him describing it as passing across the trachea.

Q. And do you remember the direction in which he described it as pointing ?—A. To the left, this direction—(indicating).

Q. Do you remember an illustration being used by Mr. Shand from an old text book to suggest that the tube was pointing upwards ?—A. I remember the illustration being shown, but I did not see it.

Q. I refer to p. 340 of Johnston's Operative Therapeutics, 1915. Do you remember an illustration like this. First of all assume the illustration on p. 304 was shown and put to Dr. Bell as showing the tube pointing up, what do you say as to the tube pointing up ?—A. First of all the tube was not coming out through the wound, through the incision.

Q. But as to modern practice, as to a tube pointing in that direction, what do you say ?—A. I have never seen, I have never used that method in my life.

Q. Or have you seen it ?—A. I have seen a method like that many years ago. It is more or less an obsolete method.

Q. Assume that Mr. Shand put it ?—A. The line of incision is above it.

Q. Have you ever seen it done in modern surgery ?—A. No, not in modern surgery. It is not in the line of the incision.

Q. What is the commonsense reason you put it in the bottom?—A. Could I use a tube?

Q. Yes?—A. It is handed to the surgeon 2 inches long and he inserts it. Before so he cuts an eye in the end. The object is an alternative method for drainage. It is put right at the end. The reason is it might impinge against something and block the end. We cut a little eye at the end to give an alternative drain. We do not cut the eye up here. (Indicating.) That would be a great mistake because the fluid would come up and leak out into the tissues. A plumber would not put a pipe in in connection with a sink and then cut a hole in it, so that eye is cut at the very end. The tube has nothing in it, it has to be kept clean and empty, it has to drain. What would be the object in putting a tube in and blocking it with something. It is simply a tube with this safety-pin in it. The pin is put in, a little stitch is put in just here at the skin, only at the skin to keep it in place. As an additional safeguard a safety-pin is put in to help keep it in place and the surplus tube is cut away. You may be left with $1\frac{1}{2}$ inches altogether.

His HONOR: What is the number of this Exhibit?—A. "1."

JURY: Is this a larger tube than the one the witness produced? I understood he said so?—A. This is larger, this is a larger tube.

Q. Larger in diameter?—A. Yes, when the tube is placed in the centre of the wound, this is the line of incision and this is what it looks like. It pokes out a quarter of an inch to a third of an inch. This would be the position. Drainage consists of serum, the natural fluids of the body which leak into the wound and some discharge from the cut surface of the thyroid gland and a little seepage, oozing of blood. It is allowed to escape. It is fairly free. In 24 or 48 hours it is reduced to the extent that there is no further use for the tube. In my practice it is removed in 24 hours. After the tube is removed there is still a certain amount of drainage. That will go on for a variable time. It leaks away itself in the dressing, but the tube is always removed in 24 or 48 hours. You snip the horsehair stitch and then take forceps and extract it. It is so simple I have not removed one of those myself for years. I have allowed the sister to do it as it is such a simple thing to do. It falls out of its own effort.

Mr. CASSIDY: At that stage what is the position of the cut surfaces there in 24 or 48 hours?—A. They are sealed together, glued together with lymph.

Q. You cut your nick close to the end?—A. Yes.

Q. Would you ever cut it back half an inch?—A. No, I think I have pointed that out to the jury. You would not cut it back. In draining this cavity you put it back at the lower level, naturally. It is only necessary to tap it by a short distance to allow the fluid to drain. It is the same as tapping a cask of beer. You put the tap at the lowest level so that you get every drain of beer out. This is only put in at the lowest level, just into the cavity sufficiently to allow the fluid to drain away. It gravitates to that level. There is no need to put the tube high up. If you push the tube up to the top as has been said the cavity would have to fill up with the fluid before it could drain away. The cavity would have to fill before that fluid could get out at all, and that is obviously silly.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Further Examination, *continued.*

Q. How far do you think your tube on the average goes into the thyroid capsule or into the cavity ?—A. From half an inch to 1 inch it would go in, just in through the muscles sufficiently without touching anything deeply.

Q. Would you be aware of pushing it right back ?—A. You would put it in until it touched something and then draw it back. You would know it was not irritating anything.

Q. How are the surfaces in that part around the neck as to soreness ?—A. There is a very great disturbance of the whole of that region and the parts are exceedingly sore and tender, so that the patient holds the neck in this position (indicating), afraid to lift or move for quite a number of days, and coughing or any movement is all very painful.

Q. Have you noticed a disinclination to put the head back this way (indicating) ?—A. Yes, the patient holds it this way (indicating), the reason being because of the soreness in this region. The muscles are kept absolutely quiet so that the parts cannot be hurt.

Q. I want to come to a specific portion of the evidence given by one of the witnesses. At page 333, Dr. Thompson, dealing with this matter, says this. He refers to page 172 of a book, and then reads about muscles. He goes on :—

> " Underneath that is the sterno thyroid and then in front of this, between those muscles and the skin and the deep fascia, there is another muscle called the platysma. So there are really four layers of muscle."

It goes on :—

> " Q. Now assuming that the tube is 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 this operation ?——

Mr. SHAND : This is on the basis that the tube is broken ?

Mr. CASSIDY : No, when the tube is put in.

Q. The question was " Would that serve to retain the tube ? " and the answer was " Yes. That would be pressed on the tube and help to grip it." What do you say——?

His HONOR : On page 346, eight lines from the bottom, we have—

> " (Q.) May we take that as applying just after the tube is put in ?—(A.) Yes."

Mr. SHAND : It is all governed by the early question—

> " (Q.) Now, with a foreign body such as the tube in the wound, could it happen that the wound might close ?—(A.) Yes, it might close and open or it might close altogether." (Page 333.)

Mr. CASSIDY : At page 318 this is what he says—

> " (Q.) If it went into the same capsule——?—(A.) It would kink or tend to be kinked. No prudent surgeon would do a thing like that.

"(Q.) How would it go then ?—(A.) It would be gripped by the muscles and would still have to go round these two other muscles."

Q. Will you explain it in as practical a way as you can ?—A. I will take the four layers of muscles in turn. There are four layers described.

His HONOR: Shortly, do you agree or disagree with it ?—A. I entirely disagree with it. It cannot happen. The muscles tend to pull away from the middle line. The muscles are in such a position that they tend to open the parts, they do not grip. (Objected to.) I take the muscles in that situation. The idea is the muscles come together and grip the tube, but I say that could not happen. The muscles tend to pull apart and that is why we stitch the muscles together.

Mr. CASSIDY: We have it in the hospital records that the tube was removed on the 17th. You have already dealt with the ordinary times of removal ?—A. Yes.

Q. I refer to the hospital records. Do you remember those records up to the 17th, the date of the removal of the tube. Is there anything other than normal in the progress or in the draining of that patient ?—A. Perfectly normal so far as you could tell up to that time.

Q. In such circumstances what is done with the tube ?—A. Taken out.

Q. Dr. Thompson said this at page 372—

"(Q.) You heard the Plaintiff say that the tube was only touched by Dr. Bell on one occasion ?—(A.) I don't remember that.

"(Q.) You may assume that is what she said. You saw in the hospital notes that the tube was removed on the 17th ?—(A.) Yes, it should not have been."

Mr. CASSIDY: What do you say as to that statement ?—A. I say it is a ridiculous statement for a man to make who knows nothing about thyroid surgery—a ridiculous statement.

Q. The next question is "What" and its answer was "It should not have been; not if it were drained" ?—A. There is always a little drainage for some days afterwards. The tube is only put in to get away the free drainage for the first two days, and then it is taken out, and then there is a little seepage for a few days, but there is certainly no need for the tube after the first two days.

Q. The next question was "Do you say that ?" and the answer was "Yes, in view of what had happened at the operation and the likelihood of infection, that tube should have been left in a little longer, because the surgeon could have very well anticipated infection" ?—A. There is no ground whatever for saying that the surgeon could anticipate infection; no ground whatever. That is another ridiculous statement.

Q. What is the reason for the removal of the tube as early as possible ?—A. Well, it is finished. The object of putting the tube in is to drain away the fluids that come in the first two days freely. After that it is no further use. Any little fluid that seeps away in the next few days, will get away of its own accord.

Q. With an open tube, does infection come into it ?—A. Yes. If the tube is left in for an unduly long time, it creates more scarring. Moreover, it becomes a trap for the entry of infection. We are glad to get rid of tubes as soon as possible.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Further Examination, *continued.*

Q. I want to pass next to the removal of the tube—the account given of the removal of the tube. (Sketch handed to witness.) While the tube (Exhibit " P ") is being brought, the Plaintiff says that on this occasion Dr. Bell caught hold of the end of the tube with his fingers and pulled once, that then he pulled hard, when it did not come out, and that then he put his hand on her forehead, and again pulled hard—that is three times altogether—and that the tube then broke, and something came away in his hand. (Objected to.)

His HONOR : She did not say that. Page 16 gives the account.

Mr. CASSIDY : Well, then, that she saw a half inch of rubber in his hand.

His HONOR : A little dark piece of rubber.

Mr. CASSIDY : A little dark piece of rubber. You told us what distance the tube would go in. Could that happen in your opinion ?—A. No, it certainly could not happen.

Q. It has been suggested, although there is no evidence, that the tube might have been stitched to something. If the pulling had to be so hard as to break a stitch and to break the tube, and leave a portion behind, what would happen to the Plaintiff's neck——(Objected to : pressed.)

Q. Well, take this suggestion that you are pulling on the tube, and the stitch does not break, and the tube breaks, what would happen to the patient's neck at that time, or to the patient herself ?—A. Well, first of all, I pointed out that the patient's neck would be held in this position (indicating), and she would resist any attempt to lift her head back, such as was suggested, and then to drag on the tube in the way described would be a most inhuman thing to do, and would cause the patient to scream the place down. She would have every nurse running round to see who was being murdered. It would be so dreadful and so terrible that I cannot imagine it for a moment.

Q. Tell the jury what the condition of the neck was at the time ?—A. Well, the neck was painful at the time, and there was inflammation, and that inflammation would make the neck very tender to the touch, to the lightest touch, and then to suggest that the neck would be pushed back in that way (indicating), and then for the tube to be pulled so as to break the tube—it is so terrible that I cannot believe it. (Objected to.) I said what I wanted to say, and I don't want to say any more. I was asked to give a description, and I have done it to the best of my ability.

Q. If the stitch held, what would happen to these tissues in the neck ?—A. It depends on what it was stitched to. If it were stitched to the thyroid gland, it would tear that and cause hæmorrhage. It if were caught on to the trachea, it would tear a hole in the trachea. If it were caught on to the muscles, and the skin, it would tear the wound open.

Mr. SHAND : And what about the muscle alone ?—A. It would tear the muscle apart.

Mr. CASSIDY : We have the Plaintiff who makes a sketch which has apparently been measured because it shows a two-inch tube, and there was left in it a wire, which she describes as one and a quarter inches long, and another one a little shorter, and she says that that is the piece that came out later ?—A. Yes.

Q. That is the piece that was left in, she alleges, so that in the surgeon's hand is left the half-inch. Will you illustrate with that tube that you have got, what would be the position if there was such a thing as Exhibit "P," or such a thing as this sketch, left in?—A. I have made a small tube here, which corresponds to the measurements of the one given by the Plaintiff (produced), and I have tried to visualise the tube. I assume that the tube must have been broken off, because a piece was said to have been thrown into the dish, and this other piece was passed afterwards with the two wires attached. The jagged end there (indicating) I would suggest is the broken end. Am I correct in saying that?

Q. Well, that is the sketch?—A. That would be the outer end of the tube apparently where it was broken off (indicating). The half-inch would also be jagged. I have tried to represent this small piece that is supposed to have been broken off, with the jagged end——(Objected to.) Could I use the other tube? (Objected to—objection withdrawn.) I have tried to reconstruct this tube as it was when it was alleged to have been put in, so I have put the half-inch back again on top, and you will notice that the wires are sticking out for a considerable distance (indicating).

Mr. SHAND: Where is the V-cut?—A. There is a V-cut down here (indicating).

Q. There is no diamond cut in it?—A. There is no diamond cut mentioned in the description of that tube. There is a vertical cut down, and then it is packed in with packing. I have tried to represent this——(Objected to by Mr. Shand.) She calls it a straight cut. However, it does not make any difference to the actual dimensions. I have tried to represent what is drawn there (indicating). That is, that I have packed something in there, and put these wires coming out. I have reconstructed it as best as I am able to by putting that half-inch back again. These wires would be sticking out into the dressing like this (indicating) according to her description. Now, Dr. Bell is said to have taken it with his fingers and thumb—of course, a thing that he would never do—and gripped it so as to pull very hard. The question is how could he grip that without gripping the wires? (Objected to by Mr. Shand—pressed.) I am reconstructing the picture.

His HONOR: What I understand is that you are putting together the combination of what the Plaintiff says—a little half an inch of black tube, and then she passed afterwards a tube which contained these various things?—A. Yes. (Objected to by Mr. Shand—pressed.) The tube was pulled on by Dr. Bell, as alleged, and a piece came off and he threw it into the dish. Well, the wires would still be there sticking out of the dressing for anybody to see who looked at the wound. I have read the evidence and I have reconstructed this performance as far as I am able.

Mr. CASSIDY: If we are to take this as something that was left in the wound, a surgeon gripping the half-inch with his fingers, could he miss the wires?—A. Not according to that reconstruction. He would have to grip it so tightly that he would take the wires and everything. (Objected to—pressed.)

Q. The next thing I want to come to is page 310, where Dr. Thompson has said this—"And on the 21st, the night report, report of 'Wound probed', and then 'Cough troublesome'." and Dr. Thompson said "The

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Further Examination, *continued.*

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 could 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." Now there is a cough which he says is consistent with irritation of the laryngeal nerve. Will you show the jury how far the laryngeal nerve is from where the tube was inserted ?—A. Yes. The tube was inserted in the lowest part of the neck. The laryngeal nerve comes up here (indicating), and enters the larynx at its upper quarter. The tube could not, in that position, in any way irritate that nerve. It is inches away from it at that stage. It is an absolute anatomical impossibility.

Mr. SHAND : Isn't it at the top of the thyroid cartilage— the nerve ? —A. No, the nerve you are thinking of is the muscular branch not the sensory nerve.

Q. The sensory nerve I was speaking about ?—A. The sensory part comes off at a higher level, and enters the larynx up above it. It is right away from the whole thyroid area, completely out of range altogether. Dr. Thompson misled you there ; I don't know with what object.

Q. Don't bother to give impertinence ?—A. No, I won't give impertinence.

Mr. CASSIDY : Is that statement completely difficult to understand ? —A. Completely impossible to understand, to anybody who is supposed to know anatomy. (Objected to—pressed.) Difficult to understand. (Objected to—admitted.)

Q. Is there any way that you can illustrate to the jury on your neck exactly the nearest bit that that laryngeal nerve could be to where the tube goes in ?—A. That would be the position of the tube (indicating). That would be the lowest point of the nerve before it enters the larynx (indicating), the interval between the hyoid bone and the upper border of the Adam's apple.

Q. Now in regard to the thyroid capsule, where is it ? Is it outside the thyroid capsule ? (Objected to as leading question.)—A. Yes, it is outside the thyroid capsule.

Q. Now, in regard to the operation in that area, is it necessary to sever the thyroid arteries ?—A. That is one of the first movements in the operation. You have to ligature the superior thyroid artery, and then divide it before you can free the upper pole of the gland to bring it down to continue the removal.

Q. Could a surgeon stitch a tube like that in without being aware of it ?—A. Absolutely impossible. It is very difficult to get a stitch through a tube like that.

Q. Why is that ?—A. Rubber is very resistant to pushing a needle through it. You would have to grip it with something and use considerable force. You could not do it.

Q. What is the grip for ? You mean it might wobble ?—A. It would wobble away from you. Could I illustrate it ?

Q. Mr. Shand said that it must be gripped by anything ?—A. You must not allow anything to grip it because anything you grip it to would be injured. The tube that is put in must lie loosely. That is a standing instruction in surgery.

Q. Are there some parts where you have to stitch tubes in, and there is the difficulty that you are unaware that a tube is left in ?—A. Well, you very rarely stitch a tube in.

Q. Take abdominal operations ?—A. Well, if you do stitch a tube in you have to put a needle through it, and it is very difficult to put a needle through rubber.

Q. What about stitching a tube in a colostomy ?—A. There may be occasions when you would stitch a tube in.

Mr. SHAND : Is that one of the occasions—in a colostomy ?—A. No.

Mr. CASSIDY : What is a colostomy ?—A. A colostomy is an opening in the large bowel to allow the motions to come out on the surface, but we do not use a tube for that.

Mr. SHAND : Someone has been misleading you too ?—A. Would you like me to illustrate the use of a needle ?

Mr. CASSIDY : Yes ?—A. There is a needle in Court, I think (handed to witness). I presume that the way it is suggested that the needle catches the tube is after the tube has been put in loosely. Supposing the tube is put in the wound (witness demonstrates). Do you see the impossibility of getting a needle into it ? To get a needle into it I would have to grip it like that (indicating). It would drag the whole thing out.

Mr. SHAND : What if it is up against a muscle ?—A. I will show you what would happen like that. That is right in the wound out of sight (indicating). Now if you put your stitch through that, you have to stitch it to something, and you would have to fix it to something. Now these stitches that you are referring to are the stitches in the muscle because the tube is not put in until the muscles are stitched. When the muscles are stitched, a gap is left, and then the tube is put through the gap. (Objected to—pressed.) You are assuming that a stitch is put in. You would have to use brute force. There would be no chance of getting it through that eye, and you have to tie it, and you would pull this (indicating) right out. You could not put a stitch through a tube without knowing it. It is fantastic. The impossible things that are suggested here are amazing. (Objected to.) I volunteered and I have shown you how impossible it is to do it.

Mr. CASSIDY : You were explaining it to the jury. Where have you got your thread ?—A. Here (indicating).

Q. And then you have to bring it out and put it through something ? —A. Yes.

Q. And after that what have you got to do ?—A. To tie it, and that would bring it up against the muscle, or whatever it was you are supposed to have stitched it to. It is impossible to describe these things to lay persons. That is the maddening thing about this case. (Objected to.)

Mr. SHAND : What is that which you said ?—A. That was an aside. (Shorthand notes read.) It is perfectly true, it is maddening to a practical surgeon.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Further Examination, *continued.*

Mr. CASSIDY: Let me come to the next matter. Now assume that the tube might have been put in last, or it might have been put in just before you finally sew up your muscles. Would the same remarks you made about stitching apply?—A. Yes, the same.

Q. Any stitching to those structures in the neck—what are the structures there that could be stitched?—A. The only parts that are stitched are the remnants of the thyroid gland on each side. They are over-sewn.

Q. That is before the tube is put in?—A. Yes. And then the next layer is the one layer of muscle in the middle. That is brought together, that is all; and then the skin.

(Short adjournment.)

Mr. CASSIDY: I think you had finished with the removal of the tube. I want to pass next—— ?—A. I don't think I had finished with the tube.

Q. The next part of the statement is that having put this half-inch in the receptacle the nurse and the doctor left the room without re-dressing the wound. Is it usual to re-dress wounds after you remove your bandage?—A. You mean they walked out and left the wound open?

Q. Yes?—A. That is a preposterous suggestion, you must dress the wound immediately.

Q. And at that stage is that very essential?—A. Most.

Q. Is there anything else you want to say with regard to the removal of the tube?—A. There was something about the removal of the stitches. It is mentioned in the evidence that some of the stitches were removed when the tube was removed. You remove those stitches very early.

Q. In the hospital record it shows: "Three sutures removed"?—A. Yes, on the second day, the 17th. It is customary to start removing these stitches on the second day and to have them all out by the fourth or fifth day, the object being to prevent scarring. It is a cosmetic consideration and the removal of those stitches was just a natural thing to do.

Q. What do you say as to an object like Exhibit "P" being used in a thyroidectomy operation?—A. I have never seen a thing like that used in any operation, it is the most fantastic contraption I have ever seen from a surgical point of view.

Q. You told the jury yesterday, I think, the area of the thyroid. Are some of the illustrations in the text books approximately life size. If you saw the neck you would be able to get a very good idea of the area a tube 2 inches long takes up at this place where the tube is inserted?—A. Yes, in a life-size section.

Q. On page 323 of the evidence Dr. Thompson says: "The skin after the operation falls on to the trachea." Is that an accurate description from your knowledge?—A. No. Underneath the skin you have the layers of fat of varying thickness in which is the platysma muscle and then beneath that the layer of the muscle which is stitched in front of the trachea.

Q. If that were so and the skin fell on to the trachea could the tube be missed by doctors and nurses?—A. You mean a tube lying across the trachea?

Q. Yes?—A. No, it would make an obvious elevation, it does not fit in, of course.

Q. The skin, you say, does not go right to the trachea ?—A. No.

Q. Not being able to see a section of the neck I would like to get from a picture the distance that this Exhibit P would take up. This is a section at the area of the thyroid, is it not ?—A. Yes.

Q. How would you say that compares as to life size ?—A. It may be a little smaller than life size, it would be hard to tell without measuring it, it depends on the size of the individual's neck.

Q. Your tube inserted it misses the trachea ?—A. Yes, according to the radius of that.

Q. Would that be after the style of the insertion ?—A. According to the description given by Dr. Thompson ?

Q. No, the normal insertion ?—A. The tube only goes in a little distance like that (indicating). You don't push it right back, it just goes into the space, but you must remember as I pointed out before that just opposite the incision the trachea is falling backwards and there is more space there than there is higher up, there is a definite space between the superficial structures and the trachea.

Q. Take the skin back to the trachea, how far would that be ?—A. There would be a space between the muscles and the trachea just above the sternum, approximately an inch, I would not say accurately, it varies in different people.

(Mr. Cassidy applied for an adjournment to Sydney University to enable Professor Shellshear to demonstrate the anatomy of the neck on a dissected section. Mr. Shand objected to the adoption of such a course unless he had a prior view of the section to ascertain if conditions were similar. Mr. Shand stated, however, that if the jury expressed any wish of their own that they should see it then he would waive his objection provided he had the right of a prior view. The jury intimated that they were quite prepared to view such a demonstration provided that both counsel were of opinion that it would be of assistance to them. Mr. Cassidy said he was of that opinion whilst Mr. Shand stated that he actually did not know if it would be of assistance, but thought in all probability it would not be of assistance.)

Mr. CASSIDY : The next thing I want to take you to is this—assume for the moment that a surgeon knew that he had left a tube behind on this 17th when it is alleged removal occurred—what would you say as to any danger in recovering it ?—A. You proceed at once to get that tube out and you would not let up until it is removed.

Q. I want to put what was said to you in evidence on behalf of the Plaintiff—would there be any difficulty and danger in removing it at that stage ?—A. No danger whatever. There would be more danger in leaving it there.

Q. Would it be necessary to put the patient back in the theatre ?—A. No, you just take hold of it. There are wires protruding from the skin, according to the reconstruction. You merely enlarge the sinus. The wound is open and it would hurt a little perhaps until you immediately remove the tube. You would see it at once.

Q. I ask you this in view of the evidence called on behalf of the Plaintiff. At page 336 Dr. Thompson was asked—

"(Q.) Would it be safe to operate for a piece of tube then ?—(A.) No, it would be very foolish. With that infection if you

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Further Examination, *continued.*

operated you would probably set up a dangerous cellulitis in the neck, and apart from that the patient was in a very bad state after the operation, semi-conscious, restless, rapid pulse, and she had hæmorrhage, and with the shock she was in a very parlous condition. It would have been folly to have done anything at that stage—otherwise one might have had a corpse." ?

—A. That is one of the most terrible statements for any man with a knowledge of surgery to make. It is a terrible thing to say. I cannot imagine anyone with any knowledge of surgery to make a statement like that.

Q. " (Q.) If you had the misfortune to have a tube break off then, would you have considered operating ?—(A.) No, I would have attempted to get a sinus forceps down, a long narrow blade, to get into the small openings and canals. I would have tried to put it down. It would have been difficult in this case owing to the muscles, to get hold of that body and pull it out. I would have made several attempts perhaps on different days. If they were unsuccessful I would have desisted for a time."

What do you say about that ?—A. That is what I call muddling—fooling around with the wound and stirring up sepsis. That is a terrible suggestion.

Q. Is probing a normal thing ?—A. Probing is a normal thing—a very small thing slides in there gently and keeps the wound and track clear.

Q. " (Q.) Do you think you would have had to wait ?—(A.) You might have to wait a considerable time. There is another position : the surgeon might have said to himself ' Oh, well, there is this infection. Even if I leave her for one month or two months, if I open it up I will cut through the surrounding protective tissue and open the part and may open up infection again.' He may have said perhaps ' I will adopt a waiting policy and perhaps the thing will quieten down and the thing will close and the foreign body will remain there with the patient for the rest of her life.' " ?

—A. To leave the patient like that for the rest of her life—that is a terrible thing to say. I cannot imagine a man on our register to say a thing like that.

Mr. SHAND : He is not on the B.M.A. Register ?—A. He is on our register. To leave a patient go out of hospital with a thing in the neck is too terrible a thing—I cannot find words in the English language to express myself.

Mr. CASSIDY : Do you do other work in an honorary capacity——? (Objected to as raising bias ; pressed ; disallowed.)

Q. You have studied and looked at, for the purpose of giving evidence here, the hospital records, the temperature, pulse rates, etc., so as to be qualified to deal with her condition afterwards ?—A. Yes.

Q. What do you say generally as to the subsequent condition of the Plaintiff as to infection ?—A. The temperature at the beginning and the pulse rate corresponded to what is usual after this operation—there is always a considerable rise in both and then gradually both pulse and temperature fall until in an average patient the pulse and temperature may be somewhere near normal at the end of a week, sometimes longer. On the morning of the 20th the temperature was found to be 103.8. That indicated that something was wrong, and a few hours later the wound was

dressed by Dr. Bell and pus was evacuated, indicating that that temperature was due to an infection of the wound. The discharge continued, but rapidly she improved, and by the 23rd I think, three days later, her temperature was below normal; and what is most important, her pulse was registered at 76, which is normal for a woman, showing that the heart, that is the pulse, was very little disturbed by this sudden rise of temperature. So the infection, although at first it had to be treated with respect, very quickly subsided, and at no time was it really serious.

Q. Would you describe it as a heavy infection?—A. That is a question now that I should like to distinguish—a "heavy infection" may mean two things: (1) that it is heavily infected by organisms in numbers; (2) that the organism that infected the wound was a very dangerous one. As to the first, I cannot say—nobody knows what were the numbers of organisms. So I presume that "heavy" meant a virulent infection. It was not a very virulent infection so far as this patient is concerned, because she very quickly resisted and recovered from it.

Q. Professor Welch said that 96 on the morning of the 23rd meant that she was subnormal?—A. But temperature varies. We have the average normal, but temperature rising and falling often falls below normal, and we refer to that as "subnormal" but it is not "abnormal."

Q. Would it be fair to just take the temperature at 97 and omit the pulse rate in describing the condition?—A. Absolutely unfair. The pulse is far more important in this condition—the effect on the heart. It is the heart that is affected by the disease, and we watch the pulse first and foremost after an operation. We have a chart and watch it coming down as the patient improves, It is the most important single item in the whole process of managing this disease.

Q. Following the later records shown, what do you say as to her condition?—A. You mean the continuance of the discharge?

Q. Yes?—A. Having had an infection in the wound, the acute stage having subsided, the discharge persists for some time afterwards. If there is any foreign material such as sloughs—that is little pieces of dead tissue from within the wound—or any foreign material such as the catgut knots mentioned here, the wound will not heal until they are all discharged. The length of time it takes to discharge is fortuitous, because they are inert, and it is a matter of luck when they will come away—it may be weeks or months—but healing will not take place until all the pieces of dead tissue come away.

Q. Are you speaking from experience when you say that cases like that take weeks and months?—A. Yes. I will give an instance of one case where five months elapsed.

Q. In this case we have the evidence that the wound closed at the end of June and that knots were coming away up till some time before that?—A. That is quite consistent.

Q. What does that indicate with regard to the wound?—A. That the final healing—it means that all the catgut knots and other foreign material were finally discharged and healing soon followed.

His HONOR: Gentlemen, that ruling I gave on Mr. Shand objecting to the honorary work seems to be purely academic, because at the beginning of Dr. Edye's evidence he enumerates a great number of hospitals where he is honorary surgeon.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Further Examination, *continued.*

Mr. CASSIDY : I did not press it further in view of Your Honor s ruling.

Q. Is gauze used for swabs in these operations ?—A. Yes—gauze swabs.

Q. Is gauze ever left in a wound ?—A. No.

Q. I mean would you leave gauze in a wound knowingly ?—A. Oh no.

Q. You have already given evidence I think that you stop the hæmorrhage before you close up the wound ?—A. Yes.

Q. In this operation it is important ?—A. It is extremely important—in this situation it is of vital importance.

Q. At page 337 this evidence was given :

" Q. What is a swab ?—A. Gauze, small pieces folded over. They are sometimes used for the control of hæmorrhage. If you cannot stop it by ligature or forceps you may have to use a hot swab and press on the part." ?

—A. Temporarily.

Q. " You cannot always stop hæmorrhage. You may have to be satisfied with stopping it as well as you can, especially if the patient is in a bad condition, and you have to get her off the table." ?

—A. The suggestion in the question is that the idea is to send her back to die. In modern thyroid surgery it would be a terrible thing to send the patient back with the hæmorrhage still on, to die. That is murder. It is a terrible thing to do.

Q. Were you in Court when Dr. Thompson said this patient nearly died on the table—is there anything in the records to suggest any such inference ?—A. Nothing at all that I saw.

Q. I want to go now straight away to the 2nd October 1939. On that day you may take it it is alleged that periods of unconsciousness took place ; for some time the Plaintiff was in bed ; and it is alleged that a tube erupted into the mouth through the tonsils. Having regard first of all to the position in which that tube is placed, what do you say as to the possibility of that occurring ?—A. Utterly impossible, in my estimation.

Q. Tell me why—that will involve taking the tube where it is ?—A. Yes. We start with the supposed alleged tube in this position in the lower part of the neck and the wound healed—is that how we start off ?

Q. First of all, if a body such as suggested were left in the neck and if there were infection, would the wound heal ?—A. It would never heal permanently until that foreign body was removed. It might close temporarily—healing means something permanent. It may seal the edges temporarily, but it would soon break out again when the pus accumulated. It might go for days or weeks according to the severity of the infection.

Q. If the wound healed temporarily and you had a body in the infected area, with no escape for the pus, what would happen ?—A. You would gradually develop a very large painful swelling, full of pus I suppose —a large abscess.

Q. What would be the size of those abscesses ?—A. There would have to be room for that object to lie freely—it is inert and does not move of its own effort. The cavity would have to be big enough to hold it. It would have to be pretty well four inches in length and a couple of inches wide. And around the actual cavity there would be a lot of inuration

and thickening, which would mean a swelling very much greater still. It would make a swelling almost five inches in length and two inches in diameter, with all the inflammatory changes going on in the vicinity.

Q. Suppose you had an accumulation of pus like that in the thyroid capsule and an opening in the neck within inches of it, where would you expect that pus to make its exit ?—A. It would attempt to get out at that spot. It always finds its way along the original track.

Q. We know that knots were being extruded through that opening ? —A. Yes.

Q. Would that wound heal while the thing was there with the infection ?—A. It might close temporarily, but it would not heal permanently.

Q. Before I deal with the question of the pus travelling I want to come to the first matter, that you say it is impossible to go through there. You have had a good deal of experience as to foreign bodies ?—A. I had in the last war. We do not see many in civil practice, but in the last war I saw a great number of them.

Q. With an object like that, or anything like it, what do you say if it were in the thyroid capsule as to its moving at all ?—A. It is an inert body—it could not move at all. It would stay more or less at the bottom of this abscess cavity by its own weight.

Q. What would you say as to the possibility of it ever leaving the thyroid cavity ?—A. I do not think it would ever move from that situation. The anatomy of the part would not allow it, anyhow—it is too big.

Q. First of all, if you had infection and pus formed there, where does the tube go ?—A. Generally in a patient in this condition it goes to the bottom of the infection. If it could move, it would move down by its own weight. It is an awkwardly shaped thing and might get caught. If it was free it would go the bottom of the cavity if there is a cavity.

Q. What do you say as to the suggestion of its travelling upwards ? —A. It could not do that. It is impossible. I should like to explain a little further. When you have an abscess cavity you get pressure in the cavity, that is why there is pain. It gets hard and painful and swollen according to the pressure. That is fluid pressure, and according to the laws of physics I understand pressure of fluid is equal in all directions. The tendency is to spread in all directions, and there would be a giving-way in the direction of least resistance. The direction of least resistance here is downwards into the mediastinum, or into the chest. The reason for the resistance being least in a downward direction is that there is nothing there comparatively to block the spread. There is no muscle across the inlet to the thorax, and there is no fascia across the inlet to the chest.

Q. I want you to take this slowly—could you illustrate with a sketch, or on your own body ?—A. I think I can explain it, or make a sketch if necessary. The œsophagus and trachea pass downwards from the neck into the chest, and there is a free passage for them to go through ; so that there is no fascia or muscle layer bridging across the entrance to the chest. If you put your finger down you only meet with loose areolar tissues—you can push your finger quite easily down on to the large blood vessels coming from the heart and feel them pulsating. I am speaking now comparatively. Any pus or blood congregating there will push itself down into the chest. It will tend to push outwards, but the sterno-thyroid muscles are attached to the side of the larynx, and they are covered

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Further Examination, *continued.*

by fascia also, and they prevent any tendency to creep upwards. It is much easier for the pus to go downwards than upwards, because there is a free getaway. I will give an illustration—in surgery we sometimes perform operations on the junction of the pharynx and the œsophagus. The great danger of that operation is that infection may escape when you open the œsophagus, and if it does we know the patient will almost certainly die, because it will go down to the mediastinum. To avoid that we do the operation in two stages to protect the patient. During the last war a soldier was brought in who had swallowed a rabbit bone. The rabbit bone protruded through the junction of the œsophagus just behind the thyroid gland. He died from the infection spreading down into the mediastinum. That is the main danger—it never enters into surgical practice the thought of it going upwards. It is always downwards.

Q. If you had such an area of pus in this vicinity, and with the easy entrance to the mediastinum, what would be the result ?—A. There are two or three possibilities. There is the abscess to both the trachea and the gullet, and it would be pushing downwards into the mediastinum. If that goes on long enough the patient will die, but during the process part of the wall of the gullet may come away, or part of the wall of the trachea. In either case the patient would die.

Q. Assume in this case that it is suggested that infection has been there, and that it has gone up to the area near the tonsil with a tube inside, and in your opinion could it ever happen that infection could be in that neck for 18 months and the patient live ?—A. No, the size of the abscess that I have described would first of all form this very large painful swelling, and if it tracked up the neck it would be obvious and painful. During that time the patient would be suffering from blood poisoning because there is no outlet for the pus. She would have a high continuous temperature, probably rigors, would waste and become extremely anæmic, and ultimately die from septic absorption; could not last for more than three and four months of that going on in the neck.

Q. You say that the tube would not move out of the capsule—you know the capsule itself ?—A. Yes.

Q. It is said here that it is possible that this tube by a suppurative process could start a path up through the neck which would carry the tube. What do you say as to that ?—A. It is so difficult to imagine it happening. It would meet with so many important structures and so much opposition that I cannot believe that it would ever happen.

Q. You heard Professor Shellshear. Do you agree with what he says ?—A. Yes, the anatomy in that region is very very complex.

Q. From the practical point of view have you ever seen or known in your experience of a tube of that size travelling from one location to another ?—A. No, or a tube with blunt ends with a diameter of a quarter of an inch.

Mr. SHAND : Have you ever known a tube being left behind in the neck ?—A. Never there.

Mr. CASSIDY : But you have known of foreign bodies in the anatomy ?—A. Yes, in various parts.

Q. A tube with blunt ends or a tube such as that, have you ever known of any tube like that ?—A. The only movements would be to the bottom of the cavity.

Q. As Professor Shellshear has explained, we have muscles, blood vessels, nerves and other structures in the neck, a complicated set of structures. You have had a lot of experience in regard to hæmorrhage ?—A. Yes, secondary hæmorrhage.

Q. If there were a suppurative process there and a tube, what do you say on the question of secondary hæmorrhage ?—A. If anyone had an abscess there, especially if one knew there was a foreign body, I would be in fear the whole of the time of secondary hæmorrhage. It is one of the greatest fears where there is an abscess in relation to blood vessels, especially with regard to tubes.

Mr. SHAND : The secondary hæmorrhage is where the blood vessel has already been cut ?—A. No, they cut and erode it sometimes by the disease.

Mr. CASSIDY : Is that an area with a great number of blood vessels and important blood vessels ?—A. Yes.

Q. Is there great danger of secondary hæmorrhage from infection ?—A. Yes, wherever infection is in relation to blood vessels there is always a danger of secondary hæmorrhage.

Q. Apart from your experience is that concerned in text-books ?—A. Yes, in text-books on surgery.

Q. Can you refer me to a passage ?—A. Yes, there is a passage in Rose & Carless, Manual of Surgery, Vol. I, 1937 Ed, page 318. The heading is " Secondary Hæmorrhage " and it goes on :—

> " The essential cause is infection of the wound. In a vessel which has been divided and ligatured as on the face of an amputated stump, the projecting end of the vessel beyond the ligature is practically dead tissue, and therefore readily attacked by bacteria, which transforms it into a slough, and this, together with the infected ligature, has to be cast off. When this happens bleeding may occur. In addition to this, however, the infection of the wound involved a suppurative inflammation around the vessel (periarteritis) which results in a softening of the vascular tunics by the bacterial toxins and this may progress in time to such an extent as to render them incapable of resisting the blood pressure, so that sooner or later they give way. This latter condition is especially seen in vessels tied in their continuity, and also occurs in the secondary hæmorrhage which sometimes develops in connection with abscesses in the neighbourhood of large vessels or deep infected wounds where a drainage tube or other source of pressure, for example a spiculated end of a broken bone, is allowed to rest against an arterial wall."

Q. I asked you for your authority as to the danger and difficulty of control of this matter of secondary hæmorrhage. What do you say as to that ?—A. Secondary hæmorrhage is an exceedingly dangerous thing in any case, and very difficult to control, especially in the neck.

Q. In this case with an infected area and the tube, what would you say as to an area packed with blood vessels such as that ?—A. If secondary hæmorrhage occurred there I think it would cause death before you could do much about it.

Q. I suppose the liability to hæmorrhage depends on the type of infection ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Further Examination, *continued.*

Q. In these tubercular things is it so likely as in abscesses of this kind ?—A. I have no knowledge of it happening in a tubercular condition except in the lungs.

Q. With regard to infection such as is suggested here, pyogeme infection, what do you say ?—A. It is always a possibility where there is suppuration in regard to any blood vessels.

Q. Coming up the neck, for this tube to have made its passage up the neck, what must happen to it to get across to come out the tonsil ?—A. It has to take a more or less right-angle turn and then get through a whole bevy of structures, blood vessels, muscles, nerves, lymphatic glands and so on.

Q. What do you say as to the possibility of the tube turning at right angles and coming out through there ?—A. I cannot imagine it.

Q. You say that it does not travel, but could it happen without death of the patient ?—A. No.

Q. I want to come next to the area near the tonsils. You have already quoted Massey. Is there something there that in your opinion shows the trouble that would be experienced for that tube to erupt in that direction ?—A. Yes, and I refer to Massey's Surgical Anatomy, 1933, p. 63, which gives a picture looking into the tonsillar region inside the mouth. The tonsil has been taken away in order to show the structure on the other side of the tonsil.

Q. For a tube such as that what do you say as to the possibility of it travelling along by suppuration through that end ?—A. First you would have to imagine the abscess reaching that level and bathing all those various structures with pus or inflammatory reaction. Before the tube would reach that level those structures would be involved in an inflammation which would mat them together. There is always an advancing inflammation, and that would be matted together by this inflammatory reaction. The tube would have to come up against that barrier and find its way through those various structures, and that could not be done without injuring them in some way. Some would have to be destroyed to make way for the tube to pass through. If they were blood vessels you would get hæmorrhage.

Q. In your opinion could it come through that tonsil without hæmorrhage ?—A. No, you would get the hæmorrhage which would pass into the abscess cavity, or if there were an opening already the blood would come out into the throat.

Q. Look at the illustration in the text-book I show you, would that be about life size for that area ?—A. Yes, I am referring to Cunningham's Anatomy, 8th Ed., p. 1424. There is very little space there for the tube to go into, and it could not be fitted into that area. I point out the vessel and the covering muscle. There are other blood vessels and muscles in the vicinity that I indicate. There is very little space there for a tube to fit in, no potential space at all. It is closely packed with important structures. In that region you have structures inside and outside which prevent expansion. Lower down in the neck you have not, and swelling can take place. In that region it cannot be opened up because it is surrounded by bony structures. First of all there is the jaw on the outside, and then the upper jaw on the inside, and certain processes that project down from the base of the skull. In that area there is no room or very little room for expansion.

(Luncheon adjournment.)

At 2 p.m.

Mr. CASSIDY : When we adjourned I had just dealt with the question of the tube going across to the tonsil there, and the structures that were in that vicinity. I want you to come back to the suggestion that is made, that for 19 months there had been suppuration and infection with an alleged tube being left in the neck. What do you say as to what would have been the position if there had been a suppuration of that long standing term having regard to the structures in the neck ?——

Mr. SHAND : That is not the evidence. (Argument ensued.)

Mr. CASSIDY : If it is put the way Mr. Shand puts it, could that happen, with that suppuration from a body like that left, it could get better and then——?—A. It could recover completely ?

Q. Yes ?——

Mr. SHAND : No, become quiescent ?—A. I cannot quite get it.

Mr. CASSIDY : With that exhibit left in the neck, and you had suppuration going on there, then it could become quiescent ?—A. No, it could not become quiescent if there was no escape for the pus.

Q. If there for 19 months, if that pus had been travelling a course which went from there where the tube was up the neck to the tonsil, what would have been the effect on the various structures and tissues ?—A. There would have been a considerable amount of destruction, and short of destruction a great deal of interference with structures and with functions.

Q. As a result of that, what do you say necessarily follows ?—A. It would leave scarring and a certain amount of deformity, perhaps contraction. Contraction would tend to deflect the neck to the affected side.

Q. When you get destruction of muscle what happens ?—A. It is replaced by scar tissue. It tends to gradually shrink as it were, or contract.

Q. Has that the elasticity and function of ordinary muscle ?—A. No, it has no elasticity at all.

Q. In the area of the neck, with such extensive suppuration as would be necessary for this body, if death had not occurred, what would you have expected if the patient had lived ?—A. It would have left some permanent deformity and impairment of movement too.

Q. You have seen the Plaintiff on one occasion in medical rooms ?—A. Yes.

Q. You have seen her movements in Court ?—A. Yes.

Q. What do you say as to her movements ?—A. They seem to be perfectly normal, the movements of her neck.

Q. Is that condition as to movement in any way consistent with such a story as she tells ?—A. Not at all.

Q. You inspected on 11th December, in company with other medical men, Dr. Thompson, Dr. Marsh, Dr. Steele, and Dr. Poate, the plate ?—A. Yes.

Q. Did you examine the throat ?—A. I looked at the throat, yes.

Q. Looking there, did you see any evidence of interference with the palatal muscle, for example ?—A. No.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Further Examination, *continued.*

Q. Would that have been the necessary corollary of such a tube having erupted in the way she indicates ?—A. Yes, I would expect it.

Mr. SHAND : Is it necessary, or would you expect it ?—A. A necessary consequence, yes.

Mr. CASSIDY : You looked then at the tonsil itself ?—A. Yes.

Q. One or both ?—A. Both sides.

Q. Did Dr. Thompson in your presence point out what he referred to as the place through which this tube had come ?—A. Yes. He pointed to a small opening in the upper pole of the tonsil, a slit-like opening about a quarter of an inch to a third of an inch long, with a little strand of tissue across it. He inserted a probe into this, which went in about a quarter of an inch. That little opening is the supra-tonsillar fossa.

Q. Did you look at the right-hand tonsil also ?—A. I did, yes.

Q. What did you find there ?—A. The same arrangement, except that the opening was a little smaller, and there was no strand of tissue, but in the same situation.

Q. What was that on the right tonsil ?—A. The supra-tonsillar fossa.

Q. In that tonsil did you see any evidence of scarring ?—A. No.

Q. In that area would you expect scarring had a tube erupted there as alleged ?—A. I would have.

Q. As to that scarring, can you say whether it would be permanent or not ?—A. It would be permanent.

Q. Was there any ?—A. None.

Q. Was there, so far as you could see, any evidence of interference with the muscles surrounding the tonsil ?—A. None at all.

Q. What was the condition of the Plaintiff's throat and tonsils at that time ?—A. She had what is called a chronic inflammation of the tonsils. I saw Dr. Marsh express secretions from both tonsils, indicating a chronic or a sub-acute inflammation. There was a definite inflammation in her throat.

Q. Did you on that occasion take a measurement ?—A. I did make a measurement, yes, a rough measurement. I did not do it very accurately.

Q. Were they from below and from the tip ?—A. Yes, one from below and one from the tip.

Q. When you were pointing out to the jury this morning how you know where the tip is, is there something anatomical ?—A. It reaches to the upper level of the thyroid cartilage, which is about the level of the Adam's Apple approximately. It varies a little in different individuals.

Q. You heard it said here, that on the day of the evacuation of this tube, that is 5th October 1939, this lady picked it out from a chamber, the tube being like Exhibit " P " packed with a swab, and on the first occasion she swore she squeezed it and green pus came out. What do you say as to that ?—A. Unless her motion consisted completely of pus, I cannot believe it.

Q. Why ?—A. If we assume that that pus was from the abscess, the assumed abscess in the neck, and it is assumed that that pus remained in the tube during all that long passage to the stomach, into the small bowel, being constantly moved, churned, mixed with fluid, digestive juices, particularly saliva, and the food and drink she took in the meantime, in the stomach it would be turned and churned about, in the small

bowel mixed and churned with digestive juices, and finally passed into the large bowel. It could not stay there. The pus would be digested just like all other materials would be digested. It could not resist the digestive juices, like milk, meat, or anything else. It would be completely digested. When it reached the large bowel it would be mixed with the faeces, and if anything got in it at all, it would be the ordinary faeces.

Q. What has been suggested is that that had been swallowed at 3 o'clock on 2nd October, and this motion took place on Friday morning, 5th October at 8 a.m. Do you say that is not possible?—A. It is not possible. It would be digested in the natural process, destroyed.

Q. On the later occasion the Plaintiff said it was a greenish yellow, or yellowy green pus. Assume Dr. Welch had given some evidence that a greenish yellow pus could come from bile, what do you say as to that? (Objected to—objection withdrawn.)—A. The bile is altered also. The bile is a greenish colour when first passed into the intestine, but, by the time it reaches the large bowel, and in the large bowel it takes the ordinary brownish colour of the motions, the normal colour. It is inconceivable that any bile could be carried by that tube through the digestive juices, into the small bowel, and into the large bowel.

Q. Where would the bile enter?—A. The bile enters the small intestine at its upper end, not far from the stomach, and the tube would have to pass through 23 feet of small intestine, and then 16 feet large bowel. It would be carrying the bile the whole way. That would be impossible. It would be churned the whole way, and emptied and altered just like the bile would under ordinary conditions.

Q. The Plaintiff on the first occasion described this as being wire, made a sketch of wire, and she said she felt a pricking and scratching of the stomach?—A. The mucous membrane of the stomach is insensitive, she would not feel anything in the stomach.

Q. What is the pain you get from the stomach?—A. That is due to spasm of the stomach, spasm of the muscle.

Q. There is no tactile sensation?—A. No.

Q. Could you illustrate that?—A. There is an operation we perform on people where we put a tube into the stomach in order to feed the patient where there is a blockage of the gullet and so on, and they have to be fed artificially. That tube is put in and out of the patient, without his knowing it is there. If it was causing pricking and discomfort, it would not be tolerated. It is tolerated without any discomfort whatever. The patient wears it day in and day out, months, or years if the patient lives that long, without any complaint.

Q. Coming to page 335 of Dr. Thompson's evidence, it is said: "It may be caused by the pus she swallowed being laden with germs. That might irritate the stomach and the intestines. It might also be caused by a foreign body coming up against the pyloric sphinoter"? —A. The pus of course would cause some irritation, but not in the sense of causing a pricking sensation or pain. It would cause a certain amount of inflammation, naturally irritation of the mucous membrance, but not irritation in the sense that it would cause pricking or pain.

Q. Could that, in your opinion, be an explanation of pricking and scratching in the stomach?—A. No. In that case we would have lots of people going about complaining of pricking in the stomach on swallowing pus from their tonsils.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Further Examination, *continued.*

Q. You have seen in the course of your clinical experience illustrations of how pus travels, or which way suppuration goes?—A. Yes.

Q. In your opinion is it clinical experience, that is experience in operating on people, that is necessary for speaking on these matters?—A. Yes, it is only clinical experience that is of any value. I mean in treating disease. I would not say it is the only thing of any value, but it is of the greatest value, clinical experience.

Q. From your experience and your reading, what do you say as to the infection of the neck, the direction in which it goes from an abscess such as alleged here?—A. If not opened, it always goes downwards. Any infection in the neck, if it is not attended to, will tend to track down until it gets down, or until the patient dies, whichever is the sooner event, whichever happens first.

Q. I want to deal with a statement by Prof. Welch on page 225, "Is there any particular likelihood whether it, the pus, would travel up or down?—A. In my experience with infection of the neck, the infection usually spreads upwards." What do you say as to that?—A. That is incorrect. I do not know what Prof. Welch's experience is clinically. It is very little, very little ever since he came to Australia anyhow. That is 1902. Unless a person has clinical experience, he could not have any knowledge of that.

Q. Were you among other things assistant to Sir Alexander McCormack for some time?—A. I was, ten years.

Q. Did you assist him at most of his operations?—A. Practically all, most of his operations during that time.

Q. Did you at any time see Professor Welch present at any of his operations?—A. On one or two occasions he was present to give an opinion on a pathological condition, such as a growth in the bowel, but never at a thyroid operation did I ever see Professor Welch.

Q. Was that ten years the last ten years?—A. It would be about 1918 onwards, up to the time pretty well Sir Alexander retired.

Q. I asked you earlier with regard to a suggestion that cough irritated that laryngeal nerve. What do you say as to the coughing in regard to the thyroidectomy operation?—A. The great majority of the patients have a cough for a few days or longer. It varies; the reason is that the trachea is exposed and bare and that sets up a little œdema of it. It is mucous membrane. There is a little more secretion from it, mucous. Then, in addition, the patient has more difficulty at first in coughing it up, so a little mucous may irritate them persistently, whereas a healthy person would cough it up at once. It stays there for some time for the simple reason that the patient cannot cough properly to shift it.

Q. When you say the trachea is bare, you mean the isthmus?—A. Yes, where the isthmus of the thyroid is removed. It grips the trachea very closely, and has to be dissected from the trachea.

Q. Coming back to the question of the abscess, what is thyroiditis?—A. That is inflammation of the thyroid gland.

Q. If it proceeds to abscess formation, and the abscess ruptures, what do you say as to the position?—A. It is a very rare condition for an abscess to develop. It does occur. If an abscess develops, if it is not operated upon, evacuated, if it is allowed to develop of its own accord, it will either track down into the mediastinum again, or it may rupture

into the trachea, to which it is very closely applied, or even into the gullet, which is just behind. In any case, if untreated, it would lead to death.

Q. I read to you a passage from Graham, Surgical Diagnosis. Do you know that book and the passage I am reading ?—A. Yes.

Q. Page 457, "Thyroiditis usually subsides, but it may proceed to abscess formation. An abscess may rupture spontaneously into the trachea, the œsophagus, or the mediastinum. Such cases usually have a fatal termination" ?—A. I agree with that.

Q. At page 246: I think you have really covered this—the statement of Dr. Welch's that there would be nothing serious to prevent the tube going to the tonsil ?—A. I said before that was impossible.

Q. The next matter in Dr. Welch's evidence is "This tube, during the discharge of the thyroid capsule, would get from the right side to the left without any difficulty." What do you say as to that ?—A. I say that would be impossible too, referring to that tube at the time.

Q. Dr. Thompson says with regard to the tube, "No difficulty at all for the tube to work up to the tonsil." You disagree entirely ?—A. I do disagree—no difficulty.

Q. We have the history in this case that this wound healed completely in June, the end of June 1938 or early in July at the latest. What do you say about the fact that that healed, as to whether or not it is proof that there was no tube in an infected area there ?—A. I would say that the fact that it healed permanently is proof that there was no tube or tubes in the wound.

Cross-examined.

Cross-examination.

Mr. SHAND: Do you take this as also amusing, that pus in the neck will travel anywhere ? It will travel downwards, it will travel anywhere, it will travel around ?—A. I do not believe that, it travels downwards.

Q. Do you consider Dr. Marsh any authority on a subject like that ?—A. Yes, I do not consider him an authority on pus. He is an ear, nose and throat surgeon.

Q. You consider him an authority ?—A. On ear, nose and throat, that is all.

Q. You think that is amusing, what I put to you ?—A. No, I don't. I just said I do not believe it.

Q. But you considered it was amusing a while ago, before you knew Dr. Marsh had said it. I refer to page 796. You considered it amusing a while ago ?—A. In what reference did Dr. Marsh make that statement ?

Q. You considered it amusing that in the neck——?—A. I considered it an amusing statement, to say that pus would travel up to the tonsil without difficulty. That is the phrase I referred to, "without difficulty." I am just saying what I referred to. I said I was amused because it came without difficulty.

Q. My question to you was based on what I read, and on what you said was amusing, that pus could travel anywhere, it will travel downwards, it will travel anywhere, it will travel around ?—A. I did not say that was amusing.

Q. Do you think it is amusing ?—A. I did not say it was amusing.

Q. Do you think it was amusing ?—A. No. I referred to what I said was amusing as something specific. (Relevant evidence read.)

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Cross-examination, *continued.*

Q. You do not believe it?—A. I do not believe it will travel in all the directions you mentioned.

Q. You do not believe that the statement I read to you is sound?—A. It is not sound, no. That is a different statement, sound.

Q. Do you think Dr. Marsh has had some considerable experience?—A. Of the ear, nose and throat, yes.

Q. How far do you suggest the throat extends?—A. The ear, nose and throat—I am not going into a discussion——

Q. Just answer the question?—A. No.

His HONOR: Can you answer the question, how far?—A. The throat extends from here to here apparently (indicating).

Mr. SHAND: That includes the neck?—A. Yes.

Q. So I suppose a person who has had many years of experience in what occurs in the neck, ought to have some knowledge, a doctor?—A. He ought to have some knowledge, yes.

Q. You do not think there is any foundation at all for that statement I just read to you?—A. I want it read again. I want to be specific.

Q. Don't you remember it? Do you want it read again? (Argument ensued.)—A. I will answer specific questions. (Relevant evidence read.) I do not remember it. I want to have it said so that I can answer.

Q. I will read it to you. Is it a fact that you cannot accurately remember it?—A. I cannot actually remember the question, any of its detail, or its implications.

Q. I will read you what it says on p. 796: "What do you say as to the direction pus will travel when it is in the neck," and the answer was "It will travel downwards, it will travel anywhere, it will travel around"?—A. My answer is I do not think that that is correct, or I do not believe it.

Q. So far you think it is not correct?—A. No, I do not believe it. I believe that pus travels preferably downwards. I have always said that and it is not correct in that form.

Q. Of course, if it is a big abscess, by gravity it would naturally tend to go downwards. I suppose you agree with that part?—A. Not by gravity alone. I do not agree with that part, not thoroughly, and I will give my reasons if you wish.

Q. I think you said when my friend showed you a piece of assembled drainage tube, you would never put anything in it because it would stop the drainage?—A. Not in that region, no, not where we use it for drainage.

Q. Do you ever put anything in drainage tubes?—A. No.

Q. Do you not put a piece of gauze?—A. No, gave that up long ago.

Q. How long?—A. Years.

Q. How many years would you say?—A. I cannot give you years in figures, but I have not done it for a very long time.

Q. You do not use it in other operations?—A. No.

Q. What do you call that thing, gauze?—A. Gauze wick.

Q. That is out of date, is it?—A. Yes.

Q. About how long?—A. In my practice, it might be five or six years.

Q. And before that, you did use it?—A. Occasionally, very loose wick.

Q. What did you use the wick for ?—A. To pull it out next day to clear the tube in case it got clotted. It was always pulled out next day.

Q. In that case, you did not block up the tube ?—A. The gauze did not. It was not intended to block up the tube.

Q. And it did not ?—A. No, not as in this case.

Q. Just a moment. I did not ask you that. Do you think that that is clever ?—A. Yes, very clever.

Q. You just answer my questions ?—A. I will, but I will add my comments.

His HONOR : Do not make comments. If there is anything wanted to be cleared up, Mr. Cassidy will clear it up.

Mr. SHAND : You are determined to make your comments ?—A. I will make the necessary comments to clarify my answer. I think I have the right to do that.

Q. Just answer the question first ?—A. If I am able to.

Q. Was not the purpose of such a gauze wick to act like any other wick, for instance, in a lamp, and help to syphon ? It would help to syphon out serum ?—A. Yes.

Q. And you never left it in more than how long ?—A. Twenty-four hours.

Q. That is the maximum ?—A. Yes, the maximum, and it was left very long so that it could not be missed, a long piece of gauze.

Q. Do you say that that is out of date for five years ?—A. Yes, it is probably five or six years since I gave that up.

Mr. CASSIDY : Do you suggest that in thyroidectomies ?

Mr. SHAND : I suggest in any operation at all ?—A. I thought we were talking about the thyroid operation.

Q. Now, what about this one. It is not so long, you see. This is four years ago almost to the day. We will not mention any names and this happens to be the hospital report—you see, Dr. Edye, and we will call the lady Mrs. Z. At p. 254 of this minute book, as it is called, but it is really the hospital report for St. Luke's, appears " Appendix operation, wound suture catgut and silkworm." You used silk there ?—A. No, silkworm, gut.

Q. That lasts longer ?—A. Yes.

Q. " One drainage tube and one gauze wick." That is right, is it not ?—A. Yes, that is all right. That was for a ruptured gangrenous appendix.

Q. And you said you never left the tube in with the wick more than one day ?—A. Not necessarily.

Q. No, never ?—A. All right, I will say never.

Q. That was the 19th, and here is the 21st, the same lady whom we are calling Mrs. Z, " Tube and gauze removed from wound and clean tube inserted, three days " ?—A. Yes.

Q. Your recollection is not quite so good there ?—A. No, I will admit that. We cannot remember everything, but that does not detract from my evidence.

Q. You cannot deny it, can you ?—A. No.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Cross-examination, *continued*.

Q. You are checked up ?—A. Yes, you checked me up with the records. I was relying on my memory, and I will go further and say you may find some even later than that if you search carefully enough.

Q. You are not quite so sure now ?—A. Yes, just as assured as ever.

Q. You say you think we might find some more later ?—A. Yes, you might if you search, and I can explain all that.

Q. That, you see, is only four years ago ?—A. Yes.

Q. You are willing to swear that Professor Welch was never at a thyroidectomy with Sir Alexander McCormack ten years ago ?—A. I am willing to swear I cannot remember Professor Welch being present and watching a thyroid operation any time I was with him.

Q. That is a little different from saying you cannot remember ?—A. We are splitting hairs, and I will say I never saw Professor Welch at a thyroid operation at which I was present watching the operation. That is a different story.

Q. What is it, you cannot remember, or you will swear you had never seen him there ?—A. I can swear I never saw him watching an operation on the thyroid.

Q. Will you deny he was there while you were there and Sir Alexander McCormack did the thyroidectomy ?—A. No, what I am saying is that I swear I have never seen Professor Welch at a thyroid operation watching the operation whilst I was assisting Sir Alexander McCormack.

Q. Will you swear he was never there while you were there ?—A. Yes, at a thyroid operation.

Q. From recollection—although you have forgotten what happened four years ago—you are willing to swear definitely that Professor Welch was never in your presence while Sir Alexander McCormack did a thyroidectomy ?—A. Yes, I am willing to swear that.

Q. Although you went wrong in two aspects ?—A. What two aspects.

Q. One that you had not used one of these gauze wicks for five or six years, and the other was that you had never left it in for more than 24 hours. You were wrong in both those ?—A. Yes, you asked me to give an estimate of time, what happened five years ago. In the busy practice I have, everybody will admit that you cannot remember dates or everything you do. I do a thousand operations a year and I want to make that plain. You are trying to stress that I should have a memory like an enclycopædia and I am giving my evidence to the best of my knowledge.

Q. The point is this, that with all your busy practice, which you undoubtedly have, you can still remember ten years ago well enough to say definitely that Professor Welch was not in attendance at a thyroid operation in your presence ?—A. Yes, because I am able to say that because I can never remember him being present. I cannot say whether it is ten, eight or five years ago, but I cannot remember any time he has been there when I have been with Sir Alexander McCormack.

Q. Can you remember every person who was present ?—A. No, but I would remember Professor Welch though.

Q. Of course, you used to send Professor Welch thyroids yourself ?—A. Yes, many of them.

Q. I suppose they would be diseased thyroids ?—A. Yes, those removed at operations.

Q. When you are doing an operation on the thyroid, did you use the expression that you undersewed the capsule ?—A. No, we oversew the portion of gland tissue left behind on each side.

Q. What does that mean ?—A. You just stitch those together over the raw surface of the portion of gland left behind with a non-cutting circular needle.

Q. With your operations, do you sometimes find it necessary to dissect the muscles across ?—A. You mean, cut them across ?

Q. Yes ?—A. Occasionally, yes, to get more room.

Q. What do you do about sewing them up ?—A. You sew those up with catgut.

Q. Stronger gut ?—A. No, not necessarily. It might be a shade stronger. No, I would not say necessarily—the same gut.

Q. What is it you mean ? First of all you said it might be a shade stronger, then not necessarily, and then the same gut ?—A. We will say the same gut. It is immaterial.

Q. It is not you who will decide what is material. Is it a shade bigger ?—A. I think it is I who has to decide whether it is a shade bigger.

Q. Is it the same catgut ?—A. The same catgut.

Q. Why did you say a shade larger ?—A. Because we do many of these operations and we have our two or three sizes of catgut to suit the operations. You may have one a little stronger in one case than another, it does not make any difference to the result of the operation whether you use size 0 or size 00.

Q. Or size 2 ?—A. No, that is very big catgut.

Q. Do you regard Dr. Bell as being an expert ?—A. Absolutely.

Q. Have you read his evidence ?—A. I have.

Q. Have you read what he says about size 2 ?—A. That is all right if he uses that.

Q. Have you read that he uses a stronger gut when he has to sew up the muscles ?—A. He uses a stronger gut for arteries.

Q. Did you not read he uses a stronger gut for tying up the muscles ? —A. I cannot remember that.

Q. But you do not ?—A. No, not necessarily.

Q. Did you say " not necessarily " ?—A. I was going to, but I did not.

Q. That is what you said, " not necessarily " ?—A. No, I said " not " and then I used the first three letters of " necessarily " and stopped.

Q. Are you trying to give us the best of your knowledge ?—A. You are trying to split hairs. We use catgut for sewing up the muscles and we use one of one or two sizes.

Q. You said " not necessarily " a moment ago ?—A. What are you coming at ? This is splitting hairs.

Q. It is a serious matter ?—A. No, not with me, because you do not understand. What is the use of me trying to drive into your head what we do ? It is impossible to describe to any untrained person what we do, and you are trying to make a mountain out of a molehill.

His HONOR : Apparently you said " not necessarily," although I did not catch it ?——

Mr. SHAND : And then you denied saying it ?—A. I was going to say it and then I stopped, that was all.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Cross-examination, *continued.*

Q. Have you got regard for the oath ?—A. Do not make that statement to me.

Q. Have you got a regard for the oath ?—A. I have.

Q. Why did you swear you did not say " not necessarily " ?—A. I said " not nec " and then stopped. That is the way you waste time in this Court, asking questions about trivial little things that mean nothing.

Q. You do not like being pressed ?—A. No, not by these silly questions. If you ask me sensible questions I will answer them, but when you ask me impossible things I am not going to answer them in the way you want me to. I am going to tell the Jury the truth and nothing else but the truth.

His HONOR : We will get on quicker if you answer the questions yes or no, and if you cannot do so you can give your explanation later ? —A. I want to be protected from innuendos.

Mr. SHAND : If you have quite finished, I would like to ask you if you sew up the capsule of the thyroid ?—A. No, I do not sew up the capsule. I sew up the muscle we divide in the middle line.

Q. You do not sew up the capsule ?—A. No, not necessarily.

Q. Have you read that Dr. Bell does ?—A. Dr. Bell called it a capsule, yes. He described it that way, but we do the same thing, actually.

Q. Do you sew up the capsule and leave a hole sufficiently big for the drainage tube ?—A. I sew up the muscles and then leave a hole sufficiently big for the tube to pass through.

Q. I am asking about the capsule—you know what that is ?—A. Yes, I do not sew the capsule, definitely.

Q. You do not sew it at all ?—A. No.

Q. After you have extracted so much as you want of the thyroid, you just let it loose ?—A. Here again you see——

Q. Just answer the question ?—A. You cannot answer it in that way. I sew up the muscles, one layer of muscle.

Q. Do you stitch up the capsule—that is what I am asking you ?—A. No, I do not.

Q. So that you have already cut across the capsule ?—A. You divide the capsule in the middle line with the muscle. You mentioned that the capsule is part of the muscle. It is a fascia covering the muscles and you divide the fascia.

Q. Do you sew the capsule on to the muscles ?—A. No, you do not sew the capsule up separately.

Q. The stitches go through the capsule ?—A. No, I just sew the edges of the muscle.

Q. So that in your method of procedure, no stitches go through the capsule ?—A. No, and I do not think in anybody else's procedure.

Q. Have you read Dr. Bell's evidence ?—A. Dr. Bell described that to make it clear to a layman and he tried to use simple language.

Q. Have you seen this slide (shown to witness) ?—A. No. Is that the stitching there ? These stitches are in the sterno-hyoid muscle. They are not in the capsule.

Q. Of course they are not. No one could take that to be in the capsule. It is obviously the muscle ?—A. Yes, that is the way I stitch it myself.

Q. I am asking you whether, before that happens, these muscles are stitched, you stitch up the capsule ?—A. No.

Q. The capsule might roughly be called a bag ?—A. It might be called a bag, I suppose.

Mr. CASSIDY : That was the expression I used.

Mr. SHAND : So that as far as your method of operating was concerned, there is no opening up of the capsule, all except a little hole ?—A. No, I do not sew up the capsule at all. I have already told you that.

Q. And therefore when you put your tube in, you put it in after you have stitched up the muscle ?—A. Quite right. I leave a gap for the tube to go through.

Q. And so with your method of operation, I suggest there would be almost no chance of stitching the tube in ?—A. None at all, no. You could not stitch it in.

Q. But nevertheless you do take good care when you are doing your stitching to avoid the tube being anchored ?—A. The tube is not there while I am putting the stitches in. I put the stitches in and leave a gap for the tube to go through.

Q. So that with your method of operation, there is really no stitching done at all—all the stitching is done except of course as regards anchoring the tube before the tube is inserted ?—A. No, I do the stitching and then put the tube in.

Q. All the stitching is done except the stitch anchoring the tube to the skin ?—A. Yes.

Q. Apparently you did not read Dr. Bell's method ?—A. I have read his evidence and I think I know what he mentioned. There are slightly different ways of doing it.

Q. Do you remember his method was to stitch up the capsule, all except a little hole, insert the tube, and then begin stitching outwards and upwards ?—A. That is not quite clear. I would like to have the question read to me.

Q. I want to put it to you that it is a proper method of performing this operation and the accompaniments of it to insert the tube in the neck slightly upwards ?—A. No, straight back.

Q. Is that not a correct method ?—A. No, to insert it straight, not horizontally.

Q. Would it be correct to insert it slightly upwards ?—A. No, it just goes in backwards.

Q. You do not agree with my suggestion ?—A. No, you put it into the lower part.

Q. You do not agree with my suggestion that in a proper thyroidectomy it can be inserted slightly upwards ?—A. No, I do not agree with that.

Q. Would that be bad ?—A. It would be bad physics.

Q. I do not know whether you disagree or not, but do you remember Dr. Bell saying it might be inserted very slightly up or very slightly down ?—A. That is all right, it might.

Q. That is only after you have heard what Dr. Bell deposed to. A moment ago you said it was not all right ?—A. No, I said it goes backwards.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Cross-examination, *continued.*

Q. A moment ago you said it was not all right and you disagreed with my suggestion ?—A. It is splitting hairs. You said slightly upwards. How slightly ?

Q. Very slightly ?—A. Would that make much difference ?

Q. You are the one who can tell us ?—A. A slight inclination could not make much difference.

Q. That would be all right ?—A. Yes. I am referring to it going upwards.

Q. I said slightly upwards and a moment ago you said you would not agree with that ?—A. No, myself I would not. I would do what was absolutely the best for the patient.

Q. You still disagree with it ?—A. Yes, on the same grounds, but slightly makes no difference really.

Q. It either makes a difference or it does not. You say it is all right ? —A. You are splitting hairs.

Q. It is all right, is it ?—A. Slightly upwards would do.

Q. I do not know what you are really saying. A moment ago you said you would not do it and now you say it is all right ?—A. I am speaking surgically.

Q. Just speak like a human being ?—A. That is what I am doing. All this is a waste of time. It is all immaterial. If it goes slightly up, it would make very little difference to the patient's welfare, none at all.

Q. I only asked you if you disagreed with it or not ?—A. I put it in straight myself, only I do not like it to go up, that is all.

Q. How much of the thyroid do you remove ?—A. Most of the right side, I leave usually just a vestige of the lobe, on the left side I remove about three quarters of the lobe, it depends on the size of the lobe originally.

Q. I suppose you leave those portions to preserve the parathyroid ? —A. To preserve the thyroid functions, to protect the parathyroid we know they are behind.

Q. That is essential ?—A. Yes.

Q. We have heard several times that when they are removed eventually death results ?—A. Yes, if they are all removed.

Q. You would not agree that you only just leave them as a kind of extra precaution, you would not describe it that way ?—A. How do you mean ?

Q. Just a kind of extra precaution—you leave a bit of the thyroid ? —A. We leave a bit of the thyroid so that the patient will have sufficient thyroid tissue to function.

Q. It is not merely as an extra precaution but it is a necessary precaution ?—A. A necessary precaution to protect the parathyroid.

Q. Yes ?—A. If you could remove the whole of the lobe and protect the parathyroids, you could remove the whole of the thyroid glands.

Q. Are they sometimes embedded in the thyroids ?—A. They say occasionally they are, I have never been able to satisfy myself.

Q. You could not tell until you had removed the thyroid whether they were embedded or not ?—A. No.

Q. So that you would agree with me that it is really a necessary precaution, not knowing whether they are embedded or not, to leave some part of the thyroid at the back ?—A. To protect the parathyroids ? Yes, we leave portion of it knowing that the parathyroids will be less endangered—put it that way.

Q. And you regard it as a necessary precaution ?—A. Yes, for two reasons, to leave the patient sufficient thyroid tissue and to protect the parathyroid glands.

Q. I take it you have had a fairly large experience of thyroidectomy ?—A. Yes.

Q. Do you do many operations ?—A. I do a fair number of operations.

Q. Will you agree that after a thyroidectomy, anything other than transitory tetany is rare ?—A. Yes, it is rare, anything other than transitory tetany.

Q. What would you call transitory tetany ?—A. In the feet I have seen, the patient may complain of some pins and needles or perhaps a cramp in the hand and that would be the last of it, or they may get them two or three times and then no more.

Q. That would be over a period ?—A. During convalescence, a couple of weeks perhaps.

Q. Without binding you down to any accurate estimate, how many thyroidectomies would you say you do in a year ?—A This last year I did about 90.

Q. I suppose in your experience you have probably done very close on 1,000 ?—A. Probably.

Q. You have never seen anything other than that type of transitory tetany ?—A. I have seen one severe case that lasted about three or four years.

Q. What was the cause of that ?—A. The removal of the parathyroids I presume—partial removal of the parathyroids.

Q. You have never seen any case of post-operative tetany resulting not from removal of the parathyroids, but from inflammation around it ?—A. No, I have never seen a case of tetany where there was inflammation as well, that I remember. This patient I am speaking of that was a prolonged case, did not have any infection, the wound healed and she was out of hospital in a fortnight. There was no sepsis.

Q. There was some physical cause ?—A. Yes.

Q. Have you had any experience, other than you have told us, of this transitory tetany, with tetany ?—A. No, really I have had very little experience with tetany.

Q. It would be clear from your experience that operations of this nature appear to almost invariably result in a clearing up ?—A. Of the tetany ?

Q. You either don't get it at all or it clears up within a week or so ?—A. In the mild cases, yes.

Q. With the exception of the one case that you remember ?—A. Yes.

Q. With regard to thyroidectomy, we have heard what the object of the operation is. Do you find with women, for instance, with very nervous symptoms, that it is generally successful in clearing those up ?—A. In most cases they generally clear up.

Q. I suppose it is a complaint that is peculiar to women ?—A. It is more common in women, you see a fair number of men with it also.

Q. Leaving out men, is it confined in women to only certain types or may any woman get it ?—A. Confined to certain types of women. In what regard do you mean ?

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Cross-examination, *continued.*

Q. What is your experience, may all types of women get it, or would it be confined to a certain type ?—A. You mean the nervous type ?

Q. Anything you like. Say the nervous type, it is not confined to nervous types ?—A. No, I would not say it was confined to any particular type of woman. It just comes out of the blue.

Q. A person might get it at any time ?—A. Yes.

Q. Any type of mentality ?—A. Yes, I think so. Of course we know that people of a highly strung nervous temperament may be more liable.

Q. They would show the disease more than another person ?—A. I would not say that, not necessarily. It depends on the acuteness of it.

Q. If it is of the same acuteness in a nervous person as in a stolid person, would not you expect the nervous person to show the signs of it ?—A. I would not say that either because the effects of the toxin varies. As I said at the beginning, it may pick out a nervous system and affect it very acutely or otherwise, very slightly.

Q. In your opinion it is practically organic ?—A. The disease is an organic disease. The effect on the nervous system by the thyroid toxin, yes, it is a poison that affects the nervous system, it is not an organic disease of the nervous system, it is only that the toxin produced by the thyroid gland has this effect on the nervous system.

Q. It might affect the stolid person just as much as it might affect the more nervy type ?—A. Yes, it might.

Q. Apart from your experience, have you read extensively on the subject of tetany ?—A. I cannot say I have read extensively about it, I do not profess to be an expert on tetany.

Q. So that you, I may take it, had never considered this case from the point of view of what Mrs. Hocking was suffering from after she left St. Luke's ?—A. I don't feel confident to go into that.

Q. Now we come to a matter that you have been dealing with. The capsule of the thyroid is something that you could put your finger through ?—A. Push your finger through ? It would be difficult to do, you have to use a considerable amount of force because there is a muscle with it. As I pointed out before, the so-called capsule of the gland is part of the fascia of the muscle which covers the gland so as to be inseparable both visibly and on dissection.

Q. You will agree with this rough statement, will you not, that the body is made up of structure—of bones, of various blood vessels, nerves, glands and other organs ?—A. Yes.

Q. And connecting those various organs there is the fascial substance forming, simply speaking, compartments really—for instance there is the fascia on the outside of veins and arteries and fascia on the outside of other organs ; when it is an organ it encloses the organ ?—A. Yes.

Q. And that forms a type of compartment ?—A. Yes.

Q. I suppose from your experience you would agree with this—I am not talking particularly of the neck now—when you get abscesses in different parts of the body and suppuration—the abscess of course is an enclosed space ?—A. Yes.

Q. It implies an enclosed space ?—A. Yes.

Q. When you get suppuration it works in different parts of the body by either dividing the fascia from the organ that it covers and running along—that is one way in which it works ?—A. Not dividing the fascia from the organ it covers.

Q. Does it not sometimes run between whatever organ it is that it covers—— ?—A. Of the organ ? You must——

Q. Take a muscle ?—A. If you have a fascia sheath that covers the muscle and it would get between that sheath and the muscle and travel along between the sheath and the muscle ?

Q. Yes ?—A. No. The fascia that covers the muscle is made up of bundles, each bundle itself really having a fascia and from the top layer of the fascia covering a muscle there are innumerable little bits going into the muscle.

Q. Is not that exactly what I am putting to you, what happens in the psoas abscess ?—A. No. You are going to talk about tuberculosis are you ? Tuberculosis does not produce pus in the ordinary sense of the word, it is a totally different disease and I think I would rather not give evidence on that subject because it has no bearing on this whatever.

His HONOR : Are you in a position to do it ?—A. I am in a position to say something about it.

Mr. SHAND : You claim to be in this position, that because you think that has nothing whatever to do with it you are not going to answer ?—A. No, I entered a protest because it is a totally different condition.

His HONOR : If it is a subject on which you can speak, answer the question ?—A. I can say something about it.

Mr. SHAND : Perhaps you will tell us why you are so reluctant to talk about the operations of the psoas abscess as being something that does not affect this case ?—A. Because you are going to talk about a totally different disease. You might as well compare tuberculosis of the lungs with ordinary pneumonia of the lung. They are two different diseases.

Q. That is not what I was going to ask you about, I was going to ask you about the effect of suppuration. You said this morning to Mr. Cassidy that suppuration from a tubercular abscess—— ?—A. I never mentioned tuberculosis.

Q. I will have it in the notes. You now say that you did not swear this morning anything in relation to a tubercular abscess ?—A. Tubercular abscess was not mentioned this morning.

Q. That is what you swear ?—A. Yes, I don't remember tuberculosis being mentioned.

Q. Do you suggest that suppuration from tubercular abscesses is less or more likely to spread than suppuration from an abscess such as can form in this region in question, the thyroid ?—A. First of all the word "suppuration"——

Q. Will you answer my question ?—A. I cannot answer it in that form. It is not true suppuration in the so-called tubercular abscess.

Q. What do you call it ?—A. It does not compare with the other form of suppuration, it is a different process.

Q. What will you call it ?—A. You can call it an abscess if you like.

Q. What is the liquid that is in the abscess ?—A. The broken down tubercular tissue and serum, but it is not pus in the sense that we refer to in the other pyogenic abscess. I don't want to mislead the jury into thinking it is the same process.

Q. You will agree that every text-book calls this an abscess, a psoas abscess ?—A. That is correct.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Cross-examination, *continued.*

Q. Is it a form of cold abscess ?—A. It is called a cold abscess, that is due to tuberculosis, that is what we accept it as being due to.

Q. Do you suggest that there is any difference in the ability or the likelihood of—I call it suppuration although you might not agree with it—of suppuration from a psoas abscess—is there any difference between the likelihood of that travelling and the suppuration from an infection such as you would get in the thyroid ?—A. In which direction ?

Q. In any direction ?—A. I would like you to specify the direction.

Q. In any direction, do you think there is—— ?—A. We know the size of the abscess——

Mr. CASSIDY : Which way ?—A. Downwards. Along the psoas muscle—inside the psoas muscle.

Mr. SHAND : Does not it force through the fascia ?—A. It destroys the tissue as it goes, it does not force through.

Q. Into other fascia ?—A. It destroys them as it goes, it does not force, it gradually destroys them.

Q. Is not that eating through into the other compartments ?—A. Yes it could——

Q. It could travel along ?—A. It could travel further along.

Q. Then it could eat through that compartment and on to another one ?—A. If it is not treated, yes.

Q. And it could travel as far as the ankle ?—A. It could travel down the leg.

His HONOR : The question was as far as the ankle ?—A. I don't know about that, I have never seen one go beyond the groin.

Mr. SHAND : You have spoken of the likelihood of blood vessels being affected ?—A. Yes.

Q. If you get suppuration ?—A. Yes.

Q. I suppose you will agree now with that authority which you read ?—A. Rose & Carlos, the last edition—here it is.

Q. You will agree that that passage you read refers only to a secondary hæmorrhage ?—A. Yes, secondary hæmorrhage, that is right.

Q. You agree ?—A. That it was secondary hæmorrhage, yes.

Q. In other words, in all cases there referred to, the blood vessel had been in some way injured ?—A. In all those cases mentioned ?

Q. Yes ?—A. No, not so. In the bottom of the paragraph you will see there——

Q. I will read that paragraph ?—A. Read it out of the other book I read ; you can have the book. I would rather have the one I read. This is a later edition. Can I read that ?

Q. I know of the other ; it is near the bottom of the paragraph ?—A. " And also occurs in secondary hæmorrhage which sometimes develops in connection with abscesses in the neighbourhood of large vessels or any deep infected wounds where a drainage tube or other sorts of pressure " and so on—large abscesses, you see.

Q. Do you suggest that that does not mean " and also occurs in secondary hæmorrhage which sometimes develops in connection with abscesses in the neighbourhood of large vessels or in deep infected wounds where a drainage tube or other sort of pressure " ?—A. In connection with abscesses in the neighbourhood of large vessels.

Q. You suggest that that stands by itself ?—A. It does. It is quite definite ; " in the neighbourhood of large abscesses."

Q. I suppose you will admit that abscesses occur in practically all parts of the body ?—A. Yes, that is true.

Q. And they occur requently in the neighbourhood of large blood vessels ?—A. They do. I would not say " frequently," but they do.

Q. And they occur without those blood vessels being ruptured ? —A. Yes.

Q. And they also occur frequently in the close proximity of muscles ? —A. Yes.

Q. And they occur without those muscles being affected ?—A. Yes, they can do that.

Q. So that——?—A. I would like to qualify that. If a muscle is beside an abscess it may not be involved actually by the suppuration, but it becomes involved in the wall of the abscess and undergoes changes, inflammatory changes which lead to more or less damage to the function of the muscle. I want to make that clear.

Q. I will put it this way, they frequently occur in the close proximity of muscles without the muscles being visibly affected ?—A. When ? At the time of the suppuration ?

Q. No, afterwards ?—A. I would not say that altogether. They may be left partially damaged, if the muscle has been in the wall of the abscess cavity.

Q. They may be left partially damaged ?—A. Yes, function interfered with.

Q. This situation can occur ; they may not be damaged at all ?— A. They may not be. It depends on the size of the abscess at the time.

Mr. CASSIDY : They have to be attended to ?—A. Yes.

Mr. SHAND : Secondly, the muscle may be affected by the abscess ; but to the clinical examination you could not detect it ?—A. It may be slightly affected.

Q. And furthermore, they may be so affected that the movement is visibly affected ?—A. Yes, visibly affected.

Q. We are apparently in agreement on this ; that abscesses take place practically all over the body ?—A. Yes.

Q. And would you agree with this ; that in many cases in some parts of the body the suppuration proceeds upwards ?—A. Yes, there are situations where it may spread upwards ; in the line of least resistance, that is always the determining factor.

Q. It is sometimes controlled by muscular action ?—A. Very little.

Q. It may be ?—A. In an acute suppuration it is so painful the muscles are all on guard.

Q. It may be affected in some cases by muscular action ?—A. Yes, in a cold abscess perhaps, where there is no pain.

Q. It may be affected by the position of the person who is suffering ? A. If they are sick and lying down gravity may affect it ; gravity may affect it a little, but not very much ; it might be very little.

Q. Gravity is, strangely enough, of very little effect ; do you agree with that ?—A. It has little effect, really.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Cross-examination, *continued.*

Q. It is mostly least resistance and movement ?—A. Least resistance is the important thing. There is not much movement in acute abscess, the muscles are all on guard.

Q. When you get to the site of abscess you have an enclosed space ?—A. Yes.

Q. But when you just get suppuration ; that is a different matter ?—A. It is during the very painful stage that the muscles are all on guard, and cannot move ; when there is acute inflammation all muscles in the vicinity are taut and on guard and won't move and protect the person from pain ; so movement of the muscles cannot affect the movement of the pus at that stage.

Q. In tetanic spasms there are very marked movements of muscles ?—A. Yes, there is movement of the muscles—spasm of the muscles.

Q. You agree with that ?—A. Yes.

Q. And you agree it can be very very marked ?—A. The spasms, yes.

Q. Because the patient comes out from the severe spasm suffering from considerable pain of the muscles ?—A. Yes.

Q. Just to come back to the subject of the tube ; you have purported to speak of general practice in the use of tubes ?—A. Yes.

Q. Are you aware that some experts in thyroidectomy use different sizes of tubes ?—A. Yes, different sizes, and sometimes a different shape.

Q. Sometimes a flat tube ?—A. Sometimes a flat piece of rubber.

Q. And sometimes surgeons use for sutures, sometimes they use silk ?—A. In thyroid operations, yes, some do.

Q. A very well known-doctor, Dr. Poate, does ?—A. Yes.

Q. You know that without reading the evidence ?—A. Yes.

Q. In your own practice do you yourself make the cut towards the end of the tube ?—A. I generally do, but often it is made by the sister and I examine it before I put it in.

Q. Why do you examine it ?—A. To see if it is done correctly, to suit my particular taste.

Q. Do you examine the tube too ?—A. Yes, always.

Q. Why is that ?—A. To see it is proper tubing, proper size, proper quality, and so on.

Q. Quality—does that mean whether perished or not ?—A. No, no sister would hand me perished tube, not a competent theatre sister.

Q. Do you know they are boiled more than once ?—A. Yes, I know they are boiled more than once.

Q. Don't you take the precaution——

Mr. CASSIDY : I understand my friend says there is no allegation of any negligence in the theatre on any operation.

Mr. SHAND : That is right.

Mr. CASSIDY : That was said at an early stage of the case, and that becomes important. Does my friend suggest an inefficient tube was used now—he cannot.

His HONOR : He certainly cannot, without altering his particulars.

Mr. SHAND : Do you object ?

Mr. CASSIDY : Yes, I do object, if put to that. It may be put to Dr. Edye's credit as to tubes, and I don't know about that.

His HONOR : What ground are you putting it on ?

Mr. SHAND : My friend has asked how Dr. Edye performs the operations, the various steps, and the kind of tubes he uses.

His HONOR : I suppose it is admissible on any ground, whether credit or anything else.

Mr. CASSIDY : If on that ground of credit I cannot object, so long as it is clear it cannot go to the other thing.

His HONOR : That seems to be my opinion—it cannot go to the other thing.

Mr. SHAND : It was asked the Defendant.

His HONOR : That does not make it admissible.

Mr. CASSIDY : A note has been made of what has been said, and that will save any argument.

Mr. SHAND : Don't you examine to see—you said you ascertained the quality ?—A. Yes.

Q. What does that mean about the quality ?—A. Some tubing is not of such good quality as other tubing for the purpose. It may be fresh tube from the manufacturers, and it may be hard and thick-walled.

Q. If hard it is perished ?—A. No, some tube is hard, without perishing.

Q. It may mean it is perished ?—A. No, not necessarily.

Q. When a tube is perished it gets hard ?—A. We don't use perished tube. The tube we use is tested by the sister and is handed to the surgeon. She is a very competent sister, and the surgeon has faith in her and examines it and inserts it. He handles it and looks at it and inserts it. There is no chance of using perished tube.

Q. It would be very dangerous to use perished tube ?—A. I would not say " very dangerous " to use. You won't use it.

Q. Won't you agree it would not be proper to use it ? (Objected to.) —A. I have made my statement about the tube and I do not think there is any more to it.

His HONOR : Your objection is on the same ground as before ?

Mr. CASSIDY : Yes.

His HONOR : How do you make it admissible ?

Mr. SHAND : I will take the doctor's word. He says he does not want to say any more.

Q. You do not want to say any more on that ?—A. No, I have made my statement on the tube and what we do, and I think that that is sufficient.

Q. Will you agree, assuming a tube is left in the neck, that if there is inflammation it can move upwards ?—A. No, it cannot. I have said that all along.

Q. What I am suggesting is this ; that you can get, if you have got the suppuration, you can get some destruction of the tissue—destruction first of all—and if you get destruction of tissue the suppuration can move upwards ; do you agree with that ?—A. I would like you to make it more

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Cross-examination, *continued.*

specific on that. I have said all along the tendency is for the suppuration to move downwards and before it can move upwards the patient would die. It would have to be a tremendous thing.

Q. What I put to you is that assuming there were a rubber drainage tube a couple of inches long left in the thyroid cavity, that if suppuration developed that suppuration could spread upward and carry with it the tube ?— A. No.

Q. Do you regard Dr. Poate as being an authority on a matter like that ?— A. Yes.

Q. Dealing with this Plaintiff's condition, I suppose you have read the whole of the evidence ?—A. The whole of the Plaintiff's evidence—not in this trial.

Q. But in other trials ?—A. I read some of the last trial.

Q. Have you read the evidence of the Defendant ?—A. In the last trial, yes.

Q. And other witnesses of the Defendant ?—A. Some of the others I have.

Q. Dr. Poate, for instance ?—A. Yes, Dr. Poate.

Q. You have said that in this case after the infection has arisen with a high temperature it quickly subsided ?—A. Yes.

Q. What do you call " quickly " ?—A. In three days the temperature was normal, according to the history.

Q. And do you think that after that period she could be regarded as a normal case ?—A. Not normal, no, but free from the acute sepsis ; she had a sinus still draining ; you could not say she was still normal.

Q. That made it a most unusual case ?—A. I would not say most unusual.

Q. You in your experience have never seen a case like it ?—A. In what regard ?

Q. To have so long after the operation a sinus which was still draining ? —A. Was that to the end of June ?

Q. Take that ?—A. Yes, I have seen a case go for five months with drainage.

Q. One case ?—A. One case, yes.

Q. And is that the only case you have seen over a period like that ? —A. That is the only one I can remember over a long time.

Q. This would be unusual ?—A. It is unusual.

Q. Was that a thyroidectomy ?—A. Yes, that was a thyroidectomy.

Q. So it would be a very unusual case ?—A. Yes, it is unusual.

Q. And of course it becomes more unusual if in fact you get tetany spasms occur over those five months ; it becomes very much more unusual ?—A. To have tetany as well, yes, because severe tetany is rare.

Q. I am only putting it in your experience, and you have nearly a thousand cases ?—A. Yes, I will agree with that.

Q. You have never known a case like that ?—A. No.

Q. Can you tell me that other case where the suppuration lasted for five months ?—A. That was a patient who had a thyroidectomy done in Hong Kong and she came down here as a refugee. She had silk used and when I saw her she had three discharging sinuses along her wound.

Q. Silk does not dissolve ?—A. No, it is a non-absorbent material. It happened to be in this case it did not discharge.

Q. That had to be extruded ?—A. I had to remove it and then it healed.

Q. That meant opening up the sinuses ?—A. Yes, I had to just open the sinuses and get the knots out—the silk.

Q. How did you do that ? Was it an operation ?—A. I made an operation of it.

Q. Under an anæsthetic ?—A. Yes.

Q. You have never known a case where catgut is used——?—A. No, I cannot remember one going as long as that.

Q. We have heard from Dr. Bell that plain catgut——

Mr. CASSIDY : You are limiting this to thyroidectomy ?

Mr. SHAND : Yes, I am speaking of thyroidectomy.

Q. Do you agree with Dr. Bell that the effect of suppuration on catgut is to prevent it dissolving easily ?—A. Yes, catgut is absorbed by the active living tissues and when the knots are separated and floating about in the pus, the tissues cannot get at them.

Q. That is your experience too ?—A. Yes.

Q. Are you aware of the method that Dr. Poate uses on these thyroidectomies ?—A. No, I cannot say I am aware of all the details of his methods, I have not watched Dr. Poate operate for a long time.

Q. Are you aware that he puts the tube in first and stitches the muscles afterwards ?—A. No, I understand that Dr. Poate does a certain amount of stitching and then puts in a couple of stitches untied and then puts the tube in and ties the final stitches around the tube. That is how I understand he does that.

Q. Do you understand that he actually puts some stitches in, I do not mean outside, of course ?—A. After the tube is put in—no, I do not understand that, he may of course but I do not know.

Q. Did you measure the distance from the thyroid to the tonsil in the Plaintiff a few weeks ago ; what measurement did you make it then ?—A. I roughly measured it and made it $3\frac{1}{2}$ inches.

Q. And that measurement—— ?—A. That is the upper pole of the tonsil. It was done rather hurriedly. Can I explain my object in making that measurement ?

Q. Why hurriedly ?—A. I said I made the measurement rather hurriedly, we were all there examining and one doctor said in evidence, or someone remarked, that the tonsil was half an inch to an inch from the upper pole of the thyroid gland. That seemed to me to be a very low measurement——

Q. Why did you do it hurriedly ?—A. I wanted to satisfy myself it was more than an inch. I did not make an accurate measurement, to do an accurate measurement you would have to do it much more carefully and take more time.

Q. The correct position for a person to be examined is the anatomical position, that is how I am standing now ?—A. Yes, the anatomical position.

Q. I want you to bring your mind back to that meeting. Is it correct that the first one who attempted to use the probe was Dr. Marsh ?—A. Yes.

Q. He was using a probe that was bent over, that is a probe or something like that ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Cross-examination, *continued.*

Q. He could not get the probe in at first ?—A. He had just a little difficulty finding a way in.

Q. At first he could not and do you remember his asking Dr. Thompson ?—A. He got it in before Dr. Thompson, I am pretty sure of that. I think he got it in and asked Dr. Thompson to.

Q. When Dr. Thompson took it he bent it at right angles ?—A. Yes, that is correct.

Q. And he inserted it like that ?—A. Yes, that is the way.

Q. Transverse ?—A. Yes.

Q. The supra tonsillar fossa runs downwards from the top of the tonsil ?—A. It runs inwards, it varies a little in its direction.

Q. Generally speaking, it runs generally downwards ?—A. It goes inwards, I cannot say whether it goes downwards.

Q. Don't you know ?—A. No, I do not definitely know.

Q. Don't you know that trouble is often caused because it runs downwards and pus is caught in it and cannot get out ?—A. I know it varies in direction.

Q. Do you agree that the way Dr. Thompson put it in after he bent it at right angles, was crossways like that ?—A. Yes, he got it in as far as he could, I know.

Q. This is a cork model of a tonsil ?—A. Haven't you the genuine article here ? I would rather have the genuine article. Suppose I object to using that ? (Argument.)

Q. Assume this is a rough representation of a tonsil where the probe is put in, it was I suggest in a position like that in the tonsil ?—A. You suggest that. No, I don't believe that, you mean to come up against the back. I suggest it went in to the bottom of the sinus.

Q. I am putting it to you it went in a hole which was running at right angles across the tonsil ?—A. Do you say where it went in ? I can say where it went in, but I cannot say where the point finished.

Q. I am not asking you that, all I am asking you is this. If this is a rough outline of a tonsil—I am not asking you how far it went in, or where it finished—but I am putting it to you that it went into the face of the tonsil horizontally ?—A. I could not see the end of the probe. It is impossible to answer that. (Objected to.)

Mr. CASSIDY : I submit Mr. Shand must say whether this is a replica or a reasonable replica of what the tonsil was on that day, on the 11th December.

Mr. SHAND : No, I am not. I am giving an example of the angle and I suggest this is what it was like before it closed up. I want to get the angle and I do not care whether I use this or a piece of dirt.

His HONOR : I understand the doctor to say he could not tell.

Mr. SHAND : What I am putting to you is this, that if the probe had gone down to the supra tonsillar fossa, it would go down in this direction from the top downwards ?—A. It probably did.

Q. It did ?—A. That is what I understood happened when I watched it going in, but I could not see where the end of it was. I know that it went in as far as it could be got to go in.

Q. Are you applying your mind to this ?—A. Yes, I am.

Q. I am not asking you how far it went in, I told you that three times. I am asking you the angle at which the probe was handled ?—A. There was no permanent angle because the probe is moved round until it finds its way——

Q. You will agree that Dr. Thompsou, when he used the probe, used it at the angle I am suggesting ?—A. He moved it round because he had trouble getting it in.

Q. You have already agreed that when Dr. Thompson used the probe he put it in at an angle such as I am showing you now, across the body ?—A. He could not keep it at a permanent angle, it is moving about.

Q. Do you wish to add to what you said before ?—A. He had the probe in his hand bent at a right-angle——

Q. You swore before without qualification when I asked you, and you swore twice that when Dr. Thompson used the probe he used it at an angle going across the body and across——?—A. I did not know what you were driving at then. When he inserted the probe into the fossa, that is the way I put it, in order to get it in he had to wriggle it round and alter the angle to get it in to the depth of the fossa.

Q. You do not know whether it went into the fossa ?—A. It went into the fossa——

Q. You know now ?—A. I said it went into the fossa, I think I told Mr. Cassidy it did.

Q. Will you swear that the supra tonsillar fossa would not be in a position like that in the cork ?—A. That is not a fair representation. Show me a tonsil and I will show you where it is, you cannot show with that sort of thing.

Q. I am asking you about the angle ?—A. I have given you my answer about the angle.

Q. I am putting it to you if it went down to the supra tonsillar fossa, it would not go in at right angles to the tonsil ?—A. You start at a right-angle and change the position to work it down the track.

Q. The supra tonsillar fossa is at the top ?—A. Yes, but you cannot have your probe at a right-angle to enter the tonsil. The supra tonsillar fossa is not a straight canal and you have to alter the angle from a right-angle to get it in. It is splitting hairs and it is so meticulous—— (interruptions).

Q. Are you trying to do your best ?—A. I am trying to do my best and you make it very difficult for me to do so. I will explain it again if you like.

Q. Did you do your best when you made this measurement of three and a half inches ?—A. I was doing my best under the circumstances.

Q. And you won't deny you pushed her head up at an angle ?—A. No, I did not push her head at all, she had it up. I did it so quickly I did not take much notice of the position of the neck.

Q. That measurement was wrong ?—A. It was wrong, but very little when you make allowance for the so-called hole in the tonsil, it is not so very much out and that is what I made allowance for, I think I mentioned that to you before.

Q. Is that the normal size tonsil or not (showing Exhibit "17")?—A. If it has been removed for disease, it is probably enlarged.

Q. Tell me whether this is a normal size ?—A. I merely assume so.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 31st December 1943, Cross-examination, *continued.*

Q. Have you seen these before ?—A. I saw one. That is a normal size. It would be about normal size because it is shrunken.

Q. What about this film (Exhibit "19"), is that a normal size one ?—A. That would be about the size because it is looking at it sideways, or at an angle. This is a diagram.

Q. This is about normal, they are both about normal ?—A. This looks larger than on the diagram. I would say they are about normal but it depends on the age of the patient. The size of the tonsil varies according to age. In children they are much larger. In elderly people they atrophy and they become very small. In a person about 18 they are about average, 18 to 35.

Q. They are both average size, are they ?—A. If you put it side on——

Q. Put it any way you like ?—A. There is a discrepancy.

Q. One is three times the size of the other ?—A. It looks bigger because the tonsil varies so much in size in different individuals.

Q. We are talking about what you call a normal tonsil ?—A. Look here, Mr. Shand, I said about normal size——

Q. And you also said that was normal size ?—A. Did I swear that was normal size ?

Q. Don't you know ?—A. I said I was looking at it obliquely, and that made it look smaller.

Q. Did you not swear that was normal size, Exhibit "19" ?—A. I said looking at it obliquely, it would be within normal range. That is a diagram and it is not fair to compare diagrams——

Q. Do you swear you used the word "obliquely" ?—A. I said I looked at it obliquely. I still maintain that is only a diagram——

Q. You still maintain they are both normal size, Exhibit "17" and the one in Exhibit "19"?—A. With the reservation that that is a diagram.

Q. You still swear they are both normal size ?—A. With the reservation that that is a diagram. That is not a true representation of a tonsil, it is only a diagram.

Q. It is not a true representation of a tonsil ?—A. No, it is a diagram.

Q. Have you seen these before ?—A. No, never seen them in my life before.

(At this stage the further hearing was adjourned to 10 a.m. on Tuesday, January 4th, 1944.)

4th January 1944, Cross-examination, *continued.*

HOCKING *v.* BELL.

Twenty-second day, Tuesday, 4th January, 1944.

(Mr. Shand asked for the production of the second slide Dr. Bell dealt with as to the capsule of the thyroid showing how it was sutured.)

(Mr. Shand asked Mr. Cassidy to admit that in the first trial the blood calcium test and the blood count was not produced. Mr. Cassidy stated he would consider the matter.)

(Mr. Shand called for Dr. Ritchie's card.)

(Mr. Shand called for the production of any medical authority which suggested that unconsciousness only occurred as a terminal event.)

(Mr. Cassidy asked for the production by Dr. Thompson of the authorities set out on pages 410 to 426 of the transcript.)

DR. EDYE.

Further cross-examined.

Mr. SHAND : Have you been thinking over questions you were asked when we adjourned ?—A. I have, yes.

Q. And do you still swear that in your opinion the tonsils in the bottle are of normal size and the tonsils as depicted on those X-rays are of normal size ?—A. I have taken the trouble to look up some records on that also which I would like to use. I say they are extremely variable in size and both of those could represent tonsils.

Q. That is not the question, do you still maintain that they both represent tonsils of a normal size ?—A. There is no normal size.

Q. That is what you swore before ?—A. I said that they could represent tonsils that were normal.

Q. Of normal size, each one ?—A. For the individuals concerned, yes, because they are extremely variable. I have Cunningham here, may I quote from that ?

Q. Do not bother producing that. We have been told that they are variable before, but when you are dealing with normal size you are not dealing with one person, you are dealing with a number ?—A. The average normal, it is very variable and both of those could be within the normal range.

Q. And in your opinion they are normal tonsils ?—A. Within normal range, it is so variable——

Q. Don't try to drown me——?—A. I am telling the truth, the size is so variable that you cannot say that they are normal.

Q. Do you agree that the tonsils in the bottle are something like four times as big as the tonsils in the X-ray ?—A. That is ridiculous. You showed me those tonsils. They were abnormal ones, they were diseased. To try and be fair I said——

Q. You now swear that those in the bottles are abnormal tonsils because they were removed for disease ?—A. I know they were, they would not be in the bottle unless they were diseased.

Q. You now swear that they were abnormal because they have been removed because of disease ?—A. Of course they were abnormal, they were diseased.

Q. Abnormal in size ?—A. I have told you over and over again that size is so variable that they could be normal.

Q. Do you suggest——?—A. I suggest that the size of tonsils is very variable.

Q. Listen to my question ?—A. I am not going to let you tie me down, that is very unfair.

Q. Is it ?—A. It is. You get Cunningham and read it.

His HONOR : Just listen quietly to the question and answer the question ?—A. I cannot answer it, I have tried to answer it, but he won't take my answer.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 4th January 1944, Cross-examination, *continued.*

Q. It is not a question of taking your answer, answer the question each time ?—A. I would like to know——

Q. It is no use trying to argue with counsel ?—A. If you cannot answer them what can you do, if they are putting to you things in such a way to try and make you tell an untruth——

Mr. SHAND : Does your Honor allow witnesses, even though they be eminent professional men, to behave like that ; to suggest that counsel is endeavouring to make him tell an untruth.

Q. Now doctor, let us get on with the case ?—A. If you will allow us to.

Q. Do you suggest that those tonsils were enlarged because they had been diseased ?—A. Yes, I suggest that they would not have been removed if they were not diseased, we don't just remove healthy tonsils.

Q. Now, just let me read what you swore at page 1206 : " First of all is that the normal size of tonsil or not ?—(A.) That has been removed for disease, it is probably enlarged. (Q.) Tell me whether this is a normal size ?—(A.) I merely assume so. (Q.) Have you seen those before ? —(A.) I saw one that is a normal size. It would be about normal size because it is shrunken." That is what you swore ?—A. I was trying to be honest. I was making allowance for the fact that it was in a bottle of formalin which makes the tonsil shrink. I was trying to be fair so I said I thought it would be about normal size. That is purely judgment. I did not measure it.

Q. This morning you swore that because it was diseased it is greater in size ?—A. They were greater in size, yes.

His HONOR : When you say " were greater in size," at what stage do you mean ?—A. They were shrunken because they had been put in formalin, how much I don't know.

Mr. SHAND : Therefore, when you saw them they were of normal size ?—A. I said they might represent a normal sized tonsil.

Q. Now you suggest because they were diseased they were above normal ?—A. They were above normal.

Q. You are satisfied with that evidence, are you ?—A. Yes, they are above normal, they are put into formalin and they shrink. How can I tell how much they have shrunken ?

Q. When you looked at them, I said ?—A. Yes, bearing in mind the variation in the size of tonsils, I want the jury to realise that tonsils vary in size.

Q. And vary in position ?—A. No.

Q. You get this variation in size, little tonsils and big tonsils, but they are all in the same position ?—A. Yes.

Q. What is the normal length of time for skin to heal, for instance, the skin on the incision across the throat ?—A. Well, the healing processes go on really for months before they are complete ; at what stage would you like me to say ?

Q. How long would it take for them to be firmly united. I don't mean thoroughly healed ?—A. Without any strain being thrown on the wound ?

Q. Yes ?—A. We take our stitches out on the fourth or fifth day, then we consider that the wound is firmly united provided no strain is thrown on it. In that position in the neck I am referring to, the collar incision.

Q. Did you note that three stitches were taken out here ?—A. Yes.

Q. And that would indicate distension of the wound ?—A. No, we take some stitches out on the second day.

Q. Will you swear that you have ever said in your evidence before about taking them out on the second day ?—A. Yes.

Q. You will ?—A. Yes, I will swear that absolutely ; take some out on the second day and the rest on the fourth or fifth day.

Q. You have sworn that in the Court ?—A. I think so.

Q. You only think so ?—A. I am as positive as I can be.

Q. Of course, if you do get a distension owing to inflammation, stitches would be removed ?—A. No, they would be left in to hold the wound together, you don't want the wound to separate.

Q. You want to keep the suppuration in ?—A. No, you are trying to put it the other way. We keep the stitches in to prevent the wound from separating and use other methods to let the pus out if necessary, as Dr. Bell did here.

Q. You will agree that there would have been, at one period, a considerable amount of suppuration about this wound ?—A. At one period there was discharge from the wound.

Q. Do you remember swearing that suppuration in the neck would always go down ?—A. Yes, preferably go down.

Q. There was suppuration in this neck and it did not go down, did it ?—A. No, because it was let out.

Q. It did not go down ?—A. It could not go down because it was coming out, if there is a track out it cannot go down.

Q. Were you aware that the wound had sealed over at Quirindi ?—A. Yes, I read in the evidence that it had.

Q. I suppose you will agree in this case the pus did not go down ?—A. It is a question of pressure.

Q. You will agree in this case it did not ?—A. It came out the other way.

Q. It did not go down, did it, you will agree with that ?—A. No, it did not go down as far as I know.

Q. Do you have much difficulty in getting the safety pin through the rubber tube ?—A. You always have to use some force to get it through. You have to hold the rubber firmly.

Q. When do you put the safety pin in, before or after ?—A. It is one of the last things we do.

Q. Is the tube inserted in the neck when you put it in ?—A. Yes, but we hold the tube very firmly with a pair of forceps and push it through. You are trying to make the jury believe that we do not hold it. I want them to know that when we put the safety pin in we hold the tube with a pair of forceps and push the safety pin through and it already has a horse-hair stitch in it.

Q. In the delicate tissues of the neck you put a safety pin through the rubber ?—A. It is always done.

Q. It is very delicate, isn't it ; it has just been opened ?—A. It has just been sutured, but we are used to doing these things.

Q. I did not ask you that, did I ?—A. No, but I want the jury to believe that we know what we are about.

Q. You mean you are infallible ?—A. We make mistakes, but I am going to show you that you are not infallible in a minute.

Q. Show it now ?—A. No, we will wait awhile.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 4th January 1944, Cross-examination, *continued.*

Q. Oh, don't be reluctant, show it now ?—A. We will wait for cross-examination.

Q. This is cross-examination. Do it now ?—A. I will wait for Mr. Cassidy.

Q. Of course, you are quite unbiassed in this case, aren't you ?—A. I am trying to be. I am doing my best to be unbiassed.

Q. Well, show me how I am not infallible, not that I claim to be ?—A. If Mr. Cassidy prefers to wait I will wait.

Q. You are in my hands now ?—A. Would you like me to ?

Q. Yes, go ahead ?—A. Well, here it is. You brought a patient's history up here and quoted it to me about putting a gauze wick in, you said I put it in on the 19th and took it out on the 21st, three days, you had already got me to say I took it out in 24 hours. I want the jury to know I put the gauze in just at midnight.

Q. Did you ?—A. Yes, and you knew that, it was left in for the next 24 hours, and if I had to take it out in 24 hours it would have been midnight the next night. We never do that, and it was taken out the next morning and that was less than 36 hours——

(At this stage His Honor, Mr. Shand, Mr. Cassidy, Mr. Reimer and the witness were all speaking together and conditions were such that any attempt at accurate reporting was impossible.)

Mr. SHAND : By the way, where does it indicate midnight ?—A. The time she went back to bed.

Q. Where does it indicate midnight ?—A. The operation was started at 10.30 and she returned to room at midnight.

Q. And you suggest, do you, that I knew that ?—A. You knew everything else about it. I had to assume that.

WITNESS : I did not want that to go without protesting.

His HONOR : You have protested now.

WITNESS : I felt very annoyed about it.

Mr. SHAND : Things can be put by mistake without being put dishonestly ; do you realise that ?—A. Yes. I am very glad to hear you say that.

Q. Do you remember seeing three bottles ? (Objected to.)—A. Three bottles.

Q. Have a look at this (Exhibit "16" handed to witness). Do you suggest that they are anything like the size on the X-ray ?—A. Yes, they are about the size of that on the X-ray as far as I can see. Certainly in length. I want to state again that that is a diagram (indicating) and I think we are looking at it obliquely.

Q. Have a look at this diagram (indicating). Do you suggest that that (indicating) is anything like the size on the diagram ?—A. No, it is certainly bigger than the one in the diagram.

Q. Considerably bigger, isn't it ?—A. But this is a diagram and we are looking at the tonsil more or less obliquely and not looking at it on a flat surface. (Objected to.) The difference is within normal range.

Q. We will show the lot of the diagrams ?—A. There is one thing that is certain. These tonsils vary very much in size.

Q. Does that represent the tonsil (indicating)——(Objected to.)

Mr. SHAND: Do you admit the tonsils are wrong?

Mr. CASSIDY: No.

Mr. SHAND: Will you admit that that (indicating) is about three times the size of the tonsil shown there?—A. It is considerably larger than this one (indicating), but that is a diagram. It does not mean very much.

Q. We have been told by Mr. Cassidy in his opening that these are correct (indicating)?—A. I don't know what this is all about.

Q. You will learn in time. Would a normal thyroidectomy take anything from three-quarters of an hour to an hour?—A. I usually take up to an hour and a half.

Q. Up to an hour and a half or an average?—A. I usually allow an hour and a half myself.

Q. You said on Friday that you tested the tube for its quality?—A. Yes, that is true. We always do.

Q. What does quality mean?—A. Good rubber.

Q. That is whether it may be fresh or whether it may be perished?—A. Not perished rubber. I said in my last evidence, last day, that I had said all that I could about the tube and I did not want to say anything more about it. Why open it up again?

Q. You will agree, will you not, that when you said "Quality" you meant to see whether it was a strong good rubber tube or not?—A. Yes, that is right, to see whether it was a suitable tube, good quality, good rubber.

Q. That is whether it was sufficiently strong or not?—A. Strong rubber; yes, good rubber.

Q. If it were polished it would not be strong?—A. No, it would not. It varies of course.

Re-examined.

Re-examination.

Mr. CASSIDY: You remember that you were asked a question by Mr. Shand during your cross-examination about Dr. Marsh, the ear, nose and throat specialist?—A. Yes.

Q. And you remember that you were asked a question in regard to the neck, and you pointed about here somewhere (indicating)?—A. Yes.

Q. What area do the ear, nose and throat specialists deal with?—A. They deal with the ear and the nose, the interior of the nose, the interior of the nose principally, and with the throat, and that is the interior of the throat.

Q. Then take the outside of the neck, what range of surgery is that?—A. That range of surgery comes within the range of the general surgeon.

Q. You had a tube there from which you cut about half an inch from the top. Have you got that in your pocket?—A. Yes. (Produced.)

(Tube tendered and marked Exhibit "22.")

The WITNESS: The piece of thread there (indicating) is just to hold the separated portion from it.

Mr. SHAND: You would not call that a wick, would you?—A. No. I hadn't a piece of marine sponge, so I had to use a piece of gauze.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 4th January 1944, Re-examination, *continued.*

Mr. CASSIDY: You were asked a question as to your evidence on secondary hæmorrhage and you were cross-examined about a passage that appeared in Rose & Carles. Do you remember that?—A. Yes.

Q. And you pointed out that secondary hæmorrhage is a matter in connection with anything close to veins and arteries that you surgeons have to be very careful about?—A. Yes. Suppuration—we are always very afraid of it.

Q. And you gave a passage from Rose & Carles?—A. Yes.

Q. And it was suggested to you by Mr. Shand that that had no application to this case. Did you find other authorities supporting the same statement you made?—A. Yes.

Q. First of all will you give us the passage from Choyce?—A. Yes. It is "System of Surgery," Vol. 1, 3rd Edition, 1932. The page is 271, under the heading of "Secondary hæmorrhage." "Secondary hæmorrhage is caused by the ulceration of the wall of a vessel before thrombosis has occurred in it, or by digestion of the clot, and it may or may not have been preceded by primary hæmorrhage. The condition is not seen so often as formerly when infective processes followed almost all operations, but it still remains as a dangerous form of hæmorrhage with peculiar difficulties in its treatment."

Q. And is that also illustrated in Binney?—A. Yes. This book is "Treatise on Regional Surgery," by Binney, Vol. 1, page 372. It is under the heading of "Pyogenic or Suppurative Arteritis."

Q. Just explain what that means?—A. Arteritis simply means inflammation of the wall of an artery. Just the same as appendicitis means inflammation of the appendix, arteritis is the inflammation of the wall of an artery and that inflammation may pass on to suppuration.

Q. This is all referring to the danger of having a thing like that tube suppurating the blood vessels?—A. Yes. The heading is "Pyogenic or Suppurative Arteritis." "This occurs typically where an artery is directly in contact with virulent pus, as in acute abscesses. These are, of course, very common in the neck following such affections as tonsilitis, alveolar abscesses, etc. In certain conditions of lowered resistance of the tissues and unusual virulence of the infection, the arterial wall sloughs like the cellular tissue. It is probable that gangrene of the walls of the arteries would occur more frequently if it were not that they are nourished by their own vasa vasorum." That is by their own little blood vessels. "The organisms usually found in these abscesses are staphylococci or streptococci, or both. The results are often disastrous. While thrombosis may result and the arterial walls become occluded, as a rule the clot——"

His HONOR: (To jury): I don't know whether you can follow this with the broadcaster outside?

The JURY: It is very difficult to catch the words.

His HONOR: Very well, we will adjourn until the march is over.

Mr. CASSIDY: Before the adjournment you were quoting from Binney's "Treatise on Regional Surgery," at p. 372. This is directed to the danger of the pus, or suppuration, in and about the area of these blood vessels?—A. Yes.

Q. Would you just start reading again?—A. Yes, This is under the heading of "Pyogenic or Suppurative Arteritis," and it says: "This

occurs typically where an artery is directly in contact with virulent pus as in acute abscesses. These are, of course, very common in the neck following such infection as tonsilitis, alveolar abscesses, etc. In certain conditions of lowered resistances of the tissue and unusual virulence of the infection, the arterial wall sloughs, like the cellular tissue."

Q. What do you mean by "the arterial wall sloughs"?—A. It means it comes away—softens—portion dies and it bursts. "It is probable that gangrene of the walls of arteries would occur more frequently if it were not that they are nourished by their own vasa vasorum. The organisms usually found in these abscesses are staphylococci or streptococci, or both.

Q. Would those be the organisms in this class of infection we are dealing with?—A. They are common organisms found in abscesses, blood poisoning and so forth. "The results are often disastrous, while thrombosis may result——"

Q. What do you mean by thrombosis?—A. Clotting. It may block the vessel. "And the arterial walls become occluded."

Q. What does that mean?—A. Blocked by the clot. "As a rule, the clot is defective and is easily forced out by the blood pressure behind it. Secondary hæmorrhages are the rule, and often prove fatal."

Q. Secondary hæmorrhages was the matter you were giving your attention to in connection with the dangers around this area?—A. Yes. "Occasionally, after an acute abscess has been opened, a smart hæmorrhage occurs, and this may be followed by others until the patient's vitality is exhausted."

Q. Assuming in this case there was an abscess there, abscesses going on for this period of 18 and 19 months, never opened and never attended to, would you expect secondary hæmorrhage?—A. Yes, very much so.

Q. On that same subject, I pass to the next matter in connection with these abscesses and this pus. You were cross-examined by Mr. Shand at page 1197 in this way—

> "(Q.) I suppose you will admit that abscesses occur in practically all parts of the body?—(A.) Yes, that is true.
>
> "(Q.) And they occur frequently in the neighbourhood of large blood vessels?—(A.) They do. I would not say 'frequently,' but they do.
>
> "(Q.) And they occur without these blood vessels being ruptured?—(A.) Yes.
>
> "(Q.) They also occur frequently in the close proximity of muscles?—(A.) Yes.
>
> "(Q.) They occur without those muscles being affected?—(A.) Yes, they can do that."

You notice that the cross-examination stopped there?—A. Yes.

Mr. SHAND: The cross-examination did not nearly stop there.

Mr. CASSIDY: In regard to these abscesses, do they receive attention?—A. Yes, it is all a question of degree.

Q. In this case you were not asked the question whether or not these abscesses were attended to. You noticed that?—A. Quite true.

Q. And in the case of abscesses such as these, what happens if they are not attended to?—A. If they are not attended to, there is the ever-present

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 4th January 1944, Re-examination, *continued.*

danger of secondary hæmorrhage occurring, and damage to the muscles and other tissues.

Q. And is attention at an early stage necessary ?—A. Yes.

Q. And is that specifically stated in one of the authorities just to confirm your statement ?—A. Yes.

Q. You remember being asked about pus going downwards and you spoke about the mediastinum, which you explained to the Court as an open part where the pus could go if it did not get out, and you said there was the gravest danger of these abscesses in the neck going downwards ?—A. That is the grave danger.

Q. Have you got chapter and verse for that statement of yours if it were needed, and does it occur in Campbell at page 129 ?—A. Yes, I think it is well set out in Campbell on Surgical Anatomy, 1911, at page 199. It is speaking about the arrangement of the fascia in the neck. " The space between the inner and middle layers, that is, the pretracheal and prevertebral layers "——

Q. Those are the ones concerned with her and which you were being asked about in Beasley & Johnson ?—A. Yes. It says " It is the largest space and contains all the essential organs of the neck. Below, this space communicates directly with the thorax and axilla. Hence, a collection of pus in this compartment might burrow either into the thorax or the axilla." Then it adds in italics, so as to stress it : " This is the dangerous area of the neck, and abscesses here should be promptly drained."

Q. You were asked about pus travelling downwards in the psoas abscess. What happens if the psoas abscess does clear up—what result does it leave behind ?—A. The psoas abscess follows tubercular disease of the spine, and when healing does take place, it is apt to leave considerable deformity, destruction of muscle, and disability.

Q. There was one suggested that went behind the knee ?—A. That would mean something that has progressed for a very long time—probably been neglected—and it would lead to the destruction of the tissues of the spine, and of all the muscles affected by the spreading of the pus.

Q. Would the man's leg be affected ?—A. Yes, he would have a wasted leg and probably a limp.

Q. If muscles are involved in the suppuration, does destruction of them follow ?—A. Yes. They are altered first of all by the inflammation and then they undergo destruction.

Q. And I think you said they were replaced by fibrous tissue ?—A. Yes.

Q. While you were being cross-examined, it was suggested this morning when you gave an answer, that the sutures were removed on the fourth day ; you had not said before earlier they were removed on the second day——?

His HONOR : Some were removed on the second day.

Mr. CASSIDY : Have you looked up your evidence during the adjournment with me at page 163, and does it say " It is customary to start removing these stitches by the second day, and have them all out by the fourth or fifth day, the object being to prevent scarring " ?—A. Yes.

Q. On this question of the size of the tonsils you said you wished to refer to Cunningham. What does Cunningham say about it ?—A. I can remember the words without referring to Cunningham. It states there is extreme variability in the size of the tonsils, and then it gives measurements

for what would be considered a reasonable size—something under an inch vertically, three quarters of an inch transversely, and about half an inch thick.

Q. You were asked one question during cross-examination about if portion of the tube left in still had the gut in it, still tied to something. If the tube is broken and the stitch is still holding the tube there, would that gut dissolve ?—A. It would dissolve after a week or ten days probably. The main catgut would fix the tube there for that length of time, fix it in the wound.

Q. That is, even taking the healthy tissues in ordinary catgut ? —A. Yes, it would also fix it so that it would be easy to get at. If you went for it, it would be fixed there, and it would be very easy to find it, pull it out.

Q. Of course, in the pulling outwards, so described by Dr. Bell, would the stitches hold it ?—A. Yes.

Q. And infection, rather than delay absorption of gut, prolongs it ? —A. Yes, if the gut is still holding healthy tissue, it will be absorbed in more or less the usual time, but once healthy tissues have dealt with it then the gut cannot be dissolved, and it remains more or less in the pus.

Q. As to sinuses remaining open, it has been suggested that these remain open or discharging for some three months. Have you had experience of sinuses remaining open ?—A. In any situation ?

Q. Yes ?—A. Yes, we occasionally see it lasting into months in other situations.

Q. Mr. Shand put one question to you in regard to thyroidectomy, the object of the operation being to remove the thyroid gland that was poisoned, and the nervous symptoms generally cleared up, and I think you said that in most cases they did generally clear up. Do they in all ? —A. No.

Q. Can you give us illustrations ?—A. I cannot give actual figures, but at the Prince Alfred Hospital I have had these patients coming up for some years in order to watch progress, and a percentage of them continued to have symptoms of what one might call a neurasthenic state. Certainly, many of them cannot do their work and they have to have rest, to be able to rest whenever they can, and so they carry on. There is a percentage that we cannot call a perfect cure. I cannot give the figures, but they do come back to see me regularly every Wednesday at the Prince Alfred, and we have to treat them and keep them going as well as we can. I do not mean that each patient comes back every Wednesday, but they come back at intervals, and every Wednesday there are some coming back.

Q. And in the aftermath, have you had cases of mental breakdown ? —A. Yes, I have had a few cases where mental breakdown has taken place. One patient became permanently affected, although there was no evidence of it in the preliminary stages. She had a mental breakdown and then finally had to be put into the asylum. I might mention I have had some who have had a temporary mental breakdown and have recovered.

Q. I think there is one alteration in your evidence you told me you wished to make, in the 8th question from the top of page 1204. The word " Bears " appears, but it should be " varies " ?—A. Yes.

Q. Three questions later the word " varies " is used again ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 34. Benjamin Thomas Edye, 4th January 1944, Re-examination, *continued.*

Q. You have checked up from the record book this matter of "Midnight tube was put in and removed a.m. on the 21st"?—A. Yes, next day but one. I think I made it clear the reason why it was removed.

Q. One other thing about that gauze wick. Do you put them in the tube, or alongside the tube?—A. No, not always inside; sometimes alongside.

Q. Can you remember in that particular instance?—A. No, it is very often outside. In this particular type of operation where we operated for gangrenous ruptured appendix, sometimes a little piece of gauze is put alongside, or sometimes inside.

Q. Do you ever use them in thyroidectomies?—A. Never.

Mr. SHAND: In this authority, Campbell, page 199, would you agree with this, "Pus in front of the middle or pre-tracheal layer usually points to the surface and confines itself to the neck"?—A. Yes, that is superficial pus.

Q. "In front of the middle or pro-tracheal layer"?—A. That would be in front of the thyroid or other structures.

Q. That is not what it says?—A. Yes, it is in front of the thyroid gland and in front of the trachea.

Q. On page 197 this figure divides them into outer investing layer, middle or pre-tracheal and inner or pre-vertical layer?—A. Yes.

Q. This includes the pre-tracheal (indicating)?—A. No, it is in front of that. This is very diagrammatic, showing the layers of the fascia, but he means in the pre-tracheal pus. This is very diagrammatic, it shows the layers of muscle.

His HONOR: That diagram on the top left-hand side?—A. That is misleading to everybody and it does not explain much. It is misleading to those who do not understand it, in fact it is misleading to the jury.

Q. What does it show?—A. The pre-tracheal layer because it is in front of the trachea.

Q. Where is the outside section?—A. There (indicating).

Q. That is the outer or investing layer?—A. Yes, of fascia.

Mr. SHAND: The author describes the pre-tracheal layer as extending in this space because it is marked "B"?—A. Yes, that is not a space, it is filled with muscles and other structures.

Q. We have here, at page 199, "Pus in front of the middle or pre-tracheal layer usually points to the surface and confines itself to the neck." Then, secondly, "Pus behind the middle or pre-tracheal layer is in the dangerous area, there is no tendency to point to the surface and unless properly drained will gravitate towards the"——?—A. The pre-tracheal layer is one we divide and strip aside when doing the operation for the so-called capsule of the thyroid gland.

Q. In Binney, page 524—you don't claim to be an authority on tetany?—A. No, being a surgeon I do not see the tetany that physicians see.

Q. Page 496, does that give you an idea of the operation for the removal of the thyroid?—A. Yes.

Q. A fair idea?—A. Yes, it is a very good idea because Binney is a very good authority. This is the 1911 edition.

Q. The thyroid is not very far from the tonsil?—A. You could not tell from that.

Q. You could get an idea ?—A. No, not with accuracy.

Q. You could get any idea ?—A. Yes.

Q. Cunningham, 1902 edition, page 981, would you agree with the illustration at page. 981 that the position of the tonsil is correctly indicated ?—A. Yes, I should say so.

Q. Would you also agree that the indication there is the outer tonsillar fascia being at the top ?—A. Yes, near the upper pole. Actually in the tonsil but near the upper pole. " Supra " means " upper."

Q. Now these plates—

His HONOR : There are six photographic plates handed to you, including the one which is an Exhibit.

Mr. SHAND : Yes, I will hand five back.

(Photographic plate showing collar incision tendered and made part of Exhibit " 4 ".)

Mr. CASSIDY : There were some sketches shown to you on a page of Campbell ?—A. Yes.

Q. Is there anything further you wish to say about those diagrams ? Is it necessary to look at them carefully ?—A. It is very difficult to understand the fascias of the neck, even medical students find it difficult. In the diagrams they are made very diagrammatic to make the layers clear.

(*Witness retired.*)

No. 35.

EVIDENCE of Professor William Keith Inglis.

Sworn : examined : deposed.

To Mr. REIMER : I am Professor of Pathology within the University of Sydney. I was not called, nor was I associated with the first trial. At the second trial I sat in the back of the Court and heard evidence given by various witnesses, including Professor Welch and Dr. Thompson. I then came and made myself known to you and was called at the latter part of the case. I also gave evidence in the third trial. I have not seen the hospital records in this case of Mrs. Hocking, but I have been told the general history and the allegations made by the Plaintiff.

Q. What is understood in pathology by " inflammation," and are there two or more kinds ?—A. Speaking generally, inflammation is the reaction of the tissues to some infected organism or some other body. It may be acute or chronic.

Q. What are the pointers or principal matters of differentiation so far as the acute form is concerned ?—A. In the acute stage, I am now speaking of inflammation in response to bacterial infection, in the acute stage the part becomes swollen with inflammatory œdema, cells come into the part from other vessels, the cells in that situation multiply, but in this early stage the condition is characterised by swelling, as seen with the naked eye, and redness, vessels become dilated, and as seen under the microscope one would see increase of cells from the blood vessels and some multiplication from that area.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 35. William Keith Inglis, 4th January 1944, Examination, *continued.*

Q. What are the characteristics of chronic inflammation ?—A. Chronic inflammation may be chronic from the outset or may follow an acute inflammatory reaction. If the latter, as for example after infection by bacteria, and in particular pus-producing bacteria, it really applies to that. Eventually connective tissue is laid down to form a capsule and if the infective process is suppurative the pus will be present in the centre, then there will be a zone of cellular tissue and as you pass outwards this cellular tissue would gradually become fibrous.

Q. What is the outer cellular tissue ?—A. Having regard to connective tissue, it is the early stage. When the connective tissue cells multiply at the outset they are cells, but as the process becomes chronic they are changed into fibres. In the chronic stage the fibres dominate the picture, and in the acute stage the cells do.

Q. Supposing you have a chronic inflammatory process in the human body. You have in the centre some pus where the centre of the infection is. What have you next ?—A. This is an area where the infection is due to pus-producing bacteria, then in the layer around that there may be remaining a cellular zone, but you would soon pass to the connective tissue or fibrous tissue.

Q. Beyond that you get healthy tissue ?—A. Not healthy, because the inflammatory reaction does not end abruptly, it sends extensions into the parts close by so that they are somewhat involved.

Q. Would that involvement be a spreading process in a layman's description ?—A. Yes, that would be a reasonable description.

Q. That is what you call encapsulated ?—A. No, I would call the fibrous zone with the remnants of the cellular zone inside the capsule. Other tissues would become incorporated, but the capsule proper would be restricted to the fibrous tissue which had formed around the pus.

Q. Does the human body try and confine inflammation to a given area ?—A. Speaking generally, that is correct.

Q. In this case you have heard that Mrs. Hocking, following a thyroidectomy on 15th March, on or about the 19th March for a few days she had a higher temperature, some pus exuding and some swelling. Then a few days later, the temperature was back to normal, swelling somewhat reduced, and for some months she had a sinus which had a sero or sero-purulent discharge which varied from time to time. How would you describe that ?—A. That description is consistent with and suggestive of an inflammatory reaction in response to infection by pyogenic organisms, pyogenic bacteria.

Q. How would you describe the early stages and the later stages ?—A. In the early stages when the process was still acute and the temperature high it indicates the wound was suppurating and purulent and discharge was coming away freely.

Q. Would that be an acute stage ?—A. That would be an acute stage of the process.

Q. The subsequent history, acute or otherwise ?—A. Gradually—it would not take place suddenly—gradually as the temperature subsided and the discharge became less the inflammatory reaction would pass from the acute stage into a chronic stage—one would say that that would happen because it is a gradual process taking place over days and perhaps weeks.

Q. In a case of chronic inflammation do the tissues prevent the spread of that inflammatory reaction, if possible ?—A. Yes, if there is an inflammatory reaction the tissues tend to prevent the extension of the spread of the infection to other parts.

Q. It is alleged by the Plaintiff that she had, left in the area of the operation, the thyroid capsule, a piece of rubber tube with adherents for some 18 months. Look at the sketch and at Exhibit " P " ?—A. Yes.

Q. You were in Court when Exhibit " P " was prepared, and that is an article which the Plaintiff says is a fair representation of the article she alleges was left in her neck ?—A. Yes.

Q. The other is her own sketch ?—A. Yes.

Q. Taking those two, what would you say would be the condition if anything of that nature or anything similar to it were left in an area where there is chronic or acute inflammation ?—A. That would accentuate and aggravate the condition and cause the formation of a considerable amount of suppuration in that situation.

Q. Can you put it in other language to give us an idea of the degree ?—A. It might vary considerably, but with an object as large as that I should say that perhaps the amount of pus present would be an egg-cup full or more.

Q. To what extent would the inflammatory reaction spread without the body moving at all ?—A. In the very early stages, when the process was acute, this would cause so much irritation that pus may spread further than it would in the earlier stages. In the latter stages when the inflammatory reaction had resulted in the presence of connective tissue being laid down then the inflammatory process would be localised.

Q. What area would be involved with inflammatory reaction with that object in the centre ?—A. That object and perhaps an egg-cup full of pus and the wall of the abscess meeting together with the adjacent tissues would be pretty large—I have suggested before that it may have been something of the order of the size of my fist.

Q. It is admitted by the Plaintiff that this sinus finally healed up towards the latter part of June 1938. What would you say as to whether that sinus could heal up if that object were inside the wound—or anything like it ?—A. I would say it could not heal up.

Q. Is the fact of it having healed up consistent or inconsistent with the allegation ?—A. In my opinion inconsistent.

Q. It is alleged that that object moved through the thyroid area to the tonsil area. How can a foreign body move ?—A. A foreign body in an area of suppuration, what would happen would be that the suppurative process would gradually digest the wall. The pus cells which are present in the suppurative focus produce forms which have a digesting capacity and they would gradually digest the whole of the abscess so that the pus could extend beyond its original position.

Q. When you say extend the wall and digest the abscess, does that mean the eating away of the surrounding tissue ?—A. That would be one way of expressing it, that is in fact what happens.

Q. In your opinion could a body such as that, assuming it were in the thyroid capsule, move at all ?—A. It could not move any distance to speak of without causing serious damage to the structures.

Mr. REIMER : We have been told the structures in the immediate vicinity of the thyroid and the muscles on the outside. You heard Professor Shellshear's evidence ?—A. Yes.

Q. And internally there is the windpipe and trachea, the œsophagus and the carotid sheath, which is the jugular vein and common carotid artery, and the vagus nerve ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 35. William Keith Inglis, 4th January 1944, Examination, *continued.*

Q. For that object to move inside the capsule, would those structures have to be eaten away ?—A. In my opinion they would, eaten away or seriously damaged.

Q. In order for an object of that nature to move, does that imply that the abscessed cavity has to be large and extended ?—A. That implies that the abscessed cavity has to extend by the eating away process I have indicated.

Q. Would that mean eating away in some direction of the tissues we have mentioned ?—A. Yes.

Q. One or other of them would have to be destroyed ?—A. Yes, that is correct ; one or other of them must be destroyed.

Q. What would happen to a patient if the inflammatory reaction involved the trachea or windpipe ?—A. The patient who had the windpipe or trachea involved would suffer from infection of the respiratory tract, that is to say, the lungs, and septic pneumonia would result.

Q. Is that a foregone conclusion medically, if that object were in that area and the trachea were involved ?—A. Yes, if the trachea was seriously involved. One would imagine it slightly involved.

Q. I mean seriously ?—A. Yes.

Q. If the œsophagus became seriously involved ?—A. The suppurative process would eat into the wall which is muscular, and the lumen of the œsophagus would be opened up, that is the hollow part of the tube, and the infection from the abscesses would spread into the tissues and cause widespread inflammation which would lead to the patient's death.

Q. What would happen in regard to the blood vessels, if they were seriously involved by an object of that nature, and the pus surrounding it ?—A. There would be serious danger of thrombosis and hæmorrhage. The risk of thrombosis would particularly apply to the vein, and I should say that the risk of danger to blood vessels would be greater so far as the vein is concerned, and so far as the artery is concerned the artery too would be endangered.

Q. You heard the passages quoted from the authorities by Dr. Edye in regard to the effect of inflammation of blood vessels. Do you agree with that, without having to repeat it in detail ?—A. I do, but I would like to add something. I have a passage marked in Boyd's Pathology which has a bearing on this subject. This is only the third edition. This is Boyd's text-book on pathology, third edition, 1938. At page 448, it is under the heading of "Suppurative Phlebitis," at the foot of page 448 : "Phlebitis" means inflammation of a vein, and "suppurative" means it is septic, due to pyogenic bacteria :—

> "Suppurative phlebitis : The inflammation is caused by pyogenic bacteria which usually invaded the vein from without. A vein passing through an abscess or an area of cellulitis is much more likely to become inflamed and thrombosed than in the corresponding artery. The entire thickness of the wall is invaded by leucocytes and thrombosis rapidly occurs, so that the condition may be called a thrombo-phlebitis. The thrombosis becomes septic, softens, and is likely to disintegrate with the formation of emboli. Hæmorrhage is not common, because the thrombosis advances ahead of the inflammation and closes the vessel. Some of the most important examples of suppurative thrombo phlebitis are as follows : Phlebitis of the lateral sinus following acute otitis media (that is,

suppurative inflammation of the middle ear) and threatening to extend down the jugular vein ; phlebitis of the facial veins following a boil or carbuncle of the nose or upper lip extending through the opthalmic veins to the cavernous sinus ; phlebitis of varicose hæmorrhoidal veins (piles) ; phlebitis extending from the appendix to the portal vein and causing a portal pyœmia (that is a form of blood poisoning in which there is the appearance of a septic clot and which is carried away in a blood stream to an outside part) ; phlebitis of the pelvic and femoral veins following puerperal sepsis (that is at childbirth) or operations on the female pelvic organs ; phlebitis of the varicose veins of the legs when ulceration has occurred. In all of these instances the great danger is that multiple septic embolism may occur and a condition of pyœmia be set up."

Q. There is also a corresponding reference dealing with the same subject matter in both Muir and McCallum ?—A. In Muir the description is very similar to this.

Q. It is in Muir's text book on pathology, fifth edition, 1941, at page 319 ?—A. McCallum I would like to show, if I may, because there is an illustration here.

Q. Before coming to the other two, put that passage that you have read in layman's language. How would you describe it ? In the passage you have just read from Boyd, it refers to leucocytes ?—A. They are the white blood cells in the blood : there are two classes, red, which are all alike, and the white of which there are many varieties. I would just like to mention two, because they are of some importance. The first variety has a long name and is called polymorpho-nuclear leucocytes. They are formed in the bone marrow, and these are the cells which are used to fight infection by pyogenic bacteria.

Q. What does pyogenic bacteria mean ?—A. That means pus-producing bacteria of which the staphylococcus is one type, and streptococcus another type.

Q. And those we are dealing with is one of them ?—A. Yes, I think so. When the bacteria enters the tissues they produce, many of them, something which attracts those polymorpho-nuclear leucocytes to the part. It is those leucocytes which play an important part in the killing off of the bacteria, and in the process many of them are killed, and it is those killed leucocytes which form the pus cells and give the opaque yellowish colour to the pus. The other type which I propose to deal with later is in regard to tuberculosis.

Q. Leave that to later. Putting that passage from Boyd into layman's language, how would you describe it ? What is the effect on the blood vessels ?—A. I am dealing particularly with the vein and not the artery. If you had this septic pus containing these pyogenic bacteria close to the surrounding of a vein, there would be a distinct tendency, a great risk, of that infection affecting the wall of the vein. The reason why the vein is more important here than the artery is because the wall of the vein is so much thinner. When the wall of the vein becomes affected by this inflammatory process, we have phlebitis, inflammation of the vein, and the blood in the lumen of the vein clots and becomes thrombosed.

Q. Is that an extension of the inflammatory reaction into the vein itself ?—A. When that clot forms, the infection which we have up to the present has affected only the wall of the vein, spreads in and infects the clot,

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 35. William Keith Inglis, 4th January 1944, Examination, *continued.*

and that infected clot with bacteria as well as pus cells and nuclear in it becomes friable and breaks up, and the small fragments of the clot containing the pus cells and the bacteria are carried away into the blood stream and become caught in the first net. In the case of the appendix, the vein affected would be the portal vein, and the first net would be the liver where you have multiple abscesses. In the case of ordinary veins throughout the body the first net would be the lungs, and you meet with multiple abscesses in the lungs. In either case a fatal issue is to be expected.

Q. Read the passage dealing with a similar matter out of Muir; that is 1941 edition, page 319?—A. That is very similar to the last.

Mr. CASSIDY: Muir is very similar?—A. Yes. You have got the reference, and there is nothing fundamentally different.

Mr. REIMER: You wanted to refer to McCallum?—A. That is the sixth edition, text book on pathology, McCallum, and the date is 1936. There is an illustration on page 239 which shows an abscess suppurative phlebitis, that is, inflammation of the portal vein arising from appendix abscesses. There are numerous abscesses in the liver. That is an example of infection spreading. (Shown to jury.) There is the situation of the appendix, and that is an abscess, and the infection from there has infected the veins so that the thrombosis in the veins has spread to the portal vein, and in that way those portions of septic clot spread up to the liver, leading to the formation of multiple abscesses there. That is one example of the way it is spread. They are caught in the first sieve. If there is cystemic vein in the limb, then the abscess would occur in the lung.

In regard to that, we give to the students in our classes specimens showing the change in the lung where the septic infection was around a varicose vein in a limb.

Q. Having regard to that object that you have got before you, which is alleged to have been in this woman's neck, do you consider that that was consistent with human life, that allegation? It is in the thyroid capsule with an inflammation, some kind of septic inflammation, and not attended to by a surgeon, and just left there. We are told of its presence there for eighteen months; is that consistent with human life?—A. No, in my opinion, no.

Q. You have told us the only way any foreign body could move would be if the surrounding tissues were one by one eaten away and destroyed so as to enlarge the abscessed cavity within which the body would be, as it were, floating in pus?—A. Not one by one; but gradually, because they would all be matted together—gradually eating them away.

Q. You heard Professor Shellshear's evidence as to the anatomy of this area. To get from the thyroid it first of all goes to the sterno-thyroid and hyoid muscle and so on, and through the parotid gland, or around it. Would each and every one of those structures necessarily be involved in the inflammatory process on the assumption of something travelling from one area to the other?—A. Yes, all the surrounding structures would be involved.

Q. And would portions of those structures have to be destroyed, to go through them?—A. Yes.

Q. When they are destroyed, what happens? You say it is inconsistent with human life. But supposing one leaves that aside for the

moment. If structures of that nature are destroyed, what are they replaced by ?—A. Do you mean muscle ?

Q. What is that replaced by ?—A. By fibrous tissue. Speaking generally, all structures destroyed by suppurative process are replaced by fibrous tissue, so far as the destroyed part is concerned.

Q. What is fibrous tissue ? How does that compare with muscular tissue ?—A. Muscular tissue has the power of contraction ; it has great elasticity and so on. The chief function is the power of contraction. Fibrous tissue has no power of contraction.

Q. Has no function ?—A. It has a purpose in holding things together and so on.

Q. But it cannot replace the function of a muscle ?—A. No.

Q. Take the fascial planes, if they are destroyed, what are they replaced by ?—A. They are themselves fibrous tissue, and if they were destroyed, fibrous tissue would be present there, but instead of having a normal arrangement, they would be arranged irregularly.

Q. Could you have destruction of the fibrous tissue with an object like that present without destroying the muscles which are enclosed in the fibrous tissue ?—A. I would think not. I would expect the muscles to be involved as well as the fibrous tissue covering them.

Q. You have seen this lady in Court giving her evidence on a former occasion ?—A. Yes.

Q. You saw the movements of her head ?—A. Yes.

Q. What would you say as to her appearance and her capacity to move her head ; as being consistent or inconsistent with the allegation ?—A. I would say inconsistent. I would expect there to be too much contraction of fibrous tissue to permit that degree of freedom of movement.

Q. As a pathologist, can you contemplate or accept the allegation that is made by the Plaintiff in this case, as being possible, and her still being alive ?—A. I cannot accept it.

Q. I want to pass to another matter. These structures, if any of those were destroyed, they cannot be replaced ?—A. Not by the same structures.

Q. They would be replaced by fibrous tissue ?—A. Yes, if an artery, not those particular ones—this is not as a general statement—but if an artery is affected, other arteries might dilate to take up a particular function, but they could not be replaced.

Q. The arteries within the carotid sheath ?—A. Yes.

Q. I do not know whether you heard the suggestion, but it has been suggested in this case that a certain spasm which this lady describes, may have been caused by the tube, the exhibit in front of you, having pressed against the carotid sheath, the vein and the artery, and thereby causing a temporary failure in the blood supply. Dr. Thompson was asked questions dealing with this alleged spasm in the one eye, and Mr. Shand asked him this question, which appears at p. 334 :—

> "Q. Now, you said something about the eye ?—A. Yes, my interpretation of that incident is this. This tube, or the exudation, or both, at that particular time pressed upon the carotid artery or vein, or both, interfering with the blood supply on the left-hand side above. That would account for the strong spasm of the facial muscles above (indicating), this orbicular muscle, and the action on the ocular muscles, and it would also account for the fact that at that time she had little or no spasm in the hand ; in other words, it was a localising action. It localised the spasm."

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 35. William Keith Inglis, 4th January 1944, Examination, *continued.*

It is suggested there was a temporary failure of the blood supply owing to the pressure either of the body or the inflammatory reaction around the object. What I want to know from you is this: could you have a temporary interference like that on a blood vessel by inflammatory reaction; it only lasted a minute or so, or two or three minutes?

His HONOR: That is a reference to the eye incident only?—A. I am afraid I could not give very much help in this direction.

Mr. REIMER: Have a look at this blood count I show you. The history given by the Plaintiff is this: that for some two or three months prior to the 2nd October 1939, she had a gross swelling, her head and shoulders were all one piece, and so on. She had pus in her mouth and was scraping it off with a tooth brush, that she had this alleged irruption of the tube on the 2nd October, and between the 2nd October and when the blood count was taken, had pus still coming in her mouth and still had pus in St. Luke's Hospital when the blood count was taken. The other side of the picture is that for some months—she puts it at 18 months—before the 2nd October, she could not eat proper food, only had arrowroot and bovril, and that continued to the admission to St. Luke's Hospital on the 26th October 1939. Is that blood count normal or abnormal in any respect?—A. It is within normal range.

Q. Is it consistent or inconsistent with her story?—A. It would be unusual; it is unexpected to find these figures. I would not say that on this evidence alone the story could be ruled out, but this evidence as it stands is against the story.

Q. What would you expect, and why?—A. If there was suppuration going on at the time this blood count was made, one would expect to see that there away from the site of manufacture in the bone marrow to the area of suppurative inflammation where they were being used up to withstand the infection—between those two—you would expect to find an increased number of polymorpho-neuclei leucocytes where here it says that the leucocytes showed no significant pathological change.

Q. Would those leucocytes be in that course from the bone through the blood if there was pus present at that time?—A. Yes.

Q. She alleges she still had pus in the mouth, so would leucocytes have been there?—A. It would depend on the amount of suppuration; if it was considerable, yes.

Q. What would you say in regard to diet, the effect of diet on the blood? Is there anything to suggest there that the patient was suffering from any anæmia?—A. No.

Q. Or being on an insufficient diet?—A. No. The red cells are a little low—not very much. They are well within the range of normal, and the hæmoglobin is perhaps a little low, but within the range of normal, and there is no reason so far as I can see, in the red cell picture, as we call it, to regard it in any sense abnormal.

Mr. REIMER: Dr. Thompson gave evidence that you can have abscesses with a considerable amount of pus without any great destruction of tissue. He has given as an example a breast abscess. What do you say in regard to abscesses in the breast?—A. An abscess in the breast would not be comparable so far as destruction of tissue is concerned with an abscess in the situation we have now in mind, deep in the neck, because

a breast has no muscles. The breast is superficial. It has no muscles or large vessels or other important structures so that one would not expect to have the same risk so far as major blood vessels are concerned or the same likelihood of contraction so far as damage to muscle is concerned, but making those allowances one must say that even in the breast there would be some destruction of tissue but it would be destruction of adipose tissue and less important tissue than in the case of the neck.

Q. A psoas abscess has been referred to on different occasions in this trial. What is the distinction between the nature of a psoas abscess or tubercular abscess on the one hand, and one of the suppurating abscesses on the other, pathologically ?—A. I would like to go further back, a little earlier than the actual formation of the abscess. I have already described what happens in the tissues when pus producing bacteria gain entrance. With the tubercle baccili it does not attract the polymorpho-nuclear leucocytes. The tubercle baccilus leads to the formation of a characteristic change in the connective tissue cells where it gains entrance. The leucocytes which are attracted are lymphocytes which come not from bone marrow but from lymphoid tissue throughout the body. Particularly lymphatic glands. Then the tubercle baccilus is responsible for the death of this small inflammatory focus and when it dies or undergoes nucrosis—that being another name for the death of tissue—it presents curious changes to the naked eye. It looks cheesy and is spoken of as being caseous. A striking contrast therefore is presented by the tuberculous, cheesy caseous lesion, as we say, and the pyogenic focus or lesion that the pyogenic bacteria cause. They are two quite distinct changes in the tissues.

Q. Can you make any analogy, any comparison of one with the other in regard to this investigation which the jury have ?—A. In my opinion it would be a false analogy but I would like to bring forward some evidence in support of that opinion.

Q. Before you refer to those passages, tubercular abscesses have been referred to as cold abscesses ?—A. Yes.

Q. The first reference is Boyd, I understand ?—A. Boyd, 3rd Edition, 1938, page 828. The caseous process is particularly well seen in the lymphatic glands. Sometimes young children suffer from tuberculosis of the lymphatic glands in the neck. The heading in Boyd is " Chronic Granulomas of the Lymph Nodes—Tuberculosis." Referring to the lymphatic glands the reference is—

> " The glands are at first discrete and firm, but when periadenitis occurs they become matted together. The cut surface shows tuberculous areas which are at first grey and translucent, but later become yellow, opaque and caseous. The entire gland may eventually become caseous and break down, so that a mild shell is left. In this way a cold abscess is formed which discharges on the surface,"

the point being that the whole of that affected lymphatic gland is caseous without any pus or suppuration in it and yet it forms a cold abscess, the essential nature of the cold abscess being this caseous material and not suppuration in the ordinary sense.

Mr. SHAND : That follows after that, that you get fluid ?—A. I was going to add something later.

In the Supreme Court of New South Wales.

Plaintiff's Evidence.

No. 35. William Keith Inglis, 4th January 1944, Examination, *continued.*

Mr. REIMER: Is there any comparison in regard to the spread of such an abscess or in regard to the spread of a suppurative——?—A. Interrupting you, may I refer to a later quotation in the same book, at page 979, the heading being " Tuberculosis of the vertebræ " and " The Cold Abscess." " When the abscess (it refers to the psoas abscess) discharges on the surface a mixed infection develops and the clinical picture changes very much for the worse with hectic temperature and rapid wasting." That is due to the pyogenic bacteria getting in. I now refer to a reference in Muir's Text Book of Pathology, 4th Edition, the first quotation being page 815, under " Tuberculosis of Bones ":

> " Structural changes: The lesion may assume a caseating type, the newly formed tissue undergoing caseous necrosis, while the partly absorbed bone trabeculæ become broken up and mixed with a caseous material; this is well exemplified in the case of the vertebræ."

They are the small trabeculæ of bone which go across, not compact and firm but running in different directions. It is a network of bone. This is caseation and not suppuration.

On page 816 we have the following quotation:

> " When the periosteum becomes affected the caseous material is often invaded by polymorpho-nuclear leucocytes and softened; thus caseous pus may result and by progressive accumulation may form a large collection. This is common in connection with the bodies of the vertebræ and the pus may penetrate the sheaths of muscles and extend in their substance. In this way when the lower vertebræ are involved a psoas or lumbar abscess may be produced."

This is the point I wish to bring out: though in a cold abscess which as I have previously described there may be pure caseation and it is the essential quality, sometimes dead material may attract polymorpho-nuclear leucocytes just as pyogenic bacteria will attract them. It is quite different from the pus which forms around the pyogenic bacteria.

Mr. SHAND: It is destructive?—A. Yes. The importance of it is caseous pus. There is a later quotation at the bottom of the same page, 816:

> " It should be added that tuberculous lesions in relation to skin of mucous membranes may become secondarily invaded by pyogenic organisms and thus septic inflammation and suppuration are superadded to the changes of tuberculosis."

Mr. REIMER: Whereabouts in the process of the psoas abscess is that likely, or can it happen?—A. When it reaches skin surface.

Q. Not in the psoas muscle?—A. No, it seems to me in view of the evidence I have just given that I am warranted in holding the opinion that caseous pus and septic pus are quite different.

Q. This cold abscess of tubercular origin does cause destruction of tissue?—A. Yes.

Q. Coming back to suppuration, it has been suggested that the suppuration went upwards from the thyroid to the tonsil. What do you say as to its going upwards?—A. In my opinion it could not do that without destroying the structures in the neighbourhood. It could not spread without destruction of the structures in the neighbourhood.

Q. And it would cause the death of the patient?—A. That is my opinion.

Q. It has been suggested that it might be advisable for you in layman's language to put what you say of the psoas abscess in this way so as to show why you cannot compare the suppuration on the one hand with the progress of a psoas abscess, what I mean is, why is it misleading ?—A. The psoas abscess is such a mild thing. In the quotation from Boyd it goes on in a mild way. It will go on for years. After I left the Court last week I looked at some specimens at the University. One was the vertebral column of a young man of twenty-three. He had had tuberculosis of the vertebræ of the lumbar region and the caseous pus had extended beyond that and it left a psoas abscess and abscess in the loin, so called abscess. This caseous pus was present in the loin for five years. This man had appreciated that mass was there for five years and it may have been many years spreading and had he not died from tuberculosis of the lungs and kidneys it might have gone on for many more years. As soon as the tuberculosis gets to the skin you get the hectic chart and the patient becomes seriously ill. It is a different condition.

Q. It is quite a different thing altogether ?—A. Yes.

(*Luncheon adjournment.*)

Mr. REIMER : I want to come back to the area where this object is alleged to have been left, this area of suppuration ? From a practical point of view where would the suppuration go, or tend to go, following this operation ?—A. The tendency would be for it to go through the wound in the early stages, and later on, if there was still a sinus, I imagine there would still be a tendency for it to go through the wound.

Q. And the sinus would not have healed so long as that suppuration was present, or so long as a foreign body were present ?—A. That is correct.

Q. Supposing for argument's sake the external wound healed or closed up sufficiently to create a barrier, would the inflammation or pus have a tendency to go up or down, or where ?—A. I should think that probably by that time there would be a wall to the pus so that it could not spread. The tendency even then would be for it to point, as it were, to the skin surface at the site of the original wound.

Q. Professor Shellshear has said there are no fascial planes which connect from the thyroid to the tonsil, but the evidence has been given that where you have inflammation the fascial planes open up and the suggestion is that the foreign body could travel up there ?—A. I would not say the fascial planes open up, but while the inflammatory condition is acute and there has not been time to form a wall around the abscess, in its acute stage pus could spread between the muscles where the fascia covering each muscle come together, or possibly if it went through that fascia it might actually be in the muscle.

Q. In the early stages you say the pus could travel along the fascial planes while the inflammation was acute ?—A. Yes.

Q. How long would you say it would take in this particular case for the wall to be formed ?—A. In this particular patient and this particular case the inflammatory reaction was acute while the temperature was rising, but after a few days the temperature subsided, and that would indicate that the acute process had subsided, and that would indicate there was no pus in point of fact. The fact that the temperature was subsiding would indicate that the pus was subsiding and that would indicate in the very

In the Supreme Court of New South Wales.

Plaintiff's Evidence.

No. 35. William Keith Inglis, 4th January 1944, Examination, *continued.*

early stages that the wall had been formed before the spread could take place.

Q. Let us assume for a moment that you have an abscess condition which is developing into a chronic condition, such a condition as would be present if a similar object was inside the thyroid capsule. I want to know within what time, in general terms, you would say that reactionary wall or the protective tissue would be formed ?—A. It would begin in a few days, in a week or so it would be quite firm.

Q. Within a week it would be quite firm ?—A. I should think so.

Q. From and after that period what would you say about the opening up of fascial planes ?—A. It could not take place.

Q. Why ?—A. Because the inflammation had been circumscribed by the matting of all the other parts.

Q. What effect has that on fascial planes ?—A. They would be matted with them.

Q. And while that condition of affairs continues they cannot open up ?—A. That is so.

Q. You did mention that pus may travel during the acute stage a certain distance along some plane. What would you say as to the possibility of that foreign body travelling along ?—A. Quite impossible.

Q. The Plaintiff gave evidence that when she saw this body in the pan she picked it up and squeezed it, and she saw what she described as green pus ; what do you say as to that ?—A. Well, it is part of my duty—— (Objected to.) In studying material from the large intestines, as I am accustomed to do, I find great difficulty in identifying pus and distinguishing it from other material in that position ; without putting it under the microscope it would be a matter of great difficulty even for an expert to express a definite opinion. That apart, if pus had come from the region of the throat in a tube such as the one I saw, which was only intact for about three-quarters inch or perhaps an inch at one end—if pus were in that it would not remain there until that object had reached the lower part of the large intestine, because pus had no cohesion, it is not tissue like a piece of meat ; it is just a suspension of cells in fluid, and it has no cohesion as I have said, and if that tube containing some pus in the closed end were swallowed that swallowing would squeeze it out in the similar way to the squeezing of it with the fingers, if that had been done. Again, when that tube passes down the gullet, it does not just drop down, it is squeezed down all the way by muscular contraction, and I would expect then the pus to be removed from the lumen of that tube.

Q. Now, if it or anything else going from the area of the mouth down to the stomach, you mentioned a process of squeezing. Is it a question of being squeezed from one area to the other until it gets down ? —A. The object passes down by a process of muscular contractions, especially from the œsophagus but right throughout the bowel.

Q. It does not squeeze up to a certain point and then stop ?—A. No, all along. In fact, that squeezing is in play in the stomach and in the intestine throughout its whole length. Another factor comes in with the stomach and intestine when they are reached, because we have there the whole of the digestive juices, and these digestive juices would act on the pus to completely alter its character, it would no longer continue to be pus by the time it reached the large intestine, and one cannot imagine that any pus would actually remain in the tube and if it did remain in the tube the digestive juices would get in and dispose of it in like fashion.

Q. And what do you say to the suggestion that this lady saw green pus; is it possible?—A. Was the green pus supposed to be in the throat?

Q. In the tube that she picked out of the receptacle?—A. That to my mind, would be quite impossible, because it has been suggested that the green colour might come from bacteria which form a green colour, or might come from bile. The bile comes into the intestine high up—just near the stomach—and becomes mingled with all the other contents of the stomach, so that if the bile got into colour the pus the juices would get in as well, and it would be digested. The same applies to the green colour producing bacteria.

Q. Dr. Flynn has given evidence that he saw this patient in October 1937, and she was then suffering from angio neurotic œdema. Now pathologically, what does that disease mean?—A. Oedema, of which angio neurotic œdema is a variety, means fluid in the tissues, dropsy, in other words. You can divide it into two main classes, that is only one way of dividing it—inflammatory and non-inflammatory. Inflammatory œdema is responsible for the swelling that one sees in any inflammatory condition, the swelling is due to the fluid which passes out into the tissues, a good example is the swelling one sees in a carbuncle or a boil; that is largely due to the passing of fluid from the vessels into the tissues. Non-inflammatory œdema is of several kinds; for instance, if a patient has a failing heart, fluid accumulates from the legs. They become doughy, and if you press on the shinbones you leave a depression. That is due to fluid in the tissues. In some forms of kidney disease you get œdema; for instance, you might get it particularly in the eyelids or you may have it in other parts of the body.

Q. This angio neurotic œdema is of the non-inflammatory type?—A. It is a third variety of the non-inflammatory type.

Q. What do you say to the clinical condition and manifestation of angio neurotic œdema?—A. Angio neurotic œdema is a very extraordinary condition not properly understood. It comes on suddenly and disappears suddenly. It may come on in one part of the body, it may come on in different parts of the body; it may affect, for instance, the hand, or may affect the vision; it may affect the throat, it tends especially to affect young people, it may not come on until middle life, and, after existing for a year or two, it may completely disappear. It is found in association with nervous conditions, such as migraine, exophthalmic goitre, it is found in association with hysteria, it is sometimes hereditary, and it varies considerably in the degree of its clinical manifestations. Minor forms may link up with a condition known as urticaria, which it hives; more serious forms sometimes lead to a fatal result, particularly is it dangerous when the throat is affected. Osler, whom I wish to quote, freely mentions that sometimes the uvula may be as big as the thumb. It is extraordinary how in this condition symptoms which are alarming may disappear comparatively suddenly and within a few hours a patient may, instead of being troubled by almost complete obstruction of the passages, may return to a state where he or she can swallow solid foods and have a good appetite. That is it in general outline.

Q. On previous trials you have heard the evidence in its entirety. Are there any particular parts of the evidence which indicate to you that this patient was suffering from angio neurotic œdema after the operation? Were there certain things which came out which struck you?—A. The

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 35. William Keith Inglis, 4th January 1944, Examination, *continued.*

first thing that struck me as quite odd was the swelling in the hands. I could not link that up with infection in the neck, and then again it was stated that the body was swollen and that is a point which I could not understand as being associated with infection in the neck.

Q. You are referring there to the letter that the husband wrote to Dr. Bell on the 2nd May, 1938, in which he says the whole body was much swollen. That is almost immediately following the operation ?—A. That was the letter.

Q. You have certain references that you want to refer to in regard to this condition ?—A. I should like to.

Q. The first one I think is " Osler's Modern Medicine " ?—A. I would like to read that if I may. I may say that I am using this particular edition and not the 1928 edition, because the article that I am going to quote from is by Sir William Osler and though the revised form in the 1928 edition does not materially differ from the preceding one, the revision is by Mallick, where this is by Osler himself, and this is Osler's observation that I wish to refer to, because he is an authority on the subject. The page is 989 : " Angio neurotic œdema : or Quincke's disease : Definition— Localised swellings of the skin, and subcutaneous tissues of the face and limbs appearing spontaneously and lasting from a few hours to a day or two." On page 999, under the heading " Nervous influences "—this appears to be the most important factor. "In the patient, I saw with the disease, a young dentist who had recurring attacks in the eyelid and forehead, worry, overwork, or any depressing influence was liable to bring on attacks." Lower on the same page—" Emotional disturbances are very apt to bring on an attack, and some of the obstinate cases are in neurasthenic subjects and at least one-half of the cases in my own series belong to this type."

The WITNESS : The next page is 1000—" Many of the patients have had other nervous affections, migraine, neuralgia and exophthalmic goitre." The same page—" Heredity. This plays a very important role and cases in this category are of unusual severity." The next page is 1001—" The ordinary type of Quincke's œdema may occur in hysterical subjects, and many cases of the kind are reported, but the association is not so common as with neurasthenia." The next page is 1002—" There are cases which Dr. A will diagnose Quincke's œdema in this attack, and Dr. B simple urticaria, in the next outbreak, and both may be right." On the same page —" In the absence of fuller knowledge we are really in a quandary and have to be content with a clinical classification. An attempt to group them etiologically (that is from the point of view of causation) is very unsatisfactory, and as we know so little about the true causes and there are few departments of knowledge in which speculation is so easy and at the same time so useless." On page 1004—" Symptoms. There are three groups of cases, mild, moderate and severe. A young woman who has been overworked or has had worries awakens one morning with a sense of itching over the forehead, and on looking in the glass is surprised to find one eyelid swollen and the side of the face and forehead puffy. By noon the swelling has gone. The lip may be œdematous or there is a puffy swelling on the back of one hand or a local infiltration the size of a saucer on the skin of one leg. The attacks recur at intervals for five or six months or for a year or two, and then disappear."

I am leaving out a few lines. " In a second group of cases the manifestations are more severe and the disease lasts for a much longer period,

even for a lifetime. The swellings are more voluminous and troublesome by bulk alone. The hand may be like a boxing glove. The under-lip may be so swollen that it is difficult to feed the patient. Both eyes may be closed. The neck may be obliterated." On the next page, 1005—"In a third group of cases the localisation of the œdema in the throat and larynx threatens life with each attack, and there are now in the literature half a dozen or more fatal cases." On page 1007, speaking of the mucous membrane—"The swelling may be diffuse or very localised. I (that is, Osler) have seen the very tip of the tongue involved. Very serious are the attacks, in which the whole mouth with the sub-lingual tissues (that is, under the tongue) and subcutaneous structures of the neck is involved. The cavity of the mouth may be almost closed, and for some hours it may be impossible to take food or drink. The throat may be the seat of a local œdema confined to the uvula and the arches of the palate. The uvula may be as big as the thumb. The tonsils are rarely involved." Lower down on the same page—"Oedema of the larynx is a rare event. It does not often occur alone, but usually in association with swelling of the pharynx or with some external manifestation." On page 1008—"It is surprising with what rapidity recovery may take place, and within 24 hours after the most alarming symptoms a patient may ask for solid food and have a good appetite." On page 1009—"The attacks usually recur, but many patients after having the disease for eighteen months or two years get quite well."

Mr. REIMER: And I think, speaking of the effect on the eyes, and you remember the Plaintiff gave evidence that sometimes her eyes were two little slits—I think you want to refer to French's "Differential Diagnosis"?—(Objected to.)

Q. The Plaintiff on one occasion definitely gave that evidence? (Objected to.)—A. There is, in this book by French, an index of differential diagnoses of main symptoms, edited by Herbert French. The edition is —the date is 1912. I don't think it mentions the edition. The page is 458. There is an illustration here with the legend "Angio neurotic œdema of the eyelids simulating acute nephritis." That is a kidney disease. I may say that here the eyelids alone are affected, as is sometimes the case. Sometimes that may be associated with swelling elsewhere. (Shown to Jury.)

Q. You have told us that there would have been destruction of tissue?—A. Yes.

Q. Now it is alleged that this tube came through the tonsil. What would you say would happen to the structure of the tonsil itself and all the structures immediately beneath or lying under the tonsil, through which it would have to travel to get there?—A. That is an object like this in a suppurative lesion?

Q. Bearing in mind the evidence that Professor Shellshear gave of the various structures through which this had to travel, what would happen to those structures if this object attempted, as it is alleged, to get through the tonsil?—A. There would be gross destruction of them, and if in the event—and I don't think that could have happened—if that did happen the scar tissue that would be left behind would cause permanent deformity and destruction of function.

Q. And if that occurred would that be obvious at this stage?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 35. William Keith Inglis, 4th January 1944, Examination, *continued.*

Q. Would that be obvious only on a clinical examination or on observing the patient ?—A. It would be obvious on observing a patient, particularly as the object passed from the higher part of the neck to the tonsil region. It would cause permanent disability.

Q. What would be the evidence to be seen in the tonsil or to anybody who had a look at the tonsil ?—A. Scar tissue.

Q. There would be a definite scar there ?—A. Yes.

Q. And how far would that be likely to spread ?—A. A fair distance, because, as I have pointed out, the abscess—the changes are not limited to the wall of the abscess; they extend into the adjacent parts, and I would expect them to be present in the tonsil region just as I pointed out they would be present lower down in the neck.

Q. And they would be there through life ?—A. They would be through life.

His HONOR: So far as the eyes being like slits is concerned, the only passages I remember on which evidence was given are on pages 226 and 227, dealing with Mrs. Fisher's evidence.

Cross-examination.

Cross-examined.

Mr. SHAND: You know Professor Welch do you not ?—A. Yes, very well.

Q. And I suppose you would agree that he is a gentleman with a most distinguished career ?—A. Yes.

Q. Now my friend said something about you being here in the second trial and seeing him. You are, I take it, a member of the B.M.A. ?—A. Yes.

Q. And I think you have been here practically every day for this hearing ?—A. Quite a lot.

Q. Pretty well ?—A. Quite a lot.

Q. I take it that you regard it as very interesting—very interesting medically ?—A. Yes.

Q. Before we pass on I just want to understand what your suggestion is about angio neurotic œdema. You said that there were two things you were unable to follow, one was the swelling of the hands and the other was the swelling of the body, and then you went on to describe what angio neurotic œdema was. What is the significance of that ?—A. Because I think that my recollection is that it was suggested that the swelling in the neck was due to the inflammation. The swelling in the neck and the eyes and the hand, that all of the swelling was due to the inflammation related to the tube passing through the neck.

Q. Do you suggest that it was due to angio neurotic œdema ?—A. The swelling of the hands the neck and so on—yes.

Q. You do ?—A. Yes.

Q. Undoubtedly there had been some fairly marked inflammation in the neck at St. Luke's Hospital ?—A. Inflammation in the region of the wound ?

Q. Yes ?—A. Yes.

Q. Accompanied by high temperature ?—A. Yes.

Q. And a purulent discharge ?—A. Yes.

Q. I suppose you heard later on that Dr. O'Hanlon gave a history of tetany spasms ?—A. Yes, I think that is right, yes.

Q. Well do you need angio neurotic œdema to explain the swelling of the hand ?—A. I don't see the relation.

Q. Do you need the theory that she had angio neurotic œdema to explain the swelling of the hand ?—A. I thought you mentioned tetany ?

Q. No I left that for the moment ?—A. I am sorry.

Q. Do you think you need that to explain the swelling of the hand ? —A. I cannot explain it otherwise.

Q. What about tetany. Wouldn't that explain it ?—A. Not that I know of.

Q. Wouldn't it ?—A. No. (Objected to.)

Q. This is the hand at present ?—A. Yes.

Q. This is the same text book that you were using, Osler and McRae, third edition, page 763, volume 6. This is under the heading " Tetany." " The affected muscles may show signs of congestion and localised œdema of the hands and feet may be observed " ?—A. Yes.

Q. Well, that is all right, isn't it ?—A. It does not say what degree.

Q. It says " localised œdema of the hands and feet may be observed " ? —A. Well, I am prepared to admit that there may be some œdema but that does not alter the fact—it may be there in tetany but that does not alter the fact that the swelling of the hands and body that suggested to me the possibility of angio neurotic œdema.

Q. You said that you gave that explanation because you could find no other. I also refer you to Allbutt and Rolleston, volume 7, 1910 edition, page 594—" Oedema of the dorsum of the hands and feet is the most characteristic of the vaso motor and trophic disturbances in tetany and is due to the infiltration of the cellular tissue." " The most characteristic " ?—A. Yes.

Q. That might serve to explain the hands, might it not ?—A. I did not form the opinion on the hand only. That was the first thing that made me think of it. I formed the opinion on other evidence—eyes, throat and so on.

Q. I cannot put them all together ?—A. No.

Q. But that would be quite a satisfactory explanation of the hands ? —A. It would be an explanation, yes.

Q. Did you know that ?—A. I cannot say that I did.

Q. Do you know the trouble which arises from the thyroid gland and does follow thyro-toxicosis—a trouble called myxœdema ?—A. Yes.

Q. And that results in a swelling of the body ?—A. Yes.

Q. And of course that might include the hands too ?—A. Yes.

Q. Is that another possible explanation ?—A. Possible, I rather think it is different, as a matter of fact.

Q. Why ?—A. Because I think that the changes which take place in myxœdema are rather different from those which occur in the œdema which we have in mind.

Q. Well, what is the difference ?—A. The reason I suspect there is some difference is that a colleague of mine is looking out for material from patients who suffer from myxœdema—about the changes which occur in myxœdema.

Q. Well, what is the difference ?—A. I cannot be more precise than that.

Q. What is the difference between the symptoms of myxœdema and those which were present here ? Can you tell us ?—A. You mean from the point of view of swelling ?

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 35. William Keith Inglis, 4th January 1944, Cross-examination, *continued.*

Q. Yes ?—A. In regard to the hand only ?

Q. No, the whole body ?—A. Well, you would not have the changes in the throat and you would not have the changes in the jaw with regard to swallowing.

Q. But supposing as well as that you have inflammation that is causing the swelling of round about the jaw, accompanied by myxœdema ? —A. Yes.

Q. That is a bit harder to get over, isn't it ?—A. I think that in angio neurotic œdema the swelling comes and goes more than it would in myxœdema.

Q. You read out a passage in which it said it may last a few hours or even a day or so ?—A. Yes.

Q. Are you aware that this swelling persisted over a week—a number of weeks ?—(Objected to.)

Q. The swelling that had occurred when Dr. O'Hanlon saw the Plaintiff up in the country in 1938. Did you know that that swelling persisted for over a period of weeks ?—A. Well, that might have been consistent with angio neurotic œdema.

Q. Well, not what you read out, is it ?—A. I think so.

Q. Can you give us any authority for any case that lasted over weeks— a swelling in angio neurotic œdema ? (Objected to.)

Q. Can you give us any authority for the case where the swelling has lasted over a week or more ?—A. No, but I well believe it could.

Q. The very nature of it is that it comes and goes ?—A. Yes, but I think it might last a week.

Q. Supposing you got a case which lasted over a number of weeks ? —A. Yes.

Q. That would be more consistent, as far as the lasting of it is concerned, with myxœdema, than with angio neurotic œdema, would not it ?—A. I think it would be consistent with angio neurotic œdema.

Q. You know that with myxœdema the swelling lasts ?—A. Yes.

Q. And that with angio neurotic œdema the characteristic sign is that it comes and goes at some short interval ?—A. It may do so.

Q. When did you first develop this theory that this condition might be due to angio neurotic œdema ?—A. It did not come suddenly. I first got the idea of it after the first trial. The second trial—I am sorry. It was the first trial with which I was associated.

Q. You did not mention it at the last trial, did you ?—A. No—— (Objected to.)

The WITNESS : I am sorry. I did mention it. I forgot.

Mr. CASSIDY : Page 277.

Mr. SHAND : You mentioned it in the last trial as being a cause or a possible cause or part of her condition after the operation ?—A. I don't think I did that.

Mr. SHAND : So that this is the first trial at which you have mentioned it as being a possible cause of some part of her condition ?—A. That is so.

Q. At p. 276 you said last time in re-examination to Mr. Reimer— " I was asked about swelling by Mr. Hardwick. You have been told that this lady at one stage had an angio neurotic condition. That is an uncommon condition, but well recognised. Swellings are associated with

that condition, and they come spontaneously. They come remarkably quickly, and after lasting a varying time disappear with equal suddenness. That, of course, is quite apart from inflammation." That is all you said about it last time ?—A. Yes.

Q. And I put it to you fairly that you did not have in mind at that time that any part of her condition was due to angio neurotic œdema ?—A. I did.

Q. But you did not put it that way ?—A. That is true.

Q. I suppose you will agree with me that the doctor in attendance should have a better chance of diagnosing the case than yourself, for instance ?—A. I suppose, generally speaking, that is so.

Q. And I do not suppose you would suggest that opening the sinus with a probe would be any treatment for angio neurotic œdema ?—A. Was that done while the swelling of the angio neurotic œdema was present or not ?

Q. It was done when the Plaintiff went to the hospital—the sinus closed and it was opened under a local anæsthetic ?—A. Yes.

Q. That would not be any part of the treatment for angio neurotic œdema ?—A. What was the condition of the patient then ? Was she swollen or not swollen ?

Q. I will limit it to the assumption she was swollen. It would not be any part of the treatment for angio neurotic œdema ?—A. No.

Q. And even if she was not swollen ?—A. Not for angio neurotic œdema as such.

Q. Nor was the application of frequent foments ?—A. No.

Q. That is to reduce the inflammation, is it not ?—A. Yes. May I say that I think the inflammation was probably there as well around the sinus.

Q. Everybody agrees on that, but those are the two things that caused you fairly to link it with the swelling of the body and the hands ?—A. Those were the first things, taken in conjunction with the others later on.

Q. What were the others later on ?—A. The swelling in the throat, the swelling of the eyes and in the throat, and the swelling of the body. I can conceive of all that linking with angio neurotic œdema.

Q. It also connects up with the neck ?—A. I do not think so. I do not think that inflammation of the neck would extend as far as the body and the hands generally.

Q. The swelling of the neck links up with inflammation ?—A. Yes.

Q. You have spoken of this inflammation as being either acute or chronic ?—A. Yes.

Q. And you will agree that acute inflammation may in the course of time become chronic ?—A. Yes.

Q. And chronic inflammation may change into acute ?—A. I would hardly put it that way.

Q. Let me put it in perhaps simpler terms. Let us get away from this case and take foreign bodies generally ?—A. What sort of foreign bodies ?

Q. With foreign bodies that get into the human frame you find that at times you will get no trouble at all for a period and then you will get an awakening up of an infection ?—A. If it was a missile perhaps.

Q. Well, that might be taken ?—A. Yes, that might happen.

Q. And that means that as far as inflammation is concerned, the thing is left dormant for some time and then an infection occurs ?—A. That might happen.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 35. William Keith Inglis, 4th January 1944, Cross-examination, *continued.*

Q. It may remain quiescent for some time ?—A. An infection around a foreign body may light up later on, that is so.

Q. And if it can so occur with a foreign body, why not with a tube ?—A. I do not see that they are parallel at all.

Q. They are both foreign bodies ?—A. Yes, but there are foreign bodies associated with sepsis.

Q. Exactly, but that is what I am putting to you—that you can get a foreign body that is associated with sepsis and then that condition can become quiescent for a period ?—A. I do not think it can become quiescent.

Q. Take a foreign body apart from this case ?—A. What sort of foreign body ?

Q. You mentioned one yourself—a missile ?—A. That gets in and there is no suppuration.

Q. It may cause infection, which may die down, and then awaken again ?—A. Yes.

Q. If that is so with a bit of shrapnel—is that a suitable example to take ?—A. Yes.

Q. Why not with a bit of rubber ?—A. Are you getting away from the circumstances relating to this case altogether.

Q. I do not know ?—A. Because it will not work with this at all. With the foreign body in these circumstances, it will not apply.

Q. If with a piece of shrapnel, why not with a piece of rubber ?—A. I think if you take a piece of rubber, in certain circumstances it might.

Q. And of course there are strange things that happen in the human body ?—A. Yes, I can quite admit that.

Q. Unforeseeable things ?—A. Yes, I will go as far as that.

Q. And may I have your agreement on this, that where you get a foreign body in suppuration—I postulate that——?—A. Is this septic suppuration ?

Q. Yes ? That foreign body may travel in the suppuration ?—A. If the abscess extends, the foreign body may go with the extension, yes.

Q. What happens is that first you get an infected wound of some kind and then you get travelling suppuration ?—A. I would call it eating away.

Q. It can be both. Suppuration at times divides ?—A. Acute ?

Q. Yes, I will limit it to that for the moment ?—A. The other circumstances you have been giving me have been chronic, like a foreign body with its recrudescence.

Q. I am dealing with acute suppuration. You have already said that acute can become chronic ?—A. Yes.

Q. And chronic can become acute ?—A. No, I did not say that. It would be wrong to make that as a general statement, but you can have a condition which has been chronic where it would flare up, yes.

Q. When you get that you may get a division of the tissues ?—A. May I just get your premises clear before me first ? What are your premises in this particular question ?

Q. That the inflammation is acute ?—A. Acute septic inflammation, where ?

Q. Do not let us limit ourselves for the moment—any part of the body ?—A. May I choose my own part, if so, I would choose the wall of the large intestine.

Mr. CASSIDY : Choose the neck ?—A. All right, I will choose the neck.

Mr. SHAND : Do not take my friend's choice. I will accept yours. You will agree that I am treating you quite fairly ?—A. Yes.

Q. You may get two things with acute inflammation. You may get an eating through of the capsule, and when the capsule has been eaten through you may get a division of other fascia ?—A. An acute inflammation, yes, in the very early stages.

Q. And then of course if it dies down and flares up, you can get it at those stages when it becomes acute ?—A. I do not quite follow you.

Q. You can get that division of the fascia. I put it to you before and you have agreed that inflammation may lie quiescent and it may flare up again, become acute ?—A. Yes.

Q. And when it becomes acute, you can get this separation of the tissues of the fascia ?—A. Of course, there is nothing of that in this particular case.

Q. I am getting away from this case and taking it generally ?—A. These circumstances are quite different.

Q. We will see whether they are in a moment, but I am talking generally at the moment. That is possible ?—A. Yes.

Q. And you will agree that suppuration may spread upwards ?—A. No, it depends on the circumstances. I cannot make a general statement.

Q. No, it may ?—A. I would need to know the circumstances.

Q. It is possible—that is all I am putting to you ?—A. In what circumstances ?

Q. In different parts of the body, when you get suppuration, it may spread upwards, it does not always follow the laws of gravity ?—A. No, it does not always follow the laws of gravity.

Q. And of course the amount of destruction that you get from suppuration in the acute stages must vary with the course the suppuration takes in connection with those organs with which it comes in contact ?—A. I cannot quite understand your question.

Q. The amount of suppuration varies in the part of the body it takes place ?—A. Yes.

Q. And sometimes you will get very little destruction ?—A. Sometimes you might have little destruction.

Q. No one can foresee how much or how little destruction you might have ?—A. There would be varying amounts of destruction in different cases.

Q. For instance, I want to refer you to a passage you mentioned this morning from Boyd where it said that hæmorrhage or bleeding was not common because thrombosis goes ahead and closes the vessel ?—A. It does do that, yes, but at the same time it often breaks down.

Mr. SHAND : You will agree that these conditions, which are described in that passage, phlebitis of the lateral sinus following acute otitis media is a very rare condition ?—A. An ear, nose and throat surgeon would be able to give you a better opinion on that than I.

Q. Would you prefer not to express an opinion ?—A. Yes.

Q. Would you express an opinion that some of those conditions are uncommon ?—A. They are uncommon for a man in general practice, but for a pathologist in a big hospital—he would know them.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 35. William Keith Inglis, 4th January 1944, Cross-examination, *continued.*

Q. You are rarely brought into contact with those ?—A. Yes.

Q. Most of the conditions are fairly rare ?—A. They are important. They are not so terribly rare also. For instance, inflammation of the systemic veins is not by any means uncommon.

Q. You know quinsy ?—A. Yes, not particularly well.

Q. Quinsy occurs in close proximity to the external and internal common carotid arteries ?—A. I am not familiar with it, really.

Q. You know where it takes place ?—A. Roughly.

Q. Do you know enough to say that where it occurs is in close proximity to those arteries ?—A. It may be, I am not sure. I don't know how close it is.

Q. Also to the jugular veins ?—A. I think it would be fairly close.

Q. Have you ever heard of veins or arteries being injured by quinsy ?—A. Those cases have not come under my notice. An ear, nose and throat surgeon would be a better man to ask. That it does happen is quite common, as pointed out in these books and in my own experience.

Q. Do you do post mortems ?—A. Yes.

Q. You would know where the organs are ?—A. Yes.

Q. You would know whether you have come across cases where quinsy has been the cause of those blood vessels being affected ?—A. I cannot recall one.

Q. It would be no exaggeration to suggest that you have done 1,000 post mortems ?—A. In how long a period—I come in contact with a great number.

Q. Certainly hundreds ?—A. Yes.

Q. You cannot remember any such case ?—A. No.

Q. Does the same apply to the retropharyngeal abscess ?—A. I cannot recollect.

Q. What about Quincke's angina ?—A. They have not come my way.

Q. What about cellulitis of the neck ?—A. I cannot recollect cases. A few weeks ago there was a case of hæmorrhage from an artery in the neck but it had been damaged by X-ray. It is difficult to think of cases at this instant.

Q. If you can think of any then you can come back and tell us ?—A. Yes.

Q. I also refer to the axillary abscess ?—A. Yes.

Q. That is the armpit ?—A. Yes.

Q. Near the thoracic aorta ?—A. A fair distance away.

Q. They are the axillary vein and artery ?—A. Yes. I can make this statement—although hæmorrhage from an artery would not be so likely as from veins because of the thicker walls, it does occasionally occur. I cannot recollect an exact example which would fit into this particular case. The one I mentioned before would not be strictly comparable because it was caused by X-ray. Cases which would compare with the vein as against the artery I can recollect in plenty, but not in this particular situation.

Q. But they are rare—not that they do not occur ?—A. They are not common.

Q. Another situation is Osler's empyema ?—A. Yes, pus in the pleural cavity.

Q. Lung abscesses would be close to the thoracic aorta ?—A. You could get them in the lung, you would be very likely to get them in the lung.

Q. I suggest it is unusual that the disease does affect the blood vessel ?—A. No, now that you touch on the lung, although it is not mentioned in Boyd, it is mentioned in the account in Muir that you do meet with thrombosis of the veins in the lung in suppurative conditions, and they go on to abscesses in the brain.

Q. Sometimes it means interference with the small blood vessels ?—A. Yes, but the ones we are referring to there would be there.

Q. Take the peritoneal abscess and sub-phrenic abscess ?—A. Yes, sub-phrenic abscesses would not be specially near blood vessels.

Q. What about the abdominal aorta ?—A. I don't think it would be particularly common. The sub-phrenic abscess would vary in position.

Q. Do you know the ascending appendicular abscess ?—A. I don't know that I know it under that name.

Q. There is an abscess of the appendix known under that name and known because of its tendency to go upwards ?—A. I don't know it under that name.

Q. It is obvious that the appendicular abscesses are close to veins and arteries ?—A. Yes.

Q. The external iliac ?—A. Not so close, not right up against them, in the neighbourhood. It would not be comparable with a situation in the neck.

Q. What about the pelvic abscess—close to blood vessel ?—A. I suggest they may be but it is a very general term. They could be close to vessels.

Q. What about the inguinal abscess in the groin ?—A. They could be close to vessels. You can have those abscesses close to things and not do those things but when they occur only near to vessels they may do those things. In certain circumstances they do.

Q. May and do at times ?—A. Yes.

Q. I will refer you to McCallum, at page 186 : " Many infections lead to inflammatory reaction without necessarily resulting in any great destruction of tissue . . . appears to depend upon the extent of the injury." That is at the bottom of the left-hand page. Would you agree with that ?—A. I suppose in general one could agree with that—in general.

Q. The whole position is that it is impossible to say exactly what is going to occur when you get suppuration ?—A. He does not say that.

Q. I am putting it to you ?—A. I think you can tell what is going to happen when you get suppuration.

Q. You cannot tell where it will go ?—A. No, but you can tell what will happen when it is chronic.

Q. You cannot state which direction it is going to go when it is acute ?—A. You would need to know the anatomical situation.

Q. But you cannot be certain of which way suppuration is going to point ?—A. In the neck, for instance, the structures are more compact in the upper part and open in the lower part. That is why one would expect it to go down rather than up.

Q. We have been told by Dr. Marsh that suppuration in the neck may travel anywhere ?—A. I would be surprised to see it go upwards, but that is as far as I would go.

Q. Would you agree that in many cases before you can thoroughly rely on the blood count you need a differential count ?—A. A differential count is part of the blood count.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 35. William Keith Inglis, 4th January 1944, Cross-examination, *continued.*

Q. There is no differential count in what was given to you ?—A. A differential count must have been done for that report to be there. Could I look at it again ? It says : " The leucocytes show no significant pathological change." The inference I draw from that is that a count has been done—that is what is implied.

Q. I am suggesting that it was not done in this case ?—A. I see.

Q. It is difficult to judge from merely the number of leucocytes to judge the condition of the person ?—A. You can draw some inference from it.

Q. But it may be misleading ?—A. No, no. If there is a differential count then that conveys definite information.

Q. Without that it may be misleading ?—A. No, without the differential count it may be very helpful. When our students are examining their blood films we teach them to look, with the low power, without doing any differential count, and they can form helpful opinions in that way.

Q. It may be misleading if you have not got a differential count ? —A. It may in certain circumstances.

Q. Boyd, at page 822 : " As a result of a heavy infection such as pneumonia the leucocytes may increase from 6,000 to 60,000 or more owing to increased activity on the part of the bone marrow. In infections of the sub-acute and chronic type there may be no increase in the total leucocyte count but the reaction of the marrow to the infection is indicated by a relative increase in the young and immature forms of poly-morpho-neuclear leucocytes." Are you in agreement with that ?—A. I don't follow that.

Q. " In profoundly toxic conditions of the pneumonia type . . . count may remain normal." Look at that book, please ?—A. Yes, I am in general agreement with that.

Mr. SHAND : Would you agree that that would indicate unless you have a differential count, you may be misled ?—A. I suppose you may be, but you could get definite information without doing the differential count. That paragraph really points out in leucocytosis some of the cells are rushed into the blood stream fairly early and are not as polymorphosed as they would be ordinarily.

Q. When they are immaturely neuclearised ?—A. No, so sub-divided, and they rush into the stream prematurely. That is all that paragraph meant. That did not help you.

Q. You were asked by Mr. Reimer a question dealing with you describing the effect of the tube on the swelling of the neck and you said you preferred not to answer it ?—A. What was that ?

Q. In connection with the trousseau test ?—A. I do not know the trousseau test.

Q. I want to refer you to your evidence at the second trial, page 510. You said this : " If one postulates the possibility of a person surviving, notwithstanding the destruction of the structures by travelling up through the neck, I think the ordinary function would be impossible. She would not be able to turn her head to the full range, and other structures in the neck from being pressed on would have their functions interfered with. The blood would not be able to flow through the blood vessels in the same way because of contraction, and the fibrous tissues would irritate the nerves so that their function would be interfered with " ?—A. Yes.

Q. You would still agree with that ?—A. It is absolutely a general statement, it had not any special significance.

Q. You still agree with it as a general statement ?—A. I would think so.

Q. You were also asked before in the same trial : " You would agree would you not, that the fascial planes have a consistency something such as paper ? " ?—A. Something of that sort ; it is the covering of the muscles, and those structures in the neck. That is what you mean ?

Q. Yes, covering the muscles and organs ?—A. Yes.

Q. I think you followed Professor Welch at the University ?—A. Yes.

His HONOR : Succeeded him ?—A. Yes.

Mr. SHAND : He actually picked you as a member of his staff ? —A. In the first instance, yes, and I was appointed to succeed him.

Q. I refer you to an answer given at the last trial, at page 276, line 22. You were asked in cross-examination this : " I was wondering whether as a pathologist you agree that many abscesses which form in any parts of the body are close to big arteries and veins," and you said " I suppose there are." You are in agreement with that still ?—A. Yes.

Q. And you were then asked " And it is not common practice that those arteries and veins are never perforated ? " and your answer was " It is uncommon for artery to be perforated."

His HONOR : I think that should be in the plural—" arteries."

The WITNESS : I am not quite clear on that question.

Mr. SHAND : The answer is " It is uncommon for arteries to be perforated " ?—A. I would think that is generally true. It is uncommon. But it has occurred. It is uncommon, in conditions of this kind.

Q. And this further passage I think you have already expressed in different words. At the second trial, page 509, "It is possible that in the inflammatory reaction there may be a stage where there is considerable damage which may be restored, but once there is complete destruction there can be no restoration " ?—A. I think that is correct.

Q. You were asked whether the blood count was consistent with the Plaintiff's account of the happening. Certain facts were given to you ? —A. Yes.

Q. One of the matters that was given to you was that pus was still present at the time when the blood count was done ?—A. Yes.

Q. Or was alleged to be ?—A. Yes.

Q. If pus was not present, it would have a considerable bearing on your answer ?—A. That would affect the answer.

Q. And you do not have to scrape pus from the tongue ?—A. No. You might have to.

Q. But it would not be likely ?—A. I suppose not.

Q. If it was dried mucous you might have to ?—A. There would not be any real difference.

Q. If it was an unhealthy tongue ?—A. Yes.

Q. The fact that it was pus is the Plaintiff's own description ?—A. Yes. If there had been suppuration the suppuration might for all practical purposes stop, and yet the blood picture still remains as it were, a short period before the blood picture settled back to normal. Generally speaking

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 35. William Keith Inglis, 4th January 1944, Re-examination.

they would go hand in hand, as the suppuration subsided the blood picture would change.

Q. In some cases there might be an interval or drag between ?—A. Yes, there might be.

Re-examined.

Mr. REIMER : Assume there was no pus in the woman's mouth at the relevant time ; if the woman had no suppuration and was on a full diet, there would be a normal blood count ?—A. Yes.

Q. And that is a normal blood count ?—A. That is so.

Q. You were asked in regard to certain foreign bodies, septic and non-septic. There was the question of shrapnel and pieces of material like that referred to ?—A. Yes.

Q. What happens when you have a non-septic foreign body in the tissues ?—A. It is surrounded by fibrous tissue, and immobilised there.

Q. It is encapsulated ?—A. Yes.

Q. And becomes anchored ?—A. Yes.

Q. It has been suggested to you that that might under certain conditions at some later stage flare up ?—A. Only if there was infection there in the first instance.

Q. It was put to you that it might flare up ?—A. I take it for granted if there was an infection there in the first place.

Mr. SHAND : And I meant it in that way, too.

Mr. REIMER : It if was a non-septic body, the infection would have to be introduced from some other source ?—A. Yes.

Mr. SHAND : My question was based on the supposition there was infection in the first instance.

Mr. REIMER : If you got infection in the first place do you get a complete healing while there is any infection left, I mean, a complete cessation ?—A. You would not expect there to be complete cessation, but sometimes you could have a few bacteria, which would light up later on.

Q. But you get a complete and final cessation ?—A. I would not expect it if there was infection with that foreign body.

Q. Whilst you have infection there, may you get a subsidence for a while under certain conditions ?—A. If there was a foreign body with infection, I would expect the infection to go on to suppuration.

Q. Have you ever known of a case in which it has not gone on to suppuration ?—A. No.

Q. Mr. Shand asked you certain questions about a piece of shrapnel, whether you get a period of quiescence, and it flares up ?—A. Yes.

Q. Although you have never known of such cases, supposing one assumes that, what would be the condition surrounding the foreign body during the period of quiescence ?—A. There would be a lot of fibrous tissue there.

Q. Encapsulated in the same way as a non-septic body ?—A. Yes.

Q. Supposing that flares up, could you get an opening up of any planes ?—A. I would say, No.

Q. You would not get any opening of planes at a later stage ?—A. No.

Q. You would only possibly get it in the first day or two of acute process ?—A. Yes.

Q. Immediately after infection started ?—A. The first few days—not a day or two.

Q. Not at any later stage ?—A. That is correct.

Q. Mr. Shand asked you about various abscesses in the back and lungs and various other parts of the human anatomy. You mentioned you have done a considerable number of post mortems ?—A. Yes.

Q. Are those in connection with your work at the University ?—A. Yes.

Q. They are not connected with inquests ?—A. No.

His HONOR: Nothing to do with the Coroner's Court ?—A. No.

Mr. REIMER: And you perform post mortems for the purpose of ascertaining why a particular person has died, and the pathological changes that have taken place ?—A. Yes.

Q. When you were asked about the different kinds of abscesses, is it important to know where the abscess is, the particular type of abscess and the locality affected ?—A. Yes.

Q. And do different considerations arise in certain areas ?—A. Yes, very different. I could cite them. For instance, I have given one, a cold abscess which is tuberculous.

Q. In regard to a septic abscess, has one to bear in mind the areas involved ?—A. Yes, it would make a big difference which particular part of the body was infected.

Q. Can one take an abscess from one part of the body as analogous illustration for another part of the body ?—A. No.

Q. Is there any other part of the body you can take as an analogy to compare with the structures of the neck, at or near the thyroid area ?—A. The neck is unique in several respects. The way in which the major vessels are associated in such a small area, closely bound up, and the way in which the structures of the neck, particularly in this particular part, are so compactly arranged and the fact that the windpipe which goes down to the lungs is so closely associated with the blood vessels and other structures in this situation.

Q. An abscess of this nature would inevitably cause the patient's death ?—A. Yes, inevitably cause death.

Q. You were asked certain questions by Mr. Shand in relation to a swelling this lady was supposed to have had when Dr. O'Hanlon saw her after returning to Quirindi following up the operation. At page 869 of Dr. O'Hanlon's evidence this is what he said—"Did you examine her that day. A. I did." That was about the 20th April, 1938; the operation was on the 15th March, 1938, she was discharged from hospital on the 14th April, and immediately goes back to Quirindi, and Dr. O'Hanlon was called in approximately a fortnight later, on the 30th April, and it was the swelling that he then observed that Mr. Shand referred to when he cross-examined you about myxœdema and angio neurotic œdema. "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 had healed, except for a small sinus, in the centre of the scar, which was discharging freely a sero-purulent matter and round about the sinus there was definite inflammatory swelling. You said there was a puffing round the face ? A. Her face was puffy. Q. Was that of an inflammatory nature ? A. No."

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 35. William Keith Inglis, 4th January 1944, Re-examination, *continued.*

In effect he is drawing a distinction there between the sinus and immediately around the sinus there was inflammatory swelling and inflammation. Apart from that her face and shoulders and the other parts he mentions there were swollen and puffy. He says that that was a non-inflammatory nature. Would that have anything to do with the sinus and inflammation ?—A. In my opinion, No.

Q. Some entirely different origin ?—A. That is what I suggest.

Q. You heard Sister Sly give evidence that Mrs. Hocking had a puffy face and puffiness in her hands ?—A. Yes.

Q. Would that have anything to do with the alleged inflammatory condition of the neck ?—A. No.

Q. Nor as stated by the husband, in the letter of the 2nd May, that the whole of her body was very swollen ?—A. No. It could not have anything to do with it, in my opinion. I feel quite confident it could not.

Q. You were asked about the myxœdema ; is the swelling of myxœdema comparative with angio neurotic œdema ?—A. I cannot speak there from very great experience, but, on general grounds, I think, no.

Q. A person who suffers from myxœdema is suffering from a lack of a thyroid extract ?—A. Yes.

Q. And that has an effect on the general health of the whole of the body ?—A. Yes.

Q. What is that condition ?—A. It is a general defect due to a deficiency of thyroid secretion.

Q. Would it be a continuous swelling ?—A. Yes. I cannot speak from personal experience.

Q. It is not a condition that goes up and down like angio neurotic condition ?—A. No.

Q. You were asked certain questions dealing with tetany, but I think you do not claim to have any clinical experience of that and do not feel qualified to deal with it as an expert ?—A. That is correct.

Q. You were also asked as to your coming forward and getting in contact with me towards the end of the second trial ?—A. Yes.

Q. You heard the evidence and at a certain stage you came to me and contacted me in my chambers ?—A. Yes.

Q. Were you in any sense influenced in doing that by being a member of the B.M.A. ?—A. It did not come into my head. I do not ever think of being a member of the B.M.A. One does not think of it.

Q. Why did you get in touch with me ?—A. Because you had spoken to me on an earlier occasion and at that particular time I thought I would like to hear the Plaintiff's case, and after I had done so I formed the opinion it was impossible and I asked to be allowed to give evidence.

Mr. SHAND : (Referring to Muir, page 749) : " In many cases a cerebral abscess "—that is an abscess—— ?—A. An abscess in the brain.

Q. It is a form of streptococcal infection ?—A. Yes, it may be a pyogenic abscess.

Q. " In many cases a cerebral abscess may exist for a considerable time in an apparently latent condition but more acute symptoms may develop owing to the spread of the suppuration and sometimes as a result of an acute inflammatory œdema and swelling of the parts around." Do you agree with that ?—A. Yes.

Mr. REIMER : Has that quotation anything to do with an actual streptococcal or staphylococcal infection ?—A. No, it is not mentioned. It is a pyogenic abscess which is in mind in that instance.

Mr. SHAND : That is what this would be ?—A. It does not mention any period. Could I have the book ?

Q. Yes. (Handed to witness) ?—A. I think it is all right.

Mr. REIMER : Is that a streptococcal or staphylococcal infection ? —A. It does not say so. It is pyogenic.

Q. What does pyogenic mean ?—A. This is a pyogenic abscess.

Q. Could it last for any length of time ?—A. No, it says vaguely for some length of time. It does not say how long. It would not be a year or anything of that order. It is not specified as to length.

Q. You do find abscesses associated with a lot of other conditions malignant that develop into abscesses ?—A. Yes, you may find a formation of pus in a mass of cancer. The cells are attracted by dead matter.

Q. It may also be infected by pyogenic material ?—A. It may subsequently.

Q. And then you get—— ?—A. Then you get a second disease superadded on the first.

(Witness retired.)

No. 36.

EVIDENCE of Dr. Stuart Arthur Smith.

Sworn, examined, deposed :

To Mr. CASSIDY : I am a legally qualified medical practitioner, carrying on the practice of my profession in Macquarie Street, Sydney. I am a graduate of Sydney University. I was Lecturer and Demonstrator in Anatomy at Sydney University for 11 years. I was Acting Professor of Anatomy 1913 and 1914. I was Lecturer in Neurology in the Department of Anatomy for some time, an honorary position, Royal Prince Alfred Hospital, and Lecturer in Clinical Medicine at that hospital, and Acting Professor of Medicine in Sydney University in 1926, that is to say I had been Professor of Anatomy and Professor of Medicine, Acting. I am Lecturer at present in Post Graduate Medicine, and Director of the Post Graduate Medical Work of N.S.W. I am consulting physician to a number of hospitals, and foundation member of the Royal Australasian College of Physicians. I have also had an extensive practice in Sydney over many years, running up to nearly 40 years. In my experience my work, my lectureships and professorships, have taken me over a very wide scope of medicine and other classes of work. I have not given evidence before in these cases.

To His HONOR : I have not given evidence in this case on the various occasions.

To Mr. CASSIDY : I have been present in court at times during the present hearing. I have read some of the evidence.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 4th January 1944, Examination, *continued.*

Q. Assume that the Plaintiff has sworn that that tube, of which Exhibit P is a fair representation, was left in the wound on the 17th March 1938, until the 2nd October 1939, travelled up the neck and erupted through the tonsil, what do you say as to the possibility of such a happening ?—A. It is impossible.

Q. It is a matter of very great importance that it should be understood ?—A. I really propose to take on the anatomical side the evidence which I heard given by Professor Shellshear and more or less collect it together and take the essentials out of it. This is purely on the anatomical ground. We are concerned not with the back of the neck, which is the big muscles of the neck and the spinal column and the backbone, but we are concerned with the front portion of the neck extending from this position where the thyroid body is situated, up the neck and then secondly into the mouth. This portion of the neck is a very compact structure. There are no spaces in it. All the important organs are held closely together.

There is just sufficient looseness to enable the various movements of the head and the neck to be made and to enable the gullet to perform its function in swallowing. These necessitate a certain amount of looseness, but there is only just so much looseness as is necessary for those various functions. That looseness is brought about by the presence of some tissues, areolar tissues as we call them, which lie in between the muscles and between the organs and the muscles. The muscles themselves are always covered by fibrous sheets such as fascia. These fibrous sheets vary a good deal in their density and strength. When you say that the fascia of the muscle is like a piece of paper it is quite correct, but there are various thicknesses of paper.

In certain positions in the neck the fascia is especially thick. Everything in nature has a function. The thickening of this fascia is always for a definite purpose.

Now, when we come to turn to the question of the passage of something from down in the region of the thyroid up to burst into the mouth through the tonsil, there are two stages in that journey. One is the stage from the original situation near the thyroid within the structures of the neck until it might reach a point which was still within the structures of the neck, opposite to the position of the tonsil. The second part of the journey is the passage of that body within the structures of the neck to pierce into the cavity of the mouth. I would like to keep those two stages more or less separate in our mind for the moment.

Now the first part of the journey : of course, I am not going to deal with the foreign body now, but only with the structures in the neck. We will leave the other questions until later In this part of the neck there are no spaces, but there are compartments and there are three compartments that we are interested in. There is firstly the compartment which I indicate by my hand now. It stretches from one side to the other. I hope to show how it is fairly closely divided, fairly strictly divided in the centre. This is the so-called visceral department because in it are located a number of extremely important organs of viscera. There is the gullet and the windpipe, there is the thyroid gland and there are all the arteries and nerves associated with those structures, and there are the lymphatic glands. It lies within this compartment (indicating). That

compartment is open at the bottom. It is closed at the top and to a certain extent on each side, but I will explain that later, but it is open at the bottom.

Now for the second compartment which I am going to talk of is this one here. That compartment stretches away back here to the angle of the jaw (indicating). It is entirely closed.

The third compartment is known as the vascular department which is a structure which runs up on the outer side of the first compartment and then rather to the back of the second one. It is known as the vascular compartment because it contains the carotid artery, the jugular vein, the vagus nerve and a number of important lymphatics. It is a compartment in the sense that the structures are held together by a strong fibrous network and it forms this long area in which these are held together, and which has considerable strength.

Now, in this extremely hypothetical journey we have to consider what difficulties would meet an object if it was going to get out of this compartment which has got no opening except downwards and then get up into this compartment which has no opening at all. That really is the problem of the first stage of the journey. Now we look at this visceral compartment. That is our first compartment and the one which contains the gullet and the windpipe and the thyroid gland.

Q. Its top limit you indicate as——?—A. I was going to define the limits. The top limit is at the hyoid bone which Professor Shellshear showed you. If you perform the act of swallowing you can feel that bone just at this angle in the neck (indicating). That is the upper limit of it. The front wall of it is formed by a number of muscles which you have heard which are the muscles which were mentioned in the description of this thyroidectomy. There are these strap-like muscles which are covered by the fibrous sheets we call the fascia. They are not of these very strong muscles or is the fascia a very strong one. I was hopeful to avoid technical terms, but I observed that it is impossible to avoid them absolutely. (Objected to.)

This is the layer which has been referred to as the pre-tracheal layer. If you trace it down it is attached to the bone at the top of the chest. Let us take the inner side first. Of course it is one triangle, but in the middle line behind this fascia we have the gullet and the windpipe. They are closely packed together, held together. You feel them immediately under the skin and at the back they lie upon a very dense sheet, a fibrous sheet, which has been variously referred to, which lies upon the very powerful muscles of the back of the neck, a very strong barrier at that point. That is the central portion. Strictly speaking, theoretically, this side of the compartment is in continuity with that, but there is this big obstruction of the gullet and the windpipe.

On the outer side we have that compartment which contains the big blood vessels, the vagus nerve which is the main nerve of the heart and the lymphatic glands.

(At 4.5 p.m. the hearing was adjourned to 10 a.m. on Wednesday, 5th January, 1944.)

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Examination, *continued.*

Twenty-third day—Wednesday, 5th January, 1944.

Dr. STUART ARTHUR SMITH.

Further examined.

Mr. CASSIDY: You were dealing with the first compartment, as you called it. You referred to a kind of triangle with the top of it up here. Go on from there?—A. This compartment which contains the thyroid gland and the gullet and the windpipe extends upwards on front of the hyoid bone and down to the opening into the thorax. The back wall of it is formed by this strong fibrous sheet which is attached to the muscles on the backbone.

Looking at it from side to side I have here a diagram. I did not propose to use very many diagrams but this is really one which Professor Shellshear has referred to (Cunningham, page 1389, 4th Ed. revised). This represents a section cut straight through the neck. There is the thyroid gland on each side and there the windpipe and there the gullet. There is the layer I referred to which forms the back of this compartment. This is the backbone and these are the muscles attached to it.

Q. That consists of what?—A. Made of a very dense fibrous sheet lying on those muscles.

Q. And about where on your own neck?—A. About there (indicating).

In red has been drawn this pre-tracheal fascia. It is wrapped around the thyroid gland upon each side. You see the communication between the two sides. It is very slight because we have the windpipe here and the gullet there. In the front here (indicating) there is very little between that and the skin. This is a closed compartment. It splits here for those strap-like muscles which the surgeons referred to, and when the surgeon operates he makes an incision into the capsule of the thyroid gland in that direction (indicating) pulling the muscles aside and putting an incision in that direction. That shows this compartment viewed from side to side.

Now we look at the upper part of it, I am still on the first compartment. When it reaches the hyoid bone here it is shut right off from this which I have referred to as the second compartment and it runs up to the base of the skull, but down below there is an opening in this compartment (indicating). If you take an envelope you could represent that compartment in this way (indicating) with the thyroid gland situated in the region where I put my fingers. This represents one half. It is closed here. It is not absolutely closed upon the inner margin. There is a very small, a narrow connection between one side and the other. Below here it is widely open. It runs down into the upper part of the thoracic cavity. The front layer is attached to this bone, the sternum, and the back layer runs down on the backbone so there is a wide opening from this compartment down into the cavity of the chest. Now look at the outer side of it. This is the situation of the carotid artery and the jugular vein. This is closed off from there, too, so you cannot in the undisturbed neck get out from this compartment into that without breaking something. Those are the outstanding facts in regard to the arrangement of the muscles and the fasciæ in this compartment.

Q. When you spoke of that opening down you called it the thoracic area or something like that. Is that synonymous with what the jury had heard a lot of, the mediastinum?—A. Yes, the name given to the space in the thorax.

The second compartment is this compartment (indicating). It is a closed compartment. It is occupied very largely by a very complicated set of muscles which have as their function the movement of the tongue and the jaw. It is a complicated set. They are densely packed together and there are three layers of them. This space is shut off from the first compartment. I have here at page 459 same edition a section showing these muscles. These are the muscles and I will not worry you with their names because Professor Shellshear has given them. This is the front of the neck and there is the Adam's apple. There are muscles coming up from below, strap-like muscles, and here is the hyoid bone. This is the compartment we are speaking of. The front part of it is occupied by three layers of muscles. They are very dense. They are the muscles which move the tongue. In the back part of that you see there is a muscle there (indicating). As a matter of fact it is very dark red but it looks black in this light. That is the superior constrictor muscle against which the tonsil lies and it is this part of the triangle that we are interested in in this problem. This compartment is shut off from the others. There are three layers of muscles and they are very powerful muscles.

To JURY: The tonsil is in there lying against that muscle.

Mr. SHAND: That is the other side of it?—A. Yes.

Q. Which side?—A. The inside. We are looking at it from this direction.

To Mr. CASSIDY: That is the nearest muscle to the tonsil but I will come back to it shortly.

To Mr. SHAND: These muscles are all on the outside, including the superior constrictor.

To Mr. CASSIDY: The third compartment which runs up along the outer side of this first compartment. It contains the main artery of the head and neck and the main veins and the main nerve of the heart and the lymphatic glands. It is a firmer compartment in its boundaries than the first one but less firm than the second one, but still it is a firm compartment with a lot of fibrous tissue binding together these very important structures. When you trace that compartment upwards you come to a point here which lies behind that area. This is my last diagram which I think you have seen before (page 1148). This represents the section which has been cut through there so it goes right through the tonsil. It leaves the lower jaw with the tongue attached to it.

This is the vascular compartment, our third compartment. This is the upper part of it here (indicating). There are two arteries. The carotid artery is divided at this level. There is one going to the brain and this one going to the face and the superficial structures. This is the jugular vein and here are some nerves, one of which is the vagus nerve. It is surrounded by muscles you saw in the other diagram. Those big muscles are in the front portion and we are not concerned with them. We are only concerned with the back part of that space. In considering the possibility

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Examination, *continued.*

of the movement in this of any body from the thyroid up ultimately to get through the tonsil, there are two stages. It has firstly travelled within the neck, and secondly it has escaped from the neck. The only possible area by which any body could escape from the neck into the tonsil is this area here. Let us consider what lies between here, between these blood vessels and the tonsil here. (Exhibit P now referred to.) In the second part of the travel this body would have to go out in that direction. It would have to pierce this dense fascial sheet which lies over that constrictor muscle. It would then reach the capsule of the tonsil. It would have to make its way through a complicated arrangement of veins and blood vessels and lymphatics before it finally reached the substance of the tonsil to find its way out. It would have to take that course (indicating).

Q. It would be what angle, qua the picture ?—A. It would be better to leave it as it is because there are two planes concerned here.

Those are the important anatomical considerations with which we are concerned. (Referring to diagram): I have measured it and it is life size, including the tonsil. I think those are the reasonably essential anatomical considerations here.

Q. Having outlined those three compartments will you go back to the original position. You say of course the tube would never move from the thyroid capsule ?—A. Yes.

Q. And if there was movement as suggested here, tell me shortly what it has to do to get to that position ?—A. It has to pierce these dense fascial sheets. It would have to pierce a number of muscles and it has to travel in close proximity to very large and important blood vessels.

There was a suggestion in Dr. Thompson's evidence that it came up by this vascular sheath. That is to say, it made its way up with the artery and the vein and the nerve. If it kept within the whole way it would come at the back of the tonsil. It would never get near the tonsil.

Q. He said there was pressure against the left carotid artery ?— A. Yes, and from there I presume he postulates this tube travelled up in that direction (indicating).

Q. And if that happened, what would you say ?—A. It would come up to a position behind this particular position in the tonsil here, it would have to (indicated to Jury).

Having got out of the first compartment and into the third, if it kept in the third it would come up to this region half-way between the angle of the jaw and the tip of the bone and it would carry it behind the tonsil, so it would have to change direction again and come forward to this position, to get to the tonsil, and that is the change of direction I showed when I put this exhibit on the diagram. It would have to get from the first to the third and from the third into the second compartment before it reached the place which is the only place whence you could—well, it is very difficult to discuss something which you think is an impossibility—but it would have to get to that place before you could even consider getting it through the tonsil.

I agree with Professor Shellshear that seeing these things in the human body is very valuable.

Q. You say you so far have considered the position on the purely anatomical basis. The second suggestion made here is, with suppuration existing over a long time, suppuration might commence and clear a path and therefore ensure the travel of this tube up to the tonsil. What do you

say as to that ?—A. Suppuration would not clear a path. It would put even more barriers in the road to the travel of pus along this pathway.

Q. And as to the possibility or otherwise of a tube of that nature travelling with suppuration, what would you say ?—A. Oh, no, a tube could travel of itself. If it were contained in a bag of pus it would drop to the bottom and that bag of pus, unless it got caught, I mean if it were sideways on one of these things might catch in one part of the capsule and the other end might catch in the other, but apart from being caught it would fall to the bottom of the cavity.

There are two aspects to this question of pus. If the infection was a very severe and acute one and the natural resisting processes the barriers were not laid down as Professor Inglis described, then the pus would be relatively free. After an operation of this kind with pus developing straight away it would be contained within the capsule and the most obvious thing would be that it would find its way out from the opening the surgeon had made because it follows the line of least resistance. That is fundamental. If you get a juicy orange and make a cut in the peel the juice will come out of the incision you have made in the peel, and that is really the position here. The thyroid capsule develops pus in it and it will find its way out through the opening that the surgeon has made. If you could for one moment imagine that it did not find its way out through that hole or found its way into this first compartment, it would follow the line of least resistance and it would go downwards. It would go downwards into the mediastinum. It is a well recognised fact in regard to pus present in this compartment. It could not go anywhere else because the position of least resistance is this opening downwards.

We know in this case when Plaintiff left hospital on the 14th April the sinus was still open and still discharging. We know further that on the 30th April it was still open. We know further that on the 2nd May the husband had written saying that the wound had not yet healed and that knots were coming out. On those facts that is from their own letter as late as the 2nd May, from those facts if there was suppuration in the capsule, there would be an opening ready for it to come out, would there not ?—A. Yes.

Q. And that, of course, would be the line of least resistance, would it not, because that opening as we know is at the bottom of the capsule ?—A. Yes.

Q. We know again that the wound was opened by Dr. O'Hanlon on the 7th May, that is within five days of that letter being written by the husband. We know that the wound finally healed at the end of June or very early July. In those circumstances with the wound finally healed, in your opinion, could there have been a foreign body there infecting and suppurating a large area of pus ?—A. No.

Q. Still keeping to this question, the suggestion that pus had formed in the thyroid capsule, a tube of the size indicated, if it became the centre of an abscess, what would the size and nature of the abscess be ?—A. It would be appreciably larger than this object. Obviously, if it contains that and if there was suppuration as well, it would be larger than that. The degree of the enlargement would depend on the amount of pus and it might easily be from about that size up to the size of one's fist.

Q. To support the story that the infection continued there over a period of 18 months and of such a nature that it ate through the structures

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Examination, *continued.*

of the neck, starting from there and going up and across the tonsil, does it assist in deciding whether this path of pus is possible or not ?—A. No, I regard it as impossible for pus to get from one side to the other ; it could not do that without damaging the gullet or the windpipe. There is no space for it to get across. If it damaged either of those two structures the patient would die.

If it started this abscess from this compartment and got into the third compartment, those important blood vessels would be bathed in pus and structures of that nature bathed in pus for a period of 18 months would be very likely, I won't say inevitably, but would almost certainly have been damaged, as the walls of those blood vessels, because the walls remain very thin and the wall of the artery is thicker, but even arterial walls, when bathed in pus, do soften and degenerate and give way.

Mr. CASSIDY : In the thyroid capsule itself have you left there arteries that have been severed and tied ?—A. Yes.

Q. And with regard to such arteries, is there a special danger for pus surrounding arteries that have been severed and ligatured ?—A. Yes, there is the danger of secondary hæmorrhage—that infection will bring about a weakening of the walls of the blood vessel, leading to it giving away and hæmorrhaging.

Q. Take the next aspect of that second part of it, that is, with the sepsis present. I think you put it that the sepsis adds extra barriers to the ordinary anatomical impossibility ?—A. Yes.

Q. What would be the results of suppuration ?—A. Well, suppuration in that area for a long period of time would, in most instances, lead to a definite condition of toxemia or blood poisoning, the patient's health would suffer to a very considerable degree, and she might die of exhaustion—a long continued suppuration, for that period of time in this portion of the body, might easily have brought that patient to her death.

Q. Are abscesses in the neck such things as call for surgical attention promptly ?—A. Very definitely.

Q. And imagine here abscesses in the neck unattended to, lasting—the last time there was any treatment to her neck, you may take it from me, was in May 1938. From May 1938, she had no surgical attention or treatment for the neck or any other medical treatment for the neck. In your opinion is it possible to imagine suppuration continuing over that period without any attention whatsoever in regard to surgical attention or the opening up of that area of the neck, and death not ensuing ?—A. No, I cannot imagine it for a moment.

Q. Taking a surgeon getting to the abscess late in the piece, what happens usually ?—A. Well, there are various possibilities. If an abscess in that compartment is untreated and the pus increases to such an extent and is not got rid of by means of a sinus or other means, as I said before, it would go down into the media-stinum, and the patient would die. Another possibility is the possibility of blood poisoning that I mentioned. A third possibility is the possibility of secondary hæmorrhage ; but even supposing the patient survived all these dangers, there would be permanent scarring left by the abscess in the neck. Those planes which I spoke of yesterday, which allow easy movement of the neck, would be all gummed up and bound together. Movement therefore would be limited. Furthermore, there would be a great loss of substance of the tissues of the neck.

There would be a sinking in of the structure of the neck, and possibly some deformity. Those are the possible results of an untreated abscess in this region.

Q. You heard the references quoted by Dr. Edye in Campbell and other books, as to the results that would follow and pus going to the mediastinum. Do those authorities agree with the evidence you have given ?—A. Yes, absolutely. I have had cases of my own knowledge too in which that has happened.

Q. I think as well as being a physician you have seen a great deal of surgery in the midst of a very versatile career, have you not——(Objected to.)

Q. Have you seen a very great deal of surgery in the course of your career ?—A. Yes.

Q. Still dealing with this question of pus, I think there was one reference you wished to refer to in Cunningham as to the limits of the termination of the spread of pus, was it not ?—A. Yes. This is Cunningham —page 1385. The heading is " The Neck." " The general envelope of deep cervical fascia along with the processes and purposes which precede from its deep surface, subdivides the neck into compartments which limit and determine the spread of pus. The most important compartment is the central or vasceral compartment, bounded anteriorally by the pretracheal fascia, posteriorally by the prevertible fascia and laterally by the fascia forming the vascular compartment. Posteriorally this compartment extends from the base of the skull downwards into the posterior mediastinum. Anterially it extends from the hyoid bone into the anterior part of the superior mediastinum. Abscesses in the vasceral compartment (that is, the compartment I called No. 1) are either secondary to disease of the lymph glands or organs it contains, or the result of primary suppurative cellulitis. A tubercular abscess originating in one of the retropharangeal lymph glands lies in front of the prevertible fascia, and points towards the posterior wall of the pharynx. Abscesses secondary to disease of the cervical vertebra lie behind the prevertible fascia (that is, they are outside of this compartment) (indicating) and spread laterally behind the vascular compartment. They point behind the sterno-mastoid muscle—that is, the big muscle coming down here (indicating), and should be opened for an incision at the posterior border of the muscle, the surgeon keeping to the anterior aspect of the transverse process in order to avoid the structures of the vascular compartment." It then deals with some of the smaller compartments with which we are not concerned.

But at page 1387 it states : " A glandular abscess in this compartment (that compartment being the lower part of this compartment here) (indicating) usually points upon the surface, adhesions being formed first between the gland and the fascia and subsequently between the latter and the cutaneous structure. In diffuse suppurative cellulitis of this compartment, the pus burrows towards the root of the neck and may reach either the mediastinum or the axilla." The importance of that, to my mind, is that it shows that there are certain directions in which pus will travel, in these compartments of the neck, and this is dealing, of course, with abscesses which have not been opened.

Mr. SHAND : " May " not " will." " May " reach ?—A. Yes, if they do extend they may reach as far down as the mediastinum.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Examination, *continued*.

Mr. CASSIDY : That is when the surgeon discovers them ; they are re-opened ?—A. Yes.

Q. It has been put that infection of the neck usually spreads upwards. What do you say as to that ?—A. That is incorrect.

Q. Have you seen, in the course of your experience, a good deal of the results of infection spreading about the neck—infection in the body and the way it spreads ?—A. In the body, yes.

Q. And in the neck ?—A. Yes. It is not very common in the neck, you know—these infections.

Q. Now, before I leave this portion of the case, what would have to happen to those structures to enable that foreign body to travel from area No. 1 up to the tonsil ?—A. Do you mean the structures that I have detailed ?

Q. Yes ?—A. Well, firstly, the suppuration would have to extend upwards along this path, and in its pathway it would destroy a considerable portion—even if it did not eat into the blood vessels it would destroy considerable areas of various muscles and it would affect also the nerves, and we must not forget the lymph glands which would swell and become very obvious in that region. It could not get into the tonsil without destroying important and powerful muscles or portions of them.

Q. And could they be regenerated ?—A. No, if the patient lived, that area of the muscle that was destroyed would be replaced by fibrous tissue.

Q. And I think you have told us that there would be permanent deformity ; is that so ?—A. Yes.

Q. Now, that last little area that you have to go, coming into the tonsil—what do you say as to the track there with a network of blood vessels ?—A. It could not avoid these blood vessels, and therefore it would produce hæmorrhage as it came through. It would also have to penetrate this superior constrictor muscle which is the main muscle of swallowing in that region.

Q. If a tube were travelling as suggested in suppuration, can a thing moving like that move quickly ? You say it cannot move, but do you say, if it could move, that it could move quickly ?—A. I do not think it could move at all, but if you could imagine some set of circumstances that would produce movement in it, it could not move quickly. The only muscle that could move it is the muscle of the pharynx when you swallow. That could move it quickly, but no other muscle could move it quickly.

Q. Would the suppuration be " prolonged " process ?—A. It would be prolonged.

Q. Because the position is that it has to eat it away, has it not ? —A. Yes.

Q. In the first trial the Plaintiff gave evidence that the tube went in about an inch to the right, she had a mark on the incision where she said that the tube was inserted, and measured to the right of the middle line. For that tube to get across from the right to the left with infection or with suppuration at the time—could that be possible to get from the right to the left ?—A. No, I don't think that would be possible.

Q. Take the back of the trachea first ?—A. No.

Q. And the front ?—A. If it came in the front of course, it would bulge outwards here in this area—it would bulge right out.

Q. And, having an opening as it was suggested there was an opening —having an opening there, could the patient herself, she was attended to

at her home for a while, or a surgeon or a nurse, in your opinion could they miss it ?—A. They could not miss it, no.

Q. In a condition of suppuration lasting for this period, would surgical attention, in your opinion, be necessary ?—A. You mean if there was suppuration there ?

Q. Yes ?—A. Yes, certainly.

Q. I want to pass from that question. You say that this movement that was suggested—that this eruption through the tonsil is, in your opinion, impossible. I want to pass next to this question of thyrotoxicosis. I think you have taken a special interest in the subject of thyrotoxicosis ?—A. Yes.

Q. And in the diagnosis of tetany ?—A. Yes.

Q. And I think you have, on request, delivered a lecture, or written a paper for the Society ?—A. Well, on request I delivered a paper to the British Medical Association on certain aspects of thyroid disease, but I have lectured on the diagnosis as between tetany and hysteria at the Post-Graduate Organisation.

Q. And you have, in the course of your practice, seen and diagnosed thyrotoxicosis often ?—A. Yes.

Q. And its results ?—A. Yes.

Q. And I think you have also had special experience, have you not, in hysteria and tetany ?—A. Yes. I have been very interested in the subject of tetany for some years.

Mr. SHAND : Is that experience or interest ?—You did not answer the question ?—A. Yes, I have seen odd cases of tetany of various kinds.

Mr. CASSIDY : And hysteria ?—A. Yes, many cases of hysteria.

Q. First of all, as to the diagnosis of hysterical tetany and parathyroid tetany and hysteria and tetany, what do you say ?—A. It is frequently a very difficult problem.

Q. Now, first of all, what is thyrotoxicosis ? Of course, the jury are pretty well aware of that now. What are the varying grades connected with it ?—A. Well, thyrotoxicosis is poisoning by an excessive activity and excretion of the thyroid gland, and it produces, among other things, a severe disturbance of the nervous system, sometimes slight, sometimes moderate, sometimes very severe ; even occasionally to the length of producing insanity. It also produces a number of physical conditions in the body, especially affecting the heart.

Q. And would you put it as varying types of hysteria ?—A. Varying types, yes.

Q. You heard that Dr. Flynn in 1937 diagnosed a condition of angio neurotic œdema ?—A. Yes.

Q. Is that a condition that occurs in thyrotoxicosis and in patients with hysteria ?—A. Yes, it is quite common in both diseases.

Q. You told the jury just now that in your opinion the differential diagnosis is difficult in cases of tetany and hysterical tetany ?—A. It is frequently difficult.

Q. It is frequently difficult ?—A. Yes.

Q. First of all, would you give me a criteria of diagnosis as a basis on which I wish to approach the later aspects of the matter ?—A. Yes. In this problem you consider firstly the type of the patient—whether this patient has hysterical trends or the reverse. Secondly, of course, you have

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Examination, *continued.*

to consider as to whether there is some obvious cause, as, for example, the removal of the thyroid. The third criterion is the pattern of the convulsions that occur. What I mean by the " pattern of the convulsions " is what actually does happen when the spasms occur. That is to say, what are the movements that occur, because in a true tetany for the most part they follow a definite pattern ; secondly, one has to consider—are they bi-lateral—do they occur on both sides ? Thirdly, are they accompanied by unconsciousness. Fourthly, what is their duration, and, where possible, what is the response to treatment. There are also special tests.

Q. I think you said in your notes to me that there was a fifth—are they purposeless ?—A. Yes, they are purposeless—that is another factor that one has to consider. Then, of course, there are certain tests. Now, as regards the pattern of the movement and the distribution of the movement, you had described to you the characteristic position of the hand, and there is a characteristic position of the foot as well, the so-called carpopedal spasm. In the vast majority of true cases of tetany the movements follow this pattern. It may extend to other muscles, the muscles of the face, very commonly, and also in very severe spasms to a great number of the muscles of the body. They are tonic spasms, and they are——

Q. What does " tonic " mean ?—A. Well, a clonic is very convulsive. It is a rigid stiffening rather than an actual convulsion. I am describing the absolutely typical ones. Now, they are usually bi-lateral—not always —but in a characteristic example they occur in both arms, both legs, and both eyes, and both sides of the face. They are purposeless—that is to say that the patient in the throes of a spasm performs a movement that has no purpose whatever. She does not clutch at any object, she does not lift anything ; the spasms just occur and they have no relation to any purpose whatever. Now, characteristically, these attacks are not accompanied by unconsciousness. I know there are certain references in text-books to say that unconsciousness does occasionally occur, but it is an essential characteristic of these spasms that unconsciousness does not occur. Then there is the duration of the spasm. Ever since the time of Trousseau, who was one of the great writers on this subject in 1868, it has been recognised that one of the absolutely characteristic spasms of tetany lasts from 15 minutes to half an hour or even an hour. It is not characteristic of these spasms for them to last for a very long period. Now, there is the response to treatment. Except in those rare cases in which the disease is so grave as to lead immediately to death, treatment by modern means—that is to say, by the use of calcium and the use of paroidin—they are practically always immediately effective. That is to say, within a period of a few weeks. I think that one can say from one's experience of tetany that six weeks is even a long period of a patient to remain ill under intensive treatment.

Mr. SHAND : You have only had a few odd cases, doctor. (Objected to by Mr. Cassidy.)

Q. I want to know whether this is from your experience or from reading ?

Mr. CASSIDY : Is it from experience, plus reading ?—A. It is from experience plus reading. When I say a " few odd cases " I mean at the

Prince Henry Hospital. I haven't looked up the figures, but I think we get half a dozen cases a year; those are odd cases when you compare it with pneumonia, toxicosis, and hysteria.

Q. But the ordinary G.P.—does he strike it very often?—A. Oh, no. I am speaking from my own experience, together with my reading. I have dealt with the pattern of the movement. You take any patient into consideration in regard to the pattern of the movement, and what those other factors are in regard to it.

Now, the next criterion and one that I left out really was the blood calcium. This is a very important one. The blood calcium is lowered in tetany, but it is not the only disease in which it is lowered.

The WITNESS: One finds a low blood calcium in untreated thyrotoxicosis. You find it in disease of the kidney, and you do find it—I am speaking here from my reading—in cases of nervous disease and hysteria. So that the blood calcium, although important, is not conclusive. There is another aspect of the blood calcium, too, that in a patient in whom it has been lowered through disease, it will frequently remain low for a long period after the disease has disappeared.

Mr. SHAND: This is any disease?—A. This is in thyroid disease or in any disease.

To Mr. CASSIDY: There are certain special tests.

Mr. CASSIDY: I think you gave me the causes of the lowered blood calcium?—A. Yes. There are certain special tests—Chvostek's, Trousseau's and Erb's. Their tests are helpful, but they are not conclusive. They are all tests that indicate that the muscle and the nerve are in a state of excitability—quick off the trigger, so to speak. That is the foundation of all those tests—excitability of nerves.

The Chvostek test is not really of such help because it is present in such a number of other conditions. It may even be present in the normal person. It is of more value in children than it is in adults. Chvostek's test is the one in which you tap a nerve in various parts of the body; usually this one here (indicating) and get a contraction of the muscle.

Mr. SHAND: What other parts of the body?—A. The peroneal nerve of the leg, and sometimes you get it by tapping over one of these nerves in the forearm.

To Mr. CASSIDY: Trousseau's test is the test in which a cuff is put around the arm and the pressure in that cuff is raised to a higher level than the blood pressure so that all circulation in the limb is stopped. I saw in evidence here that it was not necessary to produce that, that high degree of pressure. With that I disagree.

Mr. CASSIDY: That is Dr. Thompson's evidence?—A. Yes.

Mr. SHAND: Where is that?

His HONOR: At page 334, the third question: "As if you were having a blood-pressure test?—A. Yes, although it need not be as tight as that."

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Examination, *continued.*

Mr. CASSIDY : " As if you were having a blood-pressure test ? —A. Yes, although it need not be as tight as that " ; is that what you were referring to ?—A. Yes, it struck me particularly because it was so foreign to my own experience in trying to elicit the Trouseau test in patients for tetany.

Q. You disagree with that ?—A. Yes, the cuff is put around here and very considerable pressure is put into the cuff, sufficient to stop the circulation, and then the test, when positive, shows that the hand will gradually come up into this characteristic position.

Mr. SHAND : More than the blood pressure test ?—A. It needs more pressure ; you have to put a higher pressure than the blood pressure test.

Q. You always have to ?—A. That has been my experience, and Trousseau's test is rather a difficult one to elicit. Again I am speaking from my own experience, for although we only see odd cases of tetany at the Prince Henry Hospital, it does occur, not only after the removal of the thyroid, but it occurs occasionally after scarlet fever and chicken pox and those infectious diseases which we treat so largely at that hospital.

My assistant and I have tried to elicit this Trousseau test on a number of those cases and have found great difficulty. Sometimes you have to keep the pressure on for two or three minutes before you can get this test. But even when you get it, it is not very valuable in this connection because it occurs in hysteria. There is a reference to that should you wish it.

Mr. CASSIDY : You have listed a number of authorities for that statement ?—A. Yes, one is in Osler.

Q. We may put it there is authority to which you have a reference if it is required ?—A. Yes, because you hardly need authority. If you have got an hysterical patient, the patient knows what the test is being conducted for, and what is easier than that, to simulate it.

Mr. SHAND : If he knows the Trousseau test ?—A. Yes.

To Mr. CASSIDY : The third test is the Erb test, which is an electrical test. It was introduced by Erb about 1870, but it fell into disuse and I have never known this test to be applied in any case in Sydney. The difficulty with the case was that it needs apparatus which the ordinary practitioner has not got. The test was practically impossible to do in a reliable way with the apparatus that the ordinary practitioner has. It is only possible to do it by means of a special instrument of considerable exactitude. Done under the old method there were all sorts of fallacies. It depended in the last instance on the personal impression of the individual who was carrying it out, and so it was regarded as pretty valueless. But there is an instrument known as the chronaximeter which will measure the excitability of the nerve and muscle very accurately. The old method was like looking at an object and guessing its size ; with the chronaximeter it is like putting a millimetre rule on it. On my representation the chronaximeter was obtained at the Prince Henry Hospital just before the war, but it was a very complex instrument, and my assistant could not master it. Then the war came and other things intervened, and so I have myself never used the instrument. It is, to my knowledge, the only one in Sydney, and it was obtained for the special purpose of accurately measuring the excitability of the nerve and muscle, not so much for this

disease, but rather for infantile paralysis with which we are very interested in the hospital where there is a slowing. The authorities are in agreement that Erb's test can only be carried out reliably with a chronaximeter.

Mr. SHAND: You will produce those authorities?—A. Yes.

Mr. CASSIDY: What authorities do you want?

Mr. SHAND: That the authorities are in agreement that the test can only be carried out properly with a chronaximeter.

His HONOR: Can you produce them now?—A. Yes, they are here.

Mr. CASSIDY: When Dr. Thompson says the Erb test can be applied, do you know of anywhere in Sydney where that can be done?—A. No.

Q. Have I got those authorities?—A. I noted them down.

(Document shown to witness.)

Osler and McCrae, 1928, volume 6, page 760. Duncan, Diseases of Metabolism, 1942, page 203. Nelson's Loose Leaf Medicine, volume 3, page 312g. Starling's Physiology, pages 153, 154, 155. I do not know whether that is a text-book on physiology, but that will identify it sufficiently.

Q. Did you bring that one with you?—A. Yes, it is a big blue book. Starling's Principles of Human Physiology, pages 153–4–5.

Osler, page 760—the heading is "Electrical Hyper-excitability." The end of the previous paragraph reads: "Trousseau's phenomenon is often well marked in hysterical patients and in the more classic types of hysteria." That was a reference I mentioned previously.

> "Electrical hyperexcitability:—This is present in (*a*) motor nerves, (*b*) sensory nerves, and (*c*) nerves of special sense.
>
> "(*a*) Motor nerves: Erb has showed that minimal electrical stimulation (0.5 to 2 milliampers) brought out the tetany spasm reaction. Later studies of Weiss and Frankl-Hoohwart showed the constant hyperexcitability to the galvanic current, while the reactions to the faradic stream were inconstant. A large number of anomalous electrical reactions occur in the motor nerves of these patients. Bourgurgnin's studies indicate that Erb's sign is to a rough approximation which can be more accurately measured by the method of chronaxia. The chronaxic augmentation runs parallel with the calcium ion blood content diminution (acid base disturbance)."

There is an error here. It has "acid case disturbance"; it should be "acid base disturbance."

Duncan, at page 203, says, in Diseases of Metabolism, 1942, under the heading "Latent Tetany":—

> "The presence of this condition is demonstrated by mechanical or electrical excitation of the hyperexcitable nerve.
>
> "Erb phenomenon:—This important sign depends upon the fact that the neuromuscular response to galvanic stimulation can be obtained with weaker currents in tetany than under normal conditions. Measurements are usually made on the peroneal or median nerves."

I suppose you want me to read all this highly technical matter?

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Examination, *continued.*

Mr. SHAND : I only want you to deal with that part that says that the Erb test can only be carried out with the chronaximeter.

WITNESS (reading) :—

" Chronaxie is the length of time necessary to elicit a reaction when a current is employed, the strength of which is twice the rheobase. The rheobase is the minimal galvanic current, which continued indefinitely, suffices to produce a reaction. Normally, it takes about 0.00024 second (24 sigma) to elicit a reaction from the flexor pollicis. In tetany it may take only 12–14 sigma ; in hyperparathyroidism it may take as long as 50 sigma."

Mr. CASSIDY : You are down to fine measurement there ?—A. Yes.

Mr. SHAND : Where is the part where it says it can only be carried out with a chronaximeter ?—A. By inference it is obvious that you cannot measure so small an amount of time except with a highly accurate instrument.

In Nelson's Loose Leaf Medicine, at page 312g, it says : " Signs and Symptoms of Tetany "—then there are quoted the references :—

" Latent Tetany.—The increase in neuro muscular irritability may be so slight as to be wholly asymptomatic. (That means without symptoms.) This condition not uncommon in infancy and early childhood is detected by direct measurement at motor points, and the current required to produce muscle contraction. Stimuli which are subliminal (that is to say, beneath the threshold, beneath the level) under normal conditions suffice to induce a definite muscle response when a state of neuro muscular hyperexcitability obtains (Erb's phenomenon, 1874). Extensive investigation of this method has shown that normal galvanic thresholds vary according to the technique used, the age of the subject, the motor point investigated, and may fluctuate widely in different patients or in the same patient at different times. It appears to be the consensus of opinion, however, that in the hands of experienced observers, a cathodal opening contraction (C.O.C.) or cathodal closing tetanus (C.C.T.) elicited that 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 neuro muscular excitability may be detected also by the determination at motor points of the time an arbitrary galvanic stimulus—twice the rheobase—must be applied to produce a muscle response. The chronaxie is decreased in tetany."

Mr. SHAND : Does that purport to be an authority for the statement that you can only carry it out with the chronaximeter ?—A. Yes, that purports to be an authority.

In Starling's Physiology, at page 153, under the chapter dealing with voluntary muscle :—

" Excitability and chronaxie.—Examination of the properties of different living tissues demonstrates that their excitabilities vary widely. Some tissues require on galvanic stimulation a much stronger current than others, or on faradic stimulation, a closer coupling of the secondary to the primary coil. Again, some respond to galvanic but not to faradic excitation or vice versa. It is clear

that comparison of excitabilities in different tissues is unsatisfactory, if at all possible, on such indications as these. In view of the fact that there is no fundamental qualitative difference between galvanic and faradic currents, such a statement as 'Excitable to faradic, inexcitable to galvanic, electricity' so often met with, is meaningless."

On page 155 it says:

"To demonstrate the importance of duration in the stimulation of such highly excitable tissues as nerve or striated muscle (striated muscle means ordinary muscle), we require much more refined apparatus than that described above for use with the relatively inexcitable plain muscle."

In the next paragraph:

"These simple considerations serve to illustrate the importance of the time factor in excitation, and to show that 'slow' and 'rapid' are purely relative terms when different tissues are under consideration."

Mr. SHAND: What is an authority for that proposition, too?——

Mr. CASSIDY: What else is there with which you can measure 24/10,000ths? What other instrument—it would require an expert physicist to control it?—A. Yes, or someone who has learned under an expert physicist's tuition.

Q. Could an ordinary doctor do it?—A. No.

Q. Could an ordinary doctor who has not had training in the matter do it successfully?—A. No.

Q. Have you been able to get it done out there?—A. No. To be quite frank I have not tried it. We tried in the beginning and found it extremely difficult, and the war coming on, I have not had time to familiarise myself with the workings of the instrument.

Q. So the Erb test that is referred to, to your own knowledge, in Australia, so far as you know, it is impossible to have it done by anyone, at present?—A. Impossible to have it done reliably.

Q. And in your experience you have not seen it used?—A. No.

(*Short adjournment.*)

Mr. CASSIDY: You dealt with the various tests. Now I want to pass from these tests to apply the principles you have been discussing to the present case under consideration. In approaching that problem are there a number of matters that one has to take into consideration?—A. Yes. The first test that I indicated was the type of patient in whom those convulsions occurred, and from what I know of the evidence I think there are indications which occur very frequently in patients with thyrotoxicosis and in patients with hysteria, so that that does not help particularly in this problem because it is common to both conditions. Secondly, there is the question of behaviour, using that term in its widest sense. There are a number of facts here which seem to me to point to an hysterical temperament or type.

Q. Do those facts commence earlier than the operation?—A. Yes, the first one I noted was the fact that Dr. Flynn was accused of having burnt the patient's neck in his treatment.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Examination, *continued.*

Q. Grouping these, might they be conveniently grouped as to the nervous background ?—A. Yes, there are indications of nervous background. The point that struck me in listening to the evidence was that this patient said she did not know what she was admitted to hospital for. She knew it was an operation, but she did not know much about it. In my experience, patients are very interested in discovering what they are going to be operated on for.

Q. And with a moderately enlarged goitre, having been under medical attention in the country, and seeing Dr. Ritchie and Dr. Bell, would one gather that a patient would be aware——(Objected to.)

Q. I refer you next to the evidence as to Quirindi Hospital ?—A. Yes, I understand that the assertion was made that the hospital was badly run, and that she was badly treated there, that she was not given the food that every hospital patient does get.

Q. Do you remember reference to blue sago ?—A. Yes, I heard that reference, and I remember another incident at the Quirindi Hospital, as an accusation of negligence against the hospital staff, that the wound bled and she was forced to look after it herself, and unfortunately burnt the swab which she used. Then at St. Luke's Hospital, there was firstly the description of Dr. Bell's treatment of the wound on the removal of the tube. I think that that description is a fabulous one.

Q. Does it end with the actual account of the removal of the tube ? —A. No, it goes on—I think it was cruel treatment in St. Luke's.

Q. Pausing at the removal of the tube for the moment, what is it there that leads you to the conclusion that there is a fabulous story ? —A. The story of the strenuous efforts to remove the tube, culminating with Dr. Bell putting his hand upon her forehead and tugging it out, and then throwing it into the receptacle and walking out without attempting to dress it. That is a most extraordinary statement.

Q. At this stage, within two days of an operation, is a surgeon most meticulously careful as to the question of infection, and things like that ? (Objected to.)

Q. Is it the practice of surgeons to be most meticulously careful to guard against infection in handling a wound ? (Objected to ; allowed.) —A. Yes, it is the universal practice of surgeons.

Q. And then there is the charge that knowing that the tube is left there, to leave the room and make no attempt to recover it ? (Objected to. Mr. Shand asks to be allowed to put the question on voir dire that if the tube really had been left there, the witness would not regard it as a sign of hysteria that the Plaintiff described what happened ; Mr. Shand's question rejected and Mr. Cassidy's question admitted.)

Mr. CASSIDY : Following that, the Plaintiff was allowed to leave hospital with the doctor knowing the tube was within the wound and made no attempt to recover it ; that in the succeeding months, although hearing that she was ill, he made no further attempt to recover it, or either to get her to Sydney or to advise anybody of it ; that at St. Luke's in 1939 she speaks of having received cruel treatment and something being put in her drinking water ; that she was given insufficient diet ; that Dr. Bell kept Dr. Marsh away from her for five days and waited till the wall of pus had moved away——(Objected to as misquoting the evidence.)

Q. Let us get the evidence exactly ?

Mr. CASSIDY : This evidence appears on page 26 of the transcript—"It burned my throat. On the fifth day when the doctor came I told him that the wall of pus had cleared from my throat. He had a look at my throat and he said about seeing Dr. Marsh." On page 54 the Plaintiff gave this evidence :

"Q. I want to read to you now what you said before. This is on page 30, line 26, at the third trial—'You charged Dr. Bell with deliberately getting Dr. Marsh to examine you after the wall of pus had gone,' and you answered 'yes'?—A. Well, it looked very much like it.

"Q. So you did make that charge then? (Objected to: not pressed.)?—

"Q. Do you remember this question also—'and your allegation is that in St. Luke's Hospital they gave you this cruel treatment under the direction of Dr. Bell, for the purpose of removing the pus.' Did you answer that 'Yes'?—A. Well, I don't know the treatment. It was 'Yes' I suppose.

"Q. Well, would that be the answer you would give now to that question?—A. Well, I suppose it would be.

"Q. You realise that that is a very grave charge to make, do you?—A. I did not make any charge.

"Q. You did not make any charge?—A. No, I did not.

"Q. Do you now?—A. Well, I suppose in a sense I do."

(His Honor referred to further evidence appearing at the bottom of page 53 and on page 54, and suggested to Mr. Cassidy that it might be better to ask the witness on what he based his diagnosis.)

His HONOR : On what symptoms do you found your diagnosis?—A. I was dealing here with the type and personality of the patient, and one founds one's opinion on that upon a series of things.

Q. What make up that series?—

Mr. CASSIDY : Those already enumerated, plus something?—A. Those already enumerated.

Q. Plus—start with this Dr. Marsh charge?—A. There are plenty of other indicia really.

Q. Keep to these for the moment?—A. There are those that we have already had, starting from the accusation of burning by Dr. Flynn, the cruel treatment, and the bad conduct of the Quirindi Hospital, the circumstances of the removal of the tube by Dr. Bell, and there are some sub-headings under that—it is the whole of what I call the fabulous account of that—then the further cruel treatment in St. Luke's Hospital, and insufficient diet having been given.

Mr. SHAND : Is that what you think the evidence is?—A. That is the evidence as I understood it—whether it was in St. Luke's or not, I do not know, but I know there was some talk about insufficient diet.

Mr. CASSIDY : Go on with what you were saying?—A. The treatment of the throat on that second occasion in St. Luke's —as far as I remember the statement was "Cruel treatment." Whether it referred to the throat or to the whole treatment I do not know, but it was an

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Examination, *continued.*

accusation of cruel treatment. Then there were certain other facts about accusations she had made against her husband. For the moment I do not remember anything more, but that is enough.

Q. How would you describe those, speaking generally—before I pass to the next section ?—A. They are clear indications of an hysterical personality.

Q. You have had, as you told us earlier, a good deal of experience of hysteria ?—A. Yes.

Q. With regard to those manifestations, to be what we call hysterical, is it hysterical in the sense that a person must yell and scream and take fits ?—A. No.

Q. Have you yourself had experience, and is it within your reading and knowledge, of people still exercising their intellectual faculties well ?—A. Yes.

Q. Could you illustrate that to us, of the intellectual power of hysterical people ?—A. That opens up the whole question of hysteria. Do you want me to go into that ?

Q. Yes, or would you rather leave that until we deal with the other matter ?—A. I would rather deal with the application of these criteria to the diagnosis in this case, and I will deal with the other afterwards.

Q. Those matters we are speaking of you put under the personality of the individual ?—A. Yes.

Q. What is the second set of indicia ?—A. As bearing upon the diagnosis in this particular instance, there is the blood calcium. The blood calcium is 7.2. That is, as I have said, a definite reduction in the blood calcium. It does occur in other conditions, but in this particular instance I cannot say what actually was the cause of it, but I do not underestimate its value.

Q. Can you say whether the blood calcium level is disturbed by emotional causes ?—A. Yes. It is low in thyrotoxicosis sometimes ; it is low in parathyroid tetany ; it is low in nervous and hysterical conditions, as well as in kidney conditions.

Q. Do you take it as something that could be present with either tetany or hysteria ?—A. Yes.

Q. The next matter is the pattern of the convulsions ?—A. Yes.

In the descriptions I heard of these convulsions in this case, there were certain aspects of them that were not those of classical tetany. In the first place there was the position of the hands. I saw the position demonstrated in that way (indicating) with the thumbs turned in, and the whole hand clenched, and the long finger nails cutting into the skin. I won't say that cannot occur in tetany, but it is unusual ; it is not classical. Secondly, there was the incident of the spasm of one eye, which I regard as an extremely important indication. It was a unilateral spasm, which only affected one eye, and as I understand the evidence the patient obtained a mirror and observed what was going on. That is inconsistent with true tetany.

Mr. SHAND : Which part is ?—A. The whole thing, more particularly the getting of the mirror and holding it up and looking at it.

Mr. CASSIDY : Would it be bringing up too much now to deal with the suggestion made by Dr. Thompson that that may have been caused by the pressure of the tube on the carotid artery ?—A. I have heard many absurd suggestions, but I think——(Objected to.)

His HONOR: Do you agree with it or not?—A. I disagree.

Mr. CASSIDY: What do you say as to it; how would you describe that evidence?—A. That evidence is quite incorrect.

Q. Is the incorrectness of it easily explainable?—A. Yes. I have already indicated that it needs a very considerable pressure, one sufficient to stop the blood supply to the part, before a Trousseau phenomenon developed, so that the constriction of the blood supply in the neck by pressure on the carotid artery is sufficient to stop the blood supply to the whole of the head and neck momentarily is unbelievable, because we know from practice that it requires that the carotid artery should be pressed against a bone to stop its blood flow, and it requires very considerable force to stop its blood flow. The old operation of garrotting was compressing the carotid against the backbone. That requires, as you know, very considerable force. Furthermore, the Trousseau phenomenon is not due to the stopping of the blood supply in the vessel; it is due to the disturbance in the nerve. It is due to the cutting off of the blood supply to the nerve. If you can imagine any extreme pressure—I cannot imagine it—from something floating about in an abscess, but even if you could try to imagine it, it could not possibly interfere with the nerve supply of an eye. Also there was no other evidence as far as I could see in the physical state of this patient indicating pressure on the carotid artery.

Q. Is there a supplementary blood supply there as well?—A. Yes.

Q. The second matter—if one could imagine a pressure of a tube or anything on that artery exercising sufficient force to close it, could that last and disappear within some short time?—A. No; and furthermore it would create the conditions for a secondary hæmorrhage.

Q. That was an interpolation, because you were mentioning the eye incident as an example of a unilateral spasm of the eye as being inconsistent with parathyroid tetany?—A. Yes. I won't say it is impossible, but it is not consistent with the ordinary pattern of the convulsions. Then again in some of the spasms the movements were purposeful, in that the patient grabbed hold of the coat, I think it was, of Dr. O'Hanlon—I am not sure of that. That is a type of movement that is inconsistent with tetany, but very consistent with and very usual in hysteria. The duration of the spasms was again unusual. At first, if I remember rightly, after the institution of calcium treatment, the effect was very good and very quick, but, in spite of this treatment being carried on, the spasms ultimately became of a very much longer duration than is usual with parathyroid tetany.

Mr. SHAND: How long have you got in mind?—A. For some hours.

Mr. CASSIDY: Take the 2nd October. Do you remember the evidence that in one trial it was said that the spasm——(Objected to.)

Q. What is your memory as to the description of the spasms on the 2nd October, the date of this alleged eruption?—A. My memory is that they were very prolonged, and terminated in this alleged protrusion of the tube through the tonsil.

Q. What is the next matter—you were dealing with the duration of the spasms?—A. Yes, and the response to treatment, which is really bound up with it.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Examination, *continued.*

Q. You have not dealt with unconsciousness yet?—A. No—that is a very important one. The preservation of consciousness is the rule in tetany. It is a characteristic of true tetany.

Q. Have you authority for that?—A. Yes.

Q. That is a matter on which you have heard some debate?—A. Yes; there has been a good deal of debate about it.

Q. Would you give me the authorities?

Mr. SHAND: You say that the authorities support the contention that consciousness is characteristic of true tetany?—A. That is right.

Mr. CASSIDY: Will you give me those authorities—there is your own experience first of all?—A. Yes. The only patient—it is only one—that I saw unconscious from tetany was approaching death. I have not had much experience of tetany in small children, but I understand that unconsciousness is commoner there because of the spasm of the throat. In my experience the only case where I have seen unconsciousness was one that was dying.

Q. That is what they call a cyanose condition in young children?—A. It is preceded by cyanosis, and then it goes on to unconsciousness. There are a number of authorities. Take Neuhoff. Will you pass that book, Dean Lewis, Practice of Surgery.

Mr. SHAND: Is it Neuhoff you mention as an authority?—A. I see it is Dean Lewis' Practice of Surgery, Vol. 6, Chapter 2, Diseases of the parathyroid glands, page 9. It reads as follows:—

> "By tetany is meant a clinical syndrome resulting from a functional insufficiency of the parathyroid gland, 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."

There is also Sloan, 1936 Ed., page 386—Sloan is the head of the Sloan Thyroid Clinic: "The patient remains conscious throughout the attack." There is also this in Nelson's Loose Leaf Medicine, Vol. 3, page 312H: "Loss of consciousness is uncommon except with generalised convulsions."

Mr. SHAND: Is that an authority for the proposition that consciousness is characteristic of true tetany?—A. Yes. You would hardly say it was an authority for a statement that loss of consciousness was characteristic.

Q. Is that an authority for your proposition that consciousness is characteristic of true tetany?—A. Yes; it is a support for it.

Mr. CASSIDY: In any text-book can you find it definitely stated, as Dr. Thompson is saying, the unconsciousness forms part of the diagnosis of tetany? (Objected to on the ground that that is not the evidence.)

Mr. CASSIDY: What is the next one?—A. Gordon's Practice of Medicine, 1943 Ed., page 365, which says: "The consciousness is always preserved, although the patient is very nervous." That is, preserved in tetany. Those are some of the authorities. I find Trousseau's original work here, published in 1868. I have not that book, but I can get it. He laid a good deal of stress—(Objected to unless authority

produced)—I know there is a copy somewhere in Sydney. I still maintain that the preservation of consciousness is a characteristic of a classical tetany.

Q. You were then passing to response to treatment?—A. I had dealt with that.

Q. Another matter of importance in regard to these two things, tetany and hysterical tetany, is the cessation on the second?—A. As I understand that evidence it was a very highly dramatic moment when an object something of that kind popped out of the tonsil, and immediately all convulsions and all indications that might have been considered to be tetany ceased. I heard the evidence that since that date there has not been a spasm.

Q. Has that description an important bearing on the matter in your opinion?—A. I think a highly important bearing. Experience shows that with tetany the attacks gradually diminish and ultimately disappear. In hysteria the end of an hysterical phase is nearly always a dramatic end. To my mind it was a highly dramatic end in this case. I think it was the Plaintiff's birthday. There was the culmination of a spasm which I imagine was a very long one, though Mr. Shand indicated to me that it was not. Then suddenly out comes the tube from the tonsil, and immediately the patient proceeds to get better, a clear indication of an hysterical condition.

Q. Had there been tetany persisting for the length of time that is suggested, in your opinion could it have such an abrupt cessation?—A. No, and I have already given one reason for that statement. Secondly, how the presence of the tube with suppuration in the tonsil could be responsible for tetany which would disappear immediately the tube was extruded through the tonsil I don't know. In common language it does not make sense.

Q. In your experience have you seen in any of your tetany patients the result of sepsis?—A. No. In the literature as well as in my own experience there is no relationship between the occurrence of sepsis in the wound and the development of parathyroid tetany. Those patients on whom a thyroidectomy has been performed and who have developed suppuration in the wound are not the patients, any more than any other group of patients, who develop it. There is no relationship between them.

Q. From your knowledge of tetany, if tetany is persisting in a very definite form, such as indicated here on the 2nd October, necessitating the various things that must be there to produce tetanic spasms, can they cease immediately, or must they continue?—A. Characteristically they continue lessening gradually.

Q. Have you seen in the literature any authority for a statement that tetanic spasms of that grave nature can cease in one go, if I may so put it?—A. No. Of course they have to cease some time or other, but in my view of this condition it is a gradual cessation. The spasms become less and less severe, and ultimately disappear.

Q. You heard certain evidence given as to massage. Is that a matter that has some bearing on your observations?—A. Yes. The statement that massage relieves spasms is totally opposed to the experience of tetany. I cannot produce any authority to say specifically that massage increases the spasms, but it is admitted that the condition is really one of nerve muscle irritability; so that the carrying out of massage would certainly not relieve the spasms.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Examination, *continued.*

Q. Look at Osler at the passage marked with red pencil at page 61 ?—A. I know this passage, which reads "Even light stroking may set free the muscular contractions."

Q. That agrees with what you say, that it is from nervous irritability ?—A. Yes, light stroking of course is massage, that is light stroking over the nerves as referred to in Osler.

Q. Are those the matters that you took into consideration ?—A. Yes, and at the moment I cannot remember any others.

Q. On your knowledge of this case, and with the application which the principles set forth, that is the nervous condition, the account given of the nature of the convulsions, what is your diagnosis of the condition of the patient ?—A. In the latter part of her illness this woman suffered from hysteria, The whole story may be one of hysteria, but I am not in a position to say that she did not have tetany at the beginning. It is the indication of an hysterical personality, the departure from the normal in the whole story of the course of the illness, in the nature of the convulsion, in the duration of the convulsions, their distribution and their response to treatment. Those at any rate are some of the reasons.

Q. I asked you a question earlier which you said you would postpone until later. When I put to you the question whether the hysteric was necessarily a person who takes fits, or wants to shout or sing, is that a necessary condition of hysterical tetany or hysteria ?—A. No, that is only one form of hysteria, and a relatively minor grade of it. The hysteria is a condition which takes an enormous number of forms, and if you read various text-books you find that they attack that from different aspects. There is, however, one form of hysteria, a mild grade that we all know well, the person who exaggerates and perpetuates. I suppose everyone in this Court room knows of someone who will exaggerate a minor pain into a major one. Certainly every doctor knows it because we often meet patients who say that they are desperately ill, whereas they have only some minor illness, if any. That is a very common experience. In addition to that there is a tendency in a number of hysterical people to keep the pains and aches going after the actual cause of them has disappeared. Beyond exaggeration and beyond perpetuation we know the type of hysteric who goes on to fabrication, that is to say, who not only exaggerates, makes a big story out of a very slight foundation, but who will even start to invent curious happenings, not consciously but sub-consciously, who will start to invent curious happenings and fantastic stories. History is full of incidents of this character——(Objected to.)

Q. Is it necessary to have reading and observation and to use that for the purpose of carrying on your practice with this class of people ?—A. Obviously yes.

Q. And is a background and a wide knowledge of the various things absolutely essential for properly understanding and diagnosing these matters ?—A. Yes. In this type until this habit of fabrication arises and the sub-conscious invention of stories——

Mr. SHAND: Is that personal experience ?—A. Yes.

Mr. CASSIDY: Please continue ?—A. In this type in whom this arises such patients are extraordinarily vivid in the accounts they give of these happenings. They are most convincing. The evidence upon which they base their story seems frequently to be beyond question. So much so that they will induce a number of quite responsible intelligent

people to believe absolutely in what they say. This type of hysterical person has always the limelight, loves the centre of the stage. So long as he or she—and it is nearly always she—can get it, it is difficult to find any disturbance of intelligence in these patients. You can only detect what is going on by their peculiarities in behaviour. So it is that apparently normal, well, self-contained people will tell you the most astonishing stories, and will bring accusations against those who are, in many instances, the last whom they could accuse.

(Luncheon adjournment.)

At 2 p.m.

Mr. CASSIDY: You had just got to the stage of dealing with this question of exaggeration and perpetuation?—A. Patients with this form of hysteria will go beyond exaggeration and perpetuation. It may start there, but they will go beyond it to the stage of fabrication, to the relation subconsciously of extraordinary incidents, to the levelling of serious charges and to a state which is frequently referred to as hysterical sensationalism. These patients do not give those indications that most of us think of when we talk about a woman who gets hysterics. It is not that form of hysteria in which people shout and cry and rather make a show of themselves. This type of patient prefers a very-much-more-satisfactory-to-them form of show, in that they get extreme pleasure out of occupying the centre of the stage, of being the observed of all beholders, and of being the most important person in their own immediate circle. And it is this type of hysteria which is associated with the hysterical sensationalism, the fabrication of stories and the levelling of charges. I have had experience of cases of this type in which the most extraordinary and serious charges have been levelled by hysterical people, often against those whom they have most reason to love, cases in which ultimately the events have proved that the charges were quite unfounded. During the course of this condition all sorts of physical phenomena arise. Spasms are a very common feature of hysteria, spasms which, as I pointed out this morning, differ in certain important respects from the spasms of tetany, and it is a well-known fact that an individual who has started upon a course of confabulation and exaggeration will reach a stage at which it has to be ended, and usually the ending comes in a very dramatic spasm. That is why I placed a great deal of significance on the dramatic end of this illness in October when, after two days of almost continuous spasm, suddenly this thing was extruded from the tonsil, and then the health improved immediately and the patient got quite well. Once a patient has started upon this course of confabulation and hysterical sensationalism they do definitely continue with it for a considerable period afterwards. I know psychologists believe they firmly believe the story they tell. They get to believe it. And so vivid and so detailed are their descriptions of the various things that have happened to them that they will convince people of otherwise good judgment and considerable intelligence. These are well-known facts about this form of hysteria.

Q. Have you had experience with patients where you yourself have been deceived for some time?—A. For some time, yes.

Q. In those cases it was only something that occurred that convinced you absolutely?—A. That there was no foundation for the charges that had been made.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Cross-examination, *continued.*

Q. Apart from your personal experience in the matter do the authorities, Osler, for example, illustrate similar views on his part?—A. Yes, Osler states these views. He gives no actual incidents, but states the views I have expressed.

Q. There are some passages there I think that are relevant?—A. Yes.

Q. You might take those references—(Document and book handed to witness)?—A. Osler and McCrae, Vol. 6, page 663, this is quoting Savill as to the psychogenic element in hysteria. Among the five points mentioned No. 4 states, "The mind plays an important part in exaggerating symptoms which have a slight physical basis, such as a vascular derangement of a part. No. 5, the mind also plays an important part in the perpetuation of symptoms after the physical basis which had initiated them has passed away."

Mr. SHAND: What about Nos. 1, 2 and 3?—A. "As to the psychogenic element, Savill admitted that the mind plays a prominent part in many hysterical phenomena, but hysteria is a psychosis only in the following respects," that is a disease of the mind, a psychosis, "1. Hysterical persons throughout life present certain inherent peculiarities of mind—e.g., the tendency to mental abstraction, to auto-hypnotism," that is to convincing themselves of the truth of their beliefs, "to mental dissociation, and to dual consciousness—which render them more liable, especially on the occurrence of any disturbance of the cerebral circulation or nutrition, to exhibit abnormal mental phenomena." From the occurrence really of any illness. "2. A certain proportion of hysterical symptoms are purely mental; the mental faculties are unstable and easily disturbed, particularly the various commemorative faculties; various tricks and habits of body and mind are constantly arising. 3. The emotional side of the mind is strongly developed, and emotional outbursts which we call 'hysterics' are frequent. Emotion is also a frequent determining cause of other hysterical disorders by producing vascular charges." That is referring to the occurrence of engo-neurotic œdema and similar conditions. "By the well-known influence of the emotions on the vasomotor centres, vasomotor phenomena are common; and since the vasomotor centres are themselves unstable, many surprising effects and symptoms are produced as the indirect effect of emotion." That really is explaining the occurrence of things like engo-neurotic œdema in hysterical people. "4. The mind plays an important part in exaggerating symptoms which have a slight physical basis. 5. The mind also plays an important part in the perpetuation of symptoms."

The next reference is in the same volume, page 675. This describes, under the heading of motor disturbances, the convulsive attacks that are a striking phenomenon in hysteria: "The convulsive attacks have always attracted great attention and contributed the most striking phenomena. The capacity for this type of conduct has existed from the earliest days, and it is one of the most remarkable and persistent of the features of hysteria. This transmission, down through the ages, of precisely the same positions, attitudes, cries and contortions, shows that fundamental human mechanisms are being played upon by the most primitive agents." There is a lot there I do not think needs reading out. Then there is Osler, Christian, 1942.

Q. (Book handed to witness): That has been read, a great deal of that. What are the references ?—A. Pages 14, 15, 16 and 19.

Q. To summarise that may be the best way ?—A. I think so really. There is a lot here. It describes convulsive hysteria in minor forms and then in major forms, the so-called hystero-epilepsy, in the last stage of which "patients will relate imaginary events and make extraordinary and serious charges against individuals. This sometimes gives a grave aspect to these seizures, for not only does the patient make and believe the statements, but when recovery is complete, the hallucination sometimes persists. After an attack a patient may remain for days in a state of lethargy or trance."

Q. Is there a passage dealing with the constriction of the throat ?—A. Yes, it mentions the so-called globus hysterious, which means the feeling of a wall rising in the throat. On page 15, "Painful sensations or a feeling of oppression and a globus rising in the throat may be complained of prior to the onset of the convulsion." On page 16, again talking of the spasm and contractures, "They may come on suddenly or slowly, persist for months or years and disappear rapidly. The contracture is most common in the arm, which is flexed at the elbow and wrist, while the fingers tightly grasp the thumb in the palm of the hand; more rarely the terminal phalanges," that is the fingers, "are hyper-extended. It may occur in one or in both legs, more commonly in one." On page 19, "A morbid craving for sympathy may lead to the commission of all sorts of bizarre and foolish acts."

Q. The accoucheur's hand is a definite link ?—A. It is. It is the characteristic posture that the hand adopts in true tetany.

Q. Does that have the thumb clasped firmly or not ?—A. No, these two fingers are extended in that position—(Indicating).

Q. What about unconsciousness qua hysteria ?—A. Unconsciousness is common in hysteria. It is not really a true consciousness because the patient can be roused. For example, the patient may appear to be unconscious with the eyes closed, but if you attempt to open the eye that action is resisted so that it is not really a deep unconsciousness.

Q. In real unconsciousness what is the position ?—A. In real unconsciousness there is no resistance to the opening of the eye.

Q. It has been suggested here in cross-examination that it could never be suggested that the Plaintiff was hysterical in that she is able to be in the box for a length of time, on a number of trials, and conduct herself without any obvious hysterics ?—A. I saw her in the box and I thought it was an excellent performance of this type of hysteria from which I believe her to suffer.

Q. Are there classical instances of what people are capable of doing in this state ?—A. Yes, there are some very striking and classical instances.

Q. Instance one or two ?—A. One that comes to my mind is one that is associated with the work of Charcot, a Frenchman, who was perhaps the leading neurologist in this field of his day, and in that incident a young woman who was the daughter of a French General at a military establishment——(Mr. Shand asked for the authority to be produced.)

Q. Can you produce it ?—A. I cannot produce it, but it is in the Public Library.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Examination, *continued.*

I have the reference. It can be obtained from the Public Library. I will endeavour to get it overnight. I do not know how you get things out of the Library.

Q. We will get out a subpœna for it?—A. That recounts the story of——(Objected to: Mr. Cassidy undertakes to produce authority: argument ensued.)

His HONOR: The sole question is whether this should be done at 25 past two or 10 o'clock to-morrow morning. Will you finish your cross-examination this afternoon, Mr. Shand?

Mr. SHAND: I am certain I won't.

His HONOR: Phippson says: "Though the expert must be skilled by special study or experience, the fact he has not acquired his knowledge professionally goes to weight and not to admissibility." I will reject it at this stage. You can have it to-morrow morning. I am doubtful whether I should admit it at this stage.

WITNESS: I had the book in my possession, but I cannot find it. This morning I had inquiries made and found it is in the Public Library. I had a copy myself, but I have lent it to somebody, I think.

Mr. CASSIDY: Is it a matter which is relevant? (Objected to.)

Q. Will you come back to your own experience?—A. I have had cases in my own experience of very grave charges being brought against people which events proved to be quite unfounded. I am willing to relate these, but I do not want to say anything which may in any sense indicate the identity of the people.

Mr. SHAND: Proved in a court of law?—A. No, you will have to accept my word on oath I am telling the truth.

Mr. CASSIDY: These matters are essentially personal?—A. Very.

Q. Have those people appeared to you perfectly normal?—A. Yes.

Q. And reasoning powers apparently perfectly well?—A. Perfectly well, yes.

His HONOR: Your difficulty is giving the facts without revealing the identity?—A. That is my difficulty. I am willing to relate them if Your Honour requires me to do so.

Mr. CASSIDY: You would, provided every safeguard is taken?—A. Yes.

Q. The next matter is the cause of tetany after thyroidectomy?—A. I believe in all cases the cause of tetany after thyroidectomy is the removal or destruction of the parathyroid substance, not all of it, in all cases, but varying degrees of inadvertent removal or destruction of the parathyroid gland.

Q. For that statement have you looked at authorities and arranged them in order?—A. Yes.

Q. There are a number of them?—A. Yes.

Q. Will you give me the main ones?—A. The first one is in Price's Medicine. The ones I have got are—Price, Meakin, Cecil, Sloan, De Quervain, and Joll. These references are of two types, for example,

take Price; this is Price's Medicine, the text-book of the Practice of Medicine, 5th Edition, 1937, page 1784.

> "In detailing the causes of the various types of tetany No. 8, parathyroid and thyroid tetany arises from gross disease or extirpation of these glands."

Gross disease does not enter into the question of parathyroid tetany arising after thyroidectomy. It refers to disease of the bodies themselves.

I have not got Meakin here, but I will bring it to-morrow.

Then Cecil, 4th Edition, 1937, page 1241, under the heading of "Eitology"—

> "The increasing neuro muscular irritability which produces tetany is usually dependent on the following causes (1) parathyroid deficiency usually follows radical operation upon the thyroid glands with simultaneous removal or damage of several parathyroid glands."

Then Joll—"Diseases of the Thyroid Glands," 1932, page 592. This is dealing with another aspect of this question. It is admitted on all sides removal of the thyroid glands will cause parathyroid tetany. It has been stated without removal of the glands, mere interference with the blood vessels, the blood supply, will cause the tetany. Page 592, under the heading of "Tetany," reads:

> "Considerable controversy has arisen as to the influence of ligation in continuity of one or both of the inferior thyroid arteries on the development of this complication, but in both Quervain's and my own experiences tetany is practically unknown even after the systematic ligation of all the thyroid arteries, provided that the parathyroid bodies themselves have been left undisturbed in their normal situation."

Q. Is there anything which refers to inflammation or pus on the thyroid?—A. Not on any authority I have consulted. I will read that again. This is in support of my statement, parathyroid tetany occurring after operation is due to the removal of the glands and not to interference with the blood supply.

> "Considerable controversy has arisen as to the influence of ligation . . . but in both Quervain's and my own experience tetany is practically unknown even after the systematic ligation of all the thyroid arteries, provided that the parathyroid bodies themselves have been left undisturbed in their normal situation."

WITNESS: This is Quervain on "Goitre" 1924, pages 142 and 149. "It has been suggested that the ligature of both inferior thyroid arteries or the simultaneous ligature of all the arteries—complete or nearly complete—may be one of the causes of tetany. We have tied three or more arteries in 611 cases and have only had one case of mild tetany, referred to above. The four arteries were tied in 22 cases and no tetany developed."

Mr. CASSIDY: That is on the question of interference with the blood supply?—A. Yes.

Q. In your own experience have you any tetany cases you have seen coming from thyroidectomy, or tetany coming from anything; have you ever seen sepsis having anything to do with it?—A. No.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Examination, *continued.*

Q. Can you tell me whether you have known thyroidectomies that have had sinus and infection and no tetany ?—A. Yes.

Q. As to chronic tetany can you tell us whether you have had any examples of tetany lasting some time ?—A. Well, chronic tetany is a disease of itself, really. It does not necessarily mean the same tetany we have been describing that goes on for a long while, because in chronic tetany there is some previous change in the particular structures, cataracts developed on the eyes, the skin becomes affected ; that is what technically chronic tetany is. The other tetany, the type we have been discussing, lasts for a long while after thyroidectomy. I have had no personal experience of it, all the cases I have had have yielded well to treatment, but I have heard of cases which have gone on for a period of a few months. In my own experience it has been a matter of about six weeks.

Q. I want to go now to the question of the blood count. You have heard of the blood count having been made on the 28th of October ?—A. Yes.

Q. Will you have a look at it ?—A. Yes. This is a normal blood count.

Q. You have heard it stated in evidence that on the 2nd of October the Plaintiff had gross swelling and suppuration, a wall of pus in the throat and that it existed for three months beforehand and that then there had been an eruption into the throat. All that happened up to the 2nd of October. That during that period and up to the date of the blood count she had been receiving foods such as bovril and arrowroot—the pus continued up to that date—her food had been bovril and arrowroot and things of that nature. What do you say, having looked at that blood count, as to the consistency of that story with the blood count which you see ?—A. That story would lead one to expect a blood that would be abnormal in two respects. Firstly, there would be evidence of a deficiency of iron in the body which would show itself in this blood count with the amount of hæmoglobin and in the size of the red cells. Secondly, if suppuration was still present one would have expected a blood count which was not normal in respect of some of the white cells.

Q. Will you look at that ? (Document handed to witness)—A. When I look at this I find that the hæmoglobin is normal, the colour index is normal, that expresses another aspect of it, and that the count of corpuscular volume is 86, the normal range being 75/95. Furthermore it states : " The result shows there is no anæmia and in stained films the red cells show no pathological change . . . signs are present in normal changes, also the leucocytes show no pathological change." There is no anæmia of the type of anæmia which one would expect would be the type which is associated with deprivation of iron. That would show itself in these various investigations that have just been read out.

Q. Therefore is it consistent or inconsistent with the Plaintiff's story ? —A. It is inconsistent with that story.

Q. When you were dealing with the anatomy of the neck this morning it was suggested the possibility of the passage of the tube—was there any other illustration you wished to use ?—A. I do not think so. I think I gave all the essential ones.

Q. There is one thing, you used an envelope at one stage, saying there was an opening at the bottom ?—A. Yes, downwards.

Q. Did that envelope, which is oblong, purport to represent what you call your first compartment of the capsule ?—A. The first compartment with the thyroid capsule inside.

Q. Is there an illustration, have you one handy, that shows what we call the opening down ?—A. I am not familiar with Sloan's Anatomy, but there is one in Campbell which shows part of it. If you have Campbell's Surgical Anatomy, I can show you a partial diagram of it. (Book handed to witness.) This diagram shows here the hyoid bone and there the sternum or breast-bone. These are the superficial layers, these are the middle layers and it is behind that that this compartment is and it runs down. Although it does not show it very well, at about that point is the prevertebral layer, and that runs down to the chest. There is a gap and this shows the attachment to the vessels behind the sternum, there is a gap leading down in that direction. This shows a condition with the front of the chest removed, but it does not show it very clearly. (The various parts referred to by witness indicated to His Honor and the Jury.)

(Short adjournment prior to cross-examination.)

Cross-examination.

Cross-examination.

Mr. SHAND : When did you make up your list of authorities ?—A. Over the last couple of weeks.

Q. That is when you looked them up ?—A. Yes.

Q. I suppose before that you could not have given us those authorities ?—A. I could not have given you all of them.

Q. For instance Reinhoff, which you called Neuhoff—that is apparently a new authority to you ?—A. Yes.

Q. How did you come to make the mistake ?—A. I really could not tell you.

Q. You cannot explain that ?—A. No.

Q. Although you knew it was an old authority as far as you were concerned, you knew it all right ?—A. Yes, he is a very well-known man.

Q. You spelt it to the Court Reporter ?—" N-e-u " ?—A. Yes.

Q. You knew him very well ?—A. Yes, a very well-known authority.

Q. When I mentioned " Reinhoff " you corrected me until you saw the book ?—A. Yes.

Q. So even when I mentioned this authority that you knew so well, it was not brought back to you ?—A. No.

Q. Have you a bad memory ?—A. No.

Q. One of those things that cannot be explained ?—A. Yes.

Q. It was not hysteria ?—A. Not to my knowledge.

Q. Because that is the reservation " not to your knowledge " ?—A. We have all some bit of hysteria in us.

Q. Some of us like to hold the centre of the stage ?—A. Yes.

Q. All those who like to hold the centre of the stage are not hysterics ?—A. No.

Q. I would like to know what was your theory in the matter—do you think there was tetany in this case ?—A. I have already stated to Mr. Cassidy in this case that I am not in a position to say there was not tetany at the beginning of the illness.

Q. So it might have been tetany ?—A. Yes.

Q. So that you have read I suppose and I assume discussed, the evidence of medical witnesses in this case ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Cross-examination, *continued.*

Q. You know that Dr. Ritchie has expressed the opinion that it never was tetany ?—A. Yes, I know that.

Q. And you know Dr. Poate has expressed the opinion that it was tetany for some months and then it became hysteria ?—A. Yes.

Q. Might I suggest that you are half and half, you don't know what it was at first ?—A. I never saw the patient at the beginning.

Q. Neither did Dr. Poate ?—A. No.

Q. Without putting it offensively, you are the half-way house in the evidence ?—A. I suppose I am.

Q. When did the hysteria manifest itself ?—A. I cannot tell that.

Q. You can do your best ?—A. The purely hysterical part of it to my mind manifested itself at a period—of course there is no sharp line of demarcation—about June.

Q. That is what you have heard Dr. Poate say ?—A. Yes.

Q. Why take June ?—A. Because at that time the intensive treatment with calcium and paroidin had ceased to have its effect.

Q. Do you know she was being treated with calcium after June ?—A. I do not know.

Q. Do you know what she was being treated with ?—A. She was being treated with calcium gluconate and later with paroidin and during that time the spasms grew worse.

Q. What was she being treated with in June 1938 ?—A. One or other of those two substances, I don't know which.

Q. Do you know who was treating her ?—A. Dr. O'Hanlon.

Q. How long did he continue to treat her after June ?—A. I don't remember.

Q. You don't know what she was being treated with ?—A. Either calcium gluconate——

Q. Do you know how often she was being treated after June 1938 ?—A. Not in detail. Frequently, that is just what I know.

Q. Was she, is that your knowledge ?—A. Yes.

Q. That she was being treated frequently ?—A. Yes.

Q. By Dr. O'Hanlon ?—A. Yes.

Q. With one or other of those, paroidin or calcium gluconate ?—A. Yes.

Q. What do you mean by frequently ?—A. At first, daily.

Q. After June ?—A. Two or three times a week.

Q. Was it ?—A. Yes.

Q. Where did you get that from ?—A. I think from the evidence.

Q. Do you swear it comes from the evidence in this case ?—A. It could not have come from anywhere else because I do not know anything about it except what I have read in the evidence.

Q. Are you willing to swear that there is any such evidence ?—A. My impression is that there is.

Q. It is only an impression ?—A. Yes.

Q. So if your impression is wrong, the foundation goes for your conclusion that about June this hysteria manifested itself—or part of the foundation ?—A. Part of the foundation, yes.

Q. You think it was one or other of them. How long does the effect of calcium gluconate last ?—A. The individual injection ?—a few hours.

Q. I suppose you have read that in this case ?—A. No.

Q. Did you read my cross-examination of Dr. Bell ?—A. No.

Q. Where did you glean that information ?—A. From my own experience.

Q. So that if it was calcium gluconate and even assuming for the moment you are right and she was treated a few times a week and it only lasted a few hours, spasms might still continue ?—A. Not in my experience.

Q. What experience have you had with severe parathyroid tetany ?—A. I have seen a few cases of it.

Q. How many have you treated as your own patient ?—A. In hospital I have treated cases under my care—I suppose about half a dozen.

Q. In how many years ?—A. A long while, 20 years.

Q. Severe cases of parathyroid tetany ?—A. Yes.

Q. Does that involve suppuration ?—A. No, I cannot remember suppuration in any of them.

Q. So you have ascribed that condition that you have experienced as being due to some injury to the parathyroid glands themselves ?—A. Injury or removal.

Q. Of course, if you removed enough glands you would get a permanent condition ?—A. Yes.

Q. And inevitably fatal ?—A. Yes.

Q. What experience have you had of paroidin ?—A. Not very much. Some years ago I used paroidin but I was rather disappointed with it and I gave it up then for the use of calcium gluconate which I always found very satisfactory.

Q. In what way was it disappointing ?—A. Its effect was relatively shortlived.

Q. Shorter than calcium gluconate ?—A. Yes, in continuous treatment.

Q. How many patients did you treat with it ?—A. I cannot remember now ; I have not seen so many. I suppose two or three and I was influenced also by my readings.

Q. So that if it were paroidin that was used on the Plaintiff after June 1938, that particular foundation for your conclusion would not be a very strong one ?—A. The paroidin is effective for a little while.

Q. If it were only paroidin that were used, the fact that she had spasms after that would be a very weak foundation to base your conclusion of hysteria on ?—A. No, if the paroidin was being used for two or three weeks, it usually has its effect then but later on it ceases to have effect.

Q. How many spasms do you think she had after June 1938 ? Do you know ?—A. I have not any idea.

Q. Have you the slighest idea ?—A. I know she had a great number.

Q. What you call a great number, what is the minimum that constitutes a great number ?—A. I don't know—she had spasms from June that year up till October the following year, wasn't it ?

Q. I want to know what your idea is of the number of spasms she had —I am going to suggest that you have not the slightest idea ?—A. No, not beyond saying that she had a number of spasms.

Q. It was a great number a moment ago, which is it ?—A. I would say about 20.

Q. On what do you base that ?—A. My general impression of the evidence.

Q. Reading the evidence ?—A. Reading some of the evidence and hearing her own description.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Cross-examination, *continued.*

Q. Do you swear that there is any reference to such a number as 20 in the evidence ?—A. No, I don't swear it.

Q. The fact is that you are only guessing ?—A. I get a general impression from listening to the evidence and it is news to me that she did not have many after that.

Q. I am not suggesting what she had. I am saying all the information you have got to base this conclusion of hysteria on—that is the least you can do ?—A. In so far as that particular part of the evidence is concerned, yes.

Q. So that you don't know at what particular periods between June 1938 and October 1939 she had the spasms ?—A. No.

Q. And you don't know whether they closely followed injections of paroidin or whether they were removed at some long interval from injections of paroidin ?—A. I remember one occasion where she had an injection in the morning and a spasm in the evening.

Q. When do you think that was ?—A. I don't know when that was.

Q. I am taking the period after June 1938 ? Do you remember when that was ?—A. No, I had the impression it was after that time.

Q. What do you think the injection was ?—A. I think it was paroidin.

Q. I think I am at liberty to tell you that it is not so ; it was calcium gluconate ?—A. Well, it is all the more significant then.

Q. Although that only lasts a few hours ?—A. Yes.

Q. Have you studied the hospital records ?—A. Not in detail.

Q. You have expressed certain very confident opinions to those gentlemen ?—A. Yes.

Q. But you have not studied the hospital records in detail ?—A. No.

Q. How much of the evidence have you read ?—A. I heard practically the whole of Mrs. Hocking's evidence.

Q. The whole of the cross-examination ?—A. Yes, I think, the whole of the cross-examination. And I have read various transcripts that have been supplied to me.

Q. Various pieces ?—A. Yes.

Q. Were you supplied with a copy of the evidence ?—A. Yes.

Q. The whole of the evidence ?—A. No. I was supplied with the evidence given by Dr. Bell, Dr. Ritchie and the evidence given by Dr. O'Hanlon, but I did not read that last very carefully.

Q. Dr. Marsh or Dr. Steele ?—A. Neither.

Q. Mr. Hocking ?—A. Yes, I was supplied with that.

Q. You put down as one of the indications of hysteria the fact that when she was in Quirindi Hospital she turned her head and something stuck into her neck ?—A. Yes.

Q. If that really occurred it would be no evidence of hysteria ?—A. No.

Q. Do you also realise when you gave that evidence, that Mr. Hocking had sworn that on that occasion blood had run down her neck ?—A. No, I was not basing my opinion upon the fact that blood was on her neck.

Q. You used the words that she unfortunately threw the cotton wool into the fire ?—A. Yes.

Q. Of course, if that event took place you could not suggest it was the foundation for hysteria ?—A. No, but the fact that she—that nobody took any notice of it, was.

Q. Is that the only thing ?—A. That, together with the loss of the swab.

Q. I am putting it to you, assuming the swab was lost or thrown into the fire, that removes that ?—A. Yes.

Q. You are just assuming, in that particular incident, that it was absolutely without foundation that she rang in vain for a sister ?—A. No, I am not assuming that at all.

Q. What part do you suggest is imaginary ?—A. That in conjunction with a large number of other things.

Q. Leave the other things—what part of that do you suggest is imaginary ?—A. I don't suggest any part of it is imaginary.

Q. You are dealing with it on the assumption that it may be true ?—A. Yes. I am prepared to deal with it on that assumption.

Q. And if it be true—that is with regard to that incident—that is no support for a suggestion of hysteria ?—A. No.

Q. Of itself ?—A. No, I agree with that.

Q. One of the other incidents was this, that she did not seem to know what she was admitted to St. Luke's Hospital for ?—A. Yes.

Q. You are assuming, may I take it, that she was told exactly why she was to go into hospital ?—A. Yes.

Q. You are not relying on any evidence for that ?—A. I heard her giving evidence about that.

Q. You aren't relying on any evidence that she was told, you don't suggest there is any evidence in this case that she was told exactly what operation she had to undergo in the hospital ?—A. I cannot conceive that anybody would go into hospital without knowing.

Q. You don't suggest there is any evidence to that effect ?—A. No.

Q. You are simply relying on the fact that you think it is improbable that she was not told ?—A. Quite so.

Q. And on your assumption that that is improbable—you are using that as a ground for suggesting she is hysterical ?—A. One of the grounds.

Q. Do you think that is a fair assumption to make, without any evidence that when she says she was not told, she is not telling what is accurate—do you think that is a fair assumption ?

Mr. CASSIDY : That is not the position.

Mr. SHAND : Is not that the position ?—A. I am prepared to quite believe the position, so I think it is a fair assumption.

Q. You think that is fair as a scientific man ?—A. I am talking as a medical practitioner.

Q. And as a medical practitioner ?—A. Yes.

Q. I suppose that involves this, that you think both Dr. Bell and Dr. Ritchie should have told her what she was going to the hospital for ?—A. Yes.

Q. And have explained the exact nature of the operation ?—A. What do you mean by the exact nature.

Q. They were going to——?—A. To remove the thyroid, yes.

Q. You think they should have ?—A. Yes.

Q. Are you aware that neither of them has given evidence that they did tell her ?—A. I am not aware of that.

Q. Would that weaken your assumption ?—A. No.

Q. Nothing would weaken it ?—A. No, I cannot imagine——

Q. Not even if they swore they did not tell her ?—A. If they swore they did not tell her, yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Cross-examination, *continued*

Q. You believe that ?—A. Yes.

Q. Nothing short of that ?—A. No.

Q. You think that is fair ?—A. Eminently fair.

Q. What do you think she said about the way Quirindi Hospital was run ?—A. It was very badly run, and she had unsuitable food. There was a reference to blue sago at some time or other.

Q. Have you any idea how Quirindi Hospital was run ?—A. Not at that time.

Q. I suppose you will admit that sometimes hospitals are badly run ?—A. Yes.

Q. That may be perfectly true ?—A. Yes.

Q. Why mention it as being one of the matters you relied on ?—A. Because it was one of the list of misfortunes that this woman was subjected to.

Q. But it may be a perfectly true misfortune ?—A. Quite so.

Q. And you did not know whether it was or not ?—A. No.

Q. So you are putting it forward as a basis or one of the bases of hysteria and you did not know whether it was a proper basis or not ?—A. No.

Q. Do you consider that fair ?—A. Yes.

Q. Will you not agree that it is a queer idea of fairness ?—A. No, it is not.

Q. Supposing you put forward 12 matters and it turned out that each of them was without foundation because each of them was untrue, would you think that was unfair ?—A. Yes, it would be unfair.

Q. What about the blue sago ?—A. I heard that mentioned.

Q. Did you read it or hear it mentioned ?—A. I heard, I think, Mrs. Hocking talk about it.

Q. What did she say ?—A. I cannot remember what she said.

Q. You put it forward as one of the bases ?—A. I gained the impression——

Q. What is the best of your recollection as to what she said on which you are forming this conclusion ?—A. I cannot remember the words she used.

Q. What do you think was the sense of it ?—A. The sense of it was that the sago was blue and very unpalatable and it formed a considerable portion of her diet when she was in hospital.

Q. Did you know whether that was true or not ?—A. No.

Q. We have about four things now that you put forward as the grounds of hysteria, and you admit so far as your knowledge goes they may not have formed valid grounds in themselves ?—A. Yes. (Objected to : objection withdrawn.)

Q. If the tube or part of the tube had been actually left in the neck a lot of the conduct that you have described as unusual would be rendered not unusual ?—A. No.

Q. I am asking you to assume that the Plaintiff's story is correct ?—A. Correct only in so far as leaving a portion of the tube in the neck ?

Q. Correct as to the incidents that happened ?—A. Previous to it being left in ? You mean the method of withdrawal ?

Q. I will make myself more clear. Your assumption, in calling attention to what happened when the tube was removed, or what was

alleged, was based on the assumption that no such thing did happen ?—A. No. The description of the removal of the tube was in my opinion an extremely exaggerated story.

Q. And based on the assumption that the tube was not removed in that manner—It must be based on that ?—A. Yes, and a very sound assumption too.

Q. At least we have one sound assumption, have we ?—A. Yes.

Q. That is the first one that I have asked you about ?—A. Yes.

Q. What about the cruel treatment in St. Luke's ? What do you know of that ?—A. What do you mean by what do I know of it ?

Q. You said that was another of the bases of your conclusion—the cruel treatment in St. Luke's ?—A. I think it is a fair assumption from my knowledge of St. Luke's Hospital that they do not treat people cruelly.

Q. What evidence did she give of cruel treatment ?—A. She used the words " cruel treatment."

Q. What about ?—A. When she was in St. Luke's Hospital.

Q. But with reference to what ?—A. This is on the second occasion ?

Q. Yes ?—A. Some stuff having been put in her drink. That was very cruel I think she said.

Q. That is what it was ?—A. Yes.

Q. You are satisfied as to that ?—A. Yes.

Q. I suppose you will agree if a woman had a very sore throat and she was, whether for her own good or not, given something to drink that caused her severe pain, that that might be described by a person who was not hysterical as cruel treatment ? (Objected to.)

Q. I suppose you can imagine a female patient being in hospital and being given—we will say it is for her own good—something which has the effect of hurting while it is in the throat, such as many things do, and such a patient without being hysterical saying she was given cruel treatment ? —A. Yes. It would not be a very happy choice of words, but I can imagine it.

Q. Women do use such words ?—A. It is not confined to women.

Q. That is not a very strong foundation ?—A. Not if it really happened.

Q. Did you read the St. Luke's Hospital reports ?—A. Yes.

Q. Do you remember what they say ?—A. No.

Q. Do you remember anything they say about the throat ?—A. I have read them but I cannot remember the actual words.

Q. Yet you are putting forward this proposition as being a basis of hysteria and you did not check up, or did you check up, to see whether there was anything in the hospital records to support it ?—A. I looked at the hospital records but I cannot remember the actual words that were used.

Q. Did you see anything to support the suggestion that she had a sore throat, a pain in her throat ?—A. I think she had a pain in her throat then.

Q. That makes it even less sound as a foundation ?—A. For hysteria ?

Q. Yes ?—A. Yes. If all these extraordinary things were really true then the diagnosis becomes weaker.

Q. Did you notice this on the 29th October : " Sore throat ; aspirin gargle given." On the 30th October : " Burning feeling in throat ; refused inhalation," and on the night of the same date : " Irritation and pain increased in throat and chest " ?

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Cross-examination, *continued.*

His HONOR: Do you want to see the hospital records?—A. I remember them now they are being read.

Mr. SHAND: "Refused inhalation; patient said they caused the complaint"; and eventually on the 31st the throat is painted. Now I want to ask you this: you said certain accusations were made against Mr. Hocking?—A. Yes.

Q. Was one of them that the husband had struck her?—A. No.

Q. Why not?—A. I don't know why he did not strike her.

Q. You are trying to be funny, are you?—A. No. I do not remember any mention——

Q. You said a moment ago "I don't know why he did not strike her"?—A. Because you asked me why. You said "Did he strike her."

Q. Why was not that particular incident one of the reasons for your concluding hysteria?—A. Because I did not know that her husband had been charged with striking her.

Q. You were in Court and heard Mrs. Hocking cross-examined—right through the cross-examination—A. Well, I had forgotten that point.

Q. You read Dr O'Hanlon's evidence?—A. Some of it.

Q. Did you pick out bits of it?—A. I read some of it till I went to sleep, then I did not finish it.

Q. Morpheus intervened and you did not read any more?—A. Yes, mercifully.

Q. How far did you get?—A. I cannot remember how for I got. I read I suppose roughly about half of his evidence.

Q. Did you read the whole of his evidence given in chief?—A. Not the whole of it.

Q. He was the man on the spot?—A. Yes.

Q. He was the man who was stating that there were definitely spasms?—A. Yes.

Q. And you did not bother to read the whole of his evidence?—A. No.

Q. Do you agree that sometimes evidence is tested by cross-examination?—A. Yes.

Q. Did you read any of his cross-examination?—A. No.

Q. Before giving evidence in a case of this gravity did you think that was rather careless?—A. No.

Q. You did not care exactly what evidence you read?—A. I read evidence that was given to me to read, and in the case of Dr. O'Hanlon that was the only one that I did not finish.

Q. Was all that given you to read?—A. Yes, it was given to me but I did not have time to finish it.

Q. When was it you went to sleep? When you were reading it?—A. At night.

Q. How long ago?—A. I cannot remember the date.

Q. About how long ago?—A. It was a couple of days after he had been examined and cross-examined.

Q. And you have never completed it since?—A. No.

Q. You have been in Court every day?—A. Not every day but most days.

Q. Did you read as far in his evidence as the evidence he gave of the Plaintiff being unconscious?—A. I cannot remember.

Q. But this is one of the things you have been stressing—the unconsciousness being non-characteristic of tetany ?—A. Yes.

Q. And you cannot remember whether you read that ?—A. No.

Q. You cannot remember anything of what he said about unconsciousness ?—A. No, I don't think I can.

Q. Did you read anything about it ?—A. I don't know how I came to the knowledge that unconsciousness had been present. I fancy it was from Mrs. Hocking's evidence.

Q. You think she said that she was unconscious ?—A. Yes, I think she did.

Q. Didn't you think in a case of this gravity it might have been better if you had been a little better equipped with knowledge of all the facts of the case ?— A. I am sufficiently well equipped to form an opinion.

Q. But you do not know what there is that you have not read ?— A. You mean of Dr. O'Hanlon's evidence ? No, I do not.

Q. And of other evidence—you do not know what the other evidence is that you have not read ?—A. I know the evidence pretty well. The evidence that was submitted to me I read, with the exception of Dr. O'Hanlon's that I did not read.

Q. Who picked the evidence that was given to you ?—A. I do not know ; it was handed to me.

Mr. SHAND : Who picked the evidence ?—A. I do not know ; it was handed to me.

Q. You do not know what Dr. Marsh said ?—A. No.

Q. You have no idea what he said ?—A. No—I have been told what he said, but I did not read the evidence.

Q. Who told ?—A. Somebody connected with the case ; I do not know whether it was Mr. Cassidy, or Dr. Bell, or Mr. Reimer—somebody.

Q. Were you here when Dr. Marsh was in the box ?—A. No.

Q. What are the accusations against the husband upon which you rely ?—A. The fact that her food had been interfered with, No. 1 ; and No. 2, that while under the influence of a drug given by her husband, the husband took advantage of her.

Q. What was the evidence on that ?—A. That those charges had been made to Dr. O'Hanlon.

Q. You had not read Mr. Hocking's evidence. You said you had not ?—A. I did read Mr. Hocking's evidence.

Q. You said you did read it ?—A. I did read it, yes.

Q. Do you remember anything in the nature of complaints being made that her jaw was dislocated ?—A. No, I do not remember that.

Q. I had taken you through the matters that you said you relied on. I did miss one thing. I dealt with the suggestion the place was badly run at Quirindi. The other suggestion was that she was badly treated. Where did you get that from ?—A. I think I heard her say so here.

Q. I suppose, if a place were badly run, a patient might be badly treated ?—A. Yes.

Q. That is another assumption that you make ?—A. Yes.

Q. Of those matters, you have given seven, and the only two that you still maintain are solid foundations are what happened with regard to the removal of the tube, and the accusations against the husband that you have mentioned ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Cross-examination, *continued.*

Q. The rest, you agree, depend upon an assumption that her evidence mis-stated the facts ?—A. If all those things that I said were untrue, well then, I withdraw my opinion——

His HONOR : Withdraw you diagnosis ?—A. Withdraw my diagnosis.

(Last questions and answers read.)

Mr. SHAND : You mean the premises you depended upon—if they were untrue ?—A. I meant this, that if your premises are untrue, if all these things happened as stated, then my opinion about hysteria would change.

Q. Go to the other side of the picture, which I suggest is tetany ? —A. Yes.

Q. How many cases have you dealt with—if any—of suppurating wounds following an operation for thyrotoxicosis ?—A. I do not deal with them myself, but I have seen a fair number.

Q. A thick, purulent discharge ?—A. Yes.

Q. I will get you to write down the names, and we will get the records. In hospitals ?—A. Some of them in private hospitals—yes, all of them in private hospitals.

Q. Write down the names to-night ?—A. Your Honor, am I required to reveal the names of patients who are under my care ?

Mr. SHAND : They won't go any farther.

Mr. CASSIDY : The hospital can be subpœnaed.

Mr. SHAND : I must know what the names are, and I am going to subpœna the hospitals.

His HONOR : Mr. Shand cannot subpœna a hospital until he knows the names of the patients whose record he wants.

Mr. CASSIDY : Other people's interests are concerned. It is a thing that doctors are objecting to.

His HONOR : I think the law is that they can be compelled to give the names, in a court of law, and if they are required to give them I am afraid they will have to give them. But I will certainly suggest that if they are given, every possible step should be taken to keep them anonymous.

Mr. SHAND : It is obvious they will be.

The WITNESS : I cannot remember every patient. I can remember some.

Mr. SHAND : I want a patient who has had thyrotoxicosis followed by a thick, purulent discharge.

His HONOR : A thyroidectomy followed by a thick, purulent discharge ?

Mr. SHAND : How many cases do you think you have had of that ? —A. I could not give you any figures.

Q. Do your best ?—A. I cannot stretch back over 20 and 30 years.

Q. What is the minimum ?—A. I cannot give you a numerical estimate of the number ; I can say that it is a familiar experience.

Q. Will you swear you have had six ?—A. I must have had more than six.

Q. You must have ?—A. Oh, yes.

Q. How long has that lasted, that discharge ?—A. Usually a matter of a few days.

Q. So that you will agree that this was, in your opinion, an unusual case ?—A. In respect of what ?

Q. In respect of the discharge ?—A. You had better ask the surgeon that.

Q. You are put forward by my friend as a man of many parts ?—A. It is not a circumstance that would create in my mind any great wonder, if there was a purulent discharge after a thyroidectomy.

Q. Do you think that was the question I asked you ?—A. You asked me for the number.

Q. I asked you would you admit that was an unusual circumstance ?—A. Yes, I suppose you would say that it was unusual.

Q. You have never known of it ?—A. Of a thick, purulent discharge ?

Q. Lasting so long ?—A. Lasting how long ?

Q. You know, do you not ; you have studied the records ?—A. Lasting for 18 months.

Q. Have you studied the hospital records, first of all ?—A. Yes.

Q. How long do you think it lasted, in the hospital ?—A. The thick, purulent discharge lasted for about three or four days.

Q. That is what you think, is it ?—A. Yes.

Q. How long did a purulent discharge last for ?—A. In this case ?

Q. Yes ?—A. The sinus did not close until she went home to Quirindi.

Q. How long did a purulent discharge last ?—A. It was purulent while the sinus was open.

Q. All the time ?—A. Yes.

Q. When did the sinus close ?—A. After she went back to Quirindi.

Q. When ?—A. I do not know the date.

Q. You are putting forward your views that this was hysteria. How much do you know about when the sinus closed ?—A. I know that she was in St. Luke's Hospital, and she left before the sinus closed ; she went back to Quirindi, and after she went back there, the sinus did close.

Q. How long after ?—A. I do not know.

Q. You have no idea ?—A. No.

Q. Have you read the Quirindi Hospital records ?—A. I told you before I read them through, but I did not make any notes about dates.

Q. So you are giving your opinion without knowing when the sinus closed ; is that so ? (Objected to by Mr. Cassidy, who said that he had given the witness the date.)

(Question read.)

WITNESS : It was a few weeks after she left St. Luke's—that is the recollection I had.

Q. What was her history, where did she go after she came back from St. Luke's ?—A. Do you mean on the first occasion ?

Q. Yes ?—A. She went back home, and then went into Quirindi Hospital.

Q. Had the sinus closed then ?—A. I do not remember.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 36. Stuart Arthur Smith, 5th January 1944, Cross-examination, *continued.*

Q. You do not remember whether or not it was still open at Quirindi ?—A. No.

Q. Do you remember whether her neck was still inflamed when she went into Quirindi Hospital ?—A. Yes, I remember that it was inflamed—or said to have been inflamed—when she was there.

Q. And swollen ?—A. And swollen, and Dr. O'Hanlon tried to keep the wound open. Whether that happened when she was in hospital or at home, I do not know. It is not a matter of any significance.

Q. Of course, if the wound is closed, and there is inflammation, and there is swelling, do you tell these gentlemen that, from a medical point of view, that has no significance ? Do you say that ?—A. Significant as to what ?

Q. Any significance as to her condition, or the diagnosis of her condition ?—A. It has to be taken into consideration.

Q. One of the elements you did not take into consideration was whether it was closed or not ?—A. I do not know what you are driving at.

Q. You did not take into consideration the date when the sinus closed, did you ?—A. Take it into consideration in arriving at what opinion ?

Q. In arriving at the opinion you arrived at—hysteria ?—A. No, I did not.

Q. Because you did not know ?—A. I did not consider it important.

Q. You did not know, did you ?—A. I knew vaguely, it was some weeks. I did not consider it of importance.

Q. Did you think it was three months ?—A. After what ?

Q. Three months after the operation ?—A. No, my impression was that it was not as long as that.

Q. You say it was only a few weeks ?—A. Yes.

Q. I can tell you now that it was the end of June—over three months ?—A. Yes.

Q. That is news to you ?—A. Oh, yes.

Q. You seem to treat it very lightly ?—A. I do not consider the matter of any significance in regard to my opinion about this case ; whether the sinus was open or closed has no bearing on the subject of hysteria.

Q. What about tetany ?—A. No, it has got no bearing on that, either.

Q. None at all ?—A. No.

Q. Do you suggest to these gentlemen that, if you have suppuration which is around the parathyroids, that that may not affect the working of the parathyroids ?—A. I do not believe it would.

Q. You do not ?—A. No.

Q. Do you regard Dr. Bell as being any authority ?—A. Yes.

Q. You have heard him express an opposite opinion ?—A. Yes.

Q. Dr. Ritchie ?—A. Yes.

Q. Your opinion is counter to his ?—A. Yes.

Q. And Dr. Poate ?—A. I have not heard what Dr. Poate's opinion is.

Q. Have you not read what his opinion is ?—A. No, I did not know he had given evidence in this case.

Q. Not in this case. Have you not read what his evidence was in a previous case ?—A. I heard him give it in one trial.

Q. Do you say you do not know that he has stated that suppuration will interfere with the functioning of the parathyroids?—A. I did not know that.

Q. Do you know anyone that agrees with you?—A. The authorities I have quoted.

Q. You think they do?—A. Yes.

Q. Well, we will deal with those to-morrow. Those are the only ones you can find supporting this proposition?—A. No.

Q. These authorities deal with the effect on the parathyroids of ligaturing the arteries during the operation?—A. Yes.

Q. There is no authority which you have put forward which deals with the effect of suppuration about the parathyroids—none at all?—A. No, there is nothing in the literature about it whatever—not to my knowledge. I cannot pretend to know all the literature, but I have not seen anything about it in any of the authorities I read.

Q. In point of fact, did you know in an authority you read the author was careful to suggest that the arteries should not all be ligatured together, but some should be left while the others are being ligatured?—A. Who stated that?

Q. I will put it to you to-morrow. Did you note that?—A. No, I did not note it.

His HONOR: What do you mean by the arteries being ligatured together.

Mr. SHAND: Separately, not all at the same time.

His HONOR: A second operation? They are cut during the operation.

Mr. SHAND: Not all at the same time.

The WITNESS: What space of time do you mean?

Mr. SHAND: I am not suggesting any space of time, but they are not all done at the same time.?—A. You could not tie them all at the same time.

Q. Did you know that that is stressed?—A. No.

(At this stage further hearing was adjourned to Thursday, 6th January, 1944.)

Twenty-fourth day—Thursday, 6th January, 1944.

No. 37.

FURTHER EVIDENCE of Arthur Hamilton Tebbutt.

Re-called:

Mr. REIMER: Dr. Tebbutt was asked to produce certain authorities, and also the question was raised the other day as to whether or not he made any observation on the leukocytos in the blood. Dr. Tebbutt is available this morning, and I understand my friends are agreeable, and with Your Honor's permission I wish to interpose him.

Mr. SHAND: I would like to be provided with a copy of Dr. S. A. Smith's lecture to the Post Graduate Organisation—I call for that.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 37. Arthur Hamilton Tebbutt, 6th January 1944, Examination, *continued.*

I asked my friend some three days ago whether he would be prepared to admit that the blood count and the blood calcium was not referred to in the first trial.

I have the admission it was not produced in the first trial, and there is a certain passage in the transcript.

Mr. CASSIDY : Page 184 of the first trial, line 30.

His HONOR (Reading from page 184, line 30) :

> " Q. Just run your eye over these records (Records handed to witness). Did you look at those before ?—A. Yes. She had a blood calcium test done then by Dr. Hansman, I think I saw the report of that which showed——(Objected to.) "

Dr. Hansman was the doctor who did portion of the test, with Dr. Tebbutt.

Mr. SHAND : Yes.

His HONOR : Dr. Hansman's initials are on the first page.

Mr. CASSIDY : Dr. Tebbutt was not called.

Mr. SHAND : Nor was Dr. Hansman.

My friend asked that Dr. Thompson should produce the authorities referred to on pages 410 to 426 inclusive. They only refer to unconsciousness. Dr. Thompson produced his authorities. I mention that because, if my friend wants any other part produced, he can mention it later.

Then we would like to have available volumes 2 and 3 of Choice's Surgery. Volume 1 was here yesterday.

Mr. CASSIDY : At the moment we have only the one volume, and we will see if we can get them.

Mr. REIMER : The doctor was asked to produce his authorities with regard to his propositions (1) as to the amount of iron required for a normal adult woman, and (2) the effect of the amount of iron in certain foods, particularly meat extract.

Mr. SHAND : I do not remember the first ; I remember the second.

Mr. REIMER : You did give some evidence that a woman required a certain minimum iron intake per day. You have referred us to Whitby and Britten, Disorders of the Blood, 1939, 3rd edition, on page 122 of which this passage appears :

> " McLester (1931) estimates that, in order to meet every reasonable hazard of ordinary life, an adult should ingest not less than 15 milligrams of iron per day. This amount is contained in an average mixed dietary. The amount of 15 milligrams of iron represent a safe minimal diatetic iron requirement of women."

Is that one of the authorities you referred to ?—A. Yes.

Q. Then, in the same text-book, on page 131, there appears this passage :

> " Women, by reason of the demands of menstruation, pregnancy, and lactation, require a diet rich in iron in order that the iron intake may be within the margin of safety."

—A. Yes.

Q. On page 132 of the same text-book appears this passage:

"Most efficient iron containing foods are: liver, oatmeal, brown bread . . ."

I think that means wholemeal bread?—A. Yes.

Q. ". . . dried fruits, especially figs and apricots, beans, lentils, peas, green vegetables, cocoa, chocolate, and sardines. Red meats, well known to be rich in iron, have relatively little of the iron available."

What does that mean—"have very little iron available"?—A. In digestion the iron does not become available, it is not absorbed from meats; it is not available for the iron requirements of the body.

Q. You were also asked for some authority with regard to the iron content of meat extracts. You have referred us to Shearman's Chemistry of Food & Nutrition, 1933, 4th edition, on page 323 of which the following passage appears:

"Little weight can be attached to such statements regarding the iron content of foods as are based upon the data obtainable from the ordinary tables of ash analyses, as these have usually been obtained by methods which are likely to over-estimate greatly the amount of iron."

And then in the same volume, at page 557, there is a table of various foods, showing the content of iron and other substances, which shows meat extract as having no iron at all in the ash result?—A. No.

Q. Since you were in Court last, a question has arisen as to whether or not, in taking the blood count and the blood analysis, you observed the white cells, and as to whether they were normal or abnormal. The question has arisen whether, from the report you furnished, that is implied, or not. What do you say as to that?—A. My report, if I remember rightly, states——

His HONOR (Hands report to witness).

The WITNESS (continuing): These results show that there is no anæmia. In stained films—that is to say, stained films of the blood, made on glass slides—the red cells show no pathological changes. Reticulocytes are present in normal numbers, also platelets. The leukocytes show no significant pathological changes. I cannot remember, of course, exactly this particular case, but this is what I do in cases (objected to). I would like to explain what the statement is based on. Leukocytes show no significant pathological change—that is based on——

Mr. SHAND: Is this practice, or what you recollect; if it is practice, I object.

The WITNESS: I did this four years ago.

Mr. SHAND: Is this from practice, or recollection?—A. Of this particular blood film, I have no recollection of the patient, or the blood film, or anything else about the case. I have no recollection at all. My own opinion is based entirely on this report, which quite clearly shows that I thoroughly examined this blood. I examined the blood film, I reported on the red cells, platelets, reticulocytes and the leukocytes, and that is infallible evidence that I thoroughly examined the blood.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 37. Arthur Hamilton Tebbutt, 6th January 1944, Examination, *continued.*

Mr. REIMER : From an examination of your own report there, what is implied by the passage you have just read ?—A. That there was no significant change in the leukocyte differential count.

Q. What does that imply ?—A. It implies that it was in the normal range, quite definitely.

Q. How do you arrive at that conclusion ?—A. By the fact that I have had twenty or thirty years' experience in doing this, and after an examination of a blood film, without actually counting the different types of leukocytes, I can tell from my experience whether there is any significant pathological change in the relative numbers of those cells.

Q. In other words, does that imply that you have put the film under a microscope and examined the various types of leukocytes ?—A. Yes, the leukocytes, and all the other cells, and the platelets, and the reticular cells.

Q. In other words, you have made a full blood examination ?—A. A full blood examination from the point of view of this case.

Q. I want you to refer to an authority which you have handed me with regard to the question of iron in relation to sepsis. You have referred us to a book, the Anæmias, by Jennis M. Vaughan, on page 24 of which this passage appears—

> " Patients with a mild degree of sepsis require far larger doses of iron or liver to maintain a satisfactory blood picture than patients without sepsis " ?

—A. Yes.

Q. That deals with that part of your evidence you gave before when you were asked questions as to the consistency or otherwise of that blood count with the Plaintiff's story of sepsis ?—A. Yes.

Mr. SHAND : Will you swear you did a differential count ?—A. No —the report shows I did not.

Mr. REIMER : What is meant by a differential count ? I presume Mr. Shand is referring to leukocytes ?—A. A differential count is very frequently done in blood counts, always when there is any leukocyte increase, or decrease in leukocytes, leukopenia, and a differential is done also in special cases where the leukocyte count falls in the normal range. But where a patient has no anæmia, and the leukocyte count falls in the normal range, it is not my practice to do more than thoroughly examine the slide, that is to say, look at the leukocytes over a considerable number of fields and decide whether I shall do a differential count or not. I do that, because I have had 30 years' experience, and I am the Honorary Lecturer in Diseases of the Blood in the University of Sydney.

Q. Would there be any point in doing a differential count of the white cells in a case where they were in normal numbers, in normal proportion, and in normal quality ?—A. I would consider that in these days it would be a waste of time.

Mr. SHAND : Professor Inglis, I suppose, is some authority ?—A. He is Professor of Pathology.

Q. He is some authority on this subject ?—A. I would not say he was an authority on diseases of the blood. He asked me to give lectures on diseases of the blood because he thought that I had more experience.

Q. On taking a blood count, on knowing what to do ?—A. He would not do blood counts.

Q. On knowing what to do ?—A. He would know what to do, certainly.

Q. He tells us that the important matter to be considered is the proportion of polymorpha ?—A. Yes.

Q. Will you agree you cannot tell the proportion of polymorpha without a differential count ?—A. No, I won't agree with that, not with my experience.

Q. Will you agree you may be misled unless you do a differential count ?—A. No, I will not.

Q. It is never necessary ?—A. I have said when it is necessary.

Q. It is never necessary to do a differential count to know the number of polymorpha—or it is ?—A. Would you repeat that ?

Q. Do you say it is never necessary to do a differential count to know the proportion of polymorpha ?—A. "It is never necessary" ? The question is rather involved, from my point of view. If it is necessary to know the number of polymorpha accurately, it is necessary to do a differential count. But I say it is not necessary for a man of my experience to do a differential count and count the polymorpha in a patient who had no anæmia and has a normal leukocyte count number.

Q. When there has been suppuration ?—A. Even then—because I have examined the leukocytes myself.

Q. We simply have to rely on your experience ?—A. You rely on my experience, yes.

Mr. REIMER : From the examination you made of the slides, without making an actual count, can you see in your examination the different types of leukocytes that are in the slide ?—A. Certainly. The number of polymorpha that are normal is about 50 to 70 per cent. The normal range lies between 50 and 70 per cent., so there is quite a considerable range of normality. I consider that I have enough experience, after 30 years, to be able to say whether there is any necessity to do the differential count.

Q. If you found any abnormality, would you then do a differential count ?—A. Yes, certainly. I frequently do.

Q. In this case, from your records you say that it is obvious there was no necessity to do a differential count ?—A. Yes.

(Witness retired.)

No. 38.

FURTHER EVIDENCE of Stuart Arthur Smith.

Further cross-examined.

Mr. SHAND : When did you arrive at this theory you advanced that tetany is not brought on by an interference with the blood supply ? —A. Some years ago.

Q. About how many years ago ?—A. I cannot say how many years ago, but it is some years ago.

Q. Is reference made to it in your lecture in the Post Graduate Organisation ?—A. No, I did not deal with it ; I only dealt with diagnosis in that lecture.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 38. Stuart Arthur Smith, 6th January 1944, Cross-examination, *continued.*

Q. Is there any writing of yours where you have made reference to it?—A. No, I have never written on the subject.

Q. When were you first consulted with regard to this case?—A. It seems a long while ago now, but I think it was a couple of weeks before it started.

Q. On this occasion?—A. Yes.

Q. Had you discussed it before that?—A. Just casually, as such a number of people were discussing it—but quite casually.

Q. With Dr. Bell?—A. Yes, I would meet him in the street and ask him about it, but only in a casual way.

Q. Dr. Poate?—A. Yes.

Q. Dr. Ritchie?—A. Yes.

Q. Have you ever discussed this theory of yours with any of those doctors?—A. It is not a theory of mine.

Q. I put it to you it is yours, practically alone. Anyway the theory you refer to?—A. Yes, I have discussed it.

Q. With those three doctors?— A. No, I have not spoken to Dr. Ritchie about it at all.

Q. Dr. Poate?—A. I have discussed it with Dr. Poate.

Q. He disagrees with you?—A. I do not say he said he disagreed with me, but he listened to my reasons.

Q. In pained silence?—A. No.

Q. Did he agree with you?—A. I think he was inclined to agree with me.

Q. Do you know what he has sworn?—A. No.

Q. Do you know that he has sworn that infection affecting blood supply will bring on tetany?—A. No.

Q. You swear that he was inclined to agree with you?—A. I think he was impressed by my reasons.

Mr. SHAND: Besides the authorities you referred to, what are your reasons?—A. My reasons are as follows. For a long time now I have always believed that tetany was due to the actual removal or destruction of parathyroid substance.

Q. That is not a reason, that is what you believe?—A. Then, when I heard the evidence in this case, I heard that it had been attributed to interference with the blood supply. Well now, the best way to interfere with the blood supply to an organ is to tie the blood vessel that goes to it. That is a much more effective way of stopping the blood supply than by causing inflammation to occur. I then consulted the authorities, and I found that in those cases in which the inferior thyroid artery, which is the main source of supply to the parathyroid gland—I found that when both of those together with the superior thyroid arteries were tied, tetany did not occur. That seemed to me to be incontrovertible evidence that interference with the blood supply is not the cause of tetany. I know of no way of stopping the blood supply to an organ so effectively as to tie the blood vessel from which it derives its blood supply.

Q. That is the foundation of your conclusions, is it?—A. Yes. Then, I looked up some authorities.

Q. In my question I said, apart from the authorities, but I don't want to exclude you from giving them?—A. Well, that was the main basis of my own opinion, irrespective of the authorities.

Q. But you said that you only came to that conclusion by looking up the authorities, and discovering, as you have suggested, that tying up the arteries did not cause tetany ?—A. Yes, I did those things, and I sought confirmation of it, as one naturally would, by looking to the statistics as to what happens when the blood supply to these organs was known to be cut off.

Q. Talking of statistics, I refer you to a book you referred to—Joll, at page 593 :—

> "Richter and Zimmermann (1927) found in their series of thyroidectomies that tetany developed in 1.15 per cent., but that in addition certain patients exhibited an increase in neuro-muscular excitability when submitted to Trousseau's and Chvostek's tests. In one group of 100 cases of thyroidectomy specially examined in this way, fourteen were found to respond positively to the tests, two of them subsequently developing manifest tetany. They therefore consider that latent tetany is a rather common sequel to thyroidectomy."

Then, omitting two or three lines which are not material, it goes on :—

> "In two thousand consecutive thyroidectomies I have had one mild, transient case in a patient who had previously undergone elsewhere several operations for recurrent simple goitre. Neither of the inferior thyroid arteries was tied in this patient and no treatment for the tetany was necessary. She has recently had a further operation for recurrent goitre without the repetition of any further indication of interference with the function of the parathyroids."

Then, going back to page 592 : "Grasman (1927) reported the incidence from three clinics as 1.3 per cent., 2 per cent. and 3.4 per cent. In his own series of 2,600 operations in the thyroid there were only three cases of tetany. He ascribes this relative immunity to the fact that he does not tie the trunk to the superior thyroid artery but only the anterior branches" ?—A. Yes.

Q. So that is one expert, referred to just a few lines after the passage which you quoted, who considers that it is the fact that he does not interfere or interferes as little as possible with the blood supply that gives him immunity from tetany ?—A. Yes.

Q. When did you first hear the evidence in this case ?—A. In the second trial I was in and out and heard a little of it.

Q. And in the third trial ?—A. No, I was not present at the third trial.

Q. Was it after the second trial that you formed this opinion ?—A. Oh, no, this was years before. If you are trying to insinuate——

Mr. SHAND : Just answer the question, please. You have had a good deal of experience in the box, haven't you ?—A. Yes.

(Discussion ensued between counsel.)

Mr. SHAND : Can a trouble like scarlet fever affect the blood ?—A. Yes, all toxic poisons affect the blood—all infections.

Q. I suppose all things like measles, influenza, typhoid fever ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 38. Stuart Arthur Smith, 6th January 1944, Cross-examination, *continued.*

Q. With that answer in view I refer you to another authority which you cited to support your evidence. You cited F. W. Price, at page 1784, where he sets out the causes of tetany and its association. You cited No. 8 : " Parathyroid and thyroid tetany from gross disease or extirpation of these glands." Do you remember that ?—A. Yes.

Q. And you cited that as tending to negative the idea that tetany would arise from the blood supply ?—A. Yes.

Q. Let me go back to No. 5, on the same page : " Tetany from acute infectious diseases. It has been known to occur in the courses of typhoid fever, influenza, cholera, measles and scarlet fever." ?—A. Yes.

Q. And, occurring, as you have already answered, in those diseases, it results from an infection of the blood stream ?—A. No, I don't know that.

Q. You have already sworn——

Q. That is what the book says, isn't it ?—A. You go on. I want to hear the end of your remarks.

Q. That is all that appears here ?—A. Yes, but you interrupted a sentence in the middle and said " You have sworn." I have sworn this, that in those infectious diseases there is a change in the blood. I have sworn that tetany occurs occasionally in those diseases, but I have not sworn that there is any known change in the blood that causes tetany in those diseases.

Q. You have sworn that those diseases infect the blood stream ?—A. Affect the blood stream ; not infect.

Q. Well, we will have what you said read ?—A. Well, if I did say it, I will change it. (Evidence in question read.)

Q. It is clear that, according to this authority, the suggestion is that the blood being affected by those complaints that are there set out, the blood so affected itself reacts on the parathyroids ?—A. No, that is not implied at all. The only implication in that is that tetany—not the tetany following thyroidectomy—the tetany occurs in diseases of that kind.

Q. Tetany of course results from the lack of proper functioning of the parathyroids ?—A. In the majority of instances, yes.

Q. Are there any others ?—A. Yes, there are others. There are cases of tetany in which absolutely no cause can be found ; and there is the tetany that occurs in hysterical people, from over-breathing.

Q. All those troubles have this in common, that they affect the blood stream ?—A. Yes.

Q. What do you think the author means when he says that they occur in the course of those diseases ?—A. I think he means precisely what he says.

Q. How would it be brought on. Do you know ?—A. No, I don't.

Q. Unless it came from the blood stream, which all those things affect, how would it be brought on by those things ?—A. I don't know, and I don't think anybody else knows.

Q. You don't know what that means ?—A. As I said to you before, there are many cases of tetany that arise without any discoverable cause whatever. I have known a case of tetany occur after a simple injection of pituitary extract.

Q. It is a fact that all those diseases affect the blood stream ?—A. Yes.

Q. And the blood stream impinges or passes through some part of it, the parathyroids ?—A. Yes.

Q. And you will agree that that would be the logical conclusion, will you ?—A. No.

Q. What. It would be illogical to suggest that a diseased blood stream or a blood stream affected by each of those diseases would not cause tetany ?—A. Yes, quite illogical.

Q. Then you don't know what he means ?—A. Yes, I know that he means precisely what he says—that tetany occurs in the course of these diseases—and that is a very common experience, I mean in so far as tetany does occur ; but to assert that because they are infections, and affect the blood stream, they necessarily cause some change in the parathyroids which cause tetany, is not a justifiable conclusion to draw from that statement.

Q. You mean, it may be a coincidence that it occurs together with these complaints ?—A. Yes.

Q. Do you think that that is what the author said ?—A. No, he did not use the word " coincidence."

Q. You know that he said just the opposite ?—A. I think he says that there is some relation between it, but what the relation is he does not state. This has been a matter of investigation, I might state.

Q. " Tetany from acute infectious diseases." " From," not " accompanied by " ?—A. Yes.

Q. By the way, where is that article or lecture you delivered to the Post-Graduate Organisation ?—A. It was not published.

Q. Haven't you got it ?—A. No, but I will get what information about it I can. It will be in that programme of the post-graduate course of which it formed part.

Q. Will it be there in extenso ?—A. I forget, but I don't think so, because usually I do not write out these lectures, but I will get all the information I can about it for you.

Q. You have said that you cannot say, one way or the other, whether this was true tetany up to a period which you place round about June, 1938 ?—A. Yes.

Q. Did you see any signs of tetany up to that period ?—A. Yes, there were indications, but I was unable to express a definite opinion. There were indications that pointed to tetany. They were, a slightly lowered blood calcium, definitely but not markedly.

Q. How much ?—A. 7.2. That was at the time that Dr. Tebbutt conducted that blood examination.

Q. Were there any other indications of tetany ?—A. At that time, yes ; the patient had had an operation for the removal of the thyroid gland. That was another factor in favour of it being tetany.

Q. Anything else ?—A. I think the description that was given of the effect of the calcium glucinate when it was first given, although not conclusive, did help.

Q. Was it calcium glucinate that was first given ?—A. No, the first thing given was calcium by the mouth, and that was not very effective. The next thing, I think, was calcium lactate or calcium chloride given first and then calcium glucinate, and then calcium glucinate given intravenously.

Q. Have you been studying up the case since I cross-examined you yesterday ?—A. I looked at the chronological order of events.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 38. Stuart Arthur Smith, 6th January 1944, Cross-examination, *continued.*

Q. Have you learned a bit more about it ?—A. No, not very much.

Q. But you considered it necessary to give some further study to it ?—A. Yes, well, you asked me yesterday certain dates, and I could not remember them, so I refreshed my memory.

Q. Well, we have the low blood calcium, the operation, and the response to whatever was first given. Anything else ?—A. Not that I remember at the moment. Those were the things that weighed in my mind most.

Q. I suppose it would be of some significance if after an operation of this nature the patient had " pins and needles " in the hands ?—A. Yes, that has some bearing.

Q. Had you forgotten that ?—A. No, I had not, because that is part of the tetany. It is part of the disease.

Q. It is one of the symptoms of tetany to guide you ?—A. Yes.

Q. Now, leaving for a moment the effect of the blood stream on the parathyroids—I think you have read the medical evidence that was given ?—A. I haven't read it all.

Q. Have you read Dr. Poate's evidence, given previously ?—A. I read some of it.

Q. Leaving the blood stream alone, will you agree that the direct effect of pus on the parathyroids can cause them to cease to function efficiently ?—A. No, no evidence to warrant that statement.

Q. Will you swear it would not ?—A. I swear that in my opinion it would not.

Q. You will agree that pus can eat away the tissue ?—A. Yes.

Q. And could it eat away the parathyroids ?—A. Yes, it could destroy it.

Q. And if it ate away the parathyroids would it destroy their function ?—A. It would.

Q. And if before it entirely destroyed them it had partially eaten them away, would it partially destroy their function, or could it ?—A. No. I want to understand this question clearly. This is my answer : If you have suppuration down in this area near the parathyroid glands, and if that destroys all the parathyroid glands, then you will get a very grave form of tetany. If it destroys a part of the glands, you will get tetany which in the majority of instances will disappear.

Q. So that by partial destruction it can cause tetany ?—A. By partial destruction you mean destruction of part of the parathyroid ?

Q. Yes ?—A. Yes, I can conceive that ; but I have no evidence that it has ever done so. I can admit it theoretically.

Q. It is logical ?—A. Yes. Of course, the pus must be actually attacking the parathyroid substance.

Mr. SHAND : Yes, we will assume that. Then, you will agree that if after an operation you get an open sinus discharging, it is indicative of inflammation ?—A. Yes.

Q. And, where there is inflammation there may be pus ?—A. Yes.

Q. And, where there is pus, you have just said it may affect the parathyroids by partly destroying them so that you get tetany——

Mr. CASSIDY : (Interrupting) The parathyroid apparatus ?

Mr. SHAND : Yes. That is so ?—A. Yes ; theoretically.

Q. And yet you swore yesterday, that it was of no interest to you to discover when the sinus healed ?—A. Yes, that is correct.

Q. Although—I put it to you again, you see—see if you can escape from this circle—although when the sinus is still open, and discharging of course, there would be inflammation, and if there is inflammation there may be pus, and if there is pus it may affect the parathyroid so as to bring on tetany ?—A. Yes, well now you want me to escape from this circle ? When you come to actual practical experience I know of no evidence to associate suppuration with the occurrence of tetany.

Q. But you have admitted that it may occur, logically ?—A. Theoretically.

Q. Logically was the word you agreed to ?—A. All right—logically.

Q. And yet, you swore yesterday that it had no importance ?—A. No, I do not consider now that it is of any importance.

Q. Well then, you admit that mere logical consequences have no importance ?—A. Yes ; I am sorry I said logically. I meant theoretically. These are a series of theoretical considerations, similar to your talk about the blood in measles.

Q. Just answer the questions ?—A. I am trying to explain what I mean by theoretically.

Q. I think you put it yesterday that persons who jump to conclusions from wrong foundations may be branded as hysterical ?—A. I did not make so absolute a statement as that. I said that that is one of the indicia.

Q. That is what I am putting to you ?—A. And I would hate to call you hysterical, and yet you are jumping to conclusions on insufficient evidence.

Q. And, of course, you felt where it hurt ?—A. Where what hurt ?

Q. The reference to hysteria ?—A. No.

Q. That is one of the matters you did not take into account and which you did not think of any importance ?—A. No, I do not think now that it is of any importance.

Q. Do you remember Dr. Poate swearing that the parathyroids might be eaten away—to some extent I mean—by suppuration ?—A. No, I don't remember that.

Q. And then replaced ?—A. No, I have never heard of that.

Q. Could not they be replaced ?—A. Once they are destroyed they cannot be replaced.

Mr. CASSIDY : Where is that ?

Mr. SHAND : It is at page 180, line 41 :—

> " Q. I understand these parathyroid glands are in tissue of their own at the back of the thyroid or sides ?—A. Yes, they are very minute glands, and at the most they would be only one quarter of an inch in length.
>
> " Q. What I was putting was, if in the course of the ulceration and inflammation these glands had been affected in any way, would they ever renew themselves ?—A. Yes, that is a common experience."

Do you agree with that ?—A. Yes ; but that does not say " destroy."

Q. Do you agree with that ?—A. Yes, I agree with that.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 38. Stuart Arthur Smith, 6th January 1944, Cross-examination, *continued.*

Q. Do you agree further that they may be affected by ulceration and inflammation ?—A. Every tissue in the body may be influenced by ulceration and suppuration.

Q. I don't suppose you will depart from what you previously said—that if they are so affected, then their functions may be also affected ?—A. If they are destroyed ; that is my position.

Q. If only half of each one is eaten away ?—A. Well, that is destroyed.

Q. If they are only ulcerated, that would not affect their function ?—A. Yes, because ulceration would destroy them.

Mr. SHAND : We dealt with the operation, the pins and needles and you heard that the face and neck were swollen ?—A. Yes.

Q. At Quirindi after she had returned there ?—A. Yes.

Q. Would that be a matter that pointed possibly to tetany ?—A. Yes, it could occur in tetany.

Q. You mentioned the reaction and I suppose you realise that these were spasms ?—A. Yes.

Q. Will you agree that all that being taken by itself points to tetany ?—A. Yes, if taken apart from any other consideration, it points in that direction.

Q. Before June 1938 what single thing or number of things were there pointing to anything other than tetany ?—A. Firstly, these spasms were occuring in a person who I think is of a hysterical type and temperament.

Q. You are assuming hysteria there ?—A. Yes, it is a very important factor in the diagnosis as I set forth.

Q. I don't want to exclude that, all I want to give are indicia apart from your assumption of hysteria, any indicia that pointed to anything else but tetany——(Objected to ; after argument, withdrawn.)

Q. You give lectures on tetany, amongst other things ?—A. On general medicine, yes.

Q. Including tetany ?—A. Yes, that is part of general medicine.

Q. When you give lectures do you mention that unconsciousness may accompany tetany ?—A. No.

Q. You exclude that from your lectures ?—A. Yes.

Q. Do you mention that unilateral—— ?—A. I might say that I always stress the reverse, that the characteristics in tetany is that consciousness is not lost.

Q. So that if your students followed your teaching faithfully, they would exclude from being tetany any case in which consciousness was lost ?—A. Yes, on those grounds alone——

Q. If they followed your teaching ?—A. My teaching is never to make a diagnosis upon one factor in the case.

Q. Nobody would be taught by any person——(Objected to.)

Q. You teach that the characteristic of tetany is that it is not accompanied by unconsciousness ?—A. That is one characteristic, yes.

Q. Preservation of consciousness, that is the way you put it ?—A. Yes.

Q. And you make no mention of the fact that a person who has tetany may become unconscious ?—A. In the case of children, yes.

Q. Apart from children ?—A. Apart from children, no.

Q. So the tendency of a student following your teaching would be to exclude it in an adult who suffered from unconsciousness, from the realm of tetany ?—A. It would be the tendency. He would give it a good deal of importance.

Q. You don't mention unconsciousness at all to your students as occurring in tetany to adults ?—A. No, I don't.

Q. And you say in fact that the characteristic of tetany, or one characteristic, is the retention of consciousness ?—A. Yes.

Q. So if that were followed logically to its conclusion and there was an adult who suffered from unconsciousness, your student would exclude that case from tetany ?—A. No, they would not, not if they followed my teaching. That would be a very bad——

Q. You have said on general principles not to diagnose on one thing ? —A. Yes.

Q. But you don't mention at all consciousness as being a possible feature of tetany with adults ?—A. No, I don't mention it because I think it is a characteristic of this condition that consciousness is retained.

Q. I quote from text-books—Osler and McRae, volume 6, which is one you yourself referred to and you said it was an authority on tetany ? —A. I did not say so, but I agree that it is.

Q. " Consciousness is involved only in certain forms, parathyroid tetany." Barr—do you agree he is an authority ?—A. Yes.

Q. Page 3129—" In severe attacks the patient may experience excruciating cramp-like pains. Consciousness is seldom lost."

Q. Sir Humphry Rolliston—British Encyclopædia of Medicine, 428— " The central nervous system may be affected, drowsiness is common, a twitching followed by convulsions and cramp may occur." Allbutt and Rolliston—do you admit that as an authority ?—A. Yes.

Q. Page 590—" In cases of still more widespread spasm where the masseters, the muscles of the tongue, pharynx and larynx become involved and the breathing may become exceedingly difficult, the patient becomes cyanosed for a short time, consciousness may be lost." At page 594— " other vassometer phenomena consists in flushing of the face, infection of the eyes and redness of the ears. Evidence of similar vaso-dilation within the cranial cavity is found in giddiness, loss of consciousness, subjective sensations in the ears, and fleeting affection of vision." ?—A. Yes.

Q. Russell Brain is an authority ?—A. Yes.

Q. Page 769—" In severe tetany generalised by epileptiform convulsions associated with loss of consciousness may occur but are rare." Nelson is one you referred to yourself, 3128—" Manifest Tetany. Loss of consciousness is uncommon except with generalised convulsions." You also use Price. Page 514—" Bronchial and laryngeal spasm leading to spells of loss of consciousness occurs in advanced cases." Baxmin you used yourself. Page 523—" The sensbrium is usually there in the adult but in severe cases even complete loss of consciousness may be present."

Mr. CASSIDY : There has been no answer to those. It is a very difficult thing to carry all those in one's mind.

The WITNESS : I know them all. I can carry them all.

Mr. SHAND : You knew them ?—A. Yes.

Q. I want to know if your proposition goes this far——(Objected to.)

Q. You have heard those read ?—A. Yes.

Q. Does your contention go this far, that when you say consciousness is characteristic of true tetany, do you mean that it is a characteristic of manifest tetany ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 38. Stuart Arthur Smith, 6th January 1944, Cross-examination, *continued.*

Q. You don't suggest that those authorities I referred to, refer to children?—A. No. Perhaps the laryngeal one may, but speaking generally, no, they refer to adults.

Q. You don't suggest that they only refer to the terminal phase, death?—A. They don't specifically state so.

Q. Do you suggest they are meant to refer to it?—A. No, I don't.

Q. Do you disagree with them?—A. No.

Q. Now I will ask you to reconcile them?—A. I still maintain that the preservation of consciousness is a characteristic of tetany. Those authorities that you read indicate that, on rare occasions, unconsciousness may be present.

Q. In severe tetany?—A. In severe tetany, yes. You are not going to decide a diagnosis of tetany on one factor.

Q. I am not asking you that. You don't mention it to your students at all—you will agree those are world authorities?

His HONOR: He does not mention it in that way.

Mr. SHAND: He does not mention the consciousness as occurring——

His HONOR: He said "I always put unconsciousness as not characteristic."

Mr. SHAND: The answer to my question was that he does not mention it to his students as occurring in tetany.

Q. That was your answer, wasn't it?—A. I forget what the answer was.

Q. That is correct what I am putting to you, you don't mention it to your students as occurring in tetany?—A. As a characteristic?

Q. As occurring in tetany?—A. I don't remember mentioning it as occurring but I did certainly not mention it as a characteristic, quite the reverse.

Q. Those are world authorities I have referred to?—A. Yes.

Q. I suppose you will agree that unconsciousness would take place, if it took place, in the severer types of tetany?—A. Yes.

Q. And severer types of tetany are met with on occasions?—A. Yes.

Q. So that you do not give the benefit to your students of mentioning that world authorities have referred to the fact that unconsciousness does occur, at any rate in severe tetany—you don't give them the benefit of that? (Witness laughs.)

Q. What are you laughing at?—A. Because it is so ridiculous.

Q. You think so?—A. That I am taking away from my students the benefit of those. I teach my——

Q. You do not give the benefit of that learning of the world authorities?—A. I give the benefit of my knowledge——

Q. You do not give them the benefit of the world authorities?—A. I do.

Q. In that respect?—A. Yes, in that respect.

Q. You do?—A. Yes.

Q. Have you not sworn that you don't mention to them that unconsciousness occurs in adults?—A. Yes, I have, and if I may explain—

Q. Just answer the question. You did not give them the benefit of that?—A. Yes, I give them the benefit of my knowledge and experience, that is part of it.

Q. I said you don't give them the benefit of the knowledge and experience in that respect of those world authorities ?—A. No, I give the benefit of the knowledge and experience of myself and of the other authorities that state unconsciousness does not occur.

Q. Just the opposite to this proposition I have been reading ?—A. There is not very much between them.

Q. But you will agree, will you not, you don't dispute with those authorities that it does occur at times ?—A. Yes, I don't dispute that.

Q. But you don't tell your students anything about it, you don't tell them do you ?—A. Again I make the same remark, I don't know that I have ever specifically stated to a class of students that unconsciousness does not occur, but I——

Q. If you——?—A. Let me finish. But I do tell them that I regard it as an essential characteristic of tetany that consciousness is preserved. That is the whole truth.

Q. You have stated that half a dozen times ?—A. But you don't seem to quite grasp it.

Q. Don't I ? So that the fact is that if you don't tell them that unconsciousness may occur you are sending those students out into the world where they may meet unconsciousness with the benefit——what are you smiling at ?— A. It is really very ridiculous. If I am sending out a group of students into the world that are going to be so handicapped by me alone.

Q. If you know all this, that there are cases where it does occur, why don't you give it to them ?—A. I have already answered that question.

Q. Is it because you are trying to make out for this case that unconsciousness is a mark to remove this from the realm of tetany ? —A. No. I am telling the plain truth as I know it and believe it.

Q. What reason is there why you should refrain from telling your students that in certain cases unconsciousness may occur in adults ? —A. There is no reason.

Q. Do you forget or is it designed ?—A. I concentrate in my teaching upon the essentials of disease and the essential of the disease of tetany is that consciousness is not lost.

Q. Does that mean that if there are exceptional cases, they may have to deal with exceptional symptoms— do you tell them that ?— A. My students would not exclude tetany because there was unconsciousness——

Q. I am not asking that ?—A. That is the logical conclusion to your question.

Q. Do you say if there is a disease with exceptional symptoms that are not often met with, you don't tell them ? Do you ?—A. Yes.

Q. Those would be cases that would be more difficult of diagnosis ? —A. Yes.

Q. So with regard to the cases which are more difficult of diagnosis, you don't tell them the symptoms ?—A. No, nonsense.

Q. You have just sworn it ?—A. I say no.

Q. (Last three questions read) You have already sworn that that in those cases that have exceptional symptoms you don't tell them ?— A. I will withdraw that.

Q. What did you say it for ?—A. Because I did not quite understand the question.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 38. Stuart Arthur Smith, 6th January 1944, Cross-examination, *continued.*

Q. What did you think I meant ?—A. Well, frankly I thought the whole——

Q. What did you think I meant ?—A. Will you read the question again (question read) ?—A. I did not quite understand the trend of it. I thought you meant if you were dealing with a disease in which occasional symptoms, rarely occurring as symptoms, occurred, that I did not tell my students those unusual symptoms.

Q. That is just what I put to you ?—A. Yes.

Q. And you said you did not tell them ?—A. No, I want to withdraw that answer. I do tell them.

Q. You did understand the question because you repeated it ?—A. I wanted to be sure.

Q. You understood the question because you repeated it ?—A. All right. May I amend my answer on this.

Q. You want to change it ?—A. Yes. I do want to explain my position. I want to amend it in this sense, as to say that in the discussion of the diagnosis of disease I do mention unusual symptoms when they occur.

Q. So that is just the opposite to what you said before ?—A. Yes.

Q. Do you mention unconsciousness ?—A. Not in discussing tetany. I don't remember to have done it, but I have already explained to you again and again.

Q. That is just the opposite to what you said, that in discussing unusual symptoms you do mention them ?—A. Yes, when they are of importance.

Q. But why is not unconsciousness of importance if it does take place ?—A. Because it is not a characteristic of tetany.

Q. It is one of the exceptional things ?—A. It is exceptional.

Q. You do mention exceptions ?—A. Yes.

Q. But you do not mention unconsciousness ?—A. No, I don't think my students will come to any harm through that.

His HONOR : Perhaps the patients will ?—A. No.

Mr. SHAND : You are quite satisfied the answers you have been giving are logical ?—A. Yes.

Mr. SHAND : You swore yesterday that the illustration in Cunningham, at page 1148, was lifesize and the tonsils were lifesize ?—A. Yes.

Q. We have a selection of tonsils here ; I will take the smallest I can find ; this is No. 17, there is the tonsil in No. 17 ; is there anything wrong with that one ?—A. This is a diseased tonsil.

Q. Apart from being diseased ?—A. Yes, I think that is within the range of normal variation.

Q. You do not think that is the same, do you ?—A. It is not the same size as that.

Q. About twice as big ?—A. About that.

Q. You swore it was a normal tonsil ?—A. I would not imagine that Cunningham would put an abnormal one in.

Q. You swore to me when I interjected that that would be a normal sized tonsil ?—A. Yes.

Q. You do not call it normal when it is three times as big as the other ?—A. You said twice.

Q. Do you say that is within the normal range ?—A. Yes.

Q. We have dealt with unconsciousness and you will admit that it may be a symptom of manifest tetany, particularly when the tetany is in a severe form ?—A. Yes.

Q. There would be no question—assuming it is tetany and it was in a severe form ?—A. In this case ?

Q. Yes, assuming that it was it would be severe, you spoke about recovery within a few weeks ?—A. Yes.

Q. I want to put this to you, you have admitted as a matter of logic, if not a matter of your experience, that suppuration when it has reached the parathyroids may so destroy part of them as to bring on tetany ?—A. I think I corrected " logic " and submitted the word " theory."

Q. As a logical theoretical problem ?—A. I do not quite understand the application of the word " logical."

Q. Would you rather leave logic out of the question ?—A. In this question, yes.

Q. Do you admit that pus can eat away the human substances ?—A. Yes.

Q. One of the main substances, tissues ?—A. One would say that in the process which produces suppuration tissues are eaten away.

Q. And that may occur anywhere in the body ?—A. Yes.

Q. And it may occur with regard to the parathyroids ?—A. Yes.

Q. And if they are partly eaten away their function will be interfered with ?—A. The position is that there is a certain quantity of parathyroid substance in the body ; if a proportion of that is destroyed or removed it will produce tetany.

Q. That is what I was putting to you. You will agree, will you not, that is, assuming the whole of the parathyroids have not been destroyed—you said they may recover—I do not mean the tissue may recover but the person may recover ?—A. Yes, the person may recover.

Q. It would depend upon how much damage was done as to the time with which that person recovered ?—A. Yes, I think theoretically that is probably correct. There are a lot of things about this we do not understand.

Q. That is what I am endeavouring to expose. So that it is not a very strong foundation for the conclusion that in your experience patients have practically always recovered within a very few weeks, that is not a very strong feature ?—A. I think it is strong.

Q. How many cases have you had—I asked you last night and you were going to give me the names of all or any patients you have had—I do not mean publicly—who have suffered with a purulent discharge after a thyroidectomy ?—A. Yes.

Q. How many have you got ?—A. I have one so far. I might explain that it is very difficult to remember names, having seen a great number of patients ; and I last night proceeded to cast my mind back and I could not remember the names of some of the patients, but one of them I ultimately did remember.

Q. Before we deal with that, as far as that patient is concerned, was that a hospital patient ?—A. Yes.

Q. What hospital ?—A. Wootton Private Hospital.

Q. Was that a thyroidectomy in which the parathyroids were removed or not ?—A. In which the parathyroids ?

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 38. Stuart Arthur Smith, 6th January 1944, Cross-examination, *continued.*

Q. Any part of the parathyroid glands removed ?—A. I do not know ; I do not think so, there was no evidence of them having been removed or discharging.

Q. There was a purulent discharge ?—A. Yes.

Q. Lasting how long ?—A. As far as I remember it lasted six weeks. It was present I think when the patient left hospital.

Q. I assume, of course, it was a woman ?—A. Yes.

Q. Accompanied or not accompanied by tetany ?—A. There was no evidence of tetany.

Q. That is the only case you can remember ?—A. So far—there are others.

Q. Would you mind writing that name down ?—A. Yes. (Witness writes and hands paper to Mr. Shand.)

Q. Can you give us the date of that ?—A. I think it was about between six and twelve months ago.

Q. I take it there was some infection there ?—A. Yes ; that is what you asked me to get ?

Q. A purulent discharge ?—A. Yes, a purulent discharge.

Q. Would you write down the name of the surgeon, too ?—A. I do not mind saying it openly. (Witness writes and hands paper to Mr. Shand.)

Q. Have you your record of that case ?—A. No.

Q. Have you any record ?—A. The records would be at the hospital.

Q. You have none at all yourself ?—A. No.

Q. No card ?—A. No, I saw the patient in consultation.

Q. The next matter you dealt with was the blood calcium, which you conceded is very important ?—A. Yes.

Q. And you will agree a strong indication of tetany, a low blood calcium ?—A. Yes.

Q. You said it can occur with other troubles, kidney troubles was one you mentioned ?—A. Yes.

Q. Will you agree when it does occur with such a disease it is due to under-nutrition ?—A. That is one factor, yes.

Q. What I am putting is, taking the kidney trouble, that is a secondary cause ?—A. The kidney trouble a secondary cause ? Not in my view.

Q. Kidney trouble is the cause of bad health in the patient and the bad health is the cause of under-nutrition and under-nutrition a lack of calcium ?—A. That is not the story.

Q. What is the story ?—A. I do not know.

Q. You know that is not it ?—A. Yes, I know there has been a great deal of argument about it and it is mixed up with the behaviour of phosphorus.

Q. In the blood ?—A. In the body.

Q. In the blood, is it not ?—A. Yes.

Q. That is referred to in my text-books ?—A. Yes.

Q. And that phosphorus is carried by the blood to the parathyroids —that is the theory, is it not ?—A. I do not know.

Q. There has been a lot of argument over it ?—A. I know.

Q. Is not that a theory ?—A. There is one theory that says that.

Q. Under that theory the blood flow may affect the parathyroids, under the theory ?—A. No. I may as well tell you straight out I do not understand the relationships of phosphorus and calcium.

Q. Except that phosphorus is carried in the blood stream ?—A. Yes.

Q. And the blood stream part of it goes through the parathyroids,? —A. Yes, the curious thing about calcium in kidney disease is that it does not cause tetany.

Q. Will you agree with this, that if you get a lowered calcium associated with hysteria, that that lowered calcium only persists during the hysteria and for some short time afterwards and the blood stream recovers ? —A. That I do not know.

Q. Is kidney disease the only trouble that you know of in which you get a low blood calcium and do not get tetany ?—A. Oh, yes, there are others.

Q. What are they ?—A. Thyrotoxicosis for one, that will cause a lowered blood calcium, but not tetany.

Q. Anything else ?—A. That and hysteria, there are no others.

Q. I was putting to you and you said you did not know about the distinction between a lowered blood calcium in tetany and that in hysteria ; what I am putting is that in hysteria the patient recovers the calcium content a short time after the particular hysteria has passed off ?—A. I don't know that.

Q. You did swear, did you not, yesterday, referring to, amongst other, nervous disease and hysteria, that the blood calcium content would frequently remain low for a long period ?—A. Yes.

Q. Do you swear that you know in hysteria that it will remain low for a long period ?—A. No, I know this fact, that a lowered blood calcium, for whatever cause arising, will frequently continue low for a long period, but I don't know whether it does in hysteria.

Q. You maintained yesterday, with regard to the Trousseau test, that you needed a strong pressure, as strong as that for testing the blood pressure ?—A. Yes.

Q. And you said that was always so ?—A. In my experience always so.

Q. And you said it was a test that was difficult to apply ?—A. I have myself found it difficult, not to apply, but to obtain.

Q. I think the words you used were "to apply" ?—A. I meant "obtain," it is very easy to apply, it is merely a question of putting the blood pressure apparatus around the arm.

Q. Perhaps I was incorrect, the words you used were "A difficult one to elicit, you have to put a higher pressure than the blood pressure test." That is so, is it, with all classes of tetany, latent and manifest ? —A. To get a true Trousseau phenomenon I believe it to be.

Q. Osler, volume 5, page 421—"Trousseau in 1864 pointed out that if the blood supply to the arm be suppressed by means of a tourniquet the typical attitude of the obstetric 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 bicipital groove will produce such a spasm"? —A. Yes.

Q. "The test is very easy to apply and it is considered also pathognomonic of tetany" ?—A. Yes.

Q. They class it here as a sure test ?—A. Yes, I don't agree with that.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 38. Stuart Arthur Smith, 6th January 1944, Cross-examination, *continued.*

Q. It is an authority, after all, isn't it ?—A. Yes. I can show you a reference in another edition of Osler in which it says it occurs in both tetany and hysteria so one really has to choose between two authors.

Q. Do you agree with this, this is Price that you referred to, page 1786 —" In a well-marked case this presents few difficulties. The peculiar nature of the spasm, its distribution symmetrically with the hands most affected and the characteristic appearance of the limbs when in spasm with a Chvostek, Trousseau and Erbs, sign suffices at once to determine the diagnosis." Do you agree with that ?—A. Yes, absolutely, that applies the principle I have been trying to get you to understand, that you take all the facts into consideration in the diagnosis, not only one.

Q. So, in a well-marked case, provided you take all the features into consideration, it is easy ?—A. Yes.

Q. And presents few difficulties, you agree with that ?—A. Yes.

Q. " Hysterical spasm may closely simulate tetany but there is usually associated sensory loss." Was there any sensory loss here ?—A. I never tested her but I saw no reference to it.

Q. " The type of spasm is different." ?—A. I agree with that absolutely.

Q. " And the attempt at voluntary movement of the muscle and of passive movement are invaluable in distinguishing hysteria " ?—A. I agree entirely with that sentence.

Q. And in Binney, page 524—" Tetany is to be differentiated from tetanoid manifestations, especially hysterical. In hysteria the reaction to Trousseau sign is sudden, in tetany is gradual." ?—A. Yes, I think that is true.

Q. So that for persons expert in this matter who are present, who have an opportunity of seeing a patient, the diagnosis of tetany, you would agree, presents few difficulties ?—A. In a characteristic case it presents few difficulties. Yesterday, you will remember, I gave you the criteria for diagnosis. You take them all together, and when they are all present and together in a characteristic way there are few difficulties.

Q. And, of course, a person in the best position to diagnose is the person who sees the patient ?—A. If he is experienced in the disease, yes.

Q. And if he is able to read his authorities with intelligence ?—A. No, you need personal experience of this condition in addition to reading.

Q. Dr. Bell ought to have enough, shouldn't he ?—A. Yes.

Q. And Dr. Ritchie ?—A. Yes.

Q. What is your idea of treatment for an hysterical patient ?—A. I think on the whole the less treatment the better. Drug treatment plays a very small part in the treatment of hysteria.

Q. In your opinion is it necessary to secure the patient's confidence ?—A. Yes.

Q. And trust ?—A. Yes.

Q. And to let them talk and try and expose what is behind the condition ?—A. Yes.

Q. That is one of the elementary things, isn't it ?—A. Yes.

Q. If you suspect a patient of hysteria you let them wander on, whatever their bent is, and try and trace by what they say what the fundamental cause of the disorder is ?—A. Yes, you attempt psycho-analysis in so far as your abilities enable you to do it.

Q. You will probably agree with Gordon, page 642, "Treatment in a psychological sphere involves the establishment of rapport with the patient, practically this means confidence inspired by the physician. Time is probably the most important factor and there is no short cut to the treatment of neuroses, the patient should be given ample opportunity to tell his story in every detail." Would that be correct?—A. That is correct.

Q. "It is a common experience to find that the patient relates an enormous emotional discharge with consequent temporary relief from his symptoms during psychiatric interviews. Once the mental material is brought to life the case should be frankly faced and with encouragement and reassurance the patient is frequently able to view his problems without emotional display." Generally speaking do you agree with that?—A. Yes, it is a very difficult thing to obtain in many patients.

Q. But you would not agree, would you, that if you really thought a patient of yours was hysterical that you should just refrain from speaking to her and asking her anything about the causes of the trouble, you would not agree with that?—A. Yes, I would. I have often treated an hysterical patient by taking no notice of her complaints at all.

Q. Don't you try to get to the bottom of them?—A. Yes, but so frequently one cannot.

Q. But you try to?—A. Yes, you try to.

Q. What I am putting to you is this, you would not refrain from making any effort at all?—A. No, I would not do that.

Q. And do you notice in this case in the evidence of Dr. Bell and Dr. Ritchie that they did not question the Plaintiff about the occurrences that were alleged to have taken place about this tube?—A. No, I did not see that.

Q. Before giving your evidence did you not question them at all about it, you see on your conclusion of hysteria, did you not question them at all to see how she reacted if at all to their conversation?—A. Not specifically.

Q. That is one of the material matters in a diagnosis?—A. Yes.

Q. But you omitted to do that?—A. Yes, I omitted to do that.

Q. And I think you said that you had read the Plaintiff's evidence?—A. No, I heard the Plaintiff give evidence in the second trial, and I was in and out during this trial, I heard most of the Plaintiff's evidence.

Q. And you read Dr. Bell's evidence in this trial?—A. I have not read it, no, I have read bits of it. Really there is such a mass of material that I cannot remember what I have read and what I have not.

Q. So really you have gained no information as to what conversation took place when the Plaintiff came down after this tube was supposed to come down her neck?—A. Yes, I remember a portion in the evidence dealing with that.

Q. Do you not remember this, that Dr. Bell asked her nothing about it at all?—A. Nothing about the occurrence of the tube coming out?

Q. Yes?—A. Yes, I remember, or at least my impression of the evidence was, that when the charge was made Dr. Bell did not discuss it any further, that is my impression.

Q. No, before any charge was made, after she came down to the hospital the second time to be examined by Dr. Bell, did you realise that

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 38. Stuart Arthur Smith, 6th January 1944, Cross-examination, *continued.*

not one question was asked, according to Dr. Bell, about the occurrence of the tube extruding through the neck or throat ?—A. I found that impossible to believe.

Q. You did ?—A. Yes.

Q. I can tell you that is Dr. Bell's sworn evidence ?—A. I can't help it, but I find it impossible to believe.

Q. You certainly would not have adopted that line of conduct ?—A. Well, if a patient came to me and informed me out of the blue that a tube had come out of the tonsil——

Q. Did you hear my friend's last remark ?—A. Yes.

Q. Is that why you say " Out of the blue " ?—A. Yes, I did not need the cue, but if a patient came and told me, and it was my first intimation that an object like this had come out of the tonsil, I certainly would have asked a great number of questions.

Q. You knew this, that Dr. Bell had already had a letter down from Dr. O'Hanlon ?—A. Yes.

Q. And with that knowledge you have just sworn that you could not believe that Dr. Bell did not ask a question ?—A. Yes, I still believe it.

Q. So that this is the position, with your knowledge that Dr. Bell had had some information from Dr. O'Hanlon and with your further knowledge that Dr. Bell has sworn that he did not ask a word about the incident, you cannot believe it still that he did not ?—A. No, I cannot believe under those circumstances that no question was asked.

Q. And you, in similar circumstances, would certainly have asked some question ?—A. Tell me, was litigation impending at that moment ?

Q. No, there was no litigation. Let me give you this, that the Plaintiff had written down referring to the tube and saying that she did not blame the doctor or the nurses, that was the background for it. Under those circumstances may I have your assent to this, that you certainly would have asked some questions ?—A. Yes, certainly.

Q. The natural thing to do, wasn't it ?—A. Yes.

Q. To ascertain for yourself whether it was some hysterical manifestation or something else ?—A. It was such an extraordinary thing that one would want to know all about it.

Q. And might I suggest also, assuming that litigation was not pending, you would have also, if the husband had come down, inquired from him what events had occurred ?—A. I think I would have.

Q. The sworn evidence is : " 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 particular 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." And on the next page : " 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." You will agree that in your view that is unusual conduct ?—A. All I can say is that I would have asked a number of questions ; that is if I had been supplied with all the facts. I mean, if I suspected that litigation was impending—oh, well, even then I would have asked the questions.

Re-examined.

Mr. CASSIDY : In your evidence in chief you dealt with the anatomy of the neck at some length ?—A. Yes.

Q. And you have been asked no questions with regard to that ?—A. Except for the tonsil.

Q. And you dealt also with the question of suppuration and pus ?—A. Yes.

Mr. SHAND : I would like to say that I did not prolong this case unnecessarily, and I think it unnecessary to cross-examine on that, it has been dealt with by other witnesses.

Mr. CASSIDY : Coming to the question of tonsils, would you have a look at Exhibit 16. Is that within the range of normal tonsils ?—A. Yes. There are two here, they are both about the same size—yes, they are within the normal range.

Q. And they are smaller than other tonsils you have seen there ?—A. They are smaller than the ones I was shown.

Q. It is not peculiar I suppose for tonsils that you get large variations in size ?—A. No, every organ in the body. We all know the difference in size of the nose and the size of the head and so on, but they are all normal.

Mr. SHAND : Including the thyroid ?—A. Yes.

Mr. CASSIDY : Do you remember Mr. Shand cross-examining you in the early stages, and you said : " If you are insinuating—— " and you were stopped in answering ? Do you remember the connection in which that was being asked ?—A. Yes, I do.

Q. Will you just say what you wanted to say ?—A. I understood that the insinuation was that I had invented this idea or brought it up at this stage for the purpose of this case and not because it was my honest belief.

Q. What do you say as to that ?—A. I say that that is wrong. I have held this belief for a long time, long before I ever heard of this case.

Q. And the fact that it is suggested that there is disagreement between you and the other doctors, has that altered the firmness of your conviction ?—A. No.

Q. And in the course of coming to that conclusion have you been able to discover any cases of sepsis producing parathyroid tetany ?—A. No, I have not, I have consulted, as you will imagine, quite a large number of text-books within the last few days, and I have not seen a single reference to that.

Q. You realise, of course, that in some ways that was different to the views held by your colleagues ?—A. Yes, I realised that, and I believe that they have accepted this as a view, it has been passed down and it gets into text-books and I think they have accepted it uncritically.

Q. The next matter you were asked about was the question of suppuration, that you had seen active purulent discharge and you endeavoured to recall specific cases where there was no tetany. You said you had seen a number of them and you had given one of them in the last six or twelve months. Have you been able to get hold of the records yet ?—A. I have sent for them and I expect they will be here by lunch time.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 38. Stuart Arthur Smith, 6th January 1944, Re-examination, *continued.*

Q. And have you had an opportunity of looking at them yourself ?—A. No.

Q. You were asked for your reasons to support your contention that parathyroid tetany is not a necessary result from sepsis and you gave as your main reason, I think, the illustration of the ligaturing of the artery, or the tying off of the artery ?—A. Yes.

Q. In this case, if as the Plaintiff alleges, the suppuration and the abscess had shifted, you see it was on her case originally in the thyroid capsule on the right side——(Objected to.)

Q. Leave that go for the moment, I am not accepting Mr. Shand's contention on that but it does not matter very much, it does not affect the question I am asking. Assume for the moment that the infection and suppuration is in the thyroid capsule and that interference was there originally from the suppuration, interference with these vessels locally. Then assume the other part of her story that that suppuration had left the thyroid capsule and then appears 18 months later at the tonsil. With the suppuration gone from the thyroid capsule with the parathyroid gone, would it be up there having an influence on the parathyroids ?—A. Oh, no.

Q. And had it caused, as the Plaintiff said, while it was in that region, destruction of the parathyroids, could the tetany have ceased suddenly after the discharge through the tonsil ?—A. No, I think that is a fundamental fact.

Q. The premise my friend was putting to you was that the inflammation in the parathyroids was interfering with the blood supply. You were asked a question as to the teaching of your students, and it was put to you that you in effect let them out not thoroughly equipped. You might explain in the course; I suppose there are a large number of subjects to deal with ?—A. Yes.

Q. With regard to the different sub-heads with which you deal, what do you teach ?—A. I try to give my students a sound broad general view of disease. In doing so one points out the things that are characteristic. One attempts to teach them to consider all the factors together, giving some great importance and others less, and so to arrive by a consideration of all these factors at a conclusion. In lectures if there are a few features that are not characteristic of the condition, you consider those. If you were to attempt in teaching to mention every possible variation of a symptom you would never end, and your students would be in a dreadful state at the finish. If you started to give rare symptoms and everything it would never end.

Q. You remember an extract dealing with laryngeal spasm and another dealing with coma. What do you say about that ?— A. A laryngeal spasm is that condition that is most common in children. There is produced almost up to suffocation the condition of unconsciousness. Coma, of course, is a very deep form of unconsciousness that usually occurs just before, in these conditions certainly just before, death.

Q. What is your clinical experience with regard to unconsciousness in tetany ?—A. The only instance I have seen of unconsciousness was in a patient who was approaching death.

Q. You were asked about a lower blood calcium, and I think you said you might have it without tetany ?—A. Yes, that is well recognised.

Q. The question of phosphorus was mentioned. What is the importance of that ?—A. In all these conditions the phosphorus from the

calcium have an influence, particularly in kidney disease, but I am not sufficiently a bio-chemist to be able to instruct the Court on that matter, which is very highly complex.

Mr. SHAND: When was it that you say that Dr. Poate appeared to acquiesce in this conclusion of yours?—A. Yesterday.

Q. Is that the first time you told him?—A. Yes, I have not seen him for some days to talk to. That is when I told him my reasons for adopting this point of view.

Q. Did he struggle against it or just give in?—A. As I said, I think he was influenced by it, but I did not notice any signs of desperate struggle or of deep depression in him. He did not have a spasm or become hysterical, and I think he bore up very well.

Q. He did not seek to argue you out of it?—A. No.

Q. You heard some evidence given in the second trial. Hadn't you put it to him before yesterday?—A. No.

Q. Although you discussed the case with him?—A. Just in general, I did not discuss this case in detail at all until I had to give evidence.

Q. When did you put this matter to Dr. Bell?—A. Yesterday.

Q. And he appeared to agree?—A. You had better ask him, but my impression is that he was impressed.

(*Luncheon adjournment.*)

At 2 p.m.

Mr. CASSIDY: Have you had an opportunity of having a hasty look at those notes (indicating) during the lunch hour?—A. Yes.

Q. Speaking generally, what would you say as to the condition there as comparable with the affection in the Plaintiff's case?—A. It is closely comparable.

His HONOR: That is in the case of which you wrote the name down this morning and gave the name of the surgeon who performed the operation?—A. Yes.

Mr. SHAND: I would like to look at those notes. (Notes handed to Mr. Shand.)

Q. I notice the operation took place on the 14th June?—A. I only saw the patient in consultation in July.

Q. I notice that up to the 23rd June, although there is a report of temperature, there appears to be, so far as I can see up to that date, no reports of pus?—A. I never saw this patient until July.

Q. You do not know what the early condition was?—A. I was told what it was, but not of my own observation.

Q. You think it was a similar case?—A. Yes.

Q. Myxœdema?—A. No.

Q. I see there is a record of a discharge of pus on the 27th June, and there may be other entries before that; and on the day report of the 26th, "Foments to neck four-hourly," so that would indicate the presence of pus?—A. The presence of inflammation.

Q. There is also before that, on the 25th June, "Foments to neck, fair amount pus expressed"; on the 25th June, day report, "Foments to neck, same"; and on the 23rd June, "Has some pus from centre of neck" and "foments two-hourly," and "expressed discharge from wound

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 38. Stuart Arthur Smith, 6th January 1944, Re-examination, *continued.*

each time." On the 23rd, " Antiphlogistine applied to neck." Do you remember the case, or have you refreshed your recollection as to it. There apparently was a discharge, as referred to. Do you remember any other indications ?—A. Yes. I was asked to see this patient in consultation in July because of some swellings that had made their appearance, together with signs of severe illness.

Q. Did you diagnose what they were ?—A. Yes. I came to the conclusion that they were due to erythema nodosum.

Q. You get swellings in tetany also ?—A. Not of this character.

Q. What is the distinction ?—A. The distinction between swellings in tetany and erythema nodosum.

Q. In this case, what was the distinction ?—A. These were characteristic swellings of erythema nodosum.

Q. What is erythema ?—A. It is a disease.

Q. Of what type ?—A. Some people call it a rheumatic type, but it is characterised by the appearance of hard, red, painful areas in various parts of the body.

Q. Was there any connection in your opinion between this suppuration and the swellings ?—A. Yes ; I thought the suppuration was the cause of the swellings, of the erythema nodosum.

Q. Through affecting the blood ?—A. Through affecting the body generally.

Q. It affects it by the blood stream, does it not ?—A. It must, I suppose.

Q. I do not know whether you recollect, but I think you have said that the suppuration went on for some time ?—A. Yes.

Q. I suppose that would be suppuration in the area of the incision ? —A. In the capsule of the thyroid.

Q. It apparently did not go down the mediastinum ?—A. No ; this patient recovered.

His HONOR : Do you mean that if it had gone down she would not have recovered ?—A. Yes.

Mr. SHAND : You connect those two, the suppuration and the lumps that formed ?—A. Yes.

Q. Were they lumps forming on different parts of the limbs ?—A. Yes.

Q. Were they one swelling, or a matter of lumps ?—A. There were a number of swellings. It is a very characteristic disease. I thought it was due to the suppuration ; but it has got nothing to do with swelling occurring from tetany or anything of that kind. That is the reason I was asked to see the patient.

Q. The only similarity in the case is that there was suppuration in both cases ?—A. Yes, suppuration following thyroidectomy.

Mr. CASSIDY : That was suppuration over an extensive period, up till 15th July or some date like that ?—A. I did not see this patient immediately before she left hospital, but I was informed that the suppuration had not completely disappeared even when she left ; but that was only information that was given to me. When I saw her, suppuration was present. I was told it had been present for some time. I saw her with the object of assisting in the diagnosis of these swellings.

Q. There was a question asked about it not going down into the mediastinum; in that case was the sinus open all the time?—A. Yes; I think it closed over for a day or so, but I cannot say. I did not see the patient during that period of the illness.

Mr. SHAND: I think the period of suppuration was 23rd June—on the 17th July there was some discharge.

His HONOR: Do you recollect the date you saw the patient?—A. No.

Q. Would the records show it?—A. No. I saw her on two or three occasions.

Mr. CASSIDY: It was in July?—A. Yes.

Q. Dr. Poate knows the case too?—A. Yes.

Q. So that we can complete it with him when he is called?—A. Yes.

(Witness retired.)

No. 39.

EVIDENCE of Hugh Hunter.

Sworn, examined, deposed.

To Mr. CASSIDY: My name is Hugh Hunter, and I am a legally qualified medical practitioner carrying on my profession in Macquarie Street, Sydney. I am the tutor to students at Sydney Hospital in anæsthesia, and I am anæsthetist on the staff of the Prince Alfred Hospital, and senior anæsthetist at Sydney Hospital. I am also anæsthetist at the Dental Hospital.

Q. In this particular case of Mrs. Hocking, you gave the anæsthetic?—A. Yes.

Q. Do you remember anything about the tube that was used?—A. No, I have no recollection of any details of the operation; the only recollection I have would be of a negative character. I did not notice anything abnormal; that is all.

Q. Other than that, you have no recollection?—A. No.

Q. You had no after-care of the patient?—A. No.

Q. You gave the anæsthetic?—A. Yes.

Q. Is there anything at all in connection with the operation that you remember?—A. Yes, Mrs. Hocking was a difficult anæsthetic.

Q. But other than that, you remember nothing?—A. No.

Q. How do you mean; was it in regard to time?—A. In the early stages there was difficulty in producing a good airway. In an anæsthetic an open airway is absolutely essential.

Q. Does that take a little time?—A. Yes, sometimes, and sometimes very quick.

Q. But in this case?—A. A good few minutes.

Q. You have never given evidence in this case before?—A. No.

Q. And you have been asked on earlier occasions?—A. Yes.

Q. Was your state of mind such that you could give no assistance in regard to the nature of the tube used?—A. Yes.

Q. And did you tell the solicitors so?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 39. Hugh Hunter, 6th January 1944, Examination, *continued.*

Q. Have you given anæsthetics in a number of operations for Dr. Bell ?—A. Yes.

Q. In thyroidectomy operations ?—A. Yes.

Q. And other operations ?—A. Yes.

Q. And do you know his technique ?—A. Yes, I have a good idea of his technique.

Q. Can you tell me what his practice is in regard to the use of tubes in thyroidectomies——(Objected to by Mr. Shand on the same ground as previously ruled on by His Honor.)

Q. Have you noticed his practice in regard to tubes ?—A. Yes, he inserts a tube no longer than two inches and about the thickness of a pencil and there is a safety-pin put through the end of the tube.

Q. Do you know with regard to the colour of the tube ?—A. Yes, the ordinary red rubber tubing.

Cross-examination.

Cross-examined.

Mr. SHAND : And is the safety-pin in when he inserts the tube, or put in afterwards ?—A. Just as he puts the tube in, or it might have been before ; I would not say yes or no. As he puts the tube in he will be inserting the safety-pin.

Q. With the tube partly in ?—A. He would be putting it in, and then he puts it in—the pin will be in first, and he puts the tube in.

Q. He puts the safety-pin in first and inserts the tube, and after that he does some internal stitching ?—A. Yes.

Q. And then after he has done the internal stitching, he stitches the outside ?—A. Yes.

Q. Leaving a space for the tube ?—A. Yes.

Q. Puts a horsehair stitch in, I suppose ?—A. Yes.

Q. Can you tell me what an airway means for the anæsthetic ?—A. An airway is a piece of large rubber bent tubing with a metal attachment at one end.

Q. What constitutes the difficulty in securing an airway ?—A. In the early stages of an anæsthetic the jaw may become rigid—the muscles become rigid in the early stages of the anæsthetic and the jaw may not open or the tongue may fall back.

Q. Before the case was first heard, you were not asked anything before the first case ?—A. It was just at the time of the first case that I was approached—as the case was coming on.

Q. Before the first trial ?—A. Just before the first trial, I was asked then, as it was coming on, or about to come on. I was asked then.

Q. What were you asked ?—A. About giving evidence ; about what I remembered in regard to the details of the operation.

Q. Were you asked about the tube ?—A. No, I do not think I was asked about that then. They just asked whether I knew anything about the details of the operation, and I said no, I could not remember the details.

Q. That is all you were asked ?—A. Yes.

(Witness retired.)

No. 40.

EVIDENCE of Hugh Raymond Guy Poate.

Sworn, examined, deposed.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 6th January 1944, Examination.

To Mr. CASSIDY : My name is Hugh Raymond Guy Poate, and I am a legally qualified medical practitioner, practising in Macquarie Street, Sydney. I am a Surgeon and specialise in surgery. I am a Licentiate of the Royal College of Physicians, London ; Fellow of the Royal College of Surgeons, England ; Foundation member of the Royal Australian College of Surgeons ; Consulting honorary surgeon at the R.P.A. Hospital and certain other large hospitals in Sydney, and have been for a number of years. I am lecturer in post graduate surgery at the Sydney University, and a director of the Post Graduate Surgery Union. I am also Vice-President of the Royal Australian College of Surgeons.

I had a three years' service as a surgeon in the last war, and in the course of that experience saw a good deal of wounds and infections from foreign bodies. I have been consulting surgeon to the R.A.A.F. since 1939, and I hold the rank of Group Captain. I am still in that position. Also I am consulting surgeon to the 113th General Military Hospital.

Q. In the course of the last war and this war, has that given you a very extensive knowledge and practice in regard to foreign bodies in the human system ?—A. It has, and in addition I have been surgeon at the Randwick Military Repatriation Hospital ever since I came back from the last war, and I still attend there and I have seen cases right through from the last war and I am still attending them.

Q. Have you made a special study of the operation on goitre ?—A. Yes not only of the operation itself, but I have done a good deal of research work in regard to thyrotoxicosis.

Q. I think that your practice in goitres is, by reason of your specialisation, much the largest in Sydney ?—A. I believe so. Over the years I have done a tremendous lot of those operations.

Q. Tell us of the total you have done in your practice ?—A. I should say a minimum of 6,000.

Q. And even at the present time what would you say was your average a year ?—A. Since Japan entered the war and Prince Henry Hospital has closed, I have averaged 200 a year, and prior to that I averaged somewhere over 300 a year.

Q. In connection with the goitre, have you written and published papers ?—A. Yes, quite a number, different aspects of not only the operation but the disease itself.

Q. In one of those publications have you illustrated in it the various pictures of the method of performing the operation ?—A. Yes, I have given the details, and had special sketches made, because this operation that I have worked out is in strict conformity with the fascial planes of the neck, and the particular feature of the operation I have described that use is made of those fascial planes.

Q. I think you have given evidence in all three trials up to date ?—A. Yes.

Q. Do you know the practice of surgeons—Dr. Bell and others—in regard to this operation ?—A. Yes, I have seen every surgeon in Sydney, and probably in Australia, who has done much goitre work, and in various parts of the world.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 6th January 1944, Examination, *continued.*

Q. To commence with, and I am not going through all the details of the operation with you, as we have had them from others, but tell me in regard to the tube that is used, is there a recognised place where that tube goes in ?—A. Yes (Objected to).

His HONOR : That is covered by my previous ruling.

The WITNESS : The tube is always placed at the bottom of the cavity that is left, with the object of draining any serum that may form in the operation area. It is made as short as possible so as to prevent pressure on any of the important structures at the back, and it is generally removed within 36 to 48 hours after the operation.

Q. Is there a practice as to testing it before use ?—A. My own practice always———(Objected to).

Q. Are you aware of the practice of other surgeons in that regard ?—A. Yes, I have noticed and I have seen them examining the tube before being placed in position, and I think every surgeon would do so.

Q. You know Dr. Bell's surgery, and have you seen him doing it ?—A. Yes.

Q. What is it you have seen him do in regard to testing ?—(Objected to.)

Q. What is Dr. Bell's practice ?—A. I have actually seen him examine the tube, and I can remember on several occasions when I have seen actual tests of the tensile strength of the tube before inserting it.

Q. Have you in your experience ever seen a tube four to six inches used in the thyroidectomy ?—A. Never, no, I have never seen a tube of that character used in a thyroid operation.

Q. And have you ever seen such a tube with holes at intervals along it ?—A. For a thyroidectomy, no.

Q. You have seen the Plaintiff in this case ?—A. Yes.

Q. And having regard to her throat, what do you say as to the suggestion that a tube of over two inches would be used ?—A. I do not think it would be possible to place a tube of over two inches in her neck. If anything it would be shorter than that, because she is a thin person, and the actual depth that you place the tube in is only through the small infrahyoid muscles into the bottom of the cavity.

Q. Is there a reason for not placing it in too far ?—A. Yes, because you do not wish to disturb or press upon any of the other important structures further back in the neck, or in the area of the thyroid that you have left. You have sewn that over, of course.

Q. You put the tube in in the operating theatre ?—A. Yes, before you complete the operation.

Q. What is the condition of the neck at that period and for the next few days ?—A. The cavity from which the thyroid is removed tends to collapse by the pressure of the muscles around, so that the actual area is always less than the amount of thyroid tissue you remove. The cavity is smaller, and as the 24 to 36 hours go by, naturally that gets still smaller from the pressure of the muscles, and from what we call reactionary œdema that occurs in the tissues, it tends to close in. Nature abhors space in the human body and does her best to close it. Where we get the œdema is where you get a seepage of serum from the wound, from the raw surface of the wound, and that is why you place the tube to allow for excess of serum to escape to the surface.

Q. You used the words " within 24 to 36 hours "——

His HONOR : 36 to 48, he said.

Mr. CASSIDY : 36 to 48 hours you leave the tube in. What is the practice with regard to the period that the tube remains in, and what is the reason ?—A. You leave the tube in for only such a period as you get this reactionary serus exudate. For the first 12 hours it is rather free and generally blood-stained. After that it loses the bloodstaining and becomes a yellow serum. That may flow relatively freely for another 12 hours. At 24 hours that is easing off, but one leaves the tube in there in case there may be any further exudate which would be better away, and it is quite safe to remove that tube at the end of 36 or 48 hours.

Why we say 36 or 48 hours is because in public hospitals practice we operate in the afternoon, so that in the majority of cases the tubes will be removed the 36 hours following when the dressings are being done in the morning. In private hospitals we generally operate in the morning so that the tube would be left for 48 hours when the morning dressing is being done.

Q. So we know it is desirable to take the tube out ?—A. Yes. We remove the tube at the earliest possible moment. I have never experienced or seen any difficulty in removing a tube. As a matter of fact, it slips out so easily that it is my practice to leave it to the nurses to remove it.

Q. What is the reason for taking it out ? And not leaving it there ? —A. It is only held by one stitch to the skin, and the reason for taking it out is that it has then done its job and there is no further need for the tube

Q. In regard to infection, is that a possible medium of danger ? —A. There is, if you leave a tube in over long. There is a possibility of airborne infection, or infection from the dressings, or dust in the room getting in and causing infection in the deeper layers of the wound, which one naturally wishes to avoid.

Mr. SHAND : Mr. Cassidy, would you be able to get the temperature charts from the hospital covering the whole period ?

His HONOR : Which hospital ?

Mr. SHAND : St. Luke's.

Mr. CASSIDY : I am instructed that the fullest inquiries have been made and they are not here ; we cannot get them.

His HONOR : There was some evidence given that they were not kept.

Mr. CASSIDY : I thought they said that they did not know.

Mr. SHAND : I don't think there was any definite evidence.

His HONOR : It could be tested by the hospital being subpœnaed. That is one way of proving whether they were in existence at the moment or not. It is nearly six years ago now. That is a matter that can be easily cleared up.

Mr. SHAND : I understand that in the first trial there was a subpœna on the hospital to produce all the records, but they were not produced, so I assume they are not in existence.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 6th January 1944, Examination, *continued.*

His HONOR : Yes, I assume that that is the position.

Mr. CASSIDY : Still on the question of the tube. You told me that it is inserted in the lower part—any particular portion of the incision ?—A. Generally towards the centre of the incision, a little to one side of the midline. It would be on the side which appears to be the more roomy, or if you have any difficulty or trouble I think it is wiser to put it in on the side where there has been trouble.

Q. But either one side or the other ?—A. Yes. It is really immaterial. I suppose in the majority of cases one puts it in on the right side because one stands on the right side to operate.

Q. Were you in Court when Dr. Thompson gave evidence and an illustration was produced in a book called "Johnson's Operative Therapeusis" ?—A. I don't remember that.

Q. Were you in Court when Dr. Thompson illustrated how he said the tube would go in ?—A. About it passing obliquely upwards and across ?

Q. Yes ?—A. Yes, I remember that.

Q. Have you seen this illustration appearing in "Johnson's Operative Therapeusis" at page 304 (shown to witness) ?—A. I don't remember seeing this before.

Q. Taking Dr. Thompson's evidence to begin with, what do you say as to his method—pointing obliquely and upwards from right to left across the front of the trachea ?—A. No practising surgeon would dream of putting in a tube in that fashion, because it would not be doing its job. It would be in the wrong plane. It would be crossing the trachea and it would cause irritation, and the point of it would be sticking into the muscles on the other side of the neck.

Q. Is that something that you try to avoid—crossing the trachea ?—A. Yes, naturally.

Q. Why ?—A. Because if there is any pressure on the trachea the patient would get a very irritable cough, and if it is left in contact with the trachea for some days it may cause ulceration of the trachea.

Q. Now, coming next to that illustration that is given (indicating) ?—A. That is one of the old-fashioned ideas where the tube is not put in the incision, but in a special incision above the breast bone, and naturally in that case, to get into the thyroid cavity, it has got to go obliquely upwards, but it is not put through the wound.

Q. And is the object of the tube being at the bottom of the wound to get the drainage that falls down ?—A. Yes. Placed in that position (indicating) it would have to go upwards to get into the bottom of the thyroid capsule.

Q. This is on page 317—

> "To Mr. SHAND : For that I also partly rely on an examination I made of her neck. I say 'Left in the left side.' I have put forward that opinion throughout. I have insisted on that throughout. I know the structure of the neck. I hear Mrs. Hocking give evidence that the tube came out on the right side and also she had pain across the neck when it was withdrawn on the right side.
>
> "(Q.) Having, in view of your knowledge of the anatomy of the neck, what do you say ? You heard her say that she had pain across the neck when it was withdrawn from the right ?—(A.) She

had a stinging sensation on the left side of the neck, and when she turned the neck after the operation she felt the tube on the right side, towards the right side, extruding."

Now, listen to this portion: The question was "From your knowledge of the anatomy of the neck what do you say? Could a tube which was placed on the right side effectively go into the right lobe?" and this is the answer: "Not effectively, because it would be kinked. It would have to go round the muscles and consequently be kinked." What do you say as to that from the practical point of view?—A. I say, as I said before, that no practising surgeon would attempt to put a tube in in that way. The very object of the tube would be defeated if it has to be kinked to get it through. (Objected to.)

Q. He said "Not effectively." You could not put it in effectively; you could not put it straight in effectively, "because it would be kinked." Would it be kinked?—A. If it were placed in in the normal fashion it could not be kinked.

Q. And "It would have to go round the muscles and consequently be kinked." Would the muscles kink it?—A. You don't put it round the muscles. You put it in between the muscles. The muscles could not kink a tube.

Q. Passing to the next matter. You have told us the period of removal. I am trying to cut out certain things so as not to go over the ground again. You have told us when the tube was removed. You have seen the hospital records in this case, have you not?—A. Yes.

Q. And on those hospital records it shows that the tube was removed on the 17th March?—A. Yes.

Q. The operation having been on the 15th March. From your perusal of those records, what do you say as to the progress of the Plaintiff after that operation and up to the removal of the tube?—A. Judging from the hospital records, which I have examined rather closely, I would say that she had a perfectly normal, as a matter of fact rather a good, post operative 48 hours. It is not until we get to the night report of the 19th that her temperature shot up that there would be any cause for concern in her case. She was following the normal post operative reaction. They always have a rise of temperature and pulse immediately after the operation, and it generally falls to normal from the fifth to the seventh day.

Q. There is a case of yours that has been referred to in which Dr. Smith came into consultation with you?—A. Yes.

Q. Have you seen the records of temperature in that case?—A. Not since the patient left hospital, other than a very cursory glance.

Q. I will get you to have a look at them afterwards?—A. Yes.

Q. Now, it has been sworn here by Dr. Thompson that the tube should not have been removed, but should have been left in; that the tube should not have been removed on the 17th, but should have been left in. Is there anything in those records in your opinion to support such a statement as that?—A. None at all, because on the night report of the 15th it said that there was a fair amount of serous and blood stained oozing. That is what one expects. On the day report of the 16th there was slight serous oozing only——(Objected to).

Q. That is your chart, is it (indicating)?—A. Those are my own notes I have made from the hospital records.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 6th January 1944, Examination, *continued.*

Q. Have you prepared a chart that illustrates it ?—A. Yes.

(Five copies of chart tendered—Objected to.)

The WITNESS: I prepared this because it makes things so much easier and you get it in graphic form.

(Chart handed to Jury—Mr. Shand objects, and chart withdrawn from Jury.)

The WITNESS: I can assure Your Honor with regard to this chart——

His HONOR: When is the first time that the cough is referred to ?

The WITNESS: The first time the cough is referred to is in the night report of the 16th, and again in the night report of the 17th. The night report of the 17th—" Cough troublesome—4 a.m."

His HONOR: That would mean the morning of the 18th ?

(Argument then ensued as to the admission of the chart.)

The WITNESS: It is a custom in hospitals, in every part of the world that I have been in, to make 12-hourly charts of these temperatures and pulses, 4 a.m. and 4 p.m. pulses and temperatures.

His HONOR: Take the hospital record of the night of the 17th, " Chart still elevated 101.8, chart 7 a.m. 99.4 " ?—A. Yes, that would have made my chart much nicer if I could have put it in.

Q. Your chart came down there ?—A. Yes

Q. That should have come down for 7 a.m. ?—A. If we could have divided this into seven hours, but I put in at 12 hours for clarity.

Mr. CASSIDY: Is what Mr. Shand is putting to you of any significance at all ?—(Objected to.)

His HONOR: This is not put in as representing the actual temperatures ?—A. No, day and night according to the hospital records.

Q. Only the 12-hourly temperatures are put in ?—A. 4 a.m. and 4 p.m.

Mr. CASSIDY: Your reason for doing that ?—A. For clarity. If you divide the spaces into four hours then the reports are so inadequate that I do not think a four-hour representation would give you as accurate a representation as 12 hours.

Q. Why does the 12 hours give you a proper representation ?—A. That is the standard which has been adopted in hospital practice generally, the 12-hour chart.

Mr. SHAND: I still object to the chart.

His HONOR: I think it would be more satisfactory to have every temperature in.

Mr. CASSIDY: Can you, from a medical point of view, understand that anybody should require you to put every temperature in as a basis for your conclusions ?—(Objected to; not allowed.)

Q. You have looked at the temperatures and have made a certain chart ?—A. I can use the chart for my own purposes ?

His HONOR: Yes.

Mr. CASSIDY : What do the records show as to the temperatures ?—A. They show that she followed the normal course after a thyroidectomy operation. She had a post-operative rise of temperature and pulse rate well up, but it was not until mention in the night report of the 19th her temperature went to 103.8 that it would cause me any alarm. If the patient had been dangerously ill her pulse rate would not have settled down like that approximately to the 100 level and there is no record of any intravenous injections nor the administration of oxygen which we always use for seriously ill patients with a great post-operative reaction. So I say she is normal.

Q. Take the evidence that that tube should not have been removed on the ground that the surgeon should have anticipated trouble ?—A. I should say it is rather a peculiar statement to make because it means that we should leave tubes in until trouble does eventuate as it does sooner or later. It is usual that at the end of 30 hours you take it out.

Q. Now dealing with the question of the patient's condition by referring to temperature only and ignoring pulse rate, is that correct practice ?—A. No, it would only be done by somebody who had had mighty little experience.

Q. What is the position as to the two matters, temperature and pulse, to come to a conclusion ?—A. The normal reaction is for the pulse rate to go up with the temperature and when they get over their crisis the pulse and temperature fall. If the patient gets worse the pulse rate goes up and the temperature tends to fall. When you get the two factors together it shows the serious condition but when they come together the patient is beginning to recover.

Q. From those records is there anything to suggest that there was blockage of that tube interfering with free drainage ?—A. Nothing whatsoever because the tube did its normal function over the first 24 to 36 hours with the diminution of the serous oozing.

Q. It has been said that the lessening of the oozing suggests blocking of the tube ?—A. Such a suggestion could only emanate from a person who has no practical experience——(Objected to.)

Q. Now I want to go to the next matter. From these hospital reports is there anything to support a conclusion that the woman nearly died on the table ?—A. Nothing whatsoever, as a matter of fact it is the other way around because I had a report on the 17th which shows that her appetite is improving and that means that she is feeling bodily well—if she is eating it shows that she is getting better. In the day report it is reported that four horsehair sutures were removed. That is following the practice of removing the stitches at the earliest time, unless there is infection.

Q. On the 17th we read : " At the time of removal of the tube three sutures were removed." Is there anything abnormal in that ?—A. No, that is following the usual custom—get rid of your stitches as early as possible so that they will not leave a disfigurement.

Q. Were you in Court when Mr. Shand asked a question of one of the doctors as to the stitches left in by you in the tube ?—A. I do not think it was put that way, it was put inaccurately by Mr. Shand to Dr. Edye when he asked him whether he knew of the stitch after I put the tube in.

Q. Did you ever say that ?—A. No.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40.
Hugh Raymond Guy Poate, 6th January 1944, Examination, *continued.*

Q. What is your practice ?—A. Put the stitches through the muscles and then place the tube and tie the stitch that is pulled in position after the tube is in place.

Q. Now come to the question of the alleged removal on the second day. The account given by the Plaintiff herself at page 16 was that Dr. Bell used his fingers to pull the tube out. What do you say as regards the surgical practice ? (Objected to.)—A. That is not accepted surgical practice, I have not seen it done and I have not done it myself and I would not expect any surgeon to handle a tube in that fashion.

Q. The next matter is that having got his fingers on that tube he pulled the tube once and it did not come out——

His HONOR : He shook the tube then.

Mr. CASSIDY : " Pulled the tube in his fingers, shook it and it did not come out, so he pulled a little harder and it still did not come out. He then put his hand on my forehead and held the head back firmly and pulled and whatever it was came out. He then held it in his fingers for a second and I saw it, just a little dark piece of rubber, then he threw it into the tray and he and the sister turned around and left the room." Analysing that, what do you say as to that in regard to surgical practice ? —A. Well, I do not think that such a thing could have happened. No surgeon would handle a patient in that way——(Objected to ; allowed.) If a wound were treated in that fashion there would be a very grave probability of tearing it open. The wound is extremely sensitive at that time and you would almost certainly get hæmorrhage and I think the patient would make such an objection that they would be screaming at the top of their voice. The neck is extremely tender at that stage, 48 hours, it is just in the knitting stage. The patient sits with the head forward, you could not force the head back because they would not let you.

Q. After pulling the tube broke and was then thrown aside and the nurse and the doctor both left the room. What do you say as to that ? —A. If a tube breaks when you are taking it out you immediately go after it ; you have to. Dr. Thompson said he would get a pair of sinus forceps and go after it, which he would in accordance with ordinary practice ; you would never leave it there or walk out and leave the patient without putting a dressing on ; you would not leave the wound exposed. There is danger in leaving the wound exposed from airborne infection.

Q. At that stage of the operation what is the practice as to the bandages round the neck (Objected to) ?—A. The ordinary thing is to put a pad over the wound—the dressing has always got to come well down on the chest, for the first 24 to 36 hours, to collect the serum which collects in the tube.

Q. It was said at page 333 that the muscles might grip the tube. What do you say as to that ?—A. I cannot conceive of muscles gripping a tube at any stage.

Q. Do the muscles there pressing on the tube help to grip it ?—A. There is no possible way the muscles could grip the tube in that position. One often puts tubes through the big muscles here in certain types of cases, and there is never any gripping ; there could not be any gripping, because the action is to open out.

Q. The next position suggested is a stitch might have been put through the tube at the eye or somewhere else ?—A. It could have been deliberately

done, but it is not in accordance with ordinary surgical technique. There is no reason to stitch a tube into a thyroid cavity and it would be a very difficult matter to push a round needle through the rubber——

Q. In addition to that, what is the next thing you have to do after the stitch is taken through ?—A. Unless as you are deliberately stitching a tube to the bottom of the cavity and tying it there—if it was caught up in the little muscles, when you tightened it you would pull your tube up, if it passed through the eye of the tube it would pull out.

Q. If the resistance were such that the tube broke and the stitch did not, what would be the effect on the patient ?—A. I think considerable damage would have been done to the tissues in the wound if a thing like that happened. It is very probable you would have had to take the patient to the theatre and re-stitch the wound.

Q. For rough treatment of the neck at that stage what would you say as to that having dangerous possibilities to hæmorrhage ?—A. It would have very serious possibilities, particularly with regard to the stitched area of the thyroid, which is very vascular and one of the reasons why you stitch it over is to control the hæmorrhage.

Q. Dr. Thompson described you and Dr. Edye as people who were talking a lot of twaddle (Objected to ; evidence read ; page 349).

Q. In your evidence given over these three trials have you endeavoured to give the Court accurate and true answers to the questions asked ?—A. Yes, my evidence has been based upon my fairly extensive practice, and upon my learning, and I have endeavoured to give it honestly and in accordance with the oath administered to me.

Q. The next thing is this ; listen to this evidence from page 336 :

> "Q. Would it be safe to operate for a piece of tube then ?—A. No, it would be very foolish. With that infection, if you operated, you would have probably set up a dangerous cellulitis in the neck, and, apart from that, the patient was in a very bad state after the operation, semi-conscious, restless, rapid pulse, and she had hæmorrhage and with the shock she was in a very parlous condition. It would have been folly to have done anything then at that stage otherwise one might have had a corpse."

Looking at the records, and with your knowledge, what do you say in that regard ?—A. First of all I would say there is nothing in the records to substantiate the statement made there with regard to the patient's condition. She was not in a parlous state. Secondly, it is a common custom to operate for the removal of foreign bodies in septic wounds ; and it would be a near thing for our wounded soldiers if we were not able to do it. It is a very common practice ; I cannot understand the rationale which evolved such a reply as that.

Q. On the records as they stand, assuming the tube had been broken, would there have been any serious operation necessary ?—A. No, the condition was quite good.

Q. Would it be necessary to go to the operating theatre ?—A. Not necessarily ; I would think if the tube had broken at that stage it would have been easy to get hold of it by the forceps.

Q. If there was a stitch it would be held there ?—A. You would catch hold of the tube and pull, it would not come if there was a stitch holding it.

Q. " If you had the misfortune to have a piece of tube break off then would you have considered operating ?—A. No, I would have attempted

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 6th January 1944, Examination, *continued.*

to get sinus forceps down "?—A. First of all, it would have been quite easy to have passed a tube down, a sinus forceps down along the track of the tube, because 48 hours you have your lymph exudate surrounding the tube and fixing your tissues, holds them in a nice gelatinous embrace. It is a very easy thing in 48 hours to pass a sinus forceps or probe along the track of the tube. I think Dr. Thompson made the suggestion—I think passing a sinus forceps would have been naturally done, we would not have waited.

Q. " I would have tried to put it down ; it would have been difficult in this case owing to the muscles to get hold of that body and pull it out " ? —A. The muscles are still in their gelatinous embrace—from the exudate of the lymph which coagulates like junket. There is no spasm. The muscles themselves are swollen. They are difficult to contract because of the œdema and the swelling. How they could grip anything I cannot conceive.

Q. " Do you think you would have had to wait ?—A. You might have to wait a considerable time. There is another position, the surgeon might have said to himself—' Oh well, there is this infection. Even if I have her for one month, or two months, if I open it up I will cut through the surrounding protective tissue and open the part and may open up the infection again.' He may have said ' Perhaps I will adopt a waiting policy and perhaps the thing will quieten down and the thing will clear and the foreign body will remain there with the patient for the rest of her life ' " ? —A. That is dealing with two different aspects. First of all is the question about the waiting in the presence of sepsis. When that tube was removed there was no evidence of sepsis. The other is a pure fantasy. The thought processes may be in somebody's brain. I still say no reputable practising surgeon would think along lines like that.

Q. Page 445—" That is to say, if the surgeon knew he broke a tube and knew he left a part there and the patient was having trouble, that he knew the patient got to a very high temperature with infection that the doctor would not have gone after it ?—A. He would have been an absolute madman to do so with the infected state of the neck there, because the last condition of the patient might have been worse than the first and might have died." On the 17th were there any of those conditions present ? —A. No, if sepsis had supervened on the fifth day or so, and one had left a foreign body there, there is no reason why you shouldn't open up and get it out, because if you leave it there it will cause more trouble. You must get it out ; it is an elementary surgical principle which cannot be broken.

Q. For infection or abscesses in the neck it is an area where surgical attention is necessary with promptitude ?—A. It is more necessary in the region of the neck than perhaps any other part of the body, because of the presence of such vital and important structures, and particularly with regard to breathing and swallowing, breathing more than swallowing, because breathing is going to vitally affect the patient ; they are concerned if they cannot breath properly and they get into a very serious state ; so you must do something to relieve their breathing alone.

Q. The next aspect is the patient's condition, as disclosed by the records after the removal of the tube ?—A. The night reports of the 19th show her temperature was 103·8, and she had various aches and pains in her legs, arms, joints, back, cramps in her fingers, which I would co-relate there with the onset of sepsis, and those aches and pains were the result of

toxic absorption, because it is a very common thing to get it with infections, and it is one of the things that makes you think there is something wrong, although there may be no evidence of actual inflammation. As soon as the pus discharged she lost those pains and aches, and there is only one further mention of it, and that is the 22nd, when she had pains in her legs.

Mr. SHAND: What about the 20th?—A. That says she was restless. Those I would say were the toxic effects. As soon as the pus came away then temperature and pulse fell, and one would take it that they must have been hovering about the normal after the night report of the 22nd, because no further mention is made in these records of either temperature or pulse subsequently. Also there is the fact that the night special had gone, so that she could not have been very ill to have dispensed with the night special, and she was up for a while on the 30th and walking about on the 2nd April. Considering the date of the operation was the 15th and she had had this septic condition of the wound area, it was a remarkably quick and good recovery under the circumstances.

Mr. CASSIDY: Is infection possible in a number of ways without the slightest suggestion of lack of care on the part of the surgeon?—A. Yes. It is one of the big problems we have to face in hospitals. First of all, you can never completely sterilise the human skin; even with the latest of antiseptics and the most efficient you cannot completely sterilise the human skin, so there is always the possibility of getting infection from the patient's own skin. Secondly, and particularly applicable in this case, where they have any septic conditions in the throat you frequently get infection travelling via the blood stream and being lodged in the wound area, and that is what I think happened in the case that was mentioned—the Wootten Hospital one. In addition to that, you get it from what we call droplet infection, that is, people talking, and patients themselves, nurses, visitors, and so on, are all apt to spread infection in that way, so much so now that it is our practice in most well-run hospitals for nurses, doctors and patients all to be masked while dressings are being carried out; no movements allowed in the ward, they are not allowed to stir up dust or anything of that kind. This has all been exemplified by a special report from the Medical Research Council of Great Britain which has been sent out to all hospitals asking them to adopt these measures to stop what is called hospital infection of wounds.

Q. Is it a matter that is very present to your mind in regard to your present work in the military and air force?—A. Very definitely.

Q. Seeing that history of hers, subsequent to the 20th and up to the date of discharge, 14th April, what do you say as to its consistency with the story that a foreign body of the size you saw, Exhibit "P," was left there, or any size was left there?—A. I do not think it is possible for a foreign body of any kind whatsoever to have been left in that wound. The fact that she had some discharge with lots of catgut in it and a few sloughs is what one ordinarily finds where you have had infection in a wound of that character. It is the normal course of events. There are certain types of catgut that seem to take longer to dissolve than others. This London Hospital catgut that was used in this case is one of them. They have found that it takes longer to dissolve than the ordinary catgut that we use, so that when you get infection the part of the catgut that is tied on the circumference of a vessel will be dissolved, but it leaves a knot

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 6th January 1944, Examination, *continued.*

which holds infection, so that the knots get loose in the discharge and they have to come away. As long as there are any loose knots there infection will continue.

Q. Had there been this infection of which we have the results on the 20th, and where there was a return to normal by the 22nd—had a body of the size such as indicated been in the wound, in your opinion was it possible the matter would have cleared up like that?—A. No, it could not. If a foreign body, and particularly of the size of this alleged tube, were left in that wound you would have a very dense area of acute inflammation which would form an abscess cavity. That inflammation spreads into the surrounding tissues for at least half an inch to three quarters of an inch. You get the ordinary tissue reaction, a dilation of the blood vessels, the exudation of the lymph, a swelling of the tissues, a pouring out of the leucocytes. All that helps to form this barrier of infection around your abscess cavity, and that very naturally means a very large swelling; so that if anything of that character had been left it must have been evidenced by a very large swelling in the neck which would have been obvious not only to a doctor or a nurse but even to a lay person.

Q. Assuming it had been left there and you got this temperature on the 20th, could it have suddenly subsided so that you would have got rid of your temperatures and everything within two or three days?—A. No. Once you get infection around a foreign body the acute stage of the inflammation may subside over a period of weeks, but you get that continuous discharge until such time as that foreign body is removed. You might get an improvement on the surface for a little while, but it always works through. It never heals. You cannot get healing as long as there is a foreign body in the tissues in an infected wound, and particularly in a wound where you have a staphylococcus infection, because the staphylococcus infection is the one that does the most damage to the tissues. It is a different type from most other infections, and it is one that we dislike intensely in wounds.

Q. Would it be that wound that we have here?—A. Obviously. I think Professor Welch agreed with that. I think I heard him give that evidence, that it was a staphylococcus infection.

Q. You heard evidence given by Professor Welch that the drop from 103.8 on the morning of the 20th down to 97 on the 22nd and what he called a swinging temperature in between those dates, meant heavy infection. What is your opinion of that?—A. I would not say a heavy infection, but it showed what we call a serious infection in the wound which accounted for that temperature, the inflammation, the development of the pus. Once that is discharged as it was within two or three days, temperature and pulse fell to normal. Now, you cannot in medical parlance or surgical parlance talk about a swinging temperature unless you have a chart that has been carried out morning and evening, 12-hour temperatures, for a minimum period of a fortnight. What she had was a fluctuating temperature, which is the normal thing with acute infections.

Q. It was said by Professor Welch that at 4 a.m. being 97 meant that she was subnormal?—A. Almost the universal reaction when you open an abscess cavity and pus is discharged is for the temperature to come down, and it comes down with a bang and it generally swings down to subnormal. You feel very pleased when you see it.

Q. You know from the records that at that time the pulse was back to 76?—A. Yes, the pulse was normal.

Q. Does that help you in your diagnosis that the serious effects of that infection had worn off ?—A. The acuteness of the infection had worn off ; the patient was no longer in danger.

Q. At page 310 this evidence is given : " 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 could 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." I want you to deal with that statement ?—A. I cannot see that that could be the fact, for several reasons—(1) It is, I suppose, very common after a thyroidectomy for patients to have a cough for the first few days, sometimes for a few weeks, and it is often a very annoying cough and it is difficult to control. The reason for them getting that cough may be due to primarily the handling and stripping of the windpipe—because the gland has to be peeled off the windpipe, which causes a local irritation.

His HONOR : That is, taking the isthmus off ?—A. The lobes as well. The thyroid has to be peeled off. You get then the natural ordinary reaction in the trachea which does not confine itself to the outside of the trachea due to the irritation. That in itself produces a cough. Secondly, from the effects of the anæsthetic it is very common to get some form—it may be only mild—of bronchitis, or some irritation in the lungs which will also cause a cough. Now, with regard to the superior laryngeal nerve, that will be very difficult to explain, because it is so far away from the operation area. I do not know how that can be brought into the picture. As to a foreign body causing a cough by pressure on the superior laryngeal nerve, I do not see how it could get there. The superior laryngeal nerve lies in a different compartment of the neck ; it comes in there (indicating), and how something down here (indicating) is going to irritate the superior laryngeal nerve up there I do not know. It is outside the thyroid area altogether ; it is in what we call the caritod triangle, whereas the thyroid is in the muscle or viscera compartment of the neck.

Q. There is one mention of " Cramps in the finger, rubbed with effect." What do you gather from that ?—A. I should say that was part of the toxic absorption, which often produces odd aches and pains in the limbs and the joints, and the mere fact of them being rubbed and being relieved is the usual practice which would lead one to infer that that is all it was, although one would be on the look-out always for the possibility of tetany. In my experience one would put it down to the effect of the toxic absorption.

Q. We read in the hospital record that with the permission of the surgeon she left the hospital with a sinus. Is that all right ?—A. Yes. One does not like it, but when patients are in a private hospital and expenses are mounting up you often have to let them go home when you know they would be better in hospital.

Q. And I suppose that has been your experience ?—A. Yes, it is very commonly done. Of course, you see that they have proper dressings and you warn them about the necessity for looking after it.

(Further hearing adjourned until Friday, 7th January 1944.)

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 7th January 1944, Further examination.

(*Twenty-fifth day—Friday, 7th January* 1944.)

HUGH RAYMOND GUY POATE.

Further examined.

Mr. CASSIDY: You spoke of a hole being cut in the tube. What is the practice as to that hole?—A. I have heard that referred to in evidence as being a diamond cut in the tube. We do not call it that and it is not that. It is a small portion of the circumference of the tube which is removed. It is really an oval, and it is always placed near the end of the tube so as to assist drainage. In case something is dropped at the end of the tube then you have this oval cut in the side of the tube which only goes through approximately a quarter of the circumference of the tube.

Q. And how is that done?—A. With a pair of curved scissors.

Q. And how far from the end would that be, on an average?—A. Approximately a quarter of an inch, from the lower end of the opening.

Q. You told the Court that you have had a long experience in connection with foreign bodies?—A. I have.

Q. That experience I think started in Gallipoli, went through France, then attached to soldiers' institutions all through the years, and then it has been taken up again in connection with this war?—A. That is so. I have had a continuous experience since Gallipoli days.

Q. Probably I suppose in some instances with ordinary matters in civil life?—A. Yes, we always come across them in civil life.

Q. If a body such as Exhibit "P" were left in the thyroid capsule in the midst of infection, I want you to explain to the jury what would be the position there and what would be the after effects?—A. I have not seen Exhibit "P" of this trial. I take it it is the same as the last.

Q. Yes, it is the same?—A. If that were left in a septic wound the wound could not possibly heal until such time as that thing had been removed. It acts as a focus of irritation and it holds the sepsis; it holds the germs that cause the sepsis, and that sepsis would be continuous. There would be a continuous discharge from the sinus, that is, the tract in which the tube is left, until such time as that foreign body were removed. In addition you would get the ordinary inflammatory reaction which I explained yesterday which would make a very large swelling surrounding the abscess cavity in which that tube was situated, and along with that you get the ordinary constitutional reactions like temperature, fever, pain, swelling, redness, with always the possibility of some blood stream infection, that is, a septicæmia.

Q. In your opinion with a tube of that size and of that nature would there be movement there?—A. The only movement that could occur with that would be a slight degree of movement in the abscess cavity. It is very unusual for an abscess cavity to travel in any direction because of the inflammatory reaction in the tissues. It may enlarge to some extent, depending on the type of infecting organism that is present, and that may allow a certain amount of play in that tube, but always in the abscess cavity.

Q. Assume now it remaining in there in infection as we have been told, what would be the woman's condition?—A. I would expect her general condition to be very bad. She would run a true swinging temperature for

a period of probably a couple of months until such time as fibrosis occurred around the abscess cavity as a natural result of the inflammation, which prevents then some of the absorption of the poison—it cuts it down, so that as time goes on the acuteness of the symptoms subsides ; but the swelling persists, the discharge persists, the discomfort persists, and in that particular region it would have caused a great deal of interference both with swallowing and with breathing.

Q. I want you next to assume that the story given is that on the 14th April she was discharged, with a small sinus and small discharge, that she travelled home by car, that on the 30th April she is seen by the doctor, that the sinus has not healed, that on the 2nd May the husband writes in a letter that the wound has not yet healed, that knots had been recovered, and that on the 4th May she goes into hospital, the note being " Watch carefully for and report any tetanic spasms ; probe wound for sutures," and on the 7th, " Swelling on neck opened." Taking those facts together, what do you say as to the wound being open, or the wound being still discharging, up to that period ?—A. That follows the usual course of any deep infection in this region. As I said yesterday, you would not expect it to heal until such time as all catgut knots and sloughs had been extruded from the wound. The fact that it had to be opened on the 7th, I take it it must have been only on the surface, because it was sprayed with calene, which is purely a local surface anæsthetic, and a nick made into the scar where it probably had glued over, or there may have been another little tract that required opening alongside it. You may get two or three openings in the course of time. I would say that is following on the usual course that one finds in the average degree of sepsis in a wound in that region.

Q. Had there been an object of that size in that wound what would you have expected to have found at that stage ?—A. Might I ask if all these wires are still in it ?

Q. Take that as a fair representation of the length and size of the object ?—A. That measures actually a little over three and a half inches over all. The amount of inflammatory reaction that would occur would be another half inch either end, putting it at its minimum, so that you would have an abscess wall four and a half inches in length, and I would say approximately a minimum of an inch and a half in diameter, so that there would be a swelling there the size of a large duck egg or a goose egg, the minimum amount of swelling, which would be very obvious because it cannot go back—it would be pushed forward in that region, and there would be a very obvious swelling at the root of her neck below or behind the scar area.

Q. And with an open sinus there what would be happening ?—A. There would be a very profuse discharge of thick pus still coming away.

Q. In medicine is it necessary to have observation of these things to qualify a doctor to speak as to the infection that surrounds these bodies ?—A. No, not necessarily. One's remarks, as mine have been in this case, are built up as a result of one's experience and on the known tissuary reactions. There is no getting away from that. We know what inflammation is and we know what the ordinary reactions of the tissues are to inflammation and to infection, and one can speak very authoritatively as to what one would expect to find if such a thing as this were left in an infected wound.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 7th January 1944, Further examination, *continued.*

Q. Have you seen instances yourself in your experience which show you the result of infection collecting around objects ?—A. Yes, very many. I have never seen as large a foreign body as that in the neck. I have seen as large as that and larger in other parts of the body, but in the neck region of course a thing like that would be removed at a very early stage.

Q. We may take it now that the doctor opens the swelling on the 7th May—do you remember the history subsequent to that about the foments ?—A. I do not remember it in detail, but in general. That is only with regard to the dressings ?

Q. I want to follow the progress of the wound after that time. Summing it up, you may remember that up till about the 25th you get " Foments last applied 5 p.m.," and I think after that time it starts with a dry dressing to the neck wound ?—A. I understood that the sinus was still present when she left hospital.

Q. That would be right. From the 26th you may take it from the notes that the dry dressings continue ?— A. That would lead one to infer that any acute inflammatory reaction had then subsided.

Q. With that body in that wound and that infection there, could that position have arisen that the inflammation would have subsided and gone like that ?—A. No, it could not. I will say that very definitely, because it is such a large body ; there are so many areas of it that could hold infection that the organisms would go on breeding very very rapidly.

Q. Taking it that it was a piece of tube an inch and a half to two inches long, would your answer equally apply ?—A. Yes. I have seen many cases where tubes have slipped into wounds, and they maintain a continuous infection and discharge until such time as they are removed.

Q. Now I want to take the subsequent history. Leaving hospital on the 9th June, we are told that she was attended by a qualified sister or nurse, Sister Sly, and that when Sister Sly left there was no inflammation and no need for surgical treatment and the wound had healed—no need for medical treatment and the wound had healed and the neck was normal. What do you say as to the consistency of the Plaintiff's story that a tube was left in that wound and that condition had followed at the end of June ?— A. I would say definitely that the wound could not heal if that tube were left there. It must maintain infection and it must lead to a continuous discharge. Occasionally the surface of the sinus might just cover over with very thin tissue, but it breaks down. That is not what we refer to as healing. It may close like that but it never heals. By healing we mean that the inflammation has completely subsided, and the germs, the organisms, have all been got rid of, and the sinus and cavity have completely closed and the tissues are solid.

Q. You may take that Sister Sly says that there was no inflammation present and the neck was normal. In those circumstances what do you say as to the possibility of that tube having remained there in the neck ? —A. The tube could not remain in the neck under those circumstances.

Mr. SHAND : Sister Sly did not say the neck was normal.

Mr. CASSIDY : I want you to assume next that from that time until the alleged eruption through the throat there was no medical attention for the neck—although the doctor was attending from June up till October 1938, there was no medical attention to the neck, that from October 1938 until October 1939, he had only visited the place on two occasions and at

no time for the neck. What do you say as to the consistency of the story that the tube had been left there and had remained there all that time ?—A. That could not be, as a matter of fact, because the inflammatory reaction must persist in the tissues as long as that tube is there holding infection. I have heard this described as being in a bag of pus, and I think it is a very wrong way to describe it, because it is not a bag of pus. One thinks of a bag as a bag of paper. If you want to call it a bag in this case you would have to realise that it was a bag made of at least raw hide or some very thick form of hide, and very tough as well, and what is more, anchored in the tissues—it cannot move about. With the tube there this inflammatory reaction is maintained the whole of the time. It could not be just surrounded by a little serum. Serum is sterile, and where you get infection you cannot have sterile serum—you have a purulent exudate, you have pus cells and breaking down of tissues and all the other things that go to make up ordinary pus.

Q. With that statement that it could be in a bag of serum, you completely disagree ?—A. Entirely. That could not be.

Q. That is the first matter I want to deal with. May I sum it up in this way——(Objected to.)

Q. Reviewing the whole position now on the history that we have, in your opinion is that history consistent or inconsistent with a tube having been left in the thyroid cavity ?—A. Considering all the facts of the case that I have heard and that have been presented to me, I would say it is absolutely inconsistent with a tube having been left in her neck.

Q. If the wound heals and the infection is there, it must find some way to escape, I suppose ?—A. It must.

Q. If it is not escaping would you explain to the jury where you would get your abscess, if there was an abscess around it ?—A. With a foreign body left, in that region the abscess itself must form around the foreign body. You get that protective wall of inflammatory reaction which stops the pus in the abscess cavity until such time as it works its way out or in some other direction. The usual thing is for it to come through the scar tissue again, that is, along where the track of the tube was. Scar tissue is very poor tissue, and where you get inflammation developing under or in or near scar tissue it interferes with its poor blood supply and it sloughs and dies and so allows the pus to work through along the path of least resistance. If that did not happen in that region the only way that the pus could spread would be in the fascial sheath of the thyroid up as far as the lateral aspect of the larynx, or it must spread down into the chest. The absolute limit of any movement upwards would be inside the fascia so far as the larynx. That is a fixed point ; it cannot go beyond that.

Q. Were you in Court when Dr. Smith was giving his evidence ?—A. A good deal of it.

Q. Do you remember him telling the jury about a first compartment, a barrier up here ?—A. That is correct. That is what I was referring to—the anchoring of those muscles and the fascia on the side of the larynx. With regard to the tracking downwards, there is no fascia or muscular barrier there. When you get very large goitres they do not enlarge up to the jaw ; they enlarge only as far as the highest limits of their capsule, that is, both sides of the larynx ; but they may push out like this or they very frequently track down into the chest, and it is sometimes very difficult to get them out. The same way with inflammatory reaction. Another

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40.
Hugh Raymond Guy Poate, 7th January 1944, Further examination, *continued.*

point I could make there is that in post-mortem examinations of people who have died after thyroidectomy we always find a seepage of blood down into the thorax, even though there had been a tube in the neck.

Q. With an abscess unattended to by a surgeon or by anybody in that area, what do you say must have been the logical result?—A. The patient must have been in a very serious condition which would have demanded medical treatment, surgical treatment actually. If that had been withheld from the patient for any reason or other I should say it would not have been very long before she would have died, and I do not think she could have lived as long as the 2nd October the following year with a large abscess untreated in her neck.

Q. I think the medical name for pus getting down into that region is mediastinitis?—A. Yes, inflammation of the mediastinum.

Q. Is that a high mortality?—A. Very high mortality. If you see a patient recover from that you generally report it. I have only seen one myself.

Q. I was asking you as to the locality of abscess. If you have an abscess around the tube could it swell the whole body, for example?—A. No. You might get a local inflammatory reaction, a fair bit of œdema around the area, but it would not involve the whole body.

Q. You have heard in the husband's letter of 2nd May that the whole body was swollen. Could that have any relation to swelling in the neck?—A. No; I think it must have been for some other reason.

Q. Or puffy hands—could that follow from an abscess in the neck?—A. Yes. Sometimes with any degree of sepsis you may get puffiness affecting the hands, and particularly the ankles, but not affecting the whole of the body.

Mr. CASSIDY: On this question of pus going downwards, you have heard the psoas abscess mentioned. With regard to the psoas abscess you have heard cross-examination directed about it travelling downwards. You might tell us, is that an analogy to what you call the staphylococcal abscess in the neck?—A. No, definitely not. The main cause of infection in wounds that cause an abscess is what we call the staphylococcus. It might be easier if I refer to it as a staph infection, that is the main cause of the infections. There are about five or six different varieties of the staphs; the one that causes the ordinary boil is called the "staph aureous" and that is the most common of them, but the one that we dislike in infection is what we call the "hæmolytic staph," that is to say it causes actual destruction of blood cells. That is always a serious infection in wounds. We have the streptococcus or straps which cause a different infection. It is a spreading inflammation and is most commonly associated with what is called "cellulitis," that is an inflammation in the fatty tissues, that is the subcutaneous tissues, and the tissues between the skin and the muscles, and may occur in any part of the body and spreads very rapidly. Then we have the pneumococcus which is the cause of pneumonia and which may cause an abscess in the lungs or in the bones and joints or peritoneum. That again has a different type of inflammatory reaction. Then we have the gas-forming organisms which are extremely virulent and very fatal. They are the main causes of abscesses or inflammatory reactions. When we come to the question of the psoas abscess we are dealing with the tubercle bacillus which is an entirely different reaction in the human tissues,

it is not parallel in any way at all to an acute inflammatory reaction particularly as in this case where we have the staph infection, it is a different type of reaction in the tissues, it permeates, you get a very slow process of thickening of the tissues and permeation and then goes on to what we call "caseation," it develops into a thin cheesy material which is not pus. If a psoas abscess or a tuberculous abscess of any kind becomes infected with a staph then the whole picture changes. The permeating of the tissues by the tubercle bacillus produces a fibrosis. For instance, you don't get hæmorrhage with them, the blood vessels become thickened and they become obliterated with a staph infection, particularly hæmolytic staph, you get actual erosion of the blood vessels or you are very apt to a secondary hæmorrhage, particularly with a hæmolytic staph infection.

Q. That is an important distinction, secondary hæmorrhage apt to occur in the case we are dealing with and not apt to occur in a psoas abscess? —A. I have never known it to occur in a psoas abscess or a tubercular abscess of any kind, but in the lungs with tuberculous infection there is hæmorrhage but for a different reason. No analogy at all can be drawn from the behaviour of a tubercular abscess compared to a staph abscess as we are dealing with in this particular case.

Q. And what do you say as to the tendency of the infection in a psoas abscess going down?—A. Because it is inside the fascial sheath of the muscles.

Mr. SHAND: It never comes through?—A. The only place it can come through is down at the lower end where the sheath goes on to the vessels and becomes very thin and with the constant pressure and weight it might tend, on rare occasions, to go through and travel down the thigh.

Mr. CASSIDY: I want to pass from that to this position. What do you say if a tube was left in the thyroid cavity, that it would not move at all?—A. Only in the abscess cavity, it could not travel.

Q. It is said in this case that this tube has moved across the trachea, up along the neck and then turned and gone across and ruptured through the tonsil. I want you to deal with the possibility or otherwise of that? —A. That is coming up from the lower part of the neck, travelling across and going up?

Mr. SHAND: It is not a necessary part of the Plaintiff's case that it went across.

Mr. CASSIDY: Deal with it going across first?—A. The evidence I heard was that it was placed on the right side so to get to the left side it must go across the midline somewhere. If we assume, and it can only be an assumption, that some extraordinary happening allowed the migration of that abscess cavity with the tube in it across the neck, we would have had this terrific swelling and great pressure on the trachea with respiratory embarrassment of the patient in that stage while it was coming over to the left side of the neck. Then it must have transgressed all our known rules of movement of foreign bodies and inflammatory reactions to have passed up the side of the neck as far as the tonsillar region and all that time we have to remember that there is an abscess approximately the size of that part of my fist (indicating) that is doing the travelling, because the tube cannot travel without its abscess cavity and taking it on the whole I would say that it is physically impossible, for several reasons which I will give you,

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 7th January 1944, Examination, *continued.*

it is anatomically impossible and it is surgically impossible. Now, if we take the physical reasons first of all: I would say that primarily it transgresses the known reactions of a foreign body in human tissues because what we know of foreign bodies in human tissues they stay there surrounded with their abscess wall and they do not move about into various parts, they are anchored there as a result of the inflammation and the sepsis, and as time goes on they become more or less fibrous and you may get only a small exudate remaining after several months, but the discharge never ceases and the wound never heals. Now, if we imagine this, that that abscess had gone up to her neck—as I say, it must have been a very large one not only to be felt but to be seen by a lay person, and in its travel it must have so affected the tissues of the muscles of the neck that the patient's head would be drawn over to the affected side and there would have been a mass of swelling on that side of the neck.

Mr. SHAND: By the way, what notes has the witness got?—A. My own notes that I have written for my own information.

Q. Dealing with the evidence?—A. Dealing with certain points that I have correlated, I am not reading them, I am only refreshing my memory from them.

Q. That is quite all right. I only wanted to know?—A. May I go on now? It would have been perfectly obvious to anybody that there was something radically wrong with the individual, they develop what may popularly be called a wry neck.

Mr. CASSIDY: Physiologically, what is the reason why you get the bending of the neck?—A. The inflammatory reaction and the œdema infiltrates the muscles and they are stiffened and thickened and they become drawn, that is the reason why the head gets pulled down in that way. While this inflammatory reaction is there of course there must be a good deal of absorption of toxic material from the abscess, the patient would be running a continuous temperature, they would be actually tender, there would be a red inflammatory reaction, they would have great pain, they would have intense distress in swallowing and in breathing, and they would be in a very, very parlous condition, desperately ill.

Q. In your opinion would it follow that they would have to be in hospital or receive medical or surgical treatment? (Objected to.)—A. The inflammatory reaction that you would develop there would have been perfectly obvious to even a lay person and because of the distress to the patient it would have demanded surgical attention. It could not have been given in her own home because it would have meant an operation, she would have had to go to hospital and she would have had to submit to an operation to attempt to give her relief. Now we go on to the third point: if the abscess had ruptured into her throat as it was described, the foreign body itself would have taken an appreciable time to go through. When an abscess ruptures what happens is the surface that it is going to rupture through becomes softened and it begins to give way. You have to realise that all this time you have your acute inflammatory reaction, you have dilated blood vessels and all the ordinary indications. When that begins to come away little blood vessels rupture so that you get a discharge of blood and then you continue to get the seepage of the pus and in an abscess to hold an object of that size there must have been at least two tablespoonsful of pus as a bare minimum which would have seeped away

over the course of probably anything from 24 to 48 hours before the opening would have been large enough to allow that body to come through. Of course, if the wires had come first it might have been relatively easy, but you would have seen them and the patient would have seen them and felt them and complained of irritation. If the butt end had come it would have been a gradual process of extrusion, it does not pop out like a cork out of a champagne bottle, and it would have taken perhaps several hours from the time the tube started to work through until it got into the back of the throat and all the time the patient would have had extreme distress. Suppose it had come into the back of the throat, what is the natural reflex? You put your fingers into the back of your throat and you vomit.

Q. First of all, something is making its way out and there is 2 inches or 2½ inches of something to make its way out?—A. Yes, it takes some hours for a thing like that to work through from an abscess.

Q. In that period while it is pointing out of your tonsil would you consider that it must have attracted somebody's attention? (Objected to; disallowed.)

Q. With your knowledge of the travelling of a foreign body could the Plaintiff have been unaware of it?—A. Certainly not. As I say when that was coming through it must have caused intense irritation to the patient who must have been very, very aware that there was something radically wrong with the back of her throat and it would have demanded attention because of the distress it caused. I was going on to say that when any irritation occurs at the back of the throat the natural reflex which one might say is an uncontrollable reflex, is not to swallow it but to vomit it, and we are told that she swallowed this. I heard that evidence given that she swallowed this foreign body which had come across the back of her throat, there must have been blood pus and this foreign body and yet as I say the natural reflex is always to vomit it, even though her jaws were clenched, as she says, that does not stop vomitus coming through, and this would have been pushed into the front part of her mouth even if it could not come through her teeth she would have felt it there. Another physical reason against this is, I heard Mrs. Hocking give evidence that for some considerable period prior to this, I think it was a matter of a couple of months, she was unable to swallow anything but fluids. Now, a person who is unable to swallow any solids whatever and can take fluids only, how they could swallow that is beyond my comprehension, it could not be done, there must have been such terrific swelling of the throat that the inflammation must have almost closed the back of the throat and I don't think it would be possible for a person to swallow that without very intense and painful effort, it could not have just slipped out.

Mr. SHAND: And is the suggestion that there was not a painful effort?

Mr. CASSIDY: The suggestion is that it did not occur. You did not cross-examine Dr. Smith on the anatomical aspect at all.

Mr. SHAND: You did not expect me to, did you, after his exhibition?

The WITNESS: There is one final reason: when I examined this Plaintiff's throat, which I did on two occasions, there was no evidence at all of any resulting scar as one must expect if there had been that degree of inflammation in and around the tonsillar area. The movement of the

In the Supreme Court of New South Wales.

Defendant's Evidence.

No 40
Hugh Raymond Guy Poate, 7th January 1944, Examination, *continued.*

palate and the little muscles that come down on either side were perfectly free and perfectly normal; there was no deformity, the palate itself should have been dragged well down on the left side and puckered up, if there had been any such inflammation. It is a thing I have seen on many occasions; in her throat the movements of those muscles was perfectly normal.

Q. Would that cover what you put under physical, surgical and anatomical?—A. That, in the main, covers the physical reasons why I would say that the migration of that tube from the neck up through the neck and through the tonsil is physically impossible. Now, it is anatomically impossible because no foreign body of that size could travel as alleged through those important structures of the neck without causing there some irreparable damage or even possibly causing a serious hæmorrhage which might have imperilled the patient's life. In that region of the neck, as Professor Shellshear and Dr. Smith have pointed out, you have confined in a very small space some of the largest and most important blood vessels and nerves of the body and to suppose an object of that character could go through them without causing damage is more than one could possibly credit. I will not dilate any further on the anatomy because you have heard a lot on that.

Q. In that do you deal with the question of the destruction of the tissues that would follow?—A. That would really come under the surgical heading. The method of spread of infection in the neck is determined entirely by the fascial planes of the neck. It is a most important surgical consideration because inflammation developing, it does not matter what portion of the neck it develops in, it is limited by the fascia which encloses that particular space in the neck and the inflammation or abscess formation can only confine itself to that one compartment. In the deeper parts of the neck those fascial planes are always fixed very firmly, more particularly to what we call the carotid sheath around the main blood vessels, so the pus has to travel in the path of least resistance, and it comes up against one of these other fascial planes which acts as a buttress and it shoots it towards the surface. It does not matter what region of the neck, that process always occurs where you get infection of the neck, and it is a very good thing for surgeons that it does occur, because it helps us in dealing with infection of the neck. I have never known an abscess occurring in this fascial compartment of the neck which has come through into the throat and burst into the throat. I have never known of it happening, they have always come towards the surface. Abscesses that occur inside the throat like the peri-tonsillar abscesses, abscesses in the tonsil, retropharyngeal abscesses which are, one might say, on the inside of the fascial plane, point to the inside of the throat.

Q. That is to say when you are referring to the retropharyngeal abscess, the peri-tonsillar abscess and the tonsillar abscess they are all on the inner side of the fascia?—A. Yes, they are under the mucous membrane of the throat.

Q. But in the neck the abscess which makes its way to the surface, what is the fascial plane involved there?—A. They always point towards the surface. The only other possibility would be in the thyroid area and it is extremely rare for it to happen. An abscess, for instance, in the thyroid may involve the trachea. I have never actually seen one rupture through, but I understand there are records of them having done so,

but that is a different thing to the gullet, I have never known an abscess to rupture through into the gullet; into the trachea, yes, the windpipe does become involved because the fascia there is part and parcel of the windpipe, it is bound down to it. The gullet or œsophagus is different from the pharynx.

Q. You are passing now, I think, to your third heading, surgically?—A. Yes. Now we know that with foreign bodies, if they are aseptic, that is no infection, they remain there where they finally lodge, but with a septic foreign body it is a different story. As I have been trying to point out your sepsis is maintained for all time. I have never known in all my years of experience of a septic wound healing with a foreign body at the bottom of it, they invariably break down. They may close over as I pointed out, but they never heal, and they keep on breaking down until such time as the foreign body is removed.

The WITNESS: I have a case at present of a man from the last war who has a foreign body lodged just in the vertebral column where it would be a dangerous thing to attempt removal and that man was wounded on Gallipoli and to-day he still has a discharging sinus in his neck. Then you get the question of acuteness of the inflammation where you get acute inflammatory processes like peritonsular abscess that comes to a head rapidly and the inflammation subsides just as rapidly and you seldom get any resultant scarring. Scarring is always a result of chronic infection and it cannot be avoided and it is one of the great difficulties we have with soldiers where they have had chronically infected wounds. There is scarring left in those cases which may take many years treatment before it can be relieved in order to give them more movement. So the scarring is invariably the accompaniment in chronic infections such as must have been the case in this instance if we are to assume the story of the travelling of the inflammation and the foreign body with it as being correct, and I cannot conceive of that being a correct story.

Q. What causes the scarring?—A. When you have your inflammation you get the proliferation of the cells and dilatation of the blood vessels and thickening. That does not melt away but leaves a permanent fibrosis—you carry the scar for the rest of your life and where you have a gross amount of infection and inflammation over a long time the greater is the resultant fibrosis and the more the scarring is left.

Q. Is it surgically that this question of secondary hæmorrhage arises?—A. Yes, dependent on the type of infection and it is more likely with the staph than with any of the others, and we see a good deal of it. One of the difficulties we are faced with is in the control of infection in these chronic septic wounds. Fortunately of recent months there has been a new substance introduced with which we are able to control hæmolytic staphylococcus better than we have been able to before and since we have been using that we have not had a case of secondary hæmorrhage in our soldiers. This is a substance discovered by an Australian, I am glad to say.

Q. At page 330 we have this evidence:—

> "Q. How could the object be moved?—A. It would be moved in various ways, it can move by gravity, it can move by swallowing, by what is called deglutation—if you swallow like that you can feel the thyroid cartilege go up—it can also be moved by massage,

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 7th January 1944, Examination, *continued.*

but most important of all this cavity can be ruptured or completely ruptured by convulsion, that is to say, by the spasm that came on on the 2nd October."

What do you say as to that?—A. I do not agree with it and I do not think it is feasible.

Q. There are three suggestions in it—movement by massage?—A. I do not think it could be moved by massage because the patient would resent any massage which would have to be very heavy to cause a forcing of the infection in the tissues, which would be the only way to do it. It would have to be very, very firm massage and it would have taken a very long time if you have to force the infection through the tissues.

Q. " But most important of all this cavity (the thyroid apparently) could be ruptured or completely ruptured by a convulsion, that is to say, by the spasm that came on on the 2nd." What do you say about that, what do you say about a thing down there——(Objected to.)

Q. " How could the object be moved—— "?—A. I have a transcript copy of Dr. Thompson's evidence——(Objected to.)

The WITNESS: The fault is mine. I should have asked Your Honor's permission. May I refer to notes I have made with regard to this case and to relevant hospital records and depositions? My memory is not as good for those things.

His HONOR: Yes, you may.

Mr. CASSIDY: He says: " It could be moved in various ways. It can move by gravity, it can move by swallowing by what is called deglutation—if you swallow like that you can feel the thyroid cartilege going up—it can also be moved by massage, but most important of all, this cavity can be ruptured or completely ruptured by convulsion, that is to say by the spasm that I came on on the 2nd October." Would that be possible?—A. I do not think that any of those things could be possible because you have this thick walled abscessed cavity surrounding a foreign body. The only way gravity could come into it would be that the foreign body itself would tend to fall to the most dependent portion of the abscessed cavity. With regard to movement by swallowing it would be an extremely difficult process for the patient to swallow at all because of the fixation of the tissues. You might get a slight movement of the whole abscess cavity if adhering to the pharynx or side of the larynx because it is a normal movement; but you could not force a foreign body along by such a movement. I have commented on massage and now comes the question of rupture or complete rupture by convulsion. I do not think that such a thing would be feasible, I do not see how it could possibly happen:—

" Q. How does it move?—A. Well, it does not move, it is moved by muscular action on the part of the patient or it may move by gravity or it may move by someone outside the patient pressing on it, massaging it upwards.

Q. And if that movement took place some vital organs or blood vessels would be destroyed?—A. Certainly not. That is the rarest thing in the world, I cannot remember a single case myself of any big artery in the body rupturing and causing a person to bleed to death.

Q. That is the final coming through ?—A. Yes, the final coming through.

Q. Now, is there any difficulty of an object such as that tube working up the tonsil from the position in the lobe of the thyroid ? —A. No, not at all."

I have given my reasons why I think such a movement impossible and it is on these three grounds, physical, anatomical and surgical.

" Q. And if that movement took place some vital organs or blood vessels would be destroyed ?—A. Certainly not. That is the rarest thing in the world. I cannot remember a single case myself where any big artery in the body ruptured and caused a person to bleed to death."

Unfortunately it is a relatively common experience in people who have to deal with these chronic septic wounds. A few weeks ago there was a case of a soldier at 113th A.G.H. who died from a secondary hæmorrhage of the thigh. Earlier in the year I saw an American soldier who died of a secondary hæmorrhage in the neck. In the last war we must have had many hundreds of cases of secondary hæmorrhage, so much so that indeed in our hospital there was a special trolley always ready to deal with cases of secondary hæmorrhage. Every man who had a septic wound had a tourniquet at the head of his bed for that reason. How anyone may say that it is impossible for a person to die from a secondary hæmorrhage I don't know. I recollect the case of a rupture of a main blood vessel where the person would have bled to death. A boy of twelve had an abscess in a lymph gland through an infected tonsil. That was opened on the surface and led to a chronic inflammation in the neck. Some time after he got a serious hæmorrhage. We were able to get him in a hurry and found that this abscess had eroded the common carotid artery and it was a staphylococcus abscess and he nearly bled to death.

Q. What do you say as to veins ?—A. Not so susceptible. It is the arteries that are important.

Q. What do you get with veins ?—A. A certain amount of hæmorrhage but you tend to get them fibrosed—they flatten.

Q. Which has the thicker coating, the vein or artery ?—A. The artery. You get fibrosis in the vein where there is not much pressure.

Q. " Assuming the tube was in the left capsule would it have to move very far from the top of the capsule to get to the left tonsil ?—A. No, quite a short distance, one inch perhaps, or half an inch, dependent on where it was in this abscess cavity at the time. It came out, we do not know " ?—A. Considering that the top of the thyroid can only go to the side of the thyroid cartilege the distance from there to the tonsil in the average person is about three inches to three and a half inches. I do not think that would be feasible ; it is not a short distance, but it is a long distance. It goes through different fascial planes and there are a great number of very important structures in between.

Q. What is the path it must take ?—A. I could not say. I do not think there is a possible path that it could take without seriously damaging anything.

Q. If it were to erupt through the tonsil, Dr. Thompson said at some stage it has to turn across and go laterally ?—A. If it were travelling in this direction (indicating) it would have to turn to get into the throat.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 7th January 1944, Examination, *continued.*

Q. What do you say as to the possibility of there being something that could turn the path of that tube ?—A. I do not think there is anything that could turn it in that direction. If it were travelling vertically it must have gone to the base of the skull, and then it would have stopped. I cannot see anything that would turn that into the throat or give any reason why it should turn.

Q. " In the presence of an object ? If it is such a rare thing it must be published in the journals." On the question of secondary hæmorrhage is there authority to support your statement ?—A. Yes, I have records from the official history of the last war and from the recent war on war injuries in which secondary hæmorrhage is mentioned.

Q. In addition to that did you hear certain authorities referred to in evidence by other witnesses ?—A. Yes, but I do not remember the names. I have a poor memory for names.

Q. Campbell ?—A. I have heard of him. I have heard of Neuhoff and Rheinhoff. I do not know Neuhoff, but I know Rheinhoff.

Q. You had only heard of Neuhoff in the Court ?—A. Yes.

Q. Choyce ?—A. Yes, well known.

Q. Do you remember the passage ?—A. No.

Q. You could look up and refer to other authorities to support your statements ?—A. Yes.

Q. You refer to the war surgery authorities, have you them here ?—A. Yes.

Q. Roughly what do they say ? (Objected to.)—A. I have " The Surgery of Modern Warfare," edited by Hamilton Bailey in 1941. There is a chapter on secondary hæmorrhage there, in part 3, at page 328. That gives the experience of the writer, Mr. Grant Waugh, who, with the late H. F. Wolfenden, had about 5,000 patients with varying wounds, and in 1,162 cases of a secondary hæmorrhage 68 per cent. were associated with compound fractures and 12 per cent. with wounds of the jaw and neck.

Q. The other one ?—A. That is the British Official History of the War (Medical Services). In " Surgery of the War," volume 2, page 111, dealing with wounds of the neck, we have the particular reference " Secondary hæmorrhage is undoubtedly common after wounds of the neck."

Mr. SHAND : That is, after injury to the blood vessels ?—A. Not necessarily.

Q. It may have been ?—A. It is the result of sepsis.

Q. Not invariably ?—A. Yes, it is more common where you have had injury to the blood vessels but page 179 says " Secondary hæmorrhage was perhaps more closely studied than had been possible in times of peace." " The net result was to confirm the influence which infection exerts on the occurrence of secondary hæmorrhage and also the fact that incomplete lesions such as contusional lacerations, not involving the entire thickness of the walls of the vessels, were responsible for a large proportion of cases," but not all.

Mr. CASSIDY : Dr. Thompson says there is none—never heard of it ? —A. There are other references if you like. There are other cases where this volume refers to secondary hæmorrhage.

Q. And that dealt with everything concerned with the impossibility of movement ?— A. Yes.

Mr. CASSIDY : Is there any other trouble that may eventuate from infection in the area of the blood vessels ?—A. Yes. I already referred to septicæmia, and the usual way that that develops in connection with inflammatory conditions is through the veins. The veins have got very thin walls compared with the arteries, and you may get clotting of the blood in the veins and the spread of the germs into that clot. That breaks away, and you get a generalised blood infection, and in any case of prolonged sepsis where a patient is running a temperature, one generally asks for a blood culture to be done in order to be certain that there is no spread of infection into the blood stream. That is septicæmia.

Q. On this scarring—it is suggested in the Plaintiff's case in breast abscesses, for example, of scarring not occurring. What do you say as to that ?—A. It does not matter what part of the body that chronic inflammation develops in, or what tissue is involved, there is always scarring, and in regard to breast abscesses, I see any number of breast conditions, and if a patient has or had a breast abscess, there is scarring that is left there which is palpable and often visible even after 30 years.

Q. Now I pass next to the question of tetany. I think you have told us that you have had a large number of thyroidectomy operations ? —A. Yes.

Q. Have you taken a very great interest in the question of tetany ? —A. Yes, I have. I have had a considerable experience of tetany.

Q. And have you looked at this case from the point of view—have you looked at this case and examined various indicia to come to a conclusion as to whether there was parathyroid tetany on the 2nd October 1939 ? —A. While we are referring to this subject of tetany, I want to make it clear that tetany is not a disease ; tetany is only a complication which may be brought about by a very great number of different conditions. One of those conditions is deficiency of parathyroid secretion, or secretion of the parathyroid glands. That is the main one that we are concerned with in this case, but one other condition in which tetany occurs is hysteria. That is another of the conditions causing tetany with which we are concerned in this case. Now, judging from the hospital record, the history of the patient, I would say that this patient evidently had true parathyroid tetany in the early stages. I think that it probably made its first evidence felt just before she left St. Luke's Hospital, at the time when Dr. Bell advised her to have some calcium by mouth. Subsequently when she returned home, as far as I can make out, the first actual spasm that she has was on the 3rd May, the day before she was admitted to Quirindi Hospital, although prior to that she had been having these symptoms in the form of numbness and tingling, and the hardening of the muscles. These are the premonitory symptoms of the true tetany spasm, but I think the first actual reference to a true tetany spasm was on the 3rd May, and she was admitted to Quirindi Hospital on 4th May. Now, while there she had further spasms on the 9th and 17th May, and then we come to that day, the 1st June. That was the time and that was the incident, in reviewing the facts of this case, that made me first suspect that the whole of this condition was not true parathyroid tetany. She had had an injection of calcium gluconate that morning.

Q. What date was that ?—A. On 1st June. She had a tetany spasm at 6 o'clock in the evening. She had a second one at 9.15 p.m. Now, we know from experience—I know— that where a patient with tetany has

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 7th January 1944, Examination, *continued.*

received correct treatment in the form of calcium by mouth and calcium injected either into the blood stream, intravenously, or into the muscles, intramuscularly, that that will control true parathyroid tetany in the majority of cases, but when a patient who is under efficient treatment develops spasms, and particularly too in such quick succession, it makes one wonder why. Now, as we hear the further progress of this case, it becomes very clear to me that although she had a true parathyroid tetany in the earlier stages, and one would say possibly going as far as July or August—to give her the maximum benefit of any doubt—in that year, that there became superimposed upon the true parathyroid tetany an hysterical tetany. That is to say, that she had had a long illness, she had had what must be regarded as a serious illness, she had had this infection, she had had a great deal of attention given to her, she had had and known the results of the intravenous injections of the calcium, which gave her immediate relief, she had learned what to expect and what to know would be the result of treatment for her true parathyroid tetany. There are many factors in her case—I will detail them later if you so wish—which bring me to the point of view that she then developed this peculiar, really it is a mental status which many people are liable to develop, even of the highest intellect, and it carried on with this illness, despite the fact that the wound had healed, and there was no discharge. Her general condition and the tone of her tissues must have been relatively poor, and then she got this engrafted hysterical tetany. She may have had some numbness and tingling, and tightening of the muscles, which is the waning of the true parathyroid tetany, but her mind carried her on further than that, and she developed then the spasms that she already had experienced, and those spasms carried on up to the 2nd October.

Q. I want you to pause there. Have you in mind a case from your own knowledge of hysterical tetany ?—A. Yes.

Q. Going on for some length of time ?—A. Yes. One patient I know of has been going, to my knowledge, with hysterical tetany over a period of four years.

Q. Now proceeding from there ?—A. One of the important factors which occured on that 1st June was the lapse into unconsciousness. Now unconsciousness is not associated with true parathyroid tetany, except just before a patient is about to die, and I have only seen it on two occasions and that was immediately preceding death, and the unconsciousness is not caused by the parathyroid tetany, but it is caused by the general exhaustion and failure of the vital processes of the body in general. It is never associated with true parathyroid tetany.

Q. Do you know a laryngeal spasm ?—A. Yes, that mainly occurs in the tetany of children.

Q. I think it might be convenient now for you to put first of all, so that they can be followed, the grounds on which you base your conclusion ?—A. As to the main features——?

Q. As to the condition in October—(shorthand notes read).

Q. It might be convenient for you to sum them up first ?—A. I will just give you the main features that appeal to me as a surgeon, with regard to her having had this superimposed hysterical tetany. Now, first of all, was her unstable nervous system as evidenced by the onset of this disease the thyrotoxicosis which does affect the mental stability of

patients, sometimes to a considerable degree. She had this long hospitalisation at Quirindi before she came down to Sydney, when it was marked as a condition of neurasthenia, that is to say, some condition which has led to the exhaustion of her nervous vitality. She had had the development then of this toxic goitre, and she had had the operation. She had had the sepsis following the operation, and she had had this long period of illness and hospital treatment, all of them factors which tend or form a foundation upon which hysteria may easily develop. Secondly, the failure of calcium and of paroidin to eliminate the spasms in the ordinarily recognised period of time. Thirdly, the extremely long persistence of those spasms, although she had had what we know was efficient treatment. Fourthly, the frequent lapses into unconsciousness. Fifthly, the atypical clenching of her hands.

Q. What did you say then ?—A. The atypical clenching of her hands.

Q. What do you mean by that ?—A. Well, instead of the ordinary accoucheur's hands and the admission, I think, in the first trial, she said her hands were clenched in that fashion with the thumb sticking out (indicating).

Mr. SHAND : You swear that, do you ?— A. Yes, and later, when the fingers had been bent over and the nails were cutting into the flesh——

Q. In what way ?—A. In this fashion, with the thumb over (indicating), and later it was this (indicating).

Q. I would like that recorded in the notes ?—A. I have seen those three different things in three different trials.

Q. The first one was the clenching of the fist with the thumb outside ? —A. Yes.

Q. Now the second one was what ?—A. With the thumb clenching over in this fashion (indicating).

Q. That is the clenching of the fingers ?—A. The shut fist.

Q. The nails into the palm of the hand with the thumb over the fingers ?—A. Yes, and then the later stage was the thumb drawn inside the fingers. Sixthly, the fact that massage relieved the spasms. Seventhly, the dramatic and sudden cessation of symptoms as from the 2nd October, when it is alleged that this foreign body went into her throat. Eighthly, the spasm of her eyelids when she was supposed to be unconscious. Ninthly, the statement that she made about watching her left eye turn upwards, and lastly, if we suppose that this abscess had moved from the bottom of her neck and had come up into the region of the tonsil, and had made her so seriously ill for a couple of months before it came into her throat, it necessarily follows that the area of inflammation in the parathyroid region must have moved so that the parathyroids, granting that they were interfered with by the infection—the parathyroids being freed of infection, must have recovered their function if the abscess had travelled up here (indicating). Those are the ten points which strike me as being the major ones in this decision, with regard to the onset of an hysterical tetany.

Mr. CASSIDY : Having set them out in that way, it is necessary to elaborate them somewhat, is it not ?—A. Firstly, with regard to the question of the unstable nervous system, as I say, she first of all had what was regarded as a neurasthenia, which is a very real condition too, and it is nothing derogatory to a patient to have a diagnosis of either neurasthenia or hysteria made. They are not malingering ; they are real things to the individual. She had the background for the development of hysteria

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 7th January 1944, Examination, *continued.*

in this long period of hospitalisation and the illness, so that the foundation was evidently laid there for the onset of hysteria. We can say that in every person—this is a quotation from Osler and McCrae, volume 5, page 668. It reads in this fashion——

Mr. SHAND : Could we see the book ?—A. I haven't got my volume in Court.

Mr. SHAND : Well, I would like to have the book.

His HONOR : Could you bring it after lunch ?—A. I am afraid it is at home. I would not have time to get it.

Mr. CASSIDY : How does the passage start ?— A. It is on page 668, Osler and McCrae, and reads " There lies in every person the possibility of the hysterical reaction, and it all depends on the stimulus or the change in reaction to bring it out."

Mr. SHAND : " Change in the resistance."

The WITNESS : It goes on : " The hysterical character is chameleon-like in its variations, appearing in all classes "——

Mr. SHAND : That is not how this passage reads. I would like it all read, not selected extracts.

His HONOR : You have not got the book here ?—A. I could bring it on Monday.

Mr. CASSIDY : May the witness be allowed to read what he has copied ?

(Mr. Shand objected to this being done.)

Mr. SHAND : Did you say volume 5 ?—A. I do not know which edition it is.

His HONOR (to witness) : See if you can recognise it in the book handed you.

Mr. CASSIDY : Look at that passage (indicating) and see if it is similar ?—A. " There lies in every person "—what I have read, with that one alteration, " the change in the resistance to bring it out." Shall I go on ?

Mr. SHAND : Yes.

The WITNESS : " Pitt's satirical comment that ' every man has his price ' has its analogue in the truth that every individual has his hysterical jack-in-the-box. Whether it will go off or not depends on the strength of the spring and the force put on the lid. When one finds a malady due to thousands of causes it makes one conclude that either none of them has anything whatever to do with it, or that each may play a minimum role, and so it would seem with the hysterical personality. It may take the loss of a child to unloose the hysterical mechanism of one, while the death of a parrot is sufficient to keep some women in bed a month with an attack of hysterical paraplegia." Lower down on that same page, in the last paragraph but one, there is this : " The hysterical character is chameleon-like in its variations, appearing in all classes, in the intellectual as well as the weak-minded and baldly expressed, shows remarkable similarities to

the childish type of mind." Those are the indicia which I say provided the foundation or the background for the possible development of hysteria in this particular case.

Mr. CASSIDY : With the condition of thyrotoxicosis, there is some concern about the aftermath always in your experience ?—A. There are four main types of affection of the nervous system in thyrotoxicosis, one where you get this general upset of the normal balance of the individual—they become excitable, little things worry them and upset them ; they even become suspicious—" Why should I have treatment "—they do not like their friends saying " You are not well "—they resent kindly remarks ; and it is sometimes difficult to get these people to understand the necessity for them having hospital treatment, and very often of having surgical treatment. That is a general imbalance, if we can put it that way, of their mental faculties.

The second clear-cut type is the melancholic, the person who gets morose. They resent any attention, but in a different way. They do not want to be worried about anything, they like to keep to themselves, and they get fits of extreme depression ; they get peculiar fads and fancies, with regard to other people, with regard to conditions generally, with regard to their food, and so on.

The third main type are the ones who get these various phobias.

Mr. SHAND : Is this your own experience, or from reading ?—A. Both —it is a combination. I think I can give you some references for that if you so desire.

To Mr. CASSIDY : The third condition is where you get the various phobias, and that very often overlaps the melancholic type. With a phobia type they are suspicious of everybody ; they think things are happening to them for which there is no foundation in fact.

Those three types, the general mental instability, the melancholic, and the phobia types, overlap to a very great extent, and any one of those three types may merge into the fourth, which is the development of an acute mania and the necessity for incarceration in a mental hospital of the individual.

I have seen many cases of that. The trouble with thyrotoxicosis is this imbalanced mental condition. After operation, and after their period of convalescence, approximately 80 per cent. are restored to normal, but there is always that residual 20 per cent.—approximately one in five—who never become normal, and they persist with their mental instability—or true neurasthenia is a good term for it—and they never become normal individuals ; and it causes us people who have to deal with those people a great deal of concern on many occasions. It is a very difficult thing to do anything for them.

Q. That is your first ground : what is your second ?—A. The failure of either calcium in its various forms, or paroidin to eliminate the spasms. Parathyroid extract, referred to here as paroidin, only arrived in this country in about 1935, and the proper understanding of parathyroid tetany is a matter of development of only recent years, I should say the last 10 years particularly. It is a relatively recent development. Prior to that patients were treated on what we now know were incorrect lines, and that is why the text books are so full of these cases of chronic tetany, tetany going on for very prolonged periods. We know now, with efficient

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 7th January 1944, Examination, *continued.*

treatment, that calcium is the main requirement of the body in the control of parathyroid tetany.

The balance of calcium in the body is controlled to a large extent, not entirely, by the parathyroids. They regulate the amount, not of the total calcium in the blood, which may vary very greatly, but what we call the ionic—that is the active form of calcium in the bloodstream. Calcium exists in the bloodstream in three different forms. There is one, fixed to the organic elements in the blood, what we call the proteins. There is another which is diffusable. There is this third form, the ionic. Those three together constitute the total amount of calcium in the bloodstream; but it depends on this small amount of the ionic calcium whether a person gets manifest tetany or not. It is not so much the total of the calcium in the blood as the amount of this ionic calcium, which is only approximately about 1.5 milligrams per cent. What happens is that the parathyroid glands regulate and take from the fixed calcium or the other calcium in the blood—it is a specific alteration that it makes that renders it into this ionic form, which is then the active element which controls the irritability or otherwise of the little nerve endings where they go to muscle. So that it is essential that calcium be given to the individual. Paroidin or parathyroid extract is helpful only for a limited period of time, and very helpful too, because it helps to mobilise to some extent the calcium from the bones; it converts the calcium that is already in the blood into this ionic form the active form. It does not matter whether a patient has a blood calcium of 6 milligrams per cent. or 10 milligrams per cent.; there must always be that 1.5 per cent. approximately of the ionic form of calcium to stop the onset of tetany. Injections of paroidin tide the individual over a period of time, when the parathyroid glands, or what is left of them, can take on their function, either in whole or in part. It is quite useless where the whole of the parathyroids have been removed, and those cases invariably die, no matter what is done with them—even after the grafting of parathyroid tissues, which has not been successful.

Q. You try to graft them into the kidneys?—A. Yes, or some other part. The essential thing in the treatment of parathyroid tetany is to keep up the amount of calcium that can be absorbed into the bloodstream. This lady had very large amounts of calcium, and in addition she had paroidin, and yet despite that these attacks continued on up till the 2nd October.

The third point I make is the extremely long period of its persistence while under efficient treatment. It is very rare ever to get a case of parathyroid tetany nowadays going on for more than a few months, two to four months. In the old days we used to get them going on for probably years, where what is known as chronic tetany developed but these days with efficient treatment and proper understandings of the reactions, it is very seldom that we see anything but a transient tetany, and one which is eminently controllable within a matter of a few weeks. I think the longest I have seen is one that went on for about four months, but that was because that was complicated by sepsis.

In this case the sepsis, the very obvious sepsis that might have been a factor in the maintenance of her tetany, had cleared. Sepsis can only have an effect if it is acute, but it had cleared in July at the latest, and yet she had that long period of over 12 months when she was still having spasms, despite the continuance of treatment.

Q. Were you in Court when Dr. S. A. Smith gave evidence ?—A. I heard a large part of his evidence, but not all of it.

Q. Did you hear the portion dealing with his attitude to sepsis as the cause of tetany ?—A. Yes. I was rather interested in the views he put forward, because after all it is not a thing that we can prove either with regard to the interference with the blood supply to the glands or the direct result of the sepsis. It is one view that has been mentioned, and it is one that seems to have a rational basis for explaining some of the cases that we see ; and it is one that I would be inclined to accept in the case of this patient at present—that the sepsis did have a direct influence on the onset of the primary parathyroid tetany.

Mr. SHAND : I thought you disagreed with him in that respect ? —A. A friendly argument.

Mr. SHAND : It is more than a friendly argument.

Mr. CASSIDY : We have heard your sworn evidence, and that is your opinion, and you put it to the Jury ?—A. Yes, that is so.

Now we come to the fourth one, the frequent lapses into unconsciousness, which is contrary to all one's experience with regard to parathyroid tetany. I have never seen it occur in parathyroid tetany.

Q. Is that in adult cases ?—A. It is all adult—you do not get parathyroid tetany in children.

I have never seen it occur, and I cannot come across any authorities which say that unconsciousness does occur in ordinary parathyroid tetany, but there are plenty of authorities to say that it does not occur.

Q. That agrees with your experience ?—A. Yes, that is so.

With regard to the clenching of the hands, the onset of a true parathyroid tetany spasm is conditioned by the little reflexes where the nerves join the muscles ; the neuromuscular mechanism becomes excited and inclined to over act ; that is to say, the impulses will pass through more readily into the muscles, and cause contraction. The contraction in tetany is always a very typical one. Before the contraction comes on, they get this premonitory numbness and tingling which they complain of in their hands—pins and needles—and the muscles firm up, they get almost hard to the feel. That invariably occurs before you get the onset of any actual spasm.

When the spasm comes on the fingers get bent over from these joints, the knuckles (indicating) and the thumb becomes drawn into the palm of the hand (indicating) ; then the wrist gets pulled in, and the arm gets drawn up (indicating). That is the typical attitude in an extreme degree of spasm. You may get variations of that, but I have never seen one where the thumb has been extended—I have seen variations of the thumb inside or outside the clenched hand. The clenching of the hand itself is not a typical parathyroid tetany spasm. It occurs in hystericals—yes, but not in true parathyroid tetany. I say that the alteration in the clenching of her hands is a very definite factor in leading me to the conclusion of hysteria being the major factor.

Q. Is there something else you have to add to that with regard to the clenching of the hands ?—A. I think what I have said covers the main features.

Q. Do you remember the clutching of the doctor's coat ?—A. Yes ; I remember that being given in evidence. A person in a true parathyroid

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 7th January 1944, Examination, *continued.*

tetany spasm cannot clutch anything. If at the onset of the spasm something was in their hands they could hold it, and they would not be able to let it go, but they could not deliberately get hold of anything, a doctor's coat or sleeve for instance. That type of clutching is very common in hysteria.

Q. You remember you were dealing with sepsis, and you said that in this case you accepted the position that sepsis might have something to do with it ?—A. Yes, it is reasonable.

Q. In the whole of your experience can you tell us any instance where sepsis and tetany were combined ?—A. I have been thinking that question over, and the only case I can remember any details of was some years ago, where a patient had sepsis plus true parathyroid tetany, but I think the tetany part of it was due to the removal of parathyroid tissue at the time of the operation.

Mr. SHAND : How long did that tetany last ?—A. To the best of my recollection—I have been trying to look up the case but I cannot find it —the tetany lasted for about two months, two to four months I would say.

Q. Is that the same case as you mentioned a little while ago ?—A. No, that one was not associated with sepsis ; this one was associated with sepsis.

Q. It is wrong to say as to the other one that lasted four months that that was associated with sepsis ?—A. It is probably the same one. This is the only one I can remember where I had sepsis plus tetany.

(The witness' attention was directed to the following evidence given by him on page 1408 : " I think the longest I have seen is one that went on for about four months, but that was because that was complicated by sepsis.")

That would be the same case.

Mr. CASSIDY : You had finished dealing with the clenching of the hands and the clutching at the coat ?—A. Now we go to the sixth, the fact that massage relieved it. Where you have got an excitable condition in the junctions of the nerves and muscles, you never give any drug which may increase it. For instance, we do not give belladonna, atrophine, adrenalin, pituitrin, strychnine, any of those things. We do not use those drugs because of the heightened excitability of the neuromuscular mechanism, nor do we do anything which would irritate it in the way of massage. Massage would intend to increase the spasm of true parathyroid tetany rather than relieve it. In a patient who has developed it I would say to the nurse, " Just hold her hand, or just keep her as comfortable as you can, but do not do anything else ; just try and resist the spasm of the muscles lightly "—because that does seem to reassure the patient. I do not know that it does anything towards controlling the spasm, but it gives the patient a little bit of confidence that something is being done to help them.

Q. What is the next ?—A. The sudden cessation of symptoms as from the 2nd October. Parathyroid tetany is not a condition that suddenly reverts from a very severe type of spasm to a complete cessation ; it is one of gradual diminution over a period of time.

The WITNESS : It is one of gradual diminution over a period of time. The spasms become less severe, less frequent and finally stop. The hardness

and stiffness of the muscles gradually disappear, and last of all to disappear is the numbness and tingling and the pins and needles. It is a process that frequently occupies many, many weeks, sometimes many months, before you obtain complete cessation of symptoms in true parathyroidal tetany. That dramatic and sudden cessation is one of the indicia in my diagnosis. I would attach a great deal of importance to that as being something in the nature of a miraculous happening, if you can put it in that way, which has freed this individual from this bond of servitude in sickness.

Q. What is the next thing ?—A. The spasms of the eyelid. Spasm of the eyelids, clenching of the eyelids, is a condition which can only be brought on by conscious control. If a person became unconscious their muscles relax, and they cannot and do not control or exercise any will power over their own muscles. It is one of the points one looks for in people who are brought in unconscious, where you have to make a diagnosis without knowing anything about the patient. They are brought in unconscious, and if their eyelids resist your opening, then it is a very strong argument in favour of that unconsciousness being a wilful simulation. It can be either hysteria or malingering. One sees a number of cases of wilful simulation of unconsciousness, but it is consistent with hysteria.

Q. What is the next ?—A. The statement about watching one eye turn up is spasm. There are six muscles that control the movements of the eyeball. The one that turns it upwards is called the superior rectus, and I cannot conceive of spasm in one muscle of the eyeball and one only, and in one eye. Nor can I credit the statement of any individual being able with a mirror to watch one of their eyes turn up. In my opinion it is a most extraordinary statement to make. They must have had double vision, and I understand that the Plaintiff has said in her evidence that she never had double vision. If you get the eyes twisted from their correct axis and focus you naturally see double, so if that incident had occurred she must have seen double. In my opinion it is a physical impossibility for any person to turn one eyeball in one direction only and watch it with the other eye. It would be a very difficult thing for them to focus on to start with, and in my opinion the condition is one which could not possibly occur.

Q. In hysteria, of course, these things can be imagined ?—A. I think it was a pure phantasy, and that it never happened.

Q. Do you remember the explanation given by Dr. Thompson, that that could occur in tetany because of the pressure, or the swelling on the carotid artery. What is your opinion about that ?—A. I think it is a most ingenious explanation to put forward, but unfortunately there is nothing to back it—(Objected to.) I think it is wrong, and for the following reasons, firstly that it is impossible for a foreign body in an abscessed cavity to exert pressure sufficiently to interfere with the common carotid artery to such an extent as to control its blood supply—(Objected to.) The tube could not produce sufficient pressure in itself to control the circulation in the common carotid artery. Secondly with regard to the question of exudation, the exudation round an abscessed cavity forms a hard, thickened area of fixation, and that in itself could not produce any direct pressure such as this must have been if it produced this symptom.

Q. What kind of pressure would it take to stop the carotid artery supply going forward ?—A. The amount of pressure required

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 7th January 1944, Examination, *continued.*

to stop it would be such as one would have to exert—you would have to put one thumb on top of the other and compress the artery against the spinal column, which is the only way in which you could control it, the tube and the exudation or both. I have dealt with the question of exudation. In regard to "both," there is the tube in this abscessed cavity fixed in position so that it is impossible for both of them to have any effect of that character——

Q. Is there another aspect of it that you have not yet mentioned? It is put forward that the blood supply to that area would cause the spasm. Is there any aspect apart from that, assume the blood supply had been stopped in the carotid?—A. No, in my opinion there is not, and I can find no reference in the literature to support the contention that a spasm is induced from the cutting off of calcium in the bloodstream to the muscles that have become involved. As a matter of fact it is the reverse, because even when you are performing a Trousseau sign you could be affected in the other one.

Q. What do you say about the collateral supply in that area if the carotid artery were stopped?—A. The collateral supply in that area is very, very free, and it is one of our difficulties in operating, that branches that come off these arteries will bleed back, not only from the end nearest the heart, but the other end, and you have to tie them on both sides. At the base of the brain nature has put in a compensatory mechanism which controls the even distribution of blood to the cranial contents, even though one of the main arteries is blocked or has been tied, or something of that kind.

Q. During the operation you tie that carotid artery?—A. No, you tie the superior thyroid.

Q. What is the next thing?—A. The abscess moving from the parathyroid area. The inflammation must have started in the operation area of the wound. It is difficult to say how it got there, but the fact that it developed as shown by the hospital notes indicates that there must have been a fair amount of infection which caused the amount of pus that it did. With the foreign body there, the infection there, the only way in which you could get the travelling up the neck would be a movement of the whole mass. So that your inflammation must have necessarily left the region of the thyroid and parathyroid and have come up the neck, and it must have left it for some months according to the history, because the sinus had healed. It was only for two or three months before this happening on the 2nd October that she got this extreme degree of discomfort in the neck. So the focus of infection must have been in this region, so that the inflammation subsiding the parathyroids resumed their function, that is assuming the story of infection.

Q. On all these matters and on the general background what do you say as to the position on the 2nd October, 1939?—A. I would say that a tube of which this is supposed to be a fair representation could not have burst through into that patient's mouth as she described. It could not have been swallowed without an extreme and painful effort on her part, and I do not think that the facts I have heard in evidence would support the contention that is put forward in that matter.

Q. Dealing with the tetany of the matter, and dealing with the whole of the matters you have discussed before the Jury, was her condition on the 2nd October, 1939, with what was that consistent, qua tetany?—A. This was just merely part of the hysterical phenomena.

Q. Did you examine this plaintiff's throat at the first trial in Court? —A. Yes.

Q. We have heard from Dr. Thompson that he saw that throat before the first trial. Was he called at the first trial after you gave evidence? —A. I don't recollect.

Q. But you did examine that throat in Court, and you gave then and there what you found in the throat?—A. Yes.

Q. Was what you found in the throat consistent or inconsistent with her story?—A. Entirely inconsistent with her story. She had evidence of chronic inflammation at the back of the throat. Both tonsils were involved in what is called chronic tonsilitis, and in this area in the left tonsil there was a crypt or the orifice of a main crypt of the tonsil. That is what I saw at the first examination. The tonsil at the right side was not exactly a mirror picture, but closely resembled the one on the left side in its general appearance. She had what is called chronic follicular tonsilitis.

Q. Looking there could you find any evidence to substantiate the statement that a tube such as we have been dealing with had ulcerated through that tonsil?—A. I could find none whatsoever, and one of the points in connection with that which struck me at the time was the extreme degree of mobility, the normal mobility of the palate. The uvula and the little muscles were all normal, and they could not have been normal if she had a condition such as she alleges, where a big abscess had burst through. There would have been an enormous amount of fibrosia left, and permanent disfigurement, because the palate gets dragged down. It is so obvious that it could not be mistaken.

(*Luncheon adjournment.*)

At 2 p.m.

Mr. CASSIDY: Dealing with the final matter of the things which made up your diagnosis of hysteric tetany, are there any other factors in addition to those you told us?—A. There are a considerable number. Those I listed were the ones that appealed to me from the surgical standpoint. There are others more from the medical viewpoint, particularly the whole behaviour on October 2nd and the evidence I have heard tendered as to accusations, the drinking water being tainted, complaints about the hospitals the patient has been in, complaints about some of the doctors who treated her with regard to being burnt by Dr. Flynn with the X-ray and I would think this charge against Dr. Bell in itself is indicative of an hysterical tendency.

Q. Do you agree with some of the authorities which have been read as to the tendency there is to make charges in such a temperamental make-up?—A. Yes, I am in agreement with them. It is the usual experience one has with hysterics.

Q. You yourself have had experience with that type of patient? —A. Yes, of accusations. I do not see it as often as the physician would, but I see quite a number.

Q. I was dealing with the tonsils at the adjournment. You gave your description to the jury on you examination at the first trial, you told the jury what you saw. I want to read to you from page 319 the evidence of Dr. Thompson on this trial:

> "Q. When did you make the examination?—A. I don't remember the date. It must have been 2 or 3 years I suppose; oh, no, I examined the tonsil before the first trial.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 7th January 1944, Examination, *continued.*

Mr. SHAND: Before the second trial?—A. No, before the first trial, but I did not give evidence.

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."

What do you say about that?—A. My examination, I found nothing of that character at all. The tonsil crypt was in evidence. It had a couple of small strands of tissue across it which one takes as evidence of chronic inflammatory reaction.

Q. Did you hear anybody give any evidence in opposition to what you said on the first trial, any doctor, as to the tonsils?—A. I don't remember any.

Q. "I ascertained the length with a probe and glass. I have the glasses I used." Were any glasses produced to indicate the size at the first trial?—A. None that I can remember.

Q. "I used this afterwards, after I got the length of the probe, this is the probe I used. I used those (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-quarters of an inch." Those are the glasses, Exhibit "R"?—A. There was nothing at the time I examined her throat into which any of those things could have been passed.

Q. Was any one of those produced and suggested to you a glass such as that could be put into the hole?—A. I have no recollection of it.

Q. Will you give us a picture of the crypt as you saw it. Can you illustrate from the tonsils?—A. The actual surface of the tonsils as I saw them, this is larger than the normal, and hers were larger than normal because of inflammation. The surfaces of both tonsils exhibited that ragged appearance due to the inflammation which occurs in the various crypts of the tonsils. On the right side you could see the slit orifice with a couple of strands of tissue——

Q. There is a strand of tissue marked with red?—A. That one has a very fine strand going across there. The thing that struck me was more the irregular appearance, obviously it had an inflammatory process in the tonsils introduced by debris and material exuding from the various crypts. Up near the top of the left tonsil was that depression with two similar strands.

His HONOR: You said the right side. You meant the left side?—A. Yes. On the right-hand tonsil there was a similar depression but I did not notice any strands actually crossing that one.

Mr. CASSIDY: Exhibit "17" you see the crypts in those?—A. Yes, that is the major crypt. This other one I do not know that you could pick it out unless you had a probe.

Q. Do those crypts vary in size?—A. Enormously, even in the same individual. They vary with the extended inflammation which is present or may have been present in the tonsil.

Q. There is one here has two strands. Was there any evidence of scarring consistent with that tube coming through?—A. No, the only

scarring was on the surface of the tonsil itself and had resulted from the chronic inflammation in the tonsil.

Q. Did you at a later stage see the tonsils again ?—A. Yes, I examined them in December—Saturday morning, 11th December, 1943, along with Doctors Marsh, Edye, Steele and Thompson.

Q. What was the condition of the tonsils on that occasion ?—A. The appearance had altered from when I saw her. She had a sub-acute inflammation present at the time. Dr. Thompson explained she had had a recent cold which would probably account for the lighting up of the infection, both tonsils, the whole of the back of the throat. They were both moderately inflamed. This yellowish debris could be expressed very easily from the tonsil. I saw Dr. Marsh do that and the amount that came out, quite an appreciable amount. There was one alteration I noticed, and that there was only one strand of tissue over the crypt on the left tonsil.

Q. When you saw it originally you saw two ?—A. Yes.

Q. Mr. Shand interjected "Two at least." Is that right ?—A. No, it is not right.

Q. Do you know what he is referring to when he says that ?—A. I think so. A question put to me by Mr. Hardwick.

Mr. SHAND: Are you referring to your own evidence ?—A. Yes.

Mr. CASSIDY: What page ?

Mr. SHAND: 196 of the first trial.

Mr. CASSIDY: "And over that there are fibres there" ?—A. Page 211.

Q. In the Appeal book it is page 196. Was this the question—"And over that there are fibres there, two at least of what I would call bridges of tissue ?—A. Yes." ?—A. Yes.

Q. Then page 197, line 21: "Although you agree there are those two bridges of tissue," and you said "Yes" ?—A. Yes.

Q. You heard Mr. Shand read that as two at least ?—A. Yes.

Q. You heard it mentioned earlier in this trial ?—A. Yes.

Q. What is the sense, the way it is used ?—A. I took it from Mr. Hardwick's question he is referring to them as fibres and then he said "At least what I call bridges of tissue, too."

Q. And then "Although you agree there are those two bridges of tissue ?"—A. Yes. At no time have I said there are more than two.

Q. Had there been an eruption through that area that you saw, what do you say would have been the position as to any bridge of tissue ?—A. Of course they must have been destroyed just as in the succeeding period since I first examined Mrs. Hocking there, one of them has already been destroyed by recurring inflammation and if any large tube such as this had come through the tonsil, there could not have been any bridges of tissue left, they must have been torn, torn across, destroyed completely.

Q. You told the Court when you saw those tonsils on the 11th they still showed evidence of inflammation. What did you observe as to the probing there ?—A. I saw Dr. Marsh use a probe which he passed into the main crypt of the tonsil. It went in for a short distance, he tried various other areas, and he made the remark "I cannot get it in any distance" and he then asked Dr. Thompson if he would demonstrate where he had

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 7th January 1944, Examination, *continued.*

passed the probe, to which Dr. Thompson agreed and after some little time he passed the probe—he bent—altered the curve of the probe slightly and he passed it into what I am sure was identically the same area as Dr. Marsh had, that is into the remains of this large crypt of the tonsil. I observed that very closely. I observed it for the purpose of giving evidence.

Q. Was there any alteration in the palatal muscles or any of those things on the 11th December to what you had seen in December 1941 ?—A. No, they were just as mobile or free from scarring as they were when I examined her on the first occasion. I have never seen any evidence of limitation in her neck. I have watched her very carefully when she has been in Court with regard to movements of the neck, and I examined her very closely on the morning of the 11th in regard to movements of the neck and they were of normal range, not restricted in the slightest degree.

Q. Do you remember on the date given as the 2nd October the Plaintiff alleges she swallowed something, she said that she felt a pricking and scratching of the wire in the stomach. What do you say as to that ?—A. I don't think that could be correct for the reason that the mucous, that is the lining of the stomach, is insensitive. When we are operating upon a person with a local anæsthetic we can touch the stomach with impunity, there is no tactile sense in the lining of the stomach. I have frequently seen people who have swallowed various objects, especially prisoners who want to get into hospital, they will swallow forks and knives, buttons, even razor blades and once they get to the stomach there is no sensation whatever. On the way down, down the gullet, they may get a certain amount of sensation but that is of an entirely different constitution.

Mr. SHAND : Would not they vomit them up ?—A. I have never seen anyone vomiting a foreign body once introduced into the stomach.

Mr. CASSIDY : You heard Dr. Thompson's evidence, do you remember his explanation ?—A. I don't remember every detail.

Q. At page 335 he was asked " (Q.) Mrs. Hocking described that she felt something going down here (indicating) and she felt some sensation in the stomach afterwards ?—(A.) Yes, that is quite possible. It might be caused in two ways. It might be apparently caused by the pus that she swallowed being laden with germs—that might irritate the stomach and the intestines, and it might also be caused by the foreign body coming up against the pyloric sphincter." ?—A. With regard to that suggestion that pus would cause irritation in the stomach, it is a notorious fact that we have dealt with people with advanced degrees of chronic gastritis with free pus in the stomach, have no sensation of inflammation, so that would quite rule the question of any pus she might have swallowed, right out.

Q. What sensation do they get ?—A. They get dyspeptic symptoms, commonly referred to as indigestion, but there is no pain. With regard to the question of spasm of the pyloric sphincter, that may be noticed, but that would give a very severe and agonising pain and the only time I have ever known of anything being caught in the sphincter where there was sphincteric spasms it has brought about the patient's collapse because the pain was so severe. It was very severe colic.

Take the person who swallowed a safety pin. We have to track that with the X-ray because the patient cannot give us the least indication as to where it is, they have no sensation.

At the outlet of the stomach is the sphincter muscle which controls the opening of the outlet of the stomach. It is much like a valve which opens to allow the partly digested food to go through and it will close down again to retain food in the stomach for a period of time. If you get something stuck in that, you may get colic—that is, it is trying very hard to close down on the obstruction and you get this very great deal of pain of a colicky nature, very severe.

Q. It is described here on the 5th October that this tube, after being passed, was picked out of the chamber and it was squeezed and green pus ran out of the tube ?— A. I heard that evidence given at the first trial.

Q. Assume that the alleged swallowing took place on the 2nd October and this incident is alleged to have taken place on the 5th, what do you say ?—A. With regard to any pus being present ? It would be a physical impossibility for pus to have still been present in anything that had been swallowed three days previously because it would have passed through the stomach, the small intestine and the large intestine, it would have met with all the various digestive juices, which are particularly powerful in the small intestine and which would have digested and destroyed any pus cells. Although we frequently look for it we have never got evidence of pus coming through from the stomach to the lower bowel. The only pus that is ever found is that which comes from the lower bowel itself, pus from the stomach or small intestine is always digested.

Another thing would be the colour, because the bile which enters the small intestine just outside the stomach—it is first a bright golden brown and then becomes greenish as it becomes oxidised, and later in the final stages of digestion it becomes a dark brown colour just the colour of the normal excreta. Anything that is coming through would be naturally coloured by the bile so it would be, if anything, a very dark brown colour.

Q. At page 250 this was put to Professor Welch : " Q. You heard the Plaintiff say, and she was cross-examined on what she described as pus coming out of this tube when she squeezed, when she had taken it from the chamber and she described that pus at the first trial as green or greenish looking, and at the second trial as greenish yellow. Would you tell these gentlemen what your view of the matter is ? Could you get greenish pus in the tube with one end closed ?—A. Yes, you could get pus retained in the closed end of the tube and that pus might have a greenish hue for two possible reasons : one because there is a bacillus of suppuration which gives rise to what we call green pus and that might then be present in the tonsillar abscess ; and the second reason is that there may have been some green staining by bile as it passed through the intestines." What do you say as to those two reasons given ?—A. I don't agree with them.

Q. " A bacillus because of what we call green pus present in the tonsillar abscess "—did you ever hear the Plaintiff give any evidence of green pus in the tonsillar abscess in this case ?—A. No, I never heard it mentioned. The only green pus was with regard to this tube at the time it was picked out of the chamber. The organism which caused this green colouring in pus sometimes does occur with chronic infected wounds. I have personally not met with it in the throat—that is inside the throat—in wounds of the neck, yes ; but it would be destroyed in the process of digestion and it could not carry on with its formation of its green colouring during its passage through the intestine.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 7th January 1944, Examination, *continued.*

Q. I want you to come to the blood count (handed to witness). You have seen that before?—A. Yes. I have not seen this since the last trial. The date of this is the 28th October, that is 26 days after the happening of the 2nd October with regard to the throat.

Q. Is that blood count of consequence in this case, having regard to the facts that you have heard?—A. To me it is of very great consequence in that it is a perfectly normal blood count for a woman. The significance is this, that anyone who has been through a prolonged period of illness, even a matter of three or four weeks, let alone many months, changes occur in the constitution of the blood, both with regard to the red blood cells and to what we call the white blood cells. The red blood cells carry the iron of the body which carries the oxygen to the tissues and there is always a diminution in the content of the iron in those red cells. There is also a diminution in the number of red cells, that is to say, these people develop a very typical anæmia. With regard to the white cells or leucocytes, there is a very characteristic reaction with them when inflammation is present. They are always, or in nearly every case, increased in number where you have a septic inflammation. Once the inflammation clears, or, in the case of an abscess, if it is opened, they may make a very quick recovery, so the fact that there was a normal number of leucocytes 26 days later, I don't think is going to help one way or the other; but the hæmoglobin is a different problem because it is generally a question of many months before you can get a person's hæmoglobin up to anything like normal after they have had anæmia that is associated with severe sepsis.

Q. Of course, the Defendant's account is that there was no pus at St. Luke's, but I am not taking the Defendant's account for the moment. Taking her account that in St. Luke's, when that blood count was taken, she still had pus up till that date, what would you say is the importance of the leucocytes there?—A. If she still had an inflammatory reaction sufficient to produce pus, I think there would have been some augmentation of the number of white cells, perhaps up to 7,000 or 8,000.

Q. With regard to the hæmoglobin, what does that indicate to you?—A. That indicates to me that a person with a blood count like that could not have had any serious illness within recent months—months, not weeks. Otherwise they could not have had a normal blood count.

Q. In the course of Dr. Smith's examination he was asked could he remember a case where there had been sepsis and no tetany following thyroidectomy, a certain case was looked up and you happened to be the doctor who had attended it. In looking at that case, did you find something that was not asked in that connection and did you find there an example of how the blood count is affected with sepsis?—A. Yes.

Mr. SHAND (interrupting): I asked was there sepsis present?—A. Yes, there was sepsis present. Well, it was in a subsiding stage. She had been ill for approximately a month. Before she went into hospital her general condition was normal. She had a non-toxic œdematous type of goitre—that is, different to the toxic. Within the four weeks of her illness her red blood corpuscles had dropped to 3,830,000, and hæmoglobin had dropped down to 74 per cent.

Q. She also had rheumatic fever?—A. That was the final diagnosis made. The white cells at that time numbered 12,800; the normal of white cells being about 5,000. That indicates the change that one normally expects where you get sepsis. I speak authoritatively on this because,

take the soldiers at No. 113—we have regular blood counts as often as twice a week on them so that we can keep check on the destruction occurring in red cells and on that we are guided on the question of blood transfusion, and it is a very important check with regard to the progress of sepsis.

Mr. CASSIDY: You have given your conclusions from your study of that blood count?—A. Yes.

Q. Is it consistent or inconsistent with her story of this eruption on the 2nd October?—A. I would say that this count done on 28th October is quite inconsistent with the story submitted by the Plaintiff.

Q. Now come to the question of the calcium level which is mentioned there?—A. The calcium content of the blood was estimated at 7.2 milligrams per cent. That indicates that there has been some lowering of the normal amount of calcium in the blood stream, and I think it would be compatible with the suggestion I made in the earlier stages that she had had some degree of true parathyroid tetany. The normal amount of calcium is roughly 10 milligrams per cent.—it varies considerably. Now, after having parathyroid tetany, the patient has to establish a new level of calcium, and this amount of 7.8 I would take to be the new level this patient had established after her true parathyroid tetany had cleared and the new level had come into existence, and the fact that this new level was sufficient for her body needs at that time is evidenced by the fact that she had no further spasms—assuming that the spasms up to the 2nd October were all true parathryoid tetany—that having no spasms after the 2nd October it shows that this is now her new level for body requirements.

Q. And right throughout this case has that been the position, that after the 2nd October there has been no evidence of any further spasm?—A. I have heard no evidence to support the idea that there was anything in the nature of parathyroid tetany or any form of tetany after 2nd October.

Q. You mentioned to me that you wished to deal with the question of phosphorus?—A. Yes. This question of calcium balance in the blood stream is a very complicated matter, and one that is closely bound up with what we call phosphorus metabolis, also to a certain extent with the balance of magnesium in the body tissues. You have to get the balance of calcium, phosphorus and magnesium on a certain level or within a slight range of variation to carry on the normal functioning of the body tissues, and if you get a drop in your calcium, as you do with the true parathyroid tetany, it is always accompanied by an increase in the phosphorus, and until that increase in phosphorus can be controlled or eliminated you cannot restore the proper calcium level, and it is one of the things that we now know is so essential in the treatment of these cases—not only that you must control their calcium balance but also their phosphor balance. It is a very important thing, and is one of the points that has only been emphasised within probably the last six or eight years, and it has been one of the reasons why we are so much more successful in these days in dealing with the treatment of true parathyroid tetany.

Q. Can you have a lower blood calcium than 7.2 and still have no tetanic spasm?—A. Yes. I don't know that I have had any personal cases recorded that I can remember.

Q. Of course I am not talking of parathyroid tetany, but I am talking of ordinary tetany?—A. Oh, ordinary tetany—well, I think there are

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 7th January 1944, Examination, *continued.*

cases reported in the literature where there have been very great variations and very big drops in the amount of blood calcium which on occasions may have been associated with spasm, and on other occasions without, and it is a well-known fact that the actual level of the blood calcium is not indicative of tetany.

Q. Now I wish to take you to a statement made by one of the witnesses for the Plaintiff, which occurs at page 331 :—

"Mr. Shand : It is referred to on the 26th, and it is dated the 28th. Now, what do you say about that 7.2 ?—A. Well, that indicated that the calcium content of the blood was below normal. The normal is 10 milligrams per cent.

Q. Is that again indicative of what happened ?—A. Yes, that is all in harmony with the condition she had. I cannot see any other explanation."

What do you say as to that ?—A. I do not quite agree with that. As I say, it indicates to me that she probably had a true parathyroid tetany in the earlier stages. Now, as we know, in this treatment they establish the new blood level with their calcium, and this is the new blood level that she is carrying on, without any further tetany spasms.

Q. Do you or can you have the lowered blood calcium in hysteria ?— A. I understand that you can, though I have had no personal experience of it.

Mr. CASSIDY : This is Mr. Shand's question (page 322, present trial) :

"Q. You were calling attention to the fact that three stitches were removed on the 17th ?—A. That shows to me that there was tension in the wound and as the exudate was not escaping freely on the 17th tension is due to the fact that the fluid could not escape. It looks as though the tube was blocked, on the 16th there was a little drainage, the fluid would come away from the side of the tube——(Objected to). It looks as if the exudate was able to escape on the first day because the tissues had not swollen, but on the next day as a result of interference with the part swelling in the vicinity of the tube would block that so that would block that exudate also, more or less."

A. No, I do not agree with that statement at all. There was no evidence that I could find in the hospital records of any inflammation in the wound at that time on the 17th, that is two days after the operation, and it used to be a common practice to start removing your stitches; I used to do it on the second, third and fourth days.

Q. The fact that three sutures are removed at the time of the removal of the tube, what do you say to that ?—A. I would say that the wound was in a very good condition. If there was evidence of inflammation I would prefer to keep the stitches in longer than usual, otherwise the wound tends to separate.

Q. Page 323 is the next quotation, third last question :—

"Q. Would you get as good a draining if you put the tube in the right lobe ?—A. If you put it only into one cavity you would not get as satisfactory a drainage if you put two tubes in, because the skin falls on the trachea and it tends to cause a certain amount of obstruction."

A. No, of course the skin cannot fall on the trachea because it has the fatty tissue and the platysma muscle in between. You have your infra-hyoid muscles there as well. Nature abhors a vacuum, and the tendency

is to flatten everything down, to diminish the size of your cavity. If you put a tube in one side the exudate, well, if there is any excess it will come across the front of the trachea and it will drain. That is the usual practice, to put in only one side. It is very seldom that we use two tubes, and only if there has been very, very—well, a huge goitre leaving a big cavity, you might put two tubes in there, but in a case like this, the average case, I would say one small tube would be all that was necessary.

Q. (Referring to page 333, present trial) :—

"Q. Now assuming that the tube was in the left lobe of the thyroid cavity, where would it be in relation to those muscles."

I will first of all go back, same page :—

"There are three layers of muscle. This is the sterno-mastoid (indicating). That is the powerful muscle and underneath the sterno-mastoid are these flat strap muscles, the sterno-hyoid and another one at the side that does not matter. It is in the same layer. Underneath that is the sterno-hyoid, and then in front of this, between those muscles and the skin and the deep fascia, there is another muscle called the platysma, so there are really four layers of muscle.

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."

A. No, I cannot conceive of a thing like that happening. The natural tendency of those muscles is to pull in this direction, that is, they tend to separate. Unless a tube were put in at an extraordinary angle, well, I can conceive of putting in a tube according to those directions, but it would have to come from the extreme edge of the wound and come obliquely across like that (indicating). You could put a tube in in that way, but it would not be done as ordinary surgical procedure. You put the tube straight into the bottom of the cavity.

Q. A tube put in in the normal way and as Dr. Bell describes he put this tube in, could they in any way grip it ?—A. No, the muscles could not. They are infiltrated. They are œdematous. They have lost a great deal of the power of contraction for the time being. There is no possible way in which they could hold a tube and prevent it being drawn out.

Q. There was one matter of that eye incident and you dealt with it before lunch. You spoke of some muscle of the eye, a muscle called the rectus. Do you get eye spasms in hysteria ?—A. Oh yes, you can get various forms of squints and they tend to roll their eyes about. They will roll their eyes about and you can get these peculiar types of spasms in connection with hysteria, but I do not think, well, I have never heard of anything with regard to rolling up of one eyeball in that fashion, even in hysteria.

(Hearing adjourned to Monday, 10th January 1944.)

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Examination, *continued.*

(*Twenty-sixth day—Monday, 10th January* 1944.)

HUGH RAYMOND GUY POATE:

Examination continued.

Mr. CASSIDY: I did not ask you on Friday on the question of the differential diagnosis between parathyroid tetany and hysterial tetany?—A. It is a very difficult problem to differentiate one state from the other, unless you have some other factors from which you can draw conclusions.

Q. In this case do you or do you not say that you have those other factors?—A. Yes. I think taking a broad view of the whole of the case those other factors which have been mentioned play a very important part in establishing the diagnosis of hysteria.

Q. You heard something said about the various tests as to having some value in relation to the diagnosis of hysterical tetany or parathyroid tetany?—A. Those are the three classical tests—the Erbs test, the Chvostek, and the Trousseau. With regard to the Erbs test, I have never seen that test carried out, although I visited many continental hospitals and British hospitals. I think it is regarded nowadays more as a matter of interest than of any real practical significance. I have never seen the test used in Australia, and I doubt whether it could be used efficiently. The Chvostek test is of greatest value only in children, and I think most authorities will agree that after the age of five years it is not of any special significance. It occurs in a great number of different complaints apart from parathyroid tetany. The Trousseau test is not pathogonomic of parathyroid tetany—it is not necessarily a sign which is only obtained in parathyroid tetany. It may be obtained again in many other conditions, and it may even be absent altogether in parathyroid tetany. So those tests as a whole are not reliable criteria of parathyroid tetany in itself.

Q. In diagnosis is it the rule or not that a man must have regard to the totality of things?—A. Yes, that is very definite. You cannot rely on any one or other sign: You have got to be guided by the clinical condition of the patient very largely.

Q. Still referring to the Trousseau test, you might tell me what you have to say on the suggestion that contractions are of nervous origin?—A. I think it is now definitely proven that it is not due to any disturbance of the circulation, because one important piece of experimental work that has been brought forward was in reference to the Indian arrow poison curare which brings about paralysis. In parathyroid tetany injections of small doses of curare will immediately stop the spasms, showing that they must be of nervous origin, because curare acts on the actual nerve ends where they go into the muscle.

Q. Does that illustrate something with regard to the suggestion that the pressure against the carotid artery caused the eye spasm?—A. Yes, I think it would strongly negative that suggestion and also the suggestion that was put forward that the Trousseau test was due to interference with the circulation.

Q. You told the jury on Friday about your inspections of that tonsil. You also told the jury that on the 11th December you saw Dr. Thompson using a probe?—A. I did.

Q. Did you notice anything about the movements of the probe or his examination ?—A. Yes, I think it was very obvious that he had a great deal of difficulty in making the examination itself, and he kept referring to his eyesight. I understand that he has lost the vision in one eye and the vision in the left eye is seriously impaired. That means that he has lost his stereoscopic vision.

Mr. SHAND : Where did you get that from ; that the other eye was seriously impaired ? Where did that come from ?—A. That the sight in his other eye was damaged.

His HONOR : How did you come to know that ?—A. I understand that was given in evidence in the Court.

Mr. SHAND : Given in evidence here ?—A. I understood so.

Mr. CASSIDY : With regard to his own eyesight, what was said at the inspection ?—A. He complained of the difficulty in adjusting the mirror and getting the correct vision of the throat. Where a person has only one eye——

Q. Assume that a person has lost the sight of one eye, what effect has that on vision as to depth ?—A. They lose what we call their binocular vision or their stereoscopic vision ; that is to say, the sight of objects becomes flat. They have very great difficulty in appreciating depths and judging distances. For instance, in threading a needle or in hammering a nail in or even in pouring out a glass of water they have difficulty in judging with only one eye the exact distances of various objects, and particularly with regard to depths.

Q. And in the region of the throat is that an impediment to surgical measurement ?—A. I should think it would be very definitely.

Q. I want you to assume that this is the state of the eyesight of Dr. Thompson after the 16th February 1941—this will be his eyesight before the first trial : " Does sound vision enter into——(Objected to : admitted).

Q. " Does sound vision enter into that work of necessity, first of all for the more serious operations ?—A. Yes, binocular vision, double vision, just in judging distance. For instance, in threading needles or sewing in the bottom of deep cavities, unless you have binocular vision it is difficult. For instance, I find myself in putting the key into the door I have to go about it like that, or, in threading a needle, I go like that, above or below. At the bottom of deep cavities where you are sewing, for instance, the pelvis and things like that it is difficult. When you only have uniocular vision, that is, vision with only one eye, you cannot judge distances. With binocular vision the images you get with the eye are slightly different ; they are fused into the eye and give you the idea of depth, third dimension, whereas with only the one eye you can only just see on the flat. If you have had binocular vision before and you lose it, your past experience enables you to judge a bit, so that you are not absolutely deprived of that. It is difficult to judge distances."

If you are deprived of the sight of one eye—assume for the moment nothing wrong with the other eye at all—what effect has it on the judgment of distance and observation of a matter like a tonsil ?—A. I think it would correspond to the description that you have read very accurately.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Examination, *continued.*

Q. I want you to assume this statement made as at 9th June, 1942—that statement I read to you given as at 9th June 1942 :—

"Dr. Louat (by permission): I asked you what disability you suffered in regard to your surgical practice, having only one eye with vision ?—A. Yes.

Q. Tell us in what other ways you are disabled ?—A. I have a feeling as though I have a chronic black eye and a dancing haze in front of my eye. If I close the good eye it is almost black. In the daylight or when awake I have these golden drops, a most unpleasant sensation. If I move my eyes suddenly, golden droplets go round and round about there. It gives me a giddy sensation due to the of the retina. It is hard to read or see when in theatres. When walking along the street I have to look like that because vision is not distinct. All the indirect vision is gobbed, so I have to turn round to see if a car is coming. In driving the car I have to be very careful now. When walking in the street if I do not do that I find myself walking into people. When I cross the street I have to turn round like that. I have difficulty in examinations with the speculum——"

Q. What is that ?—A. That is an instrument used for examining interior cavities.

Q. "Looking into the nose and throat and the use of the microscope with this eye. I think these are the chief troubles that I suffer from, apart from loss of sight." Assuming that to be the condition would judgment of distance in an area like a tonsil be difficult ?—A. Yes, I consider it would be very difficult under those conditions.

Q. With regard to the eyeball in unconsciousness, there is something you wished to say in that respect ?—A. I think I made the statement that I had never seen an eyeball turn up in that fashion. On thinking that over, the only condition in which one does see that occur is after a person has had a very serious head injury, with some damage to brain, and then you do get that unilateral movement of an eyeball but the patient is completely unconscious.

Cross-examination.

Cross-examined.

Mr. SHAND: When Dr. Thompson made his last examination he put a probe in the tonsil ?—A. Yes.

Q. And when he had taken it out you asked him how far in his opinion it had gone in ?—A. No, I did not ask him that.

Q. He was asked ?—A. I think Dr. Marsh asked him that.

Q. And he said a quarter of an inch ?—A. I do not remember the exact details of that, as to the distance.

Q. I am putting to you that he said a quarter of an inch—we have heard that evidence from Dr. Marsh—and whatever he said was correct ?—A. Yes, at that time.

Q. So he did not make a mistake on that occasion ?—A. No.

Q. Where in this evidence did you read about his other eye being affected ?—A. I do not think I read it in the evidence at all.

Q. You have changed your mind about that ?—A. I understood that his left eye was impaired.

Q. You swore that in your opinion you had read it in this evidence in this case ?—A. No, I said that I thought it had been mentioned.

Q. Now you think you are wrong ?—A. No, I do not think I am wrong.

Q. You still think it was mentioned in this evidence ?—A. No, I do not think it was actually mentioned in the evidence that was given in the Court, but I have seen or heard it.

Q. That is what you said before, that you thought it was mentioned in the evidence in this case ?—A. I made a mistake in assuming that.

Q. With regard to inflammation, I suppose you will agree that practically every organ of the body, blood vessels, nerves, thyroids, have their own fascial coverings or compartments ?—A. Yes.

Q. And that applies, I take it, without going into detail, to all the organs of the body ?—A. Yes, practically right throughout the body.

Q. And when you get suppuration you can get a division of those compartments—suppuration can spread ?—A. Can spread within the fascial compartments.

Q. And it can eat through the fascial compartments ?—A. That depends on the type of inflammation or infection.

Q. Acute inflammation can eat through ?—A. Not necessarily.

Q. Streptococcal ?—A. No, streptococcal will not ; staphylococcal will.

Q. And this was staphylococcal ?—A. Yes.

Q. So that, without specifying in particular the direction, you will agree that in this case it would be possible for the inflammation to eat through the particular compartment ?—A. In certain conditions only.

Mr. SHAND : And you will agree, will you not, in relation to the direction of the spread of suppuration that gravity has very little to do with it ?—A. In the neck, yes.

Q. And you will agree with this, will you not, that a foreign body could move in the suppuration ?—A. Only inside the abscess cavity.

Q. But the abscess cavity does not necessarily form at once, does it ?—A. Yes, it must. It is a natural process of tissue reaction.

Q. The abscess cavity can itself be eaten through ?—A. Only when it comes to the surface and discharges.

Q. Do you agree, I don't know whether you remember what I put before, do you agree that suppuration—I put to Professor Inglis—could die down for a time and flare up again ?—A. Yes, it depends on the type of organism present.

Q. And it is correct, is it not, that suppuration in different parts of the body can spread over a considerable area ?—A. Only under certain conditions as I said before.

Q. You, I think, have sworn that you would not have any analogy between the psoas abscess and the present one ?—A. Between the tubercular infection and the staphylococcal, there is no analogy whatever.

Q. I suggest that it is somewhat on the same principle ?—A. Not at all, entirely different.

Q. You would not have any analogy ? —A. No, none at all.

Q. I suggest that the same principle does apply ?—A. I am afraid you are making a wrong assumption or suggestion rather.

Q. Did you always think so ?—A. Always. As a matter of fact the basic teaching that was given to me in that matter was given by Professor Welch himself.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

Q. Perhaps he taught you well ?—A. I think he did.

Q. Do you remember being asked this : " Q. So that suppurative inflammation tends to spread along the connective or packing tissue between the different structures ?—A. Yes, inside their fascial compartments. Q. You agree that an illustration of that type of thing is the psoas abscess ?—A. No, that occurs in the hip. Q. What I am suggesting is that it is the same principle " ?—A. Yes, spreading inside the fascial plane was the principle involved, not the infection.

Q. Did you swear that you would have no analogy ?—A. With regard to the type of inflammation.

Q. You did not qualify that at all, did you ? You had not made any reservation in giving your evidence in chief either, did you ?—A. No, that is quite correct.

Q. Why didn't you give some reservation ? Do you think you were being quite fair ?—A. If you will look back on the evidence I gave prior to these questions that were read out and on the evidence I gave last week, I made it very clear or I thought I had, that there was a different type of tissue reaction altogether between a tuberculous infection and a staph.

Q. I am asking you this, if you agree that there is some analogy, that is as to the spreading of inflammation along the planes, why didn't you give that reservation in this case ?—A. Well, I did not consider it a reservation.

Q. Didn't you ?—A. No, I mean blood would do the same thing.

Q. You called it a reservation, do you want to withdraw that ?—A. No.

Q. Well, why don't you give it ?—A. There is no necessity to give it, it was such a plain, commonsense type of thing ; to a medical man it is ordinary everyday bread and butter type of stuff.

Q. You, I think, have said that you concluded that hysteria began in June, after the end of June I think you said?—A. I said that my suspicions were first aroused by the events on the 1st June.

Q. What were the events ?—A. That she had that double-barrelled attack of tetany or tetany spasm.

Q. And unconsciousness ?—A. And unconsciousness.

Q. And then you allowed a couple of months grace, evidently you said it might have been July or August ?—A. It must have been a gradual supervention.

Q. Is it your opinion that unconsciousness first showed itself on the 1st June ?—A. I was not sure when unconsciousness began, I could not find any direct reference to it.

Q. Haven't you mentioned in your evidence that that was a feature that guided you ?—A. Yes.

Q. And you did not know when unconsciousness began ?—A. I was not sure as to what date unconsciousness began.

Q. So, as far as you know, it may have begun before then ?—A. It may have.

Q. And yet you told these gentlemen that up to that date you are convinced that it was true parathyroid tetany ?—A. I would not put it that way. I would say that the probability was that it was a true parathyroid tetany.

Q. Have you said before that you had no doubt about what it was, have you not used that expression ?—A. I may have used that expression.

Q. Was that true ?—A. Yes.

Q. The fact is that you had no doubt that up to the 1st June it was true parathyroid tetany ?—A. I may have sworn that.

Q. Was that correct ?—A. Well, take it that it was correct.

Q. Don't do it to please me. Was that a correct putting forward of your view ?—A. Yes, it was in the circumstances of this case.

Q. And still is ?—A. Yes.

Q. So we can take that as being the fact, that up to the 1st June 1938 you had no doubt that it was true parathyroid tetany ?—A. Yes.

Q. And that takes into account the possibility that unconsciousness may have occurred before then ?—A. It may have occurred, yes.

Q. Do you know when the rolling back of the eyeball occurred ?—A. The only thing I recollect about that was when Dr. O'Hanlon examined her, I don't remember the date of that.

Q. Do you deny that it was before the 1st June ?—A. No, I don't deny it.

Q. So, it may have taken place before the 1st June ?—A. It may have, and so may have hysterical tetany.

Q. I think you have sworn and still are convinced that up to the 1st June it was true parathyroid tetany ?—A. I said I had no doubt about it.

Q. I am asking for your views, and this view you held even though those two indications of hysteria that you put forward, unconsciousness and the rolling back of the eyeballs, may have occurred before that ?—A. Yes.

Q. If you did not know when unconsciousness first occurred would you mind telling the gentlemen of the jury why you said this: "Q. Now, proceeding from there ?—A. One of the important factors which occurred on that 1st June was the lapse into unconsciousness" ?—A. Yes.

Q. Important though it may have even occurred before ?—A. Yes.

Q. I just want to get the general position before we go on. Do you maintain that the parathyroids can be affected by the blood supply or the lack of the blood supply ?—A. I had that feeling with regard to it——

Q. Feeling ?—A. That I had with regard to it, but since Dr. Smith's evidence the other day I have given the matter considerable thought and I think it is opening up something that will lead us into further inquiries in that matter, it has always been assumed prior to this.

Q. I suppose before you gave evidence in a case of the seriousness of this you gave the matter considerable thought ?—A. Yes.

Q. And you were, I put it, firmly of opinion, until Dr. Smith gave his evidence, that the blood supply could affect the functioning of the parathyroids ?—A. Yes, I gave that evidence.

Q. And very definite evidence ?—A. Yes, there were three factors I mentioned.

Q. And that very definite evidence has been shaken by the five minutes' evidence, or whatever it was, that Dr. Smith gave ?—A. Not shaken, I say it requires further investigation.

Q. A doubt has crept into your own mind ?—A. I will put it this way——

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

Q. No, answer my question ?—A. Yes, a doubt has crept into my mind for this reason, that medicine is not a stagnant science, we are always revising our views, we are always trying to probe further into the why and wherefore of things and that observation of Dr. Smith's has opened up new possibilities which will require further investigation and perhaps a complete readjustment of our previous views.

Q. Never occurred to you before ?—A. I had some doubt about it, but I have never had it put so positively before.

Q. Was that the first time when Dr. Smith gave evidence ?—A. No, as I say we had doubts about some of these minor points.

Q. When did the first doubt about that enter your mind ?—A. When I saw a reference to the fact that the parathyroid tissue resists inflammation to a greater extent than any other tissue in the body.

Q. When did you see that ?—A. I think it must have been about 1936 or 1937.

Q. You never said a word about that in your evidence in any of the three previous trials ?—A. There was no necessity for it.

Q. You gave it as your definite conviction that either the blood supply or infection could affect the functioning of the parathyroids ?—A. Yes, going on our previous knowledge and observations and from text-book descriptions.

Q. And that indicated in this case, up to a stage, that those matters, that is the blood supply and infection, had affected the parathyroids ?—A. Yes, I wanted to try and arrive at some rational explanation as to the condition of this patient.

Q. Although you had this in your mind. a doubt as to whether infection or the blood supply could affect the function of the parathyroids ?—A. No, it is not quite that.

Q. You have sworn that, haven't you ?—A. The doubt was to what we call the physiological happenings, that is to say the size and control of those minute blood vessels producing an effect that would lead into an actual tetany.

Q. I don't care which way you put it, you had that doubt that you have expressed ?—A. Yes.

Q. But you never mentioned it ?—A. No, there was no need to.

Q. Although of course if there were anything in that last-mentioned theory it might be to the advantage of Dr. Bell, mightn't it ?—A. Yes, it probably might be, if one looks at it closely.

Q. Although you had that in your mind as a genuine possibility ?—A. Yes, there was a shadow of doubt.

Q. I am putting a genuine possibility ?—A. Yes.

Q. And you were giving evidence for Dr. Bell, you were called by him ?—A. I was called by Dr. Bell.

Q. You did not put forward that possibility, never put it forward until this trial ?—A. No, there was no need for it.

Q. And you never mentioned that to anyone, did you, to any of the legal advisers of the Defendant ?—A. No, it was too minute a point.

Q. Was it ?—A. Yes, it was not a thing that we could definitely say yes or no to.

Q. But it was a possibility ?—A. Yes.

Q. You have heard Dr. Ritchie's evidence ?—A. No, I heard part of it.

Q. To the effect that there was never any true parathyroid tetany ?—A. I understood that was his view.

Q. And up to the 1st June you quite disagree with that ?—A. Yes, I have my views.

His HONOR : And you won't be shaken by Dr. Ritchie, is that the position ?—A. No, we are all entitled to our own views.

Mr. SHAND : But you are shaken by Dr. Smith ?—A. That is an entirely different matter, that is a question of a scientific basis which will require argument.

Q. Do you agree with the suggestion put forward by Professor Inglis that after the patient returned to Quirindi she was suffering from angio neurotic œdema ?—A. That is quite possible.

Q. Do you agree with it ?—A. I don't know that I have sufficient facts to say definitely one way or the other, but I think it is a possibility.

Q. Have you considered it ?—A. Not to any extent.

Q. Of course, you have had plenty of time to consider these things over the years ?—A. Yes, quite a lot. I have had a lot of other things to consider also.

Q. You have been in Court most of the time, haven't you ?—A. No, I have not.

Q. Do you swear that you have not been in Court most of this trial ?—A. I have been in Court on odd occasions perhaps for a quarter of an hour in the afternoon when I was free.

Q. You knew, did you not, that Professor Welch had suggested at the first trial that you should examine the tonsil ?—A. No, I did not know that.

Q. You knew that Mr. Hardwick asked you that ?—A. Mr. Hardwick invited me to.

Q. It was at his suggestion that he asked you ?—A. Yes.

Q. Will you agree that when you made that examination at the time of the first trial that what you saw with regard to the left tonsil was consistent with an abscess having burst from it ?—A. What I said was——

Q. I am not asking you what you said ?—A. I said it came from the tonsil but not through it.

Q. Do you agree it was consistent with an abscess having burst from the tonsil ?—A. A localised abscess in the tonsil only. The only type of abscess that could have done it was a localised abscess in the tonsil.

Q. You were asked that question before ?—A. Yes.

Q. Did you say anything about a localised abscess ?—A. I did not use the word "localised," I made it very clear what I did mean, I said "from the tonsil."

Q. Is this what you swore : "Will you agree that it is consistent with the 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. A. Will you say it is a possibility ?—A. Yes, a very remote possibility" Those were your answers at that stage to those questions ?—A. Yes.

Q. Then do you remember being asked further questions later on ?—A. Yes.

Mr. CASSIDY : I object to this line of cross-examination, the very next question that follows that is omitted.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944. Cross-examination, *continued.*

Mr. SHAND : My friend can get that.

His HONOR : Line 20 is the one, I suppose.

Mr. SHAND : Of course I could read the whole page, it is all connected to some extent. I don't propose to read it at this stage.

Q. Would you mind closing that book up ?—A. His Honor has granted me permission to use it.

His HONOR : Mr. Shand does not want you to look at it, and he is cross-examining you, if you wish to look at it at any time you may ask my permission again.

Mr. SHAND : What were you going to do, look to see what you had said ?—A. I was going to try and follow the type of question you were putting to me because my answers in the other trial had other matters which qualified them.

Q. I suppose a crypt is a natural hole ?—A. Yes.

Q. And what you have called the main crypt is a natural hole ?—A. Yes.

Q. That is not the true name for it, is it, it is the supra tonsillar fossa ?—A. That is one name given to it which I consider anatomically incorrect.

His HONOR : That is a matter on which the doctors seem to disagree largely.

Mr. CASSIDY : They vary——

Mr. SHAND : Of course they do, and for a good reason too.

Q. You were asked this, weren't you—" At this moment on the left tonsil you can see there has been a hollow there, will you agree with that ? —A. In the tonsils there are many holes in both tonsils." They would be crypts, wouldn't they ?—A. Yes.

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." ?—A. Quite correct.

Q. And I want to ask you this, will you agree that at no time at no trial, until this one, have you ever mentioned the main crypt ?—A. I think I referred to that on different occasions.

Q. There is a difference between what you term the main crypt ?—A. Yes, that is as good a description as any.

Q. There is a difference between the main crypt, if you call it that, and what are just known as crypts ?—A. Yes.

Q. The main crypt is at the top of the tonsil ?—A. Yes, it comes down near the top of the tonsil.

Q. A very decided orifice and the other crypts are small ?—A. Yes, normally they are small.

Q. So that you agree that there is a distinction between what you and the main crypt and what are called simple crypts ?—A. Yes.

His HONOR : Isn't there evidence that if they get this cheesy material in them they become larger ?

Mr. SHAND : That has nothing to do with it. I don't know why Your Honor should put that to the witness.

His HONOR : I want to get the matter clear.

Mr. SHAND : It is difficult when one is cross-examining to have these matters continually put forward.

Q. You agree that these things sometimes contain a cheesy substance ?—A. The normal ones don't.

Q. And the normal ones are never anything like the size where you can get the end of a pencil in ?—A. No.

Q. So there is a definite distinction between the main crypt, as you call it, and what are known as just crypts ?—A. The lesser crypts, yes.

Q. I want to put it to you that never before this trial have you used the words " main crypt " ?—A. Probably not.

Q. Just a coincidence ?—A. That is all trying to make the thing as clear as I could.

Mr. SHAND : Why didn't you make it clear before ?—A. I thought I had made it very clear at the first trial.

Q. Did you hear Dr. Steele give evidence ?—A. Yes, I heard part of his evidence.

Q. Did you hear him say that he would not go farther than to say that he had not necessarily altered his case ?—A. No.

Q. With respect to this matter ?—A. No.

Mr. CASSIDY (interrupting) : No, it was not ; it was with respect to how far that thing could go in.

Mr. SHAND : It was not. Let me read what was said before. It is at page 196. You were asked about : " 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 that there is a depression there," and your answer was " Yes." The next question was : " And bridging over the depression are strands of tissue tending to go upwards and downwards," and you replied " Yes." Do you remember that ?— A. Yes.

Q. Then you were asked : " Q. Now will you agree that there is evidence of scarring in the depression," and you replied " No, I take it as evidence of a chronic infection in the crypts of the tonsil. The same appearance occurs on the other side," and you replied " Yes, exactly " ?—A. Yes.

Q. In the crypts ?—A. Yes.

Q. Will you agree that, prima facie, that refers not to the main crypt ?—A. No, it refers to both tonsils and most of the crypts as they exist to-day.

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 there is evidence of scarring in the depression ?—A. No, I take it as evidence of a chronic infection in the crypts of the tonsil. The same appearance occurs on either side " ?—A. Yes.

Q. Do you suggest that you are referring there to what you term the main crypt ?—A. Not specifically to the main crypt, because there was an infection of both tonsils.

Q. But you were being asked about a depression, actually ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

Q. And it was suggested by counsel at the time that that was where the tube had come through ?—A. I didn't think it was suggested at that stage.

Q. Didn't you understand that you first of all had to look at the throat to see whether there were indications of a tube having come through ? —A. I was asked to examine the throat with regard to the condition of the tonsils.

Q. Do you suggest that you had not in mind that you were being asked to verify whether or not there were indications of a tube having come through ?—A. I had it in mind, certainly.

Q. And do you say that you did not realise, when you were being asked about this depression, that it was suggested that that was the situation where the tube had come through ? Do you suggest that you did not know that ?—A. I only inferred that. I naturally would infer it from the way in which the questions were framed.

Q. And, having inferred that, your answer referred not to the main crypt but to the ordinary crypts that occur in tonsils ?—A. Yes, but it is all part of one process—inflammatory reaction in the crypt.

Mr. CASSIDY : I object. Your Honor sees, the question was : " Will you agree there was evidence of scarring in the depression," and the answer is : " I take it as evidence of chronic infection."

Mr. SHAND : There was scarring, wasn't there ?—A. Yes, scarring of both tonsils.

Q. And you will agree with me that until this trial you have never mentioned the main crypt ?—A. I don't think I have used that actual term, but it is a descriptive term in trying to simplify matters.

Q. What—just using the word crypt in general ?—A. No, I referred to where the tube is alleged to have come through as the main crypt.

Q. If you thought that that was where the tube had come through —what you call the main crypt—why didn't you make yourself clear before ?—A. I thought I had made myself very clear.

Q. You thought you had made yourself clear that the depression that was being referred to was really the main crypt ?—A. That it was part of an inflammatory process in the tonsils.

Q. And part of the main crypt ?—A. Yes.

Q. I suggest this is the only place where you have used the word " crypt." I take it as evidence of a chronic infection in the crypts of the tonsil. Now, look, wasn't your suggestion this. You heard Dr. Marsh give evidence, did you ?—A. I heard some of his evidence.

Q. And you had heard him suggest that a number of crypts, not the main crypt but a number of crypts, might be formed together to form a depression ?—A. Yes.

Q. And that is what you are suggesting here, isn't it ?—A. No, not necessarily at all.

Q. Will you swear that that was not what you were suggesting ?— A. Yes, of course I ll swear it. All my evidence here is given on oath.

Q. But you said " not necessarily "—Do you mean that you may have suggested that ?—A. No. The impression that I was trying to convey was, to put it in simple terms so that lay people could understand, what I saw, and what had caused the appearance which I saw.

Q. Do you think it is simpler if you meant it to distinguish what you mean by saying it is a main crypt, or do you just leave it as being a chronic infection in the crypts ?—A. I think it is perhaps a more complete description to refer to that particular depression where the strand and the fissure now exist as the main crypt.

Q. According to what you say now, you only intended to refer to the main crypt as explaining this depression ?—A. That was the depression to which Mr. Hardwick was referring.

Q. You intended to refer to the main crypt. Is that so ?—A. Yes.

Q. But you did not mention it in terms, did you ?—A. Not by that particular term.

Q. And it never entered your mind then that this depression was in the main crypt, did it ?—A. I tried to keep things as clear as I could. I did not know that there was going to be all this minute detail required, and we tried to keep things as simple as we could for lay people.

Q. I put it to you that you never had it in mind that this depression was where the main crypt was ?—A. That was it.

Q. But I am putting it to you that you never had it in mind ?—A. But I must have had it in mind because that was the position of it.

Q. Will you swear that at the present time there is any supra tonsillar fossa ?—A. I don't use that term, but there is evidence of what has been referred to as the supra tonsillar fossa—what I have referred to as the main crypt. There is still a depression there.

Q. Will you swear that it is still in existence ?—A. Yes, it is to some extent.

Q. More or less than when you first saw it, or the same ?—A. As far as one can judge from the surface, it has altered, because there is only one strand of tissue now instead of two.

Q. Will you swear that there is any space, being the main crypt, in which you can put a probe down at the present time ?—A. I saw both Dr. Marsh and Dr. Thompson pass a probe into that area.

Q. Will you swear that it went down the main crypt ?—A. In the position of the main crypt—yes, I am swearing it.

Q. Did you make an examination ?—A. I did.

Q. Did you notice Dr. Edye measure the neck ?—A. I did.

Q. Did you notice him measure it with the head bent over ?—A. Not bent over, but turned to the side.

Q. That is not the normal method of measuring, is it ?—A. It gives you a very approximate idea.

Q. But the anatomical position is the correct one, isn't it—standing as I am standing now ?—A. Yes.

Q. Do you know why it was measured with the head turned around ?—A. Well, I made a rough measurement myself.

Q. I say do you know any reason why it was measured with the head turned round ?—A. No.

Q. That would make it farther from the tonsil to the thyroid, wouldn't it ?—A. It would be a very small difference.

Q. Would it be an inch ?—A. No.

Q. An inch is the difference in measurement which Dr. Edye gave ?—A. I am surprised to hear it.

Q. You could not see any reason why it could not be measured from the normal position, could you ?—A. No, except that it is more convenient

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

to get at if the patient turns the head. You only get an approximate measurement at best.

Q. You get a longer measurement, don't you ?—A. Not necessarily. I should not think so.

Q. What do you say is the distance between the top of the lobe of the thyroid and the tonsil ?—A. It varies with different individuals but I made a rough measurement myself with my fingers and it worked out at approximately 3 inches.

Q. But apart from this case you gave an average measurement of 3 to 3½ inches, didn't you ?—A. Yes, I would say that that is a fair average.

Q. How long have you been of that opinion ?—A. I suppose since my student days.

Q. Did you exaggerate it in the first trial ?—A. Not intentionally.

Q. Is this what you swore at the first trial (page 178)—3 to 6 inches ?—A. Certainly not. May I refer to my notes ?

Mr. SHAND : No, don't refer to them.

Q. How long is the thyroid itself, from the bottom of the lobe to the top ?—A. A rough average would be about 2 inches.

Q. Listen to this : " Q. In order to pass from the region of the thyroid up to the region of the tonsil—it depends on the length of a person's neck—you would have to pass through anything from 3 to 6 inches." ?—A. Yes, I did say that, but I didn't say that it was 3 to 6 inches from the top of the thyroid to the tonsil, as you infer.

Mr. SHAND : Yes, I did ?—A. And that is the third time that I have heard you misquote my evidence, Mr. Shand.

Mr. SHAND : We will have it corrected. But just a moment. That makes it 5 inches, doesn't it ?—A. From the bottom of the thyroid capsule to the tonsil, yes, a minimum of 5 inches.

Q. " In order to pass, from the region of the thyroid "—you meant the bottom, did you ?—A. The tube, we are referring to.

Q. When you said the region you meant the bottom did you ?—A. The tube was put in at the bottom of the cavity.

Q. So you meant the bottom when you said the region ?—A. Yes.

Q. So that is 5 inches ?—A. Yes.

Q. Not six ?—A. Well, it depends on an average. You cannot swear to these things. Human beings vary so much. Half an inch or an inch in 6 inches is not a very abnormal variation.

Q. You say that unconsciousness does not occur in true parathyroid ?—A. In parathyroid tetany, no, except at the terminal stages.

Q. Have you any authority for that ?—A. Yes, plenty of them.

Q. Do you agree that there are authorities that it is a symptom of parathyroid tetany ?—A. No.

Q. Of course, until the third trial, you had never read that it was associated with tetany, had you ? Unconsciousness I mean ?—A. Of course. That is elementary in certain forms of tetany.

Q. What forms ?—A. Most of the forms other than parathyroid.

Q. Where is your authority that it is associated with tetany other than parathyroid ?—A. I think most of the text-books refer to it.

Q. Give us your references, will you——

His HONOR : Do you mind if he looks at his notes now, Mr. Shand ?

Mr. SHAND: No.

WITNESS: "Unconsciousness in Tetany." Rheinhoff; Sloane.

Mr. SHAND: But tell us where it says that it is associated with tetany other than parathyroid. That is what I want?—A. I don't know that it would specify that directly.

Q. Well, that is the only question that I am asking you?—A. But, I want to point out this, that the correct appreciation of parathyroid tetany is a matter of only the last five to eight years, and the text-book descriptions refer to it as a whole, and not necessarily to parathyroid tetany. There is only one authority that I know of that is concerned with parathyroid tetany, and that is Schelling.

Q. You said "Not necessarily," and I am asking if you can cite a single authority which says that it is associated with tetany but not with parathyroid tetany?—A. It is associated with hysterical tetany. I am certain that that occurs in Gowers, and I think it occurs in Osler and McCrae.

Q. That is not the question. I am asking you whether you can produce a single authority that says it is not associated with parathyroid tetany?—A. Not in those specific words.

Q. Will you agree with me that there is not one authority which says that it is not associated with parathyroid tetany?—A. They may not use those specific words, but the inference is that they say it does not occur in parathyroid tetany.

Q. But do they?—A. Yes.

Q. Which of them say that?—A. Well, I have one here.

Q. Do you mean that it does not occur in parathyroid tetany? That is what I am asking you?—A. There is a portion here. This is Schelling, 1935. The heading is "Psycosis of Tetany," and it is at page 133. It is Schelling on "The Parathyroids in Health and Disease." It is the only book I know of that deals actually with parathyroid disease. There is no book that deals with tetany, as you asked earlier—with tetany per se, but this deals with parathyroid tetany. "Tetany is seldom, if ever, accompanied by loss of consciousness, or by permanent changes in mentality."

Q. Do you say that that is an authority for the proposition that it does not occur in parathyroid tetany?—A. Yes, in ordinary parathyroid tetany. It does occur in the late stages.

Q. First of all, whatever it is referring to, it says "Seldom"?—A. "Seldom, if ever."

Q. Is the whole book referring to parathyroid tetany?—A. The whole book is with regard to diseases of the parathyroids.

Q. It does not say "never," does it?—A. Well, it does not use the word "never."

Q. It says "Seldom, if ever"?—A. That is exactly what I am saying, yes.

Q. But, haven't you sworn that it never occurs in parathyroid tetany?—A. Except in the terminal stages.

Q. Where does this say, anywhere, "in the terminal stages"?—Does it?—A. No, not in those specific words.

Q. Or any words like it to suggest that it is in the terminal stages?—A. Not specifically.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

Q. Not only not specifically, but where is it even by inference in this ?—A. I don't know that it occurs in that, but that is quite sufficient for any average person.

Q. Well, you see, we might be below average. You agree that it does not occur, either directly or inferentially ?—A. No.

Q. Well then, why the hedging about ?—A. I am not hedging.

Q. But it took a while to get that from you. You said first of all not specifically ?—A. Mr. Shand, if you refer to my evidence in the first trial, you will find that I gave exactly the same evidence.

Q. You just answer my questions, will you ?—A. Yes, I will try to.

Q. Why did you say first " Not specifically " if you knew it did not refer to it at all ?—A. I don't get that.

Q. When I put it to you first of all that that does not refer to occurring as a terminal event, you said " Not specifically " ?—A. Yes.

Q. You now agree that it does not refer to it at all, either specifically or inferentially ?—A. Yes, it does, inferentially.

Q. Then, you want to take back now what you said, do you ?—A. No, I don't.

Q. We will have read out what you said a moment ago about not referring to it at all——

His HONOR : Read it out, will you. (The Court reporter complies.)

Mr. SHAND : Your answer was : " I don't know that it does occur directly or inferentially ?—A. Not in those specific terms that you mentioned.

Q. Look, you said it did, inferentially ?—A. I consider it does.

Q. And you think that both answers are correct, do you ?—A. Yes.

Q. You purchased this book, did you ?—A. Yes.

Q. When was this book purchased by you ?—A. I think it was purchased shortly after it arrived in Australia, in about 1936 or 1937.

Q. This has been put to you from Osler at page 758 : " Consciousness is involved only in certain forms of parathyroid tetany " ?—A. Yes, but that is qualified at page 763 where he apparently corrects himself.

Q. He makes a mistake, leaves it and corrects it, is that so ?—A. Yes. You will notice that that is in brackets.

Q. You had not seen that up to the third trial, had you ? A. Yes, I had, because I had owned a copy of that since 1910.

Q. I put it to you that you had not seen it up to the third trial ?—A. Well, I do not think I had re-read it for a number of years.

Q. And you were putting yourself forward as having studied the question at all the trials ?—A. Yes, I have devoted a great deal of time to it.

Q. And you have a great number of references there ?—A. No, not many.

Q. And I suppose you had studied up the subject as much as you could ?—A. As part of my ordinary work, yes.

Q. And this was what you swore, wasn't it—at page 238, line 41 : " I have never seen unconsciousness in a true parathyroid tetany except where a person is about to die, and I have found no reference to it in the literature that I have read " ?—A. Yes, that is correct.

Q. Now, first of all, McRae makes a reference to it ?—A. " Unconsciousness in Parathyroid Tetany " ?

Q. Yes ?—A. I would like to see that.

Q. I have just read it to you ?— A. But, as I tell you, that is corrected at page 763.

Q. I am asking the question first of all; it does make a reference to it, doesn't it ?—A. Yes, in parenthesis it makes a reference to it.

Q. And was it correct that when you gave your evidence in the third trial, you had found no reference to it in the literature ?—A. In view of the fact that it was corrected on a subsequent page I consider that answer to be perfectly correct.

Q. Had you it in mind at that time ?—A. Yes, at that time.

Q. When you gave your evidence ?—A. I think so.

Q. Will you swear that you had in mind this reference in Osler and McRae, to it occurring in parathyroid tetany when you gave that evidence : " And I have found no reference to it in the literature that I have read " ? —A. No, I won't swear that because it is too confusing.

Q. Then why did you say a moment ago, that you had it in mind ? —A. At that period of time because the question was dealt with at length a little later after that.

Q. The question I asked you was, when you gave that evidence which was in chief, did you have in mind this passage in Osler and McRae and you said that you had. Why did you say that ?—A. Because it was correct.

Q. But you have now sworn that you did not have it in mind ?— A. No, I haven't.

Q. Why at one stage did you say that you had that in mind when you gave that evidence, and a little later you said you would not swear that you had it in mind. Why the change ?—A. No change.

Q. No change between swearing that you did have it in mind when you gave this evidence. Do you swear there was no change occurred in your evidence ?—A. No material change.

Mr. SHAND : In this very book that you have produced, Shelling, there is a reference to the possibility of unconsciousness accompanying parathyroid tetany ?—A. If that is so, I have not noticed that particularly or overlooked it.

Q. " Tetany is seldom," that means not often ?—A. Yes.

Q. " And if ever," that is if it occurs at all, " accompanied by loss of consciousness " ?—A. Yes.

Q. That is a reference is it not to unconsciousness in connection with parathyroid tetany ?—A. Yes, but I maintain that it does occur.

Q. That is a reference ?—A. Yes, I have already said it does occur in parathyroid tetany but it occurs in the later stages.

Q. Do you agree there is nothing here about the late stages ?— A. Yes.

Q. Directly or indirectly ?—A. Yes.

Q. And the only reference given to that if you had this parathyroid tetany in that—why did you say : " I have found no reference to it in the literature I have read " ?—A. You are putting me into a very awkward position in this way——

Q. Will you answer the question ?—A. I cannot answer the question directly, to carry back one's mental processes to that period of time with so much confusion between one author and another, it is difficult to bear these things all in mind. I have what I regard as a fairly poor memory and you cannot carry those detailed words. What we learn are facts.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

Q. This is a sworn statement to your own counsel and in answer to your own counsel—" I have found no reference to it in the literature I have read " ?—A. Yes, exactly.

Q. His HONOR : " I have never seen unconsciousness in parathyroid tetany except in cases where a person was about to die " ?—A. Yes.

Mr. SHAND : This is a reference to the possibility of parathyroid tetany occurring ?—A. Yes, at the later stages I maintain.

Q. And you have agreed it does not suggest that directly or indirectly ?—A. I have had practical experience.

Q. I am asking you about the reference to the literature and you agreed it does not relate directly or indirectly to the later stages ?—A. Not in those particular words that you were wishing, no, it does not.

Q. Nor anywhere else in the book ?—A. Not that I know of.

Q. It merely refers to this, that unconsciousness may occur, seldom if ever, but it may occur. Tetany is seldom if ever accompanied by loss of consciousness ?—A. That is correct.

Q. It does refer to the possibility of unconsciousness occurring in parathyroid tetany ?—A. Yes, but I would qualify it by saying " Occurring at the later stages."

Q. It does not qualify it there ?—A. No, it does not.

Q. And you swore I had not found any reference to it in the literature I have read ?—A. Yes, that is correct.

(*Short adjournment.*)

Q. You wanted to refer to this volume of Osler to suggest there is some correction or modification. (Book handed to witness) ?—A. I do not pick it up in this edition.

Q. I suggest to you there is absolutely none ?—A. Your suggestion is quite incorrect, this is the 1928 edition and it occurs in a subsequent edition.

Q. That is the one I am talking about, volume 5 ?—A. Here we are, it does mention it. " Consciousness is not disturbed and there are usually no sensatory tropic or temperature disturbance."

Q. That is a benign form, not the severe ?—A. I think you will find that there are three types, benign, moderate and severe.

Q. I will read out the passage, this need not be taken down, it is on page 763—" The course " and the first three groups and it goes on—" In the benign form . . . temperature disturbance." That is a benign case ?—A. That is the ordinary average case.

Q. You do not suggest that corrected what he said before about the course in parathyroid tetany ?—A. Yes, I do.

Q. When he is limiting the non-occurrance of unconsciousness to the benign cases ?—A. Yes, but the average case is what we call the benign case.

Q. This was a case of severe tetany, severe attacks ?—A. The actual spasms were severe but one does not call it a severe case of tetany.

Q. You had never known such generalised spasms ?—A. Yes.

Q. Would you not call it a benign case ?—A. It is a benign case in that it——(Objected to).

Q. Generalisation, the spasm is one of the features that divides the benign from the severe ?—A. Yes, we can take it that way.

Q. There is great generalisation there, you have emphasised that ?—A. I do not think I have.

Q. There was ?—A. A moderate degree I would call it.

Q. You would not suggest that was a benign case under that heading ?—A. In the parathyroid case, yes, in the earlier stages.

Q. Before the 1st June ?—A. Yes.

Q. Benign ?—A. Yes, benign from the point of view of prognosis, outwardly, that is what we call it, but they respond to treatment—— (Objected to that the witness should have the book with him). (Book handed to witness.) "In the grave form there is no condition of symptoms," that means that the clinical picture corresponds to what has already been described. "The attacks occur with greater frequency and become more intense and the patients died as the direct result."

Q. I want to ask you this, assuming this is correct, I am reading from Dr. O'Hanlon's letter of the 10th May, 1938 where he says: "However, the tetany is I think worse. Yesterday she had a very severe spasm involving practically her whole body. It was accompanied by so much pain that I was forced to administer a mild chloroform anæsthetic until a solution of calcium could be prepared and she recovered with great rapidity and good result." Do you suggest that comes under the heading of benign ?—A. Yes.

Q. Do you mean it is only severe if they do not recover with the injection of calcium ?—A. Not exactly.

Q. Recover in what time ?—A. Over the ordinary period of treatment. If you have attacks of spasm they may be very severe but it does not say that the progress of the tetany itself is a severe form. That is the point I am trying to make.

Q. What is the distinction between the severe form and benign ?—A. The severe form, as it says here, they go on getting increased attacks increasing in rapidity and eventually ending in death.

Q. It does not always end in death ?—A. No.

Q. And you see this report, assuming this report is correct, the tetany is worse and she gets this spasm and we are aware there were frequent spasms from the time she first went into the hospital at Quirindi until the 1st June ?—A. I am not aware of that—(objected to)—because the only reference I have is the hospital notes.

Q. We will have it down on the notes with the evidence you have heard as to what happened to this lady. I am only taking the period up to 1st June at present, do you classify her under the heading of a benign case ?—A. Yes, because she had made a complete recovery.

Q. I am not asking you that ?—A. I have said yes.

Q. Taking the symptoms, assuming that you had diagnosed her case on the 1st June, knowing what she had gone through, leaving complete recovery out for the moment, would you admit that those symptoms pointed to a severe form of tetany ?—(Objection as irrelevant. During argument, question read. Question allowed.)

Q. If you had those symptoms and that history to go on would you have diagnosed severe or benign ?—A. (Objected to.)

Q. You have a complete history have you not ?—A. No.

Q. You have heard the evidence, you have heard the Plaintiff give evidence on several occasions ?—A. Yes, partly.

Q. What evidence have you there ?—A. The hospital notes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

Q. I take it you have got Dr. Thompson's history ?——

His HONOR: The hospital notes from the 22nd February to the 14th April, the Quirindi Hospital notes ?—A. Yes.

Mr. SHAND: And Dr. Thompson's evidence ?—A. Yes.

Q. Have you read Dr. O'Hanlon's evidence ?—A. No.

Q. Have you heard him give evidence ?—A. I have heard him give part of his evidence.

Q. Have you never read the whole of his evidence ?—A. No.

Q. You come here on the fourth trial to give evidence as an expert and you have not read the whole of Dr. O'Hanlon's evidence, is that correct ?—A. Yes.

Q. I suppose you will agree that the doctor in attendance should be in a very good position to observe symptoms ?—A. Yes.

Q. And it is the fact that you have not bothered to read the whole of his evidence ?—A. I have only read the relevant portions of it.

Q. Who decided that they were the relevant portions ?—A. I have.

Q. How did you decide that when you never read the lot, that the parts you did not read were not relevant ?—A. I only looked hurriedly at certain portions of his evidence which dealt with some of her condition of tetany and with regard to his observation of the neck.

Q. How did you decide which were the relevant parts without reading the whole of it ?—A. How ? Because I did not take any notice of them. What I considered the relevant portions were dealing with other portions.

Q. Did you read them ?—A. No.

Q. How did you know whether they were relevant or irrelevant if you did not read them ?—A. The same way that one does in reading a book, you turn over pages at a time because you know they are not dealing with the particular subject you are interested in.

Q. Did you read the cross-examination ?—A. I think I read part. I am not sure. I am not sure as to what I read, and did not read.

Q. Sometimes, you will agree, cross-examination can test a witness ?—A. Yes.

Q. But you have not bothered to read Dr. O'Hanlon's cross-examination ?—A. Not in extenso.

Q. Do you think you have thoroughly fitted yourself to give evidence without that ?—A. I think I have.

Q. Without having read as to whether his answers to myself have been altered or modified by cross-examination ?—A. I consider so. I have discussed the relevant details with counsel. I have not time to go into all those minute details of words.

Q. How many notes have you there ?—A. Not a great number.

Q. Would you show them to me ?

Mr. CASSIDY: My friend calls for the notes.

Mr. SHAND: Certainly.

(Notes M.F.I. " b.")

Mr. SHAND: Six pages, so far—small pages—and the famous chart. There is a page there and there is a page interspersed at Quirindi.

Q. And notes appended to the hospital records ?—A. Yes.

Q. And this is the fourth time you have been in ?—A. Yes.

Q. And you have had the whole of Dr. O'Hanlon's evidence ? You had it available ?—A. I suppose it could have been made available.

Q. Was it made available to you ?—

His HONOR : There are 11 pages, plus the hospital reports—St. Luke's on 22nd February 1928, and 14th April 1938 ; St. Luke's on 25th October 1939 to 3rd November 1939 ; Quirindi from 19th October 1937 to 15th November 1937. And St. Luke's from 4th May 1938 to the 9th June 1938.

Mr. SHAND : Were they made available, the whole of Dr. O'Hanlon's ? —A. I think they could have been made available.

Q. Were they ?—A. At Counsel's Chambers.

Q. Did you take any part away from Counsel's Chambers ?—A. Of Dr. O'Hanlon—I do not recollect.

Q. Did you read them in Counsel's Chambers ?—A. I think the relevant parts are Dr. O'Hanlon's.

Q. Did you see the lot ?— A. I think it was there.

Q. Will you swear you saw the lot ? —A. No, I cannot swear one way or the other.

Q. I think the method you used in ascertaining whether they were relevant was to turn over the pages ?—A. The certain points I was inquiring into.

Q. What form were the notes in ?—A. In this paper thing ; these are copies of my own evidence.

His HONOR : The 4th, 5th or 6th impression, I suppose ?—A. Some of them are very bad.

Mr. SHAND : I want to return for a moment to this effect of either pus or the blood supply in the parathyroid. You have given your evidence on a number of occasions about it—the effect on the parathyroid ?—A. I think it was a rational explanation.

Q. Would that be supported by authority ?—A. It has been quoted in a number of text-books extensively.

Q. Am I correct in saying there is no text-book that supports Dr. Smith's theory ?—A. I do not think there is anything that I know of.

Q. And despite the fact that the theory you have espoused during these trials is supported extensively and Dr. Smith's is not supported by any text-book, some doubt has cropped into your mind ?—A. Yes, and for the reason I stressed before. Medicine is not a stagnant science ; medicine is continually improving and altering.

Q. In this very book you produced this morning, Schelling, you yourself marked a passage that supports what your proposition had been on page 156 with reference to the thyroid : " . . . suppuration in or about the parathyroids may lead to scar formation and functional insufficiency " ?—A. Yes, " may " lead.

Q. Are those red marks there your own ?—A. Yes.

Q. You were asked by Mr. Cassidy as to the size of the swelling at the second trial, you have been asked by your counsel at page 476 what the size of the abscess would have been if an object such as was described—the tube was produced at the second trial with the wire in it—you said " approximately the size of my fist," and then you went on to

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

say there would be inflammatory reaction around it the size of a fist ?—A. Yes, the swelling.

Q. I want to put this matter quite plainly to you ; in the first trial and I will suggest for a perfectly logical reason you would not have that, that it would be the size of a fist ; you were asked at page 204 about the size of the abscess, line 35, " We do not know what sized tube," and you said, " It must have been a big one to let that tube through." It was only a diagram then, there had been no tube built up such as we have in Exhibit " P " now, and you were asked, " Do you suggest it would be the size of your hand," and you said, " I would say approximately the size of a duck egg " at that time. I want to put it to you that at the first trial there was no evidence save the sketch ?—A. Yes.

Q. But at the second trial this tube which is now Exhibit " P " had been built up and was not before you ?—A. Yes.

Q. And am I not correct in saying that it was the fact that in the second trial it was Exhibit " P " that caused you to increase the size of the abscess to the size of the fist ?—A. Yes.

Q. I want to put it plainly : in the first trial, I will read out your words, page 203, line 51, you were asked in re-examination, " This breaking through the tonsil at some ulcerated spot. What degree of hæmorrhage would there be if that happened," and then you went on to describe that you heard the Plaintiff give in evidence, " It depends on the size of the abscess cavity. That is coming to a head." In this case with an object two and a half inches in length you were depending on the description of the sketch—" It must be a big abscess cavity, there would be a lot of congestion around it, and when that ruptured through there would be considerable hæmorrhage ; there might be a tablespoonful or a couple of tablespoonfuls of blood, and the pus from the abscess cavity."

Q. That was the case in the first trial ?—A. Yes.

Q. I asked you this morning, I had referred you to evidence in the trial, at page 205, where you were asked—" At this very moment, on the left tonsil, you can see there has been a hole there. Will you agree with that," and you said, " 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," and your answer was, " I would not say coming through the tonsil ; I would say coming out of the tonsil, Yes." And I take it what you say is a foreign body coming out of the tonsils ?—A. I mean a localised abscess in the tonsil and the fact that she has had recurring abscesses there since she has gone home from St. Luke's.

Q. You do not mean a foreign body ?—A. No.

Q. I have read your question and answer. Will you agree that is a meaning that can be taken from your answer ?—A. I think I made it very clear that it was not coming through the tonsil but out of the tonsil.

Q. And not a foreign body ?—A. And not a foreign body, unless it was one of those so-called tonsil stones. It might have easily been a so-called tonsil stone that forms and causes inflammation in the tonsil.

His HONOR : Do you mean a cheesy substance ?

Mr. SHAND : You do not mean a cheesy substance ; you do not mean a caseous or a cheesy substance ?—A. No, I would say unless she had what is called a tonsil stone.

Q. It could be as big as a marble ?—A. I have only seen one myself, and that was as big as a whole pea.

Q. Do you think that is what it was ?—A. I think it would be a possible explanation.

Q. Will you deny it was consistent with a foreign body coming through ?—A. I have already denied that.

Q. At the second trial, pages 477/481, " This scarring on the tonsil that you mentioned—is that in any way referable, or could it be possibly referable to some foreign object," and your answer was " Not coming through the neck ; she might have got a foreign body through the tonsil ; what about that ? "—A. That would be referring to what I have said—about something in the tonsil.

Q. Do you think so ?—A. Yes, I am sure.

Q. A foreign body through the tonsil ?—A. Yes. If those are the words, as quoted, there must be something in the context prior to it.

Q. " No, but coming through the neck" and your answer was "No." The next question was " What you saw was something superficial on the tonsil, or was it deep in the tonsil ? " and your answer was " No, it was relatively superficial."

Q. But you will agree she might have got a foreign body through the tonsil ?—A. No, not a foreign body in the nature of a tube, or any portion of a tube.

Q. You were being asked about a tube ?—A. I would like to consider the relevant portions of those answers.

Mr. CASSIDY : I would ask that opportunity be allowed him to look at them.

Mr. SHAND : Are those words appropriate, or not appropriate—" She might have got a foreign body through the tonsil " ?—A. I do not think they are appropriate to the case.

Q. Look at your evidence on pages 477/481, in the second trial. I see in the next question—" No, but coming through the neck," and your answer was " No." And if you will look back on the previous page you will see where I was discussing this question and the type of abscess and the type of thing it would be ?—A. I have already said in evidence prior to that it was a physical possibility for it to have occurred, it might have been a grass seed or a tonsil stone, it may have been coming out of the tonsil, but not actually through it.

Q. Now we will see if this grass seed or other object comes into it. The question directly before that is : " Is the condition of the patient's throat consistent or inconsistent with her story," and you said " Quite inconsistent." The next question : " This scarring on the tonsil you have mentioned. Is that in any way referable, or could it be possibly referable to some foreign object ? " and your answer was : " Not coming through the neck ; she might have got a foreign body through the tonsil." The whole of those questions were based on the Plaintiff's story that a tube had come through the tonsil ?—A. It had come up the neck and through the tonsil.

Q. And your answer was in appropriate language ?—A. I cannot quite understand you. I made that statement because I did not think it was appropriate in view of the question that was asked.

Q. Is it appropriate to the truth as revealed by your inspection ?—A. Not with regard to a foreign body such as has been described as coming through—no.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

Q. And that is what the answer was made in regard to ; not in regard to a grass seed ?—A. What I was trying to convey there was that there might have been something in the tonsil itself that had burst into the mouth, but nothing that could have come up through the neck. It must burst through the tonsil.

Q. Have I your assent to the fact that those words are appropriate to describe what you saw in the Plaintiff's tonsil ?—A. What I saw, yes.

Q. That gives an accurate summary ; you know what words I am referring to ?—A. I am taking the whole story, not this word or that word.

Q. I am taking these words : " This scarring on the tonsil that you mentioned—is that in any way referable or could it be possibly referable to some foreign object," and your answer was : " Not coming through the neck. She might have got a foreign body through the tonsil " ?—A. Yes, not through the neck. You must qualify that with the context before and succeeding that. If you take those words alone they do not convey the meaning I wish to infer.

Q. The case of the thumb being upright, according to you, as the Plaintiff indicated, is that important ?—A. Yes.

Q. Atypical of the accoucheur's hand ?—A. Not atypical contracture.

Q. And it is one of the factors on which you base your suggestion that this was hysterical tetany after the period you mentioned ?—A. It is one of the factors which lead me to infer that.

Q. Of course, that is the accoucheur's hand, is given, as one of the most significant when it is present—one of the most significant indications ? —A. Yes.

Q. You have sworn that at the first trial you saw the Plaintiff close her hand with the thumb upright ?—A. Yes.

Q. And that was the matter you regarded as important ?—A. Yes.

Q. You were in court when Dr. Ritchie was being examined and cross-examined ?—A. Only a small portion of the time.

Q. Never at any time has the Plaintiff held her hand with the thumb outside her fingers ?—A. I think that is incorrect.

Q. You have told us you regarded it as important ?—A. Yes ; it is a minor factor.

Q. It is of importance ?—A. Yes.

Q. You thought it was one of the things she had consciously done ? —A. Of course.

Q. Do you know that Dr. O'Hanlon has sworn that whenever he saw her at Quirindi she had the thumb inside ; do you know he swore that ?—A. I do not ; that was the evidence.

Q. In consciously imitating those signs afterwards, and knowing, as we assume she would know, she has put it outside ?—A. I have seen her demonstrate two or three different ways.

Q. What you have sworn is this ; that she, getting to learn of the signs of true parathyroid tetany up to June, has afterwards been consciously able to imitate it ?—A. That is the way those things happen.

Q. But on this occasion, if we take Dr. O'Hanlon's evidence, she has always given the true accoucheur's hand ?—A. That is not the true accoucheur's hand.

Q. Well, she makes the mistake of putting the thumb outside ?— A. Yes, and later on the spasms altered.

Q. You will be able to refer us to that part of her evidence ?—A. I could look it up.

His HONOR : He cannot if you take his notes.

Mr. SHAND : Is there any reference to the Plaintiff's evidence in this (handed to witness) ?—A. I think there may be in the hospital record part——No, I don't see it in this.

Q. As long as it is not in those we will take possession of those for a while ?—A. I am making a note. That is the alteration, the hand spasm altered ?

Q. Yes, in the holding of the thumb. You gave evidence in the first three trials ?—A. I did.

Q. And will you agree that never once in any of those trials have you ever mentioned that you saw the plaintiff in Court held her hand in the way that you have indicated with the thumb upright ?—A. I don't think I specifically mentioned that.

Q. And that is a matter of importance ?—A. It is of minor importance ; not major.

Q. Well, you have mentioned it ?—A. Yes.

Q. Will you agree that when you are performing this operation of thyroidectomy you do take care that the tube is not anchored by stitching ? —A. Yes, certainly, other than the skin stitch.

Q. Because that is something that you have to guard against ?—A. Yes.

Q. And particularly when the tube is inserted before you stitch up the inner muscles ?—A. Yes, I should think one would be careful.

Q. Well, you are careful ?—A. Well, I don't stitch up the muscles after I put the tube in. I stitch them up before I put the tube in.

Q. But you know the other technique well enough ?—A. Yes.

Q. To say that a surgeon would be careful ?—A. He would.

Q. Because there is a risk ? That is correct ?—A. Not a risk, it might be a bare possibility.

Q. Well, a possibility ?—A. Very bare.

Q. Well, it is getting barer, isn't it ?—A. Yes.

Q. It was bare a moment ago, it is very bare now ?—A. Yes. It is the barest possibility.

Q. The barest now ?—A. Yes.

Q. Perhaps I had better not ask you another question on that, but you will agree with this, what you have said, it is possible that a tube can be stitched in ?—A. In a thyroidectomy operation ?

Q. Yes, if you put your tube in before you sew up the muscles ?—A. The possibility is so remote that I do not think it could happen ; I am allowing you the bare possibility.

Q. It is going even farther away ?—A. Yes, it is extremely remote.

Q. But when you started it was a possibility ?—A. Yes.

Q. And then it became a bare possibility, and then the barest possibility ?—A. Yes, I have learned to be very careful in my choice of words.

Q. But the trouble was you said " bare " first of all ?—A. Yes.

Q. And you corrected it four time since ?—A. That is right, I wish to emphasise how remote the possibility could be.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

Q. And you know the technique that Dr. Bell uses, putting the tube in first and stitching up afterwards ?—A. Yes.

Mr. CASSIDY : Where do you say Dr. Bell said that.

Mr. SHAND : This gentleman has already sworn that he knows that happens ?—A. I was not allowed to qualify my remarks.

Q. Let us hear what they were first ?—A. I said " Yes " with regard to the stitching of the muscles, but he does not put his tube in until after he has finished stitching the deep part of the wound, it is only the stitching of the muscles.

Q. I asked you with regard to the muscles ?—A. Yes.

Q. And that is correct ?—A. I think you just said " stitching."

Q. I mean the muscles, and he puts his tube in before he finishes the stitching of the muscles ?—A. I believe that is his custom.

Q. Do you know whether he has altered his technique after this occasion ?—A. I could not say.

Q. I suppose you will admit, will you not, that if a tube is perished it could break if it happened to be caught by a stitch ?—A. Yes, it could, if one used a perished tube.

Q. And, of course, tubes are used more than once, aren't they ?—A. Sometimes.

Q. And they are sterilised more than once ?—A. Yes.

Q. They are sterilised sometimes many times ?—A. I suppose many dozens of times.

Q. And on occasions used more than once ?—A. Yes, I have.

Q. And you will agree that sterilising a tube gradually softens it ?—A. Yes. The ordinary rubber tube would take about 200 to 250 boilings of approximately twenty minutes each.

Q. And then drop to pieces, would it ?—A. Before it loses its elasticity and begins to crack.

Q. Do you remember suggesting to Mr. Hardwick in the first trial, there was a tube there and you said it could not be broken unless you were excessively strong ?—A. Yes.

Q. Do you remember Mr. Hardwick taking it in his hands and snapping it off ?—A. No, he did not do that, he put his thumbnail into the cut and it took the whole of his strength to break it.

Q. Did you say anything to him about putting his thumbnail in ?—A. Not in Court, but I did subsequently.

Q. Out of Court. You were somewhat upset ?—A. Yes, I was, he is a very powerful man to do it. If a doctor had applied that amount of pressure as a patient he would have dragged him out of bed.

Q. Do you use different sized tubes ?—A. They vary slightly in size.

Q. Small and large ?—A. Generally the diameter, it is remarkably constant, the actual length of tube one uses.

Q. Do you use a flat tube ?—A. Not a flat tube, on occasions I used that corrugated rubber.

Q. And I think you use silk for your operations ?—A. I have over the last five years, I suppose.

Q. That is non-absorbent ?—A. Non-absorbent.

Q. Do you agree with what has been stated by Dr. Bell, if you get the catgut in an infected area it might take a very long time to dissolve ?—A. To absorb the catgut knots.

Q. You stated in your evidence that you have seen Dr. Bell test the tensile strength of the rubber tube ?—A. Yes, I have seen him do it.

Q. You have never referred to that in any previous case ?—A. I was never asked that question.

Q. Well, you have never referred to it ?—A. No, I think I stated it was the common practice to do it.

Q. You were not asked that this time ?—A. No, I think I volunteered it.

Mr. CASSIDY : I did ask the question and you will find the answer there.

His HONOR : What page ?

Mr. SHAND : 637. I saw you did, you lapsed into accuracy on that occasion.

Q. Mr. Cassidy did ask you. That has never been referred to before ?—A. I don't think so specifically.

Q. Now, your practice is to put the tube in that side of the thyroid where there has been trouble, assuming there has been ?—A. Not necessarily, one generally does, the inclination would be.

Q. Is that your practice ?—A. There is no standard practice.

Q. Is that what you do ?—A. Not necessarily, no.

Q. Do you do it more often than not ?—A. I think so, more often than not, you put the tube to the side where the major portion of the trouble is.

Q. That is to collect the exudate ?—A. The serum, yes.

Q. On this occasion, assuming there had been trouble to the superior thyroid artery on the left side, you would tend to put it on the left side ?—A. I would, but it does not necessarily follow that one would though.

Q. It would be wiser ?—A. It is more often.

Q. Would it not be wiser ?—A. Not where one is concerned with the superior thyroid artery only.

Q. When there is trouble ?—A. Not with the superior thyroid artery only, because you have tied that off. The reason why one puts the tube into one side or the other depends on the question of adhesions and trouble one has had in delivering the thyroid.

His HONOR : That is not like delivering a baby, that is taking the thyroid out ?—A. Yes, when you remove it.

Mr. SHAND : When there has been this bleeding and difficulty and ligaturing the thyroid you have probably had to spend some time on that side in securing it ?—A. Yes.

Q. And therefore it is more disturbed than the other side ?—A. Yes, it might possibly be so.

Q. And therefore you would probably get more exudate ?—A. Not from just tying the artery.

Q. No, but from the work you do around there ?—A. I think very little because on occasions that closes the lot altogether.

Q. In that condition you would tend to put it in the left side ?—A. I would, yes.

Q. Before the advent of tube drainage in this operation the thyroxine coming from the diseased thyroid used to cause a rise in temperature, did it not ?—A. No.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

Q. Never ?—A. With the excessive thyroxine the patient had no temperature before the operation.

Q. I am not asking in this case ?—A. They have the thyroxine all the time they have the disease.

Q. Was it not usual in this operation before it had reached its present stage to get a temperature immediately following the operation ?—A. I should say that you invariably get a temperature on an operation.

Q. Immediately following ?—A. Yes.

Q. In this case you did not ?—A. Yes.

Q. You will agree with me that the temperature did not start until two days after the operation ?—A. Not according to the hospital notes ; you have my copy there. The night report of the 16th her temperature was 99.4.

Q. That is 4 o'clock on the 17th ?—A. Yes, that is the first record in the notes.

Q. Do you suggest it might have risen before ?—A. Yes.

Q. And the record not be put in the hospital records ?—A. Quite commonly, no. These notes, as you will see, are very incomplete.

Q. I am asking you this, because it has been sworn by certain witnesses, that if there were any rise in temperature, anything abnormal about the temperature, there would be a record in these records ?—A. Anything abnormal, yes, but if she has got the normal post-operative reaction they might easily omit it.

Q. Who would take the responsibility of omitting it ?—A. I suppose the nurse in charge.

Q. She would take the responsibility of deciding whether a fall or rise in temperature was abnormal and omit it from the record ?—A. Yes. The reason for that is this, that a doctor very seldom sees these hospital notes, he sees the sister in charge, he sees the patient's temperature chart, it is presented to him, and he derives his information from the sister. These notes are made for the convenience of the nurses, one handing over to the other at the end of their hours of duty.

Q. So we cannot decide what was the temperature on the 16th ? —A. No, that was one of the difficulties I had in making this famous chart, because there was not sufficient information.

Q. Will you agree that after the operation the Plaintiff was dangerously ill ?—A. No.

Q. Do you know that Dr. Bell has sworn that ?

Mr. CASSIDY : When ?

Mr. SHAND : After the operation, immediately after.

Mr. CASSIDY : He did not.

Mr. SHAND : You don't agree with that ?—A. There is nothing in the notes to indicate it.

Q. Have you read Dr. Bell's evidence ?—A. I don't think I have.

Q. Have you heard him give his evidence ?—A. I heard him give part of it.

Q. Only part of it ?—A. Yes.

Q. So you don't know even the whole of his evidence ?—A. No, by no means.

(*Luncheon adjournment.*)

At 2 p.m.

Mr. SHAND : I notice in your notes you say " Was given paroidin from end of June onwards at home daily." Where did you get that from ? —A. I think I heard that in evidence.

Q. You only think so ?—A. Yes, I would not be sure.

Q. " Had spasms to 2nd November 1939 daily : may be two or three in one day." Where did you get that from ?—A. I think it probably came from Mrs. Hocking's evidence.

Q. I may take it that those observations formed part of the basis of your conclusion ?—A. Yes, I think so.

Q. You swore in this trial that if a piece of tube had been left in the neck it was a very easy thing in 48 hours to pass a sinus forceps or probe along the track of the tube ?—A. I said if it had been broken off.

Q. Don't you agree that it might have been very difficult to trace it with a probe ?—A. No, I think it would have been very easy. I think you have not got that quite rightly. I said if it broke off when the tube was being removed at the end of 48 hours, not 48 hours after it had been broken off, it would have been quite easy to have passed something in and to have got the tube if it had been there.

Q. How long would it have remained easy to do ?—A. For probably a couple of days, depending on the amount of discharge.

Q. Once you got a discharge would you agree that it would be difficult ? —A. No, I do not think it would be difficult under ordinary circumstances with a large body like that.

Q. Would it not be difficult to detect once the inflammation had started without actually opening it ?—A. I do not think so—not difficult.

Q. Let me read you what you said at the first trial (page 188, line 40) " Q. What I was putting to you was this : after that tube disappeared assume it was snapped off and disappeared down into that cavity and got into the inflammation it would be difficult to detect that without opening ? —A. Yes."—A. That was if the tube had fallen in.

Q. That is what I am putting ?—A. No, you put it to me if it broke off. If it just broke off the remains of the tube would be just under the wound ; it would be relatively easy to get hold of.

Q. It depends where it broke off ?—A. Yes. The evidence I heard was that half an inch broke off.

Q. If it broke off where that incision in the tube was, it would be well down into the neck ?—A. Where the eye of the tube was.

Q. That would be so ?—A. Yes.

Q. Whatever of the tube was left lying in the capsule it would be difficult to trace with a probe ?—A. Yes, if it had gone right inside.

Q. You will agree that the small muscles close over it ?—A. They would tend to close over after some days, but it leaves a persistent sinus.

Q. The muscles just inside the neck were actually sewn together, stitched ?—A. Yes, above where the tube was.

Q. You were going to procure a reference to where the Plaintiff said that the spasms altered with regard to the way she held her thumb ? —A. Yes, I had a bit of a hunt through as far as I could get regarding the alteration in the hand spasms. In the first trial there was evidence given by Mrs. Hocking at page 9, line 21.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944. Cross-examination, *continued.*

Q. I will read that :—

" Q. Demonstrate to the jury how you mean ?—A. My fingers would clench up and my finger nails would cut into the flesh and my knees would be drawn up under my chin and I would be in a tight little ball."

Mr. CASSIDY : Start at 18.

Mr. SHAND :—

" Q. In what way did that gradually grow worse ?—A. I first noticed it in the left side of my face. My face started to draw up on the left side and I used to get worse and my hands used to clench."

The WITNESS : Then Mr. Hocking's evidence, at page 61, line 33.

Mr. SHAND : I will read from 32 onwards :—

" Q. Would you explain to His Honor and the jury how the cramps affected your wife ?—A. First of all the fingers would draw up like so (demonstrated), not actually locked like they did in the later stages, and the feet were drawn in towards one another. Sometimes I massaged and it was all gone in a few minutes. I gave the massage myself."

The WITNESS : Then at page 80, line 30 :

Mr. SHAND : I will read from line 29 :—

" Q. Will you give us an illustration as to when she was complaining of suffering from a spasm how her hands used to work ? —A. The hands would gradually tighten until they locked like that (demonstrates)."

The WITNESS : Then in the third trial Mrs. Hocking, at page 13, line 15.

Mr. SHAND :—

" Q. Do you remember saying about your thumb being across the palm of your hand ?—A. Yes.

Q. Did your hand ever get into any other position ?—A. Yes, in the later stages it was drawn right round until the fingers were drawn tightly into the palm like so.

Q. Your nails were into the palm of the hand ?—A. Yes."

The WITNESS : Then page 30, line 34.

Mr. SHAND :—

" Q. Your description of these spasms that you had is that your hands were drawn round tight and your fingernails cut into the flesh of your hands ?—A. Yes, at the later stages."

The WITNESS : Then Dr. O'Hanlon's evidence at the third trial, page 182, line 29.

Mr. SHAND : I will read from 26 :—

" Q. You attended Mrs. Hocking at her home after she was in Quirindi Hospital—— ?—A. Yes.

Q. During that period did you see some further spasms ?—A. Yes.

Q. Did you notice anything different about the spasms from what they had been before ?—A. Yes.

Q. What difference did you notice ?—A. I was most impressed with the fact that she used to grasp clothing. She grasped my coat, the top of her nightgown, the top of the bedclothes."

The WITNESS: Then Dr. Ritchie's evidence at the first trial, page 157, line 45.

Mr. SHAND: I will read from line 40 :—

" Q. She says hands clenched and on one occasion she felt the nails in the flesh."

Then Dr. Ritchie asked: " What happened to her thumb ? " Mr. Hardwick said: " I am afraid she did not give evidence about the thumb."

" Dr. Ritchie: That is really very important, isn't it ?

" His Honor: She said ' My fingers were clenched—— '

" Witness: Well, if I may interrupt Your Honor, actually——."

Then Mr. Monahan asked that the Plaintiff repeat the illustration and show what was intended in regard to the hands. The Plaintiff demonstrated to the jury and witness. Actually the spasm in the hands, the tetany, has been described as " The thumb is turned into the palm like that, in that particular way, and the other fingers go like that ; they do not go like that." Does not that clearly indicate that when the Plaintiff was asked to indicate in the first trial she put her hand in the position where the thumb was turned in ?—A. At a later stage. I was referring to the variation in the hand spasms.

Q. Have you any other reference ?—A. Only the questions that were put to myself in the first trial—page 185, lines 7 to 33.

Mr. SHAND :—

" Q. What is your own experience with regard to the way a patient's hands move if they have a spasm of this tetany ?—A. It is very typical——

Q. The fingers do not bend right over so that the fingers are cutting into the hand ?— A. I have never seen it happen.

Q. You say it is very characteristic of the way the hands behave when they are under an influence of that sort ?—A. Yes.

" Cross-examination :

Of course, the striking feature of the hands is the thumb ? —A. No, it is the whole position."

So you were not emphasising the thumb ?—A. Not particularly.

Q. Mr. Hardwick was putting to you that the striking feature about the hands was the thumb ?— A. Not necessarily.

Q. But that is what he put to you ?—A. Yes.

Q. And you said to that " No, it is the whole position " ?—A. The whole position of the hand.

Q. You did not make any reference to this fact that she held her thumb upright ?—A. Not specifically.

Q. Not specifically or in any other way ?—A. No.

Q. You will agree that in the passage before, when Dr. Ritchie asked how was the thumb turned, the Plaintiff, according to the evidence, had

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

given the sign of the true accoucheur's hand with the thumb turned inwards ; that is what the evidence indicates ?—A. I do not know, because it says that she demonstrated.

Q. Dr. Ritchie did not refer to the fact that it was not the true sign ? —A. He was describing——

Q. You said " No, it is the whole position." Then :

" Q. You take a healthy person and ask them to demonstrate the actual spasms . . . this is an involuntary act, isn't it ?—A. Yes.

Q. So that when you are asking a person to demonstrate voluntarily . . . you would not pay much attention to the fingers ? —A. It is all part of the picture.

Q. You think it is all part of the picture ?—A. Yes."

The WITNESS : Then at page 201, line 5——

Mr. SHAND : I will read from line 3 :

" Q. I think you told us that in the tetany spasm the hand movement is that the thumb goes over ?—A. The fingers bend from the joints ; the thumb stiffens out, and the wrist draws in.

Q. Supposing instead of getting that you got a person driving their nails into the palm of their hands, with the thumb outside, would that suggest tetany ?—A. I would say there was very grave doubt."

Is that the whole of the references ?—A. That is the lot that I was able to get.

Q. Where in those from beginning to end is there any evidence that the Plaintiff altered in description the position of her thumb ?—A. I think there is plenty of evidence in regard to the alteration of the hand.

Q. The thumb ?—A. Not necessarily the thumb.

Q. I was asking you before lunch to give me some reference as to where she indicated first of all that the thumb was upright outside the closed hand and then altered ?—A. The question I got was " References regarding alteration in hand spasm." The thumb is only part of the hand spasm. I specifically asked you if that was what was wanted.

Q. I think I put to you as regards the thumb ?—A. I did not take it as such. It was with regard to the whole picture. The thumb is only one part of it.

Q. You will agree that as regards the thumb there is no evidence of alteration ?—A. I think so when you read all those various references. There have been distinct alterations with regard to the clenching of the hand.

Mr. SHAND : As regards the thumb being outside ?—A. Yes, as part of the picture.

Q. Any evidence that the thumb was stated to be outside first and that position was altered ?—A. The unfortunate part of it was that there was no detailed description of what Mrs. Hocking demonstrated.

Q. Let us read out for the moment when Dr. Ritchie asked for the demonstration—— " (Mr. Monahan asked the Plaintiff to repeat the illustration and show what was intended with regard to the hands)" ——you were there then, weren't you ?—A. I don't think so.

Q. " (Plaintiff demonstrates to jury and witness.)" : That is to Dr. Ritchie?—A. Yes.

Q. "Actually the spasm in the hands—tetany has been described as accoucheur's hand, that is what happens, the thumb is turned into the palm like that, in that particular way, and the other fingers go like that, they don't go like that." Did you read Dr. O'Hanlon's evidence to this extent that on every occasion when he saw this lady's hands in a spasm that the thumb was in a true accoucheur's position ?—A. I cannot see that in glancing through his evidence, the only reference I gave was at page 182.

Q. Have you read his evidence at this trial ?—A. No.

Q. When did you see it ?—A. See what.

Q. See her give this demonstration ?—A. The one that sticks in my mind very clearly is the first trial.

Q. At what stage ?—A. When she was giving her evidence.

Q. In cross-examination or in chief ?—A. I cannot say that. I think it was in her evidence in chief.

Q. Were you there during the whole of her evidence in chief ?—A. No, not the whole of it. I saw that episode.

Q. Will you agree that this lady when she was in St. Luke's Hospital on the first occasion had a severe infection ?—A. In the wound ?

Q. Yes ?—A. Yes, relatively severe.

Q. And by the way, these tubes do have a V-cut in them ?—A. Not a V-cut ; it is an oval.

Q. I suggest to you that what happens is that they are doubled over and a corner cut off ?—A. With a pair of curved scissors, yes, and that results in an oval-shaped incision and the portion removed.

Q. This is the first time you have mentioned the oval-shaped scissors ? —A. I am not sure of that.

Q. Let me read to you what was put to you on page 492 of the second trial. When you suggested that Mr. Hardwick could not break the tube unless he was very powerful after that he said "It depends on how you stretch it, doesn't it ?—A. This is broken by what we call a diamond cut. Q. Well, a V-cut, does not that convey to you as a surgeon—as the surgeon that did the operation that that was the bit that broke off," I suppose it depends on what kind of scissors he used ?—A. You generally used curved scissors.

Q. If you used curved scissors it would be rounder ?—A. Yes.

Q. If you used straight scissors you would get more of the V-cut ? —A. Yes.

Q. Would you not agree with regard to a tube coming through the tonsil that it might come through as the result of either a severe coughing attack or a spasm ?—A. No.

Q. You would not agree with that ?—A. No.

Q. You will agree that you can get very severe spasms in tetany ? —A. Yes.

Q. And if it had worked its way up to the tonsil do you not agree it could come through as a result of a coughing attack, or a spasms ? —A. Not as a result of it, it may come through coincidentally with it, but as a direct result of it.

Q. Well, as a final result ?—A. I don't understand, how do you mean as a final result ?

Q. As the final factor which caused it to break through ?—A. It can only break through if she had a preliminary ulceration of the surface which would have been evidenced, as I say, before by the seepage of

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

blood and the exudation of blood-stained pus and there would have to be the hole there developing and it would take some appreciable time, I should say many hours, before that could necrose to a sufficient extent to allow a large foreign body like that to escape.

Q. I am putting this, supposing she had a choking fit or a coughing fit and that had reached the surface of the tonsil, could not that come through as a result of that coughing or convulsion ?—A. It might help a bit but I don't think it would be directly responsible for its expulsion.

Q. You did not fully form this theory of hysteria from the 1st June, approximately until the first trial had been progressing for a while ? —A. I think I formed that opinion before the first trial commenced.

Q. Did you not form it after hearing Dr. Ritchie's evidence that in his opinion there was no true tetany ?—A. No, I am certain of that.

Q. Did you not swear at the first trial that the attack of this spasm on the 3rd September was indicative of true tetany ?—A. No, I did not.

Q. I suppose you remember what you did swear ?—A. I do.

Q. Because it has been put to you before ?—A. Yes, it has.

Q. What do you think you swore about that ?—A. I said the reaction on that occasion would be a better criterion as to the spasm being a true tetany than the mere say so of a person who wrote the notes, or words to that effect.

Q. And do you think the indications there were indicative of true tetany ?—A. No, not in that particular spasm. I think by that time the true hysterical tetany had supervened.

Q. What possible indication was there on that occasion that it was not true tetany ?—A. It is not on that particular occasion but that was just part of the many conditions that led up to the final position.

Q. Was not the description of that spasm something that would lead you to infer that it was true tetany ?—A. Not parathyroid tetany. No, I have given the reasons why.

Q. Let us see what you said before—" In conjunction with the day before, in conjunction with what you told us the day before you have admitted to me that on the 3rd there was information there which you could come to the conclusion that she had what you say was a true tetany spasm ? —A. I did not say I came to that conclusion, I said it would lead one to infer that it was " ?—A. The nature of that spasm, yes.

Q. The indications of that spasm pointed to true tetany, the spasm itself ?—A. Only as regards the spasm, but I qualify that I think later on. There were further references to that.

Q. Now, I want to take you to a description you gave of another spasm. Do you remember a spasm that was described as taking place on the 17th May at the Quirindi Hospital ; what was your information about that ? —A. I cannot remember it, without the reference to the notes. (Hospital records handed to witness.) 17th May, tetany spasm, 6 p.m., lasted until 7 p.m. Chloroform given, intravenous injection of calcium chloride given, 6.45. Injection of morphia given at 7.

Q. What about that ?—A. That, under the circumstances, may be taken as possibly being true tetany spasm.

Q. Injection a quarter to 7 and recovery by 7 ?—A. Yes.

Q. Only possible ?—A. That is all.

Q. Have you got any reason for doubting that this was a true one ? —A. Yes. As I said before it is a very difficult thing to make a differential

diagnosis as to the actual causation of any tetany and the mere fact that the person responds to an intravenous injection does not say that that is true parathyroid tetany, it would be strong presumptive evidence in its favour, that is as far as one could go.

Q. Did you not swear at the second trial that you had not any grounds for doubting ?—A. Quite true, no specific grounds for doubting it.

Q. Did not you swear " I have not any grounds for doubting it " ? —A. If that is what you are reading, I take it it is there.

Q. At the first trial did you not swear that in your opinion there was a very grave doubt about that very same thing ?—A. I am not sure of that.

Q. Would you like to have a look at your evidence ?—A. Yes. (Previous evidence at first trial, page 198 read.)

Q. That was your answer then ?—A. Yes.

Q. In the second trial your answer was quite different—" I have not any grounds for doubting it—for doubting that the 17th May was a true tetany spasm " ?—A. There were no specific grounds for doubting on that one particular incident but, as I say here, viewing this as a whole, and these records as to whether the whole of these spasms the patient had were true tetany spasms——

Q. And your suspicion was only awakened on the 1st June, and this is the 17th May ?—A. Yes, it is not very far off. There has to be a period of super imposition.

Q. Then do you want to go back to the 17th May ?—A. Yes.

Q. Do you suggest that hysteria had started by this time ?—A. It is quite possible.

Q. What is in your mind, I want to know ?—A. What is in my mind is, you cannot fix any one specified day or date or hour for the onset of hysteria. It is a condition that is gradually developed. It supervenes and you get an overlapping of the two conditions for probably a considerable length of time.

Q. So that we are not confined now, according to your estimate, to the 1st June, but it may include the 17th May——(Objected to by Mr. Cassidy.)

Q. So that it may be that it includes the 17th May ?—A. It is quite possible.

Q. Or it may go farther ?—A. Yes ; I don't think anyone can say how early it supervened.

Q. If that be so, can you tell me why you swore, at the second trial, after you had had more time for consideration about this particular spasm of the 17th May : " I haven't any grounds for doubting it." You will agree that that is different evidence from the first trial ?—A. I do not think so. I do not think there is any material difference.

Q. You had not any grounds for doubting it in the second trial, but in the first your answer was : " In my opinion there is very grave doubt "——(Objected to.)

Mr. SHAND : That is doubt as to whether it was true tetany ?—A. I cannot say to-day what I meant at that time ; but those are my words.

Q. Do you suggest that it is what you would find in the case of parathyroid tetany ?—A. No. They vary.

Q. Do you say that possibly on the 9th May she did have what you call tetany due to interference with the parathyroid ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

Q. This is what Dr. O'Hanlon says (page 363): "The next spasm was on the 17th May, and that was very similar to the one I have described. You say you would not doubt that one?—A. I have not any grounds for doubting it." Now, that is what you swore?—A. Yes.

Q. Do you claim there is no difference in that answer you gave and the one you gave on page 198 at the first trial to the question: "Is there anything to suggest that there is any true tetany spasm," and you answered: "In my opinion there is very grave doubt, in viewing this as a whole, and these records, as to whether the whole of the spasms that the patient had were true tetanoid spasms." Do you say there is no material difference? —A. Yes, taking the whole picture. You cannot say when hysteria supervened.

Q. Do you say that you were not taking the whole picture in the second trial?—A. Yes, well, I consider that it is so immaterial.

Q. It does not matter what you consider immaterial; I am asking you, do you swear that there is no material difference?—A. I protest that it does. In forming my opinion——

Q. Will you answer the question? Do you suggest there is no material difference in those two answers?—A. In words, yes. In facts, and from the medical point of view, no.

Q. So that words do not describe the medical point of view accurately?—A. Not necessarily.

Q. I suppose you will agree that in true tetany you can have a number of spasms in the one day?—A. Yes, it is possible.

Q. How many do you think?—A. Well, they vary. I have not had any patient with many, because you immediately treat them at the first spasm, but before the correct form of treatment came in they used to get repeated spasms—perhaps every few hours.

Q. Would it be as much as five spasms a day?—A. Yes, that would be quite easy—even more—every couple of hours.

Q. How long does the effect of calcium gluconate last?—A. It varies very greatly. The average direct effect of the intravenous injection would carry a patient on from 12 to 13 hours. But that is never given alone, but is always supplemented by calcium by mouth.

Q. And if it were not, what then?—A. You don't get as good an effect. You don't control the recurrence of spasms so efficiently, and the patient may get recurring spasms.

Q. When? Within an hour or two?—A. No, but probably after the effect of the intravenous injections wore off, in from 16 to 24 hours.

Q. But I thought you said it would only last from 10 to 12 hours?— A. No, about 10 to 15 hours, I suppose.

Q. But that is with the proper treatment, when you get the calcium by mouth?—A. Along with the intravenous, yes.

Q. But I asked you what is the difference when you do not get calcium by mouth?—A. I cannot tell you, because I have had no experience of it.

Q. You said it would make a difference. You said that you would get repeated spasms?—A. Yes, you would expect it.

Q. But you cannot define what repeated spasms mean?—A. Recurring spasms I would take it that if you were to carry out the treatment of intravenous injection only you may get spasms occurring perhaps the next day and that is what I would expect.

Q. But if you treat properly with the calcium by mouth and the calcium gluconate, it is only 10 to 15 hours?—A. No, definitely not.

Q. But that is the time it lasts, isn't it?—A. No, that is the actual effect of the intravenous injection only. You don't rely for the cure of tetany on the intravenous injections only—that is only one small part of your treatment; there is the giving of the calcium by mouth, and you have to give the correct diet, and there is always the possibility of using a paroidinous supplementary.

Q. In the case of this lady, are you aware whether she was given calcium by mouth or calcium gluconate, or not?—A. She had calcium by mouth from the time when she left St. Luke's Hospital.

Q. Up till when?—A. I don't know.

Q. Were you aware that when she was being given calcium capsules she was being given not calcium gluconate but calcium lactate?—A. Yes, quite good—any form of calcium.

Q. Are you suggesting that when she got the calcium gluconate given to her she was taking anything by mouth?—A. I don't know about that.

Q. But you were assuming that she was having the proper treatment, both calcium gluconate and calcium by mouth; weren't you?—A. No, I am not assuming that at all. The assumption you asked me to make was in reference to the results of a single injection of calcium gluconate.

Q. No, I am asking you for your knowledge of what she was getting when she got calcium gluconate, and you don't know?—A. I can't say without referring to the notes.

Q. So that, as it stands at present, you don't know?—A. I don't remember.

Q. And you are basing your assumption in deciding that this is hysteria partly on the recurrence of spasms in spite of the fact that she was getting efficient treatment?—A. Yes.

Q. And you do not know whether she got the correct treatment when she was getting calcium gluconate?—A. I am not sure of that, but I have had access to the hospital records, and, taking those as a whole, is what I base my opinion on. You cannot pick out one particular day or one particular incident.

Q. Well, you don't know; that is the position?—A. I do know, and I know what I am talking about, better than anyone here in Australia, I suppose, on this subject.

Q. Is that so?—A. Yes, I think you have forced me into the position in which I must claim that I am expert in this type of work, although I do not wish to make a claim like that.

Q. I am not cross-examining at present on that. I am cross-examining on what facts you know, and you don't know whether she was getting the correct treatent when she was being given calcium gluconate?—A. At the present moment I don't know.

Q. Did you ever know?—A. Yes, when I was reviewing the whole of the case.

Q. And haven't you any recollection of it?—A. I have no memory for dates and figures and names, but I can remember facts only.

Q. On the 1st June, which you put forward as a somewhat crucial point of time—on the 1st June, was she given calcium gluconate?—A. I understand so.

Q. Was she given anything else?—A. An injection of morphia, yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

Q. But apart from the morphia, I mean ?—A. I do not know.

Q. Are you aware that Dr. O'Hanlon has sworn about the treatment on that day ?—A. No.

Q. He has sworn that he gave no other treatment except calcium gluconate. You were not aware of that ?—A. No.

Q. And you are not aware, for this period after June, when you arrived at the conclusion of hysteria, whether when she got calcium gluconate she was also given calcium by mouth ?—A. No, it was a long while after the onset of the tetany.

Q. What about paroidin. What is the correct way to deal with that ? —A. You give that by intramuscular injection.

Q. Do you give any calcium with that ?—A. You should ; at least, I think so.

Q. If you did not, it would not be efficient treatment ?—A. Not efficient because it would drain the calcium from the bones into the blood stream instead of making use of the calcium that is coming through in the process of ordinary digestion. That is one of the dangers.

Q. And if it was not efficient it might not cure her ?—A. The paroidin ?

Q. Yes. If it was not efficient treatment given with the calcium by mouth ?—A. No, you can give paroidin without calcium, but it is not wise to do it.

Q. It might have a harmful effect in the long run, mightn't it ?—A. Yes.

His HONOR : I am not quite clear. Is calcium chloride the same as calcium gluconate ?

Mr. SHAND : No, Your Honor.

Q. Were you aware that when this lady was having paroidin she was not given calcium by mouth ?—A. No, I was not aware of that.

Q. In any case, will you agree that paroidin loses its effect after about 8 weeks ?—A. It completes the job it had to do in somewhere about 8 to 12 weeks, yes.

Q. Then you admit it loses its effect after about that time ? It either completes its job or, if it does not, it loses its effect ?—A. It loses its effect because it has completed the work it can do, and that is to provide the ironised calcium in the blood stream.

Q. Did you hear Dr. Edye's evidence with regard to paroidin ?—A. No.

Q. Paroidin, of course, is not always effective, is it ?—A. In parathyroid tetany, I have not seen it fail yet.

Q. You have not. Is it not correct that paroidin only serves to add calcium to the blood for a certain period ?—A. That is the earlier view with regard to its action.

Q. That is your view ?—A. Those views have since been extended. There is still work going on with regard to that.

Q. They were your views previously ?—A. They were the views as I knew them at that time.

Q. This is what you swore at the second trial (pages 547 and 548) :

" Q. Would the injections of paroidin from July, 1938, up to October, 1939, add additional calcium to the blood stream ?—

A. No, paroidin only acts for a certain period of time in this respect, and if you continue administering injections over that period it loses its effect.

Q. If the parathyroid glands are functioning and paroidin is being injected into the body as well, does it add calcium ?—A. Only for a certain period.

Q. Does the fact that the patient had paroidin from the 2nd October, 1939, right up to the time she entered St. Luke's Hospital affect the question of the calcium content that was found by Dr. Hansman about the 27th or 28th ?—A. I do not think so, not after the first couple of months."

A. No.

Q. When has your view of the matter changed with regard to the effect of paroidin ? You said you had a view at this trial, that was your reading then and you said that work was still going on—have you changed your view ?—A. I have modified it to some extent.

Q. To what extent have you modified it ?—A. With regard to the actual action of the parathyroid hormone of which paroidin is only one form; as the actual chemical effect in the blood stream and on the human tissues.

Q. What is the variation in effect ?—A. That view given was when or in the absence of calcium, with lowered calcium it will tend to mobilise the calcium in the blood stream from the bones. At the same time that calcium cannot be made available to the tissues until such time as the phosphorus retention in the blood stream has dropped. That has got to be got rid of and that is one of the first effects with parathyroid treatment, it cuts down the amount of phosphorus there is in the blood stream and it allows the calcium to come up and thus you get your proper balance and you get that form in the ironised calcium which is the active form in the blood stream. I am trying to make it as simple as I can.

Q. For that reason you knew calcium to be employed as well ?—A. Yes, you get a better effect.

Q. You get some bad effects if you continued with the paroidin without calcium ?—A. If you continue with large doses, it depends on the dosage so much.

Q. The dose should be regulated for every individual, that is important ?—A. Yes.

Q. And the blood calcium watched ?—A. That is my idea of doing it if you have the facilities available.

Q. If you do not know your individual you might be giving too much paroidin ?—A. Yes, if you put them on an incorrect diet and other factors.

Q. It is really an expert's job to administer paroidin ?—A. Personally I think so. I am very chary of using it myself.

Q. You might in the hands of an ignorant person, take a lay person, get some very bad results ?—A. It is possible unless they give very specific instructions regarding the dosage. If you are only using 20 to 30 units a day I do not think it will have effect one way or the other.

Q. If you are using a very large dose it might be a very bad effect ?—A. Yes, if you get up to 600 units or more it may cause very serious effects.

Q. In the case I referred you to in Hoskin's Endochronology I suggest to you it might have resulted from those large doses of paroidin without compensating calcium. For instance, Lister has reported a case of tetany

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

in which very gratifying results—I had better read a bit before that. "In actual practice the use of parathyroid extract has not been very satisfactory partly because of its high cost and partly because the patients become more and more refractory to the extract the longer it is used. For instance, Lister has reported a case of tetany in which very gratifying therapeutic results were obtained in the earlier months but ultimately in which the patient finally died because of failure to respond to the dosage of extracts." ?—A. Might I see that before we get away from it? There is this quote which you read out, those words are copied from, I think, a very old text book. The views with regard to thyroid extract have altered very materially in the last few years.

Q. That appears to be the latest book ?—A. Yes, but it does not show he is up to date on the matter. I would say that the patient who died must have had complete removal of all the parathyroids, that is the only reason with the larger doses they do not respond.

Q. What about this, supposing you delivered doses of pariodin out of all proportion without calcium by mouth, what would happen ?—A. You would get a condition known as hyperparathyroidism, it is not common, they are rare. I have seen a case where you get a tumour of the parathyroid and you get extra excretion. Without getting a definite clinical picture it is evidenced by a very definite deprivation of bone.

Q. Blood affection ?—A. I think the hæmoglobin content does rise.

Q. Resulting eventually in death ?—A. Yes.

Q. I do not know whether that case is distinguished by any mark but I was going to suggest to you it was set up by such overdischarge without inclusion of calcium ?—A. I do not think you can draw that conclusion, not the way I was myself reading that, it was due to the parathyroid tissue all being removed and the patient had nothing to compensate with.

Q. That is probably speculation as to what the cause was because there are no details ?—A. Yes.

Q. What about this book you produced this morning, Schelling, is it up to date ?—A. That is fairly recent, 1935.

Q. Let me read from page 162 "Several investigators report that after the extract had been used over an extended period it may be the patient became immune to its effect." Do you agree with that ?—A. That is what is stated in the book, I take it ?

Q. Would you dispute that ?—A. No.

Q. "Similar resistance has also been associated in some cases to calcium therapy", page 163. "Obviously aside from the possibility of developing immunity to parathyroid extract, inefficient therapy may well be calculated by increase of the phosphorus intake or probably to other factors of the investigation to hyperphosphatæmia." ?—A. I think you will find it is part of an argument with regard to the question of—— (Objected to unless witness is allowed to see the text book. Book handed to him.) This is part of a sub-heading "Parathyroid construction." And they start "Extract of parathyroid is the most competent agent in the treatment of parathyroid inefficiency." Then it goes on with this argument and it is written in a very interesting fashion because it refers to a lot of experimental work that has been done. I do not think they draw any very positive conclusions one way or the other.

His HONOR : They just state the problems without answering them ?—A. They discuss them and you are left to draw your own conclusions very largely but they sum it up to you further on on the question of treatment, they make a certain summary there.

Mr. SHAND : I suppose you will agree with regard to one or other of the matters you have relied on, namely, the grasping at objects ?—A. Yes.

Q. Would you dispute this, that you do not call 10 to 15 hours a few hours for the lasting of calcium gluconate. The text books say that it lasts only a few hours ?—A. Within the 24 hours.

Q. Dr. Bell said 5 to 6 hours ?—A. Yes, it is possible.

Q. Again in Schelling—" The effects of intravenous injections are very prompt, the concentrations of calcium sometimes increasing 100 per cent. in a few minutes. However, others are of much shorter duration than are obtained by the oral or intramuscular route. Because of the fleeting effect of the intravenous medications injections may be repeated every two or three hours with the danger of hypercalcæmia." ?—A. Yes.

Mr. SHAND : (Reads from page 159 of Schelling.) I have read down to hypercalcæmia. " And for this reason . . . calcium thereapy."

The WITNESS : Yes, that is intravenous injections of paroidin.

His HONOR : Calcium chloride is given intravenously ?—A. Yes.

Mr. SHAND : That should be reinforced by calcium by mouth so this aids intermuscular therapy ?—A. That is our modern treatment, yes.

Q. You were speaking of one of the symptoms in the evidence of grasping at things ?—A. Yes.

Q. And you will agree that at the outset beyond a true tetany spasm a person can in fact get hold of something and when the spasm develops retain it ?—A. Only if there happens to be some object within the hand at the time.

Q. When the spasm starts ?—A. Once the spasm starts they cannot go and pick up anything.

Q. When the spasm starts there is something very near or within the hand ?—A. Yes.

Q. For instance, the tip of the bedclothes or the tip of the nightdress ?—A. Yes, if the hand is there it can close on it.

Q. And the spasm prevents the hand from opening ?—A. Yes.

Q. When a person has a history of these spasms they are very distressing ?—A. I should think they would be.

Q. And it is natural that the patient who has had an experience of these spasms should be in a state of some distress when she feels one is about to come on ?—A. I should think so.

Q. And you will agree in the true tetany spasms there can be localisation of certain muscles ?—A. It is possible but the usual thing one sees is the typical carpopedal.

Q. If you get a severe type of spasm it is difficult to know what set of muscles it may attack ?—A. A severe type of spasm would involve a great number of muscles, it does not pick out odd ones.

Q. You cannot tell what one is going to be picked out ?—A. Yes, you will not get the facial muscles involved without the limbs, or the trunk muscles involved without the limbs.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

Q. Have you any knowledge as to when this evidence was given as to the eye turning back, other muscles were affected ?—A. You mean in this particular case ; I think Mrs. Hocking said she had a mild spasm at the time but she was able to pick up a mirror and watch one eye going backwards.

Q. Does your knowledge of the evidence tell you whether other muscles were affected ?—A. At that particular time ? They must have been if she said she had some in her arms.

Q. Anything else you remember ?—A. No.

Q. Don't you remember whether her facial muscles were affected or not ?—A. I do not remember. I was particularly concerned with the eye incident.

Q. You spoke about double vision : you will agree that if the eyeball turned back so that the pupils were behind the lid you would not get double vision ?—A. Not once it got there, but she would have double vision in between.

Q. So it would depend at what stage the mirror was focussed on her face ?—A. Yes, but if seeing the eye turning it must have been very early.

Q. You might have seen the pupils disappear ?—A. I do not think you could.

Q. Why not ?—A. Because I do not think it is physically possible, the actual eye muscles that I have read about——

Q. I know what you have said about that ?—A. I have not said this before. It is the rectus internus which turns the eye in and that is why they get squint, and that with the oscillation of the eye and the alteration in the size of the pupil are the only three eye signs that I have read about.

Q. I was merely talking about the double vision, and I want you to assume for the moment that it is possible for the eye to turn back ; once you assume that it depends on when you pick up your mirror whether you get double vision or not ?—A. Yes. It would not come back like that, if you are assuming a spasms in the superior rectus there must be a premonitory tightening of the muscle fibres before you get an actual tightening, so it would be a gradual process.

Q. Whether gradually or not it would depend on when the mirror was fixed on the face you could see the edge of the pupil disappearing and get double vision ?—A. No. She might not have picked up the mirror at all and still have double vision of objects in the room.

Q. Have you read Dr. Ritchie's evidence, his ideas as to this ? —A. No.

Q. It is at page 998, he suggests that this rarely happens ; your opinion is to the effect that it never happens ?—A. I do not think it would be possible myself.

Q. His evidence is to the effect that it rarely happens as a hysterical phenomenon as a result of hysteria, you disagree ?—A. One eye turned out, whilst I do not think that would be possible ; one eye, yes.

Q. I understand the effect of your evidence is that the Plaintiff was consciously pretending a variation of these things, some time after June 1938, she was consciously pretending she had a spasm ?—A. Only as part of the hysteria—I would not call it consciously, I think probably sub-consciously would be more correct.

Q. We are getting it very fine ?—A. We have to in these things. It is not a deliberate and wilful simulation, it is a process that develops over a period of time. I think I have made reference to this before. Subconscious would be the more correct way of putting it.

Q. What you used was conscious simulation ; that is what you used before in the first trial at page 201, to His Honor, line 52. Would that be genuine in this sense that the patient would genuinely feel that she was experiencing it, that she was having a spasm, you said they simulate it, is that a conscious simulation ?—A. Yes, conscious simulation.

Q. You now say that the correct description is unconscious simulation ?—A. No, subconscious simulation. I do not intend to infer a wilful simulation.

Mr. CASSIDY : At line 45 he said : " That is one of the reasons why I suspected the genuine nature of the carrying on of the so-called spasms."

Mr. SHAND : I suppose you will agree that even an hysteric vision from hysteria gives knowledge she had never before had ?—A. Not directly, I think I might even qualify that because I think there are occasions in which they easily simulate illnesses they never had before, under certain conditions.

Q. You have mentioned the spasm, the eyelid. The evidence as to the eyelids resisting in attempting to open, and you said in unconsciousness the muscles relax ?—A. Yes.

Q. Assume there is unconsciousness but there is spasm of the eyelids, you would expect resistance then ?—A. Yes, but the spasms pass off as they become unconscious, that is why you give them chloroform.

Q. It always passes off ?—A. Yes, if you render them unconscious. With an anæsthetic the spasm passes off.

Q. What about epilepsy ?—A. That is different altogether.

Q. What about epilepsy, there you get unconsciousness ?—A. That is a cerebral condition.

Q. First of all there you get unconsciousness ?—A. You are apt to.

Q. And in unconsciousness you still get rigidity ?—A. That is a cerebral effect ?

Q. That is so ?—A. Yes.

Q So that unconsciousness does not relax all kinds of rigid spasms ?—A. No, but if you gave an epileptic a chloroform anæsthesia you could relax that spasm once you get to the stage where you get an anæsthetic control over the nerve cells of the cerebral.

Q. About the eyeball turning back ; your proposition is that it did not happen ?—A. No, I do not think it could have.

Q. But you will admit that spasms can be localised to certain muscles ?—A. Yes, it is a very rare phenomenon if it does occur. I have not seen it occur, a rare phenomenon ; of course, this is an unusual case.

Q. I am talking to you up to June, an unusual case of tetany ?—A. No.

Q. You rarely get tetany resulting from inflammation, post-operative tetany resulting from operation ?—A. I would say it was a rare event, that that does it ; I was assuming it.

Q. And you go farther, don't you say this, that the majority of cases of post-operative tetany are cases of inflammatory conditions ?—A. We

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued*

cannot really ; I said this morning we will have to make further investigations into that particular aspect of the condition.

Q. You are apparently learning something ?—A. We are always learning in medicine.

Q. And sometimes we learn from the conflicting views of those in medicine ?— A. Yes, that is how we progress, we argue things out amongst ourselves.

Q. Did you swear that disturbance to the blood supply (page 242), this is a year ago, you were asked " You are giving your opinion by reason of your experience of parathyroid tetany due to the removal of the thyroid " and you swore " No, the main cases are disturbance of the blood supply to the glands " ?—A. What I think he was referring to there—the cases I say I had ascribed to interference to the blood supply.

Q. " There may be disturbances due to the removal of the parathyroid glands and there may be disturbance due to the infection in the area," and your answer was " Yes." Do you think they both result in the same way ?—A. That I think was a rational explanation.

Q. That they both resulted in the same ?—A. Yes, from interference with the minute blood supply of the parathyroids.

Q. We have heard certain evidence in this case ; do you suggest, if you cannot postulate will you agree with this first of all, if you get an infected wound you may then get superadded suppuration ?
—A. Yes, you are referring to thyroidectomies.

Q. I am referring generally ; not certain cases ?—A. Yes, you may, depending on the type of infection.

Q. And at some time, when that suppuration had spread it may become an abscess ?—A. Yes.

Q. Because an abscess is an enclosed area ?—A. Yes.

Q. But you naturally in any specific case would not be able to say when the suppuration had started swelling and become enclosed in the abscess ?—A. Not within a day or two.

Mr. SHAND : Could you say within that period ?—A. I think so, in the majority of cases.

Q. Take, for instance, that psoas abscess, which now you will not have as a parallel, you could not say when that would form into an abscess ?
—A. It could only form into an abscess in the ordinary accepted way, if it were secondarily affected, if it does occur, it nearly always results in the death of the patient. It is a dreadful complication.

Q. The suppuration in the psoas abscess will spread from the vertebræ down to the back of the knee ?—A. It could do that.

Q. When does it become enclosed in the space that is called the abscess ?—A. From the very moment when it extrudes from the spine, that is what they call a cold abscess.

Q. Is this so, you may have a long sinus which forms the abscess ?
—A. You can only have a sinus if there is an opening to the surface.

Q. Perhaps there should be an opening both ends, but it is really an abscess ?—A. Tracking from the spine.

Q. So the abscess may be a long one if it suppurates ?—A. But it does not suppurate.

Q. All I want is this, it may leave a long form of abscess by whatever method it makes its way down ?—A. Yes, because it is a long muscle.

Q. And that abscess will remain open until the matter is discharged ?—A. No, it remains closed.

Q. Closed at the ends ?—A. It is closed everywhere.

Q. What do you mean by closed everywhere ?—A. There is no opening to the surface.

Q. But it is an abscess throughout its length ?—A. So-called abscess.

Q. Until finally it makes its way to the surface and the whole thing drains ?—A. No, you never open a psoas abscess if you can possibly avoid it.

Q. If it makes its way to the surface it may drain ?—A. It may drain and it is a very serious matter if it does. I have seen bigger abscesses in the thigh from stapholococci infection than tubercular.

Q. Will you dispute the fact that if you get suppuration in the neck first of all it can move upwards, can't it ?—A. Suppuration in the neck ?

Q. Suppuration in the area of the thyroid ?—A. It can only move upward as far as the upper limit of the thyroid capsule.

Q. It was put to you that it could move up to the tonsil and your answer was " Anything in this world is possible " ?—A. Yes, it was a generalisation made after I had definitely laid down my views on the matter.

Q. You say it can only move up as far as—as the capsule of the thyroid that is to the side of the larynx.

Q. And why cannot it go further ?—A. Because it is fixed there, there is a buttress.

Q. A buttress of what ?—A. Fascia and muscle.

Q. And do you suggest that suppuration of that nature cannot eat through fascia ?—A. Not if it has an opening to the surface which this did.

Q. Assuming it has not got an opening through the surface it could eat through fascia ?—A. Yes, but the patient is going to be very desperately ill.

Q. Do you think from what you have heard of this lady's description she was not very ill ?—A. Not after she left St. Luke's Hospital for a long period, a couple of months preceding October 2nd.

Q. Did you read Mrs. Fisher's evidence ?—A. No.

Q. Ever heard of her ?—A. I heard her name mentioned in regard to this case.

Q. Do you know what period she deals with ?—A. No.

Q. So that you don't know that she deals with the period after the Plaintiff left the hospital in 1938 right up to, on and off, when she went down to St. Luke's the second time ?

Mr. CASSIDY : No, that is not right.

Mr. SHAND : I said " On and off."

Q. You had no idea that her evidence dealt with incidents throughout or during the period I have mentioned ?—A. No.

Q. And did no one suggest before coming to your conclusion you had to examine her evidence ?—A. No, my opinion was formed mainly on Mrs. Hocking's own statement. That is the basis of understanding between a doctor and a patient, you believe what a patient tells you until such time as circumstances arise which cause you to doubt them.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 10th January 1944, Cross-examination, *continued.*

Q. But Mrs. Fisher might be one of the circumstances in giving you the background of whether you could believe Mrs. Hocking's account ?—A. But Mrs. Fisher is a lay person and her observations may not be accurate.

Q. They may not, but you have not examined her evidence ?—A. No.

Q. To see the quality of it or to decide what it was ?—A. No, there is a lot of evidence in this case I have not examined.

Q. Dr. Marsh is an ear, nose and throat specialist ?—A. Yes.

Q. And I suppose he ought to know the correct name for that crypt that has been called the top of the tonsil, it has been termed the supertonsilary fossa ?—A. Various men call them by various names. They have their own fancies.

Q. When you examined the throat at the invitation of Mr. Hardwick will you agree that there was a hole there big enough in circumference to allow the blunt end of an ordinary lead pencil to go in ?—A. I think it might have been possible to push one in, just to the entrance, to dilate it to that extent.

Q. You have dealt with these, the Chvostek, the Trousseau and the Erbs tests, will you not agree that the authorities refer to the Erbs test as having been more or less perfected and as being reliable ?—A. Not altogether. If you have a person trained in the performance of the test, and you have the proper machinery for it, then it is a very valuable test as regards latent tetany.

Q. And will you admit that the Trousseau test, according to Osler, is of pathogonomic value ?—A. No.

Q. You don't agree with it ?—A. No, I do not.

Q. You have seen the passage ?—A. I do not remember it.

Q. It has been read out, Trousseau, 421, volume 5—"The test is very easy to apply and is considered also pathogonomic of tetany" ?—A. He is referring there to the general tetany, not to a parathyroid. That is the trouble of the text-books, they do not discriminate.

Q. What are you calling as the ordinary tetany ?—A. General tetany which is not associated with parathyroid.

Q. Is that what he is referring to ?—A. I should take it so.

Q. Can you see anything that suggests he is referring to that ? (Book handed to witness.)—A. Before he gets on to that he gives the clinical types of tetany occurring with all sorts of things, gastric dilation, cholera, typhoid, etc., and he goes on to a general description, and then he goes on to Erb's tests. Erb's test, Dr. Hoffman's Trousseau and so on.

Q. Do you suggest that the Trousseau has no value ?—A. No.

Q. You suggest that it is not certain ?—A. It is not pathogonomic of parathyroid tetany.

Q. But it may give you a very valuable lead ?—A. In latent tetany, but not so much with parathyroid.

Q. You can have latent parathyroid, can't you ?—A. Yes.

Q. So it may give you valuable assistance in diagnosing latent parathyroid tetany ?—A. It may ; it may be of some little value.

Q. And I suppose the Chvostek may give you some assistance ?—A. Yes. I have never had much reliance on that Chvostek test, it is very difficult to elicit it.

Q. I am only putting it this far, that it may give you assistance ?—A. Yes.

Q. And you can get, of course, in parathyroid tetany a stage that may be reached in recovery where the spasms cease but there is still latent parathyroid tetany ?—A. Yes, but I don't think you would elicit any of these signs in that stage.

Q. I want to put this to you, quite fairly, if you had a case where it was alleged that there had been true parathyroid tetany, with the true manifestations and we will assume that over a period the spasms had passed off for some weeks, may I have your assent to this, that you would certainly, while not agreeing to rely on them, attempt to apply the Trousseau or the Chvostek tests ? (Objected to : rejected : objection noted.)

(Further hearing adjourned until Tuesday, 11th January 1944.)

Twenty-seventh day—Tuesday, 11th January 1944.

Dr. HUGH RAYMOND GUY POATE.

Further Cross-examined.

(By consent letter 12th April 1940, and reply of 13th April 1940, tendered : marked Exhibit " T.")

11th January 1944, Cross-examination, *continued.*

Mr. SHAND : Do you remember a discussion yesterday as to what I asked you to get after the luncheon adjournment ?—A. Yes.

Q. I will read what I asked you (pages 1457–1459 referred to), last question :—

" Q. Well, she makes the mistake of putting her thumb outside ?—A. Yes, and later on the spasms altered.

Q. You will be able to refer us to that part of her evidence ?—A. I could look it up.

Q. Is there any reference to the Plaintiff's evidence in this (handed to witness) ?—A. I think there may be in the hospital record part—no, I don't see it in this.

Q. As long as it is not in those we will take possession of those for a while ?—A. I am making a note. That is the alteration, the hand spasm altered ?

Q. Yes, in the holding of the thumb."

That is what I asked ?—A. Yes.

Q. You will agree there is no evidence by the Plaintiff as to the altering of the hand with regard to the holding of the thumb ?—A. I cannot answer either yes or no to that but I take it it is the altering of the whole position of the hand. The thumb is only part of it.

Q. I put it to you : " In the holding of the thumb " (page 1460) ?—A. Yes.

Q. You will admit there is no evidence that you know of ?—A. There has been no specific description of the demonstration Mrs. Hocking made and that is where the trouble comes in.

Q. I suppose you have used both the Chvostek and Trousseau tests ?—A. Yes, on occasions.

Q. You have used them to ascertain if you can whether there is true tetany ?—A. Not necessarily.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 11th January 1944, Cross-examination, *continued.*

Q. Well, partly ?—A. The main thing one goes on——

Q. I don't ask that; I say partly ?—A. Yes, one would do it as a matter of interest.

Q. One of the best tests I suppose is to test the blood calcium content ?—A. Blood calcium, yes.

Q. That you regard as a reliable guide ?—A. Yes, it is the best indication I think.

Q. And it is the best indication between tetany and hysteria ?—A. It would be a very good indication, yes.

Q. You swore before (page 187 of the first trial) :—

> " Q. You think any doctor would naturally conclude afterwards that any spasm was tetany ?—A. Yes. I know that because I have had patients referred back to me with having attacks when they have had these hysterical manifestations and not tetany and we have proved it by their blood calcium."

—A. Yes, the blood calcium has been normal.

Q. If you got infection in the thyroid capsule, if you got suppuration, would you expect that it would eat through the capsule ?—A. Only under certain conditions, and those conditions would have to be: it must be an enclosed abscess and it must be a staphylococcal infection.

Q. That is what this was ?—A. Yes.

Q. How long would you expect under those conditions ?—A. It would be a very slow process and would depend to a great extent on the general resistance of the tissues. You could not give any specific period of time.

Q. Without being at all specific what would your rough estimate be ?—A. With an enclosed abscess, with continued infection it may be a matter of several weeks.

Q. That was not your opinion before, earlier ?—A. I think so.

Q. (Page 188, first trial, referred to) :—

> " Q. I gather from what Dr. Bell said that he described it as being somewhat fibrous and the impression I gathered, I may be wrong, was that it would take some time before the infection would penetrate this capsule ?—A. Yes, it would take perhaps a couple of days." ?

—A. That was for an acute inflammatory process, not to pierce it but to involve it, I think.

Q. " Penetrate this capsule " are the words ?—A. We talk of inflammation penetrating. It does not necessarily say the fascia is destroyed.

Q. I did not say " destroy "——

(At this stage witness's previous evidence was read.)

Q. Do you agree that that is a different answer to what you gave before ?—A. No, not at all. It is a question of the conditions.

Q. In one case you gave an answer it would take perhaps a couple of days. This morning you say it is a very slow process and it would take a matter of weeks ?—A. Yes.

Q. As an educated man you do not suggest those two answers are compatible ?—A. I do. It is not a question of education, but a question of practical knowledge, an understanding of inflammatory reaction which I take it you do not understand.

Q. I try to understand English. You were asked as to the penetration of the capsule on both occasions, previously and this morning. On one occasion you say it would take a couple of days. This morning you say it would be a slow process, a matter of weeks ?—A. Yes, inflammatory reaction would involve a large area.

Q. "Penetrate" is the word ?—A. Inflammatory reaction would penetrate the tissues but it does not destroy them. The spread of inflammation and the spread of abscess are two very different things. I want to make it clear.

Q. I will read a little before that, line 24, page 188 :

"Q. If it were inflamed I take it that it would open in a bag shape ?—A. No, you get the infection of inflammation going through the wall of your capsule, it does not necessarily say there is a big cavity inside."

A. Yes.

"Q. Inflammation going through ?—A. Yes.

Q. You mean where the thyroid is taken from ?—A. Yes, that may be relatively small, but there may be a good deal of surrounding inflammation.

Q. Outside the actual capsule ?—A. Yes."

And then there is the question I asked you before. You are satisfied that both answers are compatible ?—A. Yes, I am, and I tried to explain previously that where you have got a process of infection and inflammation developing, it leads ultimately to a very thick wall of abscess cavity. That is the spread of the inflammation and the spread is a very different thing to the abscess cavity itself. The abscess cavity only results from the breaking down of tissues, destruction of tissues. You have your protective wall of inflammation varying in depth, three-quarters of an inch sometimes and possibly more, around it. It does not necessarily follow that those tissues will break down.

Q. It can penetrate within two days ?—A. Yes.

Q. That means it gets outside ?—A. Only so far as inflammatory reaction is concerned.

Q. If the infection penetrates the capsule it gets outside ?—A. That is the inflammatory reaction would extend——

Q. The infection ?—A. The infection causes inflammation. You cannot have infection spreading without inflammation.

Q. If you get an abscess you can have an infection getting through it and outside it within two days in that area ?—A. Inflammatory reaction, yes, but not destruction of tissue.

Q. If you get infection, and inflammation outside, it may result in destruction of tissue ?—A. No, not at all. Take a simple boil. You see a tremendous area of inflammation which you get around it due to the infection but you do not get all that area coming away as slough ; you only get the central portion.

Q. If you get infection outside the abscess you can get destruction of tissue outside ?—A. Not necessarily at all.

Q. Well, you may get it ?—A. Only by a process of spreading inflammation.

Q. But I say you may get it ?—A. I would say you could get it for a very limited area.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 11th January 1944, Cross-examination, *continued.*

Q. The limitation of area would depend on how much penetrated through the abscess ?—A. That is only one thing.

Q. Is it one factor ?—A. Yes.

Q. Until you heard the evidence in this case you had never heard of the fingers cutting into the palm in tetany spasm ?—A. Not in so many words, no.

Q. You did not know it was actually mentioned in the text-book ? —A. There have been descriptions in the text-books of the clenching of the hand, yes.

Q. But fingers cutting into the palm ?—A. Fingernails.

Q. You did not know of that ?—A. I was not specifically aware of it.

Q. You did not know of it—you had never heard of it ?—A. In the course of the years I must have read it I think because I have read a tremendous lot of these things, but you cannot remember all you read.

Q. You did not recognise it when it was described. You did not recognise ever having heard of it ?—A. I would not say that.

Q. I suppose when mentioned you gave this some thought ?—A. Not necessarily. I could not say what my thoughts were at that time.

Q. Did not you give it some thought ?—A. Not unusually.

Q. Did you give it some thought, as having some significance ?— A. I suppose naturally one would do so.

Q. You only suppose so ?—A. Yes.

Q. You did ?—A. To the best of my recollection I must have given it some thought.

Q. Did not you put it forward as one of the reasons why this could not be true tetany. Can you answer that question ?—A. No.

Q. You do not remember ?—A. No.

Q. At the first trial at page 185, line 14 :—

> " Q. The fingers do not bend right over so that the fingers are cutting into the hand ?—A. I have never seen it happen." ?

—A. Yes.

Q. So it was brought to your mind there ?—A. Yes.

Q. You gave evidence on it. In re-examination, first trial, page 201, line 7, you were asked :—

> " Q. Supposing instead of getting that you got a person driving their nails into the palm of their hands with the thumb outside, would that suggest tetany ?—A. I would say there was very grave doubt." ?

—A. Yes.

Q. Did you look up authorities after the first trial, or during it to see whether it was a possible manifestation ?—A. Yes, I have been looking up many authorities since then.

Q. (Page 483, second trial, referred to.) It was put to you by Defendant's counsel :—

> " I understand that the Plaintiff gave evidence on clenching the hands the fingernails would bite into the palms of the hands, but that was at a later stage. She gave a description of the hand first and later on apparently these spasms changed, and that is when she got that later stage."

This is your evidence in narrative form ?—A. Grasping of the hand, yes.

Q. " The fingernails would bite into the palms of the hands " are your words ?—A. Yes.

Q. "The later stage is more commonly associated with the gastro-intestinal or hysterical symptoms. In my experience it is not associated with parathyroid tetany and I have never seen that type of spasm in parathyroid tetany." ?—A. That is correct.

Q. "In my experience it is not associated." Do you tell those gentlemen that at that time you had actually read it was associated with parathyroid tetany and yet you did not divulge that fact ?—A. I had read it, yes, but in my experience——

Q. First of all, did you consider that ?—A. I have never seen it associated with parathyroid tetany myself.

Q. But did you consider that fair to give merely your experience and not mention you knew from reading it had been associated ? (Objected to.)

Q. You gave no indication you had read that it was associated with parathyroid tetany ?—A. No.

Q. Do you consider that fair ?—A. I inferred in the first part of it when it does occur. It occurs in these other types, gastro-intestinal types.

Q. Do you consider it fair to refer that in your experience it is not associated, without referring to what you read, that it was ?—A. I ask you to define what you mean by "fair."

Q. In your opinion fair ?—A. The evidence I gave in my opinion was quite correct and reasonable.

Q. I agree it was correct. It was technically correct. Do you agree it was fair ?—A. Yes, I do, if you want to put it that way.

Mr. SHAND: Tell us where have you read that you can have this symptom of the nails biting into the hand ?—A. I don't think I can give you any specific authority.

Q. Do you know any ?—A. Not offhand.

Q. Do you only keep a record of these matters that favour the Defendant's case ?—A. No, I keep very few records as you can see by the notes I gave you yesterday.

Q. You have made notes more than that, surely, you referred to more authorities than that ?—A. I have made no notes of any authorities.

Q. What about Gowes ?—A. That is one that came to my mind, I have no notes of Gowes.

Q. Where is Gowes ?—A. You mean the book—I think I presented my copy to the College of Physicians' Library.

Q. When did you last see it ?—A. I don't remember, it is since this case started.

Q. You mean since the first trial ?—A. Since the first trial, yes.

Q. You cannot say where you have read about this biting into the palm ?—A. No, there are so many books one has glanced through, but it does occur, I know.

Q. Have you read it in more than one ?—A. To the best of my knowledge, yes, I don't know that I have read with regard to the actual nails biting into the flesh, the grasping of the hands, yes.

Q. The whole of the questions I have been asking you deal with the biting of the nails into the flesh, every question I have asked you this morning, now, what do you say to it ?—A. I say it is possible.

Q. Have you read anywhere where that happened ?—A. I think I have.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40.
Hugh Raymond Guy Poate, 11th January 1944, Cross-examination, *continued.*

Q. You said a moment ago you did not know ?—A. Yes, I am not sure.

Q. You are not sure even now ?—A. No.

Q. You have not bothered to look it up recently ?—A. No, I have not had an opportunity.

Q. What, since the second or third trials you have not had an opportunity ?—A. No, I meant since I have been in the box here and the matter has been raised.

Q. It was raised in the first, second and third trials ?—A. Yes, I take it that is so.

Q. I have read you out the first and second, we will deal with those only. It was put to you about nails biting into the palms ; I will withdraw the third for the moment because I am a little uncertain about that, and since then you have not taken the trouble to look up the matter ?—A. Not specifically.

Q. It is not a question of specifically, look it up ?—A. I have looked it up, if you put it that way, but not from that particular point ; all I have read has been a general description.

Q. I am asking you that having given evidence on that one particular point and putting it forward as you have as an indication of not being true tetany, whether you have taken the trouble to look up that point ?—A. Not specifically.

Mr. CASSIDY : And that answer was never contested at the first trial.

His HONOR : If you want to object, get up and object.

Mr. CASSIDY : I object then. It is suggested that the doctor has been endeavouring to hide something. It has been put to him as a matter of contest——

His HONOR : I do not think that is a matter of objection. I think that is something that you can put in re-examination. Do not interrupt unless you have an objection that you want to raise.

Mr. SHAND : Do you suggest at the second trial a definite authority was not put forward, Fagg's Principles and Practice of Medicine, page 645—" The patient first has a sensation of tingling in the parts which are to be affected and then begins to find that their movements are no longer free. Soon the thumbs become forcibly abducted, the fingers on each hand are closely pressed together and are half flexed on the palms, the palms are hollowed by the approximation of their inner and outer surfaces, the nails may be driving into the skin so violently as to produce marks or even, it is said, to give rise to sloughs." Have you read that ?—A. No, I have not read Fagg, it is a very old book and that is dealing not with parathyroid tetany but general tetany.

Q. You give that answer without having read it ?—A. I know at that time, the time that book was written, they did not know anything about parathyroid tetany.

Q. How do you know it was not parathyroid tetany ?—A. They had no knowledge of it at that time.

Q. But parathyroid tetany used to occur ?—A. It might have occurred, but they knew nothing about it.

Q. You are not suggesting that it only began to occur recently ?—A. No, but the understanding of parathyroid tetany is a thing of recent years.

Q. How can you say it was not parathyroid tetany ?—A. Because operations for goitre at that time were very, very rare and very few and far between.

Q. Were they ?—A. Yes.

Q. And you will agree that the more violent spasms occur with regard to parathyroid tetany ?—A. Not altogether, no.

Q. Mostly ?—A. No, I would not say that. I think you get more violent spasms in these other types of tetany, medical types.

Q. Have you an authority for that ?—A. No, not specific authority ; it is my impression.

Q. Of course, both parathyroid tetany and what you call other tetany, or ordinary tetany, results in too little calcium in the blood ?—A. No.

Q. They don't ?—A. No.

Q. Parathyroid tetany has that result ?—A. Parathyroid tetany, yes.

Q. Well, what result have the other tetanies ?—A. You may have a normal blood calcium.

Q. You mean hysterical tetany ?—A. That and the other medical tetanies.

Q. What other types ?—A. Gastro intestinal, alkalosis, magnesium deprivation, vitamin D, and various other forms.

Q. How do you classify the vitamin D form ?—A. That is what used to be known as the epidemic tetany that occurred in Europe.

Q. With too little sunlight ?—A. Yes, the loss of the ultra violet rays of the sun.

Q. And resulting in the blood not getting sufficient calcium ?—A. Not necessarily, it is a question of absorption, vitamin D affects the absorption of calcium from the intestines.

Q. The absorption of calcium from the intestines means the absorption into the blood ?—A. Yes.

Q. And therefore, as I put to you, it means that the blood is not absorbing enough calcium ?—A. No, not necessarily at all, the main factor in regard to that point is the question of the deposition of calcium in the bone and particularly in growing children.

Q. Resulting in insufficient calcium of the blood ?—A. Not necessarily. You may have a blood calcium within normal range.

Q. But generally ?—A. No, I would not say generally.

Q. Never ?—A. No, I would not say never.

Q. Of course, in this trial nothing was put to you by Mr. Cassidy about the nails biting into the palm. What was put to you was the fingers being clenched ?—A. Yes, I think so.

Q. With regard to massage, would you agree with me that there is no authority to suggest that once the spasm has come on, I don't mean massage before it has come on, but once it has come on there is no authority to suggest that massage might not relieve it ?—A. No, I don't recollect any, and I don't know of any authority which says you must not give strychnine in these cases or something that will do what massage does, that is, stimulate the nerve endings.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40.
Hugh Raymond Guy Poate, 11th January 1944, Cross-examination, *continued.*

Q. And would the extent of your knowledge in the matter be this, that you can say merely this, that massage would be in your opinion unlikely to relieve it ?—A. I think that is a fair statement, yes.

Q. Now you will agree that these symptoms which I now read to you are typical of manifest tetany, pins and needles in the hands or feet ?—A. Yes.

Q. Stiffness in muscles ?—A. Yes.

Q. The accoucheur's hand ?—A. Yes.

Q. Arms and legs drawn up ?—A. In the severe spasm, when the spasm is severe, yes.

Q. And apart from this discussion we have had about what you have said your recollection was as to how the Plaintiff held her thumb, leaving that out, the evidence indicates that the Plaintiff had every one of those symptoms ?—A. Of tetany, yes, but it does not say what type of tetany it was.

Q. It is an accepted fact, is it not, that in hysterical tetany the facial muscles are not affected ?—A. I don't know that. I don't see any reason why they should not be.

Q. Have you never read that ?—A. I don't remember that specifically.

Q. You have seen the blood calcium test, the result of that test ?—A. Yes.

Q. What do you say as to that ?—A. I should say that a level of 7.2 has been the new level that has been established with her, following upon a certain amount of true parathyroid tetany.

Q. But do you establish a new level ?—A. Oh, yes, you have got to, otherwise one would expect tetany to go on.

Q. Does the patient recover ?—A. They lose their actual spasms.

Q. What I meant was this, does the patient then get a higher level or does it remain ?—A. No, it varies a great deal, I have known them to remain in the region of 7 to 7.4 over a period of time, and I have seen them after several years go back to normal. I had a patient come in the other day like that.

Q. Have you had more than one case of them going back to normal ?—A. I think I have over the years.

Q. And as far as your knowledge goes that is the position, sometimes they may be below normal and at times they get back to their original level ?—A. Yes.

Q. Will you tell these gentlemen how you came to swear this at the second trial—" But you will agree that 7.2 is a low percentage of calcium ?—A. I will say this, all these patients who have had any degree of tetany never get back to a normal balance again " ?—A. That was referring, I think, to the period of time.

Q. " . . . never get back to a normal balance again " ?—A. If I said that it was very badly expressed.

Q. It was quite untrue, wasn't it, if you said it ?—A. No.

Q. Your own experience is that they do get back ?—A. Sometimes, I have known them to get back.

Q. This is " never." There are no two ways about it, it is incorrect ?—A. I say it is badly expressed.

Q. It is incorrect, isn't it ?—A. Put in that form.

Q. This is the form you put it in. It is incorrect, isn't it ?—A. In that form, yes.

Q. How did you come to make that statement ?—A. It is very difficult to say why one makes an incorrect statement, it depends on the question and what has gone before.

Q. You can look at what has gone before and what has gone after, and I invite you to explain how you made that incorrect answer——

Mr. CASSIDY : Read the third question after it on the top of the next page.

Mr. SHAND : I don't see that it has the slightest thing to do with it. I will read it, and the one following it—" You mean even if the parathyroid glands refurnish and nature comes to the rescue and puts them right ?—A. Apparently they had not regenerated altogether, otherwise they would get the normal balance. Q. I suppose you will agree that you never, in the whole of your experience, had seen an operation where a wound has gone on suppurating like this ?—A. Not as described by this lady, but I have seen them where they have gone on for 12 to 15 months." What that has to do with it I don't know. How did you come to make that incorrect answer ?—A. To the best of my recollection that would be in a case where parathyroid tissue had been completely destroyed but where it had only been a temporary tetany——

Q. I will read the question again—" But you will agree that 7.2 is a low percentage of calcium ?—A. I will say this, all these patients who have had any degree of tetany never get back to a normal balance again." —A. I was referring, I am certain, there, to people where parathyroid tissue had been actually removed ; that is why I gave that answer " never."

Q. You knew the 7.2 referred to the Plaintiff ?—A. Yes.

Q. Is there the slightest indication in those answers that you were referring to a case where there had been complete destruction ?—A. No, but I think that would have been my thought process at the time.

Q. You find that easy to reconcile ?—A. Yes.

Q. Although a moment ago you agreed it was an incorrect answer ? —A. On a particular case perhaps.

Q. We will see whether you meant where it has been totally destroyed ; I will go back a little—" Now I am putting to you after the infection got away and the thing cleared up would not you expect nature to go on and re-furnish those parathyroid glands ?—A. Yes, and that is what has happened." ?—A. In this particular case.

Q. You are dealing now with this case where you say the glands have been re-furnished. (Objected to.)

Mr. CASSIDY : I say that the witness should be allowed to read the transcript to follow this.

His HONOR : Have you any objection, Mr. Shand ?

Mr. SHAND : None whatever.

Q. " Now I am putting to you, after the infection got away——"

Mr. CASSIDY : Might the witness read it out to get the context ?

Mr. SHAND : I want the Jury to hear it too.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 11th January 1944, Cross-examination, *continued.*

Mr. CASSIDY : Well, read from where he wants you to.

Mr. SHAND : I will read from where I want to.

Q. " Now I am putting to you after the infection got away would not you expect nature to come and re-furnish these parathyroid glands ? —A. Yes, and that is what has happened." So, we are dealing with apparently this case at present. " In that case would not you expect a normal percentage of calcium to be present in the blood ?—A. No, I would not in this case." Although they had been re-furnished. " Because she had a lot of inflammatory reaction and I don't think these glands would go back to their absolute normal. Q. But you will agree that 7.2 is a low percentage of calcium ?—A. I will say this, all these patients who have had any degree of tetany never get back to a normal balance again." Do you say that is correct ?—A. Yes, as I said before, I think it was very badly put.

Q. Do you say it is correct as it reads there ?—A. No, I don't think it is, not as it reads.

Q. Now, isn't this the position, that you are unwilling to maintain that position now because you think we may be able to show that the Plaintiff has come back to normal ?—A. No. I resent the insinuation of that character, I don't think it is a fair way of putting it to me, I am doing my best to give you my honest evidence, I may explain I have nothing to hide.

Q. How did you come to give this incorrect answer ?—A. I don't know. Under the circumstances of the case where you have counsel worrying you you are apt to say things without giving them due thought.

Q. Oh, I see. So you put it down to that, you gave an answer without due thought ?—A. It is very probable.

Q. It is a pretty plain sort of question ?—A. Yes.

Mr. SHAND : And then you volunteered this : " I will say this, all these patients who have any degree of tetany never get back to a normal balance again" ?—A. Yes.

Q. Do you suggest that it was in confusion owing to counsel's questions that caused you to give that incorrect statement ?—A. It is a possibility.

Q. It is a possibility ?—A. Yes.

Q. Why didn't you, when I asked you in the first place, say it was incorrect ?—A. Well, it is a question of the facts surrounding the case. When you take those specific words—Yes, I would say it is incorrect.

Q. It is a pretty clear statement, isn't it ?—A. Yes, when you come to read it in cold blood.

Q. It means that anyone who has ever had any degree of tetany would never get a normal balance of tetany ?—A. Yes.

Q. It is quite wrong, is it ?—A. It is wrong to put it in that form, yes.

Q. You have said that this, in your opinion, was a true parathyroid tetany up to the period round about June 1st ?—A. In the earlier stages, yes. I cannot fix a date.

Q. It is very rare to get other than mild tetany after post-operative tetany ?—A. Yes, it is rare in my experience.

Q. What percentage of cases would you say ?—A. It is very hard to work out percentages ; but the last I took out it would be about 1 in 200, I think. The last year, in over 200 cases I had no tetany at all in any case.

Q. Of course, up to that period, leaving out the period after, it was very marked, these spasms ?—A. The spasms apparently were, yes.

Q. And am I correct in saying as regards post-operative tetany, more severe than any case you have known ?—A. No, I would not say that.

Q. Well, how many have you known as severe ?—A. I cannot say off-hand. I can recollect two patients who died with post-operative tetany.

Q. Was that the removal of the parathyroids ?—A. Yes.

Q. Well, this was not. (Objected to.)

Q. Do you suggest that this case may have been caused by the Defendant removing the parathyroids ?—A. Yes, possibly one may have brought the balance down.

Q. He said that he took the extra precaution of leaving one eighth of the lobes ?—A. It does not matter what proportion. We usually take the precaution of leaving portion.

Q. If it were that, would you expect the patient to recover the blood calcium ?—A. If it were the removal of one, I think I would.

Q. But the removal of two is the immediate, as stated, cause of post-operative tetany ?—A. Well, we regard it as the cause of immediate post-operative tetany.

Q. That is what it was here ?—A. No, in her case it might have been one removed, because it took a little time for it to develop.

Q. What about the pins and needles ?—A. Well, that was towards the end of the time of her stay in hospital, I understand.

Q. That was indicative of tetany ?—A. It may have been indicative of latent tetany, yes.

Q. Did you notice that the measures taken to deal with that was sponging of the hand——(Objected to) ?—A. Not in the later stages.

Q. The cramps ?—A. That was in the early stages.

Q. Did you consider that the cramps were an indication ?—A. No.

Q. Well, they may be ?—A. Well, I take it she would have gone on to more definite symptoms and signs very quickly within a week or two.

Q. If she had the two parathyroid glands removed, do you think that the blood calcium would have recovered normally ?—A. I do not think so.

Q. Of course, you do not need to postulate the removal of the glands when you have got inflammation ?—A. That is a matter that will have to require further consideration before I can give an answer.

Q. You have described this condition on every occasion up to this trial as being due to inflammation ?—A. Possibly due——(Objected to.)

Q. And suppuration ?—A. Yes, inflammatory reaction.

Q. You say that that answer for some reason was incorrect, about a patient suffering from tetany never recovering the balance ?—A. Yes.

Q. Well, what about the Plaintiff ? Do you think she might have recovered her balance ?—A. I think so now. It is a very strong probability.

Q. And would you be willing to swear that she had not recovered her balance by two years after the operation ?—A. It is quite possible she might have. I would like to say in regard to this, that our investigations in regard to calcium balance are still going on, and I do not think I can give any facts or figures until probably four or five years' time when we follow up. The impressions one gets are often not quite correct at the time. It is only when you can check up that you can give a definite opinion.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 11th January 1944, Cross-examination, *continued.*

Q. Had you in view that I might be asking you another question about this when you said you get wrong impressions ?—A. No.

Q. Was that what that expression was for ?—A. No.

Q. This is on page 489 of the second trial :—

"Q. Dr. Hansmann apparently made a calcium calculation and on that day she is 2.8 under the normal amount of calcium ?—A. Yes.

Q. You don't suggest, do you, that she had not been like that for some long time ?—A. I say she is like that to-day."

—A. Yes.

Q. That was in 1942——

His HONOR : August 1942.

Mr. SHAND : Yes, August 1942 ?—A. Yes.

Q. That is what you swore then ?—A. Yes.

Q. And that was in line with your evidence that people never recover their calcium balance ?—A. It would be in line with that.

Q. And now you modify that, do you ?—A. Yes.

Q. Well, I put it to you that it was not a mistake when you said before that all tetany cases never recover their balance. It was not a mistake ; that is what you intended, wasn't it ?—A. That is what my impression was, apparently, at that time, yes.

Q. So, what I read out to you after all correctly expresses your ideas ?—A. I should think probably what I said at that time, yes.

Q. You have sworn a moment ago that you did not correctly express your ideas because you were being harried by counsel ?—A. No, I said that was one factor.

Q. But it did correctly express your ideas ?—A. As I expressed them at that time, I suppose it is a correct thing to say.

Q. So, your sworn answer a moment ago, that you did not mean it and you had in mind other things and it was because you were harried by counsel—all that is incorrect ?—A. I would not say that. (Objected to : pressed.)

Q. What page are you looking at there ?—A. I just turned over to page 489.

Q. You were looking at it, weren't you ?—A. In regard to that particular question I see I have got two question marks against it.

His HONOR : I allow the question.

Mr. SHAND : You have agreed that the explanation you gave before about that statement being incorrect—the explanation itself is incorrect, because now you say that the statement is correct, according to your then views ?—A. I do not quite get what you mean.

Q. Your statement before about all patients suffering from any degree of tetany never recover their blood calcium ?—A. Yes.

Q. That was correct in your then view of the matter ?—A. Yes, I apparently had that idea at that time.

Q. I am putting to you now that you, this morning, said it was incorrect ?—A. I think it was a wrong way to have phrased my answer there. Incorrect, yes, if you wish to put it that way.

Q. And you gave an explanation as to why it was incorrect because you said you had been harried by counsel ?—A. Yes, that may have been one factor.

Q. So that is why you withdraw it ?—A. No, I do not withdraw it.

Q. You said that you meant ?—A. At the time, yes.

Q. So it was not because you were harried by counsel that you gave that answer ?—A. Not specifically, no, it was one factor.

Q. Not at all ?—A. I would say that it would have been a factor in the framing of my reply.

Q. Not at all ?—A. I would not say " not at all."

Q. But the reply was correct, wasn't it ?—A. Which reply are you meaning.

Q. The reply at page——?—A. 490 ?

Q. 490, yes ?—A. I have already said——

Q. According to your belief then, that reply was correct ?—A. Yes.

Q. So that if you gave a correct reply you could not have been harried into giving an incorrect one, could you ?—A. No, because, as I said before——

Q. I don't want an explanation——(Objected to).

His HONOR : He is entitled to explain.

Mr. SHAND : If it is an explanation.

The WITNESS : What is happening at the present time in regard to this is—when you are getting asked some of these obstruse and difficult points you would like to have time to consider your answer. When you are asked to answer on the spur of the moment, you do not always give a correct answer.

Q. But you gave a correct answer then ?—A. Probably, as far as I could.

Q. You gave a correct answer according to your belief ?—A. Yes.

Q. And this morning you said it was incorrect ?—A. I say now that it was a bad way to answer it.

Q. You swore this morning that it was incorrect ?—A. If you put it that way, that those sworn words are incorrect.

Q. And that you made that incorrect answer because you were harried by counsel ?—A. That was partially one factor.

Q. This is the next question on page 489 :

> " . . . A. I say she is like that to-day. Q. You say she would be like that to-day ?—A. Yes. I remarked before—they have to get a new level established, and that generally becomes established after about six to eight weeks."

With regard to the use of rubber tubes, will you agree that you have used the one tube on some half-dozen occasions ?—A. That was during the rubber shortage at one time. As I said before, it was——

His HONOR : When was the other rubber shortage ?—A. Under the war-time exigencies.

Q. When was that ?

Mr. SHAND : When ?—A. I suppose just after Japan came into the war.

His HONOR : After the 8th December, 1941 ?—A. Yes.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 11th January 1944, Cross-examination, *continued.*

Mr. SHAND: Now, in regard to these tubes, do you remember that the sister in the theatre cuts the ends?—A. Sometimes they do. I prefer to do my own.

Q. This is on page 245 of the third trial:—

"Q. I suppose you agree that she very often cut it for you when you were there?—A. They always shape the ends, yes.

Q. They make what is called the diamond cut——

His HONOR: Is this some special situation that Dr. Poate stands in, or is this the regular technique?—A. It is the ordinary technique."

—A. Yes.

Q. Do you remember being cross-examined on the third trial, page 242, line 35, to this effect: "Dr. O'Hanlon tells us he was familiar with the Chvostek test, the Trousseau test, and the Electrical test." That would be the Erb test?—A. Yes.

Q. "He said that he used these tests, the Trousseau and the Chvostek, and she reacted to it," and you said "At what stage?" You were then asked: "He could not remember when he used them, but he used them during the illness and he had no doubt it was parathyroid tetany," and you said, "Yes, I have no doubt either in the early stages"?—A. Yes.

Q. Now, in that third trial, nor in any previous trial, did you ever give any evidence suggesting that the Trousseau or the Chvostek test was not—that one or both were not good tests for parathyroid tetany?—A. That is possible.

Q. And you gave no evidence whatsoever in regard to the Erb test?—A. I do not think so.

Q. And this is the first trial in which you have referred to those matters?—A. The first time in which so much detail has been gone into.

Q. Well, you have never seen the Erb test used at all?—A. No.

Q. And you have been in England and the Continent?—A. Yes.

Q. And you have been to clinics in both places?—A. Yes.

Q. And America?—A. Not America.

Q. I refer to the book you referred to, Schelling, page 117:—

"Latent tetany: In 1874 Erb described a most important sign for diagnosis of tetany—the 'Erb phenomenon,' the sign is based on the fact that the neuromuscular response to galvanic stimulation in tetany can be obtained with weaker currents than the minimal stimulus which is needed in normal individuals. Its greatest value is, of course, in latent tetany. In 1890, Eacherich employed this method to test for tetany in infants, and about 10 years later Theimich and Mann placed this test on a sound clinical basis. Since then the Erb sign has been used in many clinics, and by its aid many cases of latent tetany have been discovered."

and that book is authoritative?—A. Yes; that only carries the historical part of it up to 1884, doesn't it?

Q. "Since then," it is stated?—A. Ten years. Erb first described it in 1874, and these other people worked it out for ten years.

Q. And after that, these men placed it on a sound clinical basis. That brings it up to 1900, and since then this test has been used in many clinics?—A. Yes; one reads about it. As I say, I have never seen it done.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40.
Hugh Raymond Guy Poate, 11th January 1944, Re-examination.

Re-examined.

Mr. CASSIDY : You gave evidence at some length in the second trial, did you not ?—A. Yes.

Q. And it was put to you one portion of your evidence was read, and it was suggested that the inference from that was that the 7.2 should not rise, do you remember, by Mr. Shand ?—A. Yes.

Q. In cross-examination—still to Mr. Hardwick—did you say this, at page 548, about the 6th question : " Q. Supposing it was ten at the present time, wouldn't that be an extraordinary change ? " (Objected to.)

Q. I will read them :—

" Q. You say that although the parathyroids had more or less repaired themselves from August 1938, it is not an extraordinary fact to discover 7.2 as being what I would call the level of calcium on the 28th October ?—A. No, it is a very ordinary fact with this type of case.

Q. I suppose you agree that at the present time you would not expect to find more than 7.2 calcium in her blood ?—A. It may be somewhere about that."

You may take it that that is August 1942.

" Q. Supposing it was ten at the present time, would not that be an extraordinary change ?—A. Not necessarily because they can rehabilitate themselves over a period of time."

—A. That is so.

Q. And that is exactly what you said to-day ?—A. Yes, that is what I say, trying to explain.

Q. " I think you said that there was a new balance struck by nature." ? —A. Yes.

Q. And you said " Yes, but it can rise." That is what you swore in the second trial, and it was not read by Mr. Shand ?—A. Yes, that is what I was trying to explain this morning.

Q. Are you able to carry in your mind all the evidence you gave ? —A. No.

Q. Or the state of your mind or your information at particular times ? —A. No, I think it is an impossibility to do it ; for any one to do it.

Q. And the next question was—" And can it fail ?" and your answer was " Yes " ?—A. Yes.

Q. Now, on page 547, second trial :

" Q. So that, from the end of July, 1938, up to October, 1939, the parathyroid glands would be functioning fairly well ?—A. They would have recovered a large proportion of their function.

Q. They would gradually recover as you have suggested ?—A. Yes.

Q. The largest proportion of them ?—A. A large proportion of them.

Q. On the last occasion you were asked the question—' If in the course of the ulceration and inflammation these glands had been affected in any way would they ever renew themselves,' and your answer was ' Yes, that is a common experience.' What do you say about that ?—A. That is with regard to inflammation. If they have not been destroyed in ulceration, No, and that is what I said yesterday."

(Objected to.)

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 11th January 1944, Re-examination, *continued.*

Q. You were asked " You say that the question put last time was a little confusing " and your answer was " I do." Now, I want to go back to the page that Mr. Shand read to you, 490.

(*Short adjournment.*)

Mr. CASSIDY : Commencing at page 490, at the fourth question : " Q. If in the case of ulceration or inflammation these glands have been infected would they ever renew themselves—you said, yes, that is a common experience ?—A. Not if they had been destroyed, if there had been destruction of tissues they could never renew the cells and though inflammation subsides they regain their normal function." Is that what you are saying throughout, it is important to bear in mind the difference between the destruction of parathyroid tissue and inflammation affecting—— (Objected to.) What is your explanation ?—A. If the glands have been actually removed or destroyed then they cannot regenerate, but the remaining gland tissue hypertrophia takes on an added function.

Q. This is preceding the questions Mr. Shand asked ?—A. Yes.

Q. This is what you said to Mr. Monahan who was questioning you on that occasion, page 180 : " I understand those parathyroid glands are in tissue of their own at the back of the thyroid or the sides ?—A. Yes, they are very minute glands, at the most they would be only a quarter of an inch in length. Q. What I was putting was, if in the course of the ulceration and inflammation these glands had been affected in any way, would they ever renew themselves, and you said ' Yes, that is a common experience.' Your answer to that whole question was ' Yes, with regard to the inflammation'——"

Mr. SHAND : That was corrected later, at page 30.

Mr. CASSIDY : That is what you said ?—A. Yes, I think even now there has been some confusion with regard to that, because Mr. Shand put it to one of the witnesses about the glands being eaten away, which I think was corrected at the time. Once the inflammatory reaction subsides one would expect them to regain their function, which would be a gradual process.

Q. " Q. There is no suggestion, as I understand, that Dr. Bell destroyed these parathyroid glands ?—A. No, obviously not. Q. You know that the suggestion is infection got into the thyroid cavity and this ulceration and inflammation was inflammation by its interference with the function of the parathyroid glands ?—A. Yes. Q. Now I am putting to you after the infection got away and the thing cleared up, would not you expect nature to come and refurnish these parathyroid glands ?—A. Yes, and that is what happened." Then you go on with what Mr. Shand read ? —A. Yes.

Q. What does " refurnish " mean ?—A. I took it they meant the function of the glands would be restored.

Q. You have been at all four trials ?—A. Yes.

Q. You know the operation took place on the 15th March, 1938 ?—A. Yes.

Q. In no trial has there ever been any document shown you or any suggestion made that this lady had recovered her normal calcium ?—A. Nothing I can remember at all.

Q. It is now five years since the operation ?—A. That is so, five years last March.

Q. Has any evidence ever been given suggesting that this lady has got back her normal calcium ?—A. None that I know of.

Q. Following on those questions you were asked as to your evidence in August, 1942, as to the lowered blood calcium rising, is there a brochure published dealing with the calcium getting back to normal ? (Objected to : allowed.)—A. Yes, I have a paper by Harvey and Lillianthall, of the John Hopkins University, published September, 1942.

Q. The John Hopkins University is what ?—A. That is the institution where all this recent work on parathyroid has been carried out. It is a research hospital, not an ordinary one, and they are the leaders of the world in this matter, I think.

Q. Do they give an illustration of the rise in calcium ?—A. Yes, there is here a patient who was operated on in 1934 for goitre and six days after she exhibited a manifest tetany. Her symptoms were controlled by the oral administration of calcium chloride, but in the following year she had a constant low level of calcium. They say " When first tested with adrenalin the signs of latent tetany were readily elicited, the serum calcium was 4.9 milligrams per cent., and she was given doses, in the treatment, of A.T.10 and nine days afterwards her serum calcium had come up to 9.1." I might say that this starts at page 165. The next one is at page 169, a patient of 30 years of age was operated on in 1923 for goitre. She developed her first tetany in 1929 when the blood calcium was between 5.8 and 6.7. She was given various forms of treatment including the parathyroid extract and A.T.10 and normal serum calcium levels were maintained. In 1939 she had an illness and tetany returned. In 1940 a serious conflict arose in her life situation, and shortly thereafter symptoms of tetany returned. She was first seen in this clinic in May, 1941, and she then had recurrent attacks of tetany. She had been taking A.T.10 and parathyroid extract, and the serum calcium was 10.9. When all treatment was withheld for three weeks the serum calcium fell to 8.2. A.T.10 was again administered and it went up to 8.5."

Q. What is the position, summing that up ?—A. That is a recent article and it is showing some of the investigations of this question and those particular cases show how variable blood calcium may be, even with patients under the most efficient of treatments.

Q. Take the last one, what does that show ?—A. She was all right for a period of time, and when she got this domestic upset it precipitated and that in itself tended to lower the blood calcium and precipitated further attacks of tetany. When she was under treatment it was mentioned as a normal level, and afterwards it tended to drop.

Q. At 10.9 does it say whether she still had tetany ?—A. I take it when she entered hospital it was the blood calcium and she was still having tetany spasms.

Q. You know one of the authorities that deals with the question of emotional disturbances and its connection with calcium ?— A. I don't know it personally, but I know of it.

Q. The name is Dunbar ?—A. I think Dr. Smith gave evidence with regard to that.

Q. In view of some of the questions you have been asked—you were cross-examined as to a statement you made at the first trial that statement

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 11th January 1944, Re-examination, *continued.*

appearing on page 185, line 15. The fingers generally bend right over so that the fingers are cutting into the hand. You said : " I have never seen it happen " ?—A. Yes.

Q. " You say it is very characteristic, the way the hands behave when under an influence of that sort ?—A. Yes." From now on it is cross-examination—" Of course the striking feature about the hands is the thumb ?—A. No, it is the whole position." ?—A. Yes.

Q. Are those statements perfectly correct ?—A. Yes.

Q. Have you had a large experience or otherwise with regard to tetany ?—A. Yes, a relatively large one.

Q. You mentioned the other day you felt that you were entitled to speak by reason of your experience of thyroidectomy and tetany ?—A. Yes, I think I should be able to make a claim of that character.

Mr. CASSIDY : Have you taken a special interest in the subject of tetany ?—A. Yes, as one of the sequelæ associated with the thyroid operations, that is, of parathyroid tetany.

Q. I think you gave the number of your operations as a very large number, that is over 6,000 ?—A. Certainly over 6,000.

Q. You were cross-examined by Mr. Shand as to Dr. S. A. Smith's opinion ?—A. Certain portions of it.

Q. You know of course that his theory is that it is not established that it is interference with the blood supply by sepsis that causes tetany ?—A. Yes, that was the point of view that he brought forward.

Q. In the whole of your 6,000 cases and from your other experience of seeing other cases, have you seen a number of examples of tetany ?—A. Yes, of various types, of various degrees of severity.

Q. In the whole of your experience how many cases have you seen where you have tetany plus sepsis ?—A. There is only one I am sure of that I can recollect ; that was some years ago and which I put as being the ordinary post-operative parathyroid tetany following operation, because the tetany came on within about three to five days, but there was operative sepsis.

Mr. SHAND : Is this the one you have spoken of before ?—A. Yes.

Mr. CASSIDY : I want to get the reverse of that. Can you tell the Jury whether you have had cases of sepsis and suppurating wounds in the thyroid and no tetany ?—A. Yes, there is the most recent one, that case of Wootton Hospital where the girl had deep sepsis which worried us so considerably, but she developed no tetany at all. I am sure there have been others, I cannot call them to mind straight away ; it would be a question of going through the records.

Q. In that case of that girl, how long did the sinus last ?—A. I should say approximately six or seven weeks—about that.

Q. At page 187 Mr. Shand read you a question to this effect, line 16 :—

> " Q. You think any doctor would naturally conclude afterwards that any spasm is tetany ?—A. Yes, I know that because I have had patients referred back to me with having attacks when they have had these hysterical manifestations and not tetany and we have proved it by their blood calcium."

I want to ask you : has it in those cases been difficult, or was the diagnosis of whether it was tetany or hysteria easy ?—A. It was very difficult,

particularly for the general practitioners who were looking after the patients because they very seldom if ever see a case of post-operative tetany, and I would say it was extremely difficult to arrive at a positive diagnosis as actual causation.

Q. In those cases that you referred to in that evidence was your diagnosis of hysterical tetany and not parathyroidical tetany correct?—A. Apparently it was correct in view of the subsequent improvement of the patient under appropriate medical treatment.

Q. Do you remember being cross-examined about the change in movement of the hand and the changed spasms?—A. I do.

Q. Did you see what you described earlier in evidence in chief?—A. I did.

Q. At page 157 of the first trial, line 45:

"His HONOR: She said 'My fingers were clenched . . . tight little ball.'?—A. Well, if I may interrupt Your Honor, actually——"

The full question is on page 9, line 21:

"Q. Demonstrate to the jury how you mean?—A. My fingers would clench up and my fingernails would cut into the flesh and my knees would be drawn up under my chin and I would be a tight little ball."

And continuing at page 157:

"(Mr. Monahan asks that the Plaintiff repeat the illustration and show what was intended with regard to the hands. Plaintiff demonstrates to jury and witness.)"

This is the answer of Dr. Ritchie:

"Actually the spasm in the hands, tetany has been described as accoucheur's hands. That is what happened, the thumb is turned into the palm like that, in that particular way, and the other fingers go like that, they do not go like that (indicates)."

I want to refer to what was said by His Honor in summing up at pages 219 and 220—(Objected to: jury retired during argument: evidence rejected.)

Q. There was one matter on page 1431 of the present evidence: you spoke as to "In certain conditions only"—the last question on the page. In certain conditions only is it possible for inflammation to eat through the particular compartment? You were wanting to say what these conditions were?—A. Yes, I think that was partly explained to Mr. Shand this morning. Before an abscess cavity can erode, structures in the neck, and particularly fascial planes, there must be sufficient inflammation present to lead to gross destruction of tissue, which would necessitate a closed abscess with a very acute infection present, and one that would cause very great distress to the patient and a very great number of constitutional symptoms which would demand surgical or medical treatment.

To His HONOR: By constitutional symptoms I mean temperature, sweating and the accompaniments of fever. That would have to occur before the suppurative process would go sufficiently far to destroy the tissue planes. That is the only way in which they could be destroyed. The spread of the inflammation is an entirely different matter, as I tried to make clear this morning.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 11th January 1944, Re-examination, *continued.*

Mr. CASSIDY: Can the tube or not move with mere inflammation as distinct from destruction ?—A. No, I said all along that the only way which I can conceive of a tube moving would be inside an abscess cavity and it would have a very limited degree of movement, perhaps a quarter of an inch in every direction.

Q. At pages 1454–5–6 of the present trial you were cross-examined about a passage on pages 205 and 196, it commenced at 196, and taken in conjunction with something on 205, and certain portions of 196 were read and portions of 197; and then you were taken to 205—of the first trial. At 1454–5–6 of this trial a number of questions were directed to you. This is the first question following your examination of the 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 chronic 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 there is evidence of scarring in the depression ?—A. No. I take it as evidence of a chronic infection in the crypts of the tonsils, the same appearance occurs on the other side."

Would there be more than one crypt there visible in the tonsils ?—A. Yes, several.

Q. And the evidence with regard to the depression, would you tell His Honor and the jury whether that was present or not, the same evidence, was it present or not, a similar appearance as to the other crypts ?—A. In the region of what has been referred to as the supra tonsillar fossa the main crypt of the tonsil; and it conveyed the impression to me that it was the result of a local chronic inflammation which caused that scarring that was mentioned, which was nothing deep. It did not convey to me the impression that it was due to anything deep or that may have been deep in the tonsil upon anything that had come actually through the tonsil, certainly not through from the neck.

Q. Line 46:

> " Q. And that 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."

A. That is so.

Q. When you described it as not the same mirror picture what does that mean ?—A. They are not identical.

Q. "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? There is evidence of sloughing.

Q. There was 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. Do you say that that condition you now see is not consistent with her story? (Objected to.)

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. If that lady had quinsy and there was a burst from quinsy, would you expect to see a tonsil like that?—A. Not altogether. You see, with quinsy it is what we call a peritonsillar abscess, the infection develops between the capsule of the tonsil and the muscles at the back and it bursts along the edge of the muscle, it does not come through the tonsil, it is a different thing altogether."

Then it was put to you at page 205 :—

"Q. You think if there was inflammation there a medical man who looked at it could fairly describe whether something had been ejected or not?—A. Yes, there would be fixation of tissue.

Q. You could have seen whether there was a hole there?—A. Yes, but there was more evidence than that of that inflammation. What one looks for is not necessarily the hole. The inflammation affects the surrounding tissues and as a result they lose their mobility and elasticity.

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."

You might tell us were they apparent?—A. Yes. They were very apparent, made so because of the inflammation that had occurred and was present in the tonsil, that is the fallicular tonsillitis, which enlarges the crypts of swollen tonsils and makes the orifices of the crypts much more obvious than they were in the normal tonsil.

Q. Did that apply to both?—A. Yes, both tonsils.

Q. On the 11th December when you looked at the tonsils what was the condition as to health then?—A. She had then a very definite sub-active inflammation superimposed.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40.
Hugh Raymond Guy Poate, 11th January 1944, Re-examination, *continued.*

His HONOR: That is the 11th December last?—A. Yes. It was quite easy for Dr. Marsh to express some of this yellow cheesy material from the tonsils.

Mr. CASSIDY: And their condition then as compared with the first time, as to the tonsillitis and the acute inflammation?—A. Apart from the acuteness of the inflammation——

Mr. SHAND: We have had all this before.

The WITNESS: The holes that were seen were dilated crypts as the result of inflammation and infection and apart from the recent infection present on 11th December and the loss of one of those strands of tissue there was no material alteration in the condition of the tonsil other than the orifice of the major crypt was I think slightly smaller. That may be accounted for by the recent inflammation.

Q. Then page 476 of the second trial you were asked some questions, on page 477 without the context being read:—

"Q. You have heard the evidence. The Plaintiff says that this occurred to her on 2nd October and she was examined as you know by various medical gentlemen including Dr. Bell, Dr. Marsh and I think you know that Dr. Ritchie has given evidence on a previous occasion and he has examined her, that is towards the end of the month about 26th October or thereabouts. Would there necessarily be evidence there of this inflammatory condition?—A. Following upon our previous suppostion there would be evidence there to-day and it would remain there until she died. The inflammatory condition would not still be evident. That would easily clear but the scar tissue would be there to-day. It could not be removed. I have seen too many of them not to know. I have seen the Plaintiff move her head about in Court. She apparently has a normal range of movement. That is inconsistent with her story. I have never treated this lady nor have I had anything to do with her. I gave evidence at a previous hearing and at the request of Mr. Hardwick I examined her tonsils and throat in Court. On examination I found that she had evidence of some chronic follicular tonsillitis that may produce little local abscesses which when they extrude or you can press the matter out of them, they settle down for the time being. That is a process that may go on and patients may have it without even knowing they have got anything radically wrong. That is a thing that is met with in practice quite frequently. It is very common.

Q. From your examination of the Plaintiff some six months ago in Court was there any evidence there of any scarring of any nature?—A. Only on the tonsil itself, but what attracted my attention was that there was nothing in the palate or the muscles on the side of the pharynx. They were perfectly natural and normal.

Q. Is the condition of the patient's throat consistent or inconsistent with her story?—A. Quite inconsistent."

None of that you may take it was read. This is the passage which was taken out and read: "This scarring on the tonsil that you mentioned—is that in any way referable or could it be possibly referable to some foreign

object ?—A. Not coming through the neck. She might have got a foreign body through the tonsil." (Mr. Shand objected to any leading.) It was suggested to you that there you were saying that that foreign body could come through the tonsil. Is there anything in that suggestion ?—A. No, nothing at all. I was trying to make it as clear as I could in my opinion such a happening could not have eventuated and gave the reasons expressed there. I wanted to make it clear nothing could have come through that tonsil coming up the neck. She may have had some local inflammation which would cause the eruption of those small abscesses.

Q. Did you say this a little later :—

"Q. What you saw was something superficial on the tonsil or was it deep in the tonsils ?—A. No, it was relatively superficial."

—A. That is correct.

Q. Did you go straight on after that :—

"Q. What about the deeper tonsil tissue—was there any sign of abnormality there ?—A. No, you could see from the movements of the muscle in front of and behind the tonsils that it was quite natural. There was no fixation."

—A. That is correct and that still held when I made the examination on 11th December.

Q. Have you got the papers called for by Mr. Shand ?—A. Yes, they are all here.

Q. Can I have them ?—A. Yes.

Q. Is this the chart ?—A. That is a copy.

Q. They are all exactly the same ?—A. Yes.

(Documents called for by Mr. Shand tendered and marked Exhibit "23.")

Q. Fagg was referred to you as a very old book—1886 edition ?—A. I was aware of the date of that. That is why I made the remarks I did with regard to the parathyroid tetany at that time.

Q. At that time had there been an investigation of parathyroid tetany ?—A. No, they did not know anything about it.

Q. Can you remember any other authority that refers to the clenching of the nails into the hands ?—A. No, I cannot name any.

Mr. SHAND : There is Russell Brain, 1933 edition, 769.

Mr. CASSIDY : It is under "Symptoms"—It reads : "The fingers are slightly flexed at the metacarpaphalangeal joints and extended at the interphalangeal joints. They are strongly adducted and the thumb is similarly adducted and usually extended. The cause of the limitation of the muscular spasm in mild cases to the small muscles of the hands is unknown" ?—A. That is bent down from the knuckle joints, the finger is straight but bent down from those joints.

Q. "Exceptionally the fingers become flexed at all joints" ?—A. That would be the fist.

Q. "And Rosset in investigating the tetany produced by voluntarily hyperpnœa"—what is that ?—A. That is over breathing.

Q. "Has shown that limbs will become rigid in any posture in which they are previously fixed." Has hyperpnœa anything to do with parathyroid tetany ?—A. Nothing at all.

Q. You gave an authority which spoke as to benign tetany and read later a passage dealing with grave tetany which said there were no additional symptoms ?—A. Yes.

Q. In benign tetany can you remember the words ?—A. No, I cannot quote the exact words.

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 11th January 1944, Re-examination, *continued.*

Q. You remember the reference ? What is benign tetany ?—A. The type which we expect to recover quickly with treatment. The actual spasms may be at the time very severe, but it does not say that the condition of the patient is serious, that is why we use the word " benign ". If you get the parathyroid tetany after removal of two or more of the parathyroids then you would get it very severe and that would go into the serious stage and may result in death.

Mr. SHAND : Then there is Osler & McCrae, volume 6, 3rd edition, 758—" Sometimes the hands are closed making a fist."

Mr. CASSIDY : Will you look at this one, page 758 ?—A. " The hand usually takes a very significant position—that of the obstetrical hand. It is also described as a pen-holding position. In many mild attacks only the thumb may be involved and in others the hand alone. Sometimes the hands are closed making a fist." That is referring to a general account of tetany, not specifically to parathyroid tetany.

Q. Look at Brain while you are on that same subject—page 769 ? —A. " Exceptionally the fingers become flexed at all joints." Then they go on to the over breathing. This is just a general description of tetany and not dealing with parathyroid tetany.

Mr. SHAND : Does not refer at all to parathyroid tetany ?—A. I do not say that. Parathyroid deficiency is mentioned.

Q. It does not exclude it ?—A. It does not specifically mention it.

Q. It does not exclude it ?—A. No.

(Luncheon adjournment.)

At 2 p.m.

Mr. CASSIDY : There was one matter you were cross-examined about with regard to spasm of the 3rd September 1938 ?—A. Yes.

Q. And a passage was read to you by Mr. Shand from the first trial, page 200, lines 36 to 41. I do not want to re-read them. Do you remember the passage I am referring to ?—A. I think I can remember the main details.

Q. It is one dealing with the question asked " In conjunction with the day before and in conjunction with what you have told us." The cross-examination is referred to at page 1472. Do you remember the passage ? —A. Yes, I think I remember the main portion of it.

Q. You wanted to make some explanation in regard to that ?—A. Yes. I think that was referring to— —

Q. " In conjunction with the day before, in conjunction with what you have told us the day before, you have admitted to me that on the 3rd there was information from which you could come to the conclusion that she had what you say was a true tetany spasm," and your answer was— " I don't say I came to the conclusion ; I said it would lead one to infer that it was " ?—A. Yes, that particular day the patient had a spasm, a tetany spasm, and I said that the point I wanted to make clear is this —that the reaction that she had to the intravenous injection was not enough in itself to lead one to conclude either that it was a true parathyroid tetany or that it was actually an hysterical tetany, because the mere fact that she responded and the spasm quietened after the intravenous injection of calcium might have happened in either case. It is much the same way—the simile was used before—if you do not want to give a person

an injection of morphia you give them an injection of water which very often has the desired effect if they have been asking for an injection—as long as they get the injection. Often it quietens their symptoms and it would be a similar way if that particular spasm were an hysterical tetany, the patient has learned to know what to expect after an injection ; and so you get the natural response. It would be a very difficult thing to determine from that one occasion as to what the exact underlying basis was, and before you can do that you have got to take the whole of the case as far as one can get the facts before you can arrive at a possible conclusion.

Q. You were asked to produce your notes ?—A. Yes.

Q. Those notes show various observations and considerations you have given to the matters ?—A. Yes, that is all they disclose.

Q. They are there for investigation of anybody who wants to see them ?—A. Yes. I have no objection.

Q. Allbutt and Rolleston, page 589, under the heading of " Tetany " :

> " Most commonly the thumb is abducted and in close contact with the index finger, or flexed into the palm beneath the index and other fingers, which are usually flexed at the metacarpaphalyngeal joints, and extended at the phalangeal articulations ; the outer and inner borders of the hand are approximated by spasm, of the phenar and hypothenar muscles, so that the palm is hollowed and the fingers are drawn together, mainly by spasms of the interossci ; thus, from the cone-like shape, it has been called ' the accoucheur's hand,' occasionally the fingers are flexed at all their joints by spasm of the long flexors, so that the fist is tightly closed ; and so powerful is the spasm sometimes that the nails may be driven into the skin and slough produced. The conical hand and the fist are both met with at all ages, and indeed both may be met with in some individual at the same time."

A. Yes.

Q. What do you say as to that ?—A. Yes. I would take it that that is again referring to the general tetany, not necessarily parathyroid, and then it would have to be in a very severe spasm, and that would have continued for a long period of time before you would get that extreme stage.

Q. Can you tell us whether your observation of her in Court you noticed this change of the nature of the spasm ?—A. The changed position of the condition of the hands ?

Q. Yes ?—A. Yes, I noticed that.

Q. Let me pass to the next thing and the last ; you prepared a chart which was objected to before but is now in evidence ?—A. I did.

Q. Is that chart the form of chart you would use in practice to illustrate and to indicate the condition of a patient in post-operative treatment ?—A. Yes, I tried to draw up what I call the best representation I could of the 12-hour chart—the actual period.

His HONOR : Part of Exhibit " 23 ".

Mr. CASSIDY : Does that illustrate it well—can you explain to the jury the post-operative position ?—A. Yes.

(Charts handed to Jury.)

Q. Are these inaccurate ?—A. I was going to explain the basis on which I drew this chart, what we call a 12-hour chart ; that is to say, the

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40. Hugh Raymond Guy Poate, 11th January 1944, Re-examination, *continued.*

figure as to pulse and temperature are taken from the record of the hospital at the 12-hour interval, namely 4 a.m. and 4 p.m., which is the practice apparently at St. Luke's Hospital. Some hospitals make it 6 a.m. and 6 p.m. You would see, looking at the chart on the day of the operation, the only thing reported there is the pulse. I did not put morning and evening on that purposely. I put day and night so as to conform with the record of the hospital. That is why there is that period of overlap.

Q. That is the way hospital reports go ?—A. Yes. So you have got to bear that in mind. Those are the morning and evening reports of the particular date. There was no record of the temperature until the evening report of the 16th.

His HONOR : The night report ?—A. Yes, of the 16th.

Mr. CASSIDY : That becomes the dating line ?—A. You will see the temperature was 99.4. The temperature is not recorded again until the night report of the 17th, when it was 101.6 or .8 ; then the night report of the 18th, when it was 102.4, or approximately that. Then, on the morning report of the 19th, it has dropped slightly to 101.6, and then the night report of the 19th it had its highest reading of 103.8, and after that the temperature fell, and you will see that on the night report of the 22nd it was down to 97. The unusual thing about that actual temperature chart as compared with the average reaction one gets after a thyroidectomy is the relatively high peak there when she went up to 103.8. That was just immediately prior to the discharge of the pus. In some of these severe cases of toxic goitre of course you get temperatures up to 106 or higher, and you have to get the post-operative crisis and the patient may die in that crisis, but there is nothing in that chart suggestive of that character, because when it was at its highest on the night report of the 19th you will notice her pulse was below 100, showing that there was nothing in the nature of thyroid crisis, because one of the indications of that is that the pulse will go to 160 or 180. I would say from the pulse chart and that temperature chart, except for the advance of sepsis, that followed an ordinary post-operative reaction after thyroidectomy.

Mr. SHAND : You will admit, taking a 12-hourly period to your chart, you have omitted quite a lot of fluctuations ?—A. Quite a lot of fluctuations in the four hours in between.

Q. That is your chart. (Shown.) By taking all the fluctuations, here is what I suggest you get that is missed by a 12-hourly period. You have got that down on the 16th ?—A. That is the night report.

Q. That is actually the morning of the 17th ?—A. Yes, 4 a.m.

Q. You go up until the 18th, and there is on the 18th a drop which you have not got owing to the 12-hourly period, and then a further drop which you have not got. You have got one drop from the 18th to the 19th. By taking the full report you get a drop to a certain amount, and then a further drop. Then you go up to the 19th. Then you get from the 19th to the 20th one drop. You will agree that the reports show a drop on the 19th—down to 100. It is a drop from what it was ?—A. Yes.

Q. And then on the 19th again a rise, and on the 19th again a drop. Your method of taking it necessarily ?—A. Yes, those periods in between the 12 hours.

Q. Then you get a rise to the 20th, which yours does not show at all. You show a drop from the 19th ?—A. 103.8 ; that is the morning of 20th.

Q. Yes. The next thing I draw attention to is on the 22nd you get a drop, and a rise, and a drop ?—A. Yes.

Q. Your 12-hourly period only shows a rise and a drop ?—A. Yes, that is correct. Those intermissions are not of any special significance; they occur in the interval periods.

Q. Except that it shows a fluctuating temperature ?—A. Yes, fluctuating, but not a swinging temperature as it was referred to. A fluctuating temperature is what one normally gets.

Mr. CASSIDY : You see the chart gets back close to normal in between. Does that in any way alter the medical value of the observations you have shown on your chart ?—A. It only stresses, I think, the fact that in the first few days she had a more moderate post-operative reaction.

Q. If you put in what is there, it gets your chart back nearer to normal ? —A. Yes.

(Witness retired.)

(Letter of 28th November 1941, Defendant's solicitor to Plaintiff's solicitor, and reply of 1st December 1941, tendered : Exhibit "24" : Read to Jury.)

(Plaintiff's evidence given on the first, second and third trials tendered by Mr. Cassidy to establish that the Plaintiff has altered the story she had told and that she has made statements inconsistent with her present testimony.

Mr. Shand objects, and states that the proper way to tender the evidence would be to call the shorthand writers concerned and have the transcript read over to them. His Honor stated that in his opinion the evidence is admissible, and that he would give Mr. Cassidy the right to call the shorthand writers concerned.)

(Mr. Shand further stated that he had agreed that what was in the Appeal Book was correct subject to what had been corrected. There was no objection so far as he was concerned to the shorthand writers copying down in the form of those transcripts anything relevant in the previous trials ; he had never adopted the attitude that the shorthand writers should be called, to be read on to the transcript in this trial and not put in as an exhibit.

Mr. Cassidy suggested that in view of the enormous expense to the parties the Plaintiff's evidence could be cut out of the Appeal Books, put in evidence for reference by either side and not become an exhibit.

Mr. Shand said that if Mr. Cassidy referred to any passage or commented on any passage to which he has not referred the Plaintiff he would ask leave to call evidence to deal with those matters afterwards. The Plaintiff was going back into the box in the case in reply and why could not Mr. Cassidy put anything additional to her on which he wished to comment.

After further argument His Honor said he would admit the evidence and by arrangement between the parties the shorthand writers need not be called, but the Court Reporting Staff would make copies of the Plaintiff's evidence as follows :—

In the Supreme Court of New South Wales.

Defendant's Evidence.

No. 40.
Hugh Raymond Guy Poate, 11th January 1944, *continued.*

First trial, from page 6 to page 58 and pages 205–207 in reply. (Appeal Book.)

Second trial, pages 1 to 146 inclusive.

Third trial, page 4 to top of page 44, 79 to the middle of page 80 and 277 to 278. (Appeal Book.)

The pages to be numbered accordingly, e.g., first trial, page so and so, second trial, page so and so, third trial, page so and so, and to be headed " Evidence of the Plaintiff.").

Case for Defendant closed.

Case in reply.

CASE IN REPLY.

Plaintiff's Evidence.

PLAINTIFF'S EVIDENCE.

No. 41.
George Stanley Thompson, 11th January 1944, Examination.

No. 41.

FURTHER EVIDENCE of Dr. George Stanley Thompson.

His HONOR : You are on your former oath ?—A. Yes.

Mr. SHAND : You have previously given your opinion about this object coming through the neck and out the top ?—A. Yes.

Q. You have heard practically the whole of the evidence ?—A. Nearly all of it.

Q. Have you heard anything to make you alter your opinion ?—A. Nothing whatever.

Q. You heard yesterday and this morning Dr. Poate give evidence when various things were put to him about unconsciousness, the hand turning over—complete flexing of the hand ?—A. Yes, and of the fingers.

Q. And he advanced the suggestion that parathyroid tetany was only recognised of late years, and that these references might refer to other forms of tetany. You heard him say that ?—A. Yes.

Q. What do you say about the manifestations of tetany, whether they arise from parathyroid tetany or not ? (Objected to : allowed.)

Q. Do you refer to Byron on Modern Medical Therapy ?—A. Yes.

Q. Would you refer to the passage and the page (book handed to witness). It is on the right-hand side at the bottom ?—A. The clinical manifestations of tetany.

Q. You have the pages and references noted ?—A. Yes. Under " tetany " clinical manifestations. At the bottom of page 3127—" the subjective and objective manifestations of tetany are always the same, of the same general character regardless of the idealogy." That means to say that it does not matter how the tetany is produced the symptoms are always the same whether it is surgical or medical, whether it follows a parathyroidectomy or various medical diseases characterised by lack of supply of calcium or draining off of calcium.

Q. Since you gave evidence there was an examination conducted by certain medical gentlemen giving evidence for the Defendant. They were Dr. Edye, Dr. Poate, Dr. Steel, Dr. Marsh. Will you tell us what exactly occurred ?—A. Before I took her into Dr. Marsh's rooms I examined Mrs. Hocking.

Q. We need not bother about that examination. You made an examination before you went in ?—A. Yes.

Q. And you can tell my friend what you discovered then, if he wants to hear it ?—A. Yes.

Q. When you went in these four gentlemen were there ?—A. Yes, and Dr. Marsh sat down in front of the patient and endeavoured to pass a probe into this canal.

Q. That is the probe ?—A. Yes, it was a probe that was curved like that (shown). After a few minutes he turned to me and said " Will you have a try ? " Before he did that I said " It is no use having a probe like that ; it must be bent at right angles, otherwise you can't get it in." So I then told Dr. Marsh that I preferred examining as much as possible in the daylight owing to the trouble with my eye. I put the light on the other side then. It was on the right-hand side, and I put it on the left-hand side, and I put the mirror in front of my left eye, and I noticed that the left tonsil in the region of this canal was reddened due to the trauma produced by this probe. The right tonsil was quite normal. The rest of the left tonsil was normal.

Q. Before that Dr. Marsh had been attempting to get it in ?—A. Yes, owing to the redness which had never been present before, I did not get the probe in straight away, but I got it in after perhaps half a minute or a minute, and I bent the probe—I have the probe here and I can show you. I bent this probe at right angles like that (indicating).

His HONOR : That is the one that was used ?—A. Yes, this is the one that was used. Then, after a little time, owing to the redness which obscured the appearance of the path, I passed it in transversely, not vertically, transversely like that. Then when I got up, later on Dr. Poate came up to me and said " How far did that go in ? " I said " Up to about there " indicating that it was not the whole length.

Q. Indicating about what length ?—A. About a quarter of it did not go in. I said " Up to about there." He said " that would be a third of an inch ? " I said " Something about that." I said " Of course, it has contracted down now considerably owing to the scar tissue both in length and in diameter." I forget whether he agreed with that or not. Then I noticed Dr. Edye examine Mrs. Hocking for certain measurements, and he put her head up like that (indicating), backwards and to the left hand side, and he made various examinations from the lower part of the neck to the thyroid cartilege, to the angle of the jaw, and to the ear. The patient's head, of course, was not in the anatomical position to get the correct measurement. The body must be like that, otherwise in a position like this the measurements on this side would be longer than on the other side. There was no tonsillitis. Mrs. Hocking did not have tonsillitis then, and she has never had tonsillitis on any occasion that I examined her, and I have examined her about 20 times and nearly on every occasion before other doctors had examined her, and she has never had any physical pellets in any of her crypts either.

Q. Did you say that she had a cold ?—A. No, she had not.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41. George Stanley Thompson, 11th January 1944, Examination, *continued.*

Q. Would you say that she had a recent cold which would probably account for the lining up of the recent infection to Dr. Poate or anyone ?—A. No, certainly not.

Q. Was anything suggested that you had put the probe either into the supra tonsillar fossa or as called by Dr. Poate, the main crypt ?—A. The word was never mentioned.

Q. And did you know ?—A. There was not any supra tonsillar fossa.

Q. Will you tell us what was disclosed by the examination with regard to the presence or absence of the supra tonsilla fossa ?—A. There is no supra tonsilla fossa on the left-hand side, all there is is a transverse canal going from the middle outwards, later towards the pharynx.

Q. Is that the one you put the probe in ?—A. Yes, and over that canal is one strand of tissue now. There were three originally. The canal now is very much smaller than it was. In fact, this probe had slight resistance. At one time the glass probe could be put in. Owing to the strands of tissue having broken it was laid down like that and had become shallow. Of course, there are the scar tissue contractions as well.

Q. Could you see what had happened to the supra tonsilla fossa ?—A. If there was a supra tonsilla fossa there at one time it was there no longer ; it had been obliterated.

Q. It had been obliterated ?—A. Yes, I think it was there at one time because everybody has a supra tonsilla fossa. The inflammatory condition had obliterated it.

Q. You had given evidence on two trials previously ?—A. Yes.

Q. Was it ever suggested to you that when you probed the hole in the tonsil you were going into the supra tonsilla fossa ?—A. Never.

Q. And you gave evidence in that regard before ?—A. In what regard ?

Q. As to there being a hole into which that glass——?—A. Transverse punched out canal.

Q. And it was never suggested to you that there was a supra tonsillar fossa ?—A. Never.

Q. You heard certain medical evidence given, bearing on the question whether the eye could or did move back in tetany ?—A. Yes.

Q. Are there certain matters that you place importance on in regard to that incident ?—A. There are three factors there. It is not only the eye, the muscles of the eyelid called the obicularis and the facial muscles. All those muscles were involved in that incident. In my opinion, at that time, she had a slight tetany spasms in the hand, manifest tetany in other words. That indicated that the calcium content was down to about 6 or 5 milligrams. It required a very slight additional amount of reduction to produce an aggravated spasm in a particular locality, and I submit in the absence of a better explanation——

Mr. CASSIDY : Is this witness entitled to say " I submit in the absence of a better explanation " ?

Mr. SHAND : Is this your opinion as an expert ?—A. Yes. I have never heard anything before, so I assume that is the explanation. In view of the pressure caused either by the exudation of the tube or both there was an interference with the circulation. I did not say that the circulation was stopped altogether, I would not make such an absurd suggestion. There was sufficient interference from this pressure to make

that slight alteration in the blood supply to those muscles, reducing it from 6 to 5, and that I think is the explanation of this aggravated localised spasm, as opposed to the minor spasm in the hand which enabled her to do what she did.

(Mr. Cassidy states that he still objects.)

In addition to that there is another factor. In hysteria for some strange reason you do not get the facial muscles or the tongue involved.

Q. Dr. Poate said that he did not say. You do know, do you ?—A. Yes.

Q. And you are able to support it by authority ?—A. Yes.

Q. Is the reference in Taylor ?—A. Yes.

Q. Have you got that there ?—A. Yes, it is in the old copy of Taylor. Which references are you referring to ?

Q. The fact that in hysteria you do not get the facial spasms ?—A. Yes.

Q. While that is being looked up, you were asked by my friend to produce certain references on certain pages of the notes. The pages were turned up, and they are references to unconsciousness occurring. Will you just give those ?—A. I have not looked these up recently, but I think these will give you what you want—Barr, volume 3, 3128, 3130—these refer to the possibility of getting unconsciousness in severe tetany, it only occurs in severe cases. Encyclopædia of Medicine, volume 9, 323, at the top ; Allbutt & Rolleston, I forget the volume, 589, 590 and 594 ; Osler, not Osler and McRae, 758 ; and there is one in Osler and McRae, generalised convulsions, 759 ; Brain, 769, I do not know that reference ; Nelson, volume 3.

His HONOR : What do you mean by you don't know it ?—A. I have not seen the actual reference myself.

Mr. SHAND : You heard it read out in Court ?—A. Yes. Nelson, volume 3, 312, Binney, 523 ; Harg. 647 ; Johnston 320—I do not know that it actually says " unconsciousness," but it says " convulsions," and that implies unconsciousness—Osler & McRae, 764, 754 ; Cameron, I have not that noted.

Q. (Showing book.) ?—A. This is dealing with history. In " Paraplegia the legs can often be moved . . . are always bad." That is page 382, at the top. This is an old edition. I had it when I was at hospital—1901—a long time ago.

Q. Do you consider that the chart which has been tendered in evidence now, produced by Dr. Poate, gives a proper picture ?—A. No, it does not.

Q. Have you yourself drawn a chart reflecting the temperatures as indicated on the hospital records ?—A. Yes, the importance of getting all the temperatures in a thing like this—at least two a day—and when the patient is bad four—4-hourly—is to show the up and down character of the temperature, what has been called swinging temperature, what we call the recording chart. The temperature goes up and down and it is important to get that as complete as possible, otherwise it may mislead the surgeon. If a surgeon came into the ward and saw a chart like that he would immediately assume there was sepsis.

Q. How soon would you assume that, from the hospital records ? —A. After an operation it usually takes three days for the germs to

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41. George Stanley Thompson, 11th January 1944, Examination, *continued.*

incubate, and that is the day you look for the sepsis or infection if you conclude it may occur. Here it started on the 17th. The temperature was 99.4 on the morning of the 17th.

Q. Is that abnormal for that day ?—A. Yes, and at that time, there is no question.

Mr. CASSIDY : 99.4 is normal for what time ?—A. For that day.

His HONOR : What time of the day is that ?—A. 4 a.m.

Mr. SHAND : I think Dr. Poate said unless the temperature were abnormal it would not be put down in the hospital records ?—A. I was not here when he said that.

Mr. CASSIDY : I make my objection ; that is, as to his capacity to speak as to temperature. He has never done an operation of thyroidectomy and he has drawn an inference, not having done it, from a temperature of 99.4 three days after.

The WITNESS : I am not doing that, because I notice in the chart here, for some reason or other the temperature is omitted on the 15th and 16th. I would have thought after any operation the temperature would have been put down throughout. They may not have taken it, or it may have been overlooked.

Mr. SHAND : Leave out thyroidectomy. Have you had a long experience with post-operative effects and conditions ?—A. Yes, surgery generally ; all kinds of medical illnesses ; sepsis.

Q. You have said it makes no difference in principle ?—A. It is just a matter of general surgical principles. It does not matter whether a thyroidectomy. It is a matter of general principle in regard to infection.

Q. Is there anything on the 17th which would put you on your guard ? —A. There is reference to 99.4. I admit it is not a very great rise, but if the temperature was normal before that time it would have been significant. In this case here what is called a post-operative rise of temperature does not occur so much those days since drainage tubes are put in. In the olden days, before drainage tubes, the thyroixine used to collect underneath the wound and cause an immediate rise of temperature. You don't get it here. Here is the infective or septic rise of temperature.

Q. That chart faithfully follows the rise of temperature ?—A. I think I have it as accurate as I can. Where the night report shows 4 a.m. (Temperature chart tendered and marked Exhibit " U.")

Q. I think you also draw out a chart of the pulse rate ; is that so ? —A. Yes.

Q. Apparently the hospital records show prior to the operation a pulse rate only on one day, the 11th March ; is that so ?—A. As far as I remember, yes.

Q. And on that day it was shown as 88, 92 and 96 ?—A. 80 and 90 odd.

His HONOR : 88, 92 and 96 ?—A. Yes.

Mr. SHAND : Immediately after operation, 102 ?—A. Yes.

Q. What do you say as to that ?—A. Well, a considerable increase, or a fair increase, then after that remaining at about 100 or so for a few days.

Q. What do you say as to that ?—A. A moderate increase.

Q. I am not dealing now with the thyroidectomy, but I am dealing with the question of inflammation ; what do you say is the more important indication with regard to inflammation, the pulse or—— ?—A. To the surgeon, the temperature. That is the thing we always look at first, the temperature. When I say that I am particularly having regard to infection, infection causing inflammation. You can have infection without inflammation.

Q. When you suffer from some thyroid disease the pulse is important when it is merely the thyroid ?—A. Yes.

Q. You have heard certain of the evidence of the lay and medical witnesses. They lay emphasis on what has been called a sudden cessation of tetany after the incident on 2nd October ?—A. I do not admit that ; there is no evidence tetany suddenly ceased—only the manifest tetany did. On the 28th October the calcium count was 7.2. Presumably, therefore, after the 2nd October it had been lower still and she would have been in a condition of latent tetany if she had been examined. There is another factor ; in most cases of tetany the gradual cessation of the tetany is due to the fact the cause gradually ceases. Here there was a sudden cessation of the cause—an abscess ruptured, and there was a sudden cessation of the factor that had been immobilising the parathyroid gland.

(Pulse-rate chart tendered and marked Exhibit " V.")

The WITNESS : So I do not admit that the tetany suddenly ceased—but manifest, apparently, yes.

Q. You heard Dr. Ritchie say that tetany may come down——

Mr. CASSIDY : Where is this ?

Mr. SHAND : I will reserve it for the address.

Q. That is your view of it and I think you do not need support. It has not been proved she did not get a latent tetany after the 2nd October ? —A. The presumption is that she had.

Q. Have you in mind she was also being given paroidin after the tube——?—A. Paroidin and calcium, and plenty of milk, containing calcium, and the cause had been eliminated—all those factors—and also the probable low calcium content of the blood. Possibly it might have been six ; probably lower than it was four weeks later on.

Q. You have heard certain evidence given as to the blood count ?—A. Yes.

Q. And the suggestion that that is inconsistent with what the Plaintiff has sworn her condition was—you heard that ?—A. Yes.

Q. You won't have heard for the first time there was no differential count ?—A. That is so.

Q. What does that mean ?—A. The differential count is more reliable than the absolute count. We found out at St. Mary's Hospital, London ——(Objected to.) I did blood counts both absolute and differential.

Mr. CASSIDY : When ?—A. I do any number of them.

Q. When ?—A. I used to.

Q. When ?—A. Up to the present time, and right from the time I was at St. Mary's Hospital.

Q. Up to the present time ?—A. Yes, differential counts I do, myself.

Q. When do you do them ?—A. I do them with my own microscope quite easily and simply.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41.
George Stanley Thompson, 11th January 1944, Examination, *continued.*

Q. Do you do them yourself ?—A. Yes.

Q. For anybody ?—A. No, for myself.

Q. When did you do your last ?—A. I forget now. I do them just as occasion requires.

Q. When did you do your last ?—A. I do not remember.

Q. Ten years ago ?—A. No, within the last few months.

Q. Where ?—A. I do them. I take a sample of blood from the patient.

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

Q. In your home ?—A. Yes.

Q. Where is your home ?—A. Don't you know ?

Q. Where is your home ?—A. Randwick.

Q. You do them there ?—A. Yes, a differential count.

Q. What is the name of the patient—will you write it down ?—A. I don't remember the name of the patient. I do them now and then if I have occasion, and if there is pus and there is not sufficient in the clinical evidence to tell me directly I do a differential count.

Q. When did you get your qualifications for that ?—A. I got my qualifications for that when I was a student when I was working in the pathological department of St. Mary's Hospital under Sir Alan Ross-Wright.

Q. Were you in the Pathological Department ?—A. Yes.

Q. As a student ?—A. Both as a student—chiefly as a student.

Q. What else ?—A. Later on when I became house surgeon I then went there.

Q. You did a blood count then ?—A. When I was a student I did the absolute blood count.

Q. What year was that ?—A. I qualified in 1906.

Q. And you did differential counts then ?—A. No, I did differential counts later on, because they are much easier. If I want an absolute count done now from blood in regard to such as we have done here, I would send up to a pathologist; but the differential counts I do myself. They are quite a simple thing. All you have to do——

(Objection to evidence pressed.) (Evidence allowed.)

The differential count is a very simple matter. All you have to do is to prick the patient's skin, get blood on a slide, and also on another slide, then stain it with stain for one minute, stand for five minutes, water wash it off and dry it, and examine it under a microscope, and you pass a slide across a field and make an examination of the polymorphs and mononeuclears indicative of chronic inflammation. The ratio ordinarily is 3 to 1. You divide them over 12 or 20 fields. If phagocytosis specified symptoms are not developed and you think there is pus; and if instead of getting, say, three polymorphs to one you get five or six to one, then it is conclusive. That is quite simple and easy.

Q. Does that give you an accurate picture then, the blood count ?—A. Yes, it does. You often find in acute infections there may be leucocytes or even a normal leucocyte count, or, in severe infections, leucopenia, that has reduced leucocyte count. In St. Mary's Hospital we prefer the differential count to the absolute count—it is more reliable.

Q. You have already given your view of the blood count ?—A. No, I have not given my view. My view of the blood count is that it was not quite normal. It was indicative of recovered blood. The hæmoglobin is a little bit reduced here, and the leucocyte count is low. We used to regard

10,000 per cubic millimetre at St. Mary's, 7,000 to 10,000 as the normal count. Here it is 5,000 odd if I remember rightly, so, rather a leucopenia.

Q. Do you remember Dr. Poate suggesting that the tube could not get up above a certain area because a fascia was there?—A. That is quite incorrect. There are three fascia compartments in the neck. There is the deep cervical fascia which comes round the whole neck; below that is the pretracheal. Those fascias come from the spine—the ligamenta muchea at the back—they invest the neck and structures. The second layer is the pretracheal fascia. Between that and the deep cervical fascia are the muscles. The next layer is the preverticle fascia in front of the spine, and that contains the viscereal compartment containing the thyroid gland, trachea and gullet. (Objected to.) That is the compartment in which the thyroid gland is. That extends right up to the base of the skull. The compartment Dr. Poate was talking about was a muscular compartment. The thyroid gland is underneath that. It is in the middle compartment, the viscereal compartment, between the pretracheal in front and the preverticle behind. There is nothing difficult or involved about the matter at all; it is quite simple, simple anatomy.

Q. And you have already expressed your view about the ability of the tube to pass?—A. There is no difficulty whatever in the tube passing from the thyroid through to the angle of the jaw, which is about an inch, a little bit over or under, as the case may be, because the only thing that lies in that compartment and separates it from the anteria of the pharynx is the membrane, the mucous membrane of the pharynx. There is a triangle there under the angle of the jaw, and apart from the little fibrous membrane and mucous membrane there is no obstruction for anything passing from the neck into the pharynx. At that point is also the superior laryngeal nerve; that is a sensory and not a motor nerve.

Q. It is said that that was not near the thyroid, what do you say as to that?—A. What was not near?

Q. The laryngeal nerve?—A. The superior laryngeal nerve is just above the upper pole of the large prolongation of the thyro-hyoid ligament and is in the vicinity of the superior thyroid artery. The difference between the upper pole of the thyroid gland and the superior laryngeal nerve might be half an inch or three-quarters of an inch.

Q. I think you can elicit it on this (Book shown to witness). Is that diagram as Dr. Bell says it is?—A. No, this is accurate. These are accurate illustrations of the anatomy of the body. They are not pulled out of position to demonstrate things like you would in a diagrammatic illustration. Plate 4 of Jamieson's Anatomy, here is the space I am referring to under the angle of the jaw, the lower border of the superior constrictor is inserted on the inner upper aspect, and the middle constrictor is inserted there (shown). There is a distinct triangle there, and here is the apex of it, and in that place there, there is the fibrous membrane, and in that is the mucous membrane (shown).

Q. Where is the nerve?—A. There is the superior laryngeal nerve (shown).

Q. Where is the thyroid?—A. It nearly reaches the upper border of the thyroid gland.

Q. I think it was Dr. Edye said it was nowhere near it?—A. No, he said it was not a sensory nerve. This is the motor nerve, the recurrent laryngeal nerve.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41. George Stanley Thompson, 11th January 1944, Examination, *continued.*

Q. He said the sensory nerve was not near the thyroid ?—A. That is incorrect. It is only a short distance, I have not measured it, but I should say half an inch.

Mr. CASSIDY : Where is where the tube went in ?—A. Up there (shown).

Q. Right near it ?—A. Yes.

Q. Not down on the breastbone ?—A. The broken piece of tube was right up here (shown).

Q. At the top ?—A. Yes, at the upper border of the thyroid cartilage. You can see the upper pole of the thyroid gland. It was at the upper pole of the thyroid gland.

Q. That is where the tube is ?—A. That is where the tube was before it erupted.

Mr. SHAND : And when you get an enlarged thyroid can you get it very close to the tonsil ?—A. If it is enlarged it goes a little higher.

Q. Would that give you an idea (shown) ?—A. There is a diagram there that gives a very good idea.

Q. Have a look at this one first ?—A. I don't know what kind of thyroid gland that is. That is reaching, I should say, just above the upper border of the thyroid cartilage or at least to it. I have a diagram in that book that shows it very well, on Plate 52, that shows it very well.

Q. You are dealing with a normal gland now ?—A. Yes, that is not enlarged, and it nearly reaches the upper border of the thyroid cartilage. Of course, there are variations.

Q. The Jury want to know where the tonsil would be ?—A. Just under the angle of the jaw. If you compress the angle of the jaw the angle goes down and that gives you a misleading idea possibly about the tonsil, but the tonsil is just under the angle of the jaw. There is another diagram here, Plate 50, and that shows how the thyroid gland is in the visceral compartment between the protracheal layer there and the pretracheal, so it is behind the layer that Dr. Poate spoke about and not in front of it, and you will notice there how it touches the gullet below and the pharynx above, so that there is nothing between the superior constrictor and the middle constrictor in the triangle except mucous membrane and the fascia on it.

Q. You have heard evidence given about the various ways there is a danger of hæmorrhage from, I think ?—A. Abscesses.

Q. Yes. I think first of all Professor Inglis said that veins were more liable to hæmorrhage than arteries, and Dr. Poate said ?—A. Not hæmorrhage, thrombosis.

Q. Dr. Inglis said that veins are thinner and more liable to hæmorrhage than arteries ?—A. No.

Q. We will turn it up and see what was said ?—A. The veins are thinner, and, other things being equal, a thinner thing would be more likely to be affected than a thicker vessel.

Q. I suppose it will be agreed that Dr. Poate said arteries are more liable to hæmorrhage than veins ?

Mr. CASSIDY : No, he said that different processes affect arteries than veins.

His HONOR : Page 1228 is what you are referring to, I think. (Read.)

Mr. SHAND : We will settle it in a moment, but what do you say about the danger of thrombosis ?—A. There is very little danger, as a matter of practical politics, if it does occur it is more likely to occur in smaller vessels.

Q. Here is what Dr. Poate said, at page 1399 : " What do you say as to veins ?—A. Not so susceptible, it is the arteries that are important " ? —A. I entirely disagree with that, and that is against the authorities, other things being equal.

Q. You would agree in that respect rather with Professor Inglis ?— A. As far as that occurs it is quite uncommon, if you think of the number of abscesses and inflammations in the human body, and the rarity of these things, it does not occur very often.

Q. Can you give an illustration ?—A. I can give you lots of illustrations, and I am referring to the big arteries, because those are the ones referred to here, the carotid artery and the jugular vein along the neck, with all the various inflammatory conditions you get in the neck, it is the rarest thing in the world to hear of such a thing.

Q. Do they occur close to blood vessels ?—A. Yes. Then axillary abscesses in the armpit, the same thing applies there. Then the thoracic artery, abscesses to the lungs or empyema. You never hear of such a thing. Then in the abdomen, the abdominal aorta, and abscess in connection with the kidney, and in appendicular abscesses, you never hear of such a thing. If you go a little further down——

Mr. CASSIDY : I object to the witness saying that you never hear of such a thing.

The WITNESS : I should say probably in my experience and in my reading I would have heard of them if they were common. I don't say they never occur, but if they do occur what I say is they are very rare. Then coming down a little further, and this is one of the best instances of all, the appendix is right over the external iliac artery, and you can put your finger on it and feel the throbbing in the artery, and in all the thousands of cases of appendicular abscesses that occur whoever heard of the iliac artery rupturing ? Sometimes there may be difficulty where there are adhesions and you cannot hook it up, and that is the guide that is given.

Mr. SHAND : That indicates how close it is ?—A. Yes, it is just over it. Then pelvic abscesses, which are very common, involve the internal iliac artery, and you never hear of hæmorrhage. Then you can go a little further down to the groin and you have the inguinal abscesses. Whoever heard of a hæmorrhage from an internal inguinal abscess ?

Mr. CASSIDY : What does this mean—" Who has ever heard " ?— I will put a question to him to-morrow.

His HONOR : Wouldn't it be better to say " I have never heard of one " ?

Mr. SHAND : It is more than your hearing of it, you do read the text-books ?—A. Yes, from my reading and my experience in various hospitals in England, South Africa and so on. Then there is the femoral artery in the leg and the artery in the back of the knee joint often in the vicinity of osteo-myelitis and periostitis, both of which produce abscesses. And there is another thing in regard to this case, there was infection in

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41. George Stanley Thompson, 11th January 1944, Examination, *continued.*

this case. The superior thyroid artery had been ligatured and it was vulnerable, and although it was exposed to infection it was not so.

Mr. CASSIDY : Can this witness talk like this ?

Mr. SHAND : Your own witness has given evidence that if arteries are ligatured they are specially susceptible to secondary hæmorrhage.

Q. You said the artery had been ligatured and—— ?—A. It was more vulnerable.

Q. And you have said, and drawn attention to the fact that in this case it was the admitted fact that there was suppuration for some time ? —A. Yes.

Q. And that the ligatured artery was not affected ?—A. Not only so, but infection was confined from the 17th to the 20th. It has been suggested if that abscess is opened there is not the danger, but in this case it was enclosed from the 17th to the 20th.

Q. It has been said that there is no analogy between the psoas abscess and the present condition ?—A. I don't agree with that. There is a difference in degree between chronic, sub-acute and acute infection, but not a difference in kind, they all act in the same way, all kinds of toxin which paralyse or kill the tissues.

Q. You don't say they are the same toxins ?—A. No, but they have the same result. With the chronic infection it is brought about by the blood vessels, the blood supply being cut off by cellular inflammation.

Q. Several references have been made to tubercular abscesses ?—A. That psoas abscess is a tubercular abscess.

Q. In Bowers & Johnston there is an illustration of a tuberculous abscess breaking through the fascia ?—A. Yes. Of course an abscess can break through the fascia ; an abscess can break through anything for that matter, bone if you like.

(Hearing adjourned to Wednesday, 12th January 1944.)

12th January 1944.

Twenty-eighth day—Wednesday, 12th January, 1944.

Mr. CASSIDY : We have not got that other matter quite adjusted, of which we were talking yesterday. Your Honor will remember the position is that the evidence is admitted and the Court Reporting Branch was to type it out for us. They are under extremely——

His HONOR : You made representations to me and I saw you and Mr. Shand about it. It is only going in as part of the record not as an exhibit, instead of typing it out again——

Mr. SHAND : I am still trying to get my friend to say if there is any fresh matter he is going to comment on.

His HONOR : Do you assent to my suggestion that is the most convenient way to do it ?

Mr. SHAND : Yes, my friend should indicate to me if there is any fresh matter he is going to put to the Plaintiff so that I can indicate it to her in the box. Does my friend know of any fresh matter he is going to put to her ?

Mr. CASSIDY : I cannot absolutely say it but I do not think there is.

Mr. SHAND : I will accept it if you will tell me if it occurs to you that there is any fresh matter. Under those circumstances I will waive all objection.

Dr. GEORGE STANLEY THOMPSON, further examined.

Mr. SHAND : You were referring yesterday to certain things and I think I passed to another subject about the one of the turning out ? —A. Yes, I wanted to amplify what I said in that connection. First of all it was suggested that I said this tube would so press upon the carotid arteries in the same way as would digital pressure. I never made any such suggestion. All I said was that the tube could, by pressure, interfere with the circulation——(Objected to.)

Q. There are one or two considerations——(Objected to ; by permission the doctor was allowed to give this evidence.)

Mr. CASSIDY : Your Honor has allowed the doctor to add something.

His HONOR : To the argument.

Mr. CASSIDY : In view of certain evidence he has given against the doctors as to that tonsil examination, will your Honor bear that in mind in dealing with the evidence ?

His HONOR : Yes.

Mr. SHAND : There were two factors you were going to mention ? —A. Yes, this tube was in the vicinity of the " Y " shaped carotid junction of the three carotid arteries. In the early part of May, in turning her head to the left——(Objected to.)

Q. You are relying on the evidence that she turned her head in May ? —A. Yes.

Q. And blood was seen ?—A. Yes. (Objected to.)

His HONOR : Where is the evidence ?

Mr. SHAND : I withdraw the question.

Q. You can, if so desired, add certain factors to your evidence in connection with that ?—A. A good deal.

Q. Dr. Poate has said that in the case of tubercular infection it could not be liquefied unless there was some secondary infection of staphylococcus ? —A. Yes, it would remain caseous—that is to say, solid. I say that is not true. It is an abscess, it is liquid, and there is a form of treatment for the tuberculous abscess—you must not open them owing to the staphylococcus infection, but the pus is liquid and if you put an exploring syringe into it you can aspirate the fluid. You do that perhaps once a month or once in six weeks and if it were not liquid you could not possibly aspirate it into a syringe. As a matter of fact they do not get secondarily infected with staphylococcus unless they come quite close to the skin.

Q. Dr. Poate said that you cannot get " non-suppurative serous inflammation." That is about page 1400 ?—A. That is not so.

Q. Can you give examples of that ?—A. Yes, plenty.

His HONOR : What stage of the evidence was it ?—A. I could not say.

Mr. SHAND : I will have that looked up in the transcript.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41.
George Stanley Thompson, 12th January 1944, Examination, *continued.*

Q. You made a number of examinations of the Plaintiff's throat ?—A. Yes.

Q. Have you ever noticed any tonsillitis ?—A. Never at any time.

Q. Can you get tonsillitis without pain ?—A. No, if there is no pain there is no tonsillitis—chronic or acute. Of course, that is excepting diphtheria which is not strictly confined to the tonsils.

Q. A good deal has been said about this infection. In your opinion was there more than one phase of infection ?—A. Yes, the initial—— (Objected to.)

Q. You heard the evidence of Mrs. Fisher ?—A. Yes.

Q. You heard the evidence of the Plaintiff and that of her husband ?—A. Yes.

Q. And the Nancarrows ?—A. In the last trial, yes.

Mr. SHAND : Of course, if I cannot deal with this there is no evidence that can be given in reply. The evidence for the Defendant is that is not within the realm of possibility.

His HONOR : This witness has given evidence in chief. In chief the witness gave evidence that infection could die down and be quiescent and then light up again. I will allow the question but I am very doubtful about it.

Mr. CASSIDY : Evidence in reply should be strictly limited because I have not had an opportunity of calling further evidence.

His HONOR : If necessary I will give you that opportunity.

Mr. SHAND : I do not propose to ask any more questions.

His HONOR : Very well, I allow the question.

Cross-examination.

Cross-examined.

Mr. CASSIDY : I want to read what Dr. Edye said at page 1176, but before that you remember the four doctors you mentioned were present at the examination of the tonsil ?—A. Yes.

Q. You, in their presence, used that probe ?—A. Yes.

Q. I want to read this evidence and ask you what you say as to it. At the top of page 1177 :

> " Q. What was the condition of the Plaintiff's throat and tonsils at that time ?—A. She had what is called a chronic inflammation of the tonsils. I saw Dr. Marsh express secretions from both tonsils indicating a chronic or sub-acute inflammation. There was a definite inflammation in her throat."

Is that true or false ?—A. It is untrue——

Q. That is untrue ?—A. The inflammation——

Q. That is untrue ?—(No reply.)

Q. Did he express fluid from her throat ?—A. I could not see.

Q. Is that your answer ?—A. Yes, the others were looking behind Dr. Marsh and I could not see.

Q. You do not know whether he expressed secretion from both tonsils ?—A. I don't know that, but she had not got tonsillitis.

Q. That, of course, you were watching closely ?—A. You cannot when you have two or three people looking over another person's shoulder.

Q. You were there representing her ?—A. Yes, but I could not see what Dr. Marsh was doing, the other two doctors were behind him—or three of them.

Q. You will not deny that occurred ?—A. I deny she had tonsillitis but in regard to the expression of material from the tonsil I cannot say.

Q. Did you ask the Plaintiff whether the doctor had pressed the tonsils to get secretion ?—A. I did not.

Q. You heard that evidence sworn to by Dr. Edye ?—A. Yes.

Q. Have you asked her since ?—A. No.

Q. Didn't you consider it important ?—A. Quite unimportant.

Q. Though it was called "pus" ?—A. They might have called it pus——(Objected to.)

Q. Didn't you hear in Court it described by the doctors as "pus" ?—A. I don't remember that.

Q. That would be very important ?—A. It might be.

Q. This tonsil incident is of paramount importance ?—A. Yes.

Q. The question of the state of her tonsils is of paramount importance ?—A. Yes.

Q. Because if she has had tonsillitis you will get scarring of the tissues ?—A. Never had tonsillitis.

Q. If she had tonsillitis she would get scarring of the tissue ?—A. Not necessarily.

Q. You may ?—A. If there is an abscess you might.

Q. She has sworn she had abscesses ?—A. In connection with the incident of October 2nd, yes.

Q. Since October 2nd ?—A. Yes.

Q. And abscesses would cause scarring ?—A, They might.

Q. If they might it would be consistent that it would come through abscesses ?—A. If it was scarring in the tonsil it could come from abscesses in the tonsil.

Q. "I saw Dr. Marsh express secretions from both tonsils, indicating a chronic or sub-acute inflammation" ?—A. If Dr. Edye was looking over Dr. Marsh's shoulder how could I see.

Q. Was there a chronic sub-acute inflammation ?—A. There was not; there was just congestion that had been produced by Dr. Marsh in his endeavour to get into the hole—traumatic.

His HONOR: Does that relate to both tonsils ?—A. No, one.

Mr. CASSIDY: You heard the evidence as to both tonsils ?—A. It is incorrect.

Q. It is false ?—A. Yes, so far as tonsillitis is concerned, it is false.

Q. There was no evidence, according to you, of any sub-acute inflammation in either tonsil ?—A. Not of tonsillitis.

Q. No evidence of sub-acute inflammation ?—A. No.

His HONOR: Was there any evidence of sub-acute inflammation in the right tonsil ?—A. No.

Q. Was there in the left tonsil ?—A. No.

Mr. CASSIDY: You heard Dr. Edye swear there was ?—A. It is incorrect because I examined her a few minutes before in my own consulting room before she went in. Those tonsils were normal then.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41. George Stanley Thompson, 12th January 1944, Cross-examination, *continued.*

Q. And redness there was occurred from this probe ?—A. Yes, trauma.

Q. Injury ?—A. Touching the part with a probe certain times will do it.

Q. You know Dr. Edye, Dr. Marsh, Dr. Steele and Dr. Poate gave evidence of that sub-acute inflammation and the expression of the pus ?—A. I don't know they all did.

Q. Assume they all did—are they all wrong ?—A. If they say there was inflammation in those tonsils then they are all wrong.

Q. It is all false ?—A. Quite.

Q. Can you give any reason why Dr. Edye would tell that falsehood ?—A. I am not here to give reasons ; I am stating facts.

Q. I suppose Dr. Steele and Dr. Marsh have both very very great experience on tonsil——?—A. I don't know anything about that.

Q. You do know that Dr. Marsh has had a very great experience ?—A. I don't. I have heard it, that is all.

Q. In this trial you have learned it ?—A. No.

Q. Have not you learned that they are both at the large hospitals, honoraries ?—A. I have heard it.

Q. And you have accepted it ?—A. I accept that they are honoraries at hospitals, yes.

Q. You have heard their evidence that they have had a very large experience over many years ?—A. So they said.

Q. It is right, isn't it ?—A. I don't know.

Q. Aren't you prepared to accept it ?—A. I am prepared to admit or assume that they have had some experience, how much I cannot say.

Q. Is that all ?—A. Yes.

Q. Not a large experience ?—A. I don't know.

Q. Much larger than you ?—A. Not necessarily, a general practitioner sees more of this kind of thing than a specialist—that is his work, tonsillitis.

Q. How many tonsilectomies have you performed since this case started in 1940 ?—A. Not many because I think they are overdone. Far too many tonsils are taken out.

Q. How many have you performed ?—A. When I was younger I suppose I performed a few hundred.

Q. How many have you performed since the case started ?—A. None.

Q. How many have you performed in the last 15 years ?—A. Very few, I think, I do not believe in it unless under exceptional circumstances.

Q. Is that why you do not do it, because you don't believe in it ?—A. Yes.

Q. I suppose the men who are practising regularly, from experience they get a much greater appreciation of what is sub-acute inflammation than a man who does not ?—A. No.

Q. It is something you learn from experience—not text-books, isn't it ?—A. Both.

Mr. CASSIDY : It is something you learn from experience—not text-books—isn't it ?—A. Both.

Q. I want to go back to Dr. Edye. If there was no tonsillitis what would the stuff come from that was pressed out ?—A. We get that from lots of tonsils that are not inflamed ; it is just the debris and food particles.

Q. Didn't you tell us yesterday that you had never seen any debris ?—A. Yes, that is correct ; that is a different thing to it being expressed.

Q. Did you see any that morning before they went in ?—A. No, there wasn't any—not to be seen.

Q. You will agree with me that not one word was put by Mr. Shand to Dr. Edye to indicate that there was no sub-acute inflammation in that tonsil ?—A. I am not Mr. Shand.

Q. Did you tell him ?—A. I have told Mr. Shand a lot of things.

Q. Did you tell him that ?—A. What ?

Q. That there was no sub-acute inflammation in those tonsils ?—A. Yes.

Q. You did ?—A. Yes.

Q. So you did notice that it was sworn to by those gentlemen ?—A. Yes, I heard them.

Q. And you told him there was none ?—A. Yes.

Q. You know that not one word of contradiction was put to any one of those four men ?—A. That may be. A whole lot of things could have been put by Mr. Shand and he has not done so. (Objected to ; pressed.) Mr. Shand did not specifically ask me that as far as I remember, but it was by inference.

His HONOR : About what ?—A. About the condition of the tonsils.

Mr. CASSIDY : Did you tell him ?—A. Yes, I told him that the tonsils were normal—they were not inflamed.

Q. What did you say to him ? That you heard that pus was pressed out ?—A. I did not take any notice about that. I did not know that it has never been said that pus was expressed—debris.

Q. If it was said—" pus "—would you take notice of it ?—A. I would not accept it unless it were microscoped.

Q. But you would have gone and tested it the day after ?—A. No ; why should I ? What for ?

Q. You accepted the Plaintiff's evidence of pus without a microscope, didn't you ?—A. Yes, certainly I did.

Q. Why here ?—A. Because it is in accordance with facts.

Q. And why isn't this in accordance with facts ?—A. I am not here to account for that at all ; I am merely stating the facts.

Q. I want to read you next what Dr. Poate said, at page 1415, this trial. This is the question put to him : " Did you at a later stage see the tonsils again ?" and he explains that he examined them on the Saturday morning. Then this question is asked : " What was the condition of the tonsils on that occasion ?" and the answer is: " The appearance had altered from when I saw her." He is referring to away back in December 1941. " She had a sub-acute inflammation present at the time " ?—A. Incorrect.

Q. " Dr. Thompson explained she had had a recent cold which would probably account for the lighting-up of the infection, both tonsils ?—A. Absolutely untrue.

Q. That is manufactured then, is it ?—A. I don't know whether it is manufactured or imagined ; but it is untrue.

Q. You did not say that ?—A. I did not.

Q. " They were both moderately inflamed " ?—A. Untrue.

Q. " This yellowish debris could be expressed very easily from the tonsil " ?—A. I do not know anything about that.

Q. " I saw Dr. Marsh do that and the amount that came out, quite an appreciable amount. There was one alteration, I noticed, and that

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41.
George Stanley Thompson, 12th January 1944, Cross-examination, *continued.*

was there was only one strand of tissue over the crypt on the left tonsil " ?—A. Well, there are two items there ; which are you referring to ?

Q. Well, I am referring first of all to the fact that yellowish debris could be expressed from the tonsil ?—A. I know nothing about that. Three doctors were standing behind Dr. Marsh and I could not see what was being done. With regard to the strand of tissue, that is correct.

Q. Where did this redness occur ?—A. Just in the vicinity of the canal that the tube came through.

Q. But the opening there—there was no difficulty in seeing the depression ?—A. There was at that time, because owing to the depression that had been produced by Dr. Marsh's attempts to go into the canal, I found myself in a little difficulty in getting in there, whereas previously I had never had any difficulty.

Q. There was an opening there—did he close the opening up by his attempts ?—A. No ; if you touch a thing and keep on touching it—a mucous membrane—you cause vaso-dilation and the part gets red.

Q. How do you produce congestion of the opening ?—A. It does not matter whether there is an opening there ; it is all a mucous membrane.

Q. But the opening would remain ?—A. But if it is mucous membrane the opening would get smaller.

Q. What would cause the congestion ?—A. The probe. It was not there ten minutes or so before that time.

Q. Did you see the probe going in ?—A. I could not see it going in ; but Dr. Marsh could not apparently get it in and he turned to me and said : " See if you can get it in."

Q. Did he do it all in your presence ?—A. Yes, but when Dr. Marsh is sitting in front of you and there are three doctors behind him, and the light on, how could I see ?

Q. Didn't you say he was only trying for a couple of minutes ?—A. Something like that—two or three minutes ; a couple of minutes, I think.

Q. And then you tried ?—A. Well, I got it in.

Q. But a swelling had come sufficiently to congest the opening in that time ?—A. I did not lay any emphasis on swelling.

Q. But had any swelling come ?—A. There may have been slight swelling.

Q. How did that close up the opening ?—A. I did not say it closed up the opening.

Q. Well, did it leave the opening clear ?—A. Of course it did, because I got the probe in. You said that it closed the opening—not I.

Q. May I take it then that the trauma, as you put it, of the tonsil interfered with your getting the probe in ?—A. Yes, in this way, it reddened the part and so obscured the vision, and that is what made it more difficult for me. Usually it was quite easy ; but I took—I suppose—20 seconds or something like that to get it in. Of course, I was acting there in a lighted room. I generally like to examine these things in the daylight.

Q. How did reddening affect it ?—A. Well, if the part was all red it did affect it.

Q. Was the part there all red ?—A. Just in the vicinity of the hole.

Q. If what Dr. Poate said is true, that there was a cold which lighted it up, there would be redness ?—A. Well, it is not true ; but if it were true the cold might affect the trachea, or some other part.

Q. But it might affect the tonsil ?—A. Yes.

Q. And it could be responsible for sub-acute inflammation ?—A. It could, but I did not see it.

Q. You did not see it ?—A. No. I cannot understand the doctor making such a statement.

Q. You swore before that Dr. Poate would say anything ?—A. I did not say so.

Q. You said he talked twaddle ?—A. Yes.

Q. And rubbish ?—A. Yes.

Q. And lies ?—A. I did not say so. He might talk twaddle without it being deliberate, or from some other reason.

His HONOR: From ignorance ?—A. Yes, or it might be from imagination.

Mr. CASSIDY: This could not be from ignorance, so it was from sub-acute inflammation ?—A. I don't know how he got it into his head. I cannot account for Dr. Poate's mentality.

Q. It could not be ignorance if——?—A. I am not going to account for what it could be. I am stating the fact—it is not true.

Q. It could not be ignorance if he said you told him that there was a cold which accounted for the condition of the tonsil that day ?—A. I don't know what it could be.

Q. It could not have been manufactured ?—A. I do not know what it could be. He might have been mistaken. He might have thought I said that. A thing like that is not necessarily deliberate. A person might get an idea like that without any foundation. Anyhow, it is quite incorrect, whatever the explanation is.

Q. Listen to this by Dr. Steel—page 1074 ?—A. The only conversation I had with Dr. Poate——

His HONOR: Just listen to the question.

Mr. CASSIDY: So you did have a conversation with Dr. Poate ?—A. Just at the end, yes, I have already given that.

Q. " On the two occasions you have seen her has that condition been present in different degrees, tonsillitis " ?—A. Yes.

Q. " On the first occasion it was chronic, not inflamed ; on the second occasion it had a super-imposed sub-acute inflammation that was present in both tonsils " ?—A. Well, both those statements are incorrect, as I was present at both examinations.

Q. Both incorrect ?—A. Yes, Mrs. Hocking has never had tonsillitis to my knowledge.

Q. Do you remember Dr. Steele giving evidence in the second trial ?—A. What evidence ?

Q. Do you remember him giving evidence after an examination of that throat in your presence ?—A. Well, I don't know whether I was in Court at the time.

Q. Do you remember him examining the throat in your presence ?—A. Yes. Is this the second occasion or on the first ?

Q. On the second occasion.

His HONOR: He did not give evidence on the first?—A. Yes, I think so. I think he gave evidence on two occasions in connection with this examination.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41. George Stanley Thompson, 12th January 1944, Cross-examination, *continued.*

Q. Well, this is the fourth occasion ?—A. Dr. Steele has examined her throat, to my knowledge, twice, and he has given evidence on two occasions.

Q. But not on the first trial ?—A. No, I do not think he appeared on the first trial.

Mr. CASSIDY : But you have read his evidence that he gave on the second trial and the third ?—A. I may have done.

Q. " On the second occasion it had a superimposed sub-acute inflammation that was present in both tonsils " ?—A. No, that is quite incorrect, and in regard to the one tonsil he made an erroneous observation. In regard to the left tonsil, that is an erroneous observation.

Q. And, as to the right ?—A. Quite incorrect.

Q. " Did you notice anything on pressure." That was the question ?—A. Yes.

Q. The answer was " Still a considerable amount of secretion expressed from the crypt, but more fluid than was found in the chronic condition " ?—A. No pus about that, but I did not see that ; I cannot answer that.

Q. " That was on both sides " ?—A. No, but there was no pus there, you will notice. Anyhow, I did not see it, so I cannot answer that.

Q. You asked me about pus, doctor ?—A. Yes.

Q. Dr. Marsh, page 787—by the way, you did not give evidence on the first trial ?—A. No.

Q. Had you seen the throat before the first trial ?—A. Yes.

Q. His HONOR : That evidence has already been given.

Mr. CASSIDY : What date did you see that throat first ?—A. I do not remember.

Q. Haven't you got a note ?—A. No.

Q. Was it before the trial started ?—A. Yes.

Q. How long before ?—A. I do not know.

Q. With Dr. Welch——

His HONOR : Professor Welch.

The WITNESS : No, I don't think so. I don't remember whether the Professor saw it then. When I first saw it I think I saw it by myself.

Mr. CASSIDY : Where at ?—A. I think it was at Mr. Wilson's Chambers.

Q. How long before the case started ?—A. I could not tell you ; not very long before.

Q. Did you examine it with Professor Welch before the trial ?—A. I do not remember about the first trial. I cannot say.

Q. The next thing is : " I want to come next to this. You had an examination on Saturday week last " and the answer was " Yes." The question then was " On that occasion did you ask Dr. Thompson to put a probe into the tonsil," and the answer was " I did." ?—A. What is that ?

Q. That is the question, and that is the answer given by Dr. Marsh. I will just pass through that, and then we come down to the part about the pus—what was the condition of the tonsils ? This is the question, on page 790 ?—A. Is this to Dr. Marsh ?

Q. Yes ?—" What was the condition of the tonsils, and of the throat at that time "—The answer is " When I saw it last Saturday week ? "

My question to him then was " Yes." This is his answer : " There was, with a little gentle pressure, a considerable exudation of purulent material from the crypts." ?—A. Anyhow, he is in conflict with Dr. Steele ; anyhow, it was not microscoped, so we do not know what it was.

Q. " Did you try that yourself ? " and the answer was " Yes, I gently pressed it " ?—A. Well, how did he know it was pus ?

Q. Wouldn't he have a fair idea ?—A. He might. Creamy debris looks like pus.

Q. Dr. Marsh would know, wouldn't he ?—A. Well, Dr. Steele did not say anything about pus.

Q. But it is consistent with what he said, isn't it ?—A. It might be pus ; it might not. (Objected to ; pressed.)

His HONOR : That is a different occasion, Mr. Shand.

The WITNESS : Anyhow, if one got debris out of the tonsil you could not say it was pus unless it was examined microscopically.

Q. But it is not debris ?—A. It is debris.

Q. What is debris ?—A. What is in the crypts.

Q. Did you state there was none on that day ?—A. I said there was none to be seen.

Q. But there might have been some there ?—A. You can squeeze some out of every tonsil.

Q. Did you hear Dr. Welch say that he agreed that she did not have pus—what she had was the cheesy material that Dr. Marsh———(Objected to.)

Q. On the 26th October. When she alleged that she was scraping it off her tongue, didn't you hear Professor Welch agree that that was not pus, but that it was cheesy material ?—A. I think I agreed with the Professor.

Q. No, it was not pus ?—A. I do not know whether it was pus or not, but what she scraped off her tongue might have been pus, and anything else might have been mucous.

Q. On the 2nd October ?—A. Before and after the 2nd October.

Q. Although we know now that Dr. Welch says that he agrees it could not have been pus ?—A. No.

Q. She herself swore that she scraped it off her tongue ?—A. I do not care what she said. She is not a doctor. She said it was pus ; it might have been pus.

Q. But you said you accepted it as pus ?—A. Yes, before and on the 2nd October.

Q. How long before ?—A. I do not know. From the history of the case, some time before and some time afterwards.

Q. Did you take it that there might have been a tube there ?—A. I know there was. There is no doubt about that.

Q. You know there was ?—A. I do.

Q. Have you got second sight ?—A. No ; it is as plain as a pikestaff.

Q. And is it as plain as a pikestaff that it could travel up that neck ?—A. How do you mean " travel up " ?

Q. Do you say that when it broke off it would be down at the lower end ?—A. Yes, I do.

Q. How do you know that ?—A. Facts.

Q. But you heard the sworn evidence that it was pulled ?—A. I don't care anything about that ; I know the facts.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41. George Stanley Thompson, 12th January 1944, Cross-examination, *continued.*

Q. But aren't they the facts that you are going on ?—A. No, those are not the facts ; I go on this telltale dimple here (indicating) and the fact that she had pain on the left-hand side here (indicating). You asked me for the facts. Do you want them ?

Q. Yes ?—A. She had a telltale dimple. She could not lie on that side (indicating). She had swelling on that side (indicating). She had this hole in the tonsil.

Q. She could not lie on that side ?—A. No. She had to lie on her right side.

Q. For how long ?—A. I do not know. It was so tender and painful.

Q. You start then with the assumption that the tube is up here (indicating), left up here, with its end up against the pharangeal nerve ? —A. I start with the assumption that the tube is left at the Y-junction of the carotid artery.

Q. So that if half an inch broke off, that must have been wrong ? —A. If—we don't know what broke off.

Q. But won't you accept that as a basis before you start to make inferences ?—A. But Mrs. Hocking is not a doctor, and most people do not know what an inch is. I am concerned with the fact.

Q. But how much would have to break off ?—A. It depends on the length of the tube.

Q. What length would the tube have to be ?—A. Three inches.

Q. It would have to be more, wouldn't it ?—A. Not necessarily.

Q. But it could not be less than three inches ?—A. I am not going to say that. Something in the vicinity of three inches.

Q. And it is put in by the surgeon so that the end is resting at the top of the lobe ?—A. Yes, on the left-hand side.

Q. And when it is pulled the resistance is such that it does not move it ?—A. Yes, if it was stitched in. (Objected to : pressed.)

His HONOR : I don't propose to make a general ruling on anything ; I will rule on each objection.

Mr. CASSIDY : If it is stitched up in that area it is stitched in the area round about the arteries ?—A. Yes, in that vicinity.

Q. And the pulling-down would have a most disastrous effect, wouldn't it ?—A. Would it ?

Q. Wouldn't it ?—A. Would it ?

Q. Wouldn't it ? I am asking you ?—A. Certainly not. Why should it.

Q. Why should it ?—A. It is a ridiculous suggestion.

Q. Is that the answer—why should it ?—A. Certainly.

Q. What do you suggest it was stitched on to, up there ?—A. The remaining portion of the thyroid gland, perhaps, or in the vicinity of the superior thyroid artery.

Q. But the remaining portion of the thyroid gland—is there any gland up there (indicating) ?—A. Yes.

Q. Isn't the gland that is left—the one-eighth of the gland that is left, is left round the back of the trachea ?—A. No ; the posterior border.

Q. Up near that corner (indicating) ?—A. Yes. I don't know what portion of the thyroid gland it is that Dr. Bell takes away, but he said he left the posterior portion.

Q. But he would not leave the bit up near the end, would he ?—A. How do you know he would not ?

Q. But you have seen the illustrations, that he took that part away (indicating), and left the other part ?—A. But different surgeons are different.

Q. But you heard the evidence that the upper part was not left—it was cut away ?—A. But Dr. Bell is very vague in regard to the incidents. He said that himself.

Q. So one of the places to which it would be stitched would be what is left of the thyroid gland ?—A. In that vicinity.

Q. So that is to say something like two and a half to three inches inside the capsule, isn't it ? That is two and a half to three inches inside the capsule ?—A. From the skin ?

Q. Yes, from the incision ?—A. Yes, it might be two and a half inches from the incision.

Q. So that the stitch has been put through there before you close up ?—A. It may have been ; it may have been put in after the muscles were stitched.

Q. How ?—A. Well, he says that he cuts the muscles sometimes ; the upper border of the sterno-hyoid muscles and so on.

Q. But after the muscles were stitched ?—A. Yes ; the needle could go deep and include the tube.

Q. The needle would have to go in ?—A. I said it would have to go in the tube if the tube was stitched in.

Q. You saw the needle ?—A. I did not.

Q. You saw the needle in Court ?—A. But we do not know that that is the needle that was used.

Q. That is an ordinary surgical round needle, is it ?—A. Yes. I did not see it myself.

Q. If that were the needle produced, you would have to push that needle in through the capsule up there to stitch it, wouldn't you ?—A. It would not require much pushing.

Q. It would not require much pushing ?—A. No.

Q. What else besides the thyroid gland could it be stitched to up in that area ?—A. Well, as I was not present at the operation, I don't know.

Q. But what are you assuming ?—A. Let me answer the question. All that I know is, that there was a serious complication and there was great difficulty in stopping the hæmorrhage. (Objected to by Mr. Cassidy and asked to be struck out ; pressed by Mr. Shand.)

His HONOR : The question is : " What do you suggest it was stitched to ? "

Mr. CASSIDY : Yes.

Q. What do you suggest it was stitched to ?—A. I do not know. I said " Structures in the vicinity."

Q. What are they ?—A. Well, there are muscles—fascia.

Q. Which muscles up there ?—A. The sterno-hyoid, the sterno-thyroid the omo-hyoid.

Q. That is on the outside of the capsule ?—A. In the front of it.

Q. It is outside the capsule, isn't it ?—A. In front of it.

Q. It is outside the capsule, isn't it ?—A. In front of it.

Q. But outside it ?—A. Well, the muscle is not inside the thyroid capsule, of course.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41. George Stanley Thompson, 12th January 1944, Cross-examination, *continued.*

Q. What else ?—A. Then there is the remaining portion of the thyroid gland. There is the thyro-hyoid ligaments. There is the fascia.

Q. What fascia could you get it into ?—A. The remaining fascia of the thyroid capsule.

Q. How thick is that ?—A. Not very thick.

Q. How thick ?—A. Well, I have not made any actual measurements. According to you it is fairly dense.

Q. Strong enough to cause a third pull before it comes out ?—A. Yes, but it might not have included the fascia alone ; it could have included some or all of those structures.

Q. What structures could there be on the inside of the capsule ?—A. There is the trachea, the œsophagus——

Q. But you do not suggest those, do you ?—A. I am not suggesting anything. (Objected to.)

Q. Could it be stitched to those ? (Objected to.)

Q. Could it be stitched to either of those ?—A. That is possible ; it could be. You could do lots of things.

Q. What would have happened there when you pulled ?—A. What do you mean what would happen ?

Q. Wouldn't it break ?—A. Not necessarily. If the tube was not fresh, if it was perished—they usually rupture.

Mr. CASSIDY : You have heard that the tube was not perished ?—A. I have heard nothing of the kind, I don't accept that either.

Q. You have heard the tube was tested ? (Objected to)—A. I don't know what people test tubes for unless they can break.

Q. Don't you think they test them to see that they are right before they put them in ?—A. No, I have seen a hundred surgeons operate, and I have not seen one of them test a tube.

Q. How long ago was that ?—A. From the time I was a student up to the present time ; I have seen a hundred different surgeons operating.

Q. Over how many years ?—A. More than I would like to say.

Q. So, over 40 years you have seen hundreds of surgeons operating ?—A. Yes.

Q. And over the last 20 years how many ?—A. Not so many, and you know why.

Q. How many out of that hundred in the last 20 years ?—A. I have not counted them.

Q. I want to get your experience before that 20 years too ?—A. What does it matter ? It is all experience ; experience and knowledge.

Q. I want to come to Dr. Marsh—" 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 " ?—A. Is that the end of October 1939 ?

Q. Yes—" 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." ?—A. I did not know there was any ulceration on the 11th December.

Q. " Does that apply to one tonsil or both ?—A. Both tonsils now " ? —A. That is quite alarming to hear that she had an ulcerated tonsil on the 11th December last year. It is incorrect in regard to the cheesy material. I cannot speak about that because, as I say, I could not see.

Q. " You put that you told me that these tonsils showed some pus, did they ?—A. Yes, both of them." Having regard to statements I put it to you that on that day there was subacute inflammation in that area ?— A. That is entirely incorrect, and the proof of that is that 10 minutes or so before that I examined her in my own rooms in Macquarie Street and those tonsils were quite normal so far as inflammation was concerned, so far as redness is concerned. That redness developed in Dr. Marsh's consulting rooms.

Q. You swore yesterday that you had examined this woman's tonsils on twenty occasions ?—A. I said on about twenty occasions I should think since this case first started.

Q. You gave evidence on the third trial, how many times did you examine her tonsils before that ?—A. I don't remember. I am taking it over the whole period.

Q. How many times do you suggest you had examined them before the third trial ?—A. I am not suggesting anything.

Q. Did you examine them five or six times ?—A. I don't know.

Q. How many times have you examined them since the third trial ? —A. I am not quite sure.

Q. I want to know that ?—A. I don't know.

Q. Can't you say ?—A. No.

Q. That is the best you can do ?—A. Yes.

Q. Seven times ?—A. I cannot say.

Q. Once ?—A. More than once.

Q. More than seven ?—A. I cannot say.

Q. When did you first see her after the third trial ?—A. I don't remember. I think I have seen her after the trials and before the trials.

Q. Up till say two months ago had you seen her since January, 1943 ? —A. I don't remember whether she was down once in between those times and that I saw her then.

Q. Did you examine her tonsils then ?—A. Every time I have had an opportunity I have done so.

His HONOR : Did you have an opportunity on each occasion ?— A. I cannot remember because the various things that cropped up at different times, and I have endeavoured to ascertain whether they are so or not.

Mr. CASSIDY : How many times have you examined them since she has been down this time ?—A. I can't possibly tell you, several times.

Mr. REIMER : No records at all ?—A. No records at all.

Mr. SHAND : Don't bother answering the satellite.

His HONOR : Only answer Mr. Cassidy's questions ?—A. Well, I heard it.

Mr. CASSIDY : You have no records at all ?—A. I have no records of Mrs. Hocking's examinations, no.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41. George Stanley Thompson, 12th January 1944, Cross-examination, *continued.*

Q. You take very copious notes, do you not ?—A. For the purpose of this case, yes.

Q. You have a book full there, haven't you ?—A. I have notes in that book, yes. You see, if I had not those notes in the book you would say "Where are your references ?"

Q. They are all references, are they ?—A. Some of them.

Q. You see, you swore yesterday twenty occasions ?—A. I have answered that question already.

Q. Have you seen her seven times in the last three months and examined the tonsil ?—A. I don't know.

Q. How many times since the trial started ?—A. I don't know.

Q. It is customary when you are examining a patient for a doctor to make entries on his card ?—A. Sometimes, it depends.

Q. Having regard to the fact that you knew you were going to give evidence, did you ?—A. There was no need. I could carry all that in my head.

Q. Didn't you tell me you have a bad memory ?—A. I have.

Mr. SHAND : He does not carry his evidence about with him either.

Mr. CASSIDY : Don't you carry it with you ?—A. I bring it to Court.

His HONOR : Mr. Shand, that was an improper remark to make.

Mr. CASSIDY : The interest you have taken in this case, as you are entitled to do——?—A. Thanks, I am obliged to you for that, it is very good of you.

Q. You see the Plaintiff practically every afternoon ?—A. No, I don't see her when I leave the Court here. I just go away and I don't see her. The only time I see her is in the morning.

Q. Then I want to put to you that you know that for the first time in the whole of these proceedings she gave this evidence about being told to lie on her right side, you have heard her admit that ?—A. No.

Q. Will you take it——?—A. I don't remember hearing her say that ; I ascertained that from her in getting her history.

Q. Assume this——?—A. I am not talking about after the operation, I am talking about when she went home. You are referring to the incident when she said she was inclined ; I am talking about when she went home to Quirindi. That is my reference.

Q. This is a reference only to Quirindi ?—A. Yes.

Q. And you know that she had given me evidence previously in. Quirindi of lying on her right side ?—A. Everything is not brought out You are not asked everything.

Q. Did you tell her that it would be evidence that would be useful because of your submission ?—A. I do not do that kind of thing. I am concerned with the truth in this case, facts as against your fiction.

Q. You gave her no such advice ?—A. No.

Q. This is not my fiction, this is Dr. Poate and Dr. Edye and men like that ; is that fiction ?—A. I call it fiction, the case is quite clear here. This has happened and there is no doubt about it.

Q. Did you come to that conclusion before the first trial ?—A. Right from the very beginning, I have never wavered, and I have been more confirmed as the trials have gone on.

Q. You know Dr. Tebbutt, do you not ?—A. Yes.

Q. You will agree, I suppose, that he is a man of very, very great experience in regard to blood counts ?—A. I think he is, and I think he is a very fair man too.

Q. And I suppose you would not suggest against him at least that if he said it was unnecessary to do a differential count by reason of his experience ?—A. I am not suggesting that against Dr. Tebbutt at all.

Q. He saw the blood count ?—A. Yes.

Q. And did it ?—A. Yes.

Q. And gave the evidence as to its normality ?—A. Yes, the only thing I am suggesting in that regard is that at St. Mary's Hospital we found out that the differential count was more reliable than the absolute, perhaps that may not be realised here, but that is Wright's view on the matter, and it has been confirmed.

Q. Won't you agree with me that there has been a tremendous amount of advance in regard to blood counts and blood cultures and things since 1901 ?—A. Certainly that is so.

Q. And this particular gentleman we are talking about is a man who is really at the top, outstanding in the job ?—A. Yes, I should think that Dr. Tebbutt is an excellent man both as a doctor and a gentleman.

Q. And equipped with a very great knowledge ?—A. I should think so. I don't know personally, that is my opinion.

Q. If he says so aren't you prepared to accept his evidence ? —A. Says what ?

Q. That it is a normal blood count and no anæmia ?—A. No, because I think there might be a legitimate difference of opinion there. I think it is nearly normal, but I should say it is a recovering blood count.

Q. The doctor says it is inconsistent with her story.

Mr. SHAND : As told by you.

The WITNESS : We do not know that she had pus when that was taken.

Mr. CASSIDY : Assume on the 26th October she has pus ?—A. Yes.

Q. What do you say then. Is it inconsistent with her story ?—A. Not necessarily, because as I said the leucocyte count has been found to be not absolutely reliable. Sometimes you get leucocytosis, sometimes a normal and sometimes a leumopænia.

Q. Even with pus ?—A. Yes. Dr. Tebbutt himself in this case said that after a leucocytosis it swings the other way and you get a peucopænia because the marrow, as it were, becomes exhausted.

Q. He says it was unnecessary ?—A. That was his opinion. I don't see that it is necessarily inconsistent with her story.

Q. Your words were " not necessarily," that implies it might be ? —A. Of course, I believe her story if that is what you mean. I have no doubt about her story.

Q. You think that assists you ? Do you think that cuts away from her story in any way ?—A. Nothing cuts away from her story.

Q. Won't you be convinced of anything ?—A. If you give me some facts and reasons I am open to conviction any time if I thought that Dr. Bell was——

Q. I am not asking you that ?—A. Well, you are indirectly. If I thought Dr. Bell was in the right here I would hope that he got the verdict, but I don't think so, so I hope Mrs. Hocking will get the verdict.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41. George Stanley Thompson, 12th January 1944, Cross-examination, *continued.*

Q. What about the tube that is described by her with the things one and a half inches and an inch and the swab inside it ?—A. A thing that was extorted out of her after a long day in the box, most unfair.

Q. You know she gave particulars ?—A. The first particulars she gave were nothing like that.

Q. Have you studied them ?—A. Yes.

Q. So are you suggesting that something was extorted out of her ? —A. Yes, after a woman has been in the box all day long by these methods of cross-examining you can get almost anything out of her.

Q. Was she in the box all day long when that was done ?—A. I don't know. I think she was but if she was not she had had several days beforehand.

Q. Several days beforehand ?—A. Those trials are very exhaustive to a Plaintiff.

Q. Several days before that was extorted, do you suggest ?—A. I don't know how many days she was, but some time ; I think it was the most unfair extortion, and distortion.

Q. You make take it that it was admitted on the second trial within five minutes of the cross-examination ?—A. I don't care if it was, she had been in the box beforehand a long time the previous day.

Q. When beforehand ?—A. The previous day. Anyway, I don't care what time it was, it was a most unfair extortion and distortion, it was not in accordance with her original description when it was fresh in her mind and after all it was only as to the appearance and not as to the contents.

Q. You may take it that her examination took 16 pages only, that on page 17 the cross-examination started, that there was an adjournment at page 22, and that next morning at page 25 Exhibit "P" had been made ? —A. It does not matter. She had the previous day going through the gruelling ordeal and after she had been through before.

Q. The previous day the case had been opened, the Jury had been sworn, and the case opened for some time, and she had not been in the box, you will remember, a very lengthy time ?—A. It is a very anxious time for a litigant as anyone knows who has been through it.

Q. What is it you object to in Exhibit "P" ?—A. It is a complete caricature of her original description.

Q. What do you object to about it ?—A. I object to those absurd wires.

Q. Anything else ?—A. Not particularly.

Q. The wires are too thick, are they ?—A. No, the wires. She described a thing as to appearance and not for composition, after all it was only rough.

Q. You follow that if anything was sticking out from that swab and as Dr. Edye pointed out the half-inch was pulled off it would be visible ? —A. It does not follow that that swab was in it when it went down the throat, it may have been detritus picked up in the intestine. It is not a description of the tube.

Q. You have heard it described as a swab ?—A. She described it as that.

Q. Marine sponge ?—A. She said it had the appearance of that, that is all we know. We all know, as doctors, that you cannot pin a patient down to accuracy, sometimes they are most inaccurate—most unfair it is.

Q. So you won't accept that tube as being left in the neck ?—A. What I will accept is the fact as regards to the accuracy of her description of that fact, that is another matter.

Q. So you won't accept Exhibit "P" as being a fair representation ?—A. She did not say "wires," she said something that looked like wires.

Q. You won't accept Exhibit "P" as being a fair representation of what was left in the throat ?—A. No.

Q. And is this right, your evidence as to possibility does not apply to a thing of which Exhibit "P" is a fair representation ?—A. I did not say that.

Q. Well, do you say it or do you not ?—A. Anything may be possible.

Q. And what is the answer to that question, does your evidence of the possibility of movement apply to that thing which is a fair representation ?—A. There are a number of ingredients in that.

Q. Does your evidence as to the possibility of it moving apply to a thing of which Exhibit "P" is a fair representation ?—A. It is possible, but I don't think those wires were ever there.

Q. But if they were there ?—A. It could still occur, it is possible. All kinds of things are possible in medicine.

Q. In medicine ?—A. Yes, extraordinary things happen.

Q. Are you contemplating that in your evidence of which Exhibit "P" is a fair representation ?—A. You could contemplate that.

Q. But are you contemplating it ?—A. Not quite.

Q. Are you ?—A. I don't know.

Q. Doctor, I want an answer to that. Are you or are you not; it may have important consequences ?—A. I don't think I can answer that.

Q. I will ask you to answer that ?—A. I can't.

Q. You have been in this matter for three trials and you can't answer this question ?—A. I don't think so.

Q. Whether you are contemplating something of which Exhibit "P" is a fair representation ?—A. I have contemplated it.

Q. For your evidence are you assuming an object of that nature or not ?—A. I could contemplate it.

Q. Are you or are you not ?—A. I cannot answer that. All I can say is that I could assume.

Q. Are you or are you not; do you refuse to answer ?—A. I don't think I can go any further than what I have said.

Q. You cannot answer it ?—A. I don't think I can answer it, say more than I have answered it.

Q. And you won't answer it ?—A. It is not a question of "won't."

Q. Well, you can't ?—A. I don't think I can give you anything more than I have been giving.

Q. Have you assumed it up to the present, the possibility of a thing which Exhibit "P" is a fair representation ?—A. Oh, yes.

Q. And what is the conclusion you have come to now ?—A. It would be a possibility.

Q. Have you considered it for the purpose of coming to your conclusions ?—A. I have had it in mind.

Mr. CASSIDY: Is the fact that the thing of which Exhibit "P" is a fair representation applies to the possibility of it travelling and rupturing as is suggested in this case ?—A. A very rough representation.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41. George Stanley Thompson, 12th January 1944, Cross-examination, *continued.*

Q. I am putting to you that it is a fair representation. Are you considering for the purpose of the travel and the rupture a tube of which Exhibit "P" is a fair representation?—A. I said I have considered that.

Q. And is it part of the basis of your conclusion?—A. Partly.

Q. So you will answer the question?—A. If you call that "will," you can have it.

Q. When you say you are accepting the Plaintiff's allegations, are you prepared to accept the Plaintiff's description that that is a fair representation, that Exhibit "P" is a fair representation of what was left? (Objected to.)

Q. Are you doing it on the assumption that Exhibit "P" is a fair representation?—A. Am I doing what?

Q. Are you prepared to accept the Plaintiff's description on the assumption that Exhibit "P" is a fair representation of what was left?—A. I am not assuming that, but I could assume it.

Q. You gave some further evidence about the eye yesterday?—A. Yes.

Q. You said the muscles were affected?—A. The orbicularis palpebrarum, the superior rectus and the rectus internus.

Q. No, you didn't?—A. The eye muscles and the facial muscles—the orbicularis palpebrarum.

Q. I will read you yesterday's evidence—"The muscles of the eyelid called the orbicularis and the face muscles"?—A. Yes.

His HONOR: "It is not only the eye; the muscles of the eyelid called orbicularis, and the facial muscles"?—A. Yes, three factors. You are referring to the eye.

Mr. CASSIDY: "The muscles of the eyelid called the orbicularis"?—A. Not the muscles, the muscle. There is one muscle going around the eye.

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

Q. You have thought it over overnight?—A. I have not thought about the muscles.

Q. "There are three factors. It is not only the eye; the muscles of the eyelid called the orbicularis, and the facial muscles. All those muscles are involved in the incident." The orbicularis and the eye muscles?—A. The orbicularis and the eye muscles—there are three muscles—the ocular, the orbicularis and the facial muscles.

His HONOR: "Are there certain matters that you place importance on in regard to that incident?—A. There are three factors there. It is not only the eye; the muscles of the eyelid, called the orbicularis, and the facial muscles. All those muscles were involved in that incident"?—A. That is right.

Mr. CASSIDY: It is as plain as anything that you specified the muscle, the orbicularis?—A. Yes, certainly.

Q. The action of the orbicularis is to close the eye?—A. Yes.

Q. In this spasm, if it were the action of the orbicularis, the eye would be closed and she could not see it rolling back?—A. If she lifted it up she could.

Q. She could not see it rolling back?—A. If she lifted it up she could.

Q. You say the orbicularis muscle is the muscle which shows over the eye ?—A. Yes, like this (demonstrating).

Q. To see the eyeball she would have to lift that up ?—A. Yes, that is what she did.

Q. But she said first of all that she saw it in a mirror ?—A. When she had lifted the lid up.

Q. No, before she lifted it up ? And afterwards she had to lift it up and pull it ?—A. That is quite possible. She might have seen the eyeball rotating up as the orbicularis was contracting.

Q. She might have seen the eyeball closing up as the eyelid closed down ?—A. Yes.

Q. She would have time to get to the mirror and to watch that ? —A. I don't know ; I wasn't there at the time.

Q. But isn't it your suggestion that a sudden spasm came on by some form on the carotid artery ?—A. I didn't say it was sudden or how long it lasted. You say that ; I didn't.

Q. But all the muscles were in spasms ?—A. Yes, but we didn't know when it came on.

Q. Have you asked her ?—A. I don't think I have actually asked her the duration of the spasm. I gather that she saw the eye up like that when she lifted it up.

Q. I put it to you that that lifting of the eye did not occur until afterwards ?—A. I don't mind whether it did or not ; it doesn't matter.

Q. Is this correct, that you say that in hysteria you do not get the facial muscles or the tongue involved ?—A. Yes.

Q. Do you suggest that you do not get the eye incident in hysteria ? —A. I am not talking about the eyes. I said the facial muscles and the tongue.

Q. Do you get the eye incident in hysteria ?—A. The eyes may be affected in hysteria.

Q. In the way in which the Plaintiff says ?—A. What do you mean, squinting ?

Q. No ?—A. Going up ?

Q. In the way in which the Plaintiff says ?—A. What does she say ?

Q. Don't you know ?—A. I don't remember exactly her words.

Q. What do you think they were ?—A. I don't remember her exact words. All I remember her saying was that the eye went up and the lid closed and she had spasm of the facial muscles of the face, to the best of my recollection.

Q. Would you get that in hysteria ?—A. No, the facial muscles are not affected in hysteria, strange to say.

Q. The orbicularis ?—A. I don't know about the orbicularis. I am talking about the facial muscles below the eye.

Q. How about the orbicularis ?—A. I don't know. Of course, they can voluntarily close the eye in hysteria.

Q. This passage which you read yesterday and which you alleged supported your conclusion, referring to what we call peraplegis or hemiplegia ?—A. No, it does not. What has paraplegia to do with the face ? Paraplegia means below a certain level ; hemiplegia means paralysis in one part of the body.

Q. Didn't the passage you read refer to that ?—A. Paraplegia and hemiplegia were in that paragraph but they are not connected.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41. George Stanley Thompson, 12th January 1944, Cross-examination, *continued.*

Q. What does ptosis mean ?—A. The dropping of the eyelid, paralysis.

Q. " Ptosis also occurs as an hysterical symptom. It may be single or double " ?—A. Yes, that is ptosis. It may be due to paralysis or to contraction of the muscle.

Q. Or to hysteria ?—A. You may get it with hysteria.

Q. But your book which you quoted from said that ?—A. I have not denied it.

Q. And you knew that it said that ?—A. I don't remember it mentioning ptosis.

His HONOR : What is this book ?

Mr. CASSIDY : Taylor.

His HONOR : Is it Taylor & Taylor ?

Mr. CASSIDY : No, Taylor. It is on page 391—hysteria ; motor symptoms. " Ptosis also occurs as an hysterical symptom. It may be single or double." Is the orbicularis a facial muscle ?—A. Yes, it is connected with the facial nerve.

Q. At page 382—" Trismus "—what's that ?—A. Lockjaw, spasm of the jaw.

Q. " Trismus or closure of the jaw is another form of hysterical contraction and esthesia may be present at the same time " ?—A. Yes.

Q. Do you agree with that statement as coming from the book yesterday ?—A. Yes. The facial muscles are the muscles of expression. The anastata (?) is another muscle.

Q. " If they are opposed the eyeballs are rolled upwards under the upper lid." Do you agree with that statement from this book ?—A. Yes, that can occur.

Q. You did hear the evidence of Dr. O'Hanlon and nurses as to that condition of the eyes ?—A. I heard Dr. O'Hanlon say that the eyes were closed.

Q. And could not be pushed up ?—A. I don't know that he said they could not be pushed up.

Q. Did you hear him say " resisted any alleged unconsciousness " ?—A. He might have said resisted, but that is different from not being able to push them up.

Q. You suggested yesterday, did you not, that the temperature at 99.4 following that thyroidectomy operation was significant (page 1537) ?—A. In view of all the circumstances, yes, on the third day.

Q. When you made that answer, the temperature, 99.4 on the third day, would you have expected the temperature to be normal after that serious operation ?—A. Well, it might have been and it might not have been. It depends on the efficacy of the drainage.

Q. What is the usual thing ?—A. When the wound is draining properly there is no temperature, following, not these days, not the first two days.

Q. When you say these days you have not had a thyroidectomy for years ?—A. I know that in the old days drainage was not put into the wound.

Q. Won't you agree that following tetany or any post-operative thyroidectomy you get rise in temperature as the usual thing ?—A. Not if the tubes are draining properly.

His HONOR : Is this the position. In your opinion in a thyroidectomy you don't get post-operative temperature if everything goes on all right ? —A. You should not. Of course there may be exceptions to that, but speaking generally you should not.

Mr. CASSIDY : You have heard Dr. Poate, Dr. Edye and Dr. Bell say that it is the usual thing ?—A. I have not.

Q. Don't you know they said it ?—A. No, they didn't say it.

Q. Assuming they did——(Objected to.)

Mr. CASSIDY : They did not say it ?—A. No, that is so. What Dr. Poate said was sometimes you get thyrotoxic crises after operation, but he did not say it was the rule ; he indicated it occurred occasionally.

Q. Did not he say post operative rise was the usual thing ?—A. No.

His HONOR : You expect to get a rise ?—A. No, and it is not the fact.

Mr. CASSIDY : Assuming he did——(Objected to ; not pressed.)

Q. You know Quervain ?—A. No.

Q. You really have not read Quervain ?—A. No, I have not read it.

Q. Do you agree with this (page 158 of Quervain) : " In most cases there is a rise of temperature after the operation. It is temporary and may be as high as 102 degrees Fah. Without any infection to cause it " ? —A. No, I do not agree with it. I would not think much of that surgery.

Q. " This fever is characterised by the almost total absence of general symptoms ; the pulse is regular, the breathing calm and the features never look pinched. It is more severe after operations entailing any laceration of the thyroid tissue, and slight hæmorrhage, than after the usual occurrences ? " ?—A. A good surgeon would not go lacerating the thyroid tissues. If tissues are lacerated you get traumatic temperature. He has to be as delicate as he can with the tissues.

Q. Do you agree with that statement—" It is more severe after operations entailing and lacerations of the thyroid tissue and slight hæmorrhage than after the usual occurrences " ?—A. No, I do not. I would not like him to operate on me.

Q. " It is most severe in cases of ex-opthalmic goitre," of which this was one ?—A. You are more likely to get it after that rise of temperature.

Q. But take this operation ?—A. Yes, but if the drainage is efficient the secretion does not collect there and that is what causes the temperature. I would say it is an indication of insufficient drainage. It is what is called thyroxic temperature.

Q. He (Quervain) is one of the most famous surgeons in the world ? A. No, I don't know that. No surgeon anyhow is infallible.

Q. You know that there is a tremendous amount of goitre in Switzerland ?—A. Yes, it is a Swiss disease.

His HONOR : It is very prevalent ?—A. In Switzerland and Derbyshire.

Mr. CASSIDY : Coming back to the evidence of drainage tubes, I have been reminded by Dr. Poate of something. Are you aware that the modern tendency is away from drainage tubes ?—A. Certainly. You want to eliminate them as much as you can.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 41.
George Stanley Thompson, 12th January 1944, Cross-examination, *continued.*

Q. And the modern tendency is closing the wound in operation, in thyroidectomy ?—A. No.

Q. You do not agree with that ?—A. No.

Q. But where you can do it you close the wound ?—A. If you could seal up the cut surface of the gland. One of these days they will use the electrotome. Then you would do away with the drainage tube but when there is raw surface there you have these tubes to drain.

Q. If Dr. Poate says the modern tendency is——(Objected to.)

Q. If he says the modern tendency is——(Objected to.)

Q. You see you are putting it, you have put it that drainage tubes, the use of them should stop infection ?—A. No, I have not been putting it.

Q. Well, stop temperature ?—A. Yes, that is so.

Q. If Dr. Poate says that the modern tendency is away from drainage tubes and to close the wound up—— ?—A. I agree with him to a certain point, that if you can do that, if you can so perfect your technique that there is no oozing it is desirable to do away with the tube altogether, but I do not think that stage has been reached yet.

Q. I will read what your evidence was at page 1537 :—

> " In this case here what is called a post-operative rise of temperature does not occur so much these days since drainage tubes are put in. In the olden days before drainage tubes the thyroixials used to collect underneath the wound and cause an immediate rise of temperature. You don't get it here. Here is the infective or septic rise of temperature."

The point you were making was that drainage tubes had followed an old system ?—A. No.

Q. Since drainage tubes are put in ?—A. No, not an old system. They did not use tubes and then they got trouble, so they realised it was due to stuff collecting and a tube was put in to drain. Now we tend to get away from that if we can.

Q. You were putting : " A post-operative rise of temperature does not occur so much these days since drainage tubes were put in " ?—A. That is so.

Q. How long ago is that ?—A. I could not say, perhaps 20 or 30 years ago.

Q. That was when they started to be put in ?—A. I could not say that, but I would say that many years ago when the operation was done at first, being a clean operation naturally the tubes were not put in. Then it was found, trouble arose owing to the collection of secretion from the thyroid gland and a tube was put in and they got better results, and they did not have this trouble with the temperature. There are three stages : the first stage, then the drainage stage and then the stage that we are trying to approach now.

Q. See if this is your reading of the hospital records (page 1544 referred to), that the infection in that wound was confined and enclosed from the 17th March to the 20th ?—A. Yes, completely and partly from the 20th onwards.

Q. That is completely between the 17th to the 20th and partly afterwards ?—A. Yes.

Q. That is your reading of it ?—A. Yes. It did not escape until the 20th, and the temperature began to rise on the 17th so that is the inference I draw.

Q. Do you know of the modern practice of taking a culture and incubating it ?—A. Bacteriology, yes, I used to do a lot of that.

Q. When ?—A. In England I had my own laboratory.

Q. You have your results back in twelve hours ?—A. No, generally it takes twenty-four hours to incubate.

Q. You can have a swab taken in the morning ?—A. You are talking of growth ?

Q. No, a swab taken and you can have your incubation within twelve hours ?—A. You could get it. You would get a partial growth in twelve hours, yes.

Q. And complete in twenty-four ?—A. You get more in twenty-four hours of course.

Re-examined.

Mr. SHAND : Take Quervain. This book is apparently 1924. I will read you this from page 156 :

> "Drainage. Should the wound be drained after an operation for goitre ? This question has often been discussed and so far no unanimous conclusion has been reached."

Is that rather earlier learning than prevails at present ?—A. Yes, the present practice is to drain.

Q. He goes on to suggest it is more advisable to drain. Then he says : " Drainage is also advisable in operations for exophthalmic goitre where it is necessary to prevent as far as possible any reabsorption of the thyroid products " ?—A. That is correct, yes.

Q. At page 113 I see an illustration showing the superior thyroid artery (Fig. 84 referred to) ?—A. Yes, it comes in from above.

Q. Is that the top of the lobe ?—A. Yes.

Q. Does it give a fair idea of the position of the thyroid ?—A. Yes.

Q. That is with the head upwards of course ?—A. Yes.

Q. It is not diagrammatic ?—A. It is the actual position.

His HONOR : Human size ?—A. Proportionately, yes.

(Witness retired.)

No. 42.

FURTHER EVIDENCE of Edmund Hocking.

Re-called.

Mr. SHAND : Do you remember in 1940 you had seen Dr. Bell. You went on and saw Dr. Ritchie ?—A. Yes.

Q. You had a conversation with Dr. Ritchie in which the question of litigation was mentioned ?—A. Yes.

Q. It had been mentioned to Dr. Bell. You went to Dr. Ritchie and it was mentioned to him ?—A. Yes.

Q. During that conversation did Dr. Ritchie say this to you and your wife ; by the way, your wife was there ?—A. Yes, she was present.

Q. (Page 1037 referred to.) Did he say " If you go to Court you won't get a doctor to support you " ?—A. Yes.

Q. Did he say to you " It will be only a doctor who is a marked man " ?—A. Yes.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiffs' Evidence.

No. 42. Edmund Hocking, 12th January 1944, Further Examination, *continued.*

Q. Did he say to you " All these marked doctors are well known to the judges " ?—A. Yes.

Q. Did he further say " In fact, you have not got a leg to stand on " ?—A. Yes.

Q. Did he say " I feel I must tell you this ; it is only going to be painful for both sides " ?—A. Yes.

Q. Take after this incident about the tube, after the 2nd October—I think it was the 5th. In relation to this happening did Dr. O'Hanlon ever say to you, did he ever use the word it was " inconceivable " ?—A. Never at any time.

Q. (Page 940A referred to). With regard to a conversation in February, 6th February, in Rowntree's store, do you remember having a conversation with Dr. O'Hanlon ?—A. Yes.

Q. Did he tell you on that occasion, he admits this, that he had a long conference in Sydney with Dr. Bell's solicitors ?—A. Yes.

Q. Did he say " They asked for the truth," and did he further say " I told them all about her suffering " ?—A. Yes.

Q. At St. Luke's Hospital on the first occasion after the tube was removed did your wife say anything about it hurting ? (Objected to.)

Mr. SHAND : You were at the first trial when Dr. Ritchie gave his evidence ?—A. Yes.

Q. Present in Court ?—A. Yes.

Q. Do you remember at the request of Dr. Ritchie, your wife demonstrated how her hands went in a spasm ? (Objected to : admitted.)

Q. Do you remember at Dr. Ritchie's request your wife demonstrated how her hands went in a spasm ?—A. Yes.

Q. How did she demonstrate ?—A. She demonstrated with the thumb in the palm of the hand like that (demonstrating).

Q. That is, the thumb in and the clenched fist ?—A. Yes.

His HONOR : The thumb in and the fingers right over ?—A. Yes.

Mr. SHAND : Some time in 1938 your wife was having injections of paroidin ?—A. Yes.

Q. Were any instructions given to you to use calcium at the same time ?—A. No.

Q. In fact did you notice the effect of paroidin ?—A. Yes. I noticed that it used to only last for a time and then it lost its effect.

Q. And after it lost effect did you use anything else ?—A. I used to give calcium by way of the mouth.

Q. But never both at the same time ?—A. No.

Cross-examination.

Cross-examined.

Mr. CASSIDY : Will you agree with me that at the first trial you said nothing about seeing three strands of tissue in your wife's throat, in the tonsil ?—A. I do not remember.

Q. Will you agree with me that at that time you gave no evidence of there being any strands in the tonsil ?—A. I do not remember.

Q. Will you agree with me that you had looked at the throat before that ?—A. Yes, I had looked at the throat before that.

Q. Will you agree with me that you said nothing about there being a hole in the tonsil at the first trial ?—A. I do not remember being asked about that.

Q. Don't you remember distinctly that you said nothing about it? —A. No, I remember something about the strands in one trial. I do not know which trial.

Q. At the first trial, I put it to you, you said nothing at all about it? —A. I do not remember it being mentioned.

Mr. CASSIDY: I will ask my friend to admit it. I do not want to be put to the trouble of having to put all that evidence in. I want to get the admission that at no time did he say it.

Mr. SHAND: I can hardly admit that in view of the evidence given at page 69, about line 23.

Mr. CASSIDY: "Q. Did you have any occasion to give treatment to your wife there while she was out of hospital?—A. No, no further treatment. She gargled her throat, and painted her throat. I saw her doing that. I saw her throat while she was treating it, and I noticed there was apparently a scar on one tonsil, on the left side." That is the only reference you made in the first trial——

Mr. SHAND: I will make the admission if that is so.

Mr. CASSIDY: Before that first trial you and your wife had seen Dr. Thompson?—A. Yes.

Q. Had Dr. Thompson looked at your wife's throat?—A. Yes.

Q. Had you been present?—A. Yes.

Q. Had he told you about the strands there?—A. I do not know that he had told me. The discussion was between Mrs. Hocking and the doctor. I was in the room.

His HONOR: Did you overhear the conversation between the doctor and your wife?—A. Some of it.

Mr. CASSIDY: That was before the trial started?—A. Yes.

Q. Did you have the knowledge then that there were strands there? —A. Yes. There were strands there prior to that.

Q. And you knew?—A. Yes.

Q. And you had seen them?—A. Yes.

Q. As we know, you did not mention it?—A. As I said, I do not remember what was said.

Q. Then did Professor Welch see your wife—did he examine her throat before the trial?—A. No, he did not examine her throat before the first trial.

Q. Are you sure of that?—A. I do not think so. I am not sure, but I do not think so.

Q. During the trial did he examine it?—A. Yes.

His HONOR: In Court?—A. No, at Counsel's Chambers.

Mr. CASSIDY: And you saw him examine it?—A. I was in the room when he examined it.

Q. On that occasion you heard Dr. Poate asked by Mr. Hardwick to examine your wife's throat?—A. Yes.

Q. You heard Dr. Poate asked and Dr. Poate said when he described it two at least of what he would call strands of tissue?

Mr. SHAND: Are those the exact words?

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 42. Edmund Hocking, 12th January 1944, Cross-examination, *continued.*

Mr. CASSIDY: You heard Mr. Hardwick put this question to him: "And over that there are fibres there, two at least of what I would call bridges of tissue?" and Dr. Poate answered "Yes"?—A. Something to that effect.

Q. And then you heard further he put to Dr. Poate that there were two strands of tissue?—A. I do not remember the number.

Mr. SHAND: It will be admitted the comma is after the word "there"?

Mr. CASSIDY: At the next trial you swore there were two strands of tissue?—A. I do not remember how many I said there. I think there were three for a start.

Q. You swore at the second trial, that is, after Dr. Poate had said two strands of tissue—you swore there were two that you saw at Manly?—A. That may be quite right.

Q. So at Manly, although you did not mention it at the first trial, you saw two?—A. No, I did not say two.

Q. How many do you say you said you saw at Manly?—A. First of all I saw three.

Q. You did not mention them in the first trial?—A. I do not remember.

Q. At page 156 you may take it you said: "I saw a mark near the left tonsil, or on the tonsil, definitely on the inside of the mouth, after she left St. Luke's. I think I saw it at Manly, but it was more plainly visible on her return to Quirindi. As the inflammation subsided so the mark became more easily distinguishable. There were also what appeared to be two strands across it which I understand were strands of tissue." That is what you swore there, that there were two strands?—A. You mentioned that was the second trial. It has broken down since I first saw it. There were originally three.

Q. You never mentioned three at the first trial?—A. No, but you said I did not mention any, didn't you?

Q. You said: "I think I saw it at Manly, but it was more plainly visible on her return to Quirindi." You returned to Quirindi in 1939?—A. Yes.

Q. And you said there were what appeared to be two strands across it?—A. I did not say whether it was then or at the time of the second trial.

Q. "I think I saw it at Manly, but it was more plainly visible on her return to Quirindi. As the inflammation subsided, so the mark became more easily distinguishable. There were also what appeared to be two strands across it, which I understand were strands of tissue." Do you suggest that you were not referring to what you saw long before the first trial?—A. No, my recollection is that I originally saw three, and later two.

His HONOR: It is put to you that when you were at Manly you saw your wife's throat when she was gargling on one occasion?—A. Yes.

Q. On that occasion it is suggested you saw two strands of tissue. What is your answer to that? When you were at Manly, how many strands of tissue did you then see?—A. Three to the best of my recollection.

Mr. CASSIDY: Why did you swear two at the second trial?—A. Because there were only two present at that time.

Q. Do you say there were two present at the second trial ?—A. I am not sure. I remember them breaking down. As I said, there were three for a start.

Q. Do you say there were two at the second trial ?—A. I am not sure when.

Q. Does not that evidence of yours refer to what you saw long before the first trial ?—A. I do not think so.

His HONOR : Have a look at it and read it yourself. (Transcript handed to witness.) Having read that, it appears that you were referring to the examination that you made at Manly long before the first trial ?—A. It does.

Mr. CASSIDY : Until Dr. Poate said that at the first trial, you had never seen those strands ?—A. I had.

(*Luncheon adjournment.*)

At 2 p.m.

Mr. CASSIDY : I wanted to ask Your Honor to recall Dr. Poate on a matter in connection with this evidence given by Dr. Thompson—Dr. Thompson's evidence that this redness was caused by trauma produced by Dr. Marsh's instruments.

Mr. SHAND : I am not objecting.

His HONOR : Well, he may be recalled.

In the Supreme Court of New South Wales.

Case in reply.

No. 42. Edmund Hocking, 12th January 1944, Cross-examination, *continued.*

DEFENDANT'S EVIDENCE.

Defendant's Evidence.

Case in reply.

No. 43.

FURTHER EVIDENCE of Dr. Hugh Raymond Guy Poate.

Re-called.

No. 43. Hugh Raymond Guy Poate, 12th January 1944, Examination.

Mr. CASSIDY : You gave evidence as to what took place at the examination of the 11th December, 1943 ?—A. I did.

Q. Did you hear Dr. Thompson say that the redness produced there was trauma or injury brought about by Dr. Marsh's use of the probe ?—A. I heard that evidence given.

Q. Did you see the probe used ?—A. Yes.

Q. Tell us what happened ?—A. Well, as I stated in my previous description of what I saw, immediately Dr. Marsh put in the tongue depressor and before he had used a probe I commented on the alteration in her throat as it was then compared to the time I saw it the first time. My remarks were directed to Dr. Marsh. (Objected to.)

Q. Was what you said followed by some remark from the doctor ?—A. Yes.

Q. Tell us what was the remark you made to Dr. Marsh ?—A. I said her throat had altered considerably from the time I first saw it during the first trial, that she had an acute inflammatory process present. I said : " Her throat is very different to when I saw it at the first trial. She has an

In the Supreme Court of New South Wales.

Case in reply.

Defendant's Evidence.

No. 43.
Hugh Raymond Guy Poate, 12th January 1944, Examination, *continued.*

inflammatory condition present." Dr. Thompson said that she had had a recent cold which would have lit up the infection, or words to that effect.

Q. Up to that time had the probe been used ?—A. No.

Q. You adhere exactly to all the evidence you have already given about that ?—A. Yes, I do. I gave an account which was strictly in accord with the condition as I saw it at that time.

Q. Did you see Dr. Marsh do anything with that probe that would cause redness or trauma producing congestion ?—A. No, I thought his examination was very gentle.

Mr. CASSIDY : The next matter I wish to bring to Your Honor's attention is in reference to a remark made by Dr. Thompson this morning about a dimple. He said : " Nobody has ever explained this dimple." There has never been one word of cross-examination about it——

Mr. SHAND : Evidence was given in chief by Dr. Thompson.

Mr. CASSIDY : I am sure he did give evidence in chief.

Mr. SHAND : I do not object to the evidence.

Mr. CASSIDY : You heard Dr. Thompson give evidence this morning about the dimple ?—A. Yes.

Q. " What do you say as to what is called the dimple—did you look at it on the examination ?—A. On the 11th December last, as that had been mentioned previously, I had a very good look at that area and in my opinion the puckering that is produced on occasions is due to an unequal pull of the little fibres of the platysma muscle which must be divided when you make your incision. It is very common and I think that is the correct explanation because it is a purely superficial condition and does not extend deeply."

Q. If the tube—— ?—A. Near the " Y " bifurcation of the carotid artery.

Q. What would the distance be to where that occurs ?—A. In depth it would be probably at least three-quarters of an inch.

Q. Is there any sign of limitation of movement by growth of tissue at that spot ?—A. Not in the deeper tissues, no.

Q. Does the existence of that mark support or is it consistent with the Plaintiff's story ?—A. In my opinion, no.

Cross-examination.

Cross-examined :

Mr. SHAND : Will you deny that that which was called the dimple was much more marked at the first trial than it is now ?—A. I think it may have been a little more marked.

Q. You suggest it is due to natural causes ?—A. Not natural causes. It is due to the contraction of the surface of the platysma muscle. That muscle must always be severed in the operation.

Q. Do you remember the Defendant suggesting he explained it as being due to a knot that had been there ?—A. Yes, I remember that.

Q. Do you agree with that ?—A. No.

Q. The usual time for the operation of this type is three-quarters of an hour ?—A. That is from the time of the commencement of the incision to the completion of the operation. In a favourable case one would take three-quarters of an hour to one hour.

Q. You brought a tube into Court on the second trial that you had been using ?—A. One I had used on six occasions.

Q. That drainage tube was $2\frac{3}{8}$ inches long ?—A. I am not sure of the exact length.

Q. At page 491 we have: "Here is a piece I have got . . ." Mr. Hardwick said that it probably was not yours ?—A. No, probably not mine.

Q. "Q. Is that somewhere about the size you use ?—A. Yes, about the same. Q. What about the length ?—A. I have not measured this. We put the tube in and then cut off the projecting part. The tube overall measures about $2\frac{3}{8}$ inches and the part projecting outside the skin is little over a quarter inch so that inside the wound would be, say, $1\frac{3}{4}$ inches." That is the evidence you gave ?—A. Yes.

(Witness retired.)

Mr. CASSIDY: On that same matter as to what happened about the suggested irritation of the tonsil I propose to call the other three doctors.

Mr. SHAND: If they are going to be called we might have them now.

Mr. CASSIDY: Dr. Marsh is operating at St. Vincent's and Dr. Steele is operating at the Military Hospital.

His HONOR: The public have to have some rights in this matter and have to have some attention. You cannot have them here at a moment's notice apparently.

Mr. CASSIDY: Dr. Edye has also promised to be here and I will undertake to call them as soon as possible.

Mr. SHAND: I want them called as soon as possible, before I give my evidence because I want to see what they say.

His HONOR: None of those doctors suggested that she had trauma to the tonsil.

Mr. SHAND: I put to Dr. Marsh that for some time he was trying to get the instrument into the tonsil.

His HONOR: If Mr. Shand does require you to call those doctors before he calls any further evidence I suppose I will have to accede to his application. Meanwhile we can go on with Mr. Hocking.

PLAINTIFF'S EVIDENCE.

No. 44.

Edmund Hocking.

Further cross-examined:

Mr. CASSIDY: This is at page 83, line 5. This is the only passage I think I want from this witness's evidence at the moment. Will you listen to this carefully ? You may take it I am reading to you what you swore at the first trial: "Of course you would not have forgotten it if she told you an object had burst into her throat and she had swallowed it,"

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 44. Edmund Hocking, 12th January 1944, Cross-examination, *continued.*

and your answer was : " The woman was unconscious." That is correct, isn't it ? That answer that was given is correct ?—A. Yes.

His HONOR : Would you like to follow it from the book ?—A. Yes, I would. It is a long time ago. (Book handed to witness.)

Q. Your answer there was " The woman was unconscious " ?—A. Yes, that would be right.

Q. That was your answer at that time ?—A. Yes.

Mr. CASSIDY : " I am talking about half an hour afterwards," and the answer was : " The fact that she could not remember an incident half an hour afterwards—— " and you stopped. Is that correct ? Is that what you said ?—(Witness peruses document.)

His HONOR : The question is, " I am talking about half an hour afterwards," and your answer was " The fact that she could not remember an incident half an hour afterwards——" and then you were interrupted. Then the next question was :

> " Q. Just a moment, she told us that she remembered an object coming into her throat and she swallowed it. It is no good saying she was unconscious. I want to know what she told you. Is that what you want the jury to think—that she did not know what had happened to herself, that she was unconscious and did not know that she had swallowed anything ?—A. I cannot remember the whole of the incident as it happened ?—Q. Is that what you want to put——"

Is that the part you wanted, Mr. Cassidy ?

Mr. CASSIDY : Yes—the next portion now.

His HONOR : It goes on :

> " Q. Is that what you want to put that when this happened she was unconscious, and unconscious for some time and she did not know what had happened ; is that what you are wanting to put ?—A. It is very hard to recollect the whole of the incident ; it is a very worrying time.

His HONOR : Listen to me : you had a rather difficult time with your wife on this occasion on 2nd October ?—A. Yes.

Q. It was a bad attack ?—A. Yes.

Q. And you thought she was choking ?—A. Yes.

Q. And she went black in the face ?—A. Yes.

Q. And you managed to get some water between her teeth ?—A. Yes.

Q. Was your wife at that time, do you suggest that she was unconscious in so far as she was not aware at the time of what was happening ?—A. It is hard to explain ; she was not wholly conscious.

Q. After she did become wholly conscious and emerge from this attack did she tell you that she swallowed something ?—A. I remember her saying she felt something hard.

Q. Did she tell you that she thought she swallowed something ?—A. I cannot recollect.

Q. Did you ask her whether she had swallowed something ?—A. No.

Q. And you do not remember her saying anything about swallowing any foreign body ?—A. I do not remember it immediately following."

Anything further ?

Mr. CASSIDY : No, Your Honor.

Mr. SHAND : No, Your Honor.

Mr. CASSIDY : The next matter is on the second trial, page 180A. Your Honor, I am assuming that our agreement holds. That evidence is correct ?

The WITNESS : What I mean by " unconscious " is—not able to speak.

Mr. CASSIDY : Is that evidence correct ? Is that what you swore at the first trial ?—A. Yes, that is what I swore at the first trial.

Q. And is that evidence correct ?—A. Yes, that is correct.

Q. Now, this is page 180A. This is right at the bottom—the last question (book handed to witness).

His HONOR : I will read it :

" Mr. REIMER : You will admit that you said on the previous occasion that you had no idea what your wife said because she was unconscious at the time. Do you remember saying that ?—A. Yes.

Q. And you gave that as an explanation of why she would not have told you, because she was unconscious and would not know anything herself ?—A. I think I have said something to that effect.

Q. And was that correct, that during this spasm your wife was unconscious ?—A. During portion. As I have said, in all these spasms sometimes she partly regained consciousness and would then lapse off again."

A. That is correct.

His HONOR : Is that all you want ?

Mr. CASSIDY : That is all.

His HONOR : Anything else, Mr. Shand ?

Mr. SHAND : Yes, the next one.

His HONOR : The evidence goes on :

" Perhaps you do not mean it, but you were asked about your wife telling you or not telling you, as the case may be, about what she experienced on 2nd October. Do you remember that ?—A. As the question was put to me, I thought you meant had she told me immediately following this incident, within a moment or two.

Q. No, at any time. Do you remember being asked by Mr. Monahan at the previous hearing about whether your wife told you of her experiences in this spasm, particularly with regard to this tubing in her mouth and swallowing it, and so on ? Do you remember being asked whether your wife told you about it ?—A. She could not have told me during the happening.

Q. No, but she could have told you later that day or the next day ?—A. Quite possibly."

—A. She could not have told me while the tube was actually passing in the neck.

(Witness retired.)

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No, 45. Stella Eileen Hocking, 12th January 1944, Examination.

No. 45.

FURTHER EVIDENCE of Stella Eileen Hocking.

His HONOR : You are on your previous oath.

Mr. SHAND : Rather than hold up the trial I am not going to insist on what I submit were my rights in the matter about having the other evidence first.

Q. I am going to ask you this now. You remember this examination on the 11th December last year ?—A. Yes.

Q. Had you had any trouble with your tonsils before ?—A. No.

Q. Any pain ?—A. No, none at all.

Q. Is your voice as good as it used to be ?—A. No, it is not ; it has never been the same since the operation.

Q. When you went in to be examined by the doctors, who used the probe first ?—A. Well, Dr. Marsh first.

Q. Will you explain to these gentlemen how it was used ?—A. Well, he hurt my left tonsil very much—for some time—before he inserted the probe. Before he put the probe into the tonsil he hurt very much for a while.

Q. While this was going on, can you tell these gentlemen where Dr. Poate was standing ?—A. Dr. Poate was standing back behind the others somewhere. Dr. Edye was next—not Dr. Edye—Dr. Steele was the closest.

Q. That is while Dr. Marsh——?—A. Yes, that is while Dr. Marsh was sitting in front of me.

Q. Did Dr. Thompson say anything about you having had a recent cold, in explaining that your tonsils were red ?—A. No, a cold was not mentioned. I had not had a cold.

Q. Did this occur—this is what Dr. Poate has sworn, that he commented——

His HONOR : What page ?

Mr. SHAND : This is just a few minutes ago.

Q. Did he comment on the alteration of the condition of your throat to when he had last seen it—anything in your hearing ?—A. No, nothing in my hearing.

Q. And did he say to Dr. Marsh, in your hearing, that the throat had altered considerably, " She has an inflammatory condition present " ? —A. No.

Q. And did Dr. Thompson say " She has had a recent cold " ?—A. No.

Q. And then what happened after Dr. Marsh had been using the probe as you have described ?—A. Oh, he put the probe in the tonsil, and then Dr. Steele examined my throat. Dr. Marsh only examined the left tonsil. He did not look at the right one at all, not as far as I know. He did not touch it, but Dr. Steele did.

Q. And when was it that Dr. Thompson used the probe ?—A. I am sure I could not say exactly. It was after that.

Q. After that ?—A. Yes.

Q. Well, now, you have heard it suggested that at the first trial it was sworn by Dr. Poate that he, in indicating the spasm to the hands, indicated with the fingers closed and the thumb upright outside (indicating). Is that correct ?—A. No.

Q. How did you indicate it ?—A. Like that (indicating).

Q. With the thumb inside ?—A. Yes. I started off to show Dr. Ritchie with the thumb like that (indicating) at the beginning of the spasm and I showed him in the later stages where it went round into the palm of my hand.

Q. That was when Dr. Ritchie asked you ?—A. Yes, and he said " Yes, that is right."

Q. Did you step down from the box ?—A. No ; I went up to box to Dr. Ritchie.

Q. Dr. Ritchie was in the box ?—A. Yes.

Q. Now, I want to come to the second occasion when you came to St. Luke's—do you remember Dr. Ritchie visiting you there ?—A. Yes.

Q. And is this correct ; that when he came in he sat on a chair—this is on page 1031 of this trial, in the middle—put his hand up like I am indicating—in the don't argue fashion, but I am not suggesting that he meant " Don't argue "—he put his hand up like that and said " I don't want to hear anything about the matter " ?—A. Yes.

Q. In 1940 you were in Sydney, or you had seen Dr. Bell. I can identify the occasion by when the question of possible litigation was mentioned ?—A. Yes.

Q. And you were sent by him to Dr. Ritchie ?—A. Yes.

Q. And you saw him, and again the question cropped up of compensation for litigation ?—A. Yes.

Q. This is on page 1037—and during the course of that conversation did Dr. Ritchie say this to you, in the presence of your husband : " If you go to Court you won't get a doctor to support you " ?—A. Yes.

Q. " Further, it will be only a doctor who is a marked man " ?—A. Yes.

Q. And also : " All these marked doctors are well known to the judges " ?—A. Yes.

Q. " In fact, you have not got a leg to stand on " ?—A. Yes.

Q. And also this : " I feel I must tell you this ; it is only going to be painful for both sides " ?—A. Yes.

Q. This is on page 944, with regard to Dr. O'Hanlon : " After you came back from St. Luke's on the second occasion do you remember asking Dr. O'Hanlon to have a look at the scar on your tonsil ? "—A. Dr. O'Hanlon came and asked me.

Q. He came and asked you ?—A. Yes.

Q. Where did he see you ?—A. He saw me at home. He came to my home to see me.

Q. And did he have a look at your throat ?—A. Yes.

Q. And, having looked at it, did he tell you there was no scar there ?—A. No.

Q. But he did tell you something else, did he ?—A. Yes.

Q. Don't say what it was, and don't answer yet. What did he tell you——(Objected to).

Q. I cannot press it. But he did tell you something ?—A. Yes.

Mr. SHAND : You remember when you were getting the paroidin in the period 1938 onwards ?—A. Yes.

Q. Were you ever instructed to take calcium by mouth with it ?—A. No.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 45. Stella Eileen Hocking, 12th January 1944, Examination, *continued.*

Q. But in point of fact did you take that at separate times on different occasions ?—A. Yes.

Q. When was that ? Did you notice anything with the paroidin ? —A. When the paroidin had lost its effect I would then take calcium for a period.

Q. Had you ever had tonsillitis, felt any pain in your tonsils ?—A. No, I had never had tonsillitis.

Q. Other than when you had this trouble ?—A. This is the only sore throat I have ever had during that 18 months.

Q. Before these trials had it ever been suggested to you that you had tonsillitis ?—A. No, never.

Cross-examined :

Cross-examination.

Mr. CASSIDY : You have heard the evidence given right since the first trial of the fact that you had tonsillitis on every occasion from the first trial onwards ?—A. I have never had tonsillitis.

His HONOR : That is not the question.

Mr. CASSIDY : You have heard evidence given right from the first trial on ?—A. Yes.

Q. And you have never at any time until to-day denied that you have not had tonsillitis ?—A. Oh yes, I think so.

Q. You have never up to the present day asserted that you have not had tonsillitis ?—A. Yes, I think I have.

Q. Your evidence will speak for itself, I suppose ?—A. I think I have.

Q. Do you say you have never had a sore throat ?—A. I had a sore throat for 18 months.

Q. But other than that you have never had a sore throat ?—A. No, I don't suffer with my throat.

Q. Never in your life ?—A. No.

Q. Is that right ?—A. Yes, I am serious.

Q. That you have never had a sore throat ?—A. Only for the one period of 18 months.

Q. Other than that ?—A. No.

Q. Did you ever point out to your counsel before that you never had tonsillitis ? (Objected to—disallowed.)

Q. You made no protest or said anything to suggest Dr. Marsh was hurting you ?—A. Oh, yes I did.

Q. You did ?—A. Yes I did to Dr. Steele too.

Q. Did Dr. Steele hurt you ?—A. He did.

Q. Did Dr. Thompson hurt you ?—A. No he did not.

Q. So the other two doctors hurt you and Dr. Thompson did not ? —A. Yes.

Q. What did you say when you protested ?—A. I just said " Oh, you are hurting " and I shut my mouth.

Q. You said " Oh, you are hurting " and you shut your mouth ?— A. No, I shut my mouth and said it hurt.

Q. Were the fingers inside the mouth then ?—A. No they were pressing the tongue down and I wriggled away, when I wriggled they removed the tongue depressor.

Q. Do you say you used those words ?—A. I shut my mouth and I said it hurt. I said that to Dr. Steele, I don't remember saying it to Dr. Marsh but I wriggled away.

Q. So you did not say it to Dr. Marsh ?—A. No, I don't remember saying it to Dr. Marsh but I did say it to Dr. Steele.

Q. Had Dr. Steele and Dr. Marsh both made their examinations before Dr. Thompson took over ?—A. No, Dr. Thompson examined my throat before I went in to Dr. Marsh.

Q. After Dr. Marsh examined you who examined you next ?—A. Dr. Steele, as far as I remember.

Q. Did he or did Dr. Thompson ?—A. I can't say for certain.

His HONOR : Did Dr. Thompson examine you in the presence of the four of them ?—A. Yes.

Mr. CASSIDY : At what stage was that, after Dr. Marsh, or was it before ?—A. I think it was after Dr. Steele.

Q. By the way, you have discussed this matter with Dr. Thompson ?—A. No, I have not.

Q. Not a word ?—A. No, I have not seen Dr. Thompson until just now, I have only just sat down beside him.

Q. You have not discussed one word with regard to what happened that morning on the 11th December ?—A. No.

Q. Not since the 11th December, not one word ?—A. No, I have not.

Q. Is that truthful ?—A. Yes, that is truthful.

Q. And you remember what was said by him, and you remember the incident without any discussion whatever with him ?—A. Yes.

Q. Do you remember your tonsils being gently pressed ?—A. Not gently pressed.

Q. Do you say that Dr. Marsh did not look at your right tonsil ?—A. Dr. Marsh did look at my right tonsil.

Q. Dr. Steele also ?—A. Yes.

Q. And did he touch your right tonsil ?—A. No, Dr. Marsh did not look at my right tonsil.

Q. How do you know ?—A. He may have, but he did not see my right tonsil.

Q. Did Dr. Steele ?—A. Yes.

Q. Did he hurt that too ?—A. Well, he pressed very hard.

Q. Into something or on to the tonsil ?—A. I cannot tell, he just pressed very hard. It hurt.

Q. Did Dr. Thompson say anything ?—A. No, I don't remember Dr. Thompson saying anything.

Q. Did he open his mouth during the whole incident ?—A. Dr. Thompson went into Dr. Marsh's room first and then they called me in.

Q. While you were in there did Dr. Thompson say anything while the examination was going on ?—A. Dr. Thompson said something about not being able to see in the light on this side.

Q. Other than that did he say anything ?—A. I did not hear him.

Q. Never heard him say anything at all ?—A. No.

Q. Are you quite certain of that ?—A. Yes.

Q. Are you though, he said nothing at all ?—A. I don't remember him saying anything other than that.

Q. I put it to you he said this, that you had had a cold and it had lit up the condition ?—A. No, he did not.

In the Supreme Court of New South Wales.
—
Case in reply.
—
Plaintiff's Evidence.
—
No. 45.
Stella Eileen Hocking, 12th January 1944, Cross-examination, *continued.*

Q. Or any words like that ?—A. No, I did not have a cold.

Q. Or any words like it ?—A. No, nothing like it.

Q. He took then, according to you, no part in the conversation otherwise than to say something about the light ?—A. There was not any conversation, everybody was very quiet.

Q. None at all ?—A. Well, very little. There was a word whispered here and there, but I don't know what it was.

Q. A word whispered ?—A. Yes, very quietly. I cannot tell you.

Q. Do you remember telling me that the doctor and nurse after the removal by them of the tube, after the remaining bit of the tube had been thrown on to the tray, walked out of the room and left you without a dressing ?—A. Yes, they left me.

Q. How long did they leave you for ?—A. Another nurse came in.

Q. How long before another nurse came in ?—A. I cannot tell you how long.

Q. There was absolutely nothing on your neck at that time ?—A. No, there was not.

Q. Did not the doctor come back ?—A. No, I did not see the doctor.

Q. And that nurse did not come back ?—A. No.

Q. And you waited for some time ?—A. Some time, I cannot say how long.

Q. Half an hour ?—A. Oh no.

Q. You can remember that, can you, that another nurse came in ?—A. Yes.

Q. If you remember that incident and if that happened what was that nurse's name ?—A. I can't tell you the nurse's name.

Q. What was the nurse with the doctor ?—A. I don't know that nurse's name to be sure, I thought it was " Ward," but it seems that it was not.

Q. Is this correct, that you swore previously that you made that sketch on the day because you thought you were going to die ?—A. I don't remember saying that on that day.

Q. Would it be true if you said you made that sketch because you thought you were going to die ?—A. Not that sketch that we had here.

Q. Oh, another one ?—A. I thought you knew about that, what I drew for my daughter.

Q. Where is that ?—A. I don't know where that is now.

Q. So there was a second sketch, was there ?—A. That was some time after the first one.

Q. What, the same day ?—A. Oh no.

Q. How long after ?—A. It may have been a week or more after.

Q. What, a week or more after you drew the sketch for you daughter ?—A. I don't know how long it was.

Q. Did you draw it for your daughter ?—A. It was after Dr. O'Hanlon had taken the sketch that we have here.

Q. What have you done with it ?—A. I don't remember.

Q. But your daughter was at school, aged about 12 ?—A. Yes.

Q. With regard to the actual sketch in Court, I have not asked you this yet, you know the sketch in Court, did you say as to that in the second trial in chief to your counsel " Can you tell me how it was in relation to size, was what you saw as big as the sketch ?—A. It was quite as big as that " ?—A. That must be a mistake.

Mr. SHAND : That is " not quite as big as that."

His HONOR : No, it is " quite as big as that."

Mr. SHAND : In my copy it has been corrected, the word " not " has been put in.

His HONOR : This is the Judge's copy and it is not corrected, and it is the Judge's copy that is generally accepted. There is another correction lower down on this page.

Mr. CASSIDY : If you drew the sketch to show what it was like you would want it to be something like it, and you have it drawn just about 2 inches. If you wanted to show what it was you would want a sketch of the thing as near as you could get it ?—A. I did not think of that.

Q. It is drawn just about 2 inches long ?—A. I can't say whether it is or not.

Q. And it is about $1\frac{1}{4}$ inches of the wire coming out and the other wire a little shorter ?—A. $1\frac{1}{4}$ inches sticking out ?

Q. Yes from the torn end ? I put it to you that it is drawn lengthwise in accordance with your particulars as to length ?—A. What do you mean $1\frac{1}{2}$ inches sticking out ?

Q. I will show you, that is just about 2 inches, isn't it ?—A. I don't know whether it is or not.

Q. I am suggesting that it was practically measured ?—A. I did not.

Q. Did you do it without assistance ?—A. Well, I did it, I did not have any assistance I don't think.

Q. And you see the alleged wire sticking up ?—A. Yes, but I would not call that $1\frac{1}{2}$ inches sticking out.

Q. But it is $1\frac{1}{4}$ inches about ?—A. The longest piece was sticking out from the tube about half inch.

Q. What you have told us before—you have sworn that it was $1\frac{1}{4}$ inches ?—A. I don't know whether that would be right or not.

Q. That is what you gave in your particulars and swore ?—A. That is as far as I can say. I don't know whether that is exactly $1\frac{1}{4}$ inches.

Q. And the next thing is that the diameter of it is about half inch ? —A. I cannot say.

His HONOR : The only corrections that I can find on the first 12 pages are those three that I have mentioned. They have been shown by his Honor.

Mr. CASSIDY : I went down that although there are corrections in those pages there is no correction on that matter.

His HONOR : The Judge's copy has been altered and, as counsel has pointed out, we have made alterations from time to time.

Mr. CASSIDY : There is an alteration on this page (page 6) and I wanted that noted.

Mr. SHAND : But your Honor sees the context—" It was not quite as big as that."

His HONOR : " Can you tell us how it was in relation to size. Was what you saw as big as the sketch ?—A. It was quite as big as that. I drew the sketch to find out what it was."

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 45. Stella Eileen Hocking, 12th January 1944, Cross-examination, *continued.*

Mr. SHAND : It is obvious.

Mr. CASSIDY : It is not obvious. She drew the sketch to show what it was—that is in examination in chief.

Mr. SHAND : I am not agreeing that the word " not " has been omitted.

Mr. CASSIDY : Do you swear that you meant " not " there ?—A. Yes.

His HONOR : The only way to clear it up would be to call the shorthand writer who took that down.

Mr. CASSIDY : Do you mean that it was not quite as big as that ?—A. Yes.

Q. In which way ?—A. It was not quite as thick.

Q. What else ?—A. It may not have been quite as long even.

Q. We can measure that ?—A. I did not measure the tube ; I couldn't tell you.

Q. I will give you what you said at the first trial. You said you wanted to alter that to the word " not " (page 19) :

> " To His HONOR : That is what I want to ask you. The object that you had taken out of the commode and sketched to your husband, was it bigger or smaller than shown in the sketch ?"

There is no answer to that. Then His Honor put the question :

> " Can you remember that, whether your drawing was bigger or smaller ? "

And your answer was " It was about the same size, as near as I could sketch."

Mr. SHAND : Would you read from page 19 ?

Mr. CASSIDY : That is what you said there ?—A. Yes.

Q. Was that correct ?—A. It was not quite as big as that, I suppose.

Q. Is that correct ?—A. I don't know. I could not tell you the exact size of it.

Mr. SHAND : She has not seen it for two years.

Mr. CASSIDY : That is what you said on that occasion—" It was about the same size, as far as I can sketch." On the second trial I put to you that you said " It was just as big as that. I drew the sketch just to find out what it was. I did not know at that stage what it was " ?—A. Yes, that is right.

Mr. SHAND : Are you going to ask the question I have asked you to read ?

His HONOR : The evidence on page 19 is :

> " Mr. MONAHAN : 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 to be in any way 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.

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."

Mr. CASSIDY: Before that you know your solicitor had been asked to give particulars as to that tube. You remember that, don't you? They had been asked to give particulars in writing as to that tube?—A. Yes.

Q. And you had supplied them with the particulars, had you not? —A. Yes.

Q. And what you told them——(Objected to.)

Q. You were the person who saw your solicitors about your case? —A. Yes.

Q. And you gave all particulars to them? (Objected to.)

Q. You gave them certain instructions, did you not?—A. Yes.

Re-examined.

Mr. SHAND: Did you say later on in the first trial, at page 35, in cross-examination—you were asked did you want to alter your statement that it was about the same size, and did you say "I did not draw that sketch from what I had seen." And you were asked had you been talking it over in the lunch hour, and you said "No." You were asked "Do you want to alter it and say it was bigger or smaller than what you have drawn?" And you said "I would say it was a little smaller"?—A. Yes.

Q. Then:

"Q. Is that approximately right, the way it is drawn?—A. No, it is larger in diameter than what it seems."

A. Yes.

Q. It is put to you, "In point of fact it is more than double the diameter of the tube you have shown this morning, more than twice as big as you have drawn there?" and you said "Yes, it is." You were asked "If it is more than twice as big it is not a very accurate description of it?" and did you say "It was just as the article appeared to me. I was not going into the exact size so long as I got the plan on paper"?—A. Yes.

Q. The evidence continues:

"Q. What you have shown there is something in the nature of a miniature mop, two pieces of wire stuck into something. You say that is what it was you looked at. Two pieces of forked wire like that stuck into this thing there (indicated)?—A. Yes."

A. Yes.

Q. And, of course, there was no model drawn at the first trial?—A. No.

Mr. CASSIDY: Would you read the next question. That has not been read?

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 45. Stella Eileen Hocking, 12th January 1944, Re-examination, *continued.*

" Mr. Shand : Did you feel the ends of the wire scraping as it went down ?—A. Yes, I felt the wire in my stomach."

Q. Is this correct ? You were asked questions on page 19 at the first trial, and after Dr. O'Hanlon had given the sketch—I think it was by your husband—in 1939 ?—A. Yes.

Q. Did you ever see it again until it appeared in the Court on the first trial ?—A. No.

Q. Before it appeared, as appears from what has been read on page 19, you had given a description ?—A. Yes.

Q. And you had not seen that sketch for some two years ?—A. That is so.

Q. It had been in the possession of the Defendant ?—A. Yes.

Mr. CASSIDY : And you will admit that you never asked to see the sketch, or I will have to prove it, if you will not. You are going to suggest later that we kept it away from you ?

Mr. SHAND : I never had the idea in my mind at any time.

Q. My friend put to you, with a certain amount of emphasis, had you ever before mentioned that you had not had colds or trouble with your throat, tonsillitis, or trouble with your throat ?—A. Yes.

Q. Do you remember him putting that this afternoon ?—A. Yes.

Q. I am referring to the third trial, page 12, in chief. You spoke first of all of the number of abscesses you had had following this trouble ? —A. Yes.

Q. And you were asked : " Had you any colds or any throat affections at all during this period ?—A. No. Q. Had you any tonsil trouble or anything like that ?—A. No." It looks as if you had not ?—A. Yes.

Mr. CASSIDY : That is up till March 1940.

Mr. SHAND : And you said the last bad abscess was just before you came to see Dr. Bell in March 1940 ?—A. Yes.

Q. " Pus was coming away " ?—A. Yes.

His HONOR :—

" The last bad one was just before I came to see Dr. Bell in March 1940 ?—Pus was coming away.

Q. Had you any colds or throat affections at all during this period ?—A. No.

Q. Had you any tonsil trouble or anything like that ?—A. No."

That must be from the time she came down, March, to the end of October.

Mr. SHAND : You have heard the evidence given by Dr. Poate that Dr. Thompson said that the state of your throat would be accounted for by the fact that you had a cold, and the examination was the 11th December ?

His HONOR : She gave that evidence.

Mr. SHAND : I know, Your Honor. I am just directing your attention to it.

Q. When you were examined on the 11th December you had been in Court every week-day prior to that ?—A. Yes.

Q. And these gentlemen could have seen whether you had a cold or not—at any rate, an obvious one ?—A. Yes.

(Witness retired.)

No. 46.

FURTHER EVIDENCE of Professor David Arthur Welsh.

His HONOR : You have already been sworn, Professor.

Mr. SHAND : You have heard all the evidence for the Defendant ?—A. Yes, all this trial.

Q. Have your views on this matter been altered by that evidence ?—A. No. (Objected to.)

Q. Have your views altered with regard to the matters you have given evidence on ? You understood I meant that, did you ?—A. Yes, I understand you to put it to me do I want to alter my evidence in any way.

Q. Have your views changed with regard to the matters you have given evidence on ?—A. No, they have not.

Q. You were present at the first trial when the Plaintiff gave a demonstration—I think more than one—of how her hands and thumbs went in the tetany spasms ?—A. Yes, I was.

Q. And you watched carefully, did you not ?—A. I did.

Q. How did she indicate that spasm ?—A. She indicated it like that —(demonstrating)—with the thumb across the hand and the fingers fast, extended and then flexed.

Q. Did she ever give an indication with her thumb upright outside the fingers ?—A. Never.

Q. At the second trial you were cross-examined on a document containing the blood count. Is that the document (Exhibit "Q" shown to witness) ?—A. Yes, that is probably the document. Something was added later.

Q. Were you shown a document ? The one you are referring to is the second page to Exhibit "Q". When you were cross-examined were you ever shown this document or a similar one in which the calcium content of the blood was given ?—A. I was shown this later, but I don't remember how much later.

Q. But the first one you were shown had no calcium content, 7.2 on it ?—A. It had no calcium content and no date. I was not allowed to know the date at that time.

Q. Something has been said in the evidence for the Defendant about the fact that Dr. Poate said there was no analogy whatever between a psoas abscess and an infection such as this ?—A. The question is between tuberculous pus and ordinary staphylococcus pus. There is really no very close analogy between them, but there is quite a remarkably close analogy between the spread of a tuberculous abscess and the spread of a staphylococcus abscess at certain stages. The analogy of the psoas abscess——

Mr. CASSIDY : That has been gone into before.

Mr. SHAND : Does your Honor rule this out ?

His HONOR : I will allow it.

Mr. CASSIDY : On page 247 it was dealt with.

Mr. SHAND : I press it. It is said that there was an analogy, and I want to show that there is an analogy.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 46. David Arthur Welsh, 12th January 1944, Further Examination, *continued.*

His HONOR : I will see what he said about it.

Mr. SHAND : Of course they are different kinds of infection ; we know that ?—A. Yes.

Q. How does the similarity between the way they operate come about ?—A. When the psoas abscess ruptures and the pus spreads down the psoas muscle, and between the muscles of the thigh, it is quite analogous to the spread of staphylococcus suppuration at certain stages.

Q. Dr. Smith advanced a suggestion or theory that the parathyroids are not affected by the blood supply by suppuration. What do you say to that ?—A. Every tissue in the body is affected by interference with its blood supply, every tissue in every organ of the body is affected to some extent. Some organs are affected more than others, but the parathyroid glands would be absolutely unique if they were not affected by the blood supply being sufficiently interfered with. Dr. Smith I remember quoted certain experiments which had been made by tying the thyroid arteries, the superior and inferior thyroid arteries, and he quoted experiments where tying three of these arteries caused tetany and tying four of them did not. I would accept these experimental results and the men who did them are reliable men but I would not accept their interpretation.

Q. Why is that ?—A. I myself have made certain experiments, not experiments but observations on the vascular supply of the parathyroids and I find it so variable that interference with the thyroid arteries might not affect the parathyroids at all.

Q. Why is that ?—A. On account of the variable position of the parathyroids and the fact that they do not always get the blood supply from the thyroid arteries.

Q. You have written on that subject ?—A. Yes.

Mr. CASSIDY : When ?—A. 1897.

Mr. SHAND : And the blood supply is not altered very much ?—A. I do not expect it has.

Q. You have conducted a large number of experiments with regard to the thyroid and parathyroids on animals ?—A. Yes, and I have some reprints in regard to it.

Cross-examination.

Cross-examined.

Mr. CASSIDY : You heard Professor Shellshear give evidence ?—A. Yes.

Q. I suppose you will agree he is a man who knows his anatomy ?—A. Yes. I am quite sure he does.

Q. And you are prepared to accept what he says as to the anatomy ?—A. As to anatomy, yes.

Q. You know Dr. Edye ?—A. I know him well, yes.

Q. I suppose he is a gentleman who has the capacity and experience to judge whether a thing, a condition in the throat, is sub-acute inflammation or trauma——(Objected to.)

Q. Is it difficult to tell trauma which has just been produced in the last couple of minutes by an instrument and sub-acute inflammation ?—A. A trauma might produce a sub-acute inflammation.

Q. Both tonsils ?—A. You mean trauma to one tonsil——?

Q. Produce a sub-acute inflammation in the other ?—A. I should not think it likely.

Q. A man like Dr. Edye could tell ? (Objected to.)
(Admissibility of question previously objected to argued; admitted.)
Q. You were in Court and you heard evidence of sub-acute inflammation deposed to by four doctors who saw that throat, in both tonsils ? (Objected to.)

His HONOR: That is not the question I allowed.

Mr. CASSIDY: You heard Dr. Edye say that he saw sub-acute inflammation in both tonsils ?—A. I cannot recall what Dr. Edye said. It was on the 11th December ?
Q. Yes ?—A. I cannot recall it.
Q. This is correct: Dr. Edye is well fitted to know the difference between trauma and sub-acute inflammation is he not ? (Objected to.)

His HONOR: The question is whether he is sufficiently competent as an expert to be able to tell the difference between those two things ? —A. No one could tell whether a sub-acute inflammation was caused by trauma or otherwise.

Mr. CASSIDY: Within two minutes ?—A. No, you could not tell.
Q. Could trauma cause sub-acute inflammation within two minutes ? —A. Yes, that is what I said.
Q. In a tonsil which was not touched ?—A. No, I did not say so, trauma means injury.
Q. What kind of injury would it have to be to cause sub-acute inflammation ?—A. Handling in any way.
Q. Produce pus in two minutes ?—A. No, I did not say pus. (Question objected to.)
Q. (After referring to Dr. Marsh's evidence, page 790 and page 799): It would be impossible for trauma to produce pus within two minutes ? —A. There is no evidence it was pus.

His HONOR: Assuming it was pus, could trauma produce it in two minutes ?—A. No.

Mr. CASSIDY: You know Dr. Marsh I suppose ?—A. I know him by reputation only.
Q. With a very extensive ear, nose and throat practice ? (Objected to.) Operative practice ?—A. Yes.
Q. You know Dr. Steele ?—A. Yes.
Q. (Referring to page 1074, present trial):

"Q. Describe what the condition of the Plaintiff's throat was at that time ?—A. On examination 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 of 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

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 46. David Arthur Welsh, 12th January 1944, Cross-examination, *continued.*

it had a superimposed sub-acute inflammation which 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."

Could Dr. Steele mistake a sub-acute inflammation for trauma in those circumstances? (Objected to.) That is, in both tonsils?—A. Trauma could produce sub-acute inflammation.

Q. It could not produce it in the other tonsil?—A. I should not expect it.

Q. It could not?—A. Well, sometimes inflammation of one eye produces inflammation of the other.

Q. Within two minutes a scratching of the tonsil with a probe could do it in the other?—A. I said no.

His HONOR: You were not very definite about it?—A. A scratch in the tonsil could not irritate the other.

Mr. CASSIDY: Do you suggest there was a scratching of this tonsil?—A. It was you who used the word "scratching."

Q. "Trauma" was the word I used—trauma or injury?—A. You said trauma or injury or scratching of one tonsil.

His HONOR: Was not I the one who used "scratching"?

Mr. CASSIDY: You heard Dr. Poate too speak of the sub-acute inflammation on the 11th December?—A. Yes.

Q. And his knowledge and experience is great, too, of those conditions?—A. I differ from Dr. Poate in his interpretation of the tonsils at one very important stage.

Q. On that matter as to whether it is sub-acute inflammation or trauma he is a man who would be capable of judging?—A. You cannot make a distinction between sub-acute inflammation or trauma. The two things are not comparable.

Q. Could the pressing of the tonsils have anything to do with trauma?—A. That is a form of trauma.

Q. You have sworn at this trial that in 1941 you saw three strands of tissue?—A. I saw several strands. To the best of my recollection there were three.

Q. You swore at this trial that you measured it before the trial in 1941?—A. No, I did not measure it. I did not swear that.

Q. "Q. What do you say as to the left tonsil?—A. There was a distinct shallow oval depression about half an inch in diameter, about one inch deep in the left tonsil"?—A. Not one inch deep.

Q. "About half an inch in diameter, about one-eighth of an inch deep in the left tonsil, and a distinct scar at the root of that depression." That is only what you saw, not what you measured?—A. It was my estimation of the size.

Q. That is what you saw?—A. Yes, I saw that.

Q. And that was in December, 1941?—A. Yes, it was during the first trial.

Q. So your half-inch in diameter was judgment without measuring?—A. It was judgment. I am accustomed to measure by judgment.

Q. And one-eighth of an inch deep—that was also by judgment ?—A. Yes.

Q. And you saw that before the first trial in 1941 ?—A. During the first trial, after I had given evidence.

Q. Did you know Dr. Thompson had seen the tonsil earlier than you ?—A. I am sorry I cannot answer that. I do not know for certain.

Q. Did you know at that time during the trial that Dr. Thompson had seen that tonsil ?—A. I cannot answer that question. I do not know.

Q. Why ? Did you see Dr. Thompson before the first trial ?—A. I don't know what Dr. Thompson did.

Q. Did you see him before the first trial ?—A. I do not remember if I saw him before the first trial.

Q. Did you have consultation with him before the first trial ?—A. I have no recollection.

Q. What I want to put to you is that Dr. Thompson did not see that tonsil before the first trial ?—A. To the best of my knowledge he saw it during the first trial.

Q. Where did he see it ?—A. My recollection is that he saw it in Mr. Hardwick's room.

Q. And you were with him ?—A. Yes, that is my recollection.

Q. So you both saw it together ?—A. That is my recollection.

Q. You did not give one word of evidence at the first trial about those sizes ?—A. I explained in my——

Q. You did not give one word of evidence about the size of that depression ?—A. During this trial——

Q. You gave no evidence at the first trial about the size of that depression ?—A. During this trial I explained——

Q. You gave no evidence at the first trial about that ?—A. No.

Q. Further, you heard Dr. Poate say that the scarring there was consistent with follicular tonsillitis—the depression was consistent with follicular tonsillitis ?—A. Yes. That is why I do not care to accept Dr. Poate's evidence on the condition of the tonsils.

Q. You heard him give that evidence ?—A. That was part of his evidence.

Q. Neither you nor Dr. Thompson gave any evidence in reply ; you know that quite well ?—A. No, I did not.

Q. Nor did Dr. Thompson ?—A. Not to my knowledge.

(Mr. Shand asked that the witness might be allowed to give his explanation at this stage.)

The WITNESS : What I said at this trial was that we had got from Dr. Poate a reluctant admission that something could have come out of that tonsil and I advised Counsel that that was sufficient for our purposes.

Mr. CASSIDY : I am reading to you your answer given on the third trial :

> " Q. And you heard her evidence in regard to only being able to eat bovril and thin arrowroot or similar foods ? You heard her evidence ?—A. Yes.
>
> Q. Do you agree also that that would undoubtedly affect her blood count ?—A. It would affect her blood count so far as anæmia was concerned I expect.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 46. David Arthur Welsh, 12th January 1944, Cross-examination, *continued.*

Q. And both these elements would show in her blood, of a great increase in the white corpuscles and a decrease in the red corpuscles ? —A. Yes, on the 2nd October.

Q. And if this condition continued till the end of October would the condition still show ?—A. I do not agree that that was her condition.

Q. What do you say her evidence was ?—A. Her evidence was that there was a trickle of pus. Assuming that there was the discharge of pus and some object in the pus from her left tonsil on the 2nd October, then the active discharge of pus ceased on that date."

The WITNESS : There is a mistake there. It should be " the active formation of pus ceased on that date." The discharge of pus did not cease.

Q. " The material she describes on her tongue was quite obviously not pus and was mistaken by her for pus " ?—A. That is true.

Q. " It was the material described in Dr. Marsh's evidence. It was a white adhesive material that forms on her tongue. She would not require to scrape pus off her tongue. The white mucous and dried fungi would appear to be pus because it was white. Obviously it could not be pus because it had to be scraped off. Q. That is your interpretation of her evidence ?—A. Yes. From the 2nd October onwards—that was my interpretation of what she describes as pus. Q. If this woman scraped what she believed to be pus off her tongue prior to the 2nd October—do you say that that would not be pus ?—A. No, that would not be pus if it required to be scraped off her tongue " ?—A. That is quite true.

Q. " Would her continuance on a low diet up to the 2nd October have an effect on her blood count ?—A. It would tend to produce anæmia."

(Further hearing adjourned until Thursday, 13th January, 1944.)

13th January 1944.

Twenty-ninth Day—Thursday, 13th January 1944.

His HONOR : There is one matter I want to mention. There was a discussion yesterday as to whether there was the word " not " in the transcript at page 9 of the second trial, or one of the trials. As you may remember, I mentioned yesterday that the only way to settle that matter would be to call the shorthand writer but unfortunately he is away on leave. However, the Chief Court Reporter, who alleges he can read the shorthand of one of the members of his staff—and I am quite satisfied that what he says is correct—says that in fact the word " not " should have been put in. It appears from Mr. O'Grady's shorthand note.

Mr. CARSON : That is in accordance with what the Plaintiff swore yesterday ?

His HONOR : Yes.

No. 47.

FURTHER EVIDENCE of Dr. Harold Seward Marsh.

In the Supreme Court of New South Wales.

Case in reply.

Defendant's Evidence.

No. 47. Harold Seward Marsh, 13th January 1944, Further Examination.

Mr. CASSIDY : I want to refer you back to the examination you made on the 11th December, when you four doctors and Dr. Thompson, that is the five doctors, were present and the examination of the Plaintiff's throat was made—on Saturday, 11th December. Dr. Thompson has said that you produced trauma on the left tonsil by the way you used the probe. What do you say as to that ?—A. That is not true. I produced no trauma whatsoever. I was gentle in my manipulations.

Q. The doctor said the right tonsil was quite normal and the rest of the left tonsil was normal ?—A. Both tonsils were abnormal, because on gentle pressure pus exuded from both of them.

Q. Do you remember any conversations taking place just about the time you were applying the probe ?—A. When the mouth was opened and I put the tongual pressure on, I heard Dr. Poate or somebody behind me say : " The condition is not the same as it was," and I heard Dr. Thompson say " Yes, she has got a bit of a cold." That was before I used any probe whatsoever.

Cross-examined :

Cross-examination.

Mr. CARSON : In fact Mrs. Hocking had no cold ?—A. I can only go by what Dr. Thompson said.

Q. In your opinion Mrs. Hocking in fact had no cold ?—A. I did not see her using a handkerchief, if that is what you mean.

His HONOR : Did you see any symptoms of a cold ?—A. There was slight redness of the fauces.

Mr. CARSON : Do you agree that that is consistent with a cold ?—A. You get slight redness of the fauces with a cold.

Q. You saw the Plaintiff's throat. Did she have a cold ? Can you say whether she had a cold ?—A. By looking at her throat ?

Q. Yes ?—A. Not necessarily.

Q. But could you in this case ?—A. I could not say whether she had a cold just by looking at her throat.

Q. And you were not able to do so on the 11th December ?—A. I simply heard what Dr. Thompson said, that she had a cold.

Q. You not only heard what Dr. Thompson said ; you examined her throat ?—A. I examined her throat, yes.

Q. And from that examination can you tell these gentlemen whether, in your opinion, she had a cold ?—A. Well, you get a cold——

Q. I am asking your opinion from your examination of the Plaintiff ?—A. If you see redness in the throat——

Q. Did she in your opinion have a cold ?—A. I saw no running from her nose, if that is what you mean.

Q. Is that the only answer you will give me ?—A. When a person has a little cold there is not much to see. There was a slight redness in her fauces, and that is consistent with her having a cold.

Q. You won't say whether, in your opinion, she did have a cold or not ?—A. I suppose she did have a slight cold.

In the Supreme Court of New South Wales.

Case in reply.

Defendant's Evidence.

No. 47. Harold Seward Marsh, 13th January 1944, Cross-examination, *continued.*

Q. So that from your examination you are prepared to say that she had a cold ?—A. I can only tell you what I have already said ; that is all I can say about it.

Q. If she had not a cold would you have corrected Dr. Thompson ? —A. I was not prepared to correct Dr. Thompson. I am not there to criticise what he says.

Q. You read Dr. Poate's evidence before you came back into the box this time ?—A. No.

Q. You have been told what he said ?—A. I heard what he said that morning.

Q. Have you been told since he gave evidence what he said—have you been told by Mr. Cassidy what he said ?—A. No.

Q. Have you had a conference with Mr. Cassidy ?—A. I have had talks with Mr. Cassidy. I am not sure whether it was Dr. Poate or somebody else. I heard somebody say behind me——

Q. I am asking you what Mr. Cassidy told you. Did Mr. Cassidy tell you what Dr. Poate said ?—A. Somebody said behind me " This patient seems to be different from what she was before." I do not know whether it was Dr. Poate or somebody else.

Q. Can you understand my question ?—A. I think so.

Q. Did Mr. Cassidy tell you that Dr. Poate said something about a cold ?—A. He said it was either Dr. Poate or one of the others, he did not know which.

Q. Mr. Cassidy said he did not know which ?—A. Yes.

Q. Did not you regard the question of the conversation about a cold as of any importance ?—A. Some importance.

Q. And you never bothered to mention it ? (Objected to.)

His HONOR : That is all the examination was for on the 11th December as to what was the condition of her throat on that date ?—A. That is all it was for.

Mr. CARSON : Were you told by Mr. Cassidy that Dr. Thompson's left eye was affected ?—A. No, I was not.

Q. Did you hear at the examination that Dr. Thompson complained that he could not see with his left eye—had difficulty in seeing with his left eye ?—A. Yes, he said so.

Q. He did ?—A. Yes, I think so. I know he could not use the light on one side, so I put it on the other side for him.

Q. And that is all he said about his eyesight ?—A. I cannot recollect anything else.

Q. So if Dr. Poate said he continually complained about his eyesight that would be an exaggeration ?—A. I know nothing at all about his eyesight.

Q. You do not know anything about any continual complaints ? —A. No, I know nothing about Dr. Thompson's eyesight. I have heard that his eyesight is not good, but that is all I can say about it. When he examined the patient he said he wanted the light on the other side, which I fixed up for him.

Q. You tell these gentlemen that where you put this probe was——? —A. The entrance to the supra tonsillar fossa.

Q. Did you turn to Dr. Poate or anyone there and say " I cannot get it in any distance " ?—A. I might have said so. The distance was a quarter of an inch, and that is not the whole distance you can get it in.

Q. Can you remember whether you said that or not ?—A. I cannot remember saying that.

Q. What is the best of your recollection. Do you think you did or you did not ?—A. I cannot recollect everything I said, but I certainly got the probe in a quarter of an inch.

Q. Did you say to anybody on the 11th December at this examination " I cannot get it in any distance " ?—A. I do not remember saying that.

Q. Will you deny that you said it ?—A. I can only tell you that I do not remember saying it.

Q. What is the best of your recollection ? Will you deny it ?—A. I won't deny it. I simply cannot remember it.

Q. You must have seen in your time thousands of supra tonsillar fossa ?—A. I have.

Q. So you would know how far you could put a probe in the supra tonsillar fossa ?—A. Not necessarily. Sometimes these things are blocked.

Q. Were you surprised when you could not get it in any further ? —A. I was, because Dr. Thompson apparently got it in three quarters of an inch at one time. I thought I would get it in further after I had heard that Dr. Thompson got a large glass probe in it. That was a long while ago.

Q. You will admit that an injury such as Dr. Thompson speaks of could heal and close up—the canal punched out by the tube coming through ? —A. Could close up ?

Q. Heal up ?—A. Naturally. Eventually it would heal up.

Q. You knew also at this examination Dr. Thompson was illustrating to you the hole through which he had sworn this tube had come ?—A. Yes.

Q. And you say to these gentlemen that Dr. Thompson put the probe in the supra tonsillar fossa ?—A. That is where he put it.

Q. Did you think to say to him " That is the supra tonsillar fossa " ? —A. I did not say anything to him. It was not my business to say anything to him.

Q. You did not mind saying that you could not get it in very far ? —A. You said I said that, but I do not recollect saying it.

Re-examined.

Mr. CASSIDY : When you go to a medical examination of a person under those circumstances is it your practice to have conversation with the doctor representing the other side who is present ?—A. Not in a case of this nature.

Q. And is it part of your training that when there are opposing parties present and the Court is not there discussion should be as limited as possible ?—A. Certainly.

(Witness retired.)

No. 48.

FURTHER EVIDENCE of Dr. Ernest McAustin Steele.

Mr. CASSIDY : You have given evidence already as to the examination on the 11th December ?—A. I have.

Q. Since you have given evidence Dr. Thompson has given evidence that the left tonsil was reddened due to trauma produced by Dr. Marsh's use of the probe. Did you see Dr. Marsh using the probe ?—A. I did.

Q. And did you see the tonsil after the probe was used ?—A. I did.

In the Supreme Court of New South Wales.

Case in reply.

Defendant's Evidence.

No. 48.
Ernest McAustin Steele, 13th January 1944, Further Examination, *continued.*

Q. I think you told us before that you saw both tonsils?—A. I examined both tonsils.

Q. Did you see any trauma produced by the use of that probe?—A. None whatsoever.

Q. To your knowledge has Dr. Marsh a large experience in the handling of tonsils?—A. A very large experience.

Q. Dr. Thompson also said the right tonsil was quite normal and the rest of the left tonsil was normal?—A. I disagree with that. There was a condition of sub-acute inflammation of both tonsils and the fauces, the soft palate, pillars of the tonsil.

Q. Mr. Shand put this question: "Before that Dr. Marsh had been attempting to get it in?" Dr. Thompson's answer was "Yes. Owing to the redness which had never been present before I did not get the probe in straight away . . ." Was there any redness caused by trauma obscuring the appearance of the throat?—A. The redness present was due to a sub-acute inflammation of the tonsil, and not due to trauma at all. When Dr. Marsh first started to examine the throat he put pressure on the tongue and exposed the throat. We leant over in turn and examined it. Dr Poate looked in first and as he looked he made a comment that the appearance of the throat was somewhat different to what it had been and there was some inflammation. That was prior to any probing of the tonsil. As he said that Dr. Thompson made a remark to the effect that she had a bit of a cold. I took that as an explanation of the sub-acute inflammatory condition present.

Q. Was that remark which Dr. Poate made to Dr. Thompson or was it made to you people representing the Defendant? (Objected to.)

Q. To whom was it addressed? (Objected to.)

The WITNESS: We were all close together.

Mr. CASSIDY: Could you tell to whom the remark was addressed?—A. I took it it was addressed to Dr. Marsh particularly, but we all took it as a general remark, I think.

Q. You said to Mr. Carson that they were all huddled around?—A. Dr. Marsh to the best of my recollection was standing a bit to the left of the patient, I should say perhaps five feet away at the time.

Q. Did you see Dr. Marsh do anything with regard to——A. You want me to describe the examination? He first placed tongual pressure on the tongue and depressed the tongue and brought the tonsils plainly into view. At that time the comment by Dr. Poate was made and Dr. Thompson's remark about her having a bit of a cold. Then he gently pressed the pillars of the tonsil and expressed purulent debris from all the crypts of the tonsil that were visible. After that he used the probe to try and insert it into the large crypt or so called supra tonsillar fossa. I used the probe afterwards.

Q. Did you apply any pressure at any time?—A. I pressed the pillars of the tonsil in the same way and expressed some more purulent debris. From both tonsils I did that.

Cross-examination.

Cross-examined.

Mr. CARSON: Purulent debris you call it?—A. It is a mixture of pus and debris.

Q There were two collisions?—A. It was sub-acute exacerbation of a chronic condition.

Q. It is debris and pus ?—A. Debris and pus mixed.

Q. What you told us the other day was that the pus came from the breaking up of the debris ?—A. I did nothing of the kind. That is a ridiculous statement.

Q. Where do you suggest the pus came from ?—A. The pus and the debris mixed comes out of the crypt of the tonsil. It is the sub-acute inflammation of a chronic tonsillitis.

Q. Does that include tonsillitis ?—A. Obviously, if the word "tonsillitis" is used. I have used the term right through.

Q. From your examination she always has had tonsillitis ?—A. I have made two examinations.

Q. During the period covered by your two examinations you observed she always had tonsillitis ?—A. The first time chronic tonsillitis; on the second occasion a sub-acute exacerbation of chronic tonsillitis.

Q. On the two occasions you saw her she had a form of tonsillitis ?—A. Yes.

Q. Which would be painful ?—A. Not necessarily.

Q. Back to your favourite answer ? (Objected to.)

Q. Would you have pain with sub-acute tonsillitis ?—A. It depends entirely on the degree of infection or the acuteness of the infection.

Q. From the degree of acuteness that you saw in the Plaintiff, would it be painful ?—A. Not necessarily painful. She had a feeling of stiffness only.

Q. Stiffness where ?—A. In the throat.

Q. What part of the throat ?—A. In the soft palate and fauces.

Q. The palatal muscle ?—A. The membrane covering the palatal muscles.

Q. So when you saw her on the 11th December there was a certain degree of stiffness of the palatal muscle ?—A. I did not say there was. I said she could have that sensation of stiffness.

Q. Did you notice any stiffness ?—A. It would impair the movement.

Q. Did you notice any stiffness ?—A. There was no obvious stiffness of palate.

Q. Have things got to be obvious before you can notice them ?—A. A thing has to be obvious before you can see it.

Q. Before you can see it ?—A. Before anyone can see it.

Q. Did you notice any stiffness ?—A. I cannot say that I noticed any stiffness.

Q. You cannot say whether there was stiffness or not ?—A. No, that is impossible to say. It is the patient's sensation of stiffness. That is a subjective symptom.

Q. Did you notice whether she had a cold ?—A. She had a redness of her fauces and her tonsils, and in my opinion she had a sub-acute exacerbation of a chronic tonsillitis.

His HONOR: Is that another term for a cold ?—A. It is one of the signs of a cold. It could be associated with a cold.

Mr. CARSON: From your examination on the 11th December did the Plaintiff have a cold ?—A. It is possible she had.

Q. What is your opinion from your examination ?—A. My opinion is that she had a sub-acute exacerbation of a chronic tonsillitis.

In the Supreme Court of New South Wales.

Case in reply.

Defendant's Evidence.

No. 48. Ernest McAustin Steele, 13th January 1944, Cross-examination, *continued.*

Q. What is your opinion as to whether or not she had a cold ?—A. That could share any cold.

Mr. CARSON: Did she or not, in your opinion, have a cold ?—A. In my opinion she had a sub-acute exacerbation of a chronic follicular tonsillitis.

Q. Did you see the Plaintiff give evidence in this case ?—A. No.

Q. From your examination of the 11th December, did she have a cold ?—A. She had a condition of the throat which could have been associated with a cold.

Q. Say the Plaintiff had been an ordinary patient who came to you and said "I think I have a cold," what would you have told her after examination ?—A. I would have told her that she had a sub-acute exacerbation of tonsillitis.

Q. But if she had asked you had she a cold what would you have said ?—A. That she had a complication which could be a part of a cold.

Q. In your opinion was it part of a cold ?—A. Quite possibly, yes.

Q. Was it ?—A. Quite possibly.

Q. That is as far as you will go ?—A. Yes.

Q. You don't know whether she had a cold or not ?—A. She had a condition which was consistent with a cold, yes.

Q. Did you notice any other indications of a cold ?—A. Generalised injection of the palate, which is a concomitant of a cold, and an injection of the lateral bands of the lymphoid tissue which are large and red during a cold. Those are the signs I observed.

Q. They are sufficient to tell us whether she had a cold ?—A. They are sufficient to show that she had an upper respiratory tract infection.

Q. Is that a cold ?—A. Yes, it is one of the terms used for a cold.

Q. Then your opinion of the 11th December was that she had a cold ?—A. She had signs consistent with having had a cold.

Q. You won't pledge your oath, as a doctor, whether she had a cold in fact ?—A. No, I have given my opinion about that.

Q. Were you told anything by Mr. Cassidy about Dr. Thompson's eyesight ?—A. No, Dr. Thompson informed us about his eyesight.

Q. Asked you to shift the light ?—A. Yes, the light was moved for his convenience.

Q. That is the only reference he made to his eyesight ?—A. That is the only one to my knowledge. That was the only time in my presence it was referred to.

Q. You are satisfied with those answers ?—A. Yes.

Q. The order in which the examination was carried out on the 11th make that clear ?—A. Dr. Marsh made the first examination, and as far as I recollect he got up and asked Dr. Thompson to insert the probe.

Q. What did he say ?—A. He said: "Would you have a go at it," or something like that, or "Will you try."

Q. Did he say he could not get it in far ?—A. I think he got it in a quarter of an inch.

Q. Did he say "I cannot get it in very far" ?—A. I have given my recollection.

Q. Did you hear Dr. Marsh say "I cannot get it in very far" ?—A. I don't remember hearing him say that.

Q. If he spoke you could hear it ?—A. Probably.

Q. Are you prepared to swear he did not say it ?—A. I do not recollect it, there is no object in swearing if you do not recollect a thing.

Q. Dr. Marsh examined it, and turned and said something to Dr. Thompson—" You have a go " ?—A. Words to that effect.

Q. Dr. Thompson examined it ?—A. Yes.

Q. Put the probe in ?—A. Attempted to put the probe in.

Q. Eventually he did ?—A. As far as I know he put it in.

Q. Didn't you look to see ?—A. Yes, we looked in the same region, in turn.

Q. Did you see that Dr. Thompson had the probe in the tonsil ?—A. Yes, the crypt of the tonsil.

Q. Who examined it after that ?—A. I think I did.

Q. Who next ?—A. I think Dr. Poate was the next examiner.

Q. Did he use a probe ?—A. I do not recollect that. I did not see his examination in detail.

Q. Were not you interested ?—A. I was talking to someone else at the time.

Q. Who were you talking to ?—A. Dr. Edye, I think.

Q. He could not have seen Dr. Poate's examination either ?—A. He could have gone over after, I don't recollect.

Q. After Dr. Poate then Dr. Edye ?—A. Yes, I did not see.

Q. Did it occur to you that when you saw Dr. Thompson had the probe, to say " That is the supra tonsillar fossa " ?—A. I would not use the term " supra tonsillar fossa."

Q. You belong to the school that calls them crypts ? On behalf of your school, did you think of saying to Dr. Thompson " That is the main crypt " ?—A. No.

Q. Never occurred to you ?—A. There was no necessity of saying it.

Q. Never occurred to you ?—A. I say that if I did not say it it probably did not occur to me.

Q. Will you say one way or the other ?—A. I did not say it.

Q. It never occurred to you to say it ?—A. If a thing does not enter your head it does not occur to you.

Q. Will you say it did not occur to you ?—A. It did not occur to me.

Q. The whole purpose of the examination was to see or look for the hole through which Dr. Thompson has sworn this tube came ?—A. Yes.

Q. When he put the probe in the main crypt it never occurred to you to tell him that that was the main crypt ?—A. I was interested in my examination and not his findings.

Q. In those circumstances it never occurred to you to point out to Dr. Thompson that he had the probe in the main crypt ?—A. No.

Re-examined.

Re-examination.

Mr. CASSIDY : Where Dr. Thompson had it was the same place as you had yours ?—A. Exactly the same area, the same recess.

(Witness retired.)

In the Supreme Court of New South Wales.

Case in reply.

Defendant's Evidence.

No. 49. Benjamin Thomas Edye, 13th January 1944, Further Examination.

No. 49.

FURTHER EVIDENCE of Dr. Benjamin Thomas Edye.

Mr. CASSIDY: You were present at the examination of the 11th December?—A. Yes.

Q. Since you gave your evidence the following evidence has been given by Dr. Thompson about that examination—the left tonsil was reddened due to trauma produced by Dr. Marsh's use of that probe—what do you say about that?—A. Impossible. Dr. Marsh used the probe very gently and only in the vicinity of the orifice of the supra tonsillar fossa.

Q. The next matter was "The right tonsil was quite normal and except for the trauma the rest of the left tonsil was normal."?—A. Both tonsils showed sub-acute tonsillitis.

Q. Dr. Thompson then said "After a little time, owing to the redness which obscured the appearance of the path, I passed the probe in transversely not vertically." Did you notice any redness obscuring the appearance of the path?—A. No, not at all.

Q. Was the mouth of that opening there, I think everybody is agreed the mouth of the opening where the probe could be easily inserted in the mouth of it?—A. In the mouth of it, yes.

Q. In the course of that examination did you hear any remarks made by Dr. Thompson?—A. Just when Dr. Marsh began his examination and we all looked at the throat Dr. Poate remarked that the condition had changed since he saw it last and that there was an increase in the inflammation of the tonsils, and Dr. Thompson then remarked that she had had a recent cold. I accepted that by way of explanation——

Q. Was that before or after the probing?—A. That was immediately the examination began, before the probing.

Q. Your other evidence about the examination you have already given?—A. Yes.

Cross-examination.

Cross-examined.

Mr. CARSON: No redness at all?—A. Only the general redness as the result of the inflammation of the tonsils.

Q. You said "No redness" a minute ago?—A. No redness due to trauma.

Q. You said there was no redness?—A. That relates to the trauma.

Q. The whole of the tonsil was red?—A. Red and inflamed, the redness of inflammation.

Q. What did Dr. Marsh say after he put the probe in?—A. Dr. Marsh got the probe in. He took a moment or two to get it in and he said "Will you try, Dr. Thompson?" and Dr. Thompson said "Yes." He asked Dr. Thompson to see if he could do it and Dr. Thompson walked over to attempt to do it.

Q. Did Dr. Marsh say anything to this effect: "I cannot get it in any distance"?—A. I can't remember that.

Q. Will you swear those words were not used?—A. I cannot remember at all.

Q. You had no doubt that where the probe was put in—are you of the supra tonsillar fossa school or of the main crypt school?—A. It is all the one, it is only a matter of names. I have always been trained to call it the supra tonsillar fossa.

Q. You have no doubt where the probe was put in at the supra tonsillar fossa ?—A. None whatever, according to my teaching and training.

Q. You knew that the purpose of the examination was to see the hole through which Dr. Thompson has sworn this tube had escaped ?—A. Yes, that was apparently the purpose of the examination, or to investigate her throat as a whole.

Q. Did it occur to you to suggest or say to Dr. Thompson or to anyone else who used the probe " That is the supra tonsillar fossa " ?—A. I don't remember that.

Q. Did it occur to you ?—A. No, I was a looker-on largely.

Q. Did it occur to you to say " That is the supra tonsillar fossa " ?—A. It did not occur to me to say it, I accepted it as the supra tonsillar fossa.

Q. It did not occur to you to say ?—A. I had no occasion. I was not saying anything.

Q. I want to know what was in your mind ?—A. I looked on it as the supra tonsillar fossa.

Q. Did it occur to you to say " That is the supra tonsillar fossa " ?—A. I did not say anything. I cannot tell you what was in my mind.

Q. You cannot tell me what was in your mind or you won't?—A. I cannot.

His HONOR : On the 11th December, 1943, can you at this stage say what was in your mind at that time ?—A. No, not what was in my mind.

Q. Apart from that ?—A. I regarded it as the supra tonsillar fossa.

Mr. CARSON : You cannot remember whether it occurred to you to suggest to Dr. Thompson that where he was putting the probe was not an unnatural hole but it was the supra tonsillar fossa ?—A. Never occured to me at all.

Q. Did you do any more at that examination ?—A. I should think I did—I watched. I did not do it.

Q. You paid particular care because you were going to give evidence about it ?—A. Yes, I paid all the attention I could.

Q. Don't you think you might have mentioned this question of " cold " before ?—A. I was not asked, I was only there to give evidence of what I saw when I examined her throat, not about conversations.

Q. You paid great attention to the inside of her throat ?—A. Yes.

Q. You saw her give evidence in the box ?—A. Part of it.

Q. You were present in Court ?—A. I was here yesterday.

Q. Before the 11th December ?—A. No, I was not here. I did not hear her evidence at all.

Q. Was that the first time you have seen the Plaintiff, on the 11th December ?—A. I saw her in Court here.

Q. From your examination of the 11th December or from anything else, can you tell us whether or not she had a cold on the 11th December ?—A. She had no evidence of a cold on the 11th that I know of—by coughing and sneezing and blowing the nose.

Q. I am asking you as a doctor ?—A. No, she did not cough or sneeze.

Q. You swore that she had, on the 11th December, no evidence of a cold ?—A. Not that I noticed. It would depend on what you call a cold. She had tonsillitis.

In the Supreme Court of New South Wales.

Case in reply.

Defendant's Evidence.

No. 49. Benjamin Thomas Edye, 13th January 1944, Cross-examination, *continued.*

Q. You have sworn that on the 11th December she had no evidence of a cold ?—A. It depends on what sense you mean that ?

Q. In your knowledge ?—A. Can you tell me what a cold is ?

Mr. CASSIDY : What is a cold ?

The WITNESS : She had evidence of tonsillitis.

Mr. CARSON : Can you tell these gentlemen whether in your opinion, on the 11th December, she had a cold ?—A. If we accept tonsillitis as indicating a cold then she had a cold.

Q. She had ?—A. Yes, if you accept tonsillitis as indicating it.

Q. Did she have any other signs ?—A. What other signs ?

His HONOR : Coughing or sneezing ?—A. She did not cough or sneeze and did not blow her nose.

Mr. CARSON : She had no running from the nose ?—A. No.

Q. The only possible evidence you can point to is that of the tonsillitis ?—A. Yes.

Q. That tonsillitis you saw would be painful ?—A. Not necessarily, tonsillitis is not always painful.

Q. Whether it is painful or not depends on the degree of inflammation ?—A. Yes.

Q. It is from that you can tell whether it is painful or not ?—A. No, you could not tell by looking at it. Lots of people have large septic tonsils and do not have pain.

Q. Lots of people ?—A. Yes, it is quite a common thing.

Q. Referring particularly to the Plaintiff, the condition of chronic or sub-acute inflammation of the 11th December, would that have been painful ?—A. No, not necessarily.

Q. What is your opinion ?—A. That is my opinion. It might or might not be.

Q. It was chronic or sub-acute ?—A. Yes.

Q. Are those terms compatible ?—A. They are. It depends on your feeling about it. You cannot draw a strict line of demarcation between chronic and sub-acute.

Q. Have you read Dr. Steele's evidence ?—A. I know something about his evidence but I have not read it myself.

Q. He does draw a line between chronic and sub-acute ?—A. He may.

Q. At page 1074 he said that when he saw her on the first occasion (1942) she was chronic and on this occasion it was sub-acute ?—A. Yes.

Q. You accepted that as drawing a distinction ?—A. Yes, because he saw her before and found a difference. I saw her once.

Q. Were you told by Mr. Cassidy that Dr. Thompson's eyesight was affected ?—A. No, I don't think so. I cannot remember. I knew he had some defect in one eye.

Q. He lost the sight of one eye ?—A. In one eye, I think.

Q. That he lost the sight of it ?—A. Yes, I understand so.

Q. Will you tell us did you ever hear that the eyesight of the other eye was affected—in the evidence ?—A. No, I can't remember.

Q. Did Dr. Poate ever suggest to you that he had been told his other eye was affected ?—A. I cannot remember that.

Q. You discussed this matter with Dr. Poate ?—A. With somebody ; I cannot remember who it was. In the course of our conversation it was remarked.

Q. We have in Court, as an exhibit, Dr. Poate's notes ?—A. Yes.

Q. He has a note relating to Dr. Thompson's left eyesight being seriously impaired ?—A. Yes.

Q. He cannot tell us where he got that from and I am trying to find out ?—A. I don't know.

Q. Mr. Cassidy didn't tell you ?—A. No, all I can say is that in the course of our various meetings somebody remarked that Dr. Thompson had lost the sight of one eye and there had been some action for damages about it. That is all I remember. I did not know he had any trouble with the other eye.

Q. At the examination was there any mention of Dr. Thompson's eyesight ?—A. Yes, he had some trouble and we had to adjust the light for him.

Q. That was the only occasion—he asked for the light to be changed to the other side ?—A. He was using a head mirror and the light was adjusted to suit him.

Q. There was no suggestion by Dr. Thompson of frequent complaints about his eyesight ?—A. He did not mention that he had trouble with his eyes.

Q. That was on the occasion he changed the light ?—A. Yes.

Q. You told us that was the only occasion he mentioned his eyesight ? —A. I don't remember the details of that. I remember we helped to adjust the light.

Q. That was the only occasion that Dr. Thompson mentioned his eyesight to anyone, at the examination ?—A. I had never spoken to him before—do you mean that ?

Q. You were present at the examination on the 11th December ?—A. Yes.

Q. At that examination the only mention by Dr. Thompson referring to his eyesight was about moving the light ?—A. Yes, I don't know what he said quite, but I know there was a business about changing the light.

Mr. CARSON : But it was only done on one occasion ?—A. The changing of the light, you mean the light was only changed once ?

Q. No, Dr. Thompson said he mentioned his eyesight on one occasion ? —A. Yes, on that occasion when he went to examine the patient and he was putting on a head mirror I think he tried to look and could not manage, and I think the light was adjusted and I think he made some remark about some trouble with his eyesight.

Q. And that was the only time he mentioned his eyesight on that occasion ?—A. That is the only time I remember.

Mr. CASSIDY : After Dr. Thompson said she had a cold did you in any way attempt to cross-examine her as to symptoms of the cold or anything like that ?—A. No, I did not.

In the Supreme Court of New South Wales.

Case in reply.

Defendant's Evidence.

No. 49. Benjamin Thomas Edye, 13th January 1944, Cross-examination, *continued.*

Q. Or did you there ask the lady any question whatsoever ?—A. None whatever.

Q. Did you limit yourself purely to the examination ?—A. That is right, yes.

Q. And had you had experience of being present when the parties are there each with his own medical man ?—A. Yes.

Q. What is your practice in those instances as to conversation when someone is doing the examination ?—A. We usually do not converse at all, only in regard to trivialities ; with regard to the patient's comfort, that is all, we do not discuss anything else.

His HONOR : Do you discuss the facts of the case ?—A. No, not at all.

(Witness retired.)

PLAINTIFF'S EVIDENCE,

Plaintiff's Evidence.

No. 50.

No. 50. David Arthur Welsh, 13th January 1944, Further Examination.

FURTHER EVIDENCE of Professor David Arthur Welsh.

Mr. CARSON : Do you want to tell the Jury something about the formation of pus in the tonsils ? (Objected to ; objection withdrawn.) —A. What I wanted to make clear was this, that the material that may be expressed from the crypts of the tonsil looks to the naked eye like pus but may not be true pus and usually is not true pus in the sense that we use it, that is to say it is usually not caused by leucocytes being captured by bacterial infection. It is quite often caused by the lining membrane of the crypts falling off and occupying the cavity of the crypts and dragging leucocytes into the crypts and the action of the leucocytes then is to digest the dead material that comes off and it looks like pus and then it may be described very accurately, as Dr. Steele described it, as purulent debris.

His HONOR : That might be quite an accurate description of it ? —A. That would be an accurate description of it, whereas pus in the sense of bacterially produced pus would not be an accurate description.

Mr. CARSON : And that purulent debris can exist in tonsils without inflammation ?—A. Yes. You may get true suppuration in the tonsils.

Q. But true pus is always present with bacteria ?—A. It is always the result of bacterial infection.

Cross-examination.

Cross-examined.

Mr. CASSIDY : You heard Mr. Shand interject when I was asking a question of Professor Inglis that you never described the infection in St. Luke's Hospital on the first occasion as a blood infection ?—A. No, I don't remember him saying that.

Q. It was according to you ?—A. No, it was not.

Q. And you have never so described it ?—A. No.

Q. I want you to listen to this. To Mr. Hardwick in chief—" What does the fact that the temperature fell so rapidly indicate ?—A. That is the recognised swinging temperatures which are recorded also later between the 20th and the 21st although the actual temperatures are not given between those dates. It indicates the imminence of what be might a serious blood infection." Is that right ?—A. That is exactly what I said.

Q. Is that right ?—A. That is right.

Q. So it is a blood infection ?—A. No, I did not say it was.

Q. Bacterial infection ?—A. No.

Q. You never used the word " bacterial " infection, did you, intending to convey——? (Objected to.)

Q. Would that mean the imminence of a bacterial infection ?—A. Yes, that would be imminence of a bacterial infection.

Q. So when you said that to Mr. Hardwick it indicates the imminence of a serious blood infection, bacterial infection, you did not mean to convey by that that she actually had a blood infection ?—A. No.

Q. So we may take it now that did not indicate a blood infection ? —A. No, I think I said——

Q. You can have it that you only meant imminence. May we take it, for the purposes of a record now, that she did not have a blood infection, a bacterial infection ?—A. It means that one was threatening. It is an important sign that a blood infection was imminent.

Q. May the Jury take it now that you agree that although it was imminent she did not have a blood infection, bacterial infection ?—A. Yes, fortunately for her it did not develop into a blood infection.

His HONOR : She had an imminent blood infection but fortunately for her that imminence did not come into reality ?—A. Yes.

Mr. CASSIDY : When you gave that evidence then all you were intending to convey was the imminence of it ?—A. Yes.

Q. And you were not intending to convey to the jury on that occasion that she had it ?—A. That she had a blood infection ?

Q. Yes ?—A. No, that she was fortunately escaping it.

Q. Your opinion was at that time that she was fortunately escaping it ? —A. Yes.

Q. You did not say that anywhere ?—A. I implied that in that answer.

Q. I will read to you what you said before about this 1897 article on the parathyroids. You gave evidence yesterday that in 1897 you wrote a paper and you said that was in relation to the blood supply to the parathyroids ?—A. Yes.

Q. " Am I correct in understanding that apart from your observation as a young man in Edinburgh with children you have not seen any cases of tetany, actual cases ?—A. No, not on human subjects. Q. You gave evidence of having made some investigations into the parathyroid glands ? —A. Yes. Q. You wrote a thesis on the parathyroid gland in connection with your graduation ?—A. No, in connection with a special degree of Doctor of Medicine. Q. That was in 1897 ?—A. Probably, I don't remember. Q. Your thesis was divided into three sections : the first historical, the second dealing with the position of the parathyroid glands

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 50. David Arthur Welsh, 13th January 1944, Cross-examination, *continued.*

and the third represented deductions from your experiments." ?—A. The first part was historical, the second part anatomical, and the third part experimental.

Q. " Your experiments were 12 operations on cats ?—A. Yes. Q. One of them suppurated ?—A. I have forgotten that. Before coming to Court I read a summary." Q. You had one case of a cat which suppurated and you expressed the opinion that the suppuration was probably due to the cat having scratched it ?—A. Mr. Reimer told me that.

Q. Mr. Reimer had your paper ?—A. That is where I got it from.

Q. Your answer was " I don't remember, quite possibly so." ?—A. Yes. Mr. Reimer told me that one of my cats scratched itself and suppurated.

Q. You agree you gave that answer ?—A. Yes.

Q. " You will agree there is no mention in your thesis on either the function of the parathyroid glands, tetany or calcium." Do you remember that question being asked ?—A. I don't remember the question.

Q. And your answer " No, we did not know of that in those days." —A. We did not know of the relation of calcium.

Q. Your answer was " No, we did not know of that in those days " ? —A. Yes, that is the answer.

Q. And is that answer correct ?—A. No, it is incomplete.

Q. " The whole point from this was to explode the old idea that the parathyroids were an internal section or portion of the thyroid gland, that they were a separate organism from the thyroid ?—I think it was to show that the parathyroid glands were essential to life " ?—A. Yes, there is more in it than that.

Q. That is the answer you gave ?—A. Yes, that is the answer I gave.

Q. " And that they were not a portion of the thyroid tissues " ?—A. Yes, that is quite definite.

Q. " Yes, possibly that was in my mind, I don't remember. Q. All the discussion of all the knowledge of tetany in its more scientific forms is a matter of more recent research ?—Of tetany in relation to parathyroids, yes, undoubtedly " ?—A. Yes, that is quite true.

Q. " There are number of medical treatises which deal with the parathyroids alone ?—A. Yes." That is right, isn't it ?—A. Yes, there is literature, I would say, on the parathyroids.

Q. " In your opinion massage would be the improper treatment to apply to a case of tetany ?—A. Yes, that is quite true." ?—A. Yes.

Q. Will you agree that in true tetany patients do not evidence signs of unconsciousness ?—A. I have read in authoritative text-books that they do." ?—A. That is correct. I don't understand the reference to James' Medicine.

Q. You gave the reference to James' Medicine ?—A. I think that is a misprint. It is Osler and McRae.

Q. But you remember you could not find it in James' Medicine, any reference ?—A. But I don't know James' Medicine, I have never heard of it before.

His HONOR: You were the one that mentioned it there ?—A. I think there is an error there.

Q. When you were asked the question " Recent publications," can you suggest what you said in relation to " James' " ?—A. In referring to unconsciousness——

Q. What word did you say you used instead of " James' " ?—A. What I saw was in Osler's.

Q. I did not ask you where you saw it. I am asking you what you think you said ?—A. Osler and McRae's system of medicine, and it was written by a man whose name began with a " J."

Mr. CASSIDY : When you had a name like Osler and McRae you forgot the name and called it " James' Medicine " ?—A. No, I did not. Osler and McRae's System of Medicine is written by different authorities and I think this article is written by a man whose name begins with " J."

Q. The following questions showed that you did not know Snelling ? —A. No, I did not know Snelling.

Q. And you did not know Sloane ?—A. No.

Q. And you did not know Joll, you did not know any of them ?— A. No, that is not what I said.

Q. You swear that is not what you said ?—A. No.

Q. Do you realise that you are swearing that this is what you said ? A. What I meant was——

Q. Are you swearing that what I put to you is not what you said ? —A. It may be what I said, but it is not what I intended to say.

His HONOR : What you said but not what you intended ?—A. It is quite correct in one sense.

Mr. CASSIDY : " Have you read Snelling ?—A. I don't remember that. Q. Do you know Sloane ?—A. You are assuring me I don't know anything. Q. Do you know Joll ?—A. No " ?—A. That is quite correct.

Q. So you could not produce one authority at that time ?—A. Yes.

Q. And do you swear you did ?—A. I gave the reference.

Q. Do you swear the reference was produced, the authorities ?— A. Yes, I gave the reference.

Q. Can you point to it anywhere ?—A. Yes.

Q. Where ?—A. In one of Osler and McRae's System of Medicine.

Q. Can you point to any reference that you gave in the second trial ? —A. I cannot produce the book, it was not in Court, but I gave the reference.

His HONOR : Other than James' Medicine, was it ?—A. It was where the word " James " was mentioned.

Mr CASSIDY : You gave the reference there, you say that is not James' Medicine ?—A. Yes, that is a misprint.

Q. That is all you said on the second trial ?—A. That is the only place where I have seen it.

Q. I suppose I can assume that by the time you gave evidence in the second trial you had been able to make up your mind on the various matters submitted to you ?—A. I expect on most of them, yes, I think so.

Q. " But assuming there is no foreign body for the moment can you see any explanation as to the time during which it was continued ?— A. I think it might have continued without the foreign body under what I consider the imperfect treatment that it received but undoubtedly the presence of the foreign body would aggravate and continue the suppurative process." (Objected to ; allowed.) Do you still adhere to that statement ? —A. Yes.

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 50. David Arthur Welsh, 13th January 1944, Cross-examination, *continued.*

Q. Would this be correct, that if that tube were retained in the cavity containing pus it would undoubtedly interfere and prevent the proper healing of the infection ?—A. Yes, that is quite true.

Mr. CASSIDY : On page 252 of the second trial there is one question there only :—

" Q. If the infection had involved the deeper tissues the infection will probably continue until the suture material which is undissolved has been either dissolved or discharged ?—A. If the infection were sufficiently severe and the bacteria introduced sufficiently virulent as to cause actual suppuration, that would be true."

Do you still adhere to that ?—A. Yes.

Q. Page 260 :—

" Q. Will you agree that where you have suppuration involving pus and so on, that implies, to some extent, the destruction of tissue ?—A. Undoubtedly."

Do you still adhere to that ?—A. As a general statement, yes.

Q. Well, do you agree that you said last time to that question " Undoubtedly," and do you adhere to that ?—A. No ; I remember——

Q. Look at what you said——

His HONOR : " Will you agree that where you have suppuration involving pus and so on, that implies to some extent the destruction of tissue," and your answer was, " Undoubtedly." Do you agree to that ? —A. Yes, I agree to that.

Mr. CASSIDY : " Do you agree that—— " (Objected to by Mr. Carson : pressed.)

His HONOR : Unless I can see that the evidence is not likely to be helpful in any way, I will not allow it. I will allow this question.

Mr. CASSIDY : The next question is :—

" Q. Do you agree that where you have an acute suppurative process that must either find its way out or be absorbed in the body ? —A. Yes, it would tend to find its way out somehow."

Do you adhere to that ?—A. Yes, I adhere to that.

Q. The next question is :—

" Q. If the abscessed condition or inflammation spreads that implies further destruction of tissues ?—A. Yes."

—A. Yes, I agree to that.

Q. Now, at the top of page 264 :—

" Q. Supposing you have inflammation within that capsule which is forming pus—an acute inflammation—would you agree that the natural and most probable line of progress of that would be downwards ?—A. Undoubtedly, the most probable direction would be in the direction influenced by gravity and by the opening up of a fascial plane by any spread of the inflammation."

His HONOR : Do you adhere to that ?—A. Yes, but limited to the extent to which that question applies.

Mr. CASSIDY : The next one is at the bottom of page 265 :—

"Q. Take this case that we are now investigating. If there were a foreign body inside the thyroid capsule it could not get out without the capsule at some point being destroyed by the suppuration ?—A. Certainly. I do agree to that."

A. Certainly I do agree to that.

Q. Now, this is the last—page 267 :

"Q. There would have to be very extensive suppuration ?—A. Yes."

His HONOR : This is how it reads :

"Q. There would have to be very extensive suppuration ?—A. Yes.

Q. That would involve a very gross swelling immediately in front of the windpipe ?—A. A very obvious swelling.

Q. That would also be very extensive ?—A. Not necessarily extensive ; it would be considerable.

Q. It would come out a long way ?—A. Yes."

Is that the part you want ?

Mr. CASSIDY : Yes, and the last question.

His HONOR : "Would not that, in your opinion, indicate that the patient would require some treatment or investigation," and the answer was "Yes."

A JUROR : Your Honor, it is very difficult for the Jury to understand the whole of these pieces of evidence taken out piecemeal from here and there, such as this.

His HONOR : That is always the difficulty, gentlemen. Assistance will be given to you by Counsel when they address.

The JUROR : It is very difficult to follow exactly what it is intended to convey to us, where a piece of evidence is taken out from this page and that page and another page.

His HONOR : That is always the difficulty in evidence, and it can only be cleaned up when you come to Counsel's addresses.

The JUROR : It is not correlated ; that is the trouble.

His HONOR : Yes. It will be correlated in the Counsels' addresses.

Mr. CARSON : Those passages that we are referring to have reference to what would happen to enable the tube to pass from the right to the left.

His HONOR : The last two passages that have been read have been read on the basis of the tube passing from the right to the left.

The WITNESS : In front of the windpipe.

Mr. CASSIDY : Is that all—just passing from the right to the left ? (Objected to.)

Mr. CARSON : There is the second question at the top of the page (witness handed book).

In the Supreme Court of New South Wales.

Case in reply.

Plaintiff's Evidence.

No. 50. David Arthur Welsh, 13th January 1944, Cross-examination, *continued.*

His HONOR: Do you see it there:

"Q. If it attempted to go to the front of the windpipe—that distance from the skin to the windpipe is very, very little?—A. Very little in healthy conditions but it is very loose——

Q. You agree that in normal healthy conditions you can feel your windpipe right in the front of your neck quite easily?—A. Yes, quite easily.

Q. Do you agree that if an object of that size and description attempted to travel from one side to the other by going in front of the windpipe the patient would be in very obvious need of medical attention?—A. No, not necessarily.

Q. It would be obvious?—A. It depends on the amount of suppuration and loosening of the tissues.

Q. There would have to be very extensive suppuration?—A. Yes.

Q. That would involve a very gross swelling immediately in front of the windpipe?—A. A very obvious swelling.

Q. That would also be very extensive?—A. Not necessarily extensive. It would be considerable.

Q. It would come out a long way?—A. Yes.

Q. Do you agree that it should be perfectly obvious to any skilled observer that there was something very seriously amiss?—A. If an event of this kind happened the object left behind might slip over quite readily—quite rapidly.

Q. That object, which is 2 inches long?—A. I don't know about that.

Q. That is what I am asking you about. Could an object of that size make a very obvious swelling with gross suppuration in front of the windpipe?—A. An object of this size, with two wires on it, would make it very obvious.

Q. The condition of the patient would be such as that it would be obvious to any skilled observer that she would require some urgent medical attention?—A. No, a considerable swelling would be very obvious.

Q. Would not that, in your opinion, indicate that the patient required some treatment or investigation?—A. Undoubtedly."

Mr. CASSIDY: Your Honor might explain to the Jury that later I intend to line these answers of the Professor up and——(Objected to.)

His HONOR: (To Jury.) As I said to you before, gentlemen, the pieces of evidence are given to you and for the moment you cannot understand what they have got to do with the "State of Denmark" at all.

JUROR: Counsel understands them but unfortunately we are left in the dark.

His HONOR: Yes, but unfortunately Counsel is not allowed to tell you why at the moment. They are only allowed to tell you afterwards.

Mr. CASSIDY: I asked for the whole of the evidence to be put in, but that has been objected to.

His HONOR: All right. Was that the last question?

Mr. CASSIDY: Yes.

Re-examined.

Mr. CARSON : You were asked about what this thesis you wrote consisted of. Have you got it in Court ?—A. Yes, a copy of two parts.

Q. Is it in here ?—A. Yes.

Q. I do not think it is. Will you have a look ?—A. I put it on your table, I think.

Q. Is that it (handed to witness) ?—A. This is a copy of the experimental part on cats.

Q. And what is this one (indicating) ?

His HONOR : Did you say " On cats " ?—A. Yes. The effect of the removal of the parathyroid on cats, and this one (indicating) in the blue cover is the anatomical portion of the thesis.

Mr. CARSON : And do they deal with the blood supply of the parathyroid ?—A. Yes, this one (indicating).

Q. In the blue one ?—A. Yes.

Mr. CASSIDY : The other one was referred to before ?—A. Yes.

His HONOR : There are three parts as a matter of fact. Are you tendering the three parts, Mr. Carson ?

Mr. CARSON : There are only two here, as far as I can see.

Q. Are these complete (indicating) ?—A. The first part is historical. I did not bring it down.

(Two documents tendered and marked Exhibit " W.")

Q. You were asked about the authority for unconsciousness, by Mr. Cassidy, a few minutes ago ?—A. Yes.

Q. Now, did you, just about the time or prior to the second trial, extract from the University copy of Osler & McCrae a portion relating to unconsciousness ?—A. Yes, I did.

Q. In longhand ?—A. Yes.

Q. And you handed it to me, and that is the extract (handed to witness) ?—A. Yes, that is the extract.

(Document tendered and marked Exhibit " X.")

His HONOR : The name of the man that wrote that article does not appear ?—A. No.

Mr. CARSON : The name of the author is apparently Jelliffe, if you look at that book (handed to witness) ?—A. Yes, " Tetany." Jelliffe. That is where the word " James " came from, I think.

His HONOR : This has been referred to before, hasn't it ?—A. Yes.

Mr. CARSON : Yes, but at the second trial we did not have the copy available and that is why I now put that extract in. That is all we had available to us, not to the Court. It was not put in before.

(Witness retired.)

CASE IN REPLY CLOSED.

COUNSEL ADDRESSED.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 13th January 1944.

ADDRESSES.

No. 51.

CLOSING ADDRESS of Mr. Cassidy, K.C.

Mr. CASSIDY (in chief): May it please Your Honor and gentlemen of the Jury, with the closing of the evidence comes the task of each counsel to endeavour to put in some connected order the contentions he urges in respect of his particular claim. That task, of course, in a matter which has ranged over the area we have covered and which has involved matters many of which are very unfamiliar to you and to most of us, is of course a very heavy task for each. The arrangement and the order of any address that attempts to cover such an area is of course difficult because it is extremely hard to get into watertight compartments the different headings of the remarks one is going to make. I shall endeavour as much as possible to arrange my address to follow a certain order and to deal during the course of it with the various matters that arise and the various considerations that apply to those particular matters.

This morning one of the members of the Jury quite rightly said—and it must occur to a Jury over and over again—that it is difficult always to follow the connection and the significance of certain evidence. Counsel, as His Honor pointed out, is not permitted to tell you why certain evidence is being stressed and why it is being tendered. What comes later is of course the arrangement of that evidence into its proper place, to endeavour to make up the whole picture on behalf of the side which is addressing. If I might illustrate it, this morning for example I quoted a number of statements made by Professor Welsh. Those statements, when seen in their proper perspective, will—I think you will agree with me when you hear them—have a very great significance and therefore you will follow that they have to be picked out from individual parts because the evidence is given in chief first of all, then in various places there is cross-examination, and in order to follow it you may have to jump to various parts of the evidence which may cover 40 or 50 pages.

You will remember one of the important matters in this case is how one can have the Plaintiff with a present lack of limitation in that neck if she suffered from an abscess which persisted for so long and a tube which travelled the distance she alleges. The witnesses called by the Defendant speak of such a travelling as being impossible because it would have been accompanied, and would have had as its natural result, severe limitation of muscle and other structures caused by destruction of tissues. That is apparent in the Defendant's case throughout. I then referred this morning to Professor Welsh's evidence, and from that evidence we get an entire agreement in principle with that very statement that our people make. When I read to you from page 249 I find there, for example, that if you had a cavity there and pus in it, and pus continued, you would have the wound prevented from healing. You have from him this further admission, with suppuration, with pus, it involves destruction of tissues and if it travels it involves further destruction of tissues.

Mr. SHAND: There is nothing at page 249 on that.

Mr. CASSIDY: Pages 260 to 261, but 249 is the first.

Gentlemen, the point I am illustrating to you—and I am not compelled to give the pages but I do so—is this, that we come to the position where you are able to obtain from the Plaintiff's own witnesses an agreement of the principles deposed to by the Defendant's witnesses on which an important aspect of this case depends. So the question of the arrangement of the evidence back to the heading to which it relates is one of difficulty, it takes time because we have to travel over a vast area of evidence but when put together by counsel it assists, we hope, if it is put logically and consistently, in the approach to the problems that arise in a case of such length as this.

The claim against the Defendant, as you know, is a claim in negligence. The claim is that the tube was removed negligently, that is the allegation. Removed with the hands, no gloves, no forceps, that is to say, everything about the removal was negligent. Further, it was negligence in removal, such as breaking the tube; further, that having knowingly broken the tube, knowingly and negligently, it was allowed to remain in the wound and knowingly and negligently allowed to continue there. That covers, I think, a description of what the negligent charge is. Negligence charged against any professional man is, of course, a serious matter, professional reputations are built up on the work of the individual doctor, or the individual barrister, or the individual architect or person; it is a reputation which the successful professional man arrives at usually because of the pride he has taken in his work, because of the attention he has given to it, and that reputation he has only gained after years of work and is usually only the result of great care paid to that work and great ability directed to it. Competition in the medical sphere over the years has been severe, it is not the mugs—if I may say so—who get to the top, and any suggestion against a man who over years has conducted himself in such a way as to attain prominence in his sphere is, of course, a serious matter.

Here we have something, however, which transcends mere negligence, and it is very necessary that we consider that because the charge, as I say, is one which is very grave in this case. The gravity of it cannot be escaped. One finds charges against medical men, against lawyers and against others, of negligence. One finds that there may be cases of inadvertence or accident, but one rarely finds a charge such as the one here, and for a charge such as the one here to be made, if I may put it colloquially, pulls one up very short when one comes to think of it and to consider the basis of it and whether that charge can possibly be right.

As I say, the Plaintiff alleges here that Dr. Bell knew what he had done, saw what he had done, that the nurse who accompanied him saw what he did, that they both were—as they must have been—aware (as is sworn by the Plaintiff) of the shortage of the tube left in his hand and that the tube had broken. They both left the room and neither nurse nor doctor endeavoured to do anything more in connection with the matter and neither recovered it.

Further than that, Dr. Bell went to the extent of suggesting to the husband when he left Sydney that the tetany would last a long time and, as it is put by counsel for the Plaintiff, that Dr. Bell suggested that because he knew the tube was left there and that the woman would be sick for a long time. I am quoting to you, gentlemen, as I will continue to quote, the evidence almost literally correct. Not only does the evidence contain the allegation that he knew that these things happened, but further that

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 13th January 1944, *continued.*

Dr. Bell, when this lady left Sydney and when he permitted her to go, knew then that the tube was there and that he deliberately told the husband that the tetany would last a long time—Mr. Shand puts it because he knew the tube was there. For what purpose is it insinuated? So that no one would look for it or find it. Such a charge as that, of a medical man allowing a patient to go forth in that manner and carrying on with an attempt to cloak and keep from the light of day the fact that he left the tube there, continuing that system right throughout that period of eighteen months during which he was writing to her and she to him, and when in 1939 she came to Sydney, he then and there got Drs. Ritchie and Marsh to join with him in an endeavour to deprive this woman of her rights and in an endeavour to cloak some wrong that he had done, such a charge as I say calls for very close scrutiny.

We have heard of Dr. Bell from the Plaintiff this description: that in the hospital she found him a thoughtful man, we have heard from her on the third trial that she said he was a kind man, we have heard from her on the third trial that she said, in that rather extravagant language of hers, to which I will later refer, that she adored him, we have heard in the third trial that he was gentle. We have heard from Dr. Thompson—to use his words—that Dr. Bell was a very charming, good-natured man, we have heard from Professor Welsh that he was held in high regard as a surgeon, and from no one in this case during a career that has lasted for a very long time have we ever heard one suggestion in a public life of anything dishonourable or bad about him. You have seen him and, gentlemen, may I put this to you with respect, looking with acumen at the matter, can you see in him anything else other than what I have put; a simple man without any flashness, devoid of cunning, have you ever seen anyone showing less evidence of cunning such as might probably develop in some parts of commercial life where one brain rubs up against another. The man, who has devoted his life to his job, is entirely lacking in cunning and deceit, one only has to look at certain of the things he said to see that. Just think of it, he said: "I will not swear to anything unless I can remember it." On one occasion he was asked in the box by Mr. Shand what Dr. O'Hanlon and he talked about over the phone. He said: "It is difficult to remember, but I do remember two things. One was that it was a pity she did not keep the tube, and the other that Dr. O'Hanlon said it might be better if she had lost it." Can you imagine any man who is cunning enough to work up some fictitious case making such an admission? He says it only because he has a high regard for the truth. I put it to you that with your knowledge and observation you look past the superficial to the real things in the case and that you say that the man with whom we have to deal here is a man whose reputation is unchallenged and that any story which suggests that he has been guilty of this grave offence would need the most careful scrutiny applied to it before one could say it was proved as required in a court of law.

Charges are easy to make, charges have been made against all sorts of doctors and institutions in the course of this case and I am going to put to you that when one comes to examine the basis on which this case starts we find the basis one that cannot be accepted, and the unreality and the offences against ordinary probability occur in this matter only because the case starts with a premise that is wrong.

The first premise I suggest that is wrong is the allegation of negligence in removal of that tube. What does a false premise bring in its train? It has to bring in its train other things that are false and wrong. I put it to you that that account given of the negligence occurring at the removal of the tube is unbelievable and is not correct.

I take you next to this position, that that tube could be left in that wound, that you have a woman who was 6 stone 13 lb. seven weeks before she went into hospital, who is in a dangerous condition when she comes to Sydney, whose only hope for this toxic poison is an operation, that she in that weakened state could have left in her body and in her neck a tube like this, left for 18 months with suppuration going on, she recovers and we find her by the end of 1941—or earlier even—in a position that she is suffering no impairment from that tube and from that illness and to-day she is 9 stone and looking well compared with the woman who entered hospital under Dr. Bell's care in 1938, a woman of her size and type in the hospital down to 6 stone 13 and 7 stone 2. The story is conceived, I suggest, in impossibility. Following it further, when the lady leaves hospital on the 14th April within a month of the operation, she takes the motor trip home with little discharge, she sees no doctor until the 30th April and during that time she has been attending to herself. By the 25th May she is back to dry dressings and by the end of June the wound has healed and the inflammation gone. From that time on she has no medical attention to the neck until she alleges that this incident occurs on the 2nd in the circumstances she describes. During that time, although we have the evidence of the chemist as to the prescriptions that she has, she has done nothing medically in regard to the neck, and we have various accounts as to her condition.

The next thing of importance is, I suggest, that on the 2nd October she is finding difficulty in swallowing and, she alleges, that this tube comes through and bursts in one piece and is swallowed. That extraordinary happening is followed by this, no doctor is called and that tube is passed, or alleged to be passed, on the 5th October, and that tube although we are told at first that it was discarded, when it comes to Court is described as being lost because of certain contortions and things going on at the time the chain was pulled.

For those reasons I suggest to you with respect it is a story that is wrong at the outset, the basis of the charge can never be established. I know that from you the matter will receive no sentimental or sympathetic treatment but it will receive the test—I gather from the attention you have paid—has the Plaintiff proved to satisfaction in a court of law that that negligence, charged as she charged it, took place? The position will never be approved by men having a consciousness of the importance of their position from the point of view that may have been characteristic of juries in the old days: "Well, it is a sad case, it has been a long time, let us give something." In a court of law you become an exceedingly important part of the tribunal and your position proceeds free from what in other walks of life may influence us in regard to people who are ill or anything of that nature.

I have said that this case and this charge—and I have emphasised the gravity of it—need close scrutiny and I think I am not presumptuous in saying that you will agree with that. If it occurred it is intentional misconduct on the part of the doctor, it is not mere accident, or inadvertence

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 13th January 1944, *continued.*

but it is intentional misconduct. It becomes vital therefore to examine the story which is foundational to the charge and that will be the first part of my address. As I have said that story involves a consideration of her present condition. May I be pardoned at this moment for saying that in the days that have passed since the Plaintiff completed her evidence we have been apt to let what her story is slip out of our minds. The case has, from both sides, involved a large amount of medical evidence, we have had a large portion of the time directed to discussion and disputation, for example about tetany and hysterical tetany. We have had a large amount of criticism during the Defendant's case of Dr. O'Hanlon's conduct, we have had a large amount of criticism of the B.M.A., we have had with that criticism the suggestion that the doctors have bound themselves together to give false evidence. It may be that some may say "I disapprove entirely of Dr. O'Hanlon in his conduct in giving a statement to my client and in refusing to give a statement to the Plaintiff." That conduct is not probably justified, but those matters of prejudice go only to an examination or to the credit of the particular person concerned. We must not because of some spirit of objection, or some strong objection, say that the fact that he took that line of conduct and did not give statements to each side will cause us to remove him altogether from the case; we must not, because of some prejudice which exists among many people, say with regard to the B.M.A. that a number of doctors are going to lie. That is losing the true sense of proportion and this case has become overloaded with that sort of inference, innuendo and suggestion. You have seen the witnesses called, you have seen Dr. Edye, Dr. Poate and the other doctors and know their experience and it is for you to say whether those are men who are influenced by the B.M.A. to the extent that Dr. Poate would imagine the conversation on the 11th December.

(Luncheon adjournment.)

At 2 p.m.

Mr. CASSIDY: Gentlemen, I had been putting to you before lunch the matters which I suggest call for careful scrutiny and I am passing now to the position of the story of the removal of the tube. Some of you have probably served on juries before so that it is probably not necessary for me to give you a lecture on what the onus of proof means. It will be sufficient for me to say this, if there are any of you who have not served on juries, that the Plaintiff in alleging a charge, carries with her or him, whichever it might be, the onus of proving that charge. If the position is that you cannot accept the Plaintiff's story then there is a verdict for the Defendant. If the position is that on the whole of the evidence you cannot say which story you believe then the verdict passes to the Defendant. That is a well-known way of putting it to juries and it is the way approved by law and the principle which is applied in consideration of the case, that is, the person who lodges the charge must prove it, as it has been put in the High Court, to the comfortable satisfaction of the tribunal which is finally deciding upon the case. That is to say, that that must be the comfortable satisfaction to the conscience of those members of the jury who have heard the whole of the facts, that case must be so proved.

In a charge of negligence—I will put very little of the principles of law to you as His Honor will deal with them later and they are fairly simple in this case—the law requires the negligence relied upon to be

specifically stated and it must be proved as alleged. That that is right I would suggest to you on reflection is obvious. When a charge of negligence is made against any of us, and especially where that negligence is sought to be established over a period of months, where you have little or no opportunity of checking up the various statements made, it is obvious that in common fairness the Defendant should be told specifically what the negligence is and that that negligence which the Plaintiff asserts equally specifically must be proved. Much as people talk about the law being foolish, for all the defects we may have I think you will agree that it is the best system we have got and can have in human agency, and for that reason it is that the law says the Defendant is entitled to know before trial what is the negligence complained of, what are the particulars of negligence he has to meet and with which he is going to be charged.

You will remember from the correspondence that the doctor had not seen the patient between March 1940 and the time when the trial came off; on the 28th November 1941, in the correspondence which appears as part of Exhibit "24," it will be seen that the Defendant's solicitors had been asking for an inspection of the Plaintiff by the Defendant's medical witnesses, the object naturally being to see the Plaintiff's condition, the condition of the throat and what were considered other relevant matters with regard to the Plaintiff then. That had been asked and on the 1st December the Plaintiff's solicitors replied that they had had some trouble in getting instructions but they said at that time this: "It is not alleged that Mrs. Hocking's health is now impaired and as her present condition is not relevant to the accident we cannot consent to submit Mrs. Hocking to a medical examination by or on behalf of the Defendant." So you will see, gentlemen, that Dr. Bell, not having seen her since March 1940, the question of the particulars and the question of her medical condition and the question of what might have been observed had an examination of her been permitted becomes very important. As I say, the law is right when it says "You the Defendant are entitled to the particulars of the negligence; you the Plaintiff are under an obligation to supply them and you the Plaintiff are bound by those particulars." Those matters are important. It is the right the law gives to the Defendant, it is the obligation under which the Plaintiff stands. The Plaintiff is not compelled to give them in a hurry, the Plaintiff is allowed to consult her legal advisers and to set them out.

You may take it from me that in this case the writ was issued on the 15th January 1941, you may take it that the particulars were applied for on the 21st February 1941, and the documents will be before you. You may take it that the Plaintiff had ample time to consider those particulars, because although our letter was written on the 21st February 1941 the particulars are not finally supplied to us until 25th August 1941. So the first matter you will see is that there has been abundant time for consideration of the letter we wrote and for the formulating of the particulars which the legal advisers know are to be the basis of the case, the particulars which they as lawyers know blindfold, the full significance of which they are aware of because from the start this lady has had legal advice available to her as good as any that could be obtained. Therefore we come to this, that from February 1941 until August 1941 or in between those dates, you may assume that the matter has been investigated, that the full seriousness of the particulars upon which she relies are realised and that they—as we are entitled to take them—become the basis of this action.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 13th January 1944, *continued.*

As I say to you, that must in all fairness be the rule that the Plaintiff was not allowed to depart from. A Plaintiff is not allowed, after having supplied such particulars, to depart from them and after having given evidence in a first trial to make use of the opportunity when a second trial arises to re-form and alter the case to remedy the defects in it.

Just think of it gentlemen, what a miscarriage it would lead to, that when one supplies particulars on which they are bound, when one goes to trial in a first action, when the Plaintiff then deposes to the various matters which support her case, when she is cross-examined and finds defects and weaknesses and impossibilities in that case, that she then changes it, that as those further facts develop in the course of the case the story again alters. It is obvious that any alteration of a story, which has been carefully put into writing, after the existence of three trials and where the extreme shrewdness of the Plaintiff and her advisers becomes apparent, could not be allowed. It is vital to this case, it is a principle of law, that the particulars form the basis of the action and the particulars bind the Plaintiff. A Plaintiff is not allowed to reconstruct and re-alter a case to make it more probable, a Plaintiff is not allowed to benefit from one of the obvious weaknesses and defects of an earlier case and then re-shape it, a Plaintiff is not allowed to say to a jury, or to ask it: "You find a tube such as I describe was not left in, but you can find I made a mistake, you can find there may have been something else left in." A Plaintiff is not allowed to say "You, Dr. Bell, I might be wrong in saying you knew about it, I might be wrong in saying you were aware of it when I went off to the country," nor to ask the Jury to find "We do not find that against Dr. Bell but there may be something else," or to try and substitute for the case the Plaintiff launches something else that may appeal.

You can see how unfair that would read because your verdict in this case must proceed on the evidence, your verdict in this case must proceed on what the Plaintiff said, that Dr. Bell knew he left it there, walked out of the room when he knew he left it there and that he left it there all the time. That cannot be watered down. That is the evidence, a verdict against him finds those things because any substituted evidence cannot of course see the light of day. Your deliberations are on the evidence, your deliberations must only find on the case of negligence that is alleged, on the case that is set out, and, again I think you will agree with me, cannot substitute for that some theory that might arise in your own minds because that theory—supposing persons did come to that position—had never had the opportunity of being tested at this table by cross-examination or otherwise, nor is there any evidence to support it. May I say that that requires a strong and virile mind to see that the matter is restricted to the charge that is made and that your minds are not allowed to run away to any other charge; it is necessary—and it is our bounden duty to do it—to apply that principle of law fearlessly and honestly.

As I said to you, the particulars were supplied on the 25th August, 1941, the first trial commenced on the 8th December with the Plaintiff not having been examined by the Defendant's medical representatives. I said to you just now that the law required that the charge of negligence should be specifically laid. His Honor will tell you that I am right in saying that. What have we on that aspect of it (and I am endeavouring to keep my address as logical and commonsense and free from technicality as possible)? On that we have this admission: there is no charge of negligence in respect of the operation. That admission is important. I want

to read it to you in the terms in which it was made, and the full significance of that admission is important because, despite that admission by Mr. Shand, there have been veiled suggestions throughout this trial that because in the operating theatre or in the records the patient was in the theatre room at 7.30 and returned at 10, by reason of that two and a half hours something must have gone wrong. I suppose there is nothing worse than innuendo or suggestion, nothing more dangerous. Illustrations arise to the mind of how dangerous and how disconcerting that might be. I would illustrate it in this way—in the old days when dresses were longer and the human form of the ladies less exposed, the suggestion of seeing a bit of leg meant a lot; if you saw a lady in a swimming costume it meant nothing, but the point is that suggestion is often more than enough.

I suppose if there is anyone who knows Mr. Shand's form of advocacy it is myself, and if there is anyone who knows mine it is he, because in a career at the Bar it so happens that we are often opposed to one another. Despite the admission he made, which I will read to you, he will be behind it all the time with a suggestion or innuendo that at that operation something must have happened. Admissions made by Counsel and recorded in writing bind him to the fullest extent. That was why I had it noted and why it is necessary that this thing should be noted, so that there will be no argument between us. I have it noted at page 243, and it is to this effect. It arose in this way: Professor Welsh, giving evidence, had made a certain comment, and I make an objection. It was argued and His Honor ruled, and His Honor then said (and I asked him to say it to you gentlemen):

> " His HONOR (to Jury): Gentlemen, Mr. Shand says although the Professor said something went wrong at the operation there is no blame being attached by the Plaintiff to the Defendant in respect of that, or anyone else. The negligence charge is leaving a tube in the throat of the description the Plaintiff gave."

His HONOR: It ought to be " anything else."

Mr. SHAND: No, " anyone."

Mr. CASSIDY: Yes, in respect of that, " or anything else."

Mr. SHAND: I said although something went wrong she did not allege negligence against the Defendant.

His HONOR: I think it is " anything else." I did not notice it before or I would have had it corrected.

Mr. CASSIDY: " There is no blame being attached by the Plaintiff to the Defendant in respect of that or anything else."

Mr. SHAND: Read it all out.

His HONOR: As a matter of fact I think you found fault with me, Mr. Shand, for repeating it.

Mr. SHAND: " Although the Professor said something went wrong with the operation there is no blame being attached by the Plaintiff to the Defendant in respect of that or anything else."

Mr. CASSIDY: " The negligence charged is leaving a tube in the throat." (Particulars tendered, read to the Jury, marked Exhibit "O".)

In the Supreme Court of New South Wales.

No. 51.
Closing Address of Mr. Cassidy, K.C., 13th January 1944, *continued.*

His HONOR : That was mentioned before.

Mr. CASSIDY : It was mentioned earlier.

His HONOR : I remember being taken to task about it by Mr. Shand.

Mr. SHAND : I think I mentioned it in my opening.

Mr. CASSIDY : I read the notes so that there could be no argument about what the position was.

I want you to follow the significance of that admission. The hospital records show—you may take it from me that it is so—on the 15th this fact "Local anæsthetic and part oxygen wound sutured with plain gut and horsehair one tube draining wound." So the hospital records which have been tendered by the Plaintiff show the tube as having been inserted, having been insutured and the horsehair stitched. The next thing is that when that admission was made we come to this—we have the tube inserted, we have got no allegation in regard to the nature of the tube inserted because it could not be sustained, we have no allegation as to an incorrect insertion of that tube and it comes then to the consideration of a tube as to which the whole evidence is that it was a proper tube, that it was a normal tube, that it was a red tube, that it was inserted in the ordinary way and the negligence is that which is charged in their particulars delivered on the 25th August, 1941, and remaining unamended until to-day.

Gentlemen, in the face of that admission it cannot be suggested that it is a perished tube, because if you assume it is a perished tube you are alleging a negligence that the doctor was guilty of in the insertion of the tube. Therefore we come to this, without any charge ever having been specifically made that that was a perished tube, without anyone on behalf of the Plaintiff ever having felt it or tried it or otherwise, and with the admission of Counsel—and very experienced Counsel—that there was no negligence in regard to the operation, we come to what is charged in those particulars given on the 25th August, 1941, and never amended up till this day. Those are unamended and have formed the basis of every trial. Let us look at them. (Copies handed to Jury. They are copies of the Appeal Book.)

His HONOR : At page 369. The exhibit, gentlemen, is made up of the letters set out in full and then there is attached to it what you might call a précis of the two letters.

Mr. CASSIDY : Coming to these particulars, on the left-hand side of page 1, you will see the Defendant's solicitors' request and on the right-hand side the reply. Then passing down on the left you will see the various questions asked, where you get the negligence charge. If you turn to the second page you will find this :

> " 5. What act or omission on the part of the Defendant during the post-operative treatment is it alleged constitutes the negligence on the part of the Defendant on which the Plaintiff relies ? "
>
> " What act or omission on the part of Defendant . . . constitutes the negligence."

Then it goes on for reasons which I have already indicated.

His HONOR : The answers to questions 4 and 5 are contained in (1).

Mr. CASSIDY (reads answers) :—

"7. What is it alleged is the nature and description of the piece of rubber tube (that is, the piece left in) and in particular the shape, size and colour thereof."

"A piece of soft rubber tubing about 2 inches long . . . and torn at the other."

(I want you to watch that "torn at the other.")

"On the side was the straight cut . . . of the tube."

"9. In whose possession is the alleged piece of rubber tube at the present time . . ."

The answer is : "As the Defendant is already aware, the tube, etc., is no longer in the possession of the Plaintiff, having been discarded by her at the time of its passing."

So we have there the case or the particulars of the tube and we have the description of the tube alleged to have been left. When the case commenced the first time we get further descriptions added and we are told on oath as to the wire that appeared in that tube. Then a description is given of the tube.

At the second trial Mr. Reimer has the Plaintiff reconstruct the tube from a number he has and he makes it under her direction—Exhibit "P"—which you have heard referred to over and over again. He makes it with a straight cut as she says it is, with a swab in it, with a straight cut going over a distance and with two wires sticking out which she says is a fair representation of the tube and which later is only altered in respect of the thickness of the wires. At the trial she speaks only as to the thickness of the wire and at the second trial that is made and that straight cut is shown ; that tube is made under her direction and with her acquiescence ; I will show you she has given what she calls measurements for that tube. In the first trial, as I will show you, it was spoken of as wire, it was referred to by her as a feeling of pricking and scratching her stomach and it is not until the third trial that we hear this story that when she picked that tube she flicked it and it went back, and suggests that it is not wire. Why ? Because in the course of the trials the doctors had sworn—and there had been an appeal—that the stomach had no tactile sensation, that pricking of wire could not happen. The second thing is that it has been sworn that nothing like that with wires in it would be used in thyroidectomy, and at the third trial appears the evidence that she flicked it and it went back like wire. I will deal with those references in more detail later because you may take it that on the first trial this thing was referred to as wire, in the particulars it was also referred to as wire. The point is that in the particulars it is called wire but when the word "appeared" comes to be used it is applied to a swab and not to wire.

(Mr. Shand interjects.)

His HONOR : I would ask counsel not to interrupt unless a mistake is made in the statement of the evidence.

Mr. CASSIDY : If I am mis-stating the evidence I do not mind.

Mr. SHAND : I think you are, but go ahead.

Mr. CASSIDY : I will put it to you that I will deal with the evidence in detail later which shows that this alteration of "wire" to "otherwise"

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 13th January 1944, *continued.*

occurred later than the first trial. As I am reminded, in the particulars the swab and the wire appeared to be the only foreign bodies passed but, as I said, the foundation of the case is the object described, the foundation is the leaving in the body of the object described.

Let us take the Plaintiff's case as to removal. The first thing I draw your attention to is that that account is deposed to by the Plaintiff alone, it is entirely uncorroborated. Uncorroborated testimony, in a case where pecuniary advantage can accrue to the person who makes it, requires careful scrutiny. Here again is this fact, that Dr. Bell and a nurse came into the room, that Dr. Bell without forceps used his bare hands or his bare fingers, pulled at that tube and it did not come away. Before doing that he loosened a stitch. That occasion was the only time he touched the tube, that after pulling the first time it did not come away, he then pulled again and it not then coming away he put his hand on the forehead and pulled harder and it broke ; that he then stood at the bedside within a very short distance of her and looked at the tube, and that the sister was with him. It was a sister who attended him, that she admits, not the ordinary nurse. After looking at the tube, which she said she saw and which was about half an inch in length, he discarded or threw it—to use her words—on to the tray, that he said " Damn " and she said " Oh " ; that, having done that, he and the sister, without dressing the wound and without restoring the packs to her neck, left the room.

That is the uncorroborated story which we are told. That story I am going to examine in some detail and I suggest to you, so that you follow my remarks as I put them into compartments, that it is proved wrong by three things—(1) its inherent probability, that is the improbability apart from any evidence from the defence ; (2) by the contemporaneous documents that exist ; (3) by her lack of complaint at that time ; and (4) by the sworn evidence given on behalf of the Defendant. That uncorroborated statement appeared and, as His Honor will tell you, that uncorroborated statement must be accepted by the tribunal before the Plaintiff can succeed ; if she fails to produce in your mind that comfortable satisfaction of proof of that story the Defendant is entitled to a verdict.

His HONOR : I am not sure about this comfortable satisfaction. Does not that only apply to adultery cases ? It is satisfaction, they have to be satisfied on the balance of probability weighing down the scales.

Mr. SHAND : I am refraining from making any comment on these things. I have listened to a lot I do not agree with.

His HONOR : I think it is only right I should put to you that I do not propose to direct the Jury that it has to be comfortable satisfaction unless you refer me to authority.

Mr. CASSIDY : I propose to refer to a Privy Council case. In cases of malpractice or criminal malpractice the onus is still higher, but I will leave that until Your Honor is summing up.

His HONOR : So far as I understand it at the moment the expression " comfortable satisfaction " is introduced by the High Court to charges of adultery. You have not got to prove, as in criminal cases, beyond reasonable doubt. It seems to be a halfway house.

Mr. CASSIDY : Let me put it to you, gentlemen, that it must be proved to your satisfaction (that I suppose means unless you were satisfied and felt ease of mind in your conscience you must find a verdict for the Defendant). Satisfaction means you must be satisfied to accept that story. I have said to you that that story has those four objections which I do not need to repeat, the first one being the inherent probabilities. Let us look at that for a moment. It is a story of very gross mishandling of the patient in the condition in which she was, the records show it was the second day after the operation. She has already described the doctor as a thoughtful man and she had been in hospital from the 22nd February receiving her premedication. As I mentioned earlier, her opinion of the doctor expressed at the third trial was that she adored him ; it was not until this time that she says when she used the words " she adored the doctor " she used them with clenched teeth. That is something that has occurred after four trials.

Mr. SHAND : She always indicated she used them in that sense.

Mr. CASSIDY : She did not. It is opposed to all ideas of what a surgeon would do. You know that surgeons, knowing the dangers there are of infection, get more or less routine method of dealing with things. To suggest that a doctor with the tube which has a quarter of an inch sticking out, instead of using forceps which are brought on the tray would use in such close proximity to the wound his fingers offends one's sense of what would really happen. We have it that the safety pin was attached to that tube, that is, at the Plaintiff's suggestion. Is it that the doctor got his fingers on the safety pin and pulled, or is it that the doctor got his fingers on the small quarter of an inch protruding from the wound ? Either, I suggest, is almost impossible to conceive, having regard to the fact that the method of dealing with these things—in the presence of a sister who brings the tray—becomes routine and regular.

Look at the next thing. A sister, and mind you these nurses and sisters in hospital—and the senior sister in a hospital such as St. Luke's—is hardly one whom we would suggest could be so thoughtless of her duty as to stand by and see a woman mishandled in that state ; the pulling and the doctor leaving the room under circumstances like that are matters of a character which they would not be likely to stand without protest, nor would they be likely to leave the room with him and thus leave the patient. I am putting it to you that the inherent probabilities of that story destroy it.

Looking at the evidence on page 67 we find this : " You saw the tube . . . thrown on the tray ?—A. Yes, he threw it on the tray . . . I cannot tell exactly where she was. Let us go back to the removal of the tube . . . turned around they left the room." I do suggest to you with all humility that that account destroys itself.

The second matter in the improbability was that the doctor and the sister should leave this wound open to the air and to go away without dressing it because on any story the purpose of the visit of the doctor was the removal of the tube. They had come to remove it and on this story when he broke it the doctor and the sister did nothing more but just left and, as the Plaintiff told us yesterday, it was some little time afterwards that another nurse came back. I do suggest that it is inconceivable that the doctor should have done such a thing and that his action and that of the sister should have been to leave it without making any attempt or any effort whatsoever at recovery. They must have known, if that allegation

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 13th January 1944, *continued.*

is true, that an inch to an inch and a half of the tube remained ; they must have known, if that allegation is true, that for the tube to break something must have been holding it, and they must have known that when the tube resisted the pressure of pulling that tube must be attached in some very firm way to some muscle or other part. Just think of it for one moment, that at that stage when everything was all right, because it is on the second day, and the hospital records show it, that the doctor would not have opened up one of the stitches to right or left and would not have got the whole thing out, but with no suggestion of a high temperature or other trouble and with the matter going normally he left it there.

Over and over again in these Courts we are led, and judges are led, to view the matter in the light of probability and to judge stories by the way they compare and live up to that. I suggest to you that that matter to any person getting into the atmosphere of what an operation might mean, to any person having a realisation of what a doctor's attitude to his patient is, is unthinkable.

The next thing is you have heard here that infection is one of the bugbears of the surgeon following operations, you have heard that they are anxious to get rid of the drainage tube at the earliest possible moment, you have heard that while it is there it leaves the way open for infection and their anxiety is to get rid of it. You have heard from Dr. Poate that in these modern days they are getting rid of drainage tubes. What it means in the case of the soldiers is obvious from those records and those extra precautions that are now taken with regard to the mouth and other things. But here we have it suggested that the surgeon would be so forgetful, and the surgeon knowing he had done something wrong would leave that wound open, it having been treated pretty roughly, and would walk out of the room. In that time, with bandages off that neck, what would happen ?

Let us come to the third improbability. The patient is swathed in bandages. This is a serious operation ; it is performed by very few surgeons. It is performed by Dr. Bell, Dr. Poate and Dr. Edye. How many others have you heard of performing these toxic and exophthalmic goitre operations ? It is in the realm of the specialist. It is a serious major operation in an area that is full of vital structures. What is the position ? The neck has been cut from there to there (indicating) and you have seen some of the illustrations showing the way it is opened in order to remove the goitre. One knows what has to be done with regard to getting away the goitre and with regard to the numerous blood vessels that occur in that vicinity. It is a serious operation and a difficult one. The neck after it is exceedingly sore and tender, the patient is reclining in an attitude like this (demonstrates), and as you have been told the patient has sandbags as a support at the back and keeps the head forward. That is what the doctor should see and know. With a movement back like this (indicating) the patient instinctively recoils and it is obvious that such a movement is one which would irritate the neck and yet it is said that Dr. Bell put her head back like that and then pulled. Just imagine a surgeon doing it.

We have been told by two of the nurses (I call them by their nursing names), Sister Wills and Sister McCallum, that the Plaintiff was bandaged in the way that is ordinary and normal in these operations. You had the illustration of one of those sisters and you saw what it meant, you saw the

necessity for bandages and yet we are told those bandages are left aside and that the doctor and the sister departed from the room and left them off.

Let us come to the fourth thing: (1) Is that it offends what surgeon would do, (2) it offends our idea of what a sister would do, (3) the patient is swathed in bandages in a way that it would be extremely unlikely that it would be done, and (4) the Plaintiff made no complaint to anyone with regard to what is alleged as this rough treatment.

I am reminded that at page 21 of the third trial she is asked this question specifically, line 5: "You did not complain to anyone . . . no. You did not think when this happened . . . no." And that is repeated at this trial. There is no complaint about Dr. Bell's rough treatment to anyone, to the doctor or to any nurse, no complaint even to her husband, that Dr. Bell had used this rough handling of the tube. Just think of it, her husband was visiting her he said every day, sometimes twice, and I suppose the thing a patient talks about more often than anything is the treatment, because it is the absorbing topic with them, yet there is not one mention to the husband of this alleged rough treatment by Dr. Bell in pulling this tube and handling her in way alleged in order to get it out. The first time it is mentioned to him is 5th October 1939.

Can this story be right? It brands the doctor as a man who has been guilty of forgetting every precept of his job. Can it be right? Does he look like it, has his training been like it, is it conceivable that that is the true story or is it not rather that the story told there is a story that is wrong, that has some basis of disorder or mental instability behind it, that it is some misconception by a woman who has been very seriously ill at a time when she has experienced a very severe operation, when she has been suffering from this thyrotoxicosis?

There is one other matter. I have told you that the fact that the Plaintiff made no complaint at the time to her husband, the nurses, Dr. Bell or anyone else is a significant feature.

Mr. CARSON: She made complaints.

Mr. CASSIDY: She made no complaints as to Dr. Bell's handling of that tube.

His HONOR: Except that her husband said it hurt.

Mr. CASSIDY: At page 180 it is put specifically.

His HONOR: "Would that be wrong . . . I do not remember that being mentioned."

Mr. CARSON: Would your Honor read the question before commencing with "I passed to another incident?"

His HONOR: "I passed to another incident now . . . and it hurt somewhat."

Mr. CASSIDY: And you notice that it had been removed and that it hurt somewhat.

His HONOR: Then lower down: "It was I think mentioned . . . No."

Mr. CASSIDY: "You were there how many times . . . I agree with it now."

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 13th January 1944, *continued.*

Let us come to the documents that are written at the time. Just think of it, that the story could be that which she tells now, that the doctor used that method, said "Damn," walked out of the room and left. Dr. O'Hanlon was called on the 6th October. He tells you that she told him that a sister had removed the tube. If Dr. Bell had been guilty of that rough handling what would one have expected to have found in her letter—I will read it—if that had been the treatment administered to her and a tube had been left what would one have expected in the letter? Would it not be something like this: "I remember the way you treated me, I remember this pricking of the tube, of the way you walked out of the room." What would she have told O'Hanlon? She writes a letter the day after she first sees him and she sees him on the 6th. This letter is available and is being relied on by my friend. We produced it and my friends rely on it to support their case. It is written at a time when he is still going there as her medical adviser, she is not blaming Dr. Bell and the letter is written four days afterwards. I put it to you that that is not the letter of a woman who is as sick as she said.

On the 11th October she writes this: "Thank you for your letter received some time ago (the doctor had not written for very many months) . . . at the hospital." Those are remarkable words. At this trial on page 42 she says: "On the 11th I knew that Dr. Bell had done this terrible thing to me." How could that have been possible?

Mr. CARSON: She did not use those words you put it to her.

Mr. CASSIDY: "On the 11th you knew that Dr. Bell had done this terrible thing to you?—A. Yes." What does the answer "Yes" mean? She has been asked it before. "And on that occasion on the 11th please do not think I blamed you or anyone at the hospital." I submit to you that if at that time she was aware that Dr. Bell had broken that tube, had let her go back to the country and knew it was there that letter could not have been written.

I am reminded of two questions: "Did you mean what you said . . . I suppose I did . . . the doctor did not worry about the tube." What is the position? O'Hanlon is there on the night of the 6th. He recounts what is said and in that you will find no complaint to him although the marine sponge is described. You will find no suggestion there that Dr. Bell had broken the tube and had left it there. I put with respect that what I call those inherent improbabilities destroy that case.

The second thing is, is it in support of that allegation of hers? You will remember that she alone describes it. What evidence in support of it does she call? Look at her medical evidence. The position of the medical evidence is obvious. This much is clear, if 2 inches of tube are left, and if the tube is put where Dr. Thompson describes, near what he calls the top of the lobe, the tube must be a long one. The doctors are faced with explaining how the tube could remain there. The first thing is that if the tube is pulled at all, and if it breaks in such a short distance, the balance of the tube must be close to the wound because there is only a quarter to half an inch outside the neck. Let us see what the doctors say. At the first trial Professor Welsh swore that the tubes used were 4 inches to 6 inches long, because you will see it is obvious that if the tube is visible to Dr. Bell's eye, or visible to the nurse's eye, it would be a tremendous thing to suggest that doctor seeing it, or being able to feel it, would not

take it out. Therefore the suggestion is that it must have been back into the thyroid cavity.

Dr. Thompson, who gave no evidence at the first trial, now puts it for the first time that the end of it was at the top of the lobe, Professor Welsh puts it 4 inches to 6 inches. I want you to follow the cross-examination of Professor Welsh to see what a pitiable thing it is when a man who has been a professor of pathology comes to deal with the situation like this in the terms that he does. I am cross-examining him at page 255 as to his experience of thyrotoxicosis. The only evidence he has given in the original trial has been 4 inches to 6 inches and I cross-examined him as to length. "What length have you used . . . I do not know the technical details of a surgical operation." Gentlemen, just imagine this, and this is the point for which I quote it to you, when he knew it was 2 inches to 3 inches long from what he had seen in Australia, on the first trial he does not mention it and puts the tube as 4 inches to 6 inches long. How can that be accounted for but by this, that at that time it became necessary to predicate of this case that the tube had gone up or into the thyroid and was not visible because they were not prepared to ask any jury to believe that with that tube visible Dr. Bell would not have got it out.

Let us look at Dr. Thompson. The same problem is confronting him. We say the tube for a neck like this is not more than 2 inches, probably less ; the tube used was a standard tube, and if it were a standard tube up to about 2 inches, and if it is put in where it is sworn it was put in by the Plaintiff herself, even if half an inch comes off the rest of it must be apparent. What does Dr. Thompson say ? He says—and this is the basis—that that tube is up at the top of the lobe of the thyroid because he says it has a quarter of an inch to an inch of travel to get through the tonsil. I put it to you that that medical evidence on that matter is medical evidence that is worked up due to his obsession against the B.M.A., which he feels has treated him harshly.

Mr. CARSON : There is no evidence of that.

Mr. CASSIDY : There is evidence as to his demeanour. It is obvious that he has worked it up and that he has gone back to 1915 to get a book to show that the tube was pointing upward. Let us have a look at it. It is Johnson's Operative Therapeusis. It is remarkable that a person who is giving evidence of what has happened in an operation in 1938 as an expert should advance in support of his argument that the tube is put in obliquely and upward, and I do hope you will remember that at the early stages of the case I asked him to indicate that it was put in obliquely and upwards to pass across from the right to the left, a book published in 1915 and should select that book as illustrative of what happens in 1938 and to show a tube going upwards to support his argument and that that tube, as he says, was put in obliquely and upwards.

Might I just put that to you as you may not follow the full point I wish to get. I am suggesting to you that Dr. Thompson's evidence is proceeding on theory and I am suggesting to you that he has said over and over again he will not accept the Plaintiff's story.

Mr. CARSON : Where is that ?

Mr. CASSIDY : And that he will not accept the Plaintiff's story.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 13th January 1944, *continued.*

Mr. CARSON : I want the reference to that.

Mr. CASSIDY : I will give it in the morning. That you cannot accept the statement of a patient.

Mr. CARSON : I want it, that he will not accept the story of the Plaintiff.

Mr. CASSIDY : I will find it. The point I am making is this. To support that theory that the tube must have been in that direction he swears at page 318 that the tube was pointing obliquely and upwards. When every other medical witness in the case gives evidence that that is not the standard practice in these days, the doctor, to support his statement, brings into Court a book published in 1915 which shows the operation done in a way that is now out-moded. Just think of it. You are asked on that, as a tribunal, on the evidence given in a case by a man who has not performed such an operation for many years, if ever, to say that, by reason of an illustration produced, the way in which that tube was put in the neck was in the manner he stated. It is asked that that be accepted in opposition to all the other witnesses in that case, because this is what he says. He produces Johnson's Operative Therapeusis and says " How would it go then . . . on the opposite side to the inner end " and what is put forward as the suggestion to support this case is the tube placed there, pointing that way, when the incision is shown to be up there (indicating), in a way that is out-moded, says every doctor, for many, many years. That, again you will notice, is what is called a button-hole incision and does not go up to the top but it starts lower down.

How can it be suggested that his account can stand when we have from the Plaintiff that she felt nothing across her windpipe. That is her evidence. Her story is at pages 65 and 66 that she saw that half-inch come off in his hand, because with a tube the length it is, if it is to go from that side across to the left and with the thyroid cavity some little distance back, as you have been told by Dr. Edye, what is going to happen ? That medical evidence is in entire disagreement with the whole of the evidence in the case.

Dr. Thompson did not see the operation. The lady herself has stated that the tube was placed an inch to the right of the middle line. Dr. Bell and the others say that the tube was put in in the ordinary normal way at the bottom of the cavity to drain it, and I put it to you, gentlemen, before we proceed to examine at all what is said on behalf of the defence, the inherent improbabilities of that story destroy it.

Let us look for a moment at the practical side. Is not the important thing in all these matters to get at the practical side of a situation ?

You have had the doctors called before you who do the operation. I have never been in a case in my experience where I have seen people talking from books. We have heard Professor Welsh who has seen thyrotoxicosis in operations on cats and something else and who has never done one, and Dr. Thompson who cannot remember when he did the last but it is over 20 years ago and yet we have this case supported by these men speaking of what they read in books. The great teacher in life is experience and I suppose many of you know from your own acquaintance people who have expert academic knowledge and know more of what books say than anyone else, but if you put them into practice can they apply it ?

You have seen them probably in our profession, men with knowledge of what the tomes contain on the walls because they have time to read them so carefully but when you put them to do a job the academic mind does not grasp realities. Instances are familiar to us of the man who takes a medal at the University but when he gets out into the hard cold world, if he is outside his academic place, he does not make a crust.

You have had here people endeavouring to say what happens, what is done, from what they read in books. The men who do things so very often have not got time to write books ; over and over again the men who are carrying on practice in the busy practical work of the day do not get time to sit down and write text-books, but they do things. I suppose our talk or to lecture to his students was almost incoherent but when it came to his surgery and the practical things in life he was at the top of his job.

Let us look at the practical side. What do Dr. Poate and Dr. Edye tell us ? They tell us the purposes of the tube, its length, the reason it is used and the manner of its removal. Dr. Edye said you put it there for drainage. You do not push it right in, you get it just into the cavity, that is the reason you keep it short, you do not want 4 to 6 inches and you keep it short for a specific reason. The manner of removal they tell you is easy. It is at a part where you still have some exudation. After the stitching is done you insert the tube, you put a safety-pin in to prevent any tendency to go in, you put a stitch in it to prevent any possibility of it falling out.

We have it that she comes back with a tube in, inserted properly, we have it undenied that there was half an inch of it sticking out. If I liked to accept it in support of my case I could refer you to the Plaintiff's evidence and her husband's, in which they allege that they both saw about half an inch sticking out.

Mr. CARSON : The Plaintiff never saw it.

Mr. CASSIDY : I may be wrong. I will look it up over-night. I withdraw that for the moment.

Assuming for the moment that I have misquoted that, we have this that I know with certainty, that her husband gives a story, which I do not accept and which I suggest cannot be accepted, that he saw it sticking out of the flesh for a quarter to half an inch. This could be taken, if I wished it, in confirmation of what I say, but there is no evidence against my client. I am not going to take the husband's evidence because I suggest it is incorrect and that he did not see it, but the uncontradicted evidence is that there would be a quarter to half an inch of that tube sticking out and with a safety-pin in it. How then does it get pushed up into the wound ? The rubber is not a stiff piece of thing to be pushed up into that wound with a safety pin in, it could not happen.

The hospital records show that the drainage was proceeding in a normal course and every doctor tells you that it is easy of removal, and there is no evidence to the contrary. Dr. Bell swears that there was nothing abnormal about the removal of the tube. He of course cannot cast his recollection back to say " I remember going into Mrs. Hocking's room and removing the tube," it was one operation among many he has done. Nor can you expect him to say with certainty " I remember the particular day on which I removed it," but he says " I do remember that there was

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 13th January 1944, *continued.*

nothing out of the way in the removal of the tube" and he does say, and the other doctors say, "I would not have put my fingers on that tube to pull it out."

My first sub-heading was inherent improbability unsupported by evidence; the second, the practical side of the case and the third one, what is the evidence as to actual removal.

We have here got into the realm of actual evidence. We are out of speculation, we are dealing with people who pledge their oaths as to what they say. That evidence, His Honor will tell you, is primary evidence. I will quote some words of His Honor Mr. Justice Maxwell on dealing with other evidence which is in the nature of speculation and conjecture, referred to in the last trial. Primary evidence, that is the evidence of witnesses, is of very great value; conjectural evidence, the law says, is dangerous and is insufficient.

What does the actual evidence say? Dr. Bell—we will say he is an interested party—says "I used a red tube, it was a red rubber tube." That is corroborated by the nurses who say that at St. Luke's the practice is to use red rubber tubes and no other. Dr. Edye and Dr. Poate, both surgeons who operate there, say the same thing. I should imagine the position is they buy a certain standard kind of tube. So that we have this evidence from the nurses at St. Luke's, from Dr. Bell, although interested, but there are two independent witnesses, Drs. Poate and Edye, that the tube is red and not black. That becomes very vital, because this tube is sworn to by the husband and by the wife as being black or dark grey. I will refer you to that to-morrow.

Adjourned at 4 p.m. to 10 a.m. on Friday, 14th January, 1944.

14th January 1944.

IN THE SUPREME COURT OF NEW SOUTH WALES.
In Causes.

Coram: EDWARDS J. and a Jury of Four.

Friday, 14th January, 1944.

HOCKING *v.* BELL.

Mr. CASSIDY: I had arrived yesterday at a discussion of the evidence called by the defence on the matter of the removal of the tube, and I had started off by dealing with the evidence as to the colour. Dr. Bell's evidence as to the colour, that he used a tube of the colour ordinarily used in that operation. Then I pointed out that the nurses also deposed that that was the class of tube used at St. Luke's. One would imagine, and I think one of them said it, that the tubing is bought in quantity from time to time.

Mr. CARSON: No one said that.

Mr. CASSIDY: At least the nurses said that the red tube is the tube always used, and no other, and Dr. Poate, Dr. Edye and Dr. Bell, all of whom operate there, said the same thing. And the anæsthetist, Dr. Hunter, said the same thing.

That matter is not trifling, of course, because it goes right to the basis of whether the Plaintiff is correct in her observations. It goes also to the question of whether the husband is correct in his observations. Although it may sound a little matter; what was the colour of the tube, the importance of the conflict arises through this, that the husband, as I will point out later, said he saw that piece of tube sticking out, black. And I have it that the Plaintiff's story is not right in this respect, and that the husband's story, which has varied tremendously, which I will show when I come to criticise it in detail—that the husband's story is wrong, and that the manner in which the two accounts correspond must be something other than a mere coincidence.

I am going to ask you gentlemen to discount the suggestions that have been made in this case, that the doctors are in some sort of collusion, speaking here merely to save Dr. George Bell. One can imagine friendship inspiring great loyalty, one can imagine high regard for a fellow man inspiring great loyalty, but I put it to you that you cannot give credit to this suggestion that a man of the apparent outright honesty of Dr. Edye and of Dr. Poate—I am limiting it for the moment to this question of the tube—that men of the apparent outright honesty of Dr. Edye, Dr. Poate and Dr. Hunter, and also the three nurses from the hospital, that they should all come here to give false evidence with regard to the colour of the tube that was used.

The nurses, of course, are all now dissociated from nursing. Each one of them is married.

His HONOR: There are two exceptions I think.

Mr. CASSIDY: I refer to the three from St. Luke's. Those three at least are no longer connected with the nursing profession, but have their own homes and their own families.

Why should some lingering sense of loyalty, even supposing it is founded on a very great admiration of Dr. George Bell and a very great liking for him, why should it cause those people to go into the box and swear that St. Luke's uses a red tube only when that is not the case.

It is a very very big thing to ask you to believe. Although it might seem to be a small matter, it goes back to the description which the Plaintiff gave of that tube, what colour she saw when it came out, and what her husband alleges he saw.

One of the sisters, now Mrs. Barnett, I am reminded, says that she remembers the tube. I did not recollect that at the moment, because the evidence was given some time ago, but one of them said she remembered the tube and it was red. But, apart from that, the evidence of those people indicated, those people working there and knowing the place at the time, that the tubes used are red.

I want to avoid any suggestion that I am leading your minds away from the real evidence, because I have put to you, and I have endeavoured to put in here, all the evidence that has been given. I have not endeavoured to select passages. My desire is that everything should be seen. And when I say that the husband so described that tube, there is chapter and verse for it. And, with your permission, I will take you to it, so that you will follow it, as an important point, a point of fundamental importance, for the side I represent.

In the Supreme Court of New South Wales.

No. 51.
Closing Address of Mr. Cassidy, K.C., 14th January 1944, *continued.*

At page 154 of this trial there is this evidence. You will remember, gentlemen, that at this trial for the first time the Plaintiff said " I was told by a nurse to lie on my right side," That is the first time that has ever appeared. You can take that from me as accurate. She did not know the name of the nurse.

I was cross-examining the husband who, as you will remember, was there to see her daily, and I said " I put it to you that you swore before . . . a dark object, a dark grey object."

At page 173, " The only time you saw it . . . "

At page 129 in chief to Mr. Shand, " I noticed something about her neck after the operation . . . about a quarter of an inch or half an inch long."

And listen to this from a layman, " I noticed it slightly to the right of the middle line of the neck I should say."

The Plaintiff at page 7 of the first trial, lines 30 to 40, " You might just describe to the Court what happened . . . I saw a little black thing between his fingers."

That brings into sharp conflict the evidence as to that tube. And I have put to you before that this story against Dr. Bell and his treatment of that woman's neck, which was never mentioned to a soul until after 5th October 1939, and which came back into the Plaintiff's mind then for the first time ever to be mentioned, I put to you that this story is born in the imagination.

Do you think for one moment that if there was a stitch attached to the tube, holding the tube in, and it was pulled in the circumstances described, that from that lady there would never have been dropped to anyone a hint of the rough treatment she received ?

That story of the tube being black is a story that, I suggest, was never told, and likewise the story about this rough treatment, until after 30th October 1939. And I suggest also that it is a story which was born in the imagination.

I am sure that some of you gentlemen—I do not know what your activities in life are, but I am sure that some of you must at some time in your lifetimes have had some examples of what fallacious reconstructions can take place in some minds. And I am sure you have had some experience—we meet it often, and some of you must have met it—of what people can make themselves really think is right as they come to gloat, and to think and to worry over things, and to what extent a neurasthenic condition can get one to imagine things and have those things as real as may be to one.

If any of you are employers of labour you must have seen it in the Workers' Compensation Court, you must have seen it where a man can drive a pin into a part of his body and not feel it because he wills that he does not feel it. And I do put it to you gentlemen that, hard as it is for the layman to appreciate isolated instances like that, when we read and know things, they are as real in their existence as any other facts that we meet, and that a mind that gets time to brood and think in a time of sickness and probably loneliness, has strange things occur to it, especially if it is a woman in a nervous and debilitated state. That state of mind does occur.

This is a strange case. The Plaintiff's counsel tendered the hospital records, and called his witnesses to form conclusions which he said support

his case, from those hospital records. Plaintiff's counsel built a case in part from a few of those records, that his medical advisers took. That is to say, he accepts the records. Could anybody else do otherwise.

The nurses would have no interest to serve in making false records. I suppose most of us admire a profession like nursing, that has no union and no other body battling for high wages for them or for shortened hours. Most of us are full of admiration for the great body of nurses who do their work so well and so unselfishly.

Little Sister Barnett, the first one called into the box, who had been the night special for Mrs. Hocking, was asked by Mrs. Hocking to come back and see her. She went back to see her.

Those sisters had no interest to serve, or no thought of anything wrong, when they made the records. And, as I put before, those very records are relied on as part of my friend's case. Let us go to them and see what we find.

We find there that on the 17th, at the time at which the tube is normally removed, which is within 48 hours, because the doctors tell you that they do not leave it in any longer—on the 17th the tube is removed. We find there that three of the sutures are removed. We have the nurses in whose handwriting the entries were made. We have the two nurses covering the day on which the entries were made there in their handwriting, and one or other of whom was with Dr. Bell.

Mr. CARSON : Where is the evidence of that ?

Mr. CASSIDY : And we have there on that day——

Mr. CARSON : Where is that evidence ?

Mr. CASSIDY : We have there on that day in the notes put in by them exactly what happened, and the condition of the patient. Is it all imagination ? Why should it be thrown aside ? Other entries which indicated a high temperature on the 20th are there.

I was saying that we have the entries made contemporaneously. If any of you have had experience in law, you know that a Court looks at documents written contemporaneously, when there is no thought of a quarrel between the parties, as being likely to contain the truth.

I remember one of our Judges in the District Court used to put it in this way : " After the parties get their horns locked, well, you cannot take very much notice of the letters they write." But if letters are written when parties are not at arm's length, or if documents are made or entries are made when the parties are not at arm's length, if entries are made as here in the ordinary routine of the hospital, that is one of the safest things to look at for accuracy.

And, gentlemen, in all fairness is not it more accurate to look to those things, rather than to rely on the memory of the Plaintiff, who went into that hospital in a very, very dangerous state of health, very, very ill, and who had just come through a very serious operation.

I put it with respect that when such positive evidence is called it must weigh down the scales, and I suggest weigh them down to the bottom, in a case like this. There is no evidence against, other than that of the Plaintiff.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 14th January 1944, *continued.*

The next thing with regard to the removal of the tube is that the nurses swore what was the practice in that hospital, and the nurses also swore that that practice was followed. That, too, is uncontradicted.

The entry was made of when the tube was put in. You saw it. When Dr. Edye was cross-examined you will remember Mr. Shand picking up from those notes the question of the tube and the gauze wick. That was picked up at random. The practice is to enter when the tube goes in and when the tube comes out. And we have here the entry of the removal, and we have from the nurses, sworn to by them, that that was in accordance with the usual practice, which is that the tube is taken by one and is looked at by the other and examined before the entry is made, to make sure that nothing is left.

Where does that lead us? Does not it conclude the matter? Could it be possible that the nurses saw what has been described, and the Plaintiff so describes it, as this half inch of tube left in, and that the nurses then went and made that entry in the book knowing it to be false?

"Tube removed." And then there is the following reference. I think it is "Patient's condition satisfactory." "17th, tube removed, less discharge, condition good and appetite improving." That is the entry in the day report of 17th March.

I put it that it is inconceivable that the nurses would lend themselves to a false entry made in these sheets. And I put it before that it was inconceivable that Dr. Bell would be a party to such a thing, and I put it now that it is equally inconceivable that those women you saw in the box would be parties to such a thing.

They were not servants of the doctor; they were servants of the institution they belonged to. The doctor was one of a number of men who visited the institution, and only one of a number of men. Such conduct to a patient would have called from any decent nurse the strongest disapproval, and she would have given it. Those nurses, gentlemen, are not so supine that they would be overawed by any doctor so that, against the interests of their patient, they would enter into a conspiracy of concealment and would forward it by making an entry such as that.

You were told by doctors called on behalf of the Defendant—and they are doctors of experience, that the removal of the tube takes place after 24 hours and within 48 hours, and you were told that the ordinary rule is in that time he may remove a couple of sutures, the reason being to avoid scarring. You were told that is absolutely normal practice, and that the normal practice was followed.

Let me pass to the next thing. Dr. Bell said that before he used that tube he tested it. He said that is a routine custom or practice of his. It is important, bearing in mind those things, to see what positive evidence there is against those statements.

In law, if I give positive evidence of the existence of a fact, you cannot disprove the existence of that fact unless you call evidence against it. I might illustrate that in this way. Before one of our Judges in the Criminal Court at Darlinghurst a counsel was cross-examining a witness. The witness had given evidence that he purchased a car, and counsel for the accused was endeavouring to prove that that was wrong. Very vehemently he put to the witness, "Is not it the fact that you did not purchase that car?" and the witness said "No, it is not the fact." The very distinguished Judge, Mr. Justice Ferguson, was presiding, and in

the course of his address counsel for the accused said to the Jury, " And, gentlemen, we know that he did not purchase that car." So the Judge said " The only evidence in the case is his statement that he purchased the car." And the solicitor, and a very able criminal lawyer he was, then said, " But, Your Honor, when I said to him, ' You didn't purchase that car ? ' did not he deny it as if he was telling a lie ? "

You see, gentlemen, you cannot therefore say because a man denied it, and you say he might have been telling a lie, that the opposite fact is proved ; you cannot prove a fact in opposition to a sworn fact, unless you have evidence to support the opposite.

Mr. CARSON : Does Your Honor agree with those propositions of law ?

His HONOR : So far I do not see anything wrong with that.

Mr. CASSIDY : I should have thought that it was fundamental.

Let us take the positive evidence on the matter, on which it might be argued that reliance can be placed. I have to anticipate what might be said.

The first thing is that Dr. Bell has said that the tube was not stitched to anything. Let us face the position. What evidence has the Plaintiff that the tube was ? Dr. Bell said " I inserted it in the ordinary way." No negligence is charged with regard to the insertion. No negligence is charged that he stitched the tube in a way that he should not have done. Dr. Bell said that it would be a most difficult thing to do, unless you did it intentionally, because you have the tube in the wound, you have to put your needle in after you get it through the rubber, which rolls, you then have to get it through the tissue, and then you have to tie your stitch. But in spite of that admission what you will find put to you here—it is what I warned you about yesterday—what you will find put here is that that tube was left stitched in the wound. That admission is made, and carries with it those results, because there is no evidence called to show that it was stitched. And evidence cannot be supplied, as you are aware, from imagination.

Let us get to the next thing. Dr. Bell says that he used the gut ordinarily used by him. The operation record, or, I should say, the hospital record, refers to plain gut—" Wound sutured with plain gut and horsehair." Dr. Bell says that he used and has his own London plain gut. He says " I did not use what has been called chromic gut "—some suggestion was made that he did, but the evidence is there against that.

Where do we get if we substitute for that evidence something else going into the realm of conjecture. I have said this before, and I say it again, that of course the case must be decided on the evidence that there is in the case, and that requires from a Jury that they have virile minds capable of dissecting and examining the evidence, and guarding against accepting conjecture as opposed to evidence. And that, gentlemen, you will realise is a very difficult matter. With all of us there is an inclination for us to get our own little theory, substitute our own ideas, of things that happen. And that, of course, is what we are not entitled to do. No more than I am entitled to put a theory that during these months of sickness, with this lady being alone or in the spasms, she might have put something in her mouth ; no more entitled than I am to suggest that theory, is my

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 14th January 1944, *continued.*

friend entitled to suggest a theory not founded on the facts. I have no evidence of it, therefore I cannot suggest it. We are bound by the evidence.

Let us look a little further. Dr. Thompson has thought fit to form a very strong opinion about this matter. But he does not form it on the facts as given. That of course, gentlemen, is very wrong, and very dangerous from the point of view of your deliberations, because your deliberations must proceed on the sworn evidence.

Let us examine the suggestions that can be put forward that are put forward. Just think for one moment of the force it is sworn can be used in the circumstances here. I read you the evidence at the first trial, and you may take it from me that is repeated at the second trial, and it was watered down slightly at the third. And here we have for the first time instead of " He pulled very hard " the words " just jolted."

His HONOR : " Shook " was it not ?

Mr. CASSIDY : I think that it was " jolted."

His HONOR : " Shook the tube "—page 10.

Mr. CASSIDY : I thought that it was " jolted."

His HONOR : (Reads evidence, page 10.)

Mr. CASSIDY : " Loosened some stitches . . . "

His HONOR : The word " jolted " was used in cross-examination.

Mr. CASSIDY : This is the account given here (reads evidence page 10, down to " . . . and the drain came out.")

At the second and third trials it was watered down slightly from what was said at the first trial.

Coming back to the evidence, Dr. Bell's description was that he loosened the horsehair stitch first, and that the tube was there with the safety-pin in. There is no contradiction of that. As a matter of fact, it is admitted by the Plaintiff, " The stitch was loosened before removal " and at page 66 the Plaintiff said " That is the only time I remember him touching the tube."

So we have this on the evidence as it stands, that there is absolutely no contradiction of Dr. Bell's evidence that he first of all loosened that stitch. You follow what that means. I am relying on his evidence. That is his sworn evidence, and there is no contradiction of it. It means this, that the tube was being held by the stitch that was on the outside of the neck.

Mr. CARSON : Do you make that suggestion ?

Mr. CASSIDY : That is what it means. It was stitched in, as Dr. Bell said he stitched it with the horsehair stitch. He says that he only touched it once to remove it. There is no contradiction of that. And she says that it was only touched once. On page 19 of the third trial is, " All this happened after he loosened or removed that stitch."

What does that say to us ? I am trying to put this case without any frills, and on ordinary practical things. If, as he says, and as is agreed to by her, this happened after he loosened or removed that stitch, that means that the tube was lying in that vicinity, that part of it was out, and that

the fingers, or as Dr. Bell said, the forceps, were applied. If that is so the end of the tube could not be up where Dr. Thompson put it. And if half inch breaks off, the broken part is seen, and the part that is left in must be visible.

Just imagine. Dr. Bell said "If I had pulled there in those circumstances in that tender part of the neck, with those surfaces cut only 40 hours before, serious result would have followed." Would we want any doctor to tell us otherwise?

Having considered that, and having considered what the evidence is, let us now pass to this—the tube that is alleged to have been left there. Now, gentlemen, this, you have heard, has been the cause of angry argument at all times in this Court. First of all it is alleged that on 2nd October it erupted into the throat through the tonsil at about 3 p.m.; that is, if there was an object passed it was passed at 3 o'clock on 2nd October. Within three days—that is, by 8 o'clock on the morning of the 5th—it is alleged to have been handled by her and to be of the nature drawn by her, and portrayed to Dr. O'Hanlon, described to Dr. O'Hanlon. There is no evidence, and there could be no evidence, that it collected those wires and the swab in the course of its passage in those three days.

Just think of it, a tube of that diameter to have been waiting about for it somewhere in the body a swab, a marine sponge as it was called at first, plus two wires, as they were called at first, or things looking like wire in the swab and protruding in a fashion like that (indicating).

At the third trial for the first time it was said that when you flicked it it flicked straight back. Gentlemen, where is the evidence on which it can be postulated—evidence from a medical source or otherwise—there is not one bit of evidence called to establish it—that it could collect those things.

Mr. CARSON: There was no suggestion of that.

Mr. CASSIDY: I will take that.

Mr. CARSON: That is to save you raising any other red herring.

Mr. CASSIDY: I can leave it. You have heard Mr. Carson say that there is no such suggestion, because it would be impossible to maintain it, that it collected those things in its passage through the body. Of course it was hinted at by Dr. Thompson.

Mr. CARSON: At what page?

Mr. CASSIDY: It was hinted at yesterday. I will find it during the adjournment. And you will remember, gentlemen, that it was plainly hinted at.

Now that I need not deal with that, I can assume that the object that was passed was the thing which was in the throat. It is very important to see the description of it; it is important to see what is alleged was left. That becomes vital, because that was the object that had to travel.

I cannot yet understand what Dr. Thompson is saying about this. I will later read you where he said that this object in a convulsion went from the top of the lobe through the tonsil. Mr. Shand disclaims that he meant that, but it will be a matter for you. I will also refer at a later stage to his evidence where it would appear that he is suggesting that it

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 14th January 1944, *continued.*

did not come up, that the abscess was not right at the surface, but it came from somewhere back.

Gentlemen, that tube that was there had to travel from where it is admitted that it was put in. The scar is still in the neck where it was put in, and was pointed out by the Plaintiff on a former occasion. Mr. Reimer measured it at one trial, and her counsel agreed to the measurement made by Mr. Reimer. That was when the scar was there and noticeable.

That tube had to move from where it was put in to get to the position where it came out through that tonsil. So it becomes vital for us to understand what was the thing which was left. And I am going to take a little time on it, because I want no argument that I am mis-stating the evidence. The exhibit was constructed in her presence at the second trial, and on her instructions, when she was in the box, with the scissors there; it was made in detail while she looked at it. And it was confirmed in evidence given at the third trial, as I will show you.

We have the description in her particulars as to lengths, we have the lengths put to her, we have the tube selected, we have the tube built, and we have the protuberances spoken of by her.

Take first of all page 23 of the second trial. The day previously she had been shown certain rubber tubes and had been asked to make a selection. A number of tubes were there, and she was asked to make a selection, and she made a selection. That was the day before.

At page 23, "when you were at St. Luke's Hospital . . . rubber was very soft."

The evidence that I read to you was consistent with what had been written by Dr. O'Hanlon in his letter of 7th October. You will remember that letter, which has been referred to a lot. That letter of 7th October was written at a time when Dr. O'Hanlon was still on the best of terms with the Hockings, was still the doctor to the family. In the letter he wrote on 7th October there is no reason to believe he put anything which was wrong, because in the very same letter he put the words "Mrs. Hocking's description is too vivid for the article to be imaginary." That letter, which has been preserved, and which is here, and which is used against us, that same letter contains what she told him, that it was "a small piece of marine sponge about which was twisted a piece of wire." I will read the words to you, "stuck in the lumen was what she took to be a small piece of marine sponge, about which was twisted a piece of wire."

Mr. CARSON: They were all stuck in the lumen.

Mr. CASSIDY: If you want to see the exhibit you can ask for it. "Stuck in the lumen was what she took to be a small piece of marine sponge about which was twisted a piece of wire."

Mr. CARSON: You can read it like that if you like.

Mr. CASSIDY: What can one do with that sort of interruption!

And then at the third trial at page 24, "You will remember at a previous hearing . . . No, I have said that before." The whole of the evidence can be looked at, and can be looked at, and at the third trial was the first time when the flicking back was ever deposed to. I state that after careful perusal of the evidence. It is not in the evidence before, and it cannot be suggested that she ever said it before.

As I said, it becomes important to get what the article we are dealing with is, because that article enters into so many other aspects of the case. It enters into this first, that it should become the centre of infection in an area like the neck, and the centre of an abscess; (2) it enters into its capacity to travel; (3) it enters into its capacity to erupt as it is alleged it did.

That being the description, that exhibit having been put in, and that being a fair description of the article—taking it for the moment even with these qualifications, (1) that the rubber she saw was softer, and (2) that the wires were not so thick—taking those two qualifications for the moment, that being the description of the article left in, very important considerations followed. There is no other qualification made. She is asked, "Is there anything else you want to say about it?" and she says at the third trial, "The rubber was not as hard as that, it was softer."

That being so, as I say very important considerations follow. With its length, its proximity to the surface, its capability of being seen, the doctor who did not go after it would be committing an almost criminal act.

A doctor, gentlemen, of course, runs the liability of criminal negligence. Negligence has two aspects, civil and criminal. Any doctor who allowed himself, knowing that that thing was there, to leave it there, would be committing what I suggest is intentional misconduct, and once you get the element of intentional misconduct you are entering into the sphere of criminal law. If her story is right then he left it there, and let her go away, deceiving her husband—this is Mr. Shand's charge—by saying to her husband "You are going to get tetany for a long time," because he knew that she was, and he did not want them to find out.

What answer can the Plaintiff's witnesses supply when we start with the assumption that a tube of which that is a fair representation, or something like it was left? See the position they get to. Because it is impossible that that tube, a tube such as that, would be left. That is her case, that it is left.

Mr. CASSIDY: That is her case, that that is what was left, because she swallowed it on the 7th and it was passed, and they do not make the suggestion that anything was picked up. And if those wires were pointed out, as Dr. Edye showed in his illustration—if they were pointing out, and the wires were $1\frac{1}{4}$ inches long, as is shown in the sketch, in those circumstances they would have been seen and something known about it.

You know how this case started—the allegation that the tube was not draining, that it was blocked up. Blocked up with what? The first allegation was, with a swab, that the tube was blocked and the draining was not going on. That was the first allegation. You will remember my cross-examination.

Is not it nonsense that a swab would be put in the tube! Is not it nonsense! It would defeat the very object of a drainage tube. You will remember that cross-examination, which continued at some length. And you will remember the suggestion of gauze wick being used. You will remember Dr. Edye being cross-examined about gauze wick being used, and the probability of it being left. So what does it now avail these people at this stage to say that they are not suggesting that the gauze and the wire were not there.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 14th January 1944, *continued.*

In the whole course of this case every sort of argument is endeavoured to be put forward to justify a story that has its basis in improbability, and has a basis that is wrong, because of that tube that was lost, and which is not here for us to see. How can the Plaintiff's medical witnesses face up to the position that that tube, or anything like it, was left? In certain circumstances a needle can travel, but things like that tube, blunt things, do not travel.

Let us come to their suggestions how the tube could be left. They are nothing but conjecture. Let us apply ordinary reason to it. If it were stitched in, the stitch would serve to hold the broken tube, or the remaining portion, in place. We have the strange suggestion from Dr. Thompson that it was stitched back near the œsophagus, or near the gullet—into the œsophagus or to the gullet. I will deal with it later, because I asked him where could it be stitched. If stitched up there by any gut, the gut would dissolve. We know that ordinary gut dissolves, and the knots remain, and we know that for two months after the knots travelled down and out through the sinus. What was stopping them coming out? What would have happened if it had been stitched there? Within the seven or ten or fifteen days that this gut, other than the knots, takes to dissolve, it would be gone and the tube would be free. When it is pulled towards the front, its motion is towards the front. If the stitch tore away, what was it attached to? And gentlemen, you will remember the evidence of Professor Welsh. And I put it to you that it was the evidence of a man who was running away from the position of explaining how this could possibly stay there.

He had talked in the previous trial, as you will remember from my cross-examination, of thyroidectomy and the 4-inch to 6-inch tube. What does he say when I put to him, "What do you say that the tube was attached to? I want to know for my experts." He cannot tell me. I said "But I am asking you" and he would not answer. I said to him then "What do you suggest that it could be attached to?" and he would not reply.

I will read you the cross-examination which shows you nothing else but a man who would not make an admission that might damage their case. I say that he is a witness who will not say a thing that he knows will injure their case. I asked him again in that same cross-examination, "If the tube were pulled would not it come forward, would not it be seen?" and he said again, "I won't answer. I refuse to answer any question connected with the tube." That appears at pages 246/7—"We will take it that I want you to assume . . . I am not competent to discuss that." Are those frank answers. "But you are competent . . . that is outside my province altogether." And again, on page 258, "You heard it said that he pulled twice . . . I must decline to answer any questions regarding the tube." I put it to you that that evidence is far from frank and is not to be relied on. And listen to this, "Both from a practical and theoretical point of view . . . thyroidectomy operation." And this is the man who had been giving evidence as an expert.

Why is it that the Professor gets to that position? We have it admitted by all the doctors, including theirs, that an article such as that was never used in a thyroidectomy. We had Professor Welsh unable, as he said, to answer this question that I put to him, "If you pull the tube this way will not it come out like that?" Does it want a professor to

answer it. Is not it as His Honor put "You can answer it practically without knowing any theory." Both he and Dr. Thompson say that they will not have that article—if I can put it colloquially—at any price.

Let us see Dr. Thompson's approach to the question. He deals with it in this way. First of all, at page 428, he says that he is not going to accept what the patient says. That is the fifth question on page 428, "I am not going to accept what the patient says." At page 468 I put to him, "You follow if anything was sticking out . . . it is not a description of the tube." And then I followed, at the bottom of page 563, "Is what you are contemplating the Plaintiff's evidence of that tube?—A. It is not." That bears out what I put to you earlier, that one cannot leave the evidence and strike a theory of one's own. The danger of theorising is apparent.

Dr. Thompson has put in evidence now a pulse chart. I cross-examined him about her post-operative condition, and he gave this evidence, that her pulse was 88 and it rose to 104. What he had done was to pick the lowest pulse rate he could find, the furthest away from the 104 after the operation. The nearest one to the operation was 96. He said that was an accident. So then we found that it was 4 o'clock in the morning when the 96 was taken, and that the rise was not to 104 at 4 o'clock in the morning, but to 100, and it was a rise of 4 only between prior to the operation and 4 a.m., the time he took that 100. And yet his reasoning started from the point that it was 88, which was the point furthest back from the operation, the 96 being the one closest to the 100. So, when one gets into the realm of theory one gets very very dangerous results.

I am putting once again how necessary it is to see the case which is put forward by the Plaintiff, and it is necessary to see the basis of that case, because the charge of negligence here lies in what is alleged to be this non-removal of the tube.

Professor Welsh said yesterday morning something about "She did not receive efficient treatment later on." There is no charge of negligence against us for treatment later on. The lady had returned to her own doctor in the country, and in the case in reply, for the first time I think it was, Professor Welsh is suggesting inefficient treatment of the lady in the country, because of some evidence given in our case where Dr. Poate said that he thought that as well as paroidin she should have had calcium lactate administered; that he thought that to get the fullest benefit she should have had paroidin plus calcium by mouth. And that is why Professor Welsh speaks of the inefficient treatment she had somewhere else. It is a pretty late time to suggest that, and if it is suggested it still has nothing to do with this case. But every matter is grasped at by counsel, who are very familiar with the case, every matter like that which might work some degree of prejudice in regard to this lady remaining so many months in what she calls a seriously ill state.

The matter is one of cold hard fact. Has she proved the negligence she alleges in regard to the removal of that tube? I put it to you that there is not a scintilla of evidence to support the allegation of negligence. I will put it to you later, when I come to consider what is suggested as corroboration, that this endeavouring to prove that the thing stopped in the neck because something happened afterwards is a most unsafe premise upon which to act. That is the removal of the tube.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 14th January 1944, *continued.*

There are three outstanding matters in this case, (*a*) the removal of the tube, (*b*) what the doctors describe as the anatomical impossibility of that tube travelling as it is alleged it did—that is an impossibility raised on an impossibility, and (*c*) the extraordinary incident of the losing of this tube.

To Dr. O'Hanlon, who wrote on the 7th, there was no suggestion that it was lost by inadvertence or accident. You can see his letter. She does not suggest that having to crawl to the bathroom she was playing with the chain and it accidentally went. You will remember his letter. He gives a report of the history which was given to him. "Mrs. Hocking emptied the tube along with the bowel action result into the w.c., so neither Mr. Hocking nor I saw it." That letter was written on the 7th October, within two days of the happening. Mrs. Hocking emptied it into the w.c. with the bowel action.

Let us look at the Particulars. You will remember them. I will just read a bit now, because I referred you to it yesterday. When we asked "Where is the tube?" this reply was given to us, "As the Defendant is already aware the tube is no longer in the possession of the Plaintiff, having been discarded by her at the time of passing." That is a third matter as to which I suggest you will find that the evidence has shifted from time to time.

Dr. O'Hanlon's letter, written when they were not at arm's length, said that she emptied the tube with the bowel action. Their particulars, which they had time to consider, said "The Plaintiff, as you know, discarded the tube."

Is not it remarkable! The tube was lost! And then I will have an opportunity of reading to you questions asked by the learned Judge of the Plaintiff as to her description given of this incident at the first trial. And you will hear what has been said later.

Those are the three, what I suggest are outlandish stories, that are told—outlandish—impossible! There is the removal, the travelling, the loss! And the other extraordinary thing is her return to a condition of health such as she shows now. In between the alleged negligent removal of the tube, and the alleged eruption, there was a long time. The Plaintiff alleges that the tube caused the subsequent trouble. Let us examine that, let us look again at what the evidence shows.

You have heard evidence of what is infection, how it occurs, how it is perpetuated. You have heard that by 20th March there was infection in the wound, in the thyroid capsule. You have heard that is a capsule which has had removed from it something that previously took up the area there—seven-eighths of it removed. And you have had the infection started. That was an infection which reached its height on the 20th March, on the morning of the 20th March, when the temperature reached 103.8. After that the temperature fairly quickly subsided.

But the point that we have is this, that if there is a foreign body in the wound with a swab, such as is suggested—it is in the wound that infection sets up—it is in the wound, it is suggested, stopping drainage.

Once infection starts, when resistence is low—and this lady has come through a period of sickness following the operation—infection is an extremely dangerous thing. The powers of resistance are at their lowest.

What happened?—You are told by the doctors called by the defence—and I am going to show you that Professor Welsh is practically in

agreement with it—you are told that once you get infection in that wound, with a body like that in the capsule, that wound will never heal. You may get a temporary closing, but it will be followed by abscesses which will break the wound open almost immediately.

Dr. Poate, Dr. Edye, Dr. Bell, all those men who have had a lifelong experience of the danger of infection, whose job it is to deal with these matters, each and every one of them tell us that that wound, with a body like that in it, would not heal. But do we need a doctor to tell us that!

We know this, that it becomes the centre of an abscessed cavity. We know this, that if it were there it would be surrounded, as the doctors say, by a very large degree of pus. Dr. Poate has told you the area that it would take up. And yet we have this position, that although that infection developed and the temperature went to 103.8, by 22nd March the lady was back to normal temperature and normal pulse. Just think of it. With that infection around that wound she is back to a normal temperature and normal pulse, and within three weeks of that date, or four weeks, she is discharged from hospital.

You were told by the doctors that she was operated on on the 5th, had the infection on the 20th, but was able to leave hospital with dry dressings on her neck, and was fit to go home, and take the motor car trip at that time up to Quirindi.

Gentlemen, could it have been possible that that tube could have remained there, and the infection could have been such, when she had no swelling when she left the hospital, and only a slight discharge, such as she could attend to herself. And she did not visit a doctor until she was up in the country for two weeks. She goes home on the 14th, and the doctor does not see her until the 30th April.

Dr. Poate and Dr. Edye are two men of repute, occupying high positions in the community. They would not give the evidence they have on the effect of foreign bodies in the thyroid cavity unless they were certain. I would suggest that it is most unlikely that they would attach themselves to the statements made, which stand on record in matters like this, unless they were certain. Because, I suppose, as you know, in this case the medical evidence produced is well known by this time. It becomes a case not for the day; the evidence is in permanent form as appeal books and otherwise. And the doctor who is speaking on matters such as what a foreign body does is speaking for the time while his reputation lasts. And it is only fair to presume that those men are not going to attach themselves to statements in regard to foreign bodies that cannot stand up, that they cannot stand up to in their lectures and papers.

Dr. Poate's experience of foreign bodies has been phenomenal. He was a surgeon for three years in the last war, with experience of foreign bodies in every form and in every part of the body. And he has had repatriation connections, and other similar connections since he came back. And then he had had experience in this war. He has had experience with air casualties, and with every other sort of matter such as we are dealing with here. Dr. Edye is associated with that work, and Dr. Bell also, but Dr. Poate's connection with it has been tremendous. Dr. Bell has been connected with military hospitals and is a senior officer with the Naval Forces. As was opened to you, Dr. Bell is a surgeon who has been honoured by the King for his work as a surgeon.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 14th January 1944, *continued.*

Taking doctors like Dr. Poate and Dr. Edye, who give their pledged oath to the statements that they are making as to matters in their experience, and taking Dr. Poate first, what does he say. He says that that body would not move out of that capsule. He has seen such bodies, and he says when they are like that they stop there. You will get a needle which will move when you get certain muscle movement because it is sharp, but bodies of that size do not move, they get into the capsule and they stop there. And you will not get pus causing such a destruction of tissue that you will have something gradually eating its way up the neck until it comes out in the position indicated.

It is all very well for Dr. Thompson to give a little list of the people he says are talking rubbish. The assurance of some witnesses is rather amazing, and I think you will get an idea of that when I read you what is said here. First of all he said that Dr. Edye and Dr. Poate talked rubbish. Dr. Edye had not then given evidence, but Dr. Thompson was ready to say of Dr. Edye, even before he had ever heard him, that he talked twaddle. That is a peculiar thing to say about a man whom he had not even heard give evidence. That is at page 349, " You think that Dr. Poate . . . I know they do."

And then we go over to page 435, and we have this, " You have heard a volume of evidence . . . Professor Inglis." The assurance of the man, who is apparently an expert on everything !

" I think Dr. Edwards . . . lack of knowledge, it should not be." The men, Dr. Poate and Dr. Edye, who told you about foreign bodies, are men who know them and have worked in regard to them.

Let us take Dr. Edwards, one of the men who received the seal of approval from Dr. Thompson, who said that he was impartial. He has had a very large experience of foreign bodies. I think he said he had seen something over 1,000, and he said that they did not move, that they do not move in an area such as that. The position is that what happens if there is no infection is that the body gets fibrosed and anchored. If you get infection and an abscess, that abscess will continue suppurating until the body gets an outlet. And in the case of a foreign body like that staying in the thyroid capsule you will have a huge abscess, and the wound would never close up and heal, and you would have a wound open and nature expelling from the system the pus that was forming.

Just think of it. Going to the anatomy for the moment, in that portion of the neck you have your cavity from which the thyroid has been removed, and you have, as you saw in those illustrations, the path the pus would have to go. And what would happen ? Everyone says that would be fatal. If you have inflammation it will follow the line of least resistance.

Professor Shellshear gave evidence of it, and Dr. S. A. Smith also, both men of great experience in anatomy. And the surgeons gave the evidence of it too.

What did Dr. Welch say to me yesterday with regard to it. At pages 1630/1, " Would this be correct . . . that would be true." There you have agreement that it will prevent healing. And does not that stand to reason ? Is not it our own experience. One knows that if one gets a recalcitrant splinter the area of infection it can make in its endeavour to make a way out. And if you have a tube in the middle of an infection area, and infection is continuing, what will happen. What is the tube doing, if their story is correct, while all these little knots of sutures are making their way out ?

The lady goes home on 14th April, and in a letter written on 2nd May the husband says that she has been recovering sutures from the wound herself. So she has been dealing with the wound herself. In Dr. O'Hanlon's letter of 10th May he said that sutures were removed. Those were out, and the wound healed.

Is not the only position therefore this, is not this a corollary, a consequence, is not this where logic and reason drives one, that by the time that wound healed, healed at the end of June, that wound would never have healed if there had been an article there such as is suggested.

Let us look at the next aspect of this case. I am putting to you that the evidence of Dr. Poate, Dr. Bell, Professor Inglis and the other experts is evidence that accords with common sense, and that it is not evidence that is manufactured by them because of pressure brought to bear by the B.M.A. What is this that was suggested to Dr. Bell about the B.M.A.? Can anyone imagine him being a party to any such thing as that he would boycott a hospital or doctor because he gave evidence? You heard him, and I will deal later with the answers he gave. I would describe them as certainly not the most coherent answers, but when you read them all together you see what he means. The doctor has not, I think everyone will agree, the facility of expression that one would expect. But that varies with individuals. Very often the people who talk are the people who cannot do things so well. In all walks of life it is surprising that you can get a man who can explain things to you so that you would think that he is a master, and you will get another man get up to explain a thing and he is unintelligible, but if you put the two men side by side in one you have the tradesman, and in the other you have the talker. The salesman knows more about the machine than the man who makes it; the businessman who takes hold of the invention knows more about it than the inventor. And it is not unusual to find men who know their job thoroughly but who have not the facility of expression.

What is the position? It is this, I suggest with respect—I suggest that one is driven to this—that that wound would never have healed and that the doctors are telling the truth and are not lying, and are not merely speaking what the B.M.A. says to them, and that their consciences are not under the control of the B.M.A. when they say that the foreign body will not move, that with a foreign body in there any infection which started would have meant you would never have got your wound healing up. A woman starting off in her known health would never have gone through 18 months with abscesses in that portion of the neck persisting as they must have done.

This is a surprising thing, and it has been proved because I will take you through the history of it when we look at it—the history will disclose that the illness from which that lady suffered was either tetany or hysterical tetany, or true parathyroid tetany, or hysterical tetany. It was not inflammation of the neck. And that becomes apparent on a careful examination of the evidence.

We start right at the early stages. We have heard a lot about tetany. Whether this is tetany, or whether it is hysterical tetany, we have heard a lot about the various features of it. We do know this at least, that this lady had a very complex condition, and it was a condition about which she took medical advice about August 1937. And she was early diagnosed as neurasthenic. We know that she came to Sydney, and her complaint

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 14th January 1944, *continued.*

was then diagnosed as angio neurotic œdema, one of the offshoots of thyrotoxicosis. That was done way back in 1937.

We know that she went to hospital, and we know that in hospital it was not until about 2nd November that she was allowed to get up out of bed. If one looks at the records of her stay the first time in hospital, starting on 19th October 1937, we find that no visitors were to be allowed other than husband, daughter and sister, we find that she was complaining of headaches and pain in both legs, we find a drug that is used for thyrotoxicosis, we find that she is complaining of ringing noises in the ears. We find on 2nd November her weight is 6 st. 13 lbs. and that she is to have two egg flips daily. We find on 8th November that she is up in a chair for half an hour. We find on 10th November " Up in chair for a while and walked a short distance." We find in the night report of the 13th, before she goes out, that a gargle is given.

This is a lady who has had the strange experience in this life of never having had a sore throat except during this period of 18 months, has never had tonsillitis during the whole period, " Gargle given " on 13th November 1937. Mind you, at that time she has been to an expert in Sydney, Dr. Flynn, who has diagnosed her condition, and Dr. Flynn has said that she had angio neurotic œdema, which is this swelling that occurs. And we find that she goes to Dr. Ritchie on 12th November 1938, and this is the account he has given to him—this is the doctor writing to the specialist to tell him the position as to her health.

Dr. Flynn had used X-rays for physical reasons. The notes in the hospital records are that she is diagnosed as with neurasthenia. On 12th February 1938 in the letter written by Dr. O'Hanlon to the specialist in Sydney for the purpose of describing her condition we have this—and these written documents must be things to which the greatest importance must be attached—Exhibit " 14 "—" In reference to Mrs. Hocking . . . persisted." That is the patient who goes to Dr. Ritchie, that is the patient who, when she sees Dr. Bell, still has a high pulse rate, and that is the patient who goes through this very severe operation. And that is the patient who starts a period with an infection in that wound, and with a tube that it is suggested is of this length still there, and she comes out of it in October 1939 so that in a very short time she comes to Sydney, stays in hospital eight days, goes to Manly, and is in the condition, as I will describe to you later, when the doctor examined her and the X-ray was taken at the hospital, and looks as we see her now, and was suffering, as we have from their own letters, from no effects of it in 1941.

I was saying this, that we have to look now at the history of the case to see—and I put it to you that it will prove it conclusively—how inconsistent with her story of the tube remaining there are the real facts. We have a number of records, to which I will refer, and on which I will rely. One is the progress made after the routine course had been adopted. The tube was removed at a time when the post-operative temperature was normal.

The only witness in the case who says you do not get a post-operative rise in temperature in a thyroidectomy is Dr. Thompson. Every other witness says that it is the usual thing with this class of disease. Dr. Thompson finds that it is 92.4 on the morning of the 17th, and he ventures the opinion that you do not get it, and the other doctors say that you do. Quervain, the authority, points out at page 158 that in most cases there is a rise in

temperature after the operation, that is temporary, and may be as high as 102 without any infection to cause it. But in most of these things we do not want authorities like that to support men of such experience as we have had here. Dr. Poate's experience over 25 years is about 6,000 operations and his has been a very wide experience, so should we need authorities when we have our own distinguished Australians who know thyroidectomy in its very latest aspects. But if we need it then it is there, and it is in the other book by Johl, to which you can be referred if necessary.

The only one who disputes it is Dr. Thompson who says, at page 321, that the records indicate that the tube was not properly draining, and at page 372 that the tube should not have been removed. That statement is in entire disagreement with everything that the practising surgeons say. They say that the object, and the desirable thing, is to get that tube out, and they say that her records show a normal course of events and that there was nothing to suggest that the tube should be left in.

The set-back occurred on 20th March, but the Plaintiff returned to normal by the 22nd March, and she was out of hospital by the 14th April. We get the rest of the story then from the nurses and from the Quirindi Hospital.

I said earlier that this was not an easy case. This woman was in a very serious state of health. When she got home, in a letter from the husband it was said, " The whole body has been much swollen until to-day. It seems slightly less swollen to-night." Everyone agrees that the whole body could not be swollen from the tube being left there. If an abscess is caused in that cavity the abscess makes itself visible around the sides of that area, but everyone is agreed that the whole body could not be swollen. And no one has any reason to suggest that the husband at that time would write anything that was wrong. I put it to him that at that time he was telling Dr. Bell her condition as far as he knew it, and would be expected to do that—and one would expect that it was so. He was giving Dr. Bell her condition at that time.

Dr. Thompson ventured that it might be what is called mixedema. Everyone agreed that it could not be the result of the tube and the inflammation. Professor Inglis said that it was the angio neurotic œdema that Dr. Flynn had spoken about, which disease, as you will remember, produced a swelling which rises and disappears suddenly.

We have this extraordinary thing, that at times during this trouble apparently you get puffy hands. But the point is this, that at that time, if we are to take Mr. Hocking's letter to be right, as one would expect it to be, " The whole body has been much swollen until to-day."

Let us come to the next matter, and the next matter is a matter of record. She goes into hospital to be watched for tetany spasms. The thing that is causing concern at this time is the tetany spasms. And the note in the hospital record is " to be watched for tetany spasms."

The wound is probed on 7th May, and we have from Dr. O'Hanlon his report to Dr. Bell, or a letter to Dr. Bell, on 10th May recounting the spasms and saying that there was a free discharge from the neck and " She told me she had recovered several pieces of the suture material." And, gentlemen, that is all there is about the throat, and the rest is devoted to this tetany. If these spasms were as described, very very serious, and they had been continuing all this period, and there was the abscess and the

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 14th January 1944, *continued.*

other things that have been described, what would have happened if there had been a huge abscess like that long before this period?

We have it on 10th May in writing that there is a free discharge there and that she herself had recovered pieces of the suture material which was coming out. In the hospital by the 25th May they were on to dry dressings, and you were told by the hospital nurses when she left the hospital there was very little discharge and no inflammation. One of those nurses, Matron Fall, was criticised because she said that when she left she had no inflammation, when she was not at the hospital. But the other nurse was there, and the records are there, and we have the witness called by them, Sister Sly.

The nurses at the hospital at Quirindi gave this evidence, that by the 25th May foments stopped and the dry dressings were started to be applied, and that by the 9th when she left there was no inflammation and no swelling.

Take up the story from there. You heard me mention this morning a Miss Meagher, a sister of the Plaintiff, who is alleged in the Particulars to have been with the Plaintiff from April 1938 to October 1939, at various times over that period. We have not heard from her. She was there for nursing and giving general attention.

(Luncheon adjournment.)

Continuing with the history after leaving St. Luke's, in that period I am suggesting that the neck healed and continued better. I am giving you these details for this reason that, as I have said to you, although it may mean taking a longer time, the evidence rather than generalisations is important in this case. And what will be put by Mr. Shand, I feel certain, will be generalisations over the whole period, such as "And you will remember this woman was sick from time to time over this period."

Mr. SHAND: You are wrong.

Mr. CASSIDY: That is an easy way of dealing with the situation which presents difficulties when you examine it. So the best thing is to see what are the details when you look at them, and what is the positive evidence in the case when you look at it.

We have it from Mr. Shand, apparently, that he is not going to deal with it generally, that he will not say that this lady was sick on and off over the whole time.

I have told you that she went back to Quirindi, and from Quirindi we have had Dr. O'Hanlon and the nurses, who said there was no inflammation and no swelling. For the next period she calls a witness, in the person of a nurse who came from Sydney, to deal with that next period. We find that that nurse, Nurse Sly, and Mrs. Fisher, attended her during the next period running up to 9th July. And you find this—and it probably has not occurred to you before—that both of those people left within one day of one another. That appears at page 220, that either the same day or the day after Sister Sly left Mrs. Fisher left. "Did you stay on much longer . . . Sister Sly left Mrs. Hocking."

The wound healed in June, Sister Sly left on the 9th July, and Mrs. Fisher left within one day of that time. From that time on, although Dr. O'Hanlon attended on occasions up to 10th October 1938, it is agreed on all sides that he was never called in for, and never gave any medical attention to, her throat or neck.

The next time she goes into hospital, 3rd September 1938, when she again goes in for tetany, we called the nurses, and we again find no swelling, no inflammation, and not a reference in the records to any form of treatment for the neck.

Now, gentlemen, I suggest with respect that corroboration is essential. What do we find that Sister Sly says. She speaks of the spasms, and then, at page 113, she says this in chief to Mr. Shand, "I remember the appearance . . . serus discharge watery clear." That is what she gives in chief. "I remember the appearance of her face and neck . . . a little puffy." That is the full extent to which that lady goes in chief.

In cross-examination, this is what was said. "This is a course of events . . . in any way whatsoever?—A. No." Pausing at the puffiness, you remember what Dr. Flynn said about the swelling in connection with this lady in 1937, and you will remember what Professor Inglis said, and the description of the angio neurotic œdema. Because you have puffiness in the hands it could have nothing to do with the tube in the neck. "I think a year after that . . . one spasm." And there is one remarkable bit of evidence here. Mrs. Fisher said that during the time she was attending this woman she never noticed a spasm. ". . . get depressed?—A. Yes."

So we have this picture from Sister Sly. Her account is there was no swelling and no inflammation, the things that the expert looks for.

We have, the next thing in order, that Nurse Roberts and Nurse Blundell gave their sworn evidence that in the hospital there was no swelling and no inflammation, and the wound still healed. So we have a period there from June to September of the wound healed. That is the evidence. We have also got Matron Fall giving evidence to the same effect about September.

We have next the letter from Dr. O'Hanlon of 17th January 1939 and I put it to you that this makes the matter conclusive. His visits to the place ceased about 10th October 1938, and he was writing to Dr. Bell about this case. And again I suggest with respect that one looks at what is written in the letter at that time, and one takes what it says as a correct description of the position. He refers to the spasms and deals with them, and says that they are frequent minor spasms. And then he goes on, "For the first time since her return . . . certainly looks very well." This was written long before any case starts.

For months Dr. O'Hanlon does not see her. He says definitely at that time he did see her at the pictures, and he wrote about it. Her evidence must be wrong when she says she never moved outside the door to go to those pictures. Why would the man write it if it were not so. There would be no purpose in doing so. And what happened when I cross-examined the husband about going to the pictures. The husband says "I cannot remember." If that is right, the Plaintiff could not have forgotten. If it was only one visit to the pictures, could the Plaintiff have forgotten it if it occurred during that period, could she swear so positively here that she did not move outside the door for 18 months to go to the pictures, or, to use her own words, to go down the street. I ask you to accept that letter as containing the truth, the fact being that she was looking well.

He still thought that there was a functional element in Mrs. Hocking's illness. And that is not the only thing. In February 1939 Dr. O'Hanlon

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 14th January 1944, *continued.*

made a visit, and the visit was because the young daughter was going off to a boarding school. And there is no evidence of any swelling or inflammation of the neck then. He does not attend again until 19th September 1939, and that is within two weeks of the alleged eruption of this thing through the throat. During the whole of that time there was not one prescription, or one purchase suggested to be connected with the neck. There was the calcium lactate and the other things that were bought on the prescriptions which were given. They are there, and I have examined them with you before. And you will notice that the number of purchases shown there during that period are less than at other periods.

The point is this, that at no time is there any prescription or medicine from the doctor directed towards treatment of the neck. If that tube had remained in the neck, a centre of infection for that period, how could it have been possible that some medical attention would not have been necessary, how could it have been possible that the lady would have lived and been able to resist the onset of that infection, and be able to show no signs whatever of that infection having interfered in the slightest with the movement of her neck or any part of her neck? The doctors tell you that it would be impossible.

You are told that abscesses in the neck require prompt attention. We are told that abscesses in the neck left unattended, and having no outlet such as this, would mean the end of it, and it stands to reason that it would. Imagine that infection, with a body like that, locked up and unable to make an escape, and that the wound could heal on 9th June 1938 and there is never a re-opening of it until 2nd October 1939.

On 19th September 1939 the doctor attended. Dr. O'Hanlon tells you from the time of his attendance then—and the records confirm it, because the prescription has been produced from the chemist—that all that was given was a nerve tonic and an A.P.C. powder, and that then there was no swelling of the throat and no inflammation.

Let us look back for a moment, as I rather jumped in going from 17th January 1939 to 19th September 1939. In May 1939 we have letters written by the Plaintiff to Dr. Ritchie and Dr. Bell. One of those letters is here, and she has been cross-examined on what was said to Dr. Bell. In her cross-examination she admitted that there was not one word said to Dr. Bell about any swelling in her throat.

And we have, you will remember, Dr. O'Hanlon's letter written on 17th January that she looked much better. In her letter to Dr. Bell she suggests no swelling in her throat, and in her letter to Dr. Ritchie she suggested no swelling in her throat.

Will one of you gentlemen just take that original for one moment while I deal with it. I draw your attention to that letter for a number of reasons. It is the letter of 6th May 1939. (Reads letter.)

Now, gentlemen, a letter was written at the same time to Dr. Bell also. That letter is not the letter of a woman who is having this trouble with the neck and the swelling in the neck.

Round about that time two visitors called at their place. And we have this, that by this time her daughter has gone to a boarding school and is back for her holidays. This letter, which is signed Chiquita, which is written in a most regular hand, written right at the bottom of the paper—at that time when that letter was written this lady says "It took me two days to write it because I would have the spasms and I would drop the pen from my hand." That letter, I put it to you, does not convey that picture.

Look at the letter and you will see that the writing is good, and that the letters are regular and quite well formed. And the whole atmosphere of that letter is that it is not a letter that she has taken two days to finish because in the spasms the pen dropped from her hand. Is not that exaggerated, is not it the same element of exaggeration and unreality that is typical throughout this case. Take the very expressions in the letter, " I had visitors the other night and one of them said ' Gosh, but you are beautiful.' " Now it is said that he had had too much cherry brandy.

Where does this expression come from. She said to me in evidence that he had been at a party, and the reason she had written that he had had too much cherry brandy was that it was the result of the party. It turns out to be the position that the man was never at a party, that he had come with his wife and children, that he had never tasted cherry brandy in his life.

It may not matter much to my friend, but this is a very serious matter, from the point of view of his reputation and other things, to Dr. Bell. It is a serious case, and the case is founded on the evidence of a woman who, I am saying, is prone to these exaggerations, which cannot be the basis of a sound superstructure.

Mr. SHAND : You talked about cherry brandy.

Mr. CASSIDY : You said " Plonk " and I heard it. I hope that we are considering this matter and its consequences seriously. I say that this exalting of a plain drink of beer into a party of cherry brandy, when that was obviously wrong, is something which is symptomatic of what has been going on throughout this case. It is the small matters that one has to use to show that. Wait until I come to the evidence that the Nancarrows gave of her condition at that time, these people who saw her.

I put it to you that this letter written to Dr. Ritchie at that time is not a letter of a woman who describes herself as being in a condition which meant that that letter took her two days to write, because her condition was such that the pen would fall from her hand and she would have to start again.

I have said to you all along that this story of hers requires the close scrutiny of our minds, because if it is accepted it is chock-full of gravity in its effect on the reputation of this man who is getting towards the end of his career and whose life up to the present has been free from such charges.

That letter was written rather in the spirit somewhat of frivolity, but certainly not in the spirit of a woman who was suffering so badly and whose condition was such that she could not write the letter straight off but it took her two days to do so.

She also wrote to Dr. Bell. That letter is not here. I cross-examined her as to her memory of its contents, and I got it that in that letter she made no mention of swelling in her throat. His reply gives some indication of the letter that was written to him. That is the letter of 27th May (reads letter). If one can imagine the letter to which that is a reply, I should say that it was a letter in which there was no complaint about swelling in the throat, and that the talk was still about tetany, and cod liver oil and calcium were the things that were being spoken of. The other thing is that at that time, apparently, the handwriting struck the doctor. This letter was written at a time, I suggest to you, when she was not having

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 14th January 1944, *continued.*

these spasms, and her condition was such as you will hear described when I deal with it presently.

Let us look for a moment at what the evidence she calls in support of it is. The Nancarrows gave evidence, and they gave evidence of visits on three occasions. And, gentlemen, if you ever saw a somersault in respect of some of this evidence it is here. Mrs. Nancarrow gave certain evidence, and having regard to what she had said before I asked her certain questions. And we get this position, that this lady at this trial says this, "I was living at Quirindi in 1938. I visited while Sister Sly was there." She was asked "What was her general appearance?" and she said "She was desperately ill and her throat was all swollen underneath here." Sister Sly's evidence was, "Completely healed, no inflammation." That is the description in June 1938. "I knew her well . . . her voice was still the same." Compare that with the evidence this lady had given before. "Are you giving the same evidence . . . what you swore, is it not?—A. Yes." Think of it! "I did not notice anything about the lower part of the neck . . . is it not?—A. Yes."

Take the next thing, "You made that visit . . . Sister Sly brought her out." Sister Sly had been gone a year. It will be plain presently why this evidence, contradictory as it is, wrong as it is, was given. By 1939 Sister Sly had been gone a year. "He assisted her out . . . vivid imagination, absolutely."

Listen to this, and see the conflict of evidence we have here. I asked her about the 1939 incident, "In July 1939 her neck . . . her neck at all?—A. No." You see the picture that is being given. "Was her turning movement . . . yes definitely."

We have a witness there who tells us that in July when she saw her the throat was swollen and so bad she could not move it without moving the whole of the body, and on the last occasion she said she did not notice it.

Let us see what the husband, who was with her, said. The husband saw her on two occasions. "Her face seemed a bit swollen . . . still slightly swollen."

We come to the cross-examination. "Did you talk to Mr. and Mrs. Hocking about your evidence . . . I was not asked about any swelling." Now, gentlemen, I put it to you that that evidence establishes this, the greatest inconsistency between the accounts given then and now, after this talk and discussion that took place between the Nancarrows and Mr. and Mrs. Hocking.

Let us proceed. On 17th September 1939 Dr. O'Hanlon tells us there is no swelling and no inflammation. On 2nd October this alleged incident of the bursting of the tube occurred. He was not sent for until the night of the 6th, and on that night he went down and he saw her and was told this story. On the 7th he wrote to Dr. Bell. Her story is that her head and neck were like those of a hunchback, that she had been all one piece. But the very next day in his letter of 7th October 1939 Dr. O'Hanlon said a clinical examination revealed nothing definite, and there is not one word in his observations about this extreme swelling.

Mr. SHAND: He did not look down the throat.

Mr. CASSIDY: The clinical examination would have shown some swelling, if it were there, which he would have reported to the doctor.

He said that the clinical examination revealed nothing definite, and then he gave the history that he got from the wife.

Listen to what the husband said on the first occasion. For the moment I will sum it up. The husband gave this evidence that up to that time, up to 2nd October and for the three months prior, her neck was normal, and nothing wrong except a cold and the tetany. I will give you that direct evidence. That was the husband's sworn evidence at the first trial. Link that up with something objective that I am coming to. We have the letter written by the doctor the next day. He took her to the hospital the next day, X-rayed her, looked at her throat. And the X-ray picture is produced in Court. Dr. Edwards was called on that, because these X-ray pictures require interpretation. Dr. Edwards was called, and Dr. Edwards said that X-ray picture shows the normal outline of the throat and that there is no swelling.

The story that she gives is that for three months she had been scraping pus out of her mouth and that the swelling had been such that the neck and shoulders were one piece, and that she could not move her head without bringing the whole of the body to the left. That picture shows that she moved the neck to the right for the purpose of that X-ray. And the doctor told you that that movement has its influence on the muscles on the neck on the left.

I will read you presently what the husband said. Certainly he has altered it, but I will read you the admissions that he has made in the course of this trial. He made admissions before that he has now withdrawn. But when evidence gets to that point, that admissions made are withdrawn and altered, one comes to a matter of basic things, and to say that a case which has to be proved cannot rest on that unsubstantial foundation.

These are the facts, from the document and the X-ray, that on the document it is shown the doctor made his clinical examination that night, and the X-ray was taken the following day at the hospital. There is not one suggestion that after 7th October when the doctor was with her he did one thing, or that she bought any medicine, for that throat.

I do not know whether you will remember it, but on the 5th October, the day of the alleged passing of that tube, there had been a visit to the chemist and the only thing that had been purchased was an indigestion powder for the husband.

Think of it. On 2nd October she had had spasms which she said lasted over a period of two days, with intermittent unconsciousness. The husband says that she was unconscious and he thought that she was dying ; but that no doctor was called in. If something had broken into her throat, following the eruption of the abscess through the throat, no medical attention had been secured, not one thing was obtained from the chemist, and she left herself in that state and sent for the doctor at this extraordinary time of night when he is at the pictures. And when he goes there he finds the clinical examination shows nothing, and he is told this story.

I suggest to you that it is back to the unreality of the whole position, that a woman who had had these spasms lasting over two days, and having a wall of pus, it is alleged, and something has broken through, did not summon the doctor. And the doctor is not summoned until late at night, when he is told this story, and the sketch is produced to him of this thing which is alleged to have passed from the body.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 14th January 1944, *continued.*

What is the next thing. She comes down to St. Luke's Hospital. The nurses tell you there was no pus in the throat. Professor Welsh yesterday agreed with what Dr. Marsh said, that what Dr. Marsh saw in the throat was the cheesy material he spoke of.

You know what the story has been, that for three months before 2nd October her condition had been one of having this pus. Think what would have happened if there had been a wall of pus going into the system. Dr. Marsh has said there was none. The blood count is normal, and then what do we find.

This is what is said at page 89, " Let me pass to the next thing . . . with a brush." We get this, that it is sworn when she came to St. Luke's she had no pus in her mouth—the nurses and doctor swear that. And had there been any eruption, such as would cause a thing like that to leave, what would one imagine would be the position.

(At 3 p.m. further hearing of this matter was adjourned until Monday, 17th January, 1944, at 10 a.m.)

17th January 1944.

IN THE SUPREME COURT OF NEW SOUTH WALES.

In Causes.

Coram : EDWARDS J. and a Jury of Four.

Monday, 17th January, 1944.

HOCKING *v.* BELL.

Mr. CASSIDY : The first aspect of my address, you will remember, was directed towards proving that the tube was not left in the neck, and the second aspect of it, which I had commenced on Friday, was directed towards this, that the evidence in the case after the Plaintiff leaves the hospital negatives that the tube was left there as the centre of infection.

I had pointed out, (1) during the period at St. Luke's and during the probings that took place there, nothing was seen ; (2) that during the period in Quirindi Hospital the wound was again probed, and the wound finally healed ; (3) that the wound could not have healed, on all the medical evidence except Dr. Thompson, and remain healed ; (4) that the events, the letters and the correspondence over the whole period, show that no tube could have remained there because in those letters would have been mentioned something about the tremendous swelling that must have accompanied a tube being left there and remaining in the centre of infection.

I am afraid I now have a little more detail to put to you, but it is necessary, as you will realise that from the point of view of the defence the danger in this case lies in generalisation. The easy way, of course, is to say, " Well, we have here a period of illness. How did it happen ? "

Detail, of course, is obnoxious and weary to listen to, but it is essential when we do want to arrive at the truth.

This case must, of necessity, rest largely on the medical evidence, and the conclusions to be drawn from what the doctors say. In Admiralty cases, of course, we have a system whereby the Judge sits with assessors,

men who have had experience on the sea, but in this case the Jury have the onus thrown on them, the heavy responsibility thrown on them, of appreciating the medical evidence. My friend opposed that the structures of the neck should be seen in the human form, so the case must proceed on illustrations and upon the evidence which has been given by the doctors.

I pointed out on Friday that the evidence of Sister Sly confirmed the Defendant's account in that she pointed out clearly that there was no swelling and no inflammation when she left, and that the wound had healed. I passed then to reading some of the evidence which had been given by lay witnesses, if I may so call them, on behalf of the Plaintiff. And I want to show you gentlemen, with regard to the Nancarrows to commence, that their evidence is entirely opposed to what they said on the first occasion. And just to illustrate to you from a couple of references to their evidence, you will see this, how easy it is for people a long time after the happening of an event to get the matter all out of perspective.

Just let me take two illustrations. You will remember that the history prior to the Plaintiff coming to Sydney is the history of a woman who is in a very ill condition, who is looking wretched, who has lost weight. That is agreed on by everyone. It is agreed on even by the husband who says, at page 151, that when his wife came out of Quirindi Hospital in 1937 she got worse, and then came to Sydney early in 1938.

So, everybody agrees—Dr. O'Hanlon, Dr. Ritchie, Dr. Bell and her husband—that she was a very ill woman, in a very wretched condition, seriously ill, when she came to Sydney. What do we find Mr. Nancarrow says. Mr. Nancarrow says this—and I put it to him just to get the reliability of his observation—at page 127, that she was looking just about the same as she is now, probably a little stouter. How ridiculous that is. One has only to throw one's mind back to how she was when in hospital, down to 6·13 and 7·2, and to the evidence given, and admitted on all sides. And yet we have it that Mr. Nancarrow says that she was a little stouter than she is now. Well, he must be wrong. Gentlemen, he must be wrong.

I do not suppose there is any necessity for anyone to say that any man is getting up with the deliberate intention of lying in that regard, but this at least it does show. It does show that the observation of a witness, speaking at this stage gets all out of perspective, and becomes completely unreliable for any conclusions to be formed thereon. And that is not the only extent of it.

On that occasion in April 1939, when the Nancarrows were leaving for Gunnedah, and they went round with the family after packing to see Mr. and Mrs. Hocking, he says this, "Mrs. Hocking came out of the bedroom and she looked so awful and rotten that I said to her 'Gosh, you look beautiful to-night.'" Put yourselves into that position. Is that likely that when a woman is, if she were—I will show you later what she says about it—in this terrible condition, if she were that way, that a man, even on friendly terms would say to her, "Gosh, you look beautiful to-night." Even with your own people, if they are ill, does one say that sort of thing to them?

Just think of it—"She looked so awful and rotten that I said, 'Gosh you look beautiful to-night.'" I put it to you that when you apply ordinary acumen and inquiry into those matters you see that they are not right.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

What is the position ? This lady has written in the letter to Sydney, that she has been told that she is looking beautiful. That of course means that there cannot be much deformity about the neck. And it was written to a doctor, and it has to be explained. The wife, Mrs. Nancarrow, hears no such remark. Mr. Nancarrow explains it in that way.

Now look for a moment at the evidence he had given as to her condition, and see how if it is possible that he could have made what I suggest was that most improbable remark. His evidence at page 122 is this, " When you saw her in April 1939 what about her face and neck ?—A. It was pretty well the same as before with a flannel round it and still slightly swollen." Just think of it. On the previous occasion he had sworn that he did not notice much, but he says in this trial, " The wife and I have been talking it over, and things come to you when you talk it over." Just think of it. And then he comes along and says, that he passed that remark to the lady, when his evidence before was that he did not notice it. And even his evidence here was that it was still a trifle swollen.

This was his evidence before, " I could not . . . slightly husky if anything." Last time what he said was that he really did not take much notice.

What I am putting to you is this. Let me get as far as I can with regard to some of these lay witnesses, and say that they are deliberately attempting to mislead. He said, " I went over my evidence with Mrs. Hocking and my wife, and I refreshed my mind about it." They talked about it, their minds reconstructed something, and that could never have been the meaning behind those words when they were used.

I am reminded that on page 122, in addition to saying that she was stouter, when it was suggested that she was seriously ill when she came to Sydney with goitre in 1938 he discounted it and said that it was ridiculous to say that she was seriously ill, that it was absolutely ridiculous.

It is easy for my friend in reply to skate over that evidence and say that you have evidence here from the Nancarrows as to so and so, who say this woman was desperately ill. That is the way it will be put. But I am sure you will agree with me that the evidence has to be analysed, and aspects of it which may very well have gone from your minds have to be recalled to your minds. Those matters have to be brought back to your minds to show you how unreliable such evidence is.

Let us now look at Mrs. Fisher's evidence. What are the facts when we look at her evidence ? I will put them very shortly She left, as you know, the day after Sister Sly left. She was not there again in 1938 until October, she was not there from June 1938 to October 1938. She was there in October 1938 once. She was not there again until one or two occasions during 1939, at one period for two months, two days, a week, and there may have been a fortnight in between. And what is her evidence. She does not see any spasms. A significant thing in this case is that from September 1938 in the hospital, until October 1939, there is not one person other than the wife and the husband who saw the spasms. And Dr. O'Hanlon's letter of 17th January 1939, which is based on information because he has not been seeing them, is that there have been minor spasms, lessened in intensity and not as severe as before. And that is only on information that has been supplied.

The sister is there throughout the whole period of 18 months, and she does not give evidence.

The next thing is Mrs. Fisher looks into that throat within one week of the alleged eruption. Mrs. Fisher was not there apparently on 2nd October 1939, but she says she was there on 7th October, and within a week she looked into the throat. At page 226 she said she looked back as far as the back of the tongue and she could see no hole in the throat. That was Mrs. Fisher's evidence. At the last trial she said she had been told by the Plaintiff that a piece of wire was among the things which had come out. This time she said she was told by the Plaintiff that it was something that looked like wire.

She was looking for a hole. At page 225, " I looked to see what I could see in the throat. I had been told a piece of wire and a tube had come out. I could see to the back of the throat and I noticed nothing in the throat until after this incident, sometime after."

So we have there, I suggest to you, confirmation of what Dr. O'Hanlon said, that when he looked in that throat on 7th October he also saw nothing.

So, where does this case go to when it is stripped of the evidence of the Plaintiff ? At the first trial, I will show you that the husband's evidence contradicted that of the Plaintiff directly in many particulars—directly contradicted it.

You know, gentlemen, that it is not the husband who has brought this case. The husband has had the expense and the charges, but he has not sued.

Mr. SHAND : Did not you know that there was some arrangement ?

Mr. CASSIDY : I did not.

Mr. SHAND : There was. I ask you not to mention that matter you were opening.

Mr. CASSIDY : I knew nothing about that. If there is any arrangement I know nothing about it. But let that go.

We have this position with the husband's evidence. The husband's evidence at the first trial will show you that so far from this throat being one that had pus and swelling in it on 2nd October—the husband's evidence will show you, and the admissions were made at the first trial, that on 2nd October there was nothing there, and there had been no complaint except tetany and probably a cold.

I am putting to you at this stage that when you shear from this case the Plaintiff's evidence, where does it stand ? You have no real support for it from the witnesses she calls—Sister Sly, the Nancarrows, Mrs. Fisher, and the only other evidence, that of Mrs. Hannaford, which was read. As I said, Mrs. Fisher had looked inside that throat. She had been told that a tube and wire had come out, and she looked to the back of the tongue and saw no hole. Mrs. Hannaford, the nurse at the hospital, her evidence was read. She saw this lady for a few moments in May 1938 when in hospital, and then saw her later in the same hospital at Quirindi in May 1938. And in September 1938 she was nursing her. Of September 1938, what Mrs. Hannaford said, at page 230, was this, " There was nothing abnormal about her throat." You will remember that I told you that the throat healed in June 1938. " It was just the same as before. There was no bandage or anything around her face." And the hospital records show there was no treatment whatever given to that throat.

Mr. SHAND : That is not correct.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

Mr. CASSIDY: Therefore I pass to the story that the Plaintiff herself tells, which I say to you is one of exaggeration. And I deal with the Plaintiff first because, I will suggest to you, on the evidence that she has called herself, apart from what the Defendant has called, is shown gross exaggeration of the real position, that some gross exaggeration which one can only put down either to a nervous inability properly to appreciate the position, or a desire at a later stage to support the charge that she has made.

You will remember the observations of Osler on this condition of hysteria, and of the experts who have been called, where people imagining things find them very real to them and then endeavour to perpetuate the suggestion. Whatever it is—and we have not got to explain what it is—whatever it is, this is apparent when you test her evidence with the real facts—gross exaggeration of matters which become pertinent.

Take what she describes as the position. At page 84 she says that from October 1938 to June 1939, "My head was terribly swollen; I had no neck; my head and shoulders were all one; they ran into one; I was swollen out on both sides of the jaw and the face came straight down."

Now, she is pinned to that evidence, because that was the evidence given at the first trial; that from October 1938 to June 1939 "My head was terribly swollen; I had no neck; my head and shoulders were all one, they ran into one; I was swollen out on both sides of the jaw and the face came straight down." And then, "I was unable to turn my head to the left right through to October, and that lasted quite a long time after I left St. Luke's."

Take the picture that she gives. Just take that picture of the head and neck in that condition, and that during those last three months she got into this terrible condition she speaks of. We have this fact, that the X-rays taken on the morning of the 7th show the outline of the throat and chin as normal.

Let me go to the next part of her description. She had said previously that she had been spitting out pus. She now says that that is quite wrong, that she was not scraping off the pus before 2nd October. That appears at page 88. Previously it was there for three months before the 2nd October. That was given at the first and second trials.

You see where that gets. If that was so for three months before 2nd October, constantly spitting it out, the medical evidence tells you that you would have a woman who, if she could have survived it at all, would have had a blood condition from this pus that would have meant she would have been anæmic to the worst degree. The doctors say that it could not have been.

And there was the blood count taken within 26 or 27 or 30 days of the 2nd October—about the 28th October—and that blood count showed a normal count. And that could not be if her story were correct.

What do we find now. We find that she says that when she said that it was wrong. And it was corrected.

The significance of this is this, that the doctors in this case say there could have been no pus, because she could never have got into the condition that she was in on 28th October if there had been pus.

She swore at the first trial that when she went to St. Luke's and for quite a long time after she left St. Luke's, she could not turn her head to the left. We have got it now—and I will come to her husband's evidence

presently—we have it now from Dr. O'Hanlon that when he saw her on the 7th there was no pus, and we have the evidence of the other doctors who say that it could not be.

I will now read you what the husband said. He said, " I never noticed any pus until after she had been in St. Luke's." Those are his exact words.

When one puts these matters together, collecting these details from this mass of material, how strongly it supports the medical evidence which has been called. Anywhere where we can get a check on what was said, how strongly it supports the defence. The X-ray on the 7th, the blood count taken on the 28th October, they all square up. Every time one can get a check it squares with the evidence given by the doctors in this case, and clearly negatives the story that the Plaintiff is telling. Professor Welsh admitted that the blood count was inconsistent with her present story.

I have already told you that her husband admitted that he never noticed any pus until after she had left St. Luke's.

That is the evidence. Pause for a moment and consider it, with your knowledge of these things as you have heard them here and from your own experience. Think of it—the eruption of an object of the size something like that illustrated, erupting suddenly after proceeding through the throat without warning, with the discharge which would accompany it, and the woman semi-conscious, or unconscious, swallowing it—if it came through, probably with blood and hæmorrhage—and yet no doctor is called in.

Mr. SHAND : The husband said he saw what was called pus prior to 2nd October. That is page 198.

Mr. CASSIDY : I think I am right. I read exactly what he said. But since I am challenged I will read this evidence. It is at page 199, " I said to you, listen to this . . . nature of pus in her mouth ?—A. No." That is what he had sworn. " Until after your wife . . . definitely a mistake."

Mr. SHAND : That is the opposite of what you told the Jury.

Mr. CASSIDY : I said that he had sworn on two occasions that he saw no pus. He has sworn so twice, and he is altering it now.

Mr. SHAND : And you are altering it too.

His HONOR : The evidence in the third case is that he said there was no pus until after St. Luke's.

Mr. SHAND : He did not say it in two trials.

Mr. CASSIDY : First of all we have it that he admits that he swore it at the first trial. Now he says that it was a mistake.

Mr. SHAND : It was not the first trial, it was the third trial.

Mr. CASSIDY : We will get it exactly. I said that it was at two trials that he swore it. He said that it was a mistake. " It could not be a mistake . . . toothbrush." Dr. Cooper did not call until after 2nd October. " What colour was the pus . . . until after admission to St. Luke's."

Mr. SHAND : That was pus around the scarring. My friend left out a sentence.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

His HONOR : Read it again.

Mr. CASSIDY : " There was pus around that after coming out of the hospital." What I read to you was this, that he said that he never noticed any pus until after she had been in St. Luke's. He has sworn it twice, and there again he comes back to that, that there was pus after coming out of the hospital. And he alters it at this trial. " Did your wife tell you that . . . "

Mr. SHAND : (Interrupts.)

His HONOR : As far as I can see at the moment Mr. Cassidy is reading exactly what appears in the transcript.

Mr. CASSIDY : " Did you have a look to see . . . I have made a mistake." And also " Will not you admit now . . . I saw pus then."

I want to follow up the husband's evidence on these matters. What I put to you was that he said he never noticed any pus until after she had been in St. Luke's, that he had looked several times for it. He swore that at two trials, and here for the first time he said that was a mistake.

Mr. SHAND : I object. At page 202 there appears what he swore at the first trial. Will you admit, Mr. Cassidy, that you are wrong in saying this was the first time ?

Mr. CASSIDY : No.

Mr. SHAND : Then look at page 202.

His HONOR : That is the re-examination.

Mr. SHAND : Yes, the third question.

His HONOR : " You were asked about seeing pus . . . "

Mr. CASSIDY : " I saw something on the tongue."

His HONOR : " And was this what you swore at the first trial . . . "

Mr. CASSIDY : " The tongue rather coated." Professor Welsh says if it was a coating of the tongue it was not pus, but was the very thing that Dr. Marsh spoke about, which was the cheesy material which you get coming from tonsillitis. And he never called it pus either.

What I am putting to you is this, that pus is something running, and that there was no running pus or discharge such as you would have got from an opening in the side of the tonsil. It is pus that we are talking about, the pus that is supposed to be coming from a wound that is open and discharging.

Let us see the next account that the husband gives. He is asked, page 146, as to the condition during 2nd October which his wife has described. He was asked to the condition during that period. He does not corroborate that the head and neck were all one piece in that period.

He was asked this question, " You say you do not recollect your wife . . . something of that nature." And again " Had she been complaining of anything at all . . . tetany."

Mr. SHAND : I object. My friend is extracting passages here and there.

Mr. CASSIDY : I am reading exactly what he swore at the first trial.

Mr. SHAND : My friend puts it to the Jury as if this is evidence at this trial. He was cross-examined on this and explained it.

Mr. CASSIDY : We are going back to the first trial to see what case they were making then. I showed that at that original trial the husband's evidence, so far from supporting the wife's evidence, was against it. At that time the husband's evidence largely coincided with the evidence we gave. And this evidence that I read to him, it was agreed that he gave it there, and that it was correct. And that is agreed again here.

The first thing he admitted at the first trial was this, " You say you do not recollect . . . or something of that nature " and again " That was the sworn evidence you gave on the first occasion . . . tetany."

Mr. SHAND : You are picking out extracts and not giving the full answer where he explained that he thought that tetany covered everything.

Mr. CASSIDY : I am reading it because you would not let me put the whole record in. I am reading what this man has already sworn.

His HONOR : That is what Mr. Cassidy is doing.

Mr. SHAND : My friend read out part of the explanation he gave, and left out the most material part.

Mr. CASSIDY : No. I finished with, " Had she been complaining . . . tetany," and that was when you interrupted me.

His HONOR : That is correct.

Mr. CASSIDY : And I am reading it exactly as he gave it at page 21 of the first trial.

His HONOR : There is an explanation of the reason why he gave it at the first trial, but this is actually what he swore at the first trial.

Mr. CASSIDY : This is what he swore, and I will read to you afterwards the way he endeavoured to explain it. The point I am making is this, that at the first trial we had the husband's evidence which, so far from corroborating the Plaintiff, supported our case. And I will show you how he has altered his evidence in other matters to conform with that of the Plaintiff, so that things he said before he now says are wrong.

Again, he said at the first trial, " Was there anything you could see for yourself . . . except for these attacks occurring." That was the evidence given.

Mr. SHAND : And there is another extract following that.

Mr. CASSIDY : " Apart from that her condition was alright ?—A. Yes, she was able to get about between the spasms." That was the evidence given at the first trial, and the order in which it was given.

Now let us go back to examine what he said when I put this question to him, how he meets it. How does he meet it when asked why he said that before. " The first question I read to you was this, ' You say you do not recollect ? ' " I gave him a chance to explain. And his answer was, " I said tetany, I did not say a swelling." " Do you mean to say . . . swollen sometimes worse than others."

Here was the period of 2nd October when she was alleging her head and shoulders were all one piece, and that was the answer he gave when

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

I cross-examined him. "Apart from that was there anything else wrong with her . . . I think that is right." And then again, "It was true . . . get about between the spasms."

What mention is there really seriously to cut down the evidence given at the first trial. "That was the answer you gave?—A. Yes, I take it that it was if it is there."

Let me pass to another one. You remember Dr. O'Hanlon was called in on 1st February, and Dr. O'Hanlon says there was nothing wrong with the throat. At page 182, "Having regard to the state of your wife's health . . . even when the swelling was most severe." At page 183 there is that answer given, that when His Honor asked the question at the second trial, and his answer was that the swelling was not of such marked degree that people who did not know her would notice it, but those who did know her might, he was asked what period that referred to, and he said that would be up to the incident of the tube, except for those two visits.

That is exactly what the Nancarrows swore on the other occasion, that they did not notice it, and that is what the husband swore was her condition up to 2nd October.

I put it to you, when you have that early evidence, how can you depart from it and now accept a version by the husband which now corroborates the Plaintiff, that her condition in those three months was as she describes—that her head and neck were all in one piece, that she was unable to move, and had pus in her throat.

From those observations I put to you these three conclusions: (1) That there was no pus there on 2nd October. The husband looked, Dr. O'Hanlon looked on the 7th, and there was no evidence of it from anyone else, and the doctors who gave evidence later said it was inconsistent. (2) You saw Sister Saunders in the box. That was the very little nurse who had come from New Guinea. You saw Sister Saunders in the box, and she was clear and distinct, and she gave you the evidence that that woman's condition was not the condition of a very sick woman, and that there was no pus in her throat. She came down to Sydney, her appetite was good, she was placed on full diet, she needed no surgical attention, there was no pus, there was nothing abnormal in her neck.

Mr. SHAND: The evidence was that there was nothing she could remember about pus.

Mr. CASSIDY: "She says that she had pus in her mouth . . . limitation in the neck—No." That is the evidence from Sister Saunders. Why should she be disbelieved in this case. Her memory was good. She gave her evidence for the most part without looking at the notes. She said she remembered the case clearly. She was a woman who was quick, and I suggest that she knew what she was talking about.

You have this position, that the only person who swears to pus being in the throat and running in the throat on 2nd October is the wife; you have it opposed by everyone else. And I will come to it presently that she herself has altered her evidence to saying now that it was after 2nd October. I must give you that reference.

That occurs at page 89. There His Honor asked this question—you will bear in mind that at the first trial she had said that three months before 2nd October she had this swelling, which became terrible, that she had pus, and she was spitting it out of her mouth for three months, and

was scraping if off her tongue in that period—His Honor put this question at the bottom of the page where he said, " Listen carefully to this question . . . pus off her tongue with a brush."

Mr. SHAND : She said before that that she gargled.

Mr. CASSIDY : On that, with an entire absence of evidence on behalf of the Plaintiff, and with the evidence that one has on behalf of the Defendant, I do suggest with respect that it is proved to demonstration by Dr. O'Hanlon, Sister Saunders, Dr. Bell and Dr. Ritchie, who saw her in the hospital, that her account of that eruption and of the pus being there is absolutely wrong.

And there is a conclusive matter on it, and you have that in the blood count. And you have the story of the neck from the X-ray that was taken.

If the suppuration had been present in that human body, so that the position was that from August 1938 to June 1939, and to 2nd October 1939 her condition had been as she described, with suppuration and abscesses causing a swelling like she describes, and with the pus as well in her mouth, she could not have been alive, and certainly could not have had a normal blood count within three or four weeks after.

I refer you to Dr. Edye's words at page 1180, where he said, " The best proof that that tube could not have remained there is the fact that the wound would never have healed. The woman's present condition is absolutely incompatible with any such event having happened."

Take Professor Inglis at page 1227, " With an object as large as that, I should say perhaps the amount of pus present would be an eggcup full or more."

Take Dr. Poate, that the swelling there would have been round about in that vicinity.

I do submit on this aspect of the case we have evidence that clearly and conclusively negatives the fact that the infection, if there was infection remaining there, was from a tube such as that described lying in that infected area.

And I put it to you that it proves clearly that this story that we are told, of the tube having been left under the conditions suggested, is a story that is absolutely wrong.

I am reminded that Professor Welsh at page 286 said, that on that blood count he would not assume there was any pus there after 2nd October. And, as I mentioned earlier, he said that it was inconsistent with her story. That deals with that matter.

The next thing to which I pass is this matter of tetany and hysterical tetany. It is here alleged that what proves that a tube was there is the fact that she had tetany ; that is, that tetany proves the tube. The false reasoning that exists there can be seen when you examine the matter. If the alleged tetany is the result of inflammation, which has interfered with the blood supply and the parathyroids, that inflammation could take place apart from a tube being left there.

Inflammation comes from germs, and can be perpetuated apart from foreign bodies being left there. In this case we know that it was perpetuated for some considerable time by the undissolved knots. The doctors have told you of cases where infection has supervened for very long periods. That fact that there is infection does not mean that it has come from the

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

rubber tube itself. The infection comes, as you will remember quite well, from a number of places—air borne, or the skin, the person's own blood, visitors, anywhere, from quite a number of things.

Infection can come, and does come, from germs. And that infection persists does not prove that a tube must have been left there to keep it persisting. That is the first thing. And it is the first false reasoning that one has to guard against in connection with this tetany.

The second thing is this. If inflammation in the area of the parathyroid—that is, in the thyroid capsule—caused the interference with the blood supply and continued to cause it, still, the wound healed up. Do you follow that. If it was the inflammation causing the interference to the blood supply, then we have it clearly that the wound healed in June, and it continued healed. So the inflammation was gone, but the tetany, according to the Plaintiff, continued.

The third thing is this. If the suppuration had travelled up the neck into the tonsil area and left the thyroid capsule, it got into an entirely different part of the body. It is away outside the thyroid capsule, and the inflammation, if it were the inflammation in proximity to it that was causing the interference, has gone because the suppuration has shifted.

The fourth thing is this. If the inflammation was still persisting, and the suppuration was such as was described on 2nd October, and it was still affecting the parathyroids—because, according to the case here the worst spasm of all was on 2nd October ; that was the worst spasm she had ever had, according to Dr. O'Hanlon's letter based on what he was told, and her own evidence—if that were the severest spasm she had ever had, the interference to the blood and the parathyroids must have been at its height at that time. If it were then at its height, how in the world is it that it immediately ceased and disappeared ? Because inflammation is not a matter of just going like that (snapping fingers). If it is interfering with the blood supply, it is something in the blood, and something which cannot be removed for some time. So it is scientifically all wrong to suggest that, with an interference to the blood supply having reached its most serious stage, when you have a person lapsing into unconsciousness for 24 or 48 hours, immediately after the tetany spasms cease, and there are no more.

Those four things show, when one applies one's mind to them, how unsound and how dangerous it is to reason from this assumption ; if it were tetany there must have been a tube there. Because logically it cannot follow. With respect I say that it cannot follow. If it were such an object as the tube producing the inflammation, the reasons I have put forward show that this sudden cessation could never have happened, or that you would have had constant interference if the body were moving as suggested.

I do not suppose anyone would suggest that you have continuing suppuration from the cavity to the tonsil. What a condition that would be. And remember this, that according to her the head and the neck were one piece, and yet on the morning of the 7th, as you can see in the X-ray, the lady had turned her head to the right. And you have evidence that she had no limitation of movement either then or on 26th October when she went to the hospital.

The next aspect of the subject is this, that there is a very grave difference of opinion whether after July or August 1938 it was tetany or hysterical tetany. My friend presses this matter of tetany. I have

endeavoured to show you earlier that the throat condition and the swelling and the pus described were not as described, and that the wound had healed and continued to heal. My friend says "But the tetany continued, and because the tetany continued the tube must have been there."

Let me put the legal position to you. The Defendant has not to prove in this case whether it was parathyroid tetany, or true parathyroid tetany, or whether it was hysterical tetany. The issue raised on tetany is, as I called it earlier in this case, a red herring. And it has this attractive feature, especially to a layman, that it is suggested that you get this sudden and miraculous recovery that starts after 2nd October. But when you examine it medically the position becomes quite different.

Let us look at the actual history that we get with regard to this patient. The Plaintiff's medical advisers say that it is tetany throughout. The facts they point to are: (1) the tingling of the hands that occurred early, (2) Dr. Bell's statement that it was then tetany, (3) Dr. O'Hanlon's treatment, (4) the nature of the spasms—as all indicating that it was throughout what they call true tetany.

You will remember, gentlemen, that Dr. Thompson and Professor Welsh have neither of them seen parathyroid tetany. They have had nothing to do with it. Their memory of it comes from children's tetany that was seen many years ago, and which of course you know is not parathyroid tetany. And they had never treated it.

When you come to consider the expert evidence, His Honor will tell you that the value of expert evidence depends on the opportunities plus the reading that people in the science have had. What have we in this case? We have had Professor Welsh and Dr. Thompson, the latter of whom read a number of books since this trial. But what we have entirely lacking on the Plaintiff's side is the practical experience of those who have seen it.

The facts are these, that this lady returned home, and the letter of 2nd May discloses that the tetany attacks had not been so annoying—that is the letter from the husband—and that they did not last so long. Serious attacks took place in the hospital. On 27th June and 3rd September 1938 there is evidence of further attacks. After that date we have no evidence of any attacks, other than from the Plaintiff, and on 17th January 1939 Dr. O'Hanlon describes them as frequent minor spasms although he, of course, did not see them.

The doctors for the defence told you that after a certain time in their opinion, even if it were originally tetany, true parathyroid tetany, hysterical tetany supervenes. I think that is agreed on all sides. I think that Dr. Thompson is the only one who does not agree that the diagnosis of tetany and parathyroid tetany, of hysterical tetany and parathyroid tetany, is most difficult.

Mr. REIMER: He agrees with that too.

Mr. CASSIDY: It becomes difficult to decide between them.

Mr. SHAND: I do not think Dr. Thompson did agree with it.

Mr. CASSIDY: Leave him out. The medical evidence agrees that the differential diagnosis is difficult and that is supported by references to the text-books. It is difficult because in certain instances you have the same symptoms of parathyroid tetany adopted and used in hysterical tetany.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

Dr. Poate pointed out, and it will be seen when you put them together, that if this lady had tetany, then she had all the unusual and rare symptoms that are associated with hysterical tetany. Until those things are put together in their proper sequence one does not get the full strength of it.

Just think of it for the moment. The evidence for the defence has deposed to a number of indicia, or symptoms, that they suggest show hysteria in this case. The Plaintiff's advisers have dealt with the problem in this way. They say " These things you are talking about, although they might not occur regularly in tetany, can occur." Therefore, they argue, because they can occur it is tetany.

Take the first one. You heard a great deal said in regard to it. It is said by the defence, and by the doctors who have had experience in it, that unconsciousness is not associated with tetany. They say this form of unconsciousness is the accompaniment usually of hysteria, and indicative of hysteria.

Dr. Ritchie, who has had a good deal of experience of it, Dr. Poate, who has had a large experience of it, Dr. S. A. Smith, a physician with a large experience of it, all say that unconsciousness in tetany is associated with a terminal event. They quoted authorities, and I suggest eminent authorities, who say it is—for example Reinhoff, who says " Tetany occurs without loss of consciousness." Reinhoff is the John Hopkins' Hospital man, and one of the foremost men on the matter.

The very latest book out on the matter is Hughes on the Practice of Medicine, edited by Gordon, published 1942, and at page 364: " The consciousness is always preserved, although the patient is very nervous." That is the very latest authority.

Sloan, one of the very well-known books, says that the patient remains conscious throughout the attack and frequently, when the attack is at all severe, has a fear of imminent death. Those authorities refer to the unconsciousness.

After the adjournment I will deal with the way in which the Plaintiff approaches that problem. The experts for the defence make the positive statement as to tetany, and they are the leading authorities on the matter, and after the adjournment I will deal with what is the Plaintiff's approach to the matter.

(Adjournment 11.30 to 11.40 a.m.)

Mr. CASSIDY: The Plaintiff's attitude to unconsciousness as a symptom of tetany is this. Assume for the moment I have Dr. Poate in the box. Plaintiff's counsel says to him, " Well, you have never seen unconsciousness in tetany other than as a terminal event? " Dr. Poate says " No." Then he is asked, " But you know this passage from this text-book, you know this principle from a text-book, that unconsciousness, seldom, if ever, occurs in tetany. Therefore," says Plaintiff's counsel, " since the text-book says that unconsciousness seldom if ever occurs in tetany, therefore unconsciousness may occur in tetany." I suppose that reasoning may be correct.

Dr. Poate tells of the large experience that he has had in tetany, and so also does Dr. S. A. Smith. That experience has ranged over 25 to 30 years of medical experience—a lot of experience in tetany during that time. And that experience was if unconsciousness occurs it is a terminal event. But Plaintiff's counsel says, " The text-books say that it seldom if ever occurs, therefore it may have occurred in this case."

The point I want to make, and I think that it is obvious to you, is this, that assuming for the moment in a case of severe tetany, as Dr. Thompson puts it, unconsciousness may occur, well, it is a very rare thing in tetany, even if it does, and the Plaintiff here has this very rare symptom, but it is a symptom which does occur and is indicative of hysteria. And not only has she this rare symptom. Let us pass to the next thing.

She said "Massage gave my tetany relief. I was massaged and I got better. It relieved it." Every piece of medical evidence for the defence says "That is wrong; massage is the very thing you do not give; it is fundamental that you do not give it, because when you rub you are doing something which might excite the tetany because one of the ways of getting tetany is to give some irritation by way of rubbing or touching certain nerve centres." Tetany is a neuro-muscular thing. The thing you avoid is massage, and every doctor of experience says so. Yet we have this strange thing here of massage giving relief.

This goes right below the surface; this goes to this position in hysteria, that the person feels that massage is giving relief. But everything that we read about tetany is against rubbing giving relief. Rubbing does the opposite; it irritates the nerves. But yet we have here that massage is said to relieve it.

Dr. Poate or my other witnesses could be cross-examined in this way: "You can show no text-book which says that massage will not produce relief?" The doctors' answer to that is this: "You will not find it because it is so fundamental, because what you know is that tapping and touching are the things that cause the spasm to go on."

This case, as I have said before, has found its way into a strange arena where you have a whole host of text-books. And it is seriously put to a doctor in the box, a doctor who knows tetany and what to do to deal with it, "You cannot show me one authority which says that massage does not relieve tetany." It is the same thing as the doctor being asked for authority to say that you would not find in a text-book something about aperients when she has diarrhœa.

Mr. SHAND: No one said anything about diarrhœa or aperients.

Mr. CASSIDY: I am putting it by way of illustration. It is obvious that you will not find a reference to rubbing or massage, as it is so fundamental that it is not applied. And yet it is put forward here that massage was the thing that relieved the pains and relieved the tetany. It could not do it. That is the second rare thing we find in this patient.

What is the third? We have the eye incident. Here again let us see the position. You remember my reading to the doctor from a book he produced—he used it for another purpose—some of the material that was in that book. And it is in other books also. It was this, at page 1572, "What is tosis . . . under the lid." The point is this, that this eye incident, this behaviour of the eye, is a symptom typical of hysteria. Where do we find any book which says that it is a symptom of tetany?

Mr. SHAND: Dr. Poate said that it could not happen at all, that it was only made up.

Mr. CASSIDY: Dr. Poate did not say that. One doctor said in his opinion it did not happen, another said that it might have happened in

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

hysteria. The point I am making is that in the text-book a thing almost identical with what happened here is described as symptomatic of hysteria.

What is the explanation given? It is interesting to look at it. You will remember I cross-examined Dr. Thompson on what he said at the third trial, and he produced an authority there which spoke of limbs, and he was asked questions about it by the Judge. This time he was asked if he could give an authority. He went away and brought back a book which spoke of limbs, and there were certain questions asked him on that. What do we find this time? He abandoned it entirely.

Mr. SHAND: He did not.

Mr. CASSIDY: I say that he abandoned it entirely.

Mr. SHAND: I object. That is misquoting the evidence. He did not abandon it. He said that was the parallel case.

His HONOR: What page is that, Mr. Cassidy?

Mr. CASSIDY: I will give it to you. He deals with it early in his evidence.

His HONOR: Was it in chief or in cross-examination?

Mr. SHAND: Pages 333/4 and 352/7.

Mr. CASSIDY: At page 334, where he deals with it himself to Mr. Shand, he was asked this: "Now, you said something about the eye" and he goes on to his interpretation of that incident. He said "This tube or the exudation, or both . . . localised the spasm." "Do you get what you term bilateral effects . . . one side of the body." And earlier, "You heard the Plaintiff give evidence . . . then they got before." That is his explanation in chief.

As I put to you, in the earlier trials this suggestion was never put forward. It occurs at the fourth trial. At the third trial he put it that he had a book which was an authority to show that you get this bilateral movement, and he brought along a book which referred to limbs. At page 350 I cross-examined him with regard to it. I asked him: "Do you remember being criticised on the last occasion . . . bad, poor." "I will give you the sequence. . . . head can be called a limb of the body." Fancy describing the head as a limb of the body! "Listen to this from the transcript . . . you know that book?—A. No."

What I was putting was this, that this time for the first time comes an explanation of that eye incident which the doctors whom I called up say to you is absolutely wrong. And I ask you to apply your minds to it with care, because I do suggest that it is something that our lay minds are capable of grasping.

You will remember that Dr. Thompson said that this tube or exudation, or both tube plus exudation, operated a Trousseau test on the Plaintiff. The doctors have put to you what that means. You know that the way of applying the Trousseau test is to bandage the arm so that you get a pressure preventing the free supply of blood. You have had the doctors explain to you what that means, and the pressure you must get on the arteries to stop the free supply of blood. You have been told that the carotid artery, which is a big strong artery, has to be pushed back against

the vertebræ to stop the flow. That is the pressure which has to be applied, and kept applied.

Mr. SHAND: He said "interferes."

Mr. CASSIDY: The doctors say to interfere is no good, because there is the collateral supply in that area. The sworn evidence given is that the pressure has to be very heavy against that carotid artery to stop that supply, and that it has to be maintained, and that that pressure could not be obtained by a rubber tube or by the swelling round about it.

Take the second thing and think of it for the moment. Dr. Thompson cannot get away from the statement that he has sworn to here at the fourth trial, after consideration. Take this; this pressure must be very great to stop that flow. If it is a pressure that is going to cause that trouble there, could it be such a transitory thing that that pressure, or swelling, or both, ceased from the time that this incident took place, and you hear no more of it. What would happen if there were a swelling sufficient to interfere with the blood supply to that area, so that the pressure stopped that artery? That swelling could not disappear in the time that that incident took place. That is the main supply to the whole head, that carotid artery. It is unthinkable.

She says that it took place in Quirindi Hospital in May. No one saw it, and it was never reported to anyone. What is it? Think of it again. That in a spasm, that the hospital records have no report whatever —in a spasm she is able to get a mirror in the right hand and watch this eye moving back. Every doctor tells you that that exists only in her imagination. It is, on the authorities I have read to you, and it is mentioned in every authority, symptomatic of hysteria to get this talk of the eye.

And that rare thing again forms up with the unconsciousness and the massage. That is the next rare occurrence you get in this tetany.

The other matter is the dramatic sudden cessation—dramatic because it occurs on her birthday; sudden, because there is no more tetany, no more spasms, never the slightest indication of it afterwards. Although that alleged spasm of that vehemence occurred on the Saturday, and the doctor was there on the 6th, there is no suggestion that it has occurred again or since, and there is no suggestion now.

And the gentlemen I have called say this. Dr. Ritchie said that it was hysterical tetany from the outset. Dr. Bell and the others say it was parathyroid tetany at first, and then hysterical tetany supervening.

When you look at all those four rare and unusual things that all seems to come into this case, with all the other unusual things that arise, and that every one of them must be present in this case, and relied on by my friend when he finds a bit in a text book—when he finds, for example, "Unconsciousness seldom if ever present" and says: "Therefore it may be"——

Mr. SHAND: We produced nine authorities for you. None of your medical men knew anything about it.

Mr. CASSIDY: That is the kind of exaggerated statement we get.

Mr. SHAND: I will prove it.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

Mr. CASSIDY : My medical witnesses know the disease as it exists, and have had experience of it as it exists, and three of the leading authorities I have referred to say that consciousness is not lost. In some of the books my friend deals with, tetany is not drawn up in its various classifications.

Dr. Poate told you that tetany is not limited to interference with the parathyroids, but it is found in other forms, which he illustrated to you.

Let us now look at the medical evidence on this question. On this matter of the dramatic and sudden cessation, I am told by my Junior that Dr. Thompson said that he would produce an authority to show that dramatic and sudden cessation, which of course has always loomed large from our point of view, would be found in tetany. My experts say that it could not be.

Mr. SHAND : Dr. Thompson was not asked for it. We will produce it for you now if you want it.

Mr. CASSIDY : Produce it.

I refer you to Osler's Principles in the Practice of Medicine—Christian, 1942 edition, page 16. (Reads.) That again is exactly the sort of thing that happened here. When one reads that page in Osler carefully it almost looks as if it were written for this case, even to the constriction in the mouth, the rising of the ball in the mouth, the feeling in the throat, and the other accompaniments, and the rapid and sudden disappearance. The more that passage is studied the more applicable you will find it to what happened here.

The medical evidence called on behalf of the defence differs somewhat on some matters. My friend has suggested throughout this case that the B.M.A. have such control that everyone lines up. All doctors say that this question of diagnosis is difficult, and a complete diagnosis is only possible on the review of the whole of the facts. What are they ? We have to look at the particular subject with which we are dealing.

We have the Plaintiff in 1937 suffering from a condition diagnosed by Dr. Flynn as angio neurotic œdema, and thyrotoxicosis diagnosed by both Dr. O'Hanlon before leaving Quirindi, and by Dr. Ritchie when she came to Sydney. Both those conditions are diagnosed and ascertained and are on record, in records made before March 1938 when the operation took place. Those are both accompanied by, and indicate a pre-disposition to, nervous instability.

You have heard the evidence given by Professor Inglis in that regard, and by the other medical men in that regard. That evidence is uncontradicted. From Dr. Thompson I had an admission which agrees with the evidence called for the defence in this regard, that thyrotoxicosis is something where you get nervous trouble, and the nervous trouble goes through the range of irritability, depression, and in some cases to the extent of insanity. It is recognised on all sides that thyrotoxicosis is a precursor to, or is accompanied by, very nervous instability. We know in this case that prior to the operation neurasthenia was present. It is in the letters, and it is in Dr. Flynn's evidence. It is in the letter of 12th February, which I need not read to you, where Dr. O'Hanlon wrote down to Dr. Ritchie.

It appears in the evidence also that the husband has made the admission that her nerves were in a very bad state. That is at page 149.

And also that she was suffering from a depressing rash, and that when she went out of Quirindi Hospital her condition was worse. It appears also in that reference of 17th January, 1939, that there was something functional in her case.

We have evidence from outside sources—the nurses, Dr. Ritchie and Dr. O'Hanlon, as to her nervous condition before entry into hospital, before entry into St. Luke's.

So that is the first matter, and an essential matter, one has to have in mind if a diagnosis is going to be made—that is, her condition prior to a serious operation. And we have this, that in the post-operation period she is again seen in Quirindi Hospital, in September 1938. We have from Sister Sly that in June 1938 she is in a very depressed state, and an extremely nervous state. We have from Matron Fall in September 1938 also her description of her still being a very very nervy woman. We have it in the letter of 17th May 1939, and we have evidence of it after October 1939. All those factors are not negligible factors in a proper diagnosis of the position. Any diagnosis which just relies on signs, such as Dr. Thompson's does, and ignores those factors, has the grave danger of being wrong.

Dr. S. A. Smith says, " In my opinion something that has been more or less accepted in this trial is not right. In my opinion inflammation does not, or interference with the blood supply does not, produce tetany." Nowhere is it expressly so stated. I suppose there is a lot still to learn about tetany.

Mr. SHAND : It is stated. Dr. Poate admitted that the authorities supported what he said and that none supported what Dr. Smith said.

Mr. CASSIDY : I put Dr. Smith to you as a man of very great ability, and a man whose opinion is entitled to very great respect. And he refers to this fact, that in all the experience of these doctors who are called before us, in all their practical experience, taking Dr. Poate for example, can point to one case only where there was sepsis plus tetany. And Dr. Poate has had 6,000 operations. There is no case puts it in the exact words, but the inference the other medical men draw from the way in which it is put is that it can come from interference with the blood supply. Dr. Smith says " You can ligature the blood vessels and you do not get the tetany spasms." And you do ligature them and tie a lot of them in the course of an operation. And to us, coming to deal with the matter, there must be a very great deal in it when one applies reason to it. You ligature those blood vessels in the course of the operation, and the text-book speaks of them ligaturing and no tetany supervening. On the other hand he does point to cases of suppuration continuing to such an extent that the blood count becomes abnormal and you get anæmia.

You remember the card he produced, where you get suppuration and anæmia continuing and you do not get tetany. He says the question is one which is being investigated, and that the question is one on which the final word may not yet have been said.

On Dr. Smith's account, of course, the inflammation would not have been responsible, no matter what had come from the tube to induce the infection remaining there it would not be responsible for interference with the blood supply to produce these results. Dr. Poate, Dr. Ritchie and Dr. Bell disagreed with that and disagree quite frankly.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

Mr. SHAND : Dr. Ritchie did not speak about it. He had not heard of it.

Mr. CASSIDY : Dr. Ritchie put it the way you put it. He put exactly the point you put.

Dr. Ritchie put the opposite point of view from Dr. Smith. We said " In my opinion interference with the blood supply can produce parathyroid tetany." They put it quite frankly as possibilities, and as their particular opinions.

Dr. Ritchie said " I think this was hysterical tetany from the start, or from very early in the piece." Dr. Poate and Dr. Bell say that they think that the hysterical tetany supervened. And these are the reasons, and I will put them very shortly : you have calcium and paroidin being given over a long period and the tetany is not eliminated, it continues. Professor Welsh for the first time, in reply, following or something that Dr. Poate said, said that the treatment would have been inefficient which did not give paroidin and calcium lactate. The doctors say that the treatment shows that it was not true parathyroid tetany. In the particulars you will see a tremendous amount of calcium lactate mentioned. I forget how many bottles there were, but there were two 500 jars of calcium tablets, and 3 lbs. of calcium lactate, and a number of other things. You will see those mentioned in the particulars.

The first thing that Dr. Poate says is—that appears at page 373—" If you had had that administered "—Dr. Poate points out that calcium or paroidin would have eliminated it. The second thing that Dr. Poate points out is the long period of persistence of the complaint ; the third thing, its frequent lapses into this unconsciousness. And you have Dr. O'Hanlon and Matron Fall's evidence that these manifestations of unconsciousness were not unconsciousness in the true sense. You have fourthly, the clenching of the hands and the clutching of the coat ; fifthly, the massage relieving it ; sixthly, the eye incident when supposed to be unconscious ; seventh, the extraordinary incident of watching the eye ; eighth, the dramatic and sudden cessation of this tetany.

When one looks at the evidence and comes to the matter of unconsciousness, what do we find ? At page 13 of the first trial the Plaintiff said this : " I was taken from home on September 3rd, 1938, I was unconscious, and I remember nothing until the next day." Gentlemen, it is put to you that that again is wrong, that that unconsciousness lasting over that period is not in accordance with the facts, that when Matron Fall and Dr. O'Hanlon saw her the unconsciousness was not a real unconsciousness.

Imagine it. She was taken from home, and was unconscious, and remembers nothing until the following day. You can see the records. You get there again this opportunity of seeing how at that first trial, before the matter was thoroughly understood, the position became so exaggerated, and you will remember, although you may not remember it now, when I started to cross-examine this lady her reference to unconsciousness in this trial was watched, and I asked her if she had deliberately refrained from referring to unconsciousness. Because in this trial it is put that that unconsciousness, by the time that September came on, when she alleges she had this unconsciousness lasting until the second day—Dr. Poate, Dr. Ritchie and Dr. Bell all agreed that by that time this hysterical tetany had supervened.

Let us look for a moment at the authorities which deal with this question of hysteria. And they occur in this latest book, Osler-Christian, page 14, and it is dealt with under "Convulsive Hysteria." (Reads extract.)

That passage, if applied to the facts of this case, if applied to the condition which was diagnosed long before this lady went into hospital, and diagnosed as angio neurotic œdema, if applied to what happened on 2nd October, and if applied to the number of charges which have been made, shows so many things indicative of hysterical tetany, that I suggest to you with respect that if it were necessary to come to a conclusion about it, which it is not in this case—this matter of tetany is a red herring drawn across the trial by Mr. Shand—if it were necessary to come to a conclusion the conclusion would be hysteria.

Dr. Smith spoke of what he called, how people could remember exaggeration, to use his words, to perpetuation. What have we here. Everything that can be in tetany can be simulated, consciously or unconsciously. You heard Dr. Poate's evidence that people can simulate a disease that they have not had.

Much as one does not like referring to charges that are made, one has to look at them. This case has become a public case, and the question of diagnosis depends on all the features in the case. And what other explanation can there be of the extravagance and variety of these charges than that they are imagined.

We now have introduced, you may take it from me for the first time, this charge that Dr. John Flynn in 1937 severely burned the Plaintiff with the X-rays, and that when she went home Dr. O'Hanlon had a few words to say about Dr. Flynn. That has never been said in the case before. That is entirely new. When you look at Dr. O'Hanlon's records, which are used by the other side, and which were made in 1937, you will find in them that when she came back the X-ray treatment that she had had had given her some relief—"with good results" are the words used.

It is purely psychic, as Dr. Flynn said. That was her condition. The swelling came up and went. But the position is this, that so far from being disappointed with Dr. Flynn's treatment, for the time being it had given good results. And I suppose it lasted only while the psychological aspect of it lasted. That expression against Dr. Flynn comes as a complete surprise. It came in the early stages when I was asking her about her condition in 1937. It was given at a very early stage of the case, and came out of the blue. It is at page 30.

I was saying to her that she had been to Dr. Flynn for attention and I said: "You were under Dr. Flynn's care . . . you could not see anything." It is hardly necessary to remark that at the first trial her husband said she had a distressing rash on her back. Here in this trial for the first time comes this charge against this doctor of an X-ray burn. That is another charge of negligence.

I will pass over some of the minor charges in regard to the Quirindi Hospital, as to her treatment in there, and her references to the food. Suffice it to say if you look at the record of what happened at Quirindi Hospital, you will find from 29th October not what looks like a limited diet. Yet you will find that this story is told against the hospital, and it was badly managed and all she could get to eat was blue sago.

Mr. SHAND: That is not the evidence.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

Mr. CASSIDY : Look at the records showing what was the food she was entitled to have, and compare it with her charges against that hospital. How easy it is to make these statements if the mind is not given to accuracy. We find the same thing said about St. Luke's. Sister Saunders said that she was eating well and that she lived well, and that she was on a full diet. But again there was a complaint.

Going back to the records made contemporaneously in 1939 we find that she had a full diet. And what was the explanation given there. That that entry was made in the kitchen, and that she had cruel treatment, and the complaint about the stuff put in her mouth to get away the wall of pus so that Dr. Marsh could see her with a mouth that was clear. I suppose that the allegation is that Dr. Bell was doing something so that Dr. Marsh would not see the real position.

This charge in regard to the treatment by Dr. Bell, I put it that it is clear to demonstration that it cannot be right. If it is not right then what is it but just exactly what Osler tells us, that they get these ideas in these spasms, or in these contractures, and the ideas remain with them when they come from the contractures, and they perpetuate them. Is not that exactly what it is here.

Up to before that spasm this story of Dr. Bell breaking the tube in the throat was never mentioned. It was never mentioned to Dr. O'Hanlon on the night of the sixth, or the day of the seventh, before he wrote that letter. When does it come, and from what ? This book says, without necessarily putting it down that the person is malingering, that those ideas and those charges get very real in the mind of the particular person making them.

There is no doubt about this, that at the first trial the wife admitted that these charges against the husband were made. What could they be ? I suggest to you with respect they were not based on fact. Mr. Shand, with the idea of the creation of a very great deal of atmosphere, put the Plaintiff back in the box to say : " I have been very happy with my husband." The husband comes back and Mr. Shand asks : " Have you been happy with your wife ? " and, of course, Mr. Hocking says " Yes."

Mr. CARSON : Not " Of course." He said " Yes."

Mr. CASSIDY : So we have a picture of perfect domestic felicity to which many of us might aspire. If that is so, how did these charges come to be made. These charges were made 15 or 16 months after this incident had arisen. The husband said at the first trial when she went to Manly after coming out of St. Luke's she improved rapidly. In 1941, when we tried to get a medical examination, it was refused on the ground that there was no impairment of her health arising from that operation.

How did the allegations come to be made. I suggest that they were obviously untrue against the husband, and obviously creatures of her imagination. I said to Dr. Thompson, at pages 417–8, this, " Won't you agree that when this woman charges her husband with attempting to poison her food it is something from the imagination ? " He said " No." She admitted that at the second trial. He said " No, husbands do poison their wives." I said " Really, Doctor, are you serious ? " He said " How do you know. Husbands do poison their wives." I said " Doctor, you know that she suggested that her husband took advantage of her under the influence of drugs." He said, " Well, husbands have been known to do those things."

Mr. CARSON : At what page ?

Mr. CASSIDY : That is my recollection of it.

Mr. CARSON : You are wrong.

Mr. CASSIDY : I will withdraw it if I am wrong.

Mr. CARSON : You are wrong.

His HONOR : Is that right, because at page 417 the question was asked, " The husband was the only person . . . idea like that."

Mr. CARSON : Mr. Cassidy put the opposite of that.

Mr. CASSIDY : Who was it suggested that she was having hypnotics in 1941. What hypnotics was she having. Let us hear about it. Dr. Thompson seems to know a great deal more than anyone else.

I pressed him then, " You know this woman . . . she told me so." What is the position ? I put it to you that when you get that sort of thing happening in 1941, 15 months after this thing has gone, those charges are hallucinations, especially when taken coincidentally of the charge made against Dr. Flynn in 1943, when Dr. Flynn is charged with having severely burnt her with the X-rays.

(Luncheon adjournment.)

Mr. CASSIDY : I was saying at the adjournment this, I had just arrived at that portion of my address where I was dealing with the indicia of hysteria gathered from the subsequent conduct of the Plaintiff as late as 1941. And I had put to you there that in 1941, as was disclosed in the letter that the Plaintiff's solicitor wrote to us, she was suffering from no ill effects of her complaint. I had put to you that the evidence from Sister Saunders was that when she left St. Luke's she was well, and I had put to you that her husband said when she went to Manly she improved rapidly.

His HONOR : You mean when she left St. Luke's on the second occasion ?

Mr. CASSIDY : Yes. She went to Manly for a holiday after the period in St. Luke's and she was in town on two occasions, and saw Dr. Bell on one occasion and Dr. Ritchie on another occasion. She had no medical attention during the rest of 1939, and no medical attention during 1940.

If, as she says, it was in her mind to sue Dr. Bell when she was in St. Luke's, then this much is clear, that she consulted no outside doctor, that if she were dissatisfied with the treatment that Dr. Bell or Dr. Ritchie gave her, then when she left on 3rd November 1939, still within a month of the happening, she consulted no solicitor. And you may take it that she has sworn that it was while she was in St. Luke's that she had the idea in her mind of suing Dr. Bell. I forget the reference, but I am told that it is page 135 of the second trial.

Mr. SHAND : This is one of the things which was not put to her.

Mr. CASSIDY : " When did you first conceive the idea . . . Dr. Bell's care ?—A. Before."

In the Supreme Court of New South Wales.

No. 51.
Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

Mr. SHAND: The next sentence, and also the following one, are related to that.

Mr. CASSIDY: " So that some time between . . . claiming damages ? —A. Yes." With that state of mind she consulted no one else. And yet she put to you that her point of view was this, that at that time Dr. Bell had deliberately kept Dr. Marsh away from her for five days so that Dr. Marsh would not see something that was there. How ludicrous that is appears from this, that if there had been such an eruption as that within four weeks before, every evidence of it would still be apparent.

What I put to you was this, that in 1940 there was no evidence of her having any medical attention. You may take it that she was never attended by any doctor for her throat after June 1938. That appears in the husband's evidence—that from the time she left Quirindi Hospital she had never at any time been attended for anything in connection with her throat. I cannot find that reference, but I can tell you that is so. So, 1940 passes by, and in January 1941 this writ was issued.

And why I emphasise this aspect of it, that she claims there is no remaining incapacity, or anything attributable to the incident of 2nd October, or her past troubles, is that in April 1941, when she goes to see Dr. O'Hanlon, it is entirely in connection with matters which have their source only in her imagination.

It is no good criticising Dr. O'Hanlon, whether he should have told the Defendant's solicitors this, or not. He has been the subject, and I imagine will be the subject, of very severe criticism by my friend. My friend will tell you that priests, parsons and doctors are people who should keep things to themselves. But a discussion of that moral question is not important here, because what is said by Dr. O'Hanlon is in fact admitted to be true. Whether Dr. O'Hanlon was justified in saying it, or justified in his attitude in refusing them a statement, is a matter that reflects on him only, and that you can only consider in relation to portion of his evidence. In her evidence, on her own admissions, we have these facts. We have established as a fact she alleged that someone tampered with her food, endeavouring to poison her, that she honestly believed it, and that it was her husband. And at the time of the third trial she still believed it. That is from admissions made by her, leaving Dr. O'Hanlon out of it.

And we have the second thing, almost admitted—this statement made to him, almost admitted by her, and the balance stated by him, that she did make the statement to him of her alleged pregnancy.

I read this because it is something apart from what Dr. O'Hanlon says. At the third trial, at page 38, in order to establish this basis of fact, which is the basis for my observation that this is further evidence of this hysterical condition, you have these admissions made, " Having heard that question . . . mention it to the police ?—A. No."

Why should it be ? What does that mean ? And how can it be explained ? What other explanation can there be ? Dr. Thompson's explanation that husbands do poison their wives does not fit in. Dr. Thompson, apparently, is prepared to believe anything that the Plaintiff says. Of course, the husband denies it, and no one for one moment would give any credence to it.

What is the position, and what is the inference to be drawn from it ? That that was purely a matter of the imagination ! And how can you construe this sworn evidence that she still believes it ? And that evidence

was given in December 1942. It was given at the first trial. She was cross-examined about it in December 1941, and asked about it again in August 1942, and in December 1942. She said, " I honestly believed it, and I believe it still."

I put it to you again, if you go back to Osler, and you go back to a book which was written long before this case took place, and to observations that were made long before we were considering anything that happened in a remote town like Quirindi in Australia, you have in Osler this particularly pregnant passage : " This sometimes gives a grave aspect . . . hallucination persists."

Is not this a patent illustration of what Osler is saying there, and that that condition of her mind persisted in her mind and was sworn to as a definite honest belief of hers at the time she gave that evidence ? Dr. O'Hanlon says she told him that, and that she came to him with that information, or she asked him to call and she gave him that information. He had not been there for some time. He was called in on the first occasion in connection with something wrong with the jaw, and then he was called in twice during that month, and these things were repeated over that period.

The other thing put to him was this : " My husband has been assaulting me." The doctor, to use his own words, said to her that he would not believe it. The husband, when cross-examined as to that matter at the first trial, said : " I cannot imagine any woman saying it." That is the way he dealt with it. " It is not true, and I cannot imagine any woman saying it." He told me at this trial that was a lie, that he knew that it was a lie, that he was aware that it was false when he said it, and that he knew that he was telling a falsehood on oath. The wife had charged it ; he had denied it.

I asked the wife on this occasion : " When did this alleged assault occur ? " She says now that there was a spanking. She cannot remember whether it was close to the time she saw Dr. O'Hanlon or not, but the fact remains that those two things are part and parcel of a series of charges made against her husband.

The third one was, perhaps, of a more serious nature, and that was the allegation of the husband's interference with her on the occasion after the drugs. Dr. O'Hanlon has not invented these matters. He has sworn to them and, in regard to the assault, the matter was admitted at the first trial. There is a variation now, because the husband said " I did strike her on one occasion, and I have been sorry for it ever since." But it remains that we have those charges made during the whole of these trials. Add them to the charges made against each doctor who has been associated with her—Dr. Flynn, Dr. O'Hanlon, Dr. Bell, Dr. Marsh Dr. Ritchie—and against the hospitals and everyone who has been associated with her, and it is seen that everyone who has been associated with her becomes the subject of some charge.

Mr. SHAND : What was Dr. Ritchie charged with ?

Mr. CASSIDY : She said of Dr. Ritchie that although she came to Sydney with her throat alleged to be in the condition that she said it was, for medical investigation, all the doctor did was to waive his hand at her and say : " I do not want to hear anything about it," and did not even examine her.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

Imagine it. When a colleague of his had been charged with leaving a tube in the neck, and the tube had erupted, and this woman had been ill for so long, that he was not curious enough even to have a look at the throat.

Against everyone in the case and against every institution she has been associated with comes some charge of something wrong.

Those facts I have put are very important facts to take into account when one is reviewing the whole case. They cannot be left out of review, and they form a very important and substantial part of any proper diagnosis of the condition that was existing.

Think of this position. She says now that Dr. Bell did not get Dr. Marsh in for five days, and the reason was that something was to be cloaked. Dr. Marsh told her that she had a form of tonsillitis and to paint her throat.

If at that time she was saying that what the doctor told her was not correct—she agrees that he told her that—if at that time she is saying that what Dr. Marsh told her was not true, why was it that she did not consult someone else? Or why is it, if she thought that she was being mislead, and being dealt with in this unfair way she alleges, she did not seek other advice?

I am reminded that her evidence, at page 42, is that when examined by Dr. Marsh the only thing that Dr. Marsh told her was that she had had a slight infection of the tonsil.

If what she says were so, and if these people to her knowledge were telling her something which was untrue, why was not some other person sent for from whom to get some information? Her own sister had been with her, had been giving her nursing attention. Her own solicitor could have had made any investigation that he wished. There was nothing done.

She left St. Luke's on 3rd November, within one month of that eruption, and she went to Manly. And there was nothing to stop her having any consultation she liked with anyone. What did she do? She went back to Quirindi without ever making any complete charge against Dr. Bell. And we hear nothing further until April 1940, the time that she comes to Sydney.

Let us look at it again. The Defendant has suggested to you that the condition into which the Plaintiff had got was a condition of what is called hysterical tetany, that the parathyroid tetany which may have been present at first had had superimposed on it this condition of hysteria. And I do suggest with respect when we come to analyse these charges made broadside against various people, when we come to analyse the exaggeration occurring in regard to them, when we come to analyse this story that she comes to St. Luke's with a wall of pus in her throat, there is only one thing which can be said of it, and that is that it is matter which is exaggerated, imaginary and untrue.

I have not troubled to read to you all the references which have been given to hysteria. But this much is common to them, that everything that has been suggested as indicative of tetany can equally apply to hysteria. Hoarseness of the voice was at one time suggested as being peculiar to tetany. That is not so. The authorities say that it is not peculiar to tetany but that it can exist also in hysteria.

Mr. SHAND: No, it is loss of voice in hysteria.

Mr. CASSIDY : " Hoarseness " is the particular expression used. You have also the other matters suggested as indicative of hysteria, and that I have deal with—the four ones I have said are rare, and every matter that is referred to as indicative of tetany, for instance, the low calcium. Some point appeared to be made on that. And then also you will get the lower blood calcium in hysteria.

Mr. SHAND : Not persisting after.

Mr. CASSIDY : Has it persisted ? Is it still the same. We have not had an opportunity of examining her.

Mr. SHAND : I beg your pardon. You have had everything you have asked for.

Mr. CASSIDY : We asked in 1941 to have a look at her throat. If there had been anything they could have brought here to support their case, do not you think they would have brought it ? Do you think there is anything they would have left undone ? Anything they wanted to do they could have done, and any tests they wanted they could have had.

Mr. SHAND : It is not open to us to get experts.

Mr. CASSIDY : Dr. Thompson says he has done blood counts for years. If they had wanted any tests, would not they have got them.

Mr. SHAND : Dr. Tebbutt cannot do blood calcium tests.

Mr. CASSIDY : Just imagine that suggestion. All the patient had to do was to go to some place, and if she liked she could have given another name, if there is any suggestion that the B.M.A. has its tentacles over every doctor so that every doctor is frightened to make any tests. That is rubbish that is talked there ; it is a wild charge against the B.M.A.—that we would have such influence as to prevent them getting any test they wanted.

My friend is mumbling away, " My word you would." That is the warped mind that is brought to this case ; that is the prejudice that is sought to be put across the table. That is the attitude of my friend, with his snarling manner towards these men of honour who got into the box. This display of larrikinism on the part of my friend . . .

Mr. SHAND : Do not become hysterical.

Mr. CASSIDY : I am not, but I do not want to see these exhibitions made against these men, who are honourable men in their profession. I do not want to see them treated in this cheap way by any man who, instead of behaving like counsel of eminence should, behaves like a sneering junior. Mr. Shand should be decent, and not adopt the attitude of a larrikin. My friend, with his vanity, thinks no one can do anything but himself.

Mr. SHAND : A lovely display !

Mr. CASSIDY : We have seen some of the leaders of the medical profession treated in a manner which would befit a schoolboy rather than senior counsel, with cheap sneers and with cheap abuse. And I suggest that the righteous indignation shown by Dr. Edye was a good corrective, coming from a man who leads in his work, and who is not concerned in

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

deceiving people, but who is concerned, I suggest to you, with one of the real anatomical facts that exist in this case, who is concerned with what my friend never touched, the anatomy of the neck—something my friend opposed your seeing, when you could have gone and seen and understood what is in the neck. My friend preferred to rely on an illustration in a book by Jamieson. And then he called Dr. Thompson back to speak on that picture, to say that there is a space where something of the nature of this tube could come through.

The real thing in this case is that the tube could not have travelled in the way they say it did. What do they do when it comes to the right consideration, which is the anatomy of the neck and the removal of the tube. It is never touched upon, never approached and never dealt with.

I have said to you that in this case the question of tetany or hysterical tetany is a side issue. But it has given my friend ample room to cross-examine as to variations in evidence between the witnesses I have called. He will indicate that that weakens the evidence of each, but at least the witnesses stuck to the evidence they gave as being true, and were uninfluenced by what others said. And if it is necessary to come to a decision here on that point, then I submit you will say this woman had hysterical tetany.

What is it that Dr. Smith tells us of patients in that condition? That in that state they can believe things with such firmness that they will convince their medical advisers. And their minds work in such a way that they grasp everything that will tend to support such a statement, and put it together in sequence and that their powers of deception become developed to an extraordinary degree. And that is not only the suggestion of Dr. Smith, Dr. Ritchie and Dr. Poate, but it is also recorded in the text books one reads.

I say again that in this case this was an hysterical tetany. It can be the only explanation of the story as to that tube, which is told to anybody for the first time after October 1939. It is the only explanation of the impossibilities that would have to happen for the tube to have erupted in the way suggested.

Let me come now to the next portion of this case. I put to you first that the description of the manner of the removal of the tube was wrong, that every probability, and every bit of evidence shows that that description was wrong, and that basically this case therefore fails at the outset. I said to you in the next place that the succession of events that followed from the healing of the wound in 1938 showed that the story that the tube remained there was wrong. And I put to you that with the wound healing and remaining healed, and her never receiving any attention after that, that that could never have happened with a tube the size of that one being a centre of infection. I put to you next that the explanation of this extraordinary story was hysterical tetany. I put to you next that we have to consider for one moment the next impossibility that superimposes itself on the original ones. And it is this.

How could that tube of that description, and of that nature, make its way from the place where it was originally inserted until it erupted where alleged.

We have this sworn evidence, that the tube was inserted slightly to the right in the incision. All three previous trials were fought on the basis that it was inserted slightly to the right. We had it admitted

by the Plaintiff on a previous occasion, when the scar was more prominent, that the tube was inserted somewhere about one inch to the right of the middle line. We have the husband's evidence that the tube was inserted to the right of the middle line. We have from Dr. Bell that he cannot remember which side, but it would be one or the other, but we have no evidence that it was inserted on the left. And we cannot assume that it was inserted on the left. The only evidence is that the tube was inserted on the right.

We have no evidence that the tube ever went across in front of the trachea. The Plaintiff herself says she never felt anything across the front of the windpipe.

Those observations are important to have in mind before we approach this question of the travellings of that tube. All the evidence is that the tube was inserted on the right. The husband saw it, and we have also the evidence of the Plaintiff that she at no time felt the tube cross the front of the trachea. Those things are facts which have been sworn to.

We have, in addition to that, the evidence of the surgeons who say that that could not be done, because it would set up in that region where the isthmus has already been removed in the front of the windpipe, soreness and irritation. We have also from the surgeons that the tube is inserted in the lower part of the thyroid capsule where you get the exudation that is coming down. So that must be the basis of our investigation. No other basis is possible, because there is no evidence of it. And, as His Honor will tell you, the case cannot proceed by discarding what the evidence is and starting to assume something such as Dr. Thompson assumes. And the only suggestion to the contrary is from Dr. Thompson, who says he will not accept that the tube was placed as everyone else says it was. That assumption cannot be made.

Mr. SHAND : Dr. Bell did not know in which side he put it.

Mr. CASSIDY : I have dealt with that. The Plaintiff says it was inserted on the right, the husband says it was inserted on the right, and Dr. Bell could not say which side, but that in view of the difficulty he had on the left it was probably on the right. And there is no evidence from anyone that it went in on the left. And the Plaintiff said specifically in answer to me that she does not suggest that it went over the windpipe. That is what we start with.

Let us see where we stand. Commencing with that evidence, we have a tube which, inserted into the lower part of the capsule, has to find its way either behind or in front of the windpipe, up the neck, and come out in the area where it is alleged it erupted. It is interesting to see the evidence which is called to speak as to the anatomical impossibility of that travel.

It is interesting to recall that on that aspect of the case we have Professor Shellshear, Dr. S. A. Smith, Dr. Poate, Dr. Edye, Dr. Ritchie and Dr. Bell, speaking as to that anatomical matter, and Professor Inglis speaking of it in regard to the suppuration and also Dr. Steele and Dr. Marsh to a somewhat lesser extent.

Look who those men are. Dr. Poate is Director of the Teaching of Post-Graduate Surgery. That, gentlemen, is a Government appointment. Dr. S. A. Smith is the teacher of Medicine, and he has been Professor of Anatomy. Professor Shellshear is from the teaching staff of the University

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

and is not a practising doctor. He is a man of very wide renown. Dr. Edye was Professor of Surgery at Sydney University, and is the Lecturer in Surgery to the students at the hospital now, and the examiner of post-graduate degrees in surgery. So we have collected there four men who are engaged in the teaching of the things they speak about.

And who are called against them? There is Professor Welsh, who is Professor of Pathology, and who says that matters of anatomy are questions for the surgeons. And who is the other? Dr. Thompson, who admitted to me in the course of his evidence that his anatomy might be rusty, and whose experience in the structures of the neck is admittedly not large.

The inquiry we embark upon is as to whom of those men you will believe. There are two aspects of it. Those men are telling the truth, or they are definitely misleading you, because those men must know what they are talking about. And gentlemen, it cannot be baulked. Those men are right or they are wrong, and if they are wrong they must know that they are wrong. It is no good my friend getting up later and saying "I am not saying those men are telling lies." Those men, if they are telling you untruths, are deliberately misleading you, because they know their work. It has been part and parcel of their training, and if they are telling you untruths, they are deliberate and conscious untruths. And that is a very big thing to ask you to believe of doctors in those positions that they hold.

And what they have said, as I have put to you before, on this matter is written down and cannot be escaped.

All that Dr. Thompson has said is this, "It could be easily possible." And he was referred to an illustration in Jamieson, plate 43. He will not accept for the purposes of the case Exhibit "P" as being capable of making that travel.

Mr. SHAND: Yes, he will. He said that it could travel, that Exhibit "P" could travel.

Mr. CASSIDY: You say that it could do that?

Mr. SHAND: That is what he said.

Mr. CASSIDY: That Exhibit "P" could travel up there. Let us follow it. My friend says that Dr. Thompson says that Exhibit "P" could travel there and could be erupted. That is the position he takes up. I put it to you that Dr. Thompson baulked at it, but assume for the moment that my friend is right, although I thought that it was otherwise. I asked him, at page 1568: "You follow that if anything was sticking out . . . down the throat." That has been since abandoned.

Mr. SHAND: Wait a minute. That is not so.

Mr. CASSIDY: Mr. Carson abandoned it. I do not know if Your Honor made a note of it.

His HONOR: "Mr. Carson admits nothing picked up during travel from throat to tonsil."

Mr. CASSIDY: I put it to you that they could see that, if they were going to maintain that something was picked up in the travel, they could see their position, and they dropped it. You would have them claiming

this thing going along and collecting the swab and the wires, and coming out on the morning of the 3rd. So it was fully withdrawn.

Take the evidence at page 1568: "You follow that if anything . . . I can assume it." What I am putting is this. I do not know what position they want to take up about him, whether he said that it could go through, or whether he said that he did not contemplate it. I thought he said he did not contemplate it.

This is the position. Professor Shellshear gave what I suggest to you was an intelligent explanation, and an intelligent analysis easily capable of being followed by you. He gave a clear description of what were the structures in the neck, and what had to be met with before that tube could erupt through the tonsil. And it was illustrated by reference to text-books, and you were careful to follow them.

The position you got to was this, that in that area of the neck, when the tube had to start from here, it had first of all to find its way across in front of the windpipe or behind it to get to the left, and then start a passage to go up. First of all, what is the position with regard to the area at the neck. He said that it could not go behind the trachea, and if it went at all the path would have to be in front. And he said that it could not go there.

Just think of it for one moment. Here is this tube which had its entrance in the sinus, which was still open, and the isthmus removed, and the tube to pass across, in an area of infection—because you have to pre-suppose, if it were possible at all for that tube to travel, a big bag of infection would have to go with it, and you would have it travelling across the neck. And it was not seen!

How could it happen? The doctors say it would be an impossibility for that to occur. And it would have to take a path which would mean that tube, which had broken off inside—it would have to take a path so that it came out from within and then travelled across there.

You are told by the doctors who know foreign bodies that it would not move at all. It is suggested to you that there might be inflammation there eating away tissues to get a place for it to move.

After it gets across it meets this arrangement of blood vessels, nerves and muscles which you have had described to you, and which you have seen in the X-ray pictures. And you saw the area through which it has to go.

What is its next path? This tube, which is remaining in the neck for 18 months, must, during a period of suppuration which continues, then start and force its way upwards. When it gets upwards, it has then to turn and go laterally to the right to go through the tonsil. I do not want to refer back to the picture, but you have some idea from what you looked at before of the network of vessels and various muscles that are there. Dr. Smith described it as three compartments. The first compartment is the barrier at the top of the Adam's apple. You will remember that the thyroid capsule, the top of the lobe, is about level with your Adam's apple, and across there you have the upper barrier for that area of the neck.

First of all this tube which is travelling must eat its way out of the thyroid capsule. That must be destroyed. It then has to turn in its remarkable travelling—it then has to turn, this piece of rubber, and go to the top. And remember that it is 2 inches long. And then it has to bend and travel so that it goes north.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

I will read you here the extent to which a theoretical examination of a position can lead one. I will read you what Dr. Thompson said because it will show you the danger of theory as against the practical men who speak to you from their knowledge of the structure of the neck.

What I want to put is that we are dealing here with anatomical facts, and anatomical facts are just as much facts as any other statements which may be made, and can be proved by witnesses who know anatomy.

I put it that experts have been called, and I put what the experts had said, and I indicated to you that I would find during the adjournment the extent to which theory can go. At page 409 we find this. I was cross-examining Dr. Thompson, and I said to him: "How long do you think . . . rubber is flexible." That is the sort of thing that brings from Dr. Bell, under a very provocative examination, this remark, at page 672: "In this case, which is a special case . . . and things like that." That is the danger, when you get it put that you will have rubber 2 inches long, such as Exhibit "P," and you might get it bent over so that instead of it going slowly and taking the time that 2 inches would take, it takes lesser time.

How could a thing like that travel? And if a man is prepared to go to the extent of suggesting in a discussion of a scientific matter like this that that state of affairs could exist, having regard to what we know this lady alleges she passed, what could happen when a theory like that is advanced alongside the story like this, which is impossible in its inception and in what happens afterwards.

And against that is put this, that those men who form part of the teaching staff of surgery, are here consciously to lie, and to bolster up a case, when they know what they are saying is untrue.

You have been told by Professor Shelshear that this tube would not move. You have been told that it could not move through those various structures, and through those fascia—those strong fascia that it would have to pierce. You have been told that over and above those very strong fascia are the muscles, and you have been told that in the region of the tonsil there are the blood vessels in that area which is so well supplied with blood—everyone knows the bleeding that accompanies a tonsil operation.

Yet you are asked to assume that through that area, and through that tonsil, comes this thing erupting, and without any attention from any doctor, and you get nothing happening other than that the patient gets all right. And she a patient whose state of health was such that her resistance would be at a minimum, and who, if her story is right, for months and months had had this condition of the head and neck that she has described to you.

Why should you reject the evidence given by those men? On what basis could you reject it?

Professor Shellshear explained during the course of his evidence that often illustrations do not give you the full picture, and that the full picture can only be seen on the body. We did not want to hide facts, and the surgeons who have spoken want to show what exists, and they gave evidence what exists.

Professor Shellshear was not cross-examined to any extent at all as to his anatomical knowledge, ability or conclusions. The way he was cross-examined was this: let us have a look at those X-ray pictures of

yours and see is not the tonsil smaller than normal tonsils, or, see if there is not a variation between one picture and another. That is the extent of his cross-examination. That is the case when a man of his attainments has got into the box and pledged his oath on the anatomical details he has spoken of. His cross-examination is limited to this, that he is asked whether the drawing by the artist is or is not a normal tonsil, and why it is that the distance of one is a quarter inch or half inch different from the distance of the other.

I will only refer you to those two illustrations, mentioning those various structures there are in the neck. That gives you an idea of the structure of the neck and of what you have around the tonsils, and the other one is of the vessels back to the vertebræ. (Illustrations shown to Jury.) You will remember that this diagram has been measured. Dr. Smith said he measured it—this is Cunningham, one of the standard text books in use—and that it gives life size.

Mr. SHAND: Dr. Smith, when I showed him the tonsils, admitted they were twice as big.

Mr. CASSIDY: If you like to take the tube you can get an idea yourselves. And you can get an idea of that tube having to come across here, and come out through the tonsil, and what that tube would be doing. And remember that no surgeon's attention was ever drawn to it, and that from the time that the wound healed a doctor was never asked to look at the neck.

Not only Dr. Shellshear, but also Dr. Smith, gave evidence as to these various compartments, and described the impossibility of that tube so travelling. He explained to you further what you have here in this portion of the thyroid capsule. He had an envelope open at one end, which illustrated if you have a huge area of pus unable to escape, if you had that whole area of pus unable to escape through any opening and locked in, then that pus has to go somewhere. Where does it go? It goes down into that area provided for it, into that area of least resistance because, to use Professor Welsh's words, of gravity. And that would be fatal.

In addition to Dr. Smith we had Dr. Edye and Dr. Poate. Dr. Poate said consistently throughout his evidence that it was surgically, anatomically and physically impossible. The reasons were given in detail, but the ones you will remember are these, that it is physically impossible that a woman in the condition that she was after this operation could exist with abscesses in the neck untended from June 1938 to October 1939. He said that a human being could never stand it anatomically, because of the structures and vessels that would be concerned in any path that that tube had to follow. He said that the structures would hold it, that it could not go that way. He said that there was the danger of secondary hæmorrhage. And what is said in regard to that? Dr. Thompson said he had never heard of secondary hæmorrhage taking place. Dr. Poate said that that is one of the matters that any surgeon dealing with foreign bodies has to pay attention to, and that suppuration is in a like category. And it is admitted that no one has had the experience that he has had. And, further, he said that it was surgically impossible for the reason that he put to you, and which at this stage I do not want to go into in detail. Dr. Edye supported that. Those are the surgeons who dealt with it.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

I come next to Professor Inglis. You saw him, and you are able to form your own conclusions on the suggestion that it was because he was a member of the B.M.A. that he gave the evidence he did. He said that the reason he came into the case was that he was listening to one of the trials and——

Mr. SHAND: Mr. Reimer asked him.

His HONOR: What does the record say?

Mr. CASSIDY: The suggestion was that he was here because of the B.M.A.

His HONOR: He was cross-examined on whether he was a member of the B.M.A.

Mr. REIMER: Page 1224, the second trial, "I sat at the back of the Court . . ."

Mr. SHAND: It was how he came to be in the back of the Court.

Mr. CASSIDY: "At the second trial I sat at the back of the Court . . . asked to be allowed to give evidence." You saw the type of man Professor Inglis is, and whether he is open to be attacked in this way. The evidence is that he formed an opinion and came to Mr. Reimer in his chambers and said that he wanted to give evidence. What can there be suggested against him? He has been at our University, trained here, went abroad, came back, and has been a professor for some time. What suggestion can be made against him? He is not in practice, and the B.M.A. means nothing to him.

What is his evidence. That this story is an absolute impossibility. He says that any suggestion that you could have an object travelling like that, with the structures there, and with suppuration persisting for that length of time, is beyond belief and that it could not happen. And he said that the structures which Professor Shellshear said it would have to go through would be permanently affected and destroyed.

In addition we have Dr. Ritchie, a physician with a lot of experience, who also spoke as to the same things. And we have been told by Dr. Poate, Dr. Edwards, and every witness in the case, that a body like that would not move. We have been told that if it were in the thyroid capsule it would get to the bottom, and if the pus got out it would get out along the line of least resistance, and the line of least resistance was in the sinus that was open and discharging. We are told by all those men that there could never have been a movement of a tube such as that without death, and that if such a thing could be assumed, that it might move, you would have permanent limitation of movement and trouble in the neck.

What is her account. She swears that this condition of being unable to move her head to one side persisted after she came back from St. Luke's for some time. And we have the X-rays and the evidence from the hospital that there was no such limitation of movement at all. So here is the position, that if that story of hers be true we would have had this unprecedented travelling—sworn to be impossible. And there was no limitation of movement in the neck.

I just want to refer to Dr. Edwards' evidence before leaving what I term as the impossibility of that travel up to that area.

Neither of the doctors called on behalf of the Plaintiff gave any evidence of experience of foreign bodies in the neck. Dr. Poate said the reason you do not get a lot of experience of foreign bodies in the neck is because that area is such a vital one that so very often it means the end. And when one looks at the anatomy of the neck one would agree that is correct.

Dr. Edwards has had considerable experience of foreign bodies in all parts. And, dealing with the matter, he was asked at page 781, "Coming back to my question . . . perfectly normal neck?—A. Yes." His experience, I think, was that he had seen over 1,000 foreign bodies in various parts of the human anatomy in the course of his experience.

This case stands to be determined between the parties on the evidence. The Plaintiff stands in this position, that her case has to be proved. She has called two witnesses who have little or no experience of the passage of foreign bodies—one, none, and the other gives us no illustrations. The defence, on its part, called witnesses to speak from actual experience of foreign bodies at the war and in other directions. All those witnesses agree that that body would not move.

In the face of that, apart from anything else, how can the Plaintiff's story be accepted. How could one substitute for the evidence of those men who know, the evidence of people who have had no experience. How could one reject their evidence, unless one said that those men are deliberately endeavouring to mislead the Court. And that, gentlemen, I put to you is a conclusion to which you, as the body of men holding the scales between the parties, and free from prejudice, could never arrive at.

Expert evidence is allowed to be given in Court because of the experience of the individuals who give it. That expert evidence has weight from the practical work that is done by those giving the evidence, and when you find banded together not only the men practising in the profession, but also the teachers of those going into the profession, and you have that body of evidence unanimous that in this case it is an impossibility that that tube could travel in the way suggested, then I submit to you that that evidence is meet and fit and suitable to be accepted by a jury. I submit that it is overwhelming evidence.

It is overwhelming evidence on which any of those men offered to be tested and to illustrate. And they were willing to illustrate on an actual body where everything could be seen, and not from a picture where something is omitted.

What do we find in the evidence that Dr. Thompson gives. I take you again to plate 43 in this red book, and I put to you that Mr. Shand admitted to Dr. Bell, when he was cross-examining him on plate 43, that he, Mr. Shand, was wrong.

You will remember this illustration. It was shown to you. It was put to Dr. Bell that there was an area here with no blood vessels, no nerves, no muscle; that it was just a space. That was clearly put to him. The illustration, as is apparent, is an illustration showing only certain things, and not purporting to show any of those things in the areas left white. Dr. Smith told you that the muscles were cut.

Yet Dr. Thompson put this forward as something which shows a space where there is nothing. He suggested that it was filled with mucous membrane. Mucous membrane is the thin 1/16th inch coating that covers the inside of your mouth, and there is none anywhere else.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

Mr. SHAND : Do you say there is no mucous membrane anywhere else ?

Mr. CASSIDY : I mean mouth and throat. Listen to this suggestion made in the course of the cross-examination at page 725. Dr. Bell has this illustration put to him, and this admission is made by Mr. Shand . . .

Mr. SHAND : Read pages 642 and 643.

Mr. CASSIDY : I read first page 541, " You will agree that between the thyroid and the trachea . . . outside it." And you will remember that the doctors speak of outside as we do of inside ; they use the word differently from the way we do.

I have not found yet the piece of evidence that I really want, where Mr. Shand abandoned the matter before lunch, and then came back to it at a much later stage.

Mr. SHAND : The Defendant went on admitting it right up to lunch.

Mr. CASSIDY : I think that it was returned to at page 741 by Mr. Shand some time later.

The point is this, that Dr. Bell, Dr. Smith and Professor Shellshear all dealt with that diagram and pointed out that the diagram was not designed to show what Dr. Thompson alleged it shows—a space there in which there are no blood vessels or anything. And in this area there is this pharyngeal aponeurosis, which is extremely hard gristle. That is about the only piece of anatomical evidence given as a suggestion where that tube could go. And that was dealt with by three people who say that what was put was wrong, who say there is no such space there as is suggested, and who give exactly contrary evidence to what was suggested in cross-examination and what was put later by Dr. Thompson.

Mr. SHAND : What was admitted in cross-examination !

Mr. CASSIDY : I will deal with it further a little later.

What is the position around this area of the tonsil. We have the tonsil there, ranging from something like three quarters of an inch long by half an inch wide, varying of course with different individuals. You have had it said that through that tonsil came a tube which is a quarter of an inch diameter and which, to have erupted there, must have made a considerable hole and must have let out a considerable amount of discharge. Let us follow what happens in regard to it. There is no witness in the case, husband, wife or Mrs. Fisher, who say they saw any such hole.

In the letter written to Dr. Bell on 11th October 1939, although it is now told us that this tube erupted into the throat, and she remembers swallowing it—in the letter written on 11th October 1939 in which she says she does not blame the doctor, the Plaintiff used these words, " I am a little better . . . almost choked." That was written on the 11th, nine days after. She swears now she remembers swallowing that tube, and that she remembers it bursting into the throat at that time. In the letter she said, " I think it was then that the tube burst into my gullet. I almost choked." Mrs. Fisher looked down her throat to see if she could see a hole, and she saw none. Dr. O'Hanlon said that he did not look into the throat on the night of the 6th, but clinically he saw no trouble, and on the 7th he did see her throat and there was no hole there, or sign of eruption.

Sister Saunders said she saw no pus. Dr. Bell said he looked at the throat and there was no hole there. Dr. Ritchie said he saw the throat and there was no hole there.

Mr. SHAND : Sister Saunders was not there when the examination went on.

Mr. CASSIDY : She saw no pus in the throat.

Mr. SHAND : She was not there.

Mr. CASSIDY : She was the sister in charge the whole time the Plaintiff was in the hospital. She does not remember being present when the doctor examined the Plaintiff.

Mr. SHAND : The furthest she went was, " I cannot remember seeing pus in her throat."

You said that you would refer to where the word " conspiracy " was used by me, but you have not done so yet.

Mr. CASSIDY : You have mentioned every form of wrong concert possible between these doctors.

Mr. SHAND : You said you would show me where I used the word " conspiracy."

Mr. CASSIDY : You have suggested that Dr. Edye was a deliberate liar. You have suggested that the B.M.A. has got the doctors together to oppose this woman. If that is not charging conspiracy between them I do not know what is.

Mr. SHAND : You said you would show me where I used the word " conspiracy." I said I did not use it.

Mr. CASSIDY : Do you say you do not charge these doctors with being liars ? Are you going to say now that you do not charge these doctors with deliberate lying ?

His HONOR : At one stage you did say that Mr. Shand used the word " conspiracy." Do you withdraw it ?

Mr. CASSIDY : Yes, because I cannot find it. But I put this, that Mr. Shand is still charging the grossest impropriety and the grossest perjury against the doctors I have called to give evidence.

Sister Saunders said, at page 843 : " She says that she had pus . . . I saw no pus." Do not let us get into a dispute as to who is always right and who is always wrong. What I was putting to you was that at that stage Sister Saunders saw no pus, and neither did the doctors who were called in to attend her.

Mr. SHAND : My reference was to the two last questions on page 843 : " Were you present on any occasion when the throat was examined ?— A. I cannot remember."

Mr. CASSIDY : Let us get away from these little arguments.

His HONOR : The case will not be tried on whether you or Mr. Shand are right in your remarks. That is not the issue here. You have to go on the evidence.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 17th January 1944, *continued.*

Mr. CASSIDY : The evidence is that no one from the Plaintiff's side alleges that they saw the hole in the tonsil or the throat, although they looked. No one at St. Luke's Hospital saw any such hole. And the next position is this, that Dr. O'Hanlon, when seen in April 1940, saw no hole either.

At the first trial Dr. Thompson had apparently seen the Plaintiff prior to the trial. Professor Welsh had seen her during the trial. On that occasion Dr. Poate gave evidence that what was in the throat was the result of folicular tonsillitis and that there was no hole consistent with that tube having come through, but there were two strands of tissue covering over a crypt of the tonsil, and that it was anatomically impossible that the tube had come through. He examined it there and then in Court and said there was no hole coming through the tonsil, that the only hole was the crypt coming out of the tonsil and that there was no evidence of scarring consistent with that tube coming out.

Mr. SHAND : He said there was a hole coming through the tonsil.

Mr. CASSIDY : He did not. He said that there was a hole coming out of the tonsil. And that statement cannot really be a mistake on Mr. Shand's part this time.

Dr. Poate gave that evidence, that it was a hole coming out of the tonsil, at the first trial, and with two doctors available neither got into the box to deny it. And we have Professor Welsh and Dr. Thompson coming at a later stage, at the second trial, with evidence then as to what they saw. I will read you Dr. Thompson's evidence where he suggests that he had measured it and had the dimensions of it away back in 1941. Why was not it given ? Why did not Professor Welsh give it ?

And there is Dr. Poate's evidence of his examination made in Court—and they are willing to stand by it—and that was that anatomically, physically and surgically it was impossible, and that there was nothing in the tonsil to support the story that the tube had come through.

When those men went to the examination of the tonsil on 11th December 1943, Dr. Poate passed the remark within the hearing of Dr. Thompson as to the condition of the throat, and Dr. Thompson, to whom the question was not addressed—it was a question to Dr. Marsh—volunteered the information that the lighting up in the throat was due to a recent cold. That evidence was given by Dr. Poate and given in chief. Evidence was given by the other witnesses, Dr. Steele and other witnesses, about pus in the throat. Dr. Edye, Dr. Marsh, Dr. Steele and Dr. Poate were the four people concerned.

This is the significant thing, that although Dr. Thompson was present, and although he was there as her adviser, and entitled to see—and he said he saw Dr. Marsh using the probe—although those men gave evidence of some acute inflammation in that tonsil, Mr. Shand put no cross-examination to any of those doctors to show that was wrong. And Dr. Thompson was in Court.

Dr. Poate gave the evidence as to the conversation that took place, and that Dr. Thompson had said to him she had had a recent cold which lit the thing up slightly, and there was not a single suggestion made to Dr. Poate that he was saying anything untrue. Can you imagine it that if Dr. Poate had got up and said something, which is later said to be untrue and must have been manufactured, that when he said that, on a

matter of such importance, Mr. Shand would not have cross-examined him and suggested that it was manufactured? Dr. Thompson said something to me to the effect that he told Mr. Shand. Gentlemen, if that statement had been made deliberately, and was untrue, it would have been challenged. That is a straight out statement of fact, that there Dr. Thompson accounted for the information by saying a recent cold had caused this slight infection, and there was not a word put to Dr. Poate to suggest that was wrong. Although four men were in the box giving evidence of that incident, and although Dr. Poate expressly stated that, we never heard it mentioned until Dr. Thompson got back in the box, and now gives the lie direct to those four men. I put it that all four of them cannot be out of step. Dr. Poate said it first, and gave definite evidence of it. He was the only one asked about it.

I suggest that puts the tonsil incident back to this, that what Dr. Poate said uncontradicted in 1941 is the truth, and it is what he says to-day.

Professor Welsh gave pages of evidence in the first trial, and Professor Welsh never mentioned a hole in the tonsil—never mentioned it. Why didn't he?

Mr. SHAND: He had not seen it.

Mr. CASSIDY: Why didn't he see it? What was to stop him from seeing it? Dr. Thompson had also seen her in chambers. Why wasn't it mentioned. Dr. Thompson said he had looked at it before the trial. Why was it not mentioned?

I say that Dr. Poate's evidence is evidence that must stand, that this tube could not have erupted out of that tonsil.

(At 4 p.m. the further hearing of this matter was adjourned until the next day, Tuesday, 18th January, 1944, at 10 a.m.)

IN THE SUPREME COURT OF NEW SOUTH WALES. 18th January 1944.

In Causes.

Coram: EDWARDS, J., and a Jury of Four.

Tuesday, 18th January, 1944.

HOCKING *v.* BELL.

Mr. CASSIDY: Before I resume dealing with the tonsil incident, I want to return for one moment to the eye incident of which I spoke yesterday.

I criticised the evidence given there from two points. Last night one illustration occurred to me, which might illustrate one incident better to all of us who know something about first aid. I suggest it exemplifies how wrong the explanation given in regard to the carotid artery in the eye incident must be. Everyone having anything to do with first aid knows how, in attending to a hæmorrhage or something like that, it is necessary to stop the blood supply and to know the use of tourniquets. Everyone knows when you are putting the band on the arm in the Trousseau sign, as we have been told, you are stopping the blood supply, and that is the reason

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 18th January 1944, *continued.*

for the heavy pressure of the bandage. And the tourniquet you apply, dealing with first aid, indicates to you the nature of the pressure there would have to be against that carotid artery.

Dr. Smith, Dr. Poate and all the other doctors told you that there would have to be a complete stoppage of the blood along that artery.

I think that illustrates better than anything else that you could not get that pressure from a tube, or a swelling remaining in that area. It could not be the pressure of the swelling, because that would be maintained, and it could not be something which was transitory, such as this alleged incident was.

When I was cross-examining to ascertain the exact time that the incident occurred I could not find out anything. I asked Dr. Thompson, as he placed value on this incident, did he ascertain when the incident occurred, and he could not tell me whether it was in the last three months before 2nd October 1939, or at what time it was.

Mr. SHAND: You said yesterday that it was May.

Mr. CASSIDY: We have been told by the Plaintiff that it occurred in hospital. As I have pointed out there is no record of it in the hospital records. When I tried to ascertain from Dr. Thompson if he knew when it was he said that he had tried to ascertain that and had not been able to do so.

I come back now to deal with the tonsil incident. I pointed out to you that Dr. Poate's is the only medical evidence dealing with the tonsil in the first trial, and I pointed out to you that Professor Welsh gave no evidence as to it although he was in the box.

At that time Dr. Poate said this: (1) that the patient has evidence of chronic laryngitis on both sides, in each tonsil—low grade infective tonsillitis; (2) the condition of that throat is inconsistent with the discharge of a body from the throat; (3) that there was no scarring or deformity, and no interference with the palatal muscles consistent with a body having come through.

That Dr. Marsh gave evidence before Dr. Poate, and Dr. Marsh gave the evidence that she had had chronic folicular tonsillitis when he examined her, and he repeats that evidence.

We come to the next trial, and we find again that Dr. Marsh repeats the evidence he gave formerly, and that Dr. Poate repeats the evidence he gave formerly, and we find in addition an examination on 25th August 1942 in the presence of Dr. Thompson, that examination being conducted on behalf of the Defendant by Doctors Steele and Marsh, both throat specialists. Both of them tell you that when they saw the throat on that occasion there was this common condition, a condition common in throats, of chronic folicular tonsillitis, and they tell you that was present in both tonsils. And they tell you that there, on that occasion again, debris was expressed from the tonsils in the presence of Dr. Thompson. That again was undenied.

How is it, therefore, that at this fourth trial, and right at the heel of the hunt, when the Plaintiff and Dr. Thompson get back into the box that both of them can give this evidence—the Plaintiff, that she has never had tonsillitis in her life; Dr. Thompson, that he has never seen her with tonsillitis—when we have that evidence of the doctors given and repeated at these trials that have preceded this, and when that statement has never been made before by either the Plaintiff or Dr. Thompson.

You see the position it gets to when you follow it through medically. Dr. Marsh says, " I saw this lady in October 1939 and she was then suffering from this tonsillitis, and I told her and her husband about it." Dr. Poate says that there is evidence of it in 1941. The two other doctors, Dr. Steele and Dr. Marsh give evidence of it being present, and this cheesy material being expressed from both tonsils on 25th August 1942.

The third trial was held in December 1942. At none of those trials, in spite of this allegation that this tonsillitis has been persisting, is the fact of Her having tonsillitis denied. It is denied for the first time at the end of this case. And it is denied by the Plaintiff, it is denied by her, after Dr. Poate and other doctors have given evidence of this condition in the throat.

Mr. SHAND : That is not so, that is quite wrong. But I will deal with it.

Mr. CASSIDY : It is exactly right.

Mr. SHAND : It is quite wrong.

Mr. CASSIDY : What is wrong in what I am stating ?

Mr. SHAND : I will not be cross-examined by you.

His HONOR : I would like to get what you say is wrong.

Mr. SHAND : At each trial the condition has been described. The Plaintiff could not describe it ; she does not know. It has been described as a hole in the tonsil. And Mr. Cassidy, you will please speak to me properly.

Mr. CASSIDY : Was I speaking to you improperly in any way ? I asked you where I was wrong. I will deal with it. It is suggested this has not been raised. I put to you specifically that the condition I have spoken of was deposed to in the sworn evidence of Dr. Steele and Dr. Marsh, and was deposed to by Dr. Marsh and Dr. Poate, and that Dr. Steele—I will show you the evidence now since it is suggested I am wrong—expressed the cheesy material from these tonsils in the presence of Dr. Thompson on 25th August 1942.

And I put to you, you will follow, that this evidence that she has never had infection of these tonsils, or tonsillitis, is wrong, and it has never been said before.

At pages 1068/9, Dr. Steele : " On examination on 25th August 1942 I found a common condition . . . folicular tonsillitis was present." He goes on and deals with the other thing.

You will remember Dr. Poate's evidence that I have already read to you this morning, his evidence at the first trial of what he found. You will remember the evidence of Dr. Marsh that I read to you yesterday, and you remember the evidence of Dr. Steele. You have all those doctors saying that this condition of tonsillitis was present.

What does Dr. Thompson say : " I have examined that throat on 20 occasions and never have I seen any tonsillitis." I tried to get from him when those 20 occasions were, and where his notes were, and he could not remember. I have tried to get from him since December 1942 by reason of something that appears, how many times he has seen them since then, and I have not been able to get it. And we can get no account of how

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 18th January 1944, *continued.*

many times he has examined those tonsils since the last trial. Yet he puts it now that he has examined them on 20 occasions, and on no occasion has he seen any evidence of tonsillitis. And he puts that when we have had the definite evidence of the expressions of that cheesy material on 25th August 1942.

What can be the position other than this, that the doctors giving evidence on behalf of the Defendant, who gave the evidence of that condition of the throat, are giving evidence as to facts.

Mr. SHAND: I remind you of another reference, the Plaintiff's evidence at the second trial at page 142.

Mr. CASSIDY: At page 102 the Plaintiff told me she was coming down to Sydney about her tonsils.

Mr. SHAND: That was the time it started. Page 142 is in the fact of what you said.

Mr. CASSIDY: At page 102 I asked this: "When Dr. Marsh said that to you . . . I was sent to Sydney for treatment for my tonsils."

Mr. SHAND: You said at no trial before this had she ever denied she had tonsillitis or trouble with the throat. I point out that that statement is entirely wrong.

Mr. CASSIDY: In any event I did not remember that.

Mr. SHAND: Try page 142, second trial, the middle of the page. "Do you say they are in the same condition to-day?—A. . . . No, nothing." And before that, "Have you had . . . No, none at all."

Mr. CASSIDY: I will read all the evidence so that we will see exactly what it does mean. "You have never been examined by anyone . . . No, nothing." And that is being put on the basis that since the last hearing——

Mr. SHAND: Since Dr. Poate examined her.

Mr. CASSIDY: He examined her in December 1942. That is all since this last hearing.

Mr. SHAND: And it is since that time all your doctors say she has had this trouble in her throat.

Mr. CASSIDY: I put it to you when Dr. Poate examined her in December 1942 she had chronic folicular tonsillitis. That evidence had been given by Dr. Poate in December 1941. This evidence is being given on 25th August 1942. In December 1941, Dr. Marsh gave evidence she had chronic folicular tonsillitis when he examined her in October 1939. The questions that are put are, as you see, put as to the period since the last hearing; that is, since December 1941. That is the first thing we have.

At this stage no doctors have examined her; it is not until after the Plaintiff gives evidence that the doctors examine her. She is asked: "Do you say they are in the same condition to-day, or should be, as they were then?" And she answers: "As far as I know." She is asked: "You have had no trouble of any kind, tonsillitis, quinsy, or any abscesses of any kind?" And she says: "No, nothing."

The doctors examined her after that, and the doctors say that she has tonsillitis, and Dr. Steele swears he expressed it from those crypts. I will give you the day that evidence was given. It was given on Friday, 14th August, and the examination took place on 25th August.

Mr. SHAND: If you want to carry it any further, Dr. Thompson denied at the third trial that she had had any tonsillitis. That is at page 89 of the third trial.

Mr. CASSIDY: Let us get back to it again. You will remember Professor Welsh at the first trial agreed with Dr. Marsh that there was no pus in the mouth, and agreed in these words, that it was the cheesy material to which Dr. Marsh referred.

Mr. SHAND: No, he does not say that. The cheesy material is stated to be in the crypt of the tonsils. What Dr. Welsh said was that was on the tongue the Plaintiff mistook for pus was unhealthy matter, but not the cheesy material that came from the tonsils.

Mr. CASSIDY: I will read the evidence. Where does it come from?

Mr. SHAND: I cannot imagine it showering out from the crypts of the tonsils.

Mr. CASSIDY: I will read the evidence. At the third trial, at page 74. "Her evidence was there was a trickle of pus . . . Dr. Marsh's evidence." And Dr. Marsh's evidence described that cheesy material, and his words were adopted by Professor Welsh.

Mr. SHAND: I think you are wrong.

Mr. CASSIDY: I have read exactly what is there.

Mr. SHAND: What was put to Dr. Marsh was that this was not pus on the tongue at all, and Dr. Marsh agreed that it would not be pus if it had to be scraped off.

Mr. CASSIDY: "Her evidence was there was a trickle of pus . . . left tonsil." The material she describes as on her tongue was obviously not pus, and was mistaken by her for pus; it was the material described by Dr. Marsh in his evidence.

His HONOR: To clean that up you have to go back to Dr. Marsh's evidence. Was that at the second or third trial?

Mr. SHAND: I think that it was the second trial.

Mr. CASSIDY: While that is being looked for: What I have been putting to you is this, that this cheesy material which was present on 25th August 1942 was present in October 1939. By August 1942, the uncontradicted evidence is that this lady had recovered from any infection of the tonsil whatsoever. And the cheesy material that is sworn to by Dr. Marsh is discovered there on 25th August 1942. And that cheesy material means a diseased tonsil which is throwing out that stuff, giving the offensive breath of which Dr. Steele speaks, and which he refers to in connection with the tonsils he brought here.

His HONOR: Which he had operated on and taken out.

Mr. CASSIDY: Which he had operated on and taken out.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 18th January 1944, *continued.*

I have come back to it because such a lot of importance centres around the condition of these tonsils, and such a lot of importance centres around the fact that these tonsils were not healthy tonsils, and that these tonsils were in an infected state again on 11th September 1943.

Going back to page 1069, Dr. Steele said that this chronic follicular tonsillitis is 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 Hospital." And what do they show? They show varying degrees of tonsils with the supra tonsillar fossa. You see one into which you could get the end of a pencil, or the end of a glass probe as is desired."

Let me pass on from that, while the evidence is still being looked for.

Dr. Steele gave evidence at the second trial of this large crypt in the left tonsil, and he produced one similar to it. Up to the second trial these glass rods that we have seen had not been produced. They were seen for the first time at the third trial. Dr. Steele told you how he has had a great deal of experience, and at page 1073 he pointed out that these crypts do become enlarged. In his experience it occurs often and you get large pieces secreted from them, causing large openings in the tonsils, some of them the size of a marble.

Getting back to what I suggest is another example of this exaggeration —it is slightly removed from this, but is still dealing with the tonsil—we have at the second trial this account of something that happened after leaving hospital. At page 16: "During that period my neck was gradually becoming normal . . . to get rid of the pus."

Mr. SHAND: Not one word of that was put to the Plaintiff.

Mr. CASSIDY: That is not cross-examination, but is an account given by her to her counsel, in chief, at the second trial, and not repeated here, as to her condition after she left St. Luke's and in fact of what Sister Saunders has sworn as to her condition.

His HONOR: Are you right there, Mr. Cassidy? Sister Saunders had nothing whatever to do with that, as far as I remember. She was then dealing with the period after she left St. Luke's on the second occasion.

Mr. CASSIDY: Sister Saunders was the sister in charge.

His HONOR: She was giving evidence there as to her condition up to April 1940.

Mr. CASSIDY: Yes.

His HONOR: You are right. I did not realise the reference to Sister Saunders there.

Mr. CASSIDY: Sister Saunders was the sister in charge, and the last one to see her before she left hospital. At page 446, second trial: "I was asked by Dr. Bell to examine . . . external or internal." At page 451, Dr. Marsh, the second examination: "I heard the Plaintiff's general allegation——

Mr. SHAND: This is not evidence in this case. I invite you to show anything that indicated that the cheesy material was the material on the tongue.

Mr. CASSIDY : That is the only cheesy material referred to.

Mr. SHAND : You are entitled to read anything to do with that.

Mr. CASSIDY : That is referred to not as on the tongue but as a caseous material in the tonsil. That is what Professor Welsh agreed with on oath, and spoke of as the material described in Dr. Marsh's evidence.

Mr. SHAND : That type of material, yes.

Mr. CASSIDY : Let us get the next position about it. On each occasion that these tonsils have been seen, on each occasion, the description has been of infection of tonsillitis in different degrees. And on the last occasion, seen by four people, that description is again given, only this time it is in slightly different condition because it is lit up and it has a sub-acute inflammation.

What is the explanation of what is there ? Dr. Thompson says that it is a redness produced by trauma from the use of that instrument. I will read to you what he says, because I suggest to you that inherent in what he himself says is the obvious answer that he must be wrong. " I noticed that the left tonsil . . . I passed it in."

This hole is admitted to be something like a quarter inch in diameter——

Mr. SHAND : It was but not now.

Mr. CASSIDY : At this time it was said to be larger, and it is still said to be something like a quarter inch diameter.

Mr. SHAND : That is wrong. In the last examination no one said that it was a quarter inch in diameter.

Mr. CASSIDY : What is it now ?

Mr. SHAND : I do not know. I think the evidence is that the probe would just go in.

Mr. CASSIDY : At pages 1074/5 Dr. Steele speaks of it. He says this, " Can you give the Jury an idea . . . diagonal direction."

Mr. SHAND : That is not in diameter ; that is the size of the probe.

Mr. CASSIDY : I do suggest to you that the account that the redness produced by trauma would obscure the appearance is not understandable. And I do put this, with respect, that that redness of the trauma was introduced at the last minute—because it was not put to any of the doctors that it was introduced at the last minute to explain away what is described as the sub-acute inflammation in that area.

I would suggest that the condition of this tonsil in December 1941 was a vital matter in this case. I would suggest to you, with that medical evidence available that in December 1941 still not so far away from the exit, from the time that it came out—if there had been a punched out canal, that, as Dr. Thompson says, evidence would have been given of it.

He says this at this trial, this is how he describes it now at page 319 : " When did you make your first examination . . . I suppose about half a dozen since that time."

That is what I was looking for. Where does he get the 20 he spoke of the other day. I knew that somewhere in this case there had been

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 18th January 1944, *continued.*

some number given of the examinations that he has made, and that is it, sworn to in evidence in chief.

How does it get to 20, and how is it that when I came to cross-examine him how the 20 was made up—because I doubted that number—that he could not tell me when they were.

" When you first examined the tonsil . . . probe and a glass." Think of it, with a case of this importance, being conducted by King's Counsel, and Dr. Thompson has ascertained the length of it with a probe and with a glass, and it was a punched out canal, and it is not spoken of, Dr. Thompson does not speak of it, and Professor Welsh never says a word about it.

Mr. SHAND : Which trial ?

Mr. CASSIDY : The first trial.

Mr. SHAND : He did not give evidence at the first trial.

Mr. CASSIDY : Why did not he give evidence. He was willing enough, surely.

Mr. SHAND : There are two inaccuracies there. The first is that Dr. Thompson had never used the glass tube then to measure it, and the second that he did not give evidence.

Mr. CASSIDY : I will read you what he said at page 319. I have already read it, and I emphasise the point that he did not give evidence. If he had had that information in his possession, how could counsel have neglected to call him to show how he had measured it.

His HONOR : That must have referred to before the first trial.

Mr. SHAND : Yes.

His HONOR : He gives the length and how he ascertained the length —" I ascertained the length with a probe and glass."

Mr. SHAND : It is taken in narrative form and it is ambiguous.

Mr. CASSIDY : " I examined Mrs. Hocking . . . "

His HONOR : That would be before the first trial.

Mr. CASSIDY : There is no doubt he saw that before the first trial. There is no doubt that if were there Professor Welsh must have seen it. He saw Dr. Thompson during the first trial, but Professor Welsh said not one word about that.

Let us go on to the next hearing. " I ascertained the length with a probe and glass." " I have the glasses I used." And he gave the length as quarter inch diameter and three quarter inch length. How could he get the length unless he put something in. You cannot tell that it goes through to the pharyngeal wall unless you put something in.

His HONOR : Those three glass tubes are now in as exhibits.

Mr. CASSIDY : I put it to you that the position is this, that this lady, according to the evidence given, has at no time in her life had anything wrong with her tonsil ; Dr. Thompson on 20 occasions has seen her and she has not had anything wrong. That evidence is not correct. I put it that you will accept the sworn evidence of Dr. Steele and Dr. Marsh

at the second trial, which was uncontradicted on the matters of which they spoke.

That evidence is equally inaccurate as is the next thing. You will remember in describing this tube Dr. Thompson has put it as pointing obliquely upwards, and he puts it that the tube was put at the top of the thyroid cavity, at the lobe of the cavity. And he speaks of the tube having not far to travel from there. And when he puts it as half inch I put it that, knowing that neck, and knowing that lady's physique, he must have known that that could not have been even the approximate estimate of the distance. People can certainly be out a little, but you could not be out to the extent of saying that it was half inch only that it had to travel.

You saw the X-rays which were produced by us, and which are there, to illustrate the structures of that neck. There are about eight of them, all produced by the Defendant. Some comment was made that they show a variation, but you have seen them. Is there anything sinister suggested about that?

That is the only matter on which Professor Shellshear was cross-examined. We produced those pictures, with a divergence, if there is one of half inch, but what is suggested that is sinister about it?

Those pictures illustrate this, that the path that that tube would have to travel, if it went from the lower part of the thyroid capsule up to the tonsil, even if it went in a straight line, would be something like 5 inches to 5½ inches in a neck similar to that of the Plaintiff, and if it went from the top it would be from 2½ inches to 3 inches. But, gentlemen, nowhere, and in no neck, can it be suggested that the distance of the tonsil from the capsule is, as it is put, half inch.

This is how it was put by Dr. Thompson: "Assuming the tube . . . at the time it came out, we do not know." Think of that explanation that is given, that that tube, at the time it came out, might have been at the top of the cavity, could have erupted from the top of the cavity up through the tonsil, and this lady have no medical attention and live. Just think of it.

On the same page, when Dr. Thompson was asked to account for how that tube could come out, he said this, at the top of page 330, "How could the tube be moved . . ."

I suggest that you can dismiss gravity, and you can dismiss swallowing to get the tube up from the thyroid to the tonsil. "It could also be moved by massage . . . 2nd October." Just think of it. Think of that explanation being given by a witness, that by a convulsion on 2nd October you could get that tube coming from the thyroid to burst through the tonsil, and no medical attention be summoned, and the patient have no hæmorrhage and live. And that what is in between could be ruptured, and a hole bored through by a sort of convulsion, and you get no medical attention for it!

I am reminded that in this book by Fowler you will see (shows illustrations to Jury). The tonsil is in between those muscles, and those are the muscles this thing had to go through.

Mr. SHAND: That is nonsense. That is against all the evidence.

Mr. CASSIDY: This is page 36.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy K.C., 18th January 1944, *continued.*

Mr. SHAND : That is absolutely against your own medical evidence.

Mr. CASSIDY : That is a matter for the Jury to judge. At page 154 is shown the tonsil, where it would have to come out.

Mr. SHAND : All those muscles are outside the tonsils, and all your own doctors say they have nothing to do with the tonsils.

Mr. CASSIDY : There was no cross-examination of the anatomists about that.

Mr. SHAND : There was no need.

Mr. CASSIDY : No need ! The anatomists gave their evidence, referred to their sketches, spoke of those muscles and the area the tube had to go through.

Mr. SHAND : I will have no objection to your calling one of your experts. If you claim that that tube has to go through those muscles I will have no objection to your putting an expert back. That is my offer.

His HONOR : Refer to the evidence. Can you refer to the evidence to the contrary, Mr. Shand ?

Mr. SHAND : Page 1270, Dr. Smith. I suggest that my friend is grossly misleading the Jury, and I have made him a very fair offer. At page 1270 Dr. Smith said to the Jury, " The tonsil is in there . . . superior constrictor." Later on he said they have nothing to do with it.

Mr. CASSIDY : I am sure Your Honor remembers this——

His HONOR : I think the evidence was that Dr. Smith said there were three compartments and in order for the tube to get from the thyroid cavity to the tonsil the tube would have to go through the three compartments.

Mr. CASSIDY : Dr. Smith is away in Orange, Professor Shellshear is elsewhere, Dr. Poate is away, and Your Honor knows what hope I have of getting hold of any of those gentlemen.

Mr. SHAND : Dr. Ritchie is here.

Mr. CASSIDY : He is not a surgeon. I rely on the evidence, and the evidence will be dealt with. And Your Honor will remember distinctly that when the surgeons spoke of " outside the tonsil " they always spoke of it differently from us. "Outside the tonsil" is what wecall in behind it. Your Honor will remember that. And you, gentlemen, will remember that they spoke of " outside " in a way different from us. And the illustration shows it and you have had it given to you in detail by Professor Shellshear, Dr. Poate and Dr. Smith.

The position is this. You are told of the muscles that it would have to get through, and of the blood supply in that area and that it had to go through to erupt there.

When I read this part before about rupture by convulsion, and that it came up through there, Mr. Shand interrupted that was not what Dr. Thompson meant. There is no doubt that is what he meant, because when you read lower down the page he says : " It was at that abscess cavity . . . cavity at the time." So I suppose if it is at the top of the

abscess cavity he suggests that it has only half an inch to go, and I suggest to you that is most inaccurate. And, knowing this neck as he did, it was obviously inaccurate to say that that tube would have only half an inch to go from the top of the lobe. Even to go that half inch it has to go through structures such as I have described to you, and such as are described in the evidence.

Before I leave this subject I wish to refer to the crypts. In dealing with this matter, the crypts, you will remember that at previous trials Dr. Marsh described the supra tonsillar fossa, and had been cross-examined about it, and Dr. Steele had been cross-examined about it also. Dr. Thompson, in his evidence in chief to Mr. Shand, was asked : " There was some suggestion about crypts . . . absurd suggestion." You have had tonsils produced to you which show you the nature of that large crypt. You have had the evidence of the doctors who told you that large supra tonsillar fossa are not uncommon, and that you will get them, and you have selected at random three done on a particular day which show variation in size of the supra tonsillar fossa.

So how that evidence comes to be given by Dr. Thompson is extremely difficult to understand, in view of the evidence of the experts that you have had put before you.

My friend said that I was grossly misleading the Jury—that was his mild expression—and he said following that that the superior constrictor muscle was not there.

Mr. SHAND : No.

Mr. CASSIDY : You did. And you laughed when I referred to " outside " being used by the doctors in the sense in which I put it to the Jury.

Mr. SHAND : I cannot follow you.

Mr. CASSIDY : While I have been addressing, my junior has looked it up, as to the muscles in that area. You will remember Mr. Shand saying that the constrictor muscle was not there.

Mr. SHAND : I did not. I said that you were putting to the Jury that it would have to go through all those muscles.

His HONOR : I understood Mr. Shand to say that the tube would not require to go through those muscles, including the constrictor muscle.

Mr. SHAND : I said " all the muscles."

Mr. CASSIDY : At page 1103/4 : " Having got through the digastric muscle . . . (indicating X-ray) ?—A. Yes."

Mr. SHAND : That is not the evidence. " There is one only faintly indicated," not " yes."

Mr. CASSIDY : " Can you show . . . lies outside the tonsil."

Mr. SHAND : That is the point.

Mr. CASSIDY : " But separated . . . of the pharynx." And that is exactly what Mr. Shand said that it would not have to go through. And those muscles can be taken from the description given opposite the picture on page 36, and you can examine them there yourselves.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 18th January 1944, *continued.*

Professor Welsh, of course, has given no evidence on the distance of the travelling. Dr. Thompson has given evidence of one inch to half an inch, depending on where the thing was situated in the thyroid capsule. And the other evidence is that, in this neck, from the top of the lobe would be at least 2½ inches, and probably about 3 inches. That being so, when one is asked to consider the tube having travelled from right to left —we have some idea of the length of travel there, and I do put it on this aspect dealing with the tonsils that we have this position, that the tonsil being only half an inch in width, that if a tube came through in that direction it would practically mean total destruction of the tonsil, extreme injury to the individual, and, being unattended for days, the Plaintiff would never have recovered if in the condition in which she says she was.

I pass now to the incident of the eruption of that tube.

Before I leave the tonsil there is one thing of which I wish to remind you. At page 47 the Plaintiff said she was a bit better when she wrote the letter to Dr. Bell on the 11th. At page 47 she gives the remarkable evidence that she did not look inside her mouth before she left Quirindi, that she did not look in the glass at the tonsil. So there is no evidence from anyone of the hole it is said there was in that tonsil. I put it to you that, knowing the curiosity of the individual about anything sore, the Plaintiff would have looked, just as Dr. O'Hanlon looked, and just as Mrs. Fisher looked. So there is not one witness in the case gives any evidence of the hole in the tonsil.

Mr. SHAND: She said that she could not see, that her mouth was swollen. That is at page 47: "My mouth was swollen on the inside and I could not see inside."

Mr. CASSIDY: I will read the whole of it. "In October 1940, Dr. Marsh . . . abscesses in the throat."

Mr. SHAND: You said a moment ago that that was not mentioned in the trial.

Mr. CASSIDY: No. I referred to the pressure. When I read out what happened at the second trial I referred to the exaggeration there which had not been repeated here.

And you will notice, gentlemen, that that interruption came at the stage when I was going to read this: "It was not quite so swollen . . . up again?—A. Yes."

Can you imagine that at that time she did not look inside the throat to see what was there? Mrs. Fisher looked, and Dr. O'Hanlon looked. I put to you that the curiosity of women is such that there certainly would have been an examination made, and she would have found some way of looking at the tonsil. Later she told us that she found a scar in the throat.

I pass now to the incident of the eruption into the throat. With regard to the incident of the eruption, you know the accounts given, and I do not propose to go over them in detail. But you may take it that the position may be summarised thus, that on the Sunday and the Monday, a period of two days, she alleges she was in very severe spasms, and that she was in and out of consciousness over that period of two days.

On the Monday at about 3 o'clock she says she remembers something coming into her mouth and she remembers swallowing the tube. The

husband says that she was unconscious. This occurs on 2nd October; the husband is not told about the alleged swallowing until some time afterwards.

At that time she alleges she was extremely ill. She says now that she remembers swallowing something.

We have her evidence that she and her husband were sharing the same room and the same bed at that time, and yet she says she did not tell the husband that day of the incident of swallowing the tube.

On the 5th, she said, her condition was such that she thought she was going to die.

You will remember that in Osler we have that very piece about hysteria, that it is often followed with these fears of death.

On 5th October in the morning, and in the absence of her husband, she alleges she passed this tube, and made the examination that she speaks of. On the night of the 6th, the Friday night, about 8.30, the doctor was sent for. Before the doctor has arrived there, and during the 5th and the 6th, she has made the sketch of this tube. Her husband did not see her making it although he was at home during that morning. And a sketch comes into existence, which she adds to.

Her description of her condition at that time is that she was so ill on the Monday she thought she was going to die, that she has had aperients, three times in the week, and in the course of carrying the chamber she put it down on the verandah—she is so weak she has to lean against the wall to get about. She says for the first time in Court that she lost that tube when she was endeavouring to pull the chain, and she had the tube in the left hand—that leaning across to pull the chain she lost the tube.

That loss of the tube of course means that we cannot see it. We have to rely on description. And the absence of that tube means, I submit with respect, that any Court must be extremely slow to come to any conclusion with regard to it, and with regard to its existence.

It is interesting to see what conflicting accounts have been given about it, because the loss of that tube is another example, I suggest to you, of the exaggerations and unrealities that characterise other aspects of this case.

Let us look first at what is written contemporaneously. Dr. O'Hanlon tells you that when he was seen on the night of the 6th—and it is a strange thing that although he was seen on the night of the 6th he prescribed nothing; she was weak, but he prescribed nothing; he found nothing clinically wrong—on the night of the 6th he was told this, that neither he or Mr. Hocking saw the tube, because she emptied the tube along with the bowel action into the lavatory. That is the first account given. Dr. O'Hanlon swears that is what was told him. At least, that is what was written in the letter that went to Sydney the next day, when there would be no reason to misrepresent what was said in regard to a matter like that. And the husband will not deny that is what was told to Dr. O'Hanlon.

When we come to what the Plaintiff herself wrote, the Plaintiff made no reference to having accidentally lost it, made no reference to the fact that she swallowed the tube on the 2nd. To use her own words she said: " I think that it was then that the tube burst into my gullet."

So we have this from the contemporaneous documents, first of all, on 7th October, that it was put by Mrs. Hocking that she emptied the tube

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 18th January 1944, *continued.*

along with the bowel action into the w.-c. so that neither of the men saw it. The next thing is that in February——

JURYMAN : Mr. Cassidy opened up some fresh evidence this morning regarding evidence given by the Plaintiff at the second trial in regard to the throat, in regard to pressure on the throat as directed by Dr. O'Hanlon. Are we to take that as evidence given by the Plaintiff ? That is the first time it has been mentioned here.

His HONOR : You will remember I admitted the evidence given by the Plaintiff at the first, second and third trials. It was suggested that it might be put in book form for you, or cut out of these Appeal Books.

Mr. SHAND : You will remember I asked Your Honor to get Mr. Cassidy to tell me anything that he intended to put if it were fresh matter. He did not tell me anything, but he has put a number of fresh things. The Juryman is quite correct.

His HONOR : All those matters you can take into consideration. That is evidence in this case.

JURYMAN : Although no cross-examination has been made of it, and it is now only brought forward in the addresses, we can take the evidence of the Plaintiff, or the Defendant, or the witnesses——

His HONOR : Only of the Plaintiff. You will remember the argument whether it should be admissible or not, and I admitted it on the ground that they were admissions by the Plaintiff—anything she said on other occasions.

JURYMAN : But there has been no cross-examination. Have we had it all before us ?

His HONOR : You have not had it all read to you. You can have it all read to you if you wish.

JURYMAN : Can we appreciate it if we do not ?

His HONOR : Mr. Cassidy will refer you to matters he thinks will help you, and Mr. Shand will read you anything he thinks will help you from his point of view. If you wish to have the whole lot read to you I will have it done.

JURYMAN : We can only catch bits here and there. We can only form our conclusions from the evidence given to us.

His HONOR : Talk it over in the interval, and if you wish I will direct that the whole thing be read to you. But I suggest to you, to shorten time, that Mr. Cassidy can refer you to whatever he thinks is material, and Mr. Shand can refer you to what he thinks is material in the examination in chief, cross-examination and re-examination of the Plaintiff at those three other trials.

At 11.45 *a.m.*

His HONOR : Before you make up your minds to ask that the whole of this evidence should be read, I will remind you that Mr. Shand has the fullest opportunity of referring to the whole of the evidence on any particular incident referred to by Mr. Cassidy, not only the evidence given in chief,

but the evidence given in cross-examination and the evidence given in reply.

Mr. SHAND : That is, the Plaintiff's evidence.

His HONOR : That is what I am referring to.

Mr. SHAND : My objection always was——

His HONOR : I have ruled that they are admissible, and they are before the Jury, and the Jury is entitled to have the whole of it read—that is, evidence in chief, cross-examination and re-examination. If Mr. Cassidy refers to any particular incident, Mr. Shand has the fullest opportunity of referring to that incident. It is a matter for you, gentlemen.

JURYMAN : We do not wish to prolong the trial, but we do wish to hear something more in respect of that particular portion brought up by Mr. Cassidy.

His HONOR : Then Mr. Cassidy may refer you to the whole of the evidence.

JURYMAN : It is that particular evidence, examination, cross-examination and re-examination. We can look at it in the jury room ?

His HONOR : You cannot. It is not going down to you. You cannot read it in book form.

JURYMAN : You are asking a big memory test of us.

His HONOR : It is a memory test, that even the Judge, who has the typewritten notes and who can make an index of them, would hesitate to undertake, but unfortunately the law does not provide for your being provided with copies of the notes, and you have to do the best you can. It is a tremendous job, and a very heavy mental effort for you. Any help that I can give you I certainly will.

Mr. CASSIDY : I took no objection to the Jury taking any evidence to the jury room with them.

His HONOR : That was objected to by Mr. Shand.

Mr. CASSIDY : In dealing with the tonsil this morning I pointed out that in this case the position was developed that in reply Dr. Thompson gave an emphatic denial to there being tonsillitis. We then got into a discussion in detail of the various incidents of this trial, and of the whole history of the tonsils.

I have been putting it throughout that if a tube of that size had come through the tonsil at that time there would have been visible to somebody the hole through which that tube came, or a place where that eruption was visible.

I put to you that the Plaintiff came to St. Luke's Hospital, and I put to you then the evidence that we had from Sister Saunders, Dr. Bell, Dr. Ritchie and Dr. Marsh, those people swearing that there was no pus in the tonsil, that all that there was in that tonsil was the cheesy material that Dr. Marsh described, a similar cheesy material to what was squeezed out 18 months later in August 1942.

And I put to you at the stage that I read this, that at the second trial, in chief, the Plaintiff gave a description, which she altered when

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 18th January 1944, *continued.*

she came to this trial and which she has not adopted at this trial, and I put to you the reason was that the volume of the evidence made that story an exaggerated story which could not be sustained. And I read it to you.

Now, my friend has this privilege, that he comes after me, and I have no reply to him. He has every bit of evidence I put in, he can refer you to any bit of it that he likes, and he can let you take it away with you because I give my consent to it, and you can apply your minds to it.

What I said was this, that you find here again—given at the second trial, and not dealt with in this trial by her—you find again this exaggeration. You will remember I asked Dr. O'Hanlon did he ever find abscesses in the throat and he said No. I asked him if she ever came to him with abscesses in the throat and he said "No." So there is not one piece of evidence from anyone to support this statement at the second trial, and it is not sworn to here.

Mr. SHAND: It is sworn to here, that she had abscesses in the throat.

Mr. CASSIDY: I will read you everything she said here about it, and I will compare the accounts. And this account is not given in cross-examination, but in chief at the second trial. And it was not given at the first trial.

Page 816, second trial, "The ache first happened after I went back to Quirindi." You will remember that she had been at Manly for a month, so that would be at some time in December. She had had no prescriptions from anyone, except the prescription for calcium glucinate, and she had seen Dr. Ritchie and Dr. Bell. And the husband swore that at Manly she improved rapidly. "The ache first happened . . . get rid of the pus."

His HONOR: She fixed that as being December onwards; it was December to April that she was referring to there. Was there any reference to it at the third trial? And was there any cross-examination about that at the second trial?

Mr. SHAND: I do not know whether there was or was not.

His HONOR: Was there any cross-examination or re-examination?

Mr. CASSIDY: As far as I know the only cross-examination was at page 143, but I do not bind myself to that. "Since the time the swelling disappeared . . ." No, that is another matter.

In the third trial, in chief, page 12: "When do you fix the time when you lost that pain . . . pus was coming away." That is the whole of the description in the third trial.

Mr. SHAND: There is more than that.

Mr. CASSIDY: "Did you treat it yourself . . . troubled since."

His HONOR: Was there any cross-examination?

Mr. CASSIDY: At page 34: "As a matter of fact you say that the condition of your neck . . . I do not know."

JURYMAN: This is cross-examination?

Mr. CASSIDY: Yes. "Your inability to move your head" . . . (that was prior to October 1939) . . . "to October 1939?—A. No, only

in the last few weeks." And then "And you also only ate food of that description."

His HONOR: Do you want that?

Mr. CASSIDY: "You told us something about pus in your mouth . . ."

His HONOR: That is another thing.

Mr. REIMER: It leads on to a subsequent period.

His HONOR: The rest of it is referring to before.

Mr. CASSIDY: My friend has the chance in the interval to look as carefully as he likes and to read you any other material he wishes. But this remains, that that statement is unsupported by any evidence, other than the Plaintiff's evidence, those statements made there. And they are opposed to the evidence given by everyone else who has been called.

She has told us, you will remember—that is, if this were accepted—that her attitude to Dr. Bell in October 1939 at St. Luke's was such that when she used the words that she "adored" Dr. Bell at the time she said it with clenched teeth, and at that time she had in mind to sue him. And by the time she came to the Show in April 1940, she had made up her mind to claim compensation.

So in that period, from Mrs. Fisher, from her sister, or someone else, could have been ascertained evidence to sustain that statement, put as it is at page 14. In the absence of that corroboration I put it to you you will accept the evidence, largely uncontradicted, not contradicted until the late stage, given in this case as to that tonsil.

When I was dealing with the incident of eruption I said to you: "One looks at what is written about the time." I refer you to Dr. O'Hanlon's sworn evidence, that he was told that night that she had emptied it and had pulled the chain on it. I refer you now to what Dr. O'Hanlon wrote the following day in that letter, that she had emptied the whole chamber into the lavatory and had pulled the chain on it.

I refer you now to what the husband said about it when he was asked about what was said to Dr. O'Hanlon. That is page 199. I asked him if he said this at the first trial: "Did she tell you . . . hurrying back to her bedroom." And reading it consecutively, he admits what was said was this: "Did she say . . . pulled the chain."

Come to what was given to us as Particulars. You have Dr. O'Hanlon's evidence and what he wrote, and you have what the husband said. Now the Particulars. "As the Defendant is already aware the piece of rubber is no longer in the possession of the Plaintiff having been discarded by her at the time of passing."

What is the only story told by that evidence. The story told by that evidence—two bits of it in writing in Dr. O'Hanlon's letter and her solicitor's Particulars, and Dr. O'Hanlon's sworn evidence of what he was told—is that she discarded that tube.

What is put now? It is now put, at the trial it is put, that this tube was lost by her because she was pulling the chain with the right hand.

His HONOR: With the left hand.

Mr. CASSIDY: That she had the chamber in the right hand, pulling the chain with the left hand, and in the course of that the tube fell out and went into the lavatory basin.

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 18th January 1944, *continued.*

Mr. SHAND: That is what the husband said. He said it was accidental, and in fright that someone was coming.

Mr. CASSIDY: I will read to you what I put to her in this trial, what was put to her by the Judge in the first case. In that you will find what she said finally was this, that the chain was directly over the lavatory basin. His Honor put this question, page 53, "Go back to the morning of 5th October . . ."

You will remember the account given is that she placed the vessel on the floor on the verandah, picked it up, squeezed it with the fingers, green pus runs over the hand. And at the third trial she adds that she flicked the wire back with her right hand. So she had her two hands free at that stage. "And this pan that you were taking out . . . I was very weak." She turns round and closes the door. "And the importance of it did not strike you . . . leaning against the wall really." You will remember that the door is now closed.

Mr. SHAND: What?

Mr. CASSIDY: The door was closed. She said she closed the door. "And you tried to put your fingers in the ring . . . Some time during the day." Then: "Does it hang straight over the pan?—A. It hangs straight over the pan, straight over the top of the pan."

At the second trial Mr. Reimer put to her, page 94: "Do you deny you said in answer to Mr. Justice Street . . . still say it." At that trial Mr. Howard, the Inspector, had not been called at that stage.

Mr. SHAND: There is a little more than you read connected with that.

Mr. CASSIDY: "I suppose in your lavatory . . . that that was the position?—A. No." And then there was read to her all the stuff I have just read.

Mr. SHAND: At page 97 she makes it perfectly clear what she meant.

Mr. CASSIDY: We know from the sketch in evidence that the chain goes out somewhat to the right. In this trial, and in an earlier trial you know the Inspector was called to give the position of that chain.

Mr. SHAND: You should read page 97.

Mr. CASSIDY: The Inspector who had been to the house and made the inspection was brought down.

His HONOR: Mr. Shand wants you to read page 97. As I understand the evidence a description was put in of this, and it is a cistern with the chain on the right-hand side hanging straight down.

Mr. SHAND: She agrees with all that, and on page 197 she explains what she meant. (Reads evidence.)

Mr. CASSIDY: ". . . no one asked me."

Mr. SHAND: And the last four questions cover it.

Mr. CASSIDY: "You did on the previous occasions . . . and that is the position to-day?—A. Yes."

I put it that what was clearly put to His Honor when he asked her this question, and the impression conveyed there, was clearly that that

chain was straight over the lavatory, and that that was one of the things that assisted it to fall in.

When you come to the other position, and you imagine that door where it is, and you have to have the left hand going across in front of the right, and the right carrying this commode, which I suggest is not an easy thing to carry, especially for a woman who describes herself as being in the state she does, I put it to you that is a story that departs from what we have in the Particulars, and from what she told Dr. O'Hanlon at the time.

And I am reminded that the Plaintiff admitted at page 98 that she was asked to allow an inspection of that lavatory—that was before the second trial came on—and that inspection was refused.

I do put this, that what you are going to accept with regard to that matter is what was said originally; that is, that it was discarded; and that this story that is told at the first trial is a story endeavouring to account for this inexplicable loss of the article.

Can you imagine if the lady had had it in her fingers and examined it and pressed it and observed the pus and the swab and the wires, and had fingered it and handled it, having regard to the condition she was in when she retired to the toilet, that she would not have placed it there on some mantelpiece, or on the floor, or somewhere, instead of going through what she says she did—what I describe as an imaginary story as to the way in which that object came to be lost.

In these matters one gets small things by which to test the truth of stories. The account given is that at this time the Plaintiff was weak and trembling. Yet she said that when she showed her husband the sketch, that day she did not get up out of bed. Most of you know if a person has to draw something, and has to draw something of a nature such as that, which gives you an idea first of the elliptical, and then the sides of it, one cannot be in a weak and trembling state, so weak and trembling that she cannot get out of bed; she cannot sit up in bed and give a picture like that.

I suggest that those lines that are drawn show no sign of any hand that is weak and trembling. Further than that, those lines which are drawn, if you put the rule on them, just come to about the 2 inches suggested. The wires which come out, one longer than the other, come to about $1\frac{1}{4}$ inches. When you come to the matter of the drawing of those ragged edges, you will see that those ragged edges run to a very fine point. Which shows that the woman must have been using the lead pencil pretty well to get a picture like that. Yet she describes her condition as weak and trembling, and that she could not get out of bed, and that anything she had to do she would have to do in bed.

You are told by the doctors who have given evidence for the defence that you do get these imaginary charges, and that these people get a fear of death. I got from the Plaintiff in evidence that at that time she drew another picture for her daughter, aged 12, because she thought that she was going to die.

And we had it that within a very few days she wrote the letter to Dr. Bell in handwriting that was firm and quite good. She said in regard to it that at that time she had recovered somewhat. On the loss of this tube, I suggest again that the story is surrounded by unreality.

The eruption of the tube is a remarkable story, the lack of medical attention is remarkable. And then she follows that up with a story which seems to be contradicted by the very letter she wrote, by the very

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 18th January 1944, *continued.*

appearance of the sketch that she made, and contradicted also by the lack of corroboration of the thing occurring. They all seem to put it back into the same realm of unreality that exists in relation to the other stories that I have analysed in the course of my address.

I am reminded that the evidence indicates that she was so ill that she could not walk along the wall without holding on. I think that evidence has been repeated in all trials, and was repeated here.

With that I have finished with the evidence as to the eruption.

I am reminded that the husband said that she was unconscious on 2nd October. If she were unconscious she could not be aware of the swallowing of that tube. I think she explained it by saying that she was conscious at certain times.

In the letter she wrote on 11th October to Dr. Bell she at no time says she remembers swallowing the tube. She says she thinks that the tube came through at that time.

I wish to deal with two or three things in anticipation of my friend's address and then I am finished, They are these. The witnesses in this case have been subjected, as they are entitled to be subjected, to searching cross-examination by my friend. Questions have been put to them often, I think, under a misapprehension of the evidence. Instances of that abound. You will find it suggested to some of the doctors that another doctor has suggested something, and you will find on occasion that has not been put quite as the other doctor has said it. You will find that on occasions assumptions have been made which have been incorrect. Those mistakes, of course, can occur. None of us can remember everything. I remember particularly, with regard to Dr. Edye, at page 796——

Mr. SHAND : Did your Honor have that matter of whether it was the figure 2 or the figure 3 looked up by the shorthand writer ?

His HONOR : No.

Mr. SHAND : I would like that to be done.

His HONOR : What page is it on ?

Mr. SHAND : I will find that.

His HONOR : That was the 17th, 18th and 19th ; it was put in on the 17th and taken out on the 19th.

Mr. SHAND : Yes, It is down here that I said three days. As far as I can remember I said two days.

Mr. CASSIDY : Dr. Edye's cross-examination opened (page 1180) with this remark : " Do you take this also as amusing, that pus in the neck will travel anywhere . . . little while ago." Dr. Edye did not state he considered that it was amusing. Dr. Edye, at the end of the evidence, had been dealing with this fact : " I would say the fact . . . in the wound." And then he said to Dr. Edye, " You considered that it was amusing a little while ago." Dr. Edye never said that he considered it amusing.

And the other thing is this, that when Mr. Shand reads a passage to him he does not read the whole passage. This is the question put at page 796 : " What do you say as to the direction . . . naturally tend to go downwards." Mr. Shand omitted, by inadvertence or otherwise, that part of the doctor's evidence which is applicable to this case—because if

ever there was a big abscess cavity it would be here. And you have other questions of a similar nature put to the doctor.

It was suggested that a swab might be left in the tube, and the doctor is then asked has not he used a wick, and what he said was not to fix a definite date, but to say that it was four or five or six years ago. I suppose there is nothing harder for a man to give than an exact date, and he said that it was five or six years ago. The doctor was then confronted with the record, and the suggestion was made to him that because it was four years ago and not five, therefore he had committed some very grave error.

When you get down to an analysis of these little things, I suggest in a big case they mean nothing. But if in the course of the case the man suddenly says that he made a mistake, it seems to be taken that he is a man whose word is not to be believed. And when you come to look at the cross-examination, you will find that the cross-examination has been exceedingly clever, exceedingly astute, but that it is not cross-examination that is going to the root of the matter. It is a cross-examination where witnesses are confronted with the exact mode of expression they employed three or four years ago, and where there is the cleverest play on words—a play on words that the doctor does not deal in—and we have to get the proper perspective in such a case.

This case has to be decided on the matters that are sworn to by people who are competent to know. We have not to get it decided on little errors of recollection of certain incidents that occurred then. And that little difference in words used is a very different matter from where particulars are given, and a story is put forward by the Plaintiff, and then that story comes to be altered and added to in order to substantiate arguments which will be later put forward.

In this case it is no new thing that there has been disagreement between Dr. Poate and Dr. Ritchie. That disagreement has been there from the first of the case. They disagreed originally about the tetany.

At the opening of this case my friend said "I make no charge of anything intentional against Dr. Bell." That, gentlemen, he said clearly and distinctly in his opening to you. What has it developed into ? Has it stayed there ? Three trials have been on, and his opening remarks were that there was nothing intentional being put against Dr. Bell in regard to this negligence.

Mr. SHAND : Intentional in leaving it there !

Mr. CASSIDY : The position we have got to is this, not, as one knows might happen in surgery, that a pair of forceps that you do not know have been left in may be left in the wound. That could be understood. But that Dr. Bell knew that he had left it there, and that when the husband was going to the country Dr. Bell told him that the tetany would last a long time because, as Mr. Shand put to Dr. Bell, " You knew you had left it there." Is that a charge of intentional misconduct ?

Mr. SHAND : That was my opening, that it was always there.

Mr. CASSIDY : Do you now charge intentional misconduct against Dr. Bell ?

Mr. SHAND : I opened that to the Jury.

Mr. CASSIDY : " Knew it was there, must have known it was broken, left it there, and that he concealed it, and that he went so far that his

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 18th January 1944, *continued.*

conduct was such as to prevent her from seeing a specialist, and that that was the reason, as he says, that was the reason that he did not ask Dr. O'Hanlon about it, because he wanted to keep her from a specialist" —"No one would suggest that the doctor did a thing like that intentionally."

Mr. SHAND: I said that he left it because he did not have the courage of mind to admit it. Those were the words I used.

Mr. CASSIDY: "No one would suggest that the doctor did a thing like that intentionally . . . like the knots of cat gut."

Mr. SHAND: Lack of moral courage.

Mr. CASSIDY: Then it was put when he knew it was not coming out he deliberately tried to keep her away from a specialist, and further it was put that he and Dr. Ritchie would not discuss the incident with her, and that he did not examine her, Dr. Bell did not examine her, because he knew full well that he had left the tube there.

Those matters were all part and parcel of the evidence. It is a very very strong thing to put against anyone. At page 617, "I put it the other way round . . . very sinful suggestion." At page 649, "Was not that the position, that you did not want to antagonise her . . . That was not the position." At page 670, "You did not examine her because you knew well the tube had come through." At page 681, "And you did not recommend an expert because you knew there was a bit of tube in her?—A. That is an absolute lie."

So we come to the position that what is charged here in this case is a gross breach of duty on the part of Dr. Bell. And what is charged against the doctors called in support is a total disregard of the truth in order to support Dr. Bell's untrue story.

I ask you to take it as unthinkable that Dr. Marsh, or any doctor of repute, knowing that this woman had had a tube left there, would assist Dr. Bell to such an extent that they would go into Court for him, and instead of forcing him to compensate the woman would rather risk their reputations in Court by swearing a pack of lies in the box. All that applies to each witness who is called. Each one of them has to put his reputation behind what he says in a crowded public Court.

(Luncheon adjournment—12.50 to 2 p.m.)

His HONOR: During the adjournment I was successful in contacting the shorthand writer responsible for the transcript at page 1184, and he checked his original notes, and the "three days" is correct. He says that he has no doubt about it whatever.

JURYMAN: Referring to that passage which I mentioned this morning: Dr. O'Hanlon's name was mentioned in connection with certain statements which were made. We have not had the evidence of Dr. O'Hanlon in respect of that particular matter at the second trial.

His HONOR: Dr. O'Hanlon's evidence as far as the second trial was concerned was not put in.

JURYMAN: Did he give evidence at the second trial as far as that particular matter was concerned?

Mr. CASSIDY : Yes. Dr. O'Hanlon at this trial denied that there was any abscess there when she came to see him.

JURYMAN : The Plaintiff mentioned that Dr. O'Hanlon showed her how to press the abscess for the purpose of getting the pus away. As far as I know we have not had any evidence of Dr. O'Hanlon having denied it, or agreed with it, at the second trial.

His HONOR : He gave evidence before you here on that matter. That can be looked up.

Mr. SHAND : He denied it.

His HONOR : It is agreed that Dr. O'Hanlon denied he gave Mrs. Hocking that advice, or that he did show her how to do it.

Mr. CASSIDY : He denied it on each occasion.

Mr. SHAND : I do not know that I agree with that.

His HONOR : Anyway, we are only concerned with this trial as a matter of fact.

JURYMAN : Evidence was given at the second trial on that matter by the Plaintiff.

His HONOR : I do not think even Mr. Shand could have put in evidence here, evidence that Dr. O'Hanlon gave at the second trial. He could cross-examine him about passages in it, but he could not put it in en bloc. Do you follow that ?

JURYMAN : Yes.

Mr. CASSIDY : I asked Dr. O'Hanlon as to that matter at this trial, and he denied it.

I have been talking for a very long time, and it must have been a very great discomfort to you to have to listen so long to any particular voice, and particularly one which has no musical value in it such as mine. But you have been extremely patient in endeavouring to follow the substance of the argument I have been putting to you.

I have gone into a large amount of detail, because I fear that generalisation will take place on matters which are important in the address that follows. And because, from my point of view, grave danger lies in generalisation, in the course of my address, when asked to, as this morning, I have prolonged it at times to read what has been suggested by my friend that I should read. That has also, necessarily, prolonged my address. But one cannot avoid repetition to some extent, and some of it may have been repetition.

I return to two or three matters. There is a grave conflict of evidence between the doctors on certain points. Some of those stand out to a layman more picturesquely than others.

I have said that Dr. Thompson's evidence cannot be accepted when placed against ours; that the evidence of the Plaintiff's medical witnesses, Dr. Thompson and Dr. Welsh, should not be accepted when put against the evidence of the medical witnesses for the defence. You will remember that the onus is on the Plaintiff, and not on the Defendant.

Dr. Thompson, at page 333, when speaking of the question of this tube and how this tube remained in, or could remain in, which is one of the

In the Supreme Court of New South Wales.

No. 51. Closing Address of Mr. Cassidy, K.C., 18th January 1944, *continued.*

matters of vital moment in this case, said that the muscle there would serve to retain it. At page 346 he was asked what that applied to, and he said there, "serve to retain the tube when it was put in." You have had abundance of medical evidence, all of which tells you that is absolutely incorrect.

At page 393, Dr. Thompson—earlier he had been explaining how the tube could get to that position and he used swallowing, gravity and convulsion—in dealing with gravity said this—and I do put it to you that applying one's intelligence to it it is shown that his evidence may be described as a specious argument to support a premise that he thinks is right—at page 393: "You said gravity was the other one . . . no, just to show that gravity is acting."

I do suggest, having regard to certain other evidence which was given, that that evidence is most unsound to take as a premise for any finding of negligence, especially when you have such a volume of evidence the other way as is spoken of here.

I wish to come back, before I read this passage, that Mr. Reimer has found for me, to observations that may be made in regard to Dr. Bell. It will be said of Dr. Bell that he was a tongue-tied witness, or words to that effect. Dr. Bell said, in the course of cross-examination, something which describes his attitude. I looked this up, because I knew that it had been said somewhere. It is page 599: "But agreed that it should be . . . either way." That is the question, and a very complicated question. "I cannot remember any letter . . . absolutely sure."

I do suggest that what you saw in the box was a man who would not deny a thing unless he could be absolutely sure.

I do not know in what way you regard witnesses—and I am not entitled to know—but the witness who, with a ready tongue, will get into the box and tell you he can remember some conversation that took place four or five years go, and reconstruct it in perfect detail, is a witness you often regard with scrutiny. Because the human memory is not such that you can go back that far and remember just what was said.

One often thinks that the law encourages the quick tongue, as people are not allowed to give a general impression of what was said many years ago, but they must say what was said, what you said and what he said. And I do suggest to you that the truthful witness is often he who says that he cannot remember what he did say.

Apply that to your own lives. It is the glib tongue that can reconstruct. And I suggest to you that Dr. Bell's lack of glibness is one thing that stamps him as a witness of truth, trying to do the best he can to remember incidents that happened a long time ago, and which were not recalled in detail to his mind until December 1941, because this matter lapsed from the interview in April 1940 until December 1941, and until the writ was issued in 1941. The case did not come on until December 1941.

As I said to you in opening, the onus of establishing negligence is an onus that the Plaintiff takes upon herself. If the Plaintiff's story is not believed, the Plaintiff fails. If the Plaintiff leaves your mind in a state of doubt the Plaintiff still fails. The law is that the case has to be proved to satisfaction.

In this case look at the position. The initial matter is the negligence. That is the thing that has to be proved. I have dealt in the last two days with that story told. It is a remarkable story of the eruption

on the 2nd, and a story that is discounted by every doctor called on behalf of the defence, as to the travelling of that tube, and the presence of the tube in an infected area. All of those stories, of the 2nd and the 5th, I suggest are unreal and improbable, but they had of necessity to follow a story that was impossible in the beginning.

The story that the Plaintiff has to prove, and the negligence she has to establish, is not a negligence that Counsel can soften down and alter. The negligence that is charged relates to the removal of that tube, and the negligence that is charged is a negligence such as is indicated there. The tube that is left is a tube such as we have before us ; the thing that is left is a piece of rubber with a swab and two pieces of wire. It is sworn that is a fair representation of the thing that is left, except in this regard, that the rubber that was found was softer rubber.

If I might return for one moment to the matter of this trial and the abscesses, it was dealt with by Dr. O'Hanlon in chief at page 887 : " She came to Sydney . . . is that correct ?—A. No." And that matter was cross-examined on, and the cross-examination is at page 943—as to what occurred at the second trial.

Mr. SHAND : As to the scar.

Mr. CASSIDY : And as to the lymphoid tissue. There was cross-examination directed to that interview. The matter had been dealt with by me in chief, as to the denial of her story about the abscess. There was no cross-examination directed by Mr. Shand to Dr. O'Hanlon on that matter, although he had denied it in chief.

I do not propose to go any further into some of the other details. There is a number of details, of course, that one cannot deal with.

I propose to finish with the statement with which I started and that is the overriding matter, being the removal of the tube.

The story that is told, and the story that has to be established, is a story of a removal, negligently, in circumstances that have been suggested by every witness called as impossible to think of in regard to Dr. Bell—of rough treatment, of knowledge that the tube was left being present in the minds of Dr. Bell and the Sister, of subsequent failure to get it out, and allowing those people to go away, the doctor being in full knowledge that the tube remained in, and that from that time he did nothing about having it removed.

It involves not merely negligence in the ordinary sense of inattention or accident. It involves a charge of negligence that the Plaintiff makes on a story that she does not think of until 5th October 1939, and a story which, I suggest to you, is a story of something that never happened, something imaginary that has come to her at a much later date.

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 18th January 1944.

No. 52.

CLOSING ADDRESS of Mr. Shand, K.C.

May it please Your Honor: Gentlemen: Our task is nearly finished, and the most important part of your task is about to begin. In that task, gentlemen, you alone are the masters. It is fitting that you should be, because the law says so. What is urged by my friend or myself may be of assistance, or it may not. What is put by His Honor may be of assistance, or it may not be, to you, although naturally you will pay it respect.

But alone, quite alone, yours is the task of dealing with the facts in this case, and coming to the conclusion you think is a just one.

We all realise that you have had already a very severe task. It is bad enough for those who are used to it to have to concentrate day after day on this class of thing. It is worse when that concentration occurs in a Court where, I should think, no gathering of people should be held for any length of time. And it is worse still when your considerations take place at this very trying time of the year.

It is very necessary that you should approach this very important matter with a calm mind. And I hope to address you in such a way that I will put my propositions and reasons as best I can to you, which you will accept or otherwise. There is no necessity for heat, no necessity for controversy at this stage.

I should say that you would think it was of little help that my friend should liken my conduct to that of a young larrikin. I hope he is sorry for it; I certainly am that he ever said it. That does not help. What you want is calm consideration of the evidence.

What, I suppose, drew forth that most contemptuous remark was that I opened to you, and I have maintained all along, and will continue to maintain, that whenever a litigant comes before this Court, whoever he or she be, they will get just the same consideration whether they come from the high places or the low.

I put it to you earlier, and I put it to you again, that the medical men, professional men though they be, can claim no privileges. They can claim no more privileges than the Plaintiff in her humble position. They both come to you on the same level.

And, gentlemen, I suppose it is little assistance for this kind of thing to be put, which was put in my friend's opening, at page 4, first of all, about various witnesses. This is the class of thing one has to guard against, because it is not fitting that any person connected with legal proceedings should be overawed, whether it be by a galaxy of professional evidence, or the evidence of those who have had all the advantages of life. That is not what the law is for.

And this kind of thing, I put to you, is wrong. This is the class of thing my friend, you will remember, put to you in his opening, about the Matron that was to give evidence from the hospital. Unfortunately that lady gave evidence about something that she did not know anything about at all. He said that lady had been in distinguished service in the Middle East. What is the good of that?

Let us deal with it a little more. Take page 9. My friend speaks about Dr. Bell, Dr. Ritchie, Dr. Poate, Dr. Edye and Dr. S. A. Smith. As far as they have got qualifications they are properly to be considered. "It is the word of men who are not only at the top of their profession, but

men whose services to the country in other directions, civil and otherwise, are very notable." What is the use of that, except to try and overwhelm you with something that is quite immaterial.

Again, we find at page 30, speaking of Dr. S. A. Smith, "He is of a distinguished family of scientists." Has that anything to do with this case?

And as long as I am at this Bar, gentlemen, I will set my face against attempts to influence the cases of litigants by such matters as those.

You will judge these men by what you saw of them in the box, you will judge whether you can depend on them. This is the testing place, not somewhere else where you do not know what happens; this is the only testing place, and any considerations I put to you will be based on this evidence and this evidence alone.

One finds the same thing occurring when Professor Shellshear is called. You will remember there was considerable argument whether those X-rays should be admitted.

It is my duty as an advocate, and I would be failing in my duty if I did not perform it, to test everything that is put forward. And when I raised that objection even His Honor said—and I take it His Honor would obviously consider that he had justification in saying it—at page 11: "Do you suggest to me that a drawing or X-ray picture made by a Professor at the University is not accurate?" I said I did not care who prepared it, I wanted it proved.

What followed that was this. My friend stated—I am not suggesting that he was deliberately misleading anyone—it is not part of my case to indulge in personal invective, far from it—this is what he put at page 16, "There will be no doubt, because that is the 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."

That was altogether, totally, wrong. These X-rays that were produced here were not only inaccurate, as you have heard, not only were they inaccurate, but they were actually done for the purposes of the case, for the Defendant, and had never been used, these X-rays to be used here, had never been used for teaching.

Mr. CASSIDY: That is not correct.

Mr. SHAND: This Professor said that these particular ones had never been used and had been prepared for this case. And if the students had been taught from them I suggest to you that it would have been a very sorry teaching.

You will remember those little things that look like fat worms which are supposed to be tonsils. You have seen the sizes of the tonsils produced in Court, and you will remember the distances between the thyroid and the tonsil. And even Professor Shellshear's evidence at first was that they had to be reduced about $\frac{1}{2}$ inch to make them accurate. And one finds in them a variation of I think between about $2\frac{1}{4}$ inches and $2\frac{3}{8}$ inches and the $2\frac{3}{8}$ inches was about $\frac{1}{2}$ inch too far, according to the Professor.

Gentlemen, who misinformed my friend? If I had not taken that objection you would have been led to believe by my friend, doubtlessly quite innocently by him, that that was a true picture of the relationship and size in this model. There is no doubt about it you would have been

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 18th January 1944, *continued.*

hopelessly deceived, and the case would have proceeded on that basis, and they would have been very much more in evidence than they are now. You will have noticed my friend did not appear to relish relying on them in his final address. But if they had stood as a true characterisation of the position, I suppose for half the address you would have been looking at a picture show. It is strange, gentlemen, strange !

You will remember earlier in this case a picture of a transverse section of the neck was produced, that had been produced before at previous trials, and even the Defendant would not have that as accurate, so that was discarded.

That only teaches you how careful you have to be, and how necessary it is to analyse things and test everything put before you. And it does not, I suggest to you, leave a very pleasant flavour in your mouth.

The Plaintiff comes to you, I suppose, on a path that has been littered with the gravest difficulties that it is possible to imagine a litigant to suffer under. She has come here in a case where medical evidence is necessary, with her own doctor a traitor to her, a traitor, gentlemen—I will prove this —a lying traitor, this Dr. O'Hanlon. A traitor, not in the sense that he would not give evidence to help her case, but he would not give her any at all.

I will show you that there can be no doubt of it, no doubt whatever, that Dr. O'Hanlon thoroughly believed in the case, thoroughly believed in it, right up to some time just before the writ was issued in 1941.

But what happens then ? He writes down to the B.M.A. and he is told not to give her a report. That is all. Not a statement but a report, to her legal advisers ; because it might be misconstrued !

And this is a body, this is a union, the upper union of professional men, controlling those men on whom we rely for our health and our lives—men, most of them I suppose of the highest calibre.

But what does this mean ? The B.M.A. steps in and prevents a person's own doctor, to whom she has gone, and paid, and relied on, from giving her any assistance—even giving a report. It does not know what the facts are ; it does not know whether she has justice or otherwise ; it knows none of those things. But it writes back and says " No." And when it says " No," Dr. O'Hanlon says " No." And who do you think it was helping, to say " No " ?

When I put it to the Defendant whether that letter had not been referred to him, and whether he had concurred in it, he could not remember. Gentlemen, that action was admitted by him to be a most unfair action. No one could help characterising it otherwise. I suppose it is not often a man is defendant, or is going to be defendant, in an action of this type. One hopes that it is not often that a man may be party to an action that he knows is unfair.

Do you think if the Defendant had not given that advice, do you think he could have forgotten the incident, as he says, or would not it have lived for ever to sear his memory, an action for which he should be for ever ashamed. And yet he cannot remember !

And then what happened. Dr. O'Hanlon says " No." And he does not only say " No," but goes running with his story——

His HONOR : Can you raise your voice, as it is hard to hear you from here.

Mr. SHAND : As I said, gentlemen, he goes running with his story to the Defendant, and his evidence was—he denied it at first, and then it was put to him what he had admitted before—under instructions. Whose instructions ? And he goes and gives—he is certainly a party to giving —the records of Quirindi Hospital, although he says he did not actually give them himself.

But he does worse than that. He, a private doctor, to whom the confidence of his patients is given—because doctors must have it, that is how they diagnose complaints, and if patients get suspicious that their confidences will be disclosed the doctor will be much less successful, because he would not become successful—these incidents in the private life of this unfortunate woman, he goes down, and without reluctance—he was not ashamed of it, and is not now, and he would do it again—he imparts them to the Defendant.

And not content with that, after giving away these secret confidences, these poor little instances that make up the shadow half of our lives, he still treats her, still goes to her, still takes her money.

Mr. CASSIDY : What is that ?

Mr. SHAND : That was the first handicap.

Mr. CASSIDY : There is no suggestion of this doctor still going to her.

Mr. SHAND : Not now. He saw her in April 1941, after he had imparted all these things. I will try to be very accurate.

That was the treatment she got. At the behest of whom, or what body ?

I will show you that he did not want to do it. No decent man, no man having any pretentions to decency, would want to do it. It was under instructions. He was convinced, and there is no doubt he still is—and I can show you how he was convinced right up to a late date—that this tube had been left in her neck. But there was a power greater than his honesty ; there was a power that forced him. There must have been ; he says so. And what he did was against all the dictates of decency. And he did it.

It will be as clear to you, gentlemen, as daylight, that right up to the —I can show you that late in 1940 he believed every word of the Plaintiff's story. And yet he did what he did.

That was the first handidap by which the Plaintiff was beset, and there were plenty of others.

She could not get any doctors who were there at the time. She was brought down to St. Luke's on the second occasion. What for ? Dr. Ritchie has sworn, for the Defendant's benefit—quite plainly he swore that. He tried to go back on it. And even now he will not go back any further, or try to go back any further than this, that it was mostly for the Defendant's benefit. Why ? To try and get him out of the difficulty.

There she was in the hospital—no friend except her husband—everyone called in for the Defendant—Dr. Ritchie, the Defendant himself, Dr. Marsh (his sworn evidence : he realises that he was called in for the Defendant—although he had no hesitation in sending in his account to this gentleman who serves in a country store)—she had no one, because they were not acting for her, they were acting for the Defendant.

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 18th January 1944, *continued.*

And so this lady from a country town, with a husband, small people, they bring their case.

Now, gentlemen, what do you think has been the attitude in this case. The theory is hysteria, although all the times, every time, she has been under the doctors, whether it be under Dr. O'Hanlon, whether it be on the second occasion at St. Luke's when there was a number of doctors attending her, she was never treated for hysteria. But that is the cry now, because that is the only possibility of trying to get out of this very grave difficulty.

Gentlemen, do you remember the Plaintiff's cross-examination? Savage!

His HONOR: I did not catch that word.

Mr. SHAND: Savage—s–a–v–a–g–e.

What do you think the attempt was. To break her down! The wonder was she did not break down. One wonders how even a strong woman, a strong normal woman, could stand up to all this, the fourth trial, with all its anxiety.

And yet all that can be put against her is some small discrepancies in her evidence. She was not like Dr. Poate, and the other doctors who had read the part that was going to affect them—not as much as they should, but they had read it up, and Dr. Poate went into the box with it. She had not read hers, neither had her husband.

And in the result one is thankful that there was put forward—I am not criticising my friend when I say this—that savage effort to break her down, which utterly failed, because it carries with it its own lesson.

Gentlemen, you will remember the things that were put to her—whether she had not had change of life.

Mr. CASSIDY: You put that to her.

Mr. SHAND: Mr. Cassidy, you will remember the question. If necessary I will turn it up.

Mr. CASSIDY: You put the question.

Mr. SHAND: I had to put it; you were making the insinuations. Undoubtedly, there was a suggestion that she was suffering change of life, and therefore that instability of the emotions that sometimes accompanies that. And that was not successful. And even when she signed her name Chiquita, my friend asked her a question about that. And if, when she said her husband had spanked her, she had not been playing up?

This case has been conducted on behalf of a professional man. My friend has not ceased to remind you of that. And you will form your own opinion of the tactics that are displayed by the representative of that professional man—and again the criticism is not against my friend.

Dr. Thompson. Do you remember him? Do you remember those incidents?

Unless this gentleman—and I advisedly call him such—Dr. Thompson, with an obviously extensive knowledge of his subject had come forward, and that—may I be pardoned for using the expression—that grand old gentleman, with his intellect unimpaired, Professor Welsh, each showing courage equal to that, and perhaps greater than that, shown on the battle-field, where would the Plaintiff have been? What chance would she have had of putting her case?

What happens: what happens, gentlemen? Do you remember that incident of Dr. Thompson's eye, when he said that he had lost the sight of the right eye, and my friend said "You said the left eye?" and he said "No, the right eye." Need I say any more about that!

Do you remember his cross-examination because he lost a case, the only point in which was whether it was negligent for some boathouse keeper to have some kind of a nail protruding?

Mr. CASSIDY: I object. The suggestion was that Dr. Thompson had deliberately made use of a statement, that an admission of negligence had been made to him. And he denied it entirely in this Court, and I read it to him, and he admitted that he had sworn the opposite.

His HONOR: My recollection is that Mr. Shand in re-examination put it to him that his injury was caused by running into something that was sticking out.

Mr. CASSIDY: I put it to him that he had been willing to tell a lie.

Mr. SHAND: Of course you did, and he denied it.

Mr. CASSIDY: He admitted what I put to him.

Mr. SHAND: Exactly the opposite.

His HONOR: You had better turn it up.

Mr. SHAND: It was put to him that he used the word "compensation." He said "I never mentioned the word."

You remember this, gentlemen. I do not know if you want me to go all through it. I will if necessary. "I said something about compensation was mentioned but he was not the one who mentioned it."

Mr. CASSIDY: He said "As a matter of fact I never mentioned compensation."

His HONOR: (Reads evidence).

Mr. CASSIDY: Your Honor sees it at page 437?

His HONOR: Yes.

Mr. SHAND: I admit I do not. This is what my friend put to him that he had alleged that the Defendant had attemped . . .

Mr. CASSIDY: What page?

Mr. SHAND: Page 437. What the Defendant said was, "Well, he admitted the bolt was sticking out."

That was the thing, and on that, and the fact that the doctor had lost the case, it was sought to prejudice him in your eyes. Of course all kinds of methods are adopted at times, but you will be your own judges on that.

I was putting to you some of the difficulties that the Plaintiff was suffering under. She had arrayed against her not only the doctors through the B.M.A., but apparently also the University is lending itself through these X-rays. They were obtained through the University and done by persons in the employ of the University. And in fact Professor Shellshear said that he did give every assistance he could. Apparently he has been giving advice from the beginning, although he has only given actual evidence on this occasion.

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 18th January 1944, *continued.*

And the nurses, all available to the Defendant. The Matron, who was spoken of as coming from the East according to my friend's opening, was going to give evidence of the Plaintiff's complaints when she was in Quirindi Hospital, covering her first visit there. That was my friend's opening address. What happened that she could not live up to that? That is page 4. " You will have in addition to that a Matron . . . right from the very early days."

It was put to the Plaintiff, before my friend made that statement to you—it was put by Mr. Cassidy to the Plaintiff—that is apparently what he was going to prove, only apparently something went wrong—at page 75, " I put it to you you were making complaints at the hospital about your husband?—A. I never did. How can you stand there like that." And then my friend said, " Do you know that a Matron was in charge at Quirindi Hospital?—A. Yes."

What has happened to that evidence? It was never given. And the Matron was brought specially here! That is one of the mysteries! She would not come up to it, she would not give that evidence. And she was pretty game, because she did give evidence stating that she saw the Plaintiff's neck when she left the hospital—and she had not been there for a week or so!

Mr. CASSIDY: That is not right—six days.

Mr. SHAND: I said a week or so. If that is the worst mistake I make I will be satisfied.

Mr. CASSIDY: I have the notes here of what you have said already.

Mr. SHAND: That is the background of the Plaintiff's attempt to secure justice. She did not have anything, she did not have any hospital notes, she did not have the assistance of the nurses at the hospitals, she did not have the assistance of the doctors, or her own traitor doctor; she had just nothing.

Gentlemen, I will undertake to show you, not from disputed evidence but from the Defendant's evidence, just as clearly, and perhaps more strongly even than if the Defendant said " I am guilty "—I will show you from his own statements that he could not be anything but guilty. He could not, gentlemen, and remain a reasoning human being, with the reactions that all of us have.

Now, that, gentlemen, may sound a large proposition, but I will fulfil it. It is impossible to get away from. I am not coming to that yet. I will deal presently, and I hope in less than half the time that my friend took, with the chronological order of events in this matter, because they are most important.

Let us deal for the moment with some of the undisputed facts. Now, gentlemen, there are two matters that stand right out on the threshold in this case—perhaps more than two, but there are two matters. And the first one is this, that never until the Defendant got in the box at the first trial in this case did he ever deny that he had left a bit of tubing there.

Perhaps in the mass of evidence you have not realised that. I can assure you that my friend has not. But that is the fact. Let me detail a few matters. I will put them in more specific form presently.

When the tube had been discovered, not only Dr. O'Hanlon on 11th October, but the Plaintiff on 15th October, wrote down to the

Defendant about the tube left in the throat. Gentlemen, you have only to look at the correspondence. Was there any denial? Was there any denial, gentlemen?

The Plaintiff had said "You probably have heard . . . tube left in my neck." That is her opening.

If the Defendant is entitled to succeed in this case—he knew he knew, gentlemen, because there were only two (I will amend that, I think there were three; I will tell you who the other was presently), there were only two people who knew for certain that was so. One was the Plaintiff who had found this piece of material passed in the motion, and the other was the Defendant. He knew. One way or the other he knew. There is no getting away from that.

Now, what did he say? And he is not a fool you know. What would you say if accused, not with any venom, not with any hysterical atmosphere, but just told you you had committed some gross negligence?

Well, you would say: "There is something wrong, Mrs. Hocking, but I certainly did not leave any tube there, but we will see what is the matter." The first thing you would say would be what you knew to be the truth, that you did not leave the tube there.

What did he say: "I am sorry to learn you have been ill again. I had a letter from Dr. O'Hanlon, and I spoke to him by telephone on 30th October. It is difficult to explain your last illness, and the piece of drain tube which you say passed."

Does it need comment!

Now, gentlemen, that was when he was first faced with it—Dr. O'Hanlon's letter, the Plaintiff's letter.

The Plaintiff goes down to the hospital. I will have to deal in a little detail with this because it is so vastly important. And she was brought down for the Defendant's sake. She was not asked a single word by Dr. Ritchie or the Defendant.

And it goes a little further. Before the Plaintiff leaves the hospital her husband about whom, gentlemen, everyone who knows him, including the Defendant as far as he knows him, says is a decent honourable man—anyway the husband asked him, and this is the Defendant's admission, "What caused the tetany?" He said "Inflammation." The husband said "What caused the inflammation?" The Defendant said "I do not know." The husband said "I do"—and the Defendant admitted he said "The tube." It does not matter whether he said it or not, the Defendant said he knew what he meant. He said "The tube." There is no claim for compensation at that stage, He is just a decent citizen of a country town whose wife has been through a hell of agony for 18 months, comes down and asks the cause. Of course the husband knows; he had lived through it.

I think that Mr. Cassidy said that the tube was not mentioned. At page 636 I asked him: "He alleged that the tube had been left there . . . I had no doubt."

Now gentlemen, would more be wanted?

Here is a case where, if you analyse the medical evidence, the witnesses for the Plaintiff—Dr. Thompson, who has had plenty of experience, apart from thyroidectomy, of operations, and whose knowledge of anatomy appears to be well above that of most of the doctors called for the Defendant—he says: "Quite possible and probable."

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 18th January 1944, *continued.*

Professor Welsh, the old master, who has taught some of these doctors —Professor Inglis and the Defendant—" Yes," he agrees. That is one side.

The other side, gentlemen, are the Defendant's witnesses whom I will have to deal with, who, I will admit, say " Oh, that tube could not pass up from the thyroid through the tonsil," but who will admit every step of the way, I will show you, except the whole journey.

There is the evidence. One says " Possible and probable," the other admits every step of the way.

Where do you go from there ? To the two people who know, to see what their reactions were.

The Plaintiff has always been consistent. And so has the Defendant. The Defendant has been consistent in never making a denial. And I come to that stage where he is faced with as direct an accusation as a man of Mr. Hocking's gentle nature would make. " I do," says Mr. Hocking, " the tube." And there is not a word said.

Now, gentlemen, imagine that you knew the history up to that stage, and that the four of you were grouped, unseen, but within hearing of that interview. Could you have the slightest doubt ?

What would a professional man say when faced with that by a husband ? He would say : " My dear Mr. Hocking, you are entirely wrong. I know what I did. I ought to know ; I was the one who removed the tube. And I can assure you that your suspicions are entirely unfounded." Gentlemen, can you get over it. This is the Defendant speaking. When I say " speaking," what does speak is the pregnant silence. That is what speaks.

Now, gentlemen, it goes further. There comes the trip in the next year, 1940, when compensation is mentioned. You will believe it was the suggestion of Dr. O'Hanlon, who of course thoroughly believed that this tube was left, as anyone connected with this incident would believe it. When they come down in 1940, what happens ? There is a definite suggestion they are going for compensation. There is the accusation against the Defendant that part of the tube was left. What is the Defendant's answer ? " Well, if you are going to talk like that you had better go and talk to Dr. Ritchie."

Mr. CASSIDY : That is denied.

Mr. SHAND : The solicitor is denied. I am putting the Defendant's evidence. That is what the Defendant said : " If you are going to talk like that you had better go and see Dr. Ritchie." And Dr. Ritchie is seen, with what result I will tell you later. At present I am only dealing with the Defendant.

There you are—direct accusations, any amount of opportunity to deny. Accusations which, if unfounded, cry out for denial, and there is not a single denial.

Mr. CASSIDY : I draw Your Honor's attention to Mr. Hocking's evidence.

Mr. SHAND : Mr. Hocking said he was sent to the solicitor ; my friend said it was . . .

Mr. CASSIDY : (Reads page 140).

Mr. SHAND: I had forgotten that. That is the only occasion there is anything of a denial at all. You heard Mr. Cassidy read that. That is the only occasion on which there was a denial at all.

There has been a letter, Dr. O'Hanlon's letter, the special trip down to St. Luke's on the second occasion, the accusation by the husband. And to these two people there is never a single denial, never a single denial, until we come to that bare statement when litigation is threatened.

Mr. CASSIDY: I will get Your Honor to deal with it properly. There was another occasion when it was denied, when Dr. Bell rang Dr. O'Hanlon.

Mr. SHAND: Not to the Plaintiff. In fact I will deal with that incident, because you will find that even to Dr. O'Hanlon it was not until I had cross-examined and brought out the enormity of the situation that there was ever a suggestion of a denial there.

The next remarkable fact I put before you is this. The Plaintiff, of course, had never seen the hospital record of any of the hospitals until she came into Court at the first trial. Then at some stage they were produced. We know that she has had no opportunity.

Now, gentlemen, do you regard it as a mere coincidence that this evidence was given by the Plaintiff. She swore, before she saw a single hospital record, that when she came down on the second occasion to St. Luke's, the Defendant, Dr. Bell, did not examine her throat for some five days, and Dr. Ritchie did not examine her throat.

Gentlemen, do you realise the significance of that. Before she had seen the hospital record she made those two statements. And when the hospital records turn up, what do they show. They show——

Mr. CASSIDY: The position was that the hospital records were in evidence before the Plaintiff gave evidence. They were subpœnæd, in Court and called for before the Plaintiff gave evidence.

Mr. SHAND: You are entirely wrong. Inspection was asked for before production and it was refused.

Mr. CASSIDY: By whom? By us?

Mr. SHAND: And the Defendant, Dr. Bell, knew that they were refused. He told me that.

That is the position. She comes into Court and she gives a story, all in one day, all in one day that first time, and she makes these two statements that Dr. Bell did not see her throat, examine her throat—not her neck but her throat—for five days, and that Dr. Ritchie did not examine her throat at all. And you have the hospital records. All Dr. Bell examined on the first day was her neck and some other parts, the chest, not her throat. And the distinction is drawn in the hospital records about the throat. And Sister Saunders, called by my friend, says that undoubtedly those records are correct. I will show you a little more about that soon.

And what happens? Dr. Ritchie: no record of him examining her throat at all. And not only is there no record, but in an earlier trial, I think the second, he would not specifically say that he did examine her throat. Add to that this fact, that she swears that Dr. O'Hanlon did not examine her throat after the tube had erupted, and when she was taken to have the X-ray. And his letter clearly and surely indicates that he did not, and she had not seen his letter.

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 18th January 1944, *continued.*

What about those three things ?

It is a very vital matter of course, as you will appreciate without my putting it to you, if those examinations did not take place. One knows what that means. One knows if the examination did not take place the Defendant knew—he knew that it was no good examining—he knew what he had left there. He knew when Dr. O'Hanlon wrote to him with this detailed description, too vivid to be imagined, he knew that it was not worth while examining the throat. And so you have her evidence, supported by records that she had never seen.

Mr. CASSIDY : It is a shame that I should have to rise like this——

Mr. SHAND : You must feel reluctant !

Mr. CASSIDY : My friend has told the jury deliberately that this lady, without seeing those records, gave that evidence at the first trial about Dr. Bell not examining her——

His HONOR : Until five days after she went into hospital.

Mr. SHAND : I said five days after, but that was Dr. Marsh I think. I think that it was three days after.

His HONOR : You may have meant Dr. Marsh, you said Dr. Bell. As far as I can see the first thing that happened was that the hospital records were put in, and I cannot see anything in her evidence in chief about——

Mr. CASSIDY : In the evidence in chief there is no such evidence, but he said that she gave it in chief without seeing the hospital records.

Mr. SHAND : The hospital records were not put in.

Mr. CASSIDY : She gave no evidence in chief——

Mr. SHAND : She gave her evidence in chief before she saw the hospital records. I say that she had not seen a single hospital record when she gave the evidence that she was not examined—on the first day—by the Defendant for, I said five days but I should have said three days. She went in on the 26th, the Defendant did examine her throat on the 29th, and Dr. Marsh two days later. But that was the evidence she gave, that when she went in on the first day her throat was not examined by the Defendant.

Mr. CASSIDY : Where do you say that evidence is ?

His HONOR : I cannot see it. She was asked what happened when she came down. She deals with what happened when she came down at page 21. (Reads.) So far I have not seen any reference at all to an examination or non-examination of her throat by anybody at St. Luke's, not until after the luncheon adjournment anyway, and I have not read that far.

Mr. SHAND : At page 21 is what was first said. Start at the bottom of page 20 : " Do you remember if you saw Dr. Bell . . . He did not stay." That is the account of the first interview. I think Your Honor will find there is more in the cross-examination.

His HONOR : It must be after the luncheon adjournment because as far as I have been able to see, that is the only thing she said about the first day, and then she said she stayed in St. Luke's eight days and had no spasms while there.

Mr. SHAND : She first gives an account which says nothing about any examination.

His HONOR : She had no conversation with Dr. Bell about her trouble at all—she said that at that trial—during that seven or eight days. It must have been after the luncheon adjournment, anyhow.

Mr. CASSIDY : The hospital records were put in before the luncheon adjournment.

His HONOR : The St. Luke's hospital records were put in at ?

Mr. CASSIDY : Page 27, before the luncheon adjournment.

His HONOR : The luncheon adjournment was page 28.

Mr. CASSIDY : They were produced from the custody of the Court.

Mr. SHAND : To Mr. Monahan, counsel for the Defendant.

Mr. CASSIDY : They were marked before lunch.

Mr. SHAND : As m.f.i. not as an exhibit.

His HONOR : What were the ones that were first called for and put in, produced by the Matron ?

Mr. SHAND : I think you will find, gentlemen, in this evidence that it was only put in the first trial—I can be corrected if I am wrong—that it was only put by the Defendant's counsel that Dr. Marsh examined the tonsils, and it was not put on the first day that the Defendant examined the tonsils, or that Dr. Ritchie did.

His HONOR : Did the Plaintiff say anything about inspection of the tonsils by Dr. Bell or Dr. Ritchie on the first day ?

Mr. CASSIDY : (Remarks not heard.)

Mr. SHAND : She gives a description of Dr. Bell's visit, and says he went away in a hurry, and that the interview consisted in his saying that she was a good artist. And you will find I think, gentlemen, that not only is there that but, as I was putting to you, at the first trial by the Defendant's own counsel, it was not suggested that the Defendant had examined her on the first day. And this is admitted, that Dr. Ritchie did not examine her on the first day. Dr. Ritchie admits that. And there is no record of his ever having examined her throat. You will have to consider whether it would not have been almost——

His HONOR : At page 48 she was asked : " Did not Dr. Marsh——" Nowhere does she say when that was made. There is no reference to it being the third or the fifth day.

Mr. SHAND : I thought she made a specific reference to it. She certainly made an inferential reference when she said that Dr. Bell made no examination of the throat and went out in a hurry. And when I put to you that Dr. Bell's own counsel at that stage did not put to her that he examined her throat, and we know what the hospital records show, and when we know that Dr. Bell and Dr. Ritchie had been in conference after receiving Dr. O'Hanlon's letter on this matter, and discussed what should be done, can you imagine Dr. Ritchie, with his friend in a precarious position which he no doubt thought he was in then, not bothering to examine the throat, or tonsils, or whatever it was, on the first day.

Added to those broad factors, what have we got in this case. We find that the Plaintiff, who is supposed to be suffering merely from hysteria

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 18th January 1944, *continued.*

—Dr. Ritchie says all the time, and the others for some period from about June 1938—comes forward and states that she has suffered from symptoms that these doctors of the Defendant's did not know of at first. They did not know of them. And why was that? Why it was this, because this was a case of very severe tetany. There can be no question of that, lasting the time it did. It was a very severe tetany.

What is the good of my friend saying these doctors have had great experience. I suppose Dr. Poate is one with the greatest experience of thyroidectomy, and he tells you that in the whole of his experience he has only known of one case of post-operative tetany resulting from inflammation. That is his experience—one case he has known of.

And why is it? The reason is because you do not often get severe tetany. And happily a tube is not often left in the thyroid cavity, where the thyroid gland was. That is why these men had no experience of tetany of this kind. And they came forward, and they say "We do not know of it, and therefore it cannot exist." They have not taken the trouble to go to the libraries available to them, as Dr. Thompson has, producing authority for everything. And they did not even know of unconsciousness, and they have to go to all kinds of subterfuges now to get out from under the authorities, which have accumulated around them as time has gone on, and which were available to them.

This clasping of the hands, and the nails going into the flesh, they did not know of that. And yet that is one of the symptoms testified to by her, and by Mrs. Fisher as to seeing the results and the marks in the hands. They did not know of that.

They did not know that the spasm could be localised so that, for instance, it could affect one eye. All those things they held up to say that it could not be tetany.

Yet the authorities come forward, the authorities which have gathered together the knowledge of the world on these matters, and not only the knowledge of our comparatively small country, and comparatively small city, and each one of those things that she has deposed to is there set out as occurring in severe tetany. And that is what she had.

Now, gentlemen, we have heard a bit about hysteria but, as Dr. Ritchie admitted, hysteria cannot tell you what you do not know. It cannot educate you. So we have this extraordinary position of this lady coming forward and giving you, and giving it at the first trial, these symptoms that even the doctors here did not know of, and they proved to be characteristic of tetany and characteristic, gentlemen, of severe tetany, which she had, and of which these doctors had no experience, no experience at all.

I remember my friend in his opening—I do not know whether you remember it. He was going to say to you that Dr. Bell would detail to you some extraordinary story of a woman who hung from a balcony with the fingertips, and Dr. Bell did not know that it was tetany until she would not let go. Dr. Bell did not give evidence of it, but that was his opening.

And here are these extraordinary things given in evidence. She did not know it. She gives you all these indications one finds occur in tetany.

And finally, what? The hole in the tonsil. That has taken a bit of explaining away. I will deal with it separately. It has taken a bit of

explaining away with the supra tonsillar fossa, which came into vogue in this case—mentioned by one doctor before, but never used.

Mr. CASSIDY : It was put forward by Dr. Marsh.

Mr. SHAND : It was never put forward to explain this hole that Dr. Marsh admitted before a pencil could go in, but which has now closed up so that you can only get a probe in. I do not know whether the supra tonsillar fossa closed it up, but I will deal with it in some detail.

I will put to you that hers is a case of stupendous strength, and I will show you how it is dealt with by the Defendant and his witnesses.

When first the case came on, as the Defendant has admitted, he termed the Plaintiff's story as a wicked invention, as a wicked invention, that is how he termed it, although he thought even then that it was true tetany for some stage, up to say round about June 1938. A wicked invention —that is how he termed it.

Do you think, gentlemen, that a man who was prepared to agree to use terms like that—wicked invention—would not have given some categorical denial previously when he was faced with this, either by letter or to the husband ? He did not hesitate at the first trial to agree with those terms—that it was a wicked invention.

And what does he say now. Gentlemen, he will not say even now that it is hysteria after a certain period ; he will not say that even now. I asked him at page 606 " Did you think that it was hysteria . . . Yes, I have come to the conclusion that during the later stages of the illness there were hysterical manifestations." That is all. Even now he will not go further than that.

Now, how does the case go after that. He calls Dr. Poate. Dr. Poate says " Hysteria up to June, after that "—I am not trying to bind him down to a day—I am sorry—true tetany up to June, after that hysteria. That is Dr. Poate's evidence.

Although, gentlemen, is not this somewhat significant, that unconsciousness occurred in the hospital on the first occasion, and that is one of the signs that indicated that it was hysteria. He thought it was true tetany then. That was the time when unconsciousness was occurring.

Dr. Ritchie says it never was parathyroid tetany—never at any time. This suppuration that existed in it. Luke's that continued ; the swelling of the face and neck and body when she returned to Quirindi ; the suppuration that continued in the wound at Quirindi ; the fact that on, I think at least 14 occasions, she had to have these hot fomentations, of course for inflammation ; all those things meant nothing to Dr. Ritchie ; it was never parathyroid tetany ! He goes the whole hog, and I will have to deal with his evidence.

Dr. S. A. Smith is the half-way house. He will not say what it was at first. He will not say what it was. But afterwards, at any rate after June —he fixed on the same date as Dr. Poate—he says that it was hysteria. And then of course we get this new theory, that the blood supply does not affect the parathyroids, and he was reluctant even to say that suppuration would affect them. And what happens ? This theory is advanced. Dr. Ritchie had never heard of it, apparently, because he never mentioned it. Although every authority mentioned, as Dr. Poate agrees, supports

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

that the blood supply does affect the parathyroids, he is shaken to his foundations.

And this is the kind of evidence on which you are asked to say that the Plaintiff had hysterical tetany !

(At 3.45 p.m. further hearing adjourned until next day, Wednesday.)

(19th January, 1944.)

HOCKING *V.* BELL

ADDRESSES

(MR. J. W. SHAND, K.C.)

JURYMAN : Referring to the matter of the notes, is not there any possibility of our getting the notes to take with us to the jury room. It is very necessary.

His HONOR : The notes of the evidence ?

JURYMAN : The notes of the evidence of this trial.

His HONOR : As a matter of fact I can tell you that it reaches to page 1636.

JURYMAN : The question of the pages does not matter so very much. As an instance : When Professor Welsh was called in rebuttal he gave certain evidence that he had given certain instructions to counsel on which they framed a certain course of action.

His HONOR : If at any time you want any part read, tell me and I will have it read to you. I would like to let you have the evidence——

Mr. SHAND : The question of the evidence in this trial did not come up before. As regards the matter of the evidence in the other trials, as it was held to be part of the transcript, and as Mr. Cassidy has cross-examined on it, I would like it put before the Jury. Unfortunately, as fas as this trial is concerned, I do not think there is any means of giving it to them.

Mr. REIMER : It could be done by consent.

His HONOR : At the first stage you opposed it, Mr. Shand.

Mr. SHAND : I objected to it altogether ; I wanted to know what Mr. Cassidy would cross-examine on.

His HONOR : Now you are willing for it to go in ?

Mr. SHAND : It having gone in, I now wish the Jury to have it.

His HONOR : Have copies been prepared ?

Mr. REIMER : No.

Mr. SHAND : I do not mind if unmarked parts of the Appeal Books are put in.

Mr. REIMER : Have you any Appeal Books unmarked ?

Mr. SHAND : No. I understood that copies were being made.

His HONOR : The original arrangement was that the shorthand people should transcribe it, but they made representations to me that they

were overworked and had not the time. I discussed it with both Counsel and both agreed that it would be a convenient course for the Defendant's solicitors to make copies.

Mr. SHAND : And I agreed to that.

His HONOR : As far as the Jury is concerned, you, gentlemen, have it—Counsel have it, because you have the Appeal Books and you can refer to any portion you like.

The trouble is, gentlemen, you have to recollect as far as you can the evidence given.

JURYMAN : Seven weeks !

His HONOR : It is an impossible task for three days in most cases. But any particular evidence that you are doubtful about, all you have to do is to say " Will you have that read ? " and it will be read.

JURYMAN : There was the question of the evidence in rebuttal by Prof. Welsh, when he said that certain information was given to Counsel, on the evidence of Dr. Poate, that Dr. Poate had given in the first trial. And I understood Prof. Welsh to say that it was owing to the evidence of Dr. Poate, that something had come through the left tonsil of the Plaintiff, that he gave that evidence. My recollection of the evidence of Dr. Poate was that something had come *from*, but not *through*.

His HONOR : Out of.

JURYMAN : If we had the notes we could turn that up and satisfy ourselves which is correct, otherwise we are doing one party or the other a gross injustice.

His HONOR : The only way out of it, as far as I can see, if the parties do not agree that you should have the 1636 pages, is for you to ask me to read to you any particular passage you want.

JURYMAN : It might be a marathon.

His HONOR : This case has been a marathon.

Mr. SHAND : If it can be done there is no objection as far as I am concerned.

Mr. REIMER : There is no objection as far as we are concerned.

His HONOR : Then that will be done.

Mr. SHAND : As long as a question of expense does not enter into it.

His HONOR : I understand the practice of the Court Reporting Staff is to keep a copy for themselves. It will not be the original. I would like to lend you mine, but unfortunately I have marked mine.

Mr. REIMER : With regard to the matter that the Jury mentioned, that particular passage of Dr. Poate's evidence in the first trial is quoted and is in the present transcript. With regard to the other matter of the Plaintiff's evidence in former trials, there should be in the possession of the Court officers several copies of both Appeal Books.

His HONOR : They have been marked. They have been marked by the various Judges.

Mr. REIMER : We have no copy that is entirely unmarked.

His HONOR : The only other way would be to get from the shorthand people the transcript of the Plaintiff's evidence in the first three trials.

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

I was under the impression that you people were in the course of copying that evidence.

Mr. REIMER : I was informed by Mr. Rex that for the first time he had heard about it, that the solicitors were to do it.

His HONOR : I arranged with Mr. Cassidy that instead of the Court Reporting Staff doing it you people would do it. I suppose you did not attach any importance to it at that stage. That was to save the Court Reporting Staff having to type out the evidence of the Plaintiff on those three occasions. But I will see if I can get their copies from the Court Reporting Staff. And, gentlemen, it is very important that they should not be lost.

Mr. SHAND : Will they be corrected ?

His HONOR : When the corrections are made in Court the shorthand people correct them on those occasions. If they are corrected at a time when the shorthand people are not in Court, the corrections may not be there, but in most cases the corrections are pretty obvious.

Mr. SHAND : The Jury will bear that in mind.

His HONOR : You have taken such an interest in this case that I feel certain you will notice any mistake that has been made, but if you are doubtful about it then ask me. If there is any doubt about it, send a message into Court, and I will have the original turned up for you.

Mr. SHAND : I had drawn your attention yesterday to several broad aspects of the matter, and I had put to you what has been, generally, the defence brought to meet this case, a case where the Plaintiff has suffered and continued to suffer—that is not contested—a very serious illness, with all the indicia of tetany throughout.

You will remember this, that after the period in hospital at St. Luke's, where she had the inflammation and suppuration she goes to Quirindi, and there we know—we know it, luckily from the records of Dr. O'Hanlon —that her face, neck and body were swollen. You have those records,— and the short extracts.

She was treated there undoubtedly for inflammation and swelling of the neck. She was given those hot fomentations over a period of weeks, she returned to her home, she had these attacks of tetany, she had to go back to the hospital at Quirindi in September, suffering another attack of tetany, and we know that the tetany continues.

Where is the mystery ? What is brought to bear on that ? Dr. Ritchie, who says there never was any parathyroid tetany—right in the teeth of the other medical experts—although there was this inflammation, although all the text-books dealing with the subject say that the inflammation may affect the parathyroids and bring on tetany, he discards all that and says there is no tetany at all.

Of course, gentlemen, you will consider whether you can accept his evidence. I will recall to you certain aspects of it. One of them, of course, was this, that he first swore to me that it was hysteria, not tetany, directly he had heard the contents of Dr. O'Hanlon's letter, which describes only tetany, and describes Dr. O'Hanlon's admitted belief—at any rate admitted at that time—that it was tetany.

Yet this gentleman, who is supposed to be an expert in diagnosis, swore to you, that as soon as he heard the contents of that letter, which referred to nothing but tetany, he came to the firm belief that it was hysteria. And then, when I said, " On what ? " he withdrew it. And he said that it was on the second time that she came to St. Luke's. I put it that you will not accept that evidence.

Then there is the evidence of Dr. Poate that she only had tetany till about June, or it may have been July or August 1938. What did he base that on ? She had had her unconsciousness before then, she had had the spasms. She had had unconsciousness before then—he says that was one of the things that said that it was not tetany, yet he was prepared to say that it was tetany up to June.

I have already referred you to Dr. Smith. He would not say at first what it was. Although all the facts were there for him to consider he said that he would not say what it was. Yet later on he concluded that it was hysteria, because he had this new idea, never put forward before by any authority, that the blood supply does not affect the functioning of the parathyroids. Every authority dealing with the matter is against him, and of course he has to admit, at least theoretically, that if there is suppuration around the parathyroids it might affect them, because suppuration can eat away any of the human tissues, and if it eats away the parathyroids he admits they can be affected. And there was suppuration there.

And it is, I put to you, an extraordinary thing, when one comes to consider the case of people like Dr. Poate, who has literally lived with this case from its initiation, and the first trial, that when this unsupported theory is put to him he seems to be shaken.

Gentlemen, you are asked to conclude this case on theories. But it would appear these theories which are held by these doctors are like bubbles, one moment scintillating in the sun, and a light touch and they have gone.

Dr. Smith gave the touch in this case, and appears to have altered Dr. Poate's outlook.

Those are some of the things you are asked to decide this case on, against the hard facts. And the hard facts are the reactions of the only two parties who knew—with one exception whom I will mention later on. Those two are the Plaintiff, who never varied in her substantial description of what she found and what happened, and the Defendant, with his conduct that I have referred to in part, and which I will refer to in more detail later.

One gets a change in this case for the Defendant as it advances. I will show you that there can be no doubt that this hole in the tonsil that has been deposed to, not only by the Plaintiff's medical evidence, but by the Defendant's witnesses, Dr. Marsh and Dr. Steele, who saw it, as big as the end of a pencil—they could not explain it. For the first time they have definitely tried to explain it. Instead of as before explaining it by a number of crypts, this time they have attempted to say that it was a supra tonsillar fossa.

And on every occasion they have mentioned that, they have shown that shrinking that does occur when people know that they are not saying what is accurate. Dr. Steele—you will remember him—when I asked him whether he would admit that he had altered his case, because he had referred

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

to crypts before, these little things, and not once to supra tonsillar fossa. which they now try to call the main crypt instead of its real name, supra tonsillar fossa, they only mention crypts now—when I asked him if he has altered his case, what does he say, " Not necessarily."

We are dealing with educated men. We are not even dealing with persons like the Plaintiff, who are unversed in critical analysis.

Mr. REIMER : I object to this. Would your Honor look at what Dr. Steele said at page 173 in the third trial.

Mr. SHAND : I know what he said.

His HONOR : Page 173 in the third trial is not in evidence in this Court.

Mr. REIMER : Mr. Shand made the statement that Dr. Steele made no reference until this trial of the supra tonsillar fossa, or the large crypt, and that he has altered his evidence. That is a statement which is inaccurate, and there is no evidence in this trial to that effect, and I am merely drawing Your Honor's attention to what appears there in view of what Mr. Shand says.

His HONOR : I do not think that unless Mr. Shand makes some inaccurate statement on what Dr. Steele said at this trial you can refer to what he said in another trial, unless it be in evidence.

Mr. SHAND : I will not deal with an important case like this by merely technical evidence. I want to deal with this fairly. The evidence that my friend referred to in the third trial was this. Dr. Steele said " . . . which I mentioned previously," and he went on to say that he regarded the crypt he saw as superficial. Superficial ! ! The supra tonsillar fossa is not superficial. He was not trying to explain the hole in the tonsil by this. He kept on repeating, " That is my answer," when I kept on asking him if he would admit that he had altered his case he said " Not necessarily."

In dealing with this defence will you remember this. Will you remember the blood calcium test taken in October 1939—7.2 instead of 10. Now, according to them, this tetany had finished in June or July or August 1938, the year before. And we find the blood calcium test showing that at this time. And that was not put before the Jury on the first trial. Why ?

Everyone admits the extreme importance of it. Is there an answer to it ? Why was not it put before the Jury at the first trial ? They had it then ? In point of fact it was mentioned by, I think, Dr. Poate, and then there was an objection taken. It was objected to that if it was a written document it had to be produced. Why was not it produced ? Was that a fair way for professional men to conduct a case—to conceal—because that is what it was—to conceal from that first jury the fact that the blood calcium test had given the indications of tetany ?

And that is why I say that this case has not been conducted as one would expect it to be conducted on behalf or a Defendant in this walk of life. If he is innocent, one would expect these matters to be dealt with quite fairly. And, as I mentioned to you yesterday, if it were hysteria —if it were hysteria !—why was not there treatment for hysteria ? There was all the opportunity. She could have been advised to go to a specialist. At St. Luke's the second time the throat and the blood specialists were called in. Why not treatment for hysteria ?

The Defendant has never become firmly convinced yet that it was hysteria. Dr. Ritchie had firmly made up his mind at that time that it was hysteria. And we have heard what the treatment is for hysteria; I read it to Dr. Smith, who entirely agreed.

Part of the treatment is to secure the confidence of the patient to endeavour to see what the canker is that is gnawing at the subconscious personality, to get them to tell, to bring it out, to encourage them to talk. However, was that done? The Plaintiff was met, as far as her troubles were concerned, with a stony silence.

Do you really think that they thought that it was hysteria, or has not this been dragged in afterwards as one of the, or the only possible, avenue of escape?

While I am dealing with this matter I want to deal with an aspect of the case that my friend spent a lot of time on. Of course, the Plaintiff is bound by her particulars that she gives, but you have to regard her particulars from a commonsense and human point of view.

Let me remind you of this. When the Plaintiff drew this sketch that you all know of she was undoubtedly a sick woman. There can be no dispute about that. Leave out for the moment the cause of it: she was undoubtedly a very sick woman. Dr. O'Hanlon, who does not give her the benefit of any doubt, and who is allied with the defence, agrees that he and her husband had to assist her down to the car, assist her out, when going to the hospital, and she had to be assisted when the X-ray was being taken.

And in his letter of 7th October he says: "Mrs. Hocking is still far from well, she is very unsteady when she tries to walk." That is what he swore, and that is what he says still.

What is the use of pointing to this (sketch) and saying these are steady lines. Of course, this has been gone over after. And therefore she was well. We know from the enemy's camp that she was not, that she was still a sick woman.

We know that everyone has different ideas of measurement, and particularly women—sometimes about the measurements of their husbands. But just have a look at this. This (sketch) is described by Dr. Bell when he sees it, " This is an excellent drawing," " very good " or " excellent." And an excellent drawing of what? Of course, of a drainage tube.

I want you to consider this. Of course it is too big. You will remember the evidence of the previous trial when it had it checked up. Of course it is about twice the circumference of a drainage tube. But if you put it all into scale you will see what size it would be. It would be about half that size all round.

This Exhibit " P " was constructed. I am not complaining, because my friends are entitled to get all they can out of it. It was said at first to be a rough representation, and then a fair representation. The Plaintiff said in the box, " It all depends on what you mean by ' fair '."

Here is the drawing, never seen by the Plaintiff for two years, in the possession of the Defendant for two years. Is that a fair representation of Exhibit "P"?

You see the V-cut, where it has been torn; what has been described as a diamond cut. Where is the diamond cut in this? These " fencing wires " as I satirically called them, how do they compare with those in Exhibit " P "?

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

And this is what she drew at the time—a sick woman—what Dr. Bell regarded as a good drawing (page 660).

Now there is a very eloquent piece of evidence given by Dr. Poate. And it is this. In the first trial Exhibit " P " had not been constructed. All there was to depend upon was the sketch and the Plaintiff's description. In the first trial it was put to Dr. Poate by his counsel whether the abscess or the swelling caused by such an object as was described by the Plaintiff would be as big as a fist. And he would not admit that. He said, " As big as a duck egg."

At the second trial Exhibit " P " was constructed, and it was put to him again, and on the second trial he said the swelling would be as big as a fist. That shows you how the evidence has been led in these cases.

There is the effect of it. As first described by the Plaintiff, together with the drawing, Dr. Poate says the swelling would be as big as a duck egg. He was asked if it would be as big as a fist, and he said it would be as big as a duck egg. When Exhibit " P " was constructed he felt himself at liberty to say that the swelling would be as big as a fist.

And there is the color of it. What came through had a greyish appearance, what came through was soft. This is hard rubber. And it was never suggested that this filling in here, whatever it be, was of that size, or jammed in in that way.

Of course, gentlemen, what the Plaintiff describes in her particulars is not what went in the neck. She never saw that. What she described was what came out. And what she said in her particulars was not that the substance was wire, but that it was like wire. You will remember my friend's somewhat frantic effort—you have those particulars—to read it in the way he wanted to. " A piece of soft rubber tube about 2 inches long, greyish in color, and had the appearance of having been in water for some time. It was cut off straight at one end and torn at the other. On the side . . . torn end of the tube." You will remember when my friend read it he would stop at, " what appeared to be a swab," and then say, " and wire."

And, as I am reminded, I was putting to you previously what Dr. Poate said about it, and the change in his evidence when Exhibit " P " was brought into existence (page 1451). What he said was this: " Am I not correct . . . size of the fist ?—A. Yes."

So, gentlemen, one has to be careful in dealing with these aspects to remember the history of the progress of these trials, and to consider also the human element.

This sketch is one of the most remarkable features of the case. She had no medical knowledge, she did not know what the tube was like. She had not seen it put in because she was unconscious. And yet there comes into being immediately, when the tube has been lost, this drawing, which even the Defendant says is a good drawing.

She had no medical knowledge, no nursing knowledge, nothing. And, as Dr. Ritchie observed, hysteria does not allow you to put forward something that you did not know before.

Let me for the moment turn again to what has emerged. Of course, the aspect of tetany is important, because if there is tetany there must be a cause. And the only cause that there could be in this case is this suppuration round about the area and there is no other cause for suppuration lasting for some 19 months, there could be no other cause suggested, and it has not been suggested, than a foreign body.

That is the importance, gentlemen, of course of the tetany. So what happens? That which was called by my friend a red herring. But you can see its importance by the attempts to explain it away.

It was said that tetany is not accompanied by unconsciousness. If you want them I can give you nine authorities to say that it is. And do you remember how Dr. Poate attempted to get away from that? Of course, he did not know. At the third trial he was surprised when it was put to him that there was an authority. There was only one put to him at that trial. Now we have nine. He was surprised there was an authority which said that tetany was accompanied by unconsciousness. Because he did not read it; he was relying on his own experience. And his own experience did not cover severe post-operative tetany. And it is only in severe forms of tetany that unconsciousness occurs. He did not know that.

Of course, he knows a bit more now. This time he says that it is not characteristic of tetany. That is generally what is now said. That is a different story from what was put forward before.

Well, as I say, we find that it is accompanied in severe cases by unconsciousness. So how can he get out of this? He has to admit that he has not read the authorities. That is one way out, and not a particularly good way. Or he has to find another way.

So what he says is: It is only in the past few years that there has been a distinction drawn between parathyroid tetany and tetany arising from other causes. That was quickly finished—that attempt to cover his lack of knowledge on that subject. When Dr. Thompson got back in the box, you will remember, he read to you that passage by one of the expert world authorities, which stated that whatever the cause of tetany the symptoms and effects therefrom were the same.

And there it stands. They cannot get out of it. They did not know. She was describing symptoms of severe tetany that they had not met. In only one case in his experience had he struck a case of post-operative tetany arising from inflammation. And I suppose if he relied on his experience he was entitled to say that.

But it goes a little deeper, because you will remember when I cross-examined him he claimed that he did know that it accompanied, or could accompany, tetany. He claimed that he had read that. Do you think that he had?

And yet, coming forward in the third trial, he admitted that he gave a statement, sworn evidence in Court, that dealt with his experience—and I put to you also, generally—and never indicated once that there was any support for a suggestion that unconsciousness accompanied tetany. That is one of the difficulties that the Defendant's witnesses got into.

This clenching of the hands with the thumb in, they did not know that. They had not experienced it. They had not read about it. And yet the world authorities say that it occurs. That is one of the things they put forward as indicating that this was not tetany but hysteria.

Dr. Smith, of course, the matter having been brought up, then said that it is rare, it is unusual, for that to happen.

The whole of Dr. Poate's evidence in previous trials—the relevant parts have been brought before you on that aspect— has been taken up with showing, not that she had her thumb out—he never mentioned that—but that this clenched hand with the nails sticking in, or clenched in, did not occur in tetany. Because he did not know.

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

This case has taught them all. They did not know of this effect on the eye. They did not know that spasms could be localised to a few or even one set of muscles. So they put that forward as an indication that this was not tetany.

And yet you have heard read to you, and you can have them read again, authorities which deal with the localising of muscles, and the effect of tetany spasms on the muscles.

Let me for the moment here deal with my friend's criticism of Dr. Thompson. In putting forward his solution of that eye incident Dr. Thompson did not say the blood would have to be arrested. What he said was that if it were impeded, if you got a state in the blood where the calcium was low and there was some impediment to the flow of blood, then you could get a spasm with a much less pressure than you could if it was not severe tetany, and the calcium was only affected to an extent.

McCreagh, volume 5, page 421: "The more severe the tetany . . . produce a spasm."

They refer, gentlemen, to massage. Now, it is one thing to say that massage will prevent tetany spasms. No one has ever said that. It is another thing to say that it may, when the spasm has already contracted the muscles, give relief. Dr. O'Hanlon will not have there was any massage here, but any massage here was given after the spasm had operated. Whether it was that which relieved the spasm or whether it was merely the fact that it was going off anyway, no one can tell.

I have asked practically every expert called for the Defendant to produce an authority to say that when the spasm has operated, massage will aggravate it, and there was not one produced.

And it is a strange thing, is it not, that in this case Dr. Thompson has produced an authority for every proposition that he has put. The Defendant admitted that. When we asked these experts—undoubtedly good men in their own spheres, but they have not had experience of severe tetany—when we asked them for their authorities, as a general rule we failed to get them.

What was the other aspect that was brought up? The other aspect was the sudden cessation. Here again what have we got? Generally the cause of tetany disappears gradually. That is the usual thing when there is injury to some part of the structure of the parathyroids—there is a slow process of healing and a slow recovery. That is what you would expect. That is the experience of the Defendant's experts.

But here you have got a sudden removal of the cause. You have got a bursting of an abscess through the tonsil, with a discharge of pus that was affecting the functioning of the parathyroids, and when you get a sudden removal of the cause you would expect a sudden recovery. Not so! Not so!

It is true she got no spasms after the tube passed, but we do not know if it was a sudden recovery. Dr. Ritchie admitted to me that there comes a stage, if there is going to be a recovery, where spasms disappear but there is still latent tetany—not manifest, but latent. And no one tried at St. Luke's, no one gave a test, to see if there was latent tetany still. I will deal with that, because that is a matter of vital importance. That will help to tell you whether the Defendant desired to make a test or not. That is another aspect of the case.

One knows this, that the blood calcium was only 7.2. And one does know this, that Dr. Ritchie, who claims that he thought that it was hysteria, gave her calcium after she had come out of St. Luke's.

And Dr. Bell—Dr. Ritchie will not admit that he partook of this; he would not deny it, but he would not admit it—in St. Luke's gave her halivol, which you give to persons suffering from tetany, and gave her milk, which you also give.

Now, gentlemen, I must deal with certain criticisms of the medical men who gave evidence in this case. My friend approached that subject as if you must accept their evidence, that you cannot doubt it. That is his point of view. And that is the point of view, as I put to you before, that I have been fighting against.

I do not know what His Honor will say about this. I do not think that His Honor will put that to you, but whatever His Honor puts I must call your attention to cases in which these gentlemen have not told the truth. It cannot be shirked, and it can be proved.

Gentlemen, if these witnesses for the Defendant have told what they realise is not the truth, the whole of the value of their evidence is gone and you cannot depend on them, because you are being told by them things which you cannot check, which you do not know about. It that is so whom would you rather believe on questions like that—Dr. Thompson, Professor Welsh, that most conservative of experts, who will not say unless he knows, who will not trespass on surgical questions, who will not say unless he is sure. Can anyone suggest that he is not telling the truth?

Gentlemen, let us deal with the Defendant. I have referred, without pleasure, to the matter of those X-rays. You will remember what my friend's words were. And again I remind you I absolve him of any intention to mislead. He was mislead, doubtless.

You will remember—I want to be quite accurate—"There will be no doubt that is a neck not prepared . . . into existence merely for this case." "An X-ray not prepared for this case." That was admittedly and unquestionably wrong.

Gentlemen, sitting behind my friend was the Defendant. He heard him say that. He knew it was wrong, because he had helped, so Professor Shellshear tells us, to pay, in part at any rate, for those X-rays which were prepared for this case. He sat there, gentlemen, no doubt—I cannot avoid it—hoping that would be got away with. And there again I hate saying it—does not he show just that lack of moral courage when he stood by and hoped that this piece of broken tube would find its way out of the sinus. There is no escape from it.

He must, if he had the strength of courage, have said to Mr. Cassidy: "That is not right; I helped pay for it; I had it made at the University." But there he sat until eventually, at a much later stage of the case, it was brought out from Professor Shellshear.

It is no good saying that just because a man is a doctor, just because he lives a life that so far has not been criticised by the community, when this sort of thing comes into the case, it is no good saying that you must believe him. Because you cannot get away from that.

I have already referred you to the incident about the letter from the B.M.A. to Dr. O'Hanlon telling him not to give a report because it might be misconstrued. I have already put to you, how could he have forgotten a thing like that. He could say definitely: "No, I had nothing to do with it."

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

And do you think that a mere secretary of the B.M.A. would have the authority, without referring to some responsible person—and the Defendant is a councillor of the B.M.A.—do you think that the secretary would have the authority, of his own initiative, when asked by any doctor if he could give a report on his patient, that he could of his own initiative advise him not to ? That is ridiculous. There must have been reference to someone. If there was not, it is a terrible thing that there is general authority to the secretary to tell a doctor that he cannot give a report. You can judge whether the Defendant would have forgotten a thing like that.

And do you not think, if he had not had a hand in that letter or authorised it, or had it referred to him, why not call the secretary of the B.M.A. to say " I did that ; Dr. Bell had nothing to do with it." It was a very serious matter. There is no suggestion that the secretary was not available. How can that be got away from, when he was not called.

I have to say these things. I am appearing for my client here, who wants justice, and these are things you have to weigh. Do you think that the Defendant would do what the ordinary innocent man would do, decent innocent man, in using those confidences that he admits were grossly, the dissemination of which was grossly, unethical. And yet he is using them, those little privacies of life that Dr. O'Hanlon secured in 1941.

He admits that it was unfair that he should have access to the reports of the hospitals and the Plaintiff have none. He could have remedied that, I suppose, and he did not. Is all this the action of an innocent person whose word you can trust ?

Would your Honor prefer I give references ?

His HONOR : Yes.

Mr. SHAND : Pages 602 and 607 ; divulging of confidences was 600 and 601, and the failure to deny he was a party to the letter written by the B.M.A. 597/8.

And he would not deny this when I put it to him, that Dr. O'Hanlon, before he wrote to the B.M.A., had already advised the Defendant that he was going to write (597/8/9). And he could not have forgotten that either. What do you think happened ?

Mr. CASSIDY : I thought this matter over last night, and in view of the grave view I take of some of the matters which have been said by Mr. Shand in his address, I am taking a note of them, and I propose to ask your Honour's permission to deal with them at the end.

His HONOR : I do not think you can do that.

Mr. CASSIDY : He puts me in the position that I get up, that I interrupt his address, that we get away into some argument who is right and who is wrong. Is not it much better for me to allow him to proceed, and then call Your Honor's attention to them for Your Honor to take such a course as you think fit ?

His HONOR : Not unless Mr. Shand agrees.

Mr. SHAND : I do not.

His HONOR : The only way is for you, if he misquotes the evidence —you must get up and object.

Mr. CASSIDY : I will refer to one matter this morning. Mr. Shand said of Dr. Poate that he did not know of the unconsciousness, that he

only learned it during the case and he did not mention it during the first trial. At the very first trial Dr. Poate gave the express evidence at page 201. I have looked up the passages.

Mr. SHAND : Let us see what he said in this case.

Mr. CASSIDY : " What about unconsciousness happening ?—A. That is a very rare happening with tetany. It very rarely occurs until just before death." That is the exact opposite of the conclusion that Mr. Shand puts to the Jury. If I interrupt it stops the train of his address, and I suggest the right way——

Mr. SHAND : You interrupt.

His HONOR : I think you must interrupt.

Mr. CASSIDY : At page 182 also, Dr. Poate also speaks of it.

Mr. SHAND : The third trial——

His HONOR : The third trial is not in.

Mr. SHAND : No, but I put it to him.

His HONOR : Get it in this trial. He started at page 1415.

Mr. SHAND : As I put it to the doctors, that terminal event, unconsciousness, occurs practically always. Before you die—you generally do not go out in a flash—there is a period of unconsciousness.

This is what I put to Dr. Poate in this trial (page 1447) : " And this is what you swore . . . was it not . . . literature I have read ?—A. Yes, that is correct."

Mr. CASSIDY : What Mr. Shand put was that Dr. Poate knew nothing of unconsciousness, that he changed his evidence.

Mr. SHAND : I still put that.

Mr. CASSIDY : That he did not know that it was rare. Dr. Poate used the exact words of the authority : " It is a very rare . . . until just before death." At page 182 he dealt with it also. If Your Honor will not adopt that course——

His HONOR : I cannot adopt that course without consent, so you will have to interrupt wherever there is a mis-statement of the evidence.

Mr. SHAND : Let me read this to you : " I have found no reference to it in the literature . . . " He said that he corrected it. I put it to you that it was no correction. It was only referable to cases of mild tetany where it was found. I put to him at page 1448 : " And the only reference given . . . literature I have read." There was a reference, a direct reference in Osler, and many other references. " You are putting me into a very awkward position . . . carry those detailed words."

That is sufficient, gentlemen. Unconsciousness occurring before death has nothing to do with it. It is not typical of anything. It occurs in practically every disease. What we are dealing with is unconsciousness that occurs during a tetany spasm, and from which the patient recovers—not a terminal event.

Now, gentlemen, I was putting to you with regard to the Defendant that he not only would not deny that he had been referred to this letter that was going to Dr. O'Hanlon, but he would not deny that Dr. O'Hanlon told him first that he was going to write to ask permission. None of those things could have been forgotten. And the position obviously must have

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

been some communication from Dr. O'Hanlon to Dr. Bell saying, "I am going to write to the B.M.A. about giving a report," and a communication between the B.M.A. and the Defendant as to either what should be written, or a reference as to what was written, and the sending of the letter. Because there must have been authority for sending that letter. And no one has been called.

Now, first of all, the Defendant, like Dr. O'Hanlon, said that he suspected that it was not true tetany when he got Dr. O'Hanlon's letter (page 603).

It was put to him by His Honor: "You said on the last trial . . . yes, that was incorrect." He said, just as Dr. Ritchie had said, that his views had changed, and he changed his evidence, just as Dr. Ritchie had changed his, but when he got Dr. O'Hanlon's letter he suspected that it was not true tetany. That is untenable. He has no data to suggest that it is not true tetany, and he treated her for true tetany.

I asked him, "Why give that untrue answer . . . wrong answer." And let me remind you of this, the correspondence that is before you shows this, that he saw Sir Allen Newton in the following year, on 27th May 1939. There was a letter from the Defendant to the Plaintiff—"I was talking to Sir Allen Newton . . . I told Dr. Ritchie I had heard from you." On 27th May 1939 he is seeing Sir Allen Newton in connection with this question of tetany. And he swore at one time that when he got Dr. O'Hanlon's letter he suspected that it was not true tetany.

His HONOR: That was Dr. O'Hanlon's letter.

Mr. SHAND: It should be put separately.

His HONOR: At page 603 he said he made a mistake in giving that evidence.

Mr. SHAND: I should have put it to you that in 1939 it is obvious he thought this was true tetany, because he was seeing Sir Allen Newton. Later on he admitted his evidence was quite incorrect. But when he got Dr. O'Hanlon's letter in October, 1939, he suspected that it was not true tetany. He withdrew that statement, and he admitted he had given a wrong answer in the box.

I want you to consider this piece of evidence which I will read to you on page 611, and you will judge whether it does not indicate that the Defendant knew perfectly well that something had been left there, and he knew perfectly well that something had come through the throat.

What I am putting to you is this. If he had left nothing, there was nothing to be worried about. If he had left nothing it was an impossibility that any tube should come through the throat.

I was asking him about that. Listen to this, from a man who knows that it is impossible that a tube could have come through. He said "Yes, when I read Dr. O'Hanlon's letter I was suspicious." Suspicious only! It would be more than suspicious, it would be a moral certainty, if he had not left any part of the tube there. "The sketch came with it . . . to have found something." To have found something! His Honor put it, "Found some clinical signs you mean . . . yes, that is the reason."

Mr. CASSIDY: That is all in reference to when he came to be suspicious of Mrs. Hocking.

Mr. SHAND: I will read anything they want in connection with it.

Let us deal with this. How can it be that there was the reason for his suspicions? His suspicions—not suspicions—his certainty that this was absolutely wrong would have occurred when he got the letter, because he would have said: "I know I left nothing. I do not want any clinical signs whether there is a hole in the throat. I know." Here he is saying that it was the lack of information from Dr. O'Hanlon that there were signs of an eruption that caused him to be suspicious.

Do you want me to read any more?

Mr. CASSIDY: The next question.

Mr. SHAND: Just tell me. We may all make mistakes in this, because it is a long and difficult subject, but I will not make them intentionally, and anything which needs clarifying, I will do my best to clarify it. I will read the next question: "Was that the reason . . . sketch." You will remember he said that it was a good sketch. " . . . suspicious." That only adds to the significance of this aspect of the case.

Mr. CASSIDY: Go on.

Mr. SHAND: You asked for one question, and I am dealing with that at the present time.

The two things were not "I did not leave it in" and "It is impossible." He said, "The sketch and the clinical examination." I said, "The important nature of the thing sketched . . . would be some sign." That is adding to it. How could he have contemplated the possibility of it bursting through into the throat, and there being some sign?

Mr. CASSIDY: Your Honor sees what is done there. I am having notes taken of this address.

Mr. SHAND: That does not frighten me.

Mr. CASSIDY: I hope I will get some accuracy from you. What Mr. Shand is basing his argument on is questions directed to Dr. Bell on his theory on tetany. The first is: "The case you saw after the war . . . tetany." The next question: "Did you see anything in these letters . . . you mean as regards tetany." He has been dealing with hysteria and tetany, and he says "You mean as regards tetany."

Mr. SHAND: Might I suggest this, that anything my friend asks me I will read, but I do not want a long address.

Mr. CASSIDY: Will Your Honor look at the middle of the page on that very thing and see what it is directed to?

Mr. SHAND: This is a reply. I do not want a reply to each remark in my address. I did not do it myself, and I ask your Honor to keep my friend in order. I will read anything my friend wants.

His HONOR: I follow what Mr. Cassidy means.

Mr. SHAND: Listen to it. If my friend wants it again I will read it. "The case you saw after the war . . . as regards tetany." I said "Anything at all." He said, "Do you mean as regards tetany?" I said, "Anything at all, not confining it to tetany." "Anything at all," is my question, so this interruption is quite uncalled for.

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

I said " Anything at all," and he said in that case his suspicion was lack of clinical signs, and the fact that he had never used anything like that, and the impossible nature of the object. He was not putting it, as anyone would put it first and foremost if he were innocent, " I did not do it ; I did not leave anything."

Mr. CASSIDY : Look at page 612, the last question on the page, and the middle question on the page, in view of what Mr. Shand says ?

His HONOR : Ask Mr. Shand to read those things.

Mr. SHAND : This is becoming a crusade. I do not want to become personal.

Mr. CASSIDY : You have put me in this position.

Mr. SHAND : I have not put you in any position.

Mr. CASSIDY : I am willing to do it the other way.

His HONOR : Will you read what Mr. Cassidy asks ?

Mr. SHAND : I have said I will read them. I do not know what Your Honor is suggesting. I have told my friend and Your Honor I will read anything. But it is impossible to continue like this and I will ask Your Honor to take control of my friend. What is required ?

Mr. CASSIDY : The middle question on page 612, and the last question on page 612.

Mr. SHAND : I will read a little more than that.

You will see here my task is being rendered difficult, but you will have to consider this quietly, and not in the middle of any vituperation.

I have given him every chance to put why he thought it was suspicious, and you have heard what he put up when the very thing that should have occurred to his mind was, " I did not leave anything at all." And now I put it straight up to him that the very thing that should have leapt to his mind, gentlemen—I put it straight to him. I read from the bottom of page 611, " It must be obvious to you . . . I know it was not there." He said, " I do not follow you."

His HONOR : " I do not follow you, Mr. Shand."

Mr. SHAND : That does not matter. My name has always been the same. " Do you say that honestly . . . reasoning." Even then this innocent man did not follow what I was putting to him. " Do you say that . . . is not that the reaction ?—A. I do not agree with that."

This is leading up to what my friend asked me to read. I thank him for it ; it makes it stronger. " Don't you . . . if there was anything I could do for her." Gentlemen, do you think that interruption was justified ?

Mr. CASSIDY : Go on.

Mr. SHAND : You said the middle paragraph.

Mr. CASSIDY : And the last.

Mr. SHAND : " I asked you . . . natural reaction." He does not admit that it was the natural reaction to say, " I did not do it." " Do you regard it as out of the question . . . "

Do you think that there was call for that interruption ? Here he is, I have put to him for over a page, " Why did you get suspicious ? " The natural thing for any innocent man to say was " It was not suspicion,

it was more than that." The natural thing to say was " I knew I had not left it there." He did not say that. He gave these reasons.

And when I finally put it straight to him, was not that the natural reaction, to say " I did it. I know I did not leave it there." You have heard what he said.

(Adjournment—11.30 to 11.40 a.m.)

Upon resuming at 11.40 *a.m.*

Mr. SHAND: As I told you I am dealing with this matter of the witnesses because, no matter what my friend says, no matter—with the greatest of respect—what His Honor says, you will have to judge yourself whether you can accept these witnesses.

Turn to Dr. Ritchie. In regard to Dr. Ritchie I will remind you of instances in his evidence, I will give you the references, so that they can be checked.

You will remember that he at first denied that when the Plaintiff was brought to St. Luke's on the second occasion it was for the Defendant's sake (page 1005).

He had sworn at a previous trial just in those words, " For whose sake was it?—A. It was for the Defendant's."

" What did you think was the best thing to do . . . you are quite clear on that?—A. Quite." " And will you suggest that it was . . . qualification in my mind."

You cannot say less than this, that that was an untruth.

He swore (page 1009), and it can be compared with pages 1034/5, that he had no idea that Dr. Bell had prescribed calcium for the Plaintiff at the termination of her first trip to St. Luke's when she had the operation. You will remember that Dr. Bell gave her calcium tablets. The letters disclose that Dr. Ritchie had suggested calcium gluconate. Dr. Bell's letter of the 4th May discloses that. (Reads letter.)

Dr. Ritchie was in a very awkward position because he tries to make you believe that he never thought this was tetany. How is he to explain his prescription of calcium gluconate.

His explanation was: First of all he says, " I never knew at all that Dr. Bell was giving her calcium glucinate when she left." I said " How did you come to give her calcium glucinate? " and he said, " I knew that Dr. O'Hanlon had been giving her calcium lactate and I thought this was a better form." I said, " You could not have known that " because he had not been in communication with him, and he said that he knew that Dr. Bell had been giving her calcium, " and so I said calcium glucinate."

Can you trust his evidence? There is a reason for it. It is not just a slip.

He has to explain why he gave this calcium, which is to prevent tetany. And the only thing he could think of was because someone else had given it, and he mentioned Dr. O'Hanlon, the wrong man first, and then he went back on what he swore previously and said, " Because Dr. Bell had given it."

It was because he thought she had tetany! Because you will remember that it was after she had been to St. Luke's the second time that he gave her calcium glucinate again. And what answer has he got to that? I asked him why he gave her calcium glucinate in November 1939 after she had been in St. Luke's on the second occasion, and he said he gave it to her because she had a low blood calcium. He had never said that

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

before, and it was not true. He gave it to her because he was firmly convinced that she had tetany!

He said, at this trial for the first time, "I gave it to her because she had a low blood calcium content." Dr. Bell was asked about that at page 620. I put to Dr. Bell "That was a startling thing, was it not . . . Dr. Ritchie."

You will remember how that appeared. It had not come to hand in the first or second trials. And Dr. Ritchie had sworn that he had only seen the Plaintiff on two occasions, and there was nothing said about any prescription he had given. He swore that he had not seen her from leaving St. Luke's until next year, negativing altogether this interview. And then, at the third trial, or by that time, the Plaintiff had discovered this prescription for calcium glucinate given by Dr. Ritchie, and it was made known to him, he admits, before he got in the box.

Now, for the first time in this trial he said he gave it to her because she had low blood calcium content. I put to Dr. Bell, "That was a startling thing, was it not . . . St. Luke's." "You know that Dr. Ritchie has never suggested that." He said, "I know he has never suggested it." That is definite.

And yet Dr. Ritchie gets in the box, and for the first time swears that was given for the low blood calcium content. And I put to him what he said on the previous occasion, to his own counsel at the third trial. He was asked, "You were questioned in regard to a prescription . . . goes to sleep." That is the explanation he had given before, and the only one. "Your suggestion . . . both true." He had never mentioned this one before. "I asked you about it this morning . . . because it was incorrect."

Can you trust him? Every time he is faced with these two prescriptions, which could be only given for tetany, he does not tell the truth. He admits that he has not told the truth, in his effort to explain away by absurd means the fact that he knew that this was tetany.

Previously, he had put: "I gave it for the psychological effect, because we inject water instead of drugs to satisfy the psychological aspect in regard to some patients." But he could not remember he had given it, he could not remember any interview he had with the patient; how could he remember that he had given it for any psychological effect?

This trial he changes it and says the only reason was for the low blood calcium content. He had never suggested it before.

Gentlemen, where are you getting to? The effect of these things lie deeper, much deeper, than the mere telling of falsehoods. People do not need to tell falsehoods unless they have something to hide. And this is a falsehood about the very crux of this case.

He was a man, a personal friend of the Defendant, apparently in close contact with him; a man who had been in conference with him about bringing the Plaintiff down.

He either knew or suspected what was going on. What do these falsehoods mean—falsehoods so pertinent to this case? I suggest that they go very deep. They tell you that if he did not know, he was convinced; if he had not been told, he had no doubt what the position was. And so he was put to it, and these facts wrap round the very core of this case, to prevaricate.

Now, you will remember, in dealing with these witnesses, his first answer to me—and I think I have mentioned it to you before; it appears

at page 1011, and his altered evidence at pages 1034/5—when I asked him when he first became firmly convinced that this was hysteria, he said, on receipt of Dr. O'Hanlon's letter. And I said "On what?" He had nothing to go on that it was hysteria.

Every word in Dr. O'Hanlon's letter reflected Dr. O'Hanlon's genuine belief that it was tetany.

And he had to alter it. He withdrew it and he said, "No, it was not then, it was when she went into St. Luke's." Just imagine a responsible doctor, a large part of his life is taken up with diagnosis, diagnosing anything on the information that he had. As I put it to him: "Do you usually diagnose on that—on that amount of information?" "Oh yes." He did not ask for further facts. Even when the Plaintiff got to St. Luke's he did not ask her. He got no further facts from Dr. O'Hanlon. And yet he was prepared to give his diagnosis.

Now, how this case has grown is indicated by part of his evidence. On this trial he swore (pages 1012/3/4 and 1016) that it would have been the worst possible thing on a doctor's part to allow the Plaintiff to leave St. Luke's on the first occasion. Why was that? Because, he said, she was a highly neurotic woman, and the sinus was still open in the throat and—I do not know whether he used "madness"; I think he did—it would have been the worst possible thing for a doctor to do.

And he said that to emphasise to you, whom he was deceiving, the alleged neurotic condition of the patient so that his suggestion of hysteria could be supported.

What he had sworn before was this, on the previous trial, that he had no profound objection to her leaving. Absolutely incompatible?

This is what he swore on this occasion (page 1913): "I advised her not to leave . . . wound unhealed." His evidence in the previous trial, the first trial, to his own counsel was, "Your view was that you would have preferred . . . no, there was no profound objection."

I asked him (page 1014): "At the first trial you swore . . . exactly." You will remember he smiled. "Do you think that is funny . . . it was understated." And then: "Understated. There was . . . what you said was wrong?—A. That is so."

Compare this evidence with that offered by the Plaintiff. Here are men with all the advantages of education, and moving in the higher places of life. Compare their evidence with that of the Plaintiff, a woman coming from this country town, having to face up to four trials, and gruelling cross-examinations, one of which lasted nine hours. How do you compare them?

Now, when it was put to him, at pages 1026/9, when he was faced, as he was faced, with a serious position, the Plaintiff's evidence being that when she went to St. Luke's on the second occasion he had never examined her, but had only done this when he came in and she started to speak to him, put up his hand and said: "I do not want to discuss the matter"; when he was faced with that and the statement that he had not made an examination, and it was borne out by the hospital records that he had not made an examination, because there was no reference to any such examination—in fact, just the opposite—I asked him—his escape lay in this, if he could make it, if he could get out of the net of his own weaving—his escape was to say: "Well, I made an examination but the sister was not there and therefore it was not recorded." He had

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

sworn previously, unfortunately for him, that the hospital sister was always present when he made an examination. So, therefore, it would be recorded.

And it was put to him (page 1026)—" First of all, you always examine a patient in the presence of a sister . . ." And then I put the hospital records to him, and the first date was the 26th and he agreed that he did not examine her on the 26th.

This is what I put specifically : " You will notice on the 26th that it states ' Dr. Ritchie here, will examine patient tomorrow ' . . . yes, I think it is."

All these events are not slips, they are all pregnant because, if he did not examine her, why ? Was it because he knew, or in his own mind was convinced, that the tube must have come through and he did not want to examine her ? And therefore, if he did not examine her, it was most significant.

So, having sworn that he would not examine her without the hospital nurse being present, when his own presence would be recorded, and what he did would be recorded, he now gives a totally different answer from his own sworn evidence before, and said that he did on a number of occasions examine patients without the sister being present.

It is not just a simple slip. All these things are aimed at something. I could show you hundreds of slips, which I will not bother with, but these matters all point to something.

I am dealing only with some aspects of this evidence because, I warn you, although I do not think you need it, if there is an attempt, no matter whether it is by His Honor or my friend, to deal with the position of these doctors, and the unlikelihood of their prevaricating, you have it here, you know they have, and you will deal with the evidence in this case and not with things you do not know about.

Dr. Poate : I suppose one of the most significant things in Dr. Poate's evidence—and this I will have to deal with as it is vitally important—is this question of the hole in the tonsil. One of you mentioned it this morning, and it is a matter of great importance, and I will deal with it specifically later. And it is as clear as daylight. But for the present I will just call your attention to this.

At the first trial Professor Welsh has told you what happened was this. At the first trial, during the trial, Professor Welsh had seen this hole in the tonsil. He had not measured it, he had seen it. And he has told you that it was on his advice—mark this, on his advice—that Dr. Poate was asked to examine it. So you can see what Professor Welsh thought about it. You know what he thought about the nature of it when he was the first one who suggested it, and then through Plaintiff's counsel—then Mr. Hardwick—Dr. Poate was asked to examine it.

Mr. CASSIDY : I wish to correct that. Professor Welsh did not say that he did not examine it.

Mr. SHAND : He said that he did.

Mr. CASSIDY : Professor Welsh gave the measurements of it.

Mr. SHAND : He gave the measurement of the diameter.

Mr. CASSIDY : He gave more than that. He gave evidence of its depth and diameter.

His HONOR : That is what Mr. Shand was saying, that Professor Welsh did in fact examine the throat.

Mr. SHAND : He did not measure it with the probe. He examined it, but he did not measure it with the probe.

What I am putting is : You can see what he thought, because it was on his suggestion that Dr. Poate was asked to examine it. He relied on Dr. Poate's integrity and that, when he saw it, he would give a fair description of it. And Dr. Poate said that it was consistent, that this hole was consistent, with the bursting of an abscess. He might have said " Fairly consistent," I will read it later.

When asked later if it was a natural hole—that is the question put to him, and I will refer to it specifically later—when asked if it was a natural hole he said that it was a hole out of which something had come, caused by something coming out. And on that, Professor Welsh tells you, he considered that sufficient and he did not go back in that box. He thinks now that he made a mistake, and that he should have.

Mr. CASSIDY : Where was that said by Professor Welsh—that he thinks now that he made a mistake ?

Mr. SHAND : That will be turned up.—This is what Professor Welsh first said (page 265) : " You did not go back in the box thereafter to contradict that ? " One would not have thought there was any necessity to contradict it. " I heard what Dr. Poate said, and I understand . . . at the end of the first trial." And then later on it was put to him (page 265), " If you had seen scarring of the throat . . . " My friend repeated it, but the professor was not flustered, and gave his evidence calmly and with thought. " I remember advising counsel . . . I gave you the reason why."

Gentlemen, in Professor Welsh we are dealing with a man, I suppose, who has not got very many years to live, and when he goes he will go with achievements and honors thick on him. He has no interest in this case. He is not a man of hasty judgment, and he is not a man of violent vituperation. I will read you what he says about Dr. Poate, and the way he said it. He was cross-examined at page 1617 : " Further you heard Dr. Poate say that the scarring there was consistent with follicular tonsillitis." That was after he had examined the throat. And the professor said " Yes, that is why I do not care to accept Dr. Poate's evidence on the condition of the tonsils." And that is the only passage in which the professor has criticised any person. He might have disagreed with their theories, but he has not dealt with them in the violent way in which some of the Defendant's doctors, like Dr. Edye and Dr. Poate criticised and dealt with Dr. Thompson. He has not criticised any person in the case.

That is what he said. He knew what he had seen, and he knew what Dr. Poate must have seen ; " Yes, that is why I do not care to accept Dr. Poate's evidence on the condition of the tonsils."

You, perhaps, gentlemen, having seen the professor, have about as valuable a guide on that aspect of the case as you could possibly have.

Now, gentlemen, to pass to another aspect of Dr. Poate's evidence. He has allied himself with his professional friend, and one finds that a comparison on certain essential respects with his evidence in other trials shows how that evidence has become strengthened for the Defendant, even at the risk of loss of truth.

He swore the previous trial that the psoas abscess, which as we know travels from the vertebræ, opening up the fascia as it travels—it was put

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

to him at the first trial that that was an analogy and good example to give in reference to this case, and at page 1391—he admitted he had said that previously at pages 1431/3—he swore at this trial, " I want to make this clear, there is no analogy at all." Why does he alter his evidence? Because he thought that it was dangerous. Every alteration of the evidence is an alteration that is sought to strengthen the Defendant's position.

You will remember the evidence he gave about the accouchuer's hand. This is definitely wrong; there can be no doubt about it. It is so wrong it needs little argument.

He swears now—and this is one of the things he relies on as being one of the indicia of hysteria rather than tetany—he swears now that at the first trial—you will remember when the Plaintiff put her thumb up like that (lifting thumb away from hand)—that is one of the vital things now, gentlemen—that was supposed to be at the first trial—he has never mentioned it at the second or third—that is his admission—and the evidence is at pages 1466/8.

Can you imagine—he has a keen brain, and perhaps a keener enthusiasm for his case, even though it may be a lost one—can you imagine either his omitting to give that damning piece of evidence, or his counsel allowing him to forget it? Gentlemen, what happened at the first trial we know from the transcript, in part. We know that at one stage the Plaintiff was being cross-examined—I am sorry, I mean Dr. Ritchie—and Dr. Ritchie was asked by his own counsel—I think it was his own counsel—as to the question of the hand, and the transcript—you have it before you—no you have not—you have it in this trial—I will have the place found—his own counsel, Dr. Bell's counsel, was asking Dr. Ritchie about the position of the hand, and Dr. Ritchie said, " What about the thumb, that is the important thing." That is what Dr. Ritchie said, and of course it was.

And then and there the Plaintiff demonstrated it. (Folding thumb in palm of hand.) And not another word was said to Dr. Ritchie. If she had made this sign (thumb extended) when Dr. Ritchie asked her to demonstrate, the next question could not have failed to have been " What do you say about that? " And nothing more was said!

My friend is groaning again! Page 1467. This is what occurred at the first trial. Mr. Monahan, who was then Dr. Bell's counsel, was putting to Dr. Ritchie certain questions, and he put this: Mr. Monahan said, in the form of a question, " She says hands clenched, and on one occasion she felt the nails in the flesh." And then Dr. Ritchie said " What happened to her thumb?" That is Dr. Ritchie in the box. Mr. Hardwick said " I am afraid she did not give evidence of the thumb."

Mr. CASSIDY: That is challenged in the next question.

Mr. SHAND: Dr. Ritchie said " That is very important, is it not? " Everyone knows that it is important. His Honor said " She says ' My fingers were clenched '." That does not say she had given a demonstration. And then Dr. Ritchie said something, and Mr. Monahan asked the Plaintiff to repeat the illustration and show what was intended in regard to the hand, and the Plaintiff demonstrated to the Jury and the witness.

This is what Dr. Ritchie said after that demonstration: " Actually the spasm in the hands . . . variation in the hand spasms." It is as clear as daylight from that that what the Plaintiff did was to give the true sign.

Now Dr. Poate swears for the first time—he has never sworn it before—it is an important indication that she had her thumb out—and in that he is not only giving evidence in face of the evidence given at the first trial, but he is in conflict with the Plaintiff, with her husband, and with Professor Welsh. Whose evidence do you prefer ?

Many witnesses could have been called—I am not referring to counsel, because he might think it advisable to avoid it—many witnesses could have been called if she had had her thumb out as described. But they were not. And what will you conclude when Dr. Poate comes along for the first time and gives that class of evidence ?

Gentlemen, is the Plaintiff getting a fair deal ?

I hope to put all these matters to you fairly and squarely for you to weigh. I am putting them as best I can for my client, but you will weigh them. And I am putting to you that you cannot believe that, and if you cannot, there is another mark as to what is happening in this case.

We find that is not the only change. On the first trial Dr. Poate whom, I suggest to you—and I put it to him—did not fully form this theory of tetany changing to hysteria about June 1938, said that the spasm that took place on 17th May, and which appears in the hospital record, he had strong reason to doubt whether it was true tetany at all.

That is what he swore at the first trial. At the second trial, when his evidence had crystallised into a state of true tetany only until about June, he said he had no reason to doubt that was a true tetany spasm.

Those are the persons on whose evidence you are asked to rely, those are the persons who are, according to the tone of my friend's address in this case, above criticism ; that they must only speak and you must follow. That evidence is at pages 472/3/4.

He swore at the first trial, with regard to infection penetrating the capsule of the thyroid, that it could do it in two days. But the case has become strengthened. At page 1492 he now swears that it would take weeks. Always strengthened !

With regard, not to the thumb incident, but the nails cutting into the hands, he has placed himself on the horns of a dilemma. I put to you, because he had previously put it that that was not consistent with tetany—that is what he concentrated his evidence about the hands on at the first trial—I put it to you that he did not know of it, that he did not know of the nails cutting into the hands. The relevant passages are at pages 1494/5/6/8. Now he says he had read about it when he gave that evidence. His evidence was that the nails cutting into the hands was inconsistent with tetany. And, of course, he did not know about it.

As this case has gone on, text-books have been brought up to draw attention to it.

Mr. CASSIDY : Where did he say that at the first trial ?

Mr. SHAND : Pages 1494/5/6/8.

Mr. CASSIDY : In all those places ?

Mr. SHAND : That is the third time I have told you. You have a good choice. He came forward at this trial and he would not admit his ignorance of that, and he said that he had read of it. There are only two alternatives. Either he was ignorant, which I suggest that he was, or, if he had read of it, he had not given the best of his information to the Jury before whom he was swearing.

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

This is what he actually said: "The fingers do not bend right over . . . happens." And "Supposing instead of getting that . . . very grave doubt." And "Did you look up the authorities . . . but in my experience." Assuming he was limiting it to his own experience, he was giving the impression this was inconsistent with tetany, and yet he had read it was one of the manifestations. Was that fair? Would you care to be treated in that way in this case? And have you, in some way that we do not know of?

I put it to him: "You gave no indication you had read . . . define what you mean by 'fair'." Did the Plaintiff or her husband ask Mr. Cassidy to define what is fair? ". . . if you want to do it that way." I asked him what books he had read it in, and he could not say. "There are so many books . . . I know."

There is the dilemma. Either he did not know of it and he is not telling the truth that he had read about it in books, or if he did know about it; I will leave it to you to say if his answer was fair.

I did refer him, in regard to clenching of the hands, to Fagg. He did not know of the authority. Mr. Cassidy asked him if he could remember any others. I referred him to Russell Brain, and there are others.

There is the incident referred to at pages 1501/8. He had sworn at a previous trial that if a person gets any degree of tetany—any degree of tetany!—all these patients who have had any degree of tetany never get back to a normal balance again. You will remember that. Of course, that was quite wrong.

Mr. CASSIDY: Are you saying that is the evidence, that that is Dr. Poate's evidence?

Mr. SHAND: That is the first part of it. I read out the actual words, that he used at the first trial.

Mr. CASSIDY: When?

Mr. SHAND: One second ago.

Mr. CASSIDY: What page?

Mr. SHAND: 1501.

Mr. CASSIDY: You read it out.

Mr. SHAND: Yes. I will read it again. I do not know whether my friend has taken leave of his senses. ". . . never get back to a normal balance again." Those are his words. That is referring to the period of time. I pointed out that the words were "Never get back." He said "If I said that it was very badly expressed." I said "This is never." He said "It is badly expressed." I said "It is incorrect . . . questions that had gone before." I read him the questions that had gone before, and they were most pertinent to this and he did not disagree.

He said, at page 1502, I read him the question again—he said "I was referring I am certain there . . ." And I put it to him that he was referring to a person like the Plaintiff, because I said ". . . particular case." So it went on. He said: "In the circumstances of the case where you have counsel worrying you you are apt to say things without giving them due thought." I asked him if that was the reason and he said "Very probably." I put to him later something further he had said on the same lines, and he admitted that it was wrong, and he said that it was wrong because he had been learning since. And I think I am right

in saying that finally he came back and said that what he had said before was correct, that what he had said in this Court was incorrect, and what he had said before was correct.

That is what you are asked to rely on.

Mr. CASSIDY : I ask Your Honor to point out there that Mr. Shand did not read to Dr. Poate at that time, and kept from him, that at that same trial the doctor on that same matter had said that the thing could not rise (page 1510).

Mr. SHAND : Yes. It does not alter it one scrap, because what he had said was " They never get back to normal balance again."

Mr. CASSIDY : And they were dealing with——

Mr. SHAND : No.

Mr. CASSIDY : Take page 1510. You have not read that. That is what was said about rise. That is the same trial.

Mr. SHAND : I will read it. What I point out is that he had got into this difficulty because he said that these patients never got back to normal balance. The only qualification he gave was that they might rise or fall.

Mr. CASSIDY : He used the words " They rehabilitate themselves over a period of time."

Mr. SHAND : " You say that although the parathyroids . . ."

Mr. CASSIDY : This is the second trial.

Mr. SHAND : It is the same trial. " It is not an extraordinary fact to discover 7.2 . . . rehabilitate themselves over a period of time?— A. That is so."

Mr. CASSIDY : That is the answer given in the second trial.

Mr. SHAND : In this trial he said what was put to him first. First of all he said it was badly expressed, then he said it was wrong, then he said it was possibly wrong because counsel had confused him in some way, then later on he said that it was right.

And that is the class of evidence you are asked to depend on.

Dealing with Professor Inglis, I say that Professor Inglis is a sincere and very decent man. And I would also suggest that what he puts forward in his theoretical way he genuinely believes. I do not criticise him. If all the evidence were given in this case in the way that Professor Inglis gave his, your task would be much easier. Because, where Professor Inglis thought that he should make concessions he made them. Where his opinion—a medical man's opinion can vary on these subjects honestly—where he thought that he was justified he maintained his opinion. He brought in further theories into the case, quite honestly, and that is that after the Plaintiff left St. Luke's on the first occasion, and she had this swollen neck, body and face, she had angio neurotic œdema. A new one? The professor said that he could not account for the condition of the swelling of the hands and the other parts in any other way, and therefore he was inclined to think that was so. I put to him that those swellings were all consistent with tetany, and perhaps mixœdema, which does follow at times in operations for thyroid, and he treated the matter quite reasonably. So one can only wish that matters were put in the way that he and Professor Welsh put them—without heat, with logic, and fairly. That is

In the Supreme Court of New South Wales.
——
No. 52.
Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

my only comment on Professor Inglis, except that I will later call your attention to his evidence, to his very fair admissions on the possibility of this tube working its way up the neck.

I am afraid with regard to Dr. Smith one has to take a somewhat different attitude. He it was, you will remember, who said that unconsciousness was not characteristic of tetany. He said retention of consciousness was characteristic of tetany. That is what he said. He had to admit that the authorities I cited to him were against that. And I put it to you here again that Dr. Smith was unaware of consciousness; he again would not admit it. You will remember the difficulties he got into about it.

He said when he was lecturing to his students (pages 1294/6) he taught them that retention of consciousness was characteristic of tetany, and he did not say anything about unconsciousness. Well, gentlemen, of course that would be to mislead his students, because he says a characteristic of tetany is consciousness and therefore, unconsciousness, no tetany. So I put it to him: "When you are lecturing on any disease, the most difficult to diagnose is the one with the unusual symptoms?" He said "Yes." I said "When lecturing on other diseases do you tell your students about those rare symptoms that create the difficulty in diagnosis?" He said "Yes." I said "What about this unconsciousness, as you admit that is one of the rare symptoms, and you do not tell your students that?" "No."

I do not want to enlarge on it. You remember the difficulties he got into. And what do you think it was? Why? Because this gentleman did not know that unconsciousness featured in tetany.

Mr. CASSIDY: Do you have to wait for unconsciousness to diagnose tetany?

Mr. SHAND: Are you childish? They did not know that unconsciousness was a feature of tetany. They were ignorant. But there is no blame attaching, because it is a rare case. It is only in bad cases of tetany that you get it. If they had come forward and said "We did not know that," all right. But they will not.

Just imagine an acting professor knowing that unconsciousness can be a feature of severe tetany, and telling his students—and this is what in effect he said he told them—that the feature of tetany is you must retain consciousness, meaning that if you become unconscious it is not tetany. Fancy him knowing that unconsciousness occurs in severe tetany and telling them the opposite.

Mr. REIMER: There is one matter of correction—page 1517, at the foot of the page. Mr. Cassidy, re-examining Dr. Poate, was asking him the questions in toto which had been put to him at the first trial, at page 205. It goes down to the answer, "In both tonsils," in the original transcript. There is no question that Mr. Cassidy did read the whole passage, and the shorthand writer has omitted the last question and answer. I ask Your Honor to direct that that be inserted.

His HONOR: Is that your recollection, Mr. Shand?

Mr. SHAND: I have no objection to it, anyway. Obviously it should be there.

His HONOR : That will be added. That is the fourth question and answer on page 205 of the first transcript to be added to page 1517.

(Luncheon adjournment—12.55 to 2 p.m.)

At 2 p.m.

Mr. SHAND : I was dealing with Dr. Smith's evidence. I will deal with these matters shortly. I do not want you to think that they are the only matters of comment, but they are the important ones.

You will remember that he apparently knew comparatively little about history of this case. For instance, he did not know that the sinus closed in the neck, and at first he purported to say that was not a matter of importance. But, of course, it was obvious that while the sinus was open at any rate suppuration was going on, and he admitted that suppuration could affect the parathyroids, and therefore it was an important matter in the distinction between hysteria and true parathyroid tetany. But he did not know that. (Pages 1326/7.)

While he was diagnosing hysteria he of course admitted (page 1355) —of course it was obvious—that in coming to the conclusion of hysteria one of the important matters, material matters, in the diagnosis was to see how the patient reacted to conversations, what did she say, how was she questioned, did she indicate any particular mania or obsession. He admitted at page 1355 that that was one of the material matters for a diagnosis.

I asked him, " Did you question them about it . . . yes, I omitted to do that."

Many of the witnesses' evidence he did not read at all. He did not know, he was not equipped, with the full history of this case ; nothing like it. And as a matter of fact, as he admitted, he based his conclusion on a number of facts that she had stated, that he assumed to be untrue ; for instance, that the hospital was not well run, or very badly run, at Quirindi at one period. He said " I took it as one part leading me to the hysteria." He did not know whether it was badly run or well run. Yet he will take that fact, and the others that he took, as the basis of his assumption of hysteria. And finally, when I put them all to him, that he did not know whether those things were right or wrong, with the exception of two or three factors he did not know whether she was giving an accurate statement or not. Yet on that he was prepared to come forward and say " I took it that she was not speaking facts, and therefore I concluded it was hysteria."

Dr. Steele : I will deal with him in this most important respect of the hole in the tonsil. He was the gentleman, who, when I put to him would he admit that he had changed his evidence, and the nature of his evidence, said " Not necessarily," and kept on saying it. You know what that means.

It is quite evident that although Dr. Marsh mentioned the supra tonsillar fossa previously, I will show you that it was never until this case the real case of the Defendant, that this hole that was found was the supra tonsillar fossa. And I can indicate, I think, to your complete satisfaction, on this matter, what that hole was, namely, a hole where an abscess had erupted—as Dr. Poate admitted in the first trial was possible.

Where an abscess had erupted and the tube had come through !

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

I have dealt with Professor Shellshear, and I only wish to add this (page 1136). When I cross-examined him on those X-rays—which seem to have fallen into the discard now—I put to him, as I put to Dr. Edye, these tonsils that look about three or four times as big, these bottled tonsils. He said " Those in the bottles you are showing me are enlarged," although we hear from other witnesses that they are normal, and if they were enlarged they were shrunken by the formalin, or because they were taken out, down to the normal size.

Dr. Edye: You remember him. If those tonsils were enlarged it was hardly fair that they were put to you, without any suggestion that they were enlarged by Dr. Steele or Dr. Marsh, as being an ordinary supra tonsillar fossa. They cannot have it both ways.

In this case on 11th December of last year you will remember the Plaintiff was examined by several doctors on behalf of the Defendant, Dr. Thompson attending on behalf of the Plaintiff. And we heard a measurement was taken of the alleged distance between the top of the thyroid and the tonsil by Dr. Edye, and that that distance was $3\frac{1}{2}$ inches. What do we find? You will remember I interjected, and you will probably assume that I had heard from Dr. Thompson that it was not a proper measurement because the patient was not in the proper anatomical position.

What do we hear from Dr. Edye? This is an examination of the Plaintiff by these doctors, consented to by us, to give you gentlemen the benefit of what could be discovered. And Dr. Edye makes a measurement of $3\frac{1}{2}$ inches, and he will not deny that the head was turned round. Dr. Thompson will tell you that it was turned round and pushed up. And of course it must have been because you will remember Dr. Edye, while he was here in front of you, making a measurement, and he gave his evidence that the best he could make it—and I suggested to him that was not in proper normal position—the best he could make it was $2\frac{1}{2}$ inches. And what did he say: " Oh, it was a rough measurement, it was made hurriedly."

Why should it be? There was no hurry. Why should not this lady have been allowed to stand in the natural position.

Are you, or is she, being treated fairly? Do you think that Dr. Edye was an unbiassed witness? One inch longer than he could make it in this Court, and his excuse was that it was made hurriedly! There was no need for that.

How did it happen that it was made hurriedly if the head was turned round? That is the kind of thing we are contending against. Do you think that it is fair?

This distance between the thyroid and the tonsil has been stressed. Professor Welsh said that one inch or so does not make any difference, but in the Defendant's case it is important. We find Dr. Edye taking this measurement; we find Professor Shellshear (pages 1133/5) saying that the nearest points are $3\frac{1}{2}$ inches to 5 inches. When those X-rays are shown, the first one shown is a distance of $2\frac{3}{4}$ inches, and then he says that might be half inch too much. And finally, when we call for them all, the last one that appears, or amongst the last ones, the measurement is $2\frac{1}{4}$ inches.

Why? Why does all this go on? Dr. Edye is prepared to go so far as to say (page 1175) there was no evidence of scarring in the tonsil. He is

the only one who does. Everyone else admits there is some evidence. Some of the Defendant's doctors do minimise it. I will refer you later to what was found on that examination.

What we find with Dr. Edye is this, that he first of all (page 1206) says—I show him the tonsils in the bottle (Exhibit " 17 ") and ask him are they normal size, and he says if it has been removed for disease it is probably enlarged. " Tell me if this is a normal size . . . it is shrunken."

I show him Exhibit " 19," the X-ray, with those little pellets facing forward, and not in the angle of the jaw where it is admitted the tonsil is, and I say : " Is that a normal one . . . in different individuals." I invited him to put the specimen tonsil any way he liked, and then what he said was, " You still swear they are both normal size . . . it is only a diagram." And that is what was put before you in my friend's address as being a proper representation and not made for the case.

Well, gentlemen, take any one of those witnesses you desire. Can you accept their evidence ? Can you accept it against the medical evidence for the Plaintiff, and that of the Plaintiff and her husband ?

Now Dr. O'Hanlon. I do not think you will desire that I should address you long in regard to him. I do not want to enlarge on his conduct —it was horrible.

Take a few pieces of his evidence. What he swore was this, what he first of all swore (pages 926/7 and 613/7) was this, that he did believe that, when he had got the Plaintiff's or her husband's account of this tube erupting, he did believe that it had so erupted. He could not get away from that, because he had written the letter of 11th October. He said : " Within a few weeks after I had been reading some books, and I came to the conclusion that it was not correct." That is what he put.

And finally I cross-examined him on the telephone message he had received within a few days after sending down his letter. " Oh," he said, " now I remember. It was when Dr. Bell told me that he had taken the tube out I lost all doubts about the matter, and I knew no such thing had occurred." That is how he changes his evidence. What did Dr. Bell say ?

Can you possibly believe him ? I said : " What did you say to Dr. Bell ; did you indicate to him that you did not believe there was anything in this on learning that he had taken out the tube ? "

First of all, page 926 : " You have been told what Dr. Bell's account of that conversation was . . . that is incorrect." He did not indicate his belief that the tube had been left there. And then there is another matter I will deal with later in connection with that remark : " Is this clear, whether you knew it or not . . . I did not indicate to Dr. Bell."

I am suggesting that he knew that the tube had been left there, and that he passed that on to Dr. Bell. He denies that. " That is quite clear . . . doubts in your mind ?—A. Yes."

What does Dr. Bell say about that ? (Page 613.) " What did you say to Dr. O'Hanlon when you got that letter and when you rang him . . . imagination was so vivid." You will note that, Dr. O'Hanlon saying, " As soon as he told me that he had taken the tube out, I was satisfied " ; Dr. Bell saying " Dr. O'Hanlon thought that she had passed something because her imagination was so vivid."

Then I asked him at the bottom of page 615 : " Now what he thought at the time . . . another impression at that time."

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

What do you think of it? Of course, he is just lying. Now, in this case, Dr. O'Hanlon who, after all, at the bidding of the B.M.A. seems to be thrown to the wolves—there is no defence of him by my friend—he says —whatever you think of his moral conduct, well his moral conduct was dictated by the B.M.A.—and there can be little doubt that the Defendant himself, for the reasons I put to you, was part of the force that dictated that moral conduct—now he is thrown to the wolves—he is not defended —that is the position he is in now.

So there we have it. The Plaintiff conveys that Dr. O'Hanlon thought that it was a genuine case, and Dr. O'Hanlon saying: "As soon as I heard that Dr. Bell had taken it out I had no doubts on the matter, and I communicated that to Dr. Bell in some way."

I have here four copies of the letter to the B.M.A. and the reply.

His HONOR: That is the 12th and 13th April 1940?

Mr. SHAND: Yes.

His HONOR: The Jury will have that in the jury room. It is an exhibit.

Mr. SHAND: That will show you more conclusively than any argument of mine what Dr. O'Hanlon thought, and what he thought, not in 1939 when this happened, but in 1940. Will you just ask yourselves when you read it: Is this the letter of a man in respect of whom all doubts had been removed, that when he heard Dr. Bell's story he did not believe the Plaintiff's story? "On 13th March 1938 a patient of mine . . . this report." And then follows the advice not to make any statement, that it might be misconstrued. Can you imagine it, writing down to the B.M.A. —presumably they knew nothing about it—and putting to them matter which, taken without anything else—and that is all one would presume the B.M.A. had—tells a story which suggests only one thing, that his patient had had a piece of tube left in her neck. And yet his state of mind was that no such thing had occurred, he did not have the slightest doubt about it, and he does not give any suggestion in the letter that although that is the patient's story he is convinced otherwise. He does give the B.M.A. that, believing it was all false, without a word of suggestion.

Could anything be more powerful? This is 1940, after he has had the telephone conversations with Dr. Bell. And that was what he wrote. Do you need very much more to see whether you can believe Dr. O'Hanlon? What was his attitude at the time (page 929).

You may notice something rather significant in that letter. He does not mention who the doctor was. He says "A Sydney surgeon," he does not mention who it was. Do you think that adds, or otherwise, to the force of my submission to you that he told Dr. Bell that he was going to write? He would probably ask Dr. Bell's advice, and Dr. Bell may have told him: "I cannot advise you directly. You had better write direct to the B.M.A.", and he writes, mentioning "A Sydney surgeon," well knowing that they will realise who it is.

And of course he admits that he did in fact say with regard to the passage of this tube—and he is a doctor and knows his anatomy, or one presumes he does—he did say—and I suggested to him he did say it at a late interview, but he would not admit that—he put it as 6th October— I put it to him that he had been asked. "Did not he ask you if it was

possible . . . I swore it." That was his attitude. "Presumably, yes, quite probable." That is what he swore he said to Mr. Hocking. I told him, "I am telling you you did swear that." "I want to make it quite clear . . . tell a deliberate lie."

And over the page he admits even now that he had in mind then that it was possible. He will not go so far as he went before, to say that it was probable.

It was placed by the husband as much later. I put it to him that it was much later, but he would not admit that. And you will remember his evidence. He said: "It is true I refused to give a report to the Plaintiff's representative. That was unfair. I also gave all my information to the Defendant, Dr. Bell. That was more unfair." He claimed that he did it of his own free will, but I put it to him that he had sworn before (pages 931/2/4/5) that he was acting under instructions when he gave the statement to Dr. Bell. He had sworn that before. This time he denied that he was acting under instructions.

And the expression he used before, when he said that he told the legal advisers of the Plaintiff, when they asked him for a report, was "I have got to write to the B.M.A." "I have *got* to." Why? Was it because Dr. Bell had told him to?

I want you to remember certain aspects of his evidence, because they are remarkably valuable in deciding this matter. When this matter had come up, when the tube had passed, it was he who went into the explanation that this was a drainage tube (page 936). This is on 6th October. I put it to him: "You explained that a rubber tube . . . towards the end of it?—A. Yes." The drawing of course had been made then. And he came forward, and apparently as soon as he saw the drawing he said: "This is a drainage tube. There is the diamond cut."

Mr. REIMER: What you said just now was that he said that it was a drainage tube. He did not say that.

Mr. SHAND: I paraphrased it. "You actually demonstrated it . . . I may have." He was the man on the spot. And I put it to him: "You said that apparently this tube . . . tube would break."

One wonders if we could ever get a case as powerful as this with all these circumstances.

And what happens further (page 940A). When he comes down to Sydney to see the Defendant's solicitors—he is supposed to be at this time perfectly convinced that Dr. Bell is not to blame—what does he tell them? I put it to him when he saw them: "They asked for the truth . . . very probable." He must think that it is either a fraudulent claim or an hysterical manifestation—obviously not compatible. No other illness is suggested except the tetany. What do we find? At page 952 he applies the Chvostek test, he applied it, and he got a positive reaction.

Mr. REIMER: When?

Mr. SHAND: On more than one occasion. Page 952: "Have you applied this Chvostek test . . . indicating tetany?—A. Yes."

Well, is not it strange that he was the only one who applied those tests? None of the other doctors tried them. And we find from him (page 956) that although the medical evidence, or part of it, for the Defendant, endeavours to persuade you that this parathyroid tetany

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

changed from the true form about June 1938 into the hysteria, Dr. O'Hanlon admits that when the Plaintiff went back to the hospital in September—and that is later than June, July or August—the spasms were similar to what she had had before. And he was the man on the spot.

And when you come to look at his letter—and I will ask you to remember this on another aspect—the letter of 7th October, you will find in that letter all the corroboration you want for the fact that the Plaintiff continued to get swellings well after 1938. And you will find a definite indication of the condition of her neck.

It has been alleged that her neck was not swollen when she went to Quirindi Hospital after the tube had been ejected. One assumes that it had gone down, and the pus had come down. "Mr. Hocking gave me the following history . . . which was swollen." That is not that she stated that her neck was swollen, but, "She complained of pain in her neck, which was swollen." And we know this, on that aspect of the matter, he has sworn that she used quite often to complain to him of soreness in the neck, and I think swellings—soreness and swellings—he swears that, that she used from time to time complain to him—"Frequently" were his words—about soreness and swelling on the left side of the neck. He says there was not any, but he never appears to have told her there was not any. It was his duty to tell her that she was imagining those things if he thought she was. He admitted that she told him about it.

I asked him about that at page 948. He went a little further. This letter says that she complained of soreness in the neck. At page 948 he said "She frequently complained of soreness."

And I was putting to him: "You did not tell Dr. Bell in this letter that there was no indication of swelling or soreness" and he admits that.

Might I call your attention to this. The first paragraph of the letter refers to a clinical examination revealing nothing definite. He admits he did that on the 6th, and did not try to look at the throat on the 6th. So that disposes of that. And then he goes on to say that she was complaining of soreness in the neck. That is the third paragraph. And in the first paragraph is what I have referred to you about the neck being swollen.

And now I refer you to this. The Plaintiff has always sworn he never examined her throat up there. In the condition that it was in apparently he could not. He swears he examined it when she went for the X-ray; she says that he did not. This letter was written after the X-ray because it refers to it—"To-day I X-rayed Mrs. Hocking's neck." And although it sets out that the neck was swollen, and that she has complained of soreness in the neck, is not it obvious beyond words, if he had made a clinical examination inside, that he must have told Dr. Bell that although the throat was supposed to be swollen and she complained of soreness in the neck—"I clinically examined the inside of her throat, and I found no indications." But he does not.

Keep this in mind. I specifically put to him, when His Honor asked him the question: "That clinical examination which disclosed nothing was a clinical examination when you called in the evening," and he admitted that he did not do it then. So those first four lines refer to that.

So, although he is supposed to have examined her throat before he wrote this letter next day, he does not give any indication that he has examined it and found something, or lack of something, which contradicts her evidence.

Mr. REIMER : Will you read page 948.

Mr. SHAND : I will read it in a minute.

You see, he does refer to the result of the X-ray. That is the last paragraph in the letter : " To-day I X-rayed her . . ." Of course it had gone. And it is at the time that he took the X-ray that he is supposed to have examined her throat.

There is another test. I put to you yesterday three things. She did not know that she would be supported by this letter ; she did not know what he had written. And yet she swore that he never examined her throat at that period. And when the letter turns up it supports every word she said.

Mr. REIMER : Will you read the passage you referred to. You started to read at the top of page 948.

Mr. SHAND : " It was not swollen . . . revealed that it was swollen." That does not refer to this examination.

Mr. REIMER : There was an examination on the night of the 6th.

Mr. SHAND : But he does not suggest that he then examined the throat.

Mr. REIMER : This refers to the swelling.

Mr. SHAND : Anything else you want me to read ?

Mr. REIMER : No.

Mr. SHAND : What I am referring to is the inside of the throat, which he swore he examined early on the day of the letter of the 7th. And he never mentioned it in the letter—never mentioned it.

And would you just keep this in mind in dealing with her evidence. Just imagine this. If she was not well aware when she came back from St. Luke's on the second occasion that something had come through her tonsil—she did not know before when the thing came into her throat—she would not know what part of her throat it came through—and that is important to remember later—but when she had been to Manly, and came back to Quirindi, she knew that something was wrong with the tonsil, and that is where this thing had come through.

So what did she do ? She went back to her doctor, as he admits at page 939, and she tells him that she has a scar on her tonsil, and asks him to look at it. " You tell these gentlemen when Mrs. Hocking . . . that is correct." He admits that. " Did you tell her that she did not . . . left side." This is obviously false. " Did not she say there was a scar there . . . lymphoid tissue." That is the commonest thing in the throat. We have not heard anyone else mention it. He knew what he saw, and that is the way he passes it off.

Would you have any difficulty in discarding this man's evidence ? He is without principle—and on his own admissions !

And the Plaintiff, of course, has told what happened—that Dr. O'Hanlon came to see her at her home at this period. " Did he have a look at your throat . . . something else, did he ?—A. Yes." I could not get that because of the rules of evidence ; I could not put the express words to Dr. O'Hanlon on what he told her.

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

I want now to deal very shortly with certain evidence in the Plaintiff's case. You have all got a copy of Dr. O'Hanlon's notes. When you are looking at it you might remember that there are two sides to the original. Your copy has only one side. That (showing exhibit) is the part that you have got. The figures were not copies. I pointed out before that the doses given were not specified as to days.

We know how she came back to Quirindi. Look at the 7th entry, 30th April: "Patient had thyroidectomy in Sydney—Dr. George Bell—apparently parathyroids disturbed." That is what he thought. It is not suggested that Dr. O'Hanlon knew anything about this tube until it came out, or suspected it. It is clear that he did not. "Apparently parathyroids disturbed—has marked tetany and discharging sinus over operation scar—face and body swollen." That is a couple of weeks after she came back from the hospital. And that was her condition—this woman who is supposed to have been recovered.

Following it down, on 9th May she had a generalised tetanic spasm, and became unconscious. Keep this in mind—I have mentioned it before—that these gentlemen called for the Defendant say because she was unconscious that is a strong indication that was not tetany. But they admit, with the exception of Dr. Ritchie, that she had tetany right up to about June 1938. And here is the unconsciousness occurs here, and yet they admit this is pure parathyroid tetany.

Mr. REIMER: I object. Dr. Poate said that at one stage hysteria superimposed on parathyroid tetany, and he said the first time he became suspicious of it being true tetany was when he saw the entry at Quirindi Hospital of 1st June. There is no reference to unconsciousness in the hospital record of 9th May, and he said the first time he became suspicious was when he saw unconsciousness referred to in the entry of 1st June.

Mr. SHAND: He still says that his suspicions only date from about June. Having all this information in his possession now, that there was unconsciousness on 9th May, he still does not date it back to there.

While we have this, look at 26th June—"Patient has severe spasm—calcium chloride was reduced to 5 cc." He knew why. He knew that it was tetany, and he knew the reason for the spasm. And that 26th June. And then on 30th June there had been injections, and then there was calcium lactate, and then she came back to the hospital with severe spasm on 3rd September. And do you remember this, that last entry: "Soreness following dislocation of jaw by dentist." It was not put in this trial, but in previous trials——

Mr. REIMER: What page?

Mr. SHAND: It was put that this was one of the cases, this complaint about the jaw being dislocated, and also the striking, were detailed by Dr. O'Hanlon amongst and with the other things that were to indicate hysteria. And he knew that they both happened. He gave them in chief. He did not explain then that there was a foundation for them, but put them forward. And any jury merely hearing that would come to the conclusion: "These things have no foundation, therefore she must have imagined them, therefore she was an hysteric." It turns out they were both founded on fact.

He now has to admit that he puts neither forward as indicating hysteria, and yet that is how the case was dealt with first. Do you think that the Plaintiff has had a fair deal? That is another little incident.

Summarising it shortly, Sister Sly gave evidence at page 111. After all, she is a sister, she is in a very awkward position. I suppose she is dependent also, to a large extent, on the favours—and when I say favours I mean in no improper way—of doctors, and you would not think that she would ever err on the side of exaggerating the Plaintiff's case. In point of fact the Defendant had also obtained a statement from her. She said that at page 112. What does she say, briefly? She details the spasms, she said they would come on rather suddenly, usually started with a spasm of the limbs, and became more rigid, and she would then lose consciousness for a period. She remembers paroidin being used, and she remembers when the doctor could not use the injections. "I do not remember very much . . . I am not clear on that point." The doctor denies it was ever given. Someone gave it. Apparently it was either she or the doctor. "What are you not clear about?—A. Whether I gave the massage or the doctor gave the massage." She says she has had many cases since. "I remember the appearance of her face . . . few steps by herself." There is the picture of this lady at the end of June. "When I left she was improving a little. There was a little stiffness."

Mr. REIMER: Will you read on, on the next page, the cross-examination.

Mr. SHAND: No, I will not read the cross-examination. Mr. Cassidy has read it. But I do not think Mr. Cassidy read this part though. She was cross-examined, and Mr. Cassidy asked, "That puffy appearance . . . neck, face, hands, neck."

Mr. REIMER: You are leaving out the intervening part.

Mr. SHAND: Mr. Cassidy read it.

You will remember the evidence of the Nancarrows. That covered not many visits, but a number of visits in 1938/39. They spoke about the face being swollen, that there was a bandage around her neck, and that her voice was hoarse, that there was a swelling near her chin—and both the Nancarrows speak of that. And one notices not very much was said about Mrs. Fisher, but I would suggest to you that if ever there was a reliable witness she was one. She it was who, when questioned by Mr. Cassidy about her evidence, said "I might have forgotten a good deal, but anything I have given you is the truth."

Mrs. Fisher was there over a period. She speaks of the face and throat being swollen, and they were still swollen when Sister Sly left. She said that the swelling varied, but there was a certain amount of swelling. She speaks about symptoms, the eyes at times being mere slits, and at other times they would be almost normal. She called in in the following October, and said that the swelling seemed to be more or less the same. In 1939 she visited the house, and there was still swelling, and Mrs. Hocking was sitting in the lounge chair—she said she was there all the time. The swelling was still there, and she washed her before she went to the hospital after the incident of this tube. And what she did was to put hot foments around her throat. Do you think that it was swollen or not?

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

I am reminded the witness, a vastly important witness in this period, her evidence Dr. Poate did not even bother to read. He did not bother to read the whole of Dr. O'Hanlon's evidence. He got tired. I think it was Dr. Smith in that regard. Dr. Poate was given certain witnesses, he did not read the others.

Then she speaks about what her condition was on this occasion in October after she had had the X-ray. She said that the tongue was coated with pus and very swollen, and her mouth was very swollen. It is obvious when these lay people speak of pus they mean the furry unhealthy condition of the tongue, as if it were pus you would not need to scrape it off, if it were an unhealthy condition of the tongue you would. The Defendant's witnesses would know that.

They have thought fit to assist their evidence on the blood count by suggesting that this matter continued right up to the entry into St. Luke's on the second occasion. Professor Inglis admitted that it was only some kind of mucous substance and not pus. Then you get a different reply to whether the blood count was consistent.

And I suppose Mrs. Fisher, in using the word " pus," would use a word many of us would use without knowing the medical significance of it. She is not a lady who is willing to invent evidence. We know that tetany spasms were occurring. She did not see any when she was there. She did see the marks in the palms where the nails had dug in. She was shown those. She says that the throat was swollen when the Plaintiff was taken to the hospital for the X-ray. When asked about pus, at page 231, by Mr. Cassidy, whether it was running: " No, it was not running, but the tongue was all coated with what looked to be pus. It was creamy yellowy looking, hard to describe." So there is that period covered.

Now let me deal shortly with this matter with which I have already dealt to some extent—hysteria. What do we know? What are the distinctions? We know that the first distinction is this, that hysteria is an hereditary complaint and that means that you get it in the forebears.

I suppose you will have little doubt if there had been any indication of that it would have been investigated.

Tetany, we know, is a purely physical disease, not hereditary, due to some trouble preventing the functioning of the parathyroids. And will you keep this in mind. A lot has been said of this lady having a nervy condition at a certain stage. Well, no doubt she had it. After her first trip to Quirindi Hospital, she eventually had a diagnosis of this complaint of thyroid—thyrotoxicosis. And the very things that flow from that are nerviness, rapid pulse, the nerviness showing itself in various ways. But that does not establish that the woman is an hysterical woman. Those are the outward signs of the disease of thyrotoxicosis. And of course, with the removal of that trouble, which was removed in this case, the nerviness clears up. But not with hysteria.

We know now that Dr. Flynn's diagnosis of an angio neurotic œdema was quite wrong. Even he admits that having heard the history now, and later on this diagnosis of thyrotoxicosis, he admits he may have been wrong; he will not admit that he was.

Mr. CASSIDY: No.

Mr. SHAND: That will be turned up. But we are not very concerned with that. It is unimportant. We know that she was suffering from

thyrotoxicosis, and all these indications she gave of this nerviness were the result of it and not as the result of an hysterical make-up.

It is also agreed that in hysteria, once an hysteric, always an hysteric. Well, what about her now. Four trials she has been through. Do you think that she is? Has she given the slightest indication of it?

We know that in hysteria the administration of calcium has no effect. In tetany one expects a marked effect. And that is just what we got here —so marked that Dr. O'Hanlon emphasises it.

We are told, and the text-books state, that in hysteria the face and tongue are not affected. Here, admittedly, the face and tongue were affected. In hysteria you do not get unconsciousness—here we have unconsciousness.

And of course in hysteria, as has been read to you, you get what are called chlonic spasms—that is, throwing of the arms about, and the loose sort of movement. In tetany you get tonic or rigid spasms. And that is what you get here.

I want to find a passage which has been read to you, has been read to you several times. Let me read it to you. It is dramatic. This is the passage which has been relied on and read four times, in Osler's Principles of Medicine, by Christian, at page 14—"Convulsive Hysteria." You would be misled if you simply took it as applying to this at all. This is not hysterical tetany, but convulsive hysteria. I do not know where "Hysteric tetany" comes from. It seems to be a name coined by the doctors for the defence in this case.

(Mr. Shand reads Osler, page 14, commenting on each sentence to the effect that it had no bearing and no application to the present case.)

Think of it. Fancy reading that passage to you and asking you to apply it to this case. Hallucinations during the grip of hysteria, and persistence of those, and charges which are made before, and persistence of those charges after! In this case there was no charge made, until when? Something like a year or more after this tube had passed.

Can you imagine anything less applicable when you read the Plaintiff's letter—and this is supposed to be an hysterical woman making charges. She is just a decent fair woman—too fair as it turned out.

This is what she wrote on 11th October, this woman supposed to be making a charge. Look at the letter—pitiable, simple, and unduly generous. "Dear Dr. Bell . . . or anyone at the hospital."

How can they try to put that stuff over you. How can they try to put a passage like that over you. That was her attitude—just a simple woman, too decent for what has happened, refraining from making charges, with a generosity she should not have shown. But an hysteric, a person who is gripped by uncontrollable hysteria to blame someone for something? Where is it?

It is not until 1940 this lady comes to Sydney, at the suggestion, as I will show you, of Dr. O'Hanlon, that she should see Dr. Bell. It just happens in a normal way. She has seen Dr. O'Hanlon, and there should be no doubt, as you will see from the evidence I will read you, she got certain advice from him and came to Sydney, and put to Dr. Bell the position, and he was not willing then to stand up to his obligations. Where is the hysteria, where are the charges?

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

Have you ever thought of this, that this suggestion of hysteria depends upon certain of those incidents in the private life of this unfortunate woman that occurred, when ? In 1941. You will remember the allegation that something had been put in the milk. The previous mention that her jaw was dislocated. That is not now put forward. And the striking. No suggestion of them roundabout this time when the tube came out of the neck and was swallowed. It is not until the incident in 1941 that this Defendant places his allegation of hysteria. Has that struck you ?

And who would wonder ? Who would wonder if, after this terrible time she has been through—there is no doubt of that—Dr. O'Hanlon emphasised her sufferings to the Defendant's solicitor—who would wonder if her health were affected ? But there is no suggestion that when this tube passed in 1939 beyond the fact that it did pass, and was drawn, and Dr. O'Hanlon believed it—there was nothing wrong then.

They say because she made a suggestion 1941, therefore she is hysterical. And that is the frail foundation on which this structure is built.

I indicated that I would put to you—and I will do it—this. It is easy to say a thing is impossible, very easy to say it, but it is harder to prove it. And I did put it to you, and I will repeat it and give you chapter and verse for it, that although most of the witnesses called by the Defendant say : " This is not possible, this tube passing in that area, it is not possible," I will show you that they have admitted all the individual elements which will make it possible.

We start with the evidence of that very eminent man who has nothing to gain from this case, Professor Welsh, and with Dr. Thompson whose knowledge is obviously very profound. They tell you that it is possible, or probable.

What do we hear ? First of all we hear this. It is said if there were pus there in the position indicated it would not go up, it would go down into the periostenum, and that would be the end. Now, there was pus where the operation had been performed ; there was pus, and a lot of it, at one time. And the wound had closed up at Quirindi, but it had to be opened, and it did not go down. That is all you want for that—it did not go down.

And we are told further that if a thing like that passed it would injure the blood vessels. They vary in that. Professor Inglis said that it would injure the arteries. I think that is what he said. No, Professor Inglis said that it would injure the veins, which are more susceptible to injury. Dr. Poate said that it was the arteries, that it would injure (page 1399). There we get the variance again. If you are looking for more candid evidence, and you have to choose between them, I suppose you would take Professor Inglis.

Professor Inglis admitted very fairly that you get abscesses all over the body. You heard Dr. Thompson, with his encyclopædic knowledge of this subject, describe to you the various abscesses you get, starting in the head and neck and going right down to the trunk, and you heard what large blood vessels are in the vicinity of each place, and it is not disputed that although you can get injury to the blood vessels, it is very rare.

What is next alleged—that you can get injury to the muscles. A very simple illustration in regard to that matter is quinsy, where you get this huge bag of pus at the back of the throat spreading right to the centre, and further, of the roof of the mouth, and, as Dr. Poate said, bursting along the edges of the muscles. And how much injury do you get to the muscles ?

As Professor Welsh said, pus works in this way. It does not have to go through the muscles; it separates. And Professor Inglis agrees with this, and so did Dr. Poate at the first trial.

It works in this way, as Professor Inglis admitted, that when you get into the neck you can divide those organs with a blunt dissector and pull them apart. And what you can do with a blunt dissector can be done with pus, and so the muscles or organs are forced apart and the pus forces its way.

Looking at the authority produced by my friend, Fowler, 28 and 29, dealing with tonsil surgery—Professor Welsh has told you this is dealing with the tonsil and the structures below it—dealing with that part of the neck, the pharyngeal aponeurosis—you heard when it was put to Dr. Bell he admitted there was mucous membrane—at page 28 it says: "The fact that the capsule . . . prevent free mobility."

And that is how it works. All this talk of having to go through all these muscles and organs, is so much nonsense. And that is admitted. Let me refer you to what the Defendant's experts have said. I will refer you to who said it and to the pages. They have said that pus is particularly in the neck, and pus may go anywhere—that is Dr. Edwards, 777/9, Dr. Marsh 796, Dr. Tebbutt 833, and that it may in particular spread or work upwards. That is what Professor Shellshear says at 1121, and Dr. Edye says it at 1198. And Dr. Poate also says, that it is not impossible —that is the length he goes—for pus to go upwards (page 1487).

Dr. Edye says suppuration may spread upwards (1198) and that gravity is of little effect, and Dr. Poate also says, with regard to the neck, gravity is of little effect. That is their own evidence.

Mr. CASSIDY: That is tuberculosis. I have looked at Professor Shellshear, and it is tuberculosis.

Mr. SHAND: It does not really matter if it is tuberculosis. Professor Welsh has told you although they are different types of infection they act in the same way. And if he is confined to tuberculosis the other doctors certainly were not. Apparently that referred to tuberculosis in one case.

Mr. CASSIDY: Dr. Edye said: "It may spread upwards in the line of least resistance."

Mr. SHAND: And it is controlled by the movement of the muscles of which in the neck you get a great deal. And remember that in this case this lady spent a large amount of time in bed in an horizontal position, and on a great number of occasions she was having these spasms which would affect her neck amongst other parts of the body. And the act of swallowing, the doctor said, was one thing which would affect the matter of travelling. And if pus can travel it is no use saying a tube cannot, because it can travel with it. And that is how it does.

As Professor Welsh said, what you get in a case like this, is this, that you first of all get an infected wound. You have the tube in it. The next stage you get is what is described as spreading suppuration—suppuration dividing the fascia or various vessels, and forcing its way in some direction. And as it spreads the foreign body, whatever it be, can be carried along with it. Whether by force of the muscles, or the angle at which the person is lying or, it is suggested, massage in this case, or the

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 19th January 1944, *continued.*

spasms. And so it follows the pus, the spreading suppuration, until you finally get an abscess formed, and at some stage or other that abscess will break. And where it broke in this case was the tonsil, because we know in this case there was a hole in the tonsil, the size of the blunt end of a lead pencil. Dr. Marsh, page 804: It was a size that corresponded with the diameter of the rubber tube.

Mr. CASSIDY: When is it suggested that the hole was that Dr. Marsh saw of that size? Do you suggest that it was in St. Luke's?

Mr. SHAND: He denied it in St. Luke's—that was when he made his examination after—that there was then a hole in the tonsil the size and diameter of the tube, or the blunt end of the lead pencil.

And I put to you this morning that this was a late idea to describe it as supra tonsillar fossa. The supra tonsillar fossa is a natural opening which does not close, and everyone admits this one is much smaller. Everyone admits that. It has got smaller until you can now only get a probe in.

Mr. CASSIDY: Dr. Marsh says that it was not there in October 1939, so he could not say that it got smaller.

Mr. SHAND: Of course he says that he did not see it in the hospital but he admits when he made the examination later he saw it. I do not know what is suggested made it smaller in the meantime.

What further do we know about the passage of this tube? I am taking this from Professor Inglis who also says that gravity is of little effect in these things (1255). We also know from him that infection may become chronic, acute. That means, of course, acute is active, when it is making its way, and chronic is when it is not in that condition. It may be chronic, and flare up and become acute, and then chronic again.

Mr. CASSIDY: Where do you say is your medical justification for that?

Mr. SHAND: I have said that.

Mr. CASSIDY: Who said it?

Mr. SHAND: Professor Inglis, page 1255. I will read it. My friend apparently does not know his own medical witnesses. I will start on page 1253. (Reads evidence.)

Mr. CASSIDY: If it is chronic it never ceases.

Mr. SHAND: That is what Dr. Cassidy says!

Mr. CASSIDY: That is what Professor Inglis says.

Mr. SHAND: At page 1254: "It may cause infection . . . and become acute?—A. Yes." So we find that gravity does not necessarily control in the neck, we find that suppuration may spread, and it may divide or eat through, and when it has spread the foreign body may move as it spreads. When it is acute, it divides or moves through. That is what I am putting, too. And we find then that it may die down and become chronic for a time, and then flare up in a recrudescence and become acute.

What happened in this case? We know there was an acute infection at St. Luke's on the first occasion. There was a large amount of purulent

pus. When she went to Quirindi to the hospital a few weeks later, there was all this swelling around the face, neck and body, and inflammation, of course, and where there is inflammation there can be pus. What was her treatment in Quirindi for weeks? These hot foments were put on, only for one purpose, of course, to draw out the inflammation or the pus that was there. During that time this was acute. And these hot foments were around the neck.

Where had the suppuration spread, do you think? And if it had spread up the neck, where had the bit of tube gone? And what do you get? You get, probably, as Dr. Thompson has said, it dying down for a while—you get the attacks of tetany, as Dr. O'Hanlon said, less acute. Why? Because possibly the tube had moved and an abscess had formed. And then what do you get finally?

Some little time prior, some months prior to 2nd October, you get a flaring up. You get a worsened condition. Finally, you get this suppuration free, acting on the parathyroids, and causing a most severe spasm, and in the middle of that the tube extruded. The suppuration had eaten through. It had got to the tonsil and eaten its way through, and through has come the tube.

And that is why I say as against the evidence of Professor Welsh and Dr. Thompson, the Defendants will sum it up and say that is not possible, but they have admitted every essential element can happen that makes it possible.

Mr. CASSIDY: My friend quoted Professor Inglis. Professor Inglis specifically denied it at page 1263.

Mr. SHAND: What is this? "Mr. Shand asked you certain questions . . . at a later stage?—A. No." That is alright, that does not interfere with it. While you have the thing uncapsulated you are not getting it, but it is when it has eaten through the capsule, as Dr. Poate has admitted, where you get the flaring up again. And where it ate through the capsule, I suggest was very close to when the tube came out.

That is what I am putting. The passage my friend referred to does not affect the question at all.

Every element that makes this possible has been admitted, and it is only the final conclusion that is denied by the Defendant's doctors.

And may I say this, and I say it without reservation, that one is pleased that there comes to this Court—leaving my witnesses aside—a witness like Professor Inglis, who, if you put to him something that is rational and possible, will let you have the benefit of it. And that is what he did.

Mr. CASSIDY: And he said that the woman would be dead if this happened.

(At 4 p.m. the further hearing of this matter was adjourned until next day, Thursday, 20th January 1944, at 10 a.m.)

Thursday, 20th January 1944.

20th January 1944.

Mr. SHAND: I put it to you yesterday, gentlemen, that when you analyse the evidence of the witnesses—expert witnesses—for the Defendant, although they will not admit the ultimate matter, namely, that a tube

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 20th January 1944, *continued.*

can come through the tonsil, they admit everything that makes that possible. And there is another matter, there is not one of these witnesses—not one of them—that has given you any experience that he has had with a foreign body in the neck—not one of them. I do not know whether they have not had any such experience, or whether they do not think it is useful to let us know, but not one of those witnesses gave any experience they had had of the movement of a foreign body in the neck.

The other matter I will deal with is concerning the question of there being blood around. Both Professor Welsh and Dr. Thompson referred to this, and the professor went on to say that there was no running pus. And I put that too to Professor Inglis—he is a very fair witness—at page 1261—about the arteries—and there is his reply to that.

Mr. CASSIDY: My friend has said that no doctor gave evidence of any experience as to foreign bodies.

Mr. SHAND: Of the movement of foreign bodies.

Mr. CASSIDY: Dr. Poate.

Mr. SHAND: He said nothing about movement.

Mr. CASSIDY: The evidence is that they did not move.

His HONOR: Professor Inglis' evidence was negative movement.

Mr. SHAND: More than one gave negative evidence. As to the effect on the arteries—page 1261—he said: "I would think that is . . . of this kind." I referred yesterday to that passage dealing with the pus. "You were asked whether . . . one of the matters . . . that would affect your answer . . . and you do not have to scrape pus . . . if there had been suppuration . . . to normal . . . in hand."

When the pus stops the blood comes back to normal. "As the suppuration subsided . . . would change." I put it that there might be an interval or lag between and he said "Yes."

And now, gentlemen, coming to what I submit is the most important part of the case—and before that, let me remind you again of the illustrations of Mr. Finney's that have been before you—at pages 496–497. (Shown to Jury.) It may be that that is enlarged. You can judge from that regarding the evidence given by some of the expert witnesses about the $3\frac{1}{2}$ inches and 5 inches between the tonsil and the thyroid—that would mean almost a juxtaposition. Here you see a tube inserted slightly to the right of the centre and it comes into the right lobe obviously.

Coming now to the most vital part of this case. I undertook to satisfy you beyond any question of doubt as to the accuracy of the claim made in this case, and I now propose to attempt to do that. Before we turn to those acts or factors upon which I rely and which are not in doubt, let me remind you of certain circumstances that occurred at the initiation of this operation.

We know that this was a long operation. It took, instead of three-quarters of an hour to one hour—it took $2\frac{1}{2}$ hours. You might deduct some time for administering the anæsthetic—I do not care whether you do—but it was a long time, because it turned out to be difficult. There was trouble—I am not suggesting trouble through negligence—but there was trouble. There was hæmorrhage in the left side—the superior thyroid artery—the left one, at the top. There was hæmorrhage, and there was

some difficulty in stopping that bleeding—that we know. I am not putting this on the ground of negligence. But that is a fact, and is unquestionable, of course, that that would make the operation more difficult than if that complication had not ensued.

The Defendant said that he did not know in which lobe he put the tube, but Dr. Poate tells you that his practice is—and one would think it a very logical practice—to put the tube in that side where there might be trouble. If that is so, the tube would be in the left lobe—not across the neck.

We know that these tubes that are used are boiled a number of times —not merely boiled up and discarded. Dr. Poate tells us that they are actually used in the human body a number of times.

Mr. CASSIDY : That is only since the war.

His HONOR : Since the war, Mr. Shand—since the shortage.

Mr. SHAND : He did confine it to that, but on the evidence they may be boiled up a number of times.

Dr. Poate, at page 1470. He admitted that care was taken that the tubes were not stitched in. That means only one thing—there is a risk that they may be stitched in. You remember Dr. Edye, the peculiar way he was illustrating—you could not put a needle through a tube.

Mr. CASSIDY : My friend takes the risk in proceeding with this. He has admitted no negligence in the operation—that covers the operation of stitching.

Mr. SHAND : You remember gentlemen, Dr. Edye, as to the way he dealt with the tube, and you remember he admits that they take care that the tube is not stitched in. Page 1220.

I am not putting this as the groundwork of the case. It might be very difficult to avoid stitching in a tube in certain circumstances—with a lot of blood about.

Mr. CASSIDY : The evidence is that the blood is cleared up as you go along.

His HONOR : Blood cannot be left about—the blood must be stopped before you retrace your steps. Dr. Poate did not say there was risk—he said there was no risk—that the possibility was so remote that it could not happen. That there was no risk.

Mr. SHAND : He said at first that it was remote—then very remote, and then most remote.

Mr. CASSIDY : He did not say there was a risk.

Mr. SHAND : I say there is evidence, and we all know that when you are putting stitches in the vicinity of a tube, of course there must be a risk, and, gentlemen, in view of His Honor's support of my friend's suggestion, I put it that there is still blood coming from the wound, to an extent, even when it is being drained, and of course, there must be some about the place however carefully it is sought to drain it.

It may be, and I am not putting it as a ground of negligence—but it may have been that the doctor was unfortunate. These are difficult matters—intricate matters—the space is so small—and there are four

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 20th January 1944, *continued.*

hands about the place. It is very difficult. There is no negligence suggested, but what is suggested is leaving the tube in.

Dr. Edye's evidence—according to Dr. Edye, if you put a stitch through the tube it will hold. At page 1220: "Would the stitches hold it . . .?—A. Yes." My friend expected him to say "No." "An infection . . . Yes . . . in the pus." I will call your attention to that presently, gentlemen, because we can well understand now how these structures that look like wire appear in that tube.

Let me deal at this stage with a matter of extreme importance. If the tube were put in first and the stitches (internal stitches) afterwards, of course the tube could be sewn in in some way. If the stitches were put in first, and the tube after the stitches were done, it could not be sewn in of course.

I am going to show you that the Defendant has sought to avoid what he knows is a vital difficulty by seeking to tell you that his practice was to do the stitches first and then put the tube in—that has been exposed. That is important. If he is innocent, why bother, but if he knows that he stitched the tube, then one can understand it.

May it be this, gentlemen, that since this operation showing the danger of putting the stitches in while the tube was already in position—may it be that the Defendant changed his technique? He has been taught a lesson since that operation, and he has said, "I will not take another risk. I will change my technique—I will do as Dr. Poate does—I will put the stitches in first, and the tube afterwards."

I will now refer to pages 540, 542, 695/7. Also to Dr. Hunter at page 1365 and Dr. Poate at page 1461.

"Having stitched it down like my coat at the bottom you will have a kind of opening?—A. Yes." You see the evidence he gave there. You first of all stitch the internal muscles down like the two sides of a coat and you leave a hole to put the tube in.

I put it to him then: "You put the tube in . . . as a rule you do that."

Mr. CASSIDY: "As a rule" he said, and I said, "Might it vary?"

Mr. SHAND: You said "Might it vary?" And then, "It is fitted before . . . that is my usual technique—the one on the slides." That is his evidence in chief. What he meant was that his practice was to sew it up first and then to put the tube in—no risk then of stitching through, and that would have been left to you if there had been no further question.

Mr. CASSIDY: Before he had indicated the method and produced the slide.

His HONOR: Do not interrupt—the Jury will remember that.

Mr. SHAND: I have read the evidence. The slide disappeared and we had to get another.

Mr. CASSIDY: The slide was in Court all the time.

Mr. SHAND: It was not.

His HONOR: There has been no question about Exhibit "4."

Mr. CASSIDY: This is marked Exhibit "4."

His HONOR : There has been no talk about this before.

Mr. SHAND : The doctor had to go to his room and get it.

Mr. CASSIDY : That was a different slide.

His HONOR : My recollection is that I had it on the Bench the whole time.

Mr. SHAND : I withdraw.

Mr. CASSIDY : On that page—" Slide tendered and marked Exhibit ' 4 '."

Mr. SHAND : They are both " 4." (Slides shown to His Honor.)

His HONOR : One was originally marked " 4." I had it on the Bench all the time.

Mr. SHAND : I withdraw.

His HONOR : Let the Jury see the slides. This other one I saw much later. (Slides shown to Jury.) This collar incision did not come in until much later.

Mr. SHAND : My recollection was not quite clear.

His HONOR : I had it here on the Bench. At page 539 he says there that that was what he used with the students.

Mr. CASSIDY : My friend's charge was that the slide disappeared.

Mr. SHAND : I withdraw.

His HONOR : That was the only one put in at that stage.

Mr. SHAND : I withdraw.

His HONOR : The other was put in later on.

Mr. SHAND : I want to deal with this case as calmly as I can. There is no doubt about the evidence—" Having stitched it down like my coat . . . the one on the slide." I suppose—the one on the slide his usual technique—would mean that he sewed it up first and put the tube in afterwards. He said that is his usual technique—that is what he says on this page.

Returning to the evidence on this page. We go a little further. At page 542 : " In this operation, can you tell me . . . I would not swear as to whether I put the tube in after I stitched the muscles or before . . . what I sometimes do . . . try it . . ." " That is the technique I taught the students." That is putting the tube in afterwards. He cannot remember in this case whether the tube went in first and the stitches afterwards, or vice versa.

At page 695 (middle)—" Well you gave some evidence . . . left a hole big enough . . . that is the way I lecture to the students . . . stitched up after the operation?—A. Yes." " How can you aim so accurately from the outside?—A. It is not a small hole . . . operation in detail."

At page 696—" Did you say you slipped your finger in . . . cannot remember."

At page 697—" I put it to you what he said . . ."

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 20th January 1944, *continued.*

Mr. CASSIDY : Will you go on from " I cannot remember ? Have you any comments about that ?

Mr. SHAND : I am only commenting on that as to being either change of evidence or change of technique.

Page 697—" You went on to say . . . thin muscles . . . called them strap-like muscles . . . together again ?—A. Yes."

That is his evidence in the first trial. That he put the tube in first and sewed the muscles up afterwards. There is no question about it. I put to him—" So that there you have sworn . . . do it either way . . . might be safer." " Why did you only put it one way at the trial . . . description." " It is my invariable practice . . . removal of the thyroid." He says " technique " at page 698 refers to the whole of the operation.

Dr. Hunter was in attendance at this operation and apparently knew the technique of the Defendant. He was the anæsthetist. At page 1363 I asked him about the technique.

" He puts the safety-pin in first . . . outside ?—A. Yes."

So Dr. Hunter knows only one practice—puts the tube in first and does the stitching afterwards.

At page 1461, I asked Dr. Poate—he knows Dr. Bell's technique— " And you know the technique . . . stitching up afterwards ?—A. Yes."

Could you have a more eloquent indication ? At the first trial the only evidence he gives is—the tube in first and the muscles stitched afterwards, leaving the risk of the tube being stitched in. Then at this trial, apparently both on the slides and his evidence-in-chief—he tells that his technique is stitching first and the tube in afterwards—that is what he teaches the students.

Mr. CASSIDY : There should have been a further question read in Dr. Hunter's evidence.

Mr. SHAND : It was read.

Mr. CASSIDY : Leaving a space for the tube—that means leaving a hole for the tube.

Mr. SHAND : These interruptions are very trying—I read all that out. I don't know whether my friend is pretending stupidity. I read it all out. " And after that he does some internal stitching . . . outside leaving a space for the tube." That is on the outside. There is no question about it.

Mr. CASSIDY : What do you suggest the space he leaves is ?

Mr. SHAND : The space for the tube. Gentlemen, we have this evidence by the Defendant. At the first trial he tells you what he does. There is only one thing he does not two methods of technique. He puts the tube in first and stitches the internal muscles while the tube is there. In this trial he produces slides and gives descriptions which are the opposite. If that is so, there would be no risk.

There are only two alternatives—Either he was trying to mislead you (and I rather absolve him of that)—that is one alternative, or he is describing what his present technique is. If he has changed his technique since this operation—why ? There is only one reason, and it is because he knows

that by some unfortunate accident he had stitched in that tube. Can you have anything stronger than that. He has changed his technique for the very reason that he knows that happened in this case.

I was dealing with the general facts surrounding this operation. I referred to the likelihood that the tube would be in the left lobe—also the Defendant cut the muscle across—it was the proper procedure. He had difficulty with the artery and he had to cut the muscle. He says that he was sure he cut the muscle and that had to be stitched and he used for that strong gut. At page 780.

I will now refer to page 564 and pages 593–4.

(Sketch shown to Jury.)

These things like wire. Dr. Edye was surprised that he (Defendant) used such strong gut—this was No. 2 London Hospital type—but he did use it, and the Defendant has told us and Dr. Edye, too, but the Defendant also, that with infection this gut will not dissolve.

Mr. CASSIDY: Knots—not gut—everybody said that.

His HONOR: The only evidence is that it won't dissolve—the gut itself will remain. That is my recollection.

Mr. SHAND: Dr. Edye's evidence—page 1220—" An infection . . . prolongs it . . . it will be absorbed . . ."

His HONOR: My recollection there was at fault.

Mr. SHAND: It comes wth a lot of authority from Your Honor.

Mr. CASSIDY: The gut referred to—what would you suggest was the length of it—was it tied and then cut.

His HONOR: Do not interrupt.

Mr. SHAND: Knots are only composed of catgut—not of any different material. I suppose because they are tied in a knot there is a little more resistance, but we are told that catgut cannot be absorbed.

At page 693—" It was not merely a knot . . . absorbed . . . performed an operation . . ."

Mr. CASSIDY: What is a suture ?

Mr. SHAND: I object.

His HONOR: A suture is a stitch.

Mr. SHAND: Yes. Not merely a knot but a stitch. A suture is comprised both of the knot and the part that goes round.

Mr. CASSIDY: Where does the 1¼ inches come from ?

His HONOR: Please do not interrupt.

Mr. SHAND: We do not know how extensive the stitching was. The Defendant could not remember, but we have not very much difficulty now in deciding what those two things looking like wires and springing back when you touch them, are. " Marine sponge "—that is a woman's description. We do not know whether it was a swab. We do not know that it was a swab that got into the tube. We know swabs were used in the wound, and you can well imagine, gentlemen, that that might

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 20th January 1944, *continued.*

well have gone through this V cut—with that circular needle attaching the swab on to it—into the V cut. Now we have a probable explanation for those two wire-like structures.

Now we come to a vitally important part of the case. What happened at this operation. I had put to you before that there were two persons that knew—one was the Defendant—he knows. And the other, the Plaintiff, because she saw what was discovered when this thing was passed; and I mentioned another person, and that person I now name—Nurse McCallum, now Mrs. Warburton. She knew too. The nurse that was in attendance when the tube was taken out knew. She must have known. Her evidence—Nurse McCallum.

I suppose she must have attended a great number of operations, but when she was asked by the matron—without any prompting, whether she remembered this case, she immediately remembered—in her own words—Dr. Bell doing something with the tube. Gentlemen, can you imagine her saying that if it was not something remarkable?

At page 521—"On the first occasion when you were spoken to . . . four years afterwards . . . yes . . . your unaided recollection?—A. Yes."

I put that to her because in chief to my friend she had stated—"I did not remember exactly . . . one time." Page 517.

If the ordinary thing had gone on and the tube had been taken out as we are told in the ordinary way, with the forceps, the incident would never have been recollected, but she can remember Dr. Bell doing something with the tube.

"But you have not told us . . . some cases you can remember more than others."

One is sorry, gentlemen, for this lady. She has a loyalty. It is clear as daylight what she means. That is why she can think of it at once when it was spoken about.

"You can remember . . . 4½ years?—A. Yes . . . tell us what the incident was . . . I do not remember exactly."

You could have nothing more eloquent. There was an incident connected with Dr. Bell and that tube which four years afterwards she could remember immediately.

Then—"Tell us what the incident was . . . I do not remember exactly." I wonder did we nearly get it then—that word—"Exactly." She remembers something, but she will not tell us.

"Apparently in the meantime . . . was it . . . I do not remember." She did not remember exactly what it was.

"Just this one case . . . you do remember this one incident?—A. Yes . . . cannot definitely say . . . it being removed . . . any more definite."

She was very confused because she knew.

"But you do remember an incident . . . cannot remember now . . . immediately when the matron asked you?—A. Yes."

Mr. CASSIDY: The next question.

Mr. SHAND: She said "There is this other case in the same book . . ." That is the case I had just examined her on.

Mr. CASSIDY: Her mind had been called back to Mrs. Hocking's case.

Mr. SHAND: Page 523: "But assuming you are given the name of the patient (having been given the name of Mrs. Hocking) . . . finished it

off and gone away?—A. Yes. Removing of the tube would be quite ordinary."

Then again at page 525: " . . . spoke to you first . . . yourself first? —A. Yes."

She brings the matter up. She is asked about this lady—" When the matron . . . remember the patient " and then, without anything more she goes on to say as I have quoted above. You appreciate the significance of this, gentlemen. The patient is mentioned to her, and not a single word is said, and she herself brings up something about the tube. I wonder what it was she told the matron.

It is incredible—it is not possible—if this was just an ordinary incident of the tube, that she of her own accord, should bring it up. It was just as if she had said—" As soon as this case was mentioned I remember what happened—it was so unusual that it stuck in my mind for four years, that directly it was mentioned I said 'tube.' "

You cannot get away from it—this is the most dramatic incident in this case, this evidence.

At page 527 this witness—" There is nothing at all . . . is that he certainly did something to the tube . . . any further?. A. No."

What was that something that stuck in her mind all those years? That something which removed this case out of the ordinary run of cases where the last thing that would be recorded would be simply taking out the tube with the forceps? What made her remember at once—bring it up on her own accord, remember that the Defendant certainly did something? And what was that something? If that something was not something out of the ordinary, why should she not tell us? The only ordinary something would be that he removed it, and why would she not say that? The woman is a decent woman—she will go that far. She will give you the cue, because that is what it looks like. She is giving you the cue in this case. She has a sense of loyalty and she is trying to keep it, but she is telling you, gentlemen, and that is why I treated her so gently about this remarkable thing about this tube. She does not deserve criticism. She has given it away—she could not say it straight out, but she has done just as much as if she had. And when you put that with this fact—that she was never called in the first trial—never called to give evidence when the allegation was exactly the same as this. When the allegation was that in front of the nurse, this tube had been pulled and broken. There are the hospital records as to the nurses who attend at the various times —this is to discovering this witness.

Mr. CASSIDY: On her own evidence, she left the hospital. Difficult to get her.

Mr. SHAND: What evidence is there that there was any attempt made to discover her? There are the marriage records through which to locate her. And also she married a doctor, but no attempt was made to locate her. She just was not called, and you know why. Because that lady has done the proper and decent thing here—she has told you. That is the operation then.

Mr. CASSIDY: I object to those observations with regard to that lady. The Plaintiff's sworn evidence is a denial that this lady ever attended her at the time of the tube—that she does not know her and that neither she nor the other sister mentioned, attended her.

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 20th January 1944, *continued.*

Mr. SHAND : She said that she did not recognise them.

Page 17—3rd trial.

Mr. CASSIDY : I wanted line 2.

Mr. SHAND : " Whatever the name may be . . . I do not remember." She did not recognise them, but this lady says she was there. And she saw the Defendant do something with the tube. And how would the Plaintiff recognise her after four years—and she in a condition that has been described by the Defendant as a dangerous condition. Two days after this serious operation with this infection just upon her ? How could she be expected to recognise her ? This is an attempt to sidetrack. We have the evidence of this lady. There is no doubt she is trying to tell you about it without going too far. No one else had anything to do with it—only she.

This is the story so far as we can get it and it is pretty complete. What happens ? This lady, as soon as she is asked, comes along. There would have been no difficulty in getting her at the first trial.

In view of my friend's interruption, I cross-examined the Defendant, and he said that he did not attempt to see any of the nurses before the first trial, and in view of that there is my friend's interruption that she might be hard to get. Was it not because the Defendant knew it was no good getting her—because he was frightened ?

Now, the Plaintiff leaves hospital and what happens ? As she leaves she is given some calcium tablets, and she has indications of tetany as Defendant admits. And what happens ?

At page 700. I asked Defendant—" And you prescribed . . . quite a while to clear up ?—A. Yes."

Why should he say that ? Why should he think it would take quite a while to clear up the tetany. We know from the Defendant's history that he has only had one case of severe tetany in his career. Everyone has told us that whenever tetany does occur after an operation it is very slight—everyone agrees on that. Why then this statement ? Again, there is only one explanation for it. He knew.

I repeat again that this incident did not arise from gross carelessness, but it arose from a weakness that is in all of us in varying degrees. We all of us have a certain amount of moral courage, but, with regard to each of us, there is just a point where we fail. It is inevitable. It is human nature. Otherwise, we would all be gods. But, beset as we are with such frailties, you cannot always condemn. Some of us are lucky—some of us are born with a large amount of moral courage—some with a smaller amount, and what happened here is clear beyond words. It is unpleasant to have to put it, but it is that that tube was left in. We know the Plaintiff was in a dangerous condition. We know this suppuration developed, and we know it would have been highly dangerous to operate, and the Defendant thought he would not take the risk, and, step by step, his moral courage was fretted away. We know his view was—and he has sworn it—that such a thing would come out through the sinus. And I suppose he thought—it will be alright. It may take some time, but it will come out—and he consoled himself with that.

One does not know—but one hopes he did not take Dr. Ritchie into his confidence or get his advice—one hopes he did not, and that whatever battle he had to fight, he fought out by himself.

And so, when the Plaintiff is leaving, and the husband is talking to him—the Defendant is not a bad man—I am not suggesting that—I would say he was a decent type of man, meeting the events of life with propriety and decency, but there is the breaking point, and he is not callous enough to leave it at that, and so he gets the calcium, hoping against hope that this piece of tubing will come out through the sinus. He even goes as far as making a statement which is incriminating—he tells Mr. Hocking that it may take quite a while to clear up. There is no reason for that unless he knows of some extraordinary cause operating.

Page 71—"You have sworn that . . . cannot explain it." "But that was opposed to the whole . . . operated to the general run of your experience . . . why should you single out . . ."

The story is that Plaintiff was well when she left the hospital—all the doctors say that. "Did you . . . otherwise she was alright . . . clearing up . . . some time . . ."

(Adjournment from 11.30 a.m. to 11.45 a.m.)

Mr. SHAND: When the Plaintiff left hospital, though she was supposed to be quite well, there appeared to be still a good number of conferences or occasions on which Dr. Ritchie was still attending, and I suggest there was some anxiety about her condition when she left. Up to the day before she left, Dr. Ritchie was in attendance, and on that day—Dr. Ritchie said that he had nothing to do with it—calcium tablets were prescribed. They were taken by the Plaintiff when she went to Quirindi.

Now, what happened? Here is a lady dangerously ill. Her doctor is Dr. Bell. She goes away with the sinus still open in her neck. We know what happened after she first saw Dr. O'Hanlon—the whole of her neck and body were swollen—but she left hospital anyway, with the sinus still open. In ordinary circumstances, would you not imagine that the Defendant, her own doctor, would have got into touch with the local doctor and explained the circumstances to him—such as saying—"Doctor, you had better keep an eye on Mrs. Hocking—the sinus is still discharging, and there are indications of tetany." That was not done, gentlemen. Not because the Defendant is a hard-hearted man. I do not suggest that he is. Was it not because he was just frightened of the subject—getting away from it. Just showing that lack of moral courage that I put to you he showed under cross-examination. But there we have it, he never communicates with Dr. O'Hanlon—although he promised Mr. Hocking, as he admits—he never communicates at all with Dr. O'Hanlon, and the first thing that happens is that Mr. Hocking writes him a letter saying that there is slightly less swelling and the attacks, though not less frequent, did not last so long. He also mentions tetany. If it was accepted at this time that she had tetany, Mr. Hocking could only have known it from Dr. Bell.

So it is only then, for the first time (Plaintiff had left hospital on 14th April and this is the 2nd May), that is nearly three weeks after, and nothing is done at all, no communications passed, and this letter comes first from Mr. Hocking.

And Dr. Bell writes back on 4th May—"I was talking to Dr. Ritchie . . . tablets."

This is the doctor who does not believe at any time—he never believed —that she had tetany—never believed—and he is prescribing calcium tablets.

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 20th January 1944, *continued.*

It is all too hopelessly incredible. Believing it is hysteria, calcium tablets are prescribed.

" . . . glad to know . . . Mrs. Hocking progresses."

That letter to Dr. O'Hanlon is missing. We have no letters written by the Defendant (although there were letters) to Dr. O'Hanlon.

Then on 10th May, Dr. O'Hanlon, having got a letter from Dr. Bell, which we have not got, writes back, and there is a sort of complaint in this letter—one does not wonder. And then he writes of discharges in the neck and of the contraction in the forearms and legs, and occasionally in the facial muscles.

Mr. CASSIDY : He says that the neck appears to be generally better.

Mr. SHAND : You have the letters, gentlemen—I am not reading every word. I wonder what would have happened if Dr. O'Hanlon had not written down to Dr. Bell, because it was only by virtue of that that the Defendant wrote to Dr. O'Hanlon, and only by virtue of that that Defendant saw the Plaintiff and put her into hospital. I wonder what would have happened. Doctors ordinarily take care of their patients. Dr. Ritchie would have you believe that it was the worst thing in the world for her to leave hospital, and yet it is only when the husband writes and reminds the Defendant of the matter that he writes back. And then in the letter there is mentioned the effect and good results of chloride and the proposal to give her daily injections for a few days at least.

We do not know the Defendant's opinion—there is no record of that—" Sorry . . . concerning muscle . . . methods of treatment . . . special injections . . . better news."

What time has passed since the operation ? It was in March. April, May, June. That is over three months. And this we are told, is a most rare thing, this severe tetany—Dr. O'Hanlon describes it as severe. Three months. Dr. O'Hanlon showed he was worrried when he said—" I have heard that sometimes patients die after post-operative tetany."

You would have expected Defendant to suggest Plaintiff coming down and having an examination—to say that they could not let the matter go on and why had he not been told before—to send Plaintiff down and they would see what could be done for her. But there was no such suggestion —only these special injections, and that in the hope that they would correct her condition—that is not carelessness, but a guilty conscience. He knew that he could do nothing. He was hoping that the injections would combat the tetany till the tube made its way out through the sinus.

We know that many medical experts said that with heavy suppuration the sinus would not close. It did and had to be opened.

Mr. CASSIDY : " Healed " was the word used.

Mr. SHAND : It had to be opened—on 7th May—the hospital entry reads—" swelling of neck opened this day . . ." " Sinus to be kept open." The danger of closing again was considered.

The letters go to the 17/1/1939. Again Dr. O'Hanlon writes to the Defendant—" Your inquiry . . ."

We have not that letter either. Dr. O'Hanlon then writes back and says that the lady is improving slightly, that the attacks are not less frequent but less severe " . . . more than a month or so . . . her condition."

That is sixteen months after the operation and she is still having attacks of tetany and still the Defendant does not suggest that she should

come down. (Sixteen months just referred to should be eight months.) Nor is there a suggestion that the doctor go up there to Quirindi.

You have been told that the Defendant is a kindly man. What are the instincts of a kindly man about his own patients, or of any medical man doing his duty when he gets a case that he has never heard of in his life and which resulted after his own operation—could he do less than suggest that the patient come down to the city and be subjected to some other treatment than that of a general practitioner. But there is no such suggestion. And there you have the weakness. It is too late now. He could not come forward even some four or five months after the operation, let alone eight months afterwards, and then operate and remove the tube—that would be too much. The time has passed. If he was sufficiently weak before not to do his duty, there is no chance now, so she is left there in this agony.

Then there is the letter, telling him, after a year has passed—" I am not yet well . . ." that is dated 6th May.

Then a letter from the Defendant to Mrs. Hocking—" Many thanks for your letter . . . glad to see that your handwriting is so good." It looks as though she must have said something in excuse of her handwriting. (We have not that letter.) The letter goes on—" I was talking to . . . write to Dr. O'Hanlon." But why does he not get her down to the city? He has never known such a case in his experience and yet he discusses her case with Sir Alan Newton, whose evidence is not here.

Then finally we have the letter of 7th October, where Dr. O'Hanlon sets out what he has been told and what he knows of the incident of the passing of this tube. I am not going to read that to you, it has been read many times. It is obvious what it says. And it expresses Dr. O'Hanlon's attitude as clearly as it could be expressed, and also describes the Plaintiff's condition. I am not going to worry you by reading it again. I have connected up parts of it, but I now say that that marked a crisis. What the Defendant, no doubt, was fearing—what he was fearing would happen. And do not forget this—when I say that one cannot blame persons for moral weakness—that is not the question in this case. This lady, through the conduct that one does not expect from a professional man—and a specialist—had been through these months of agony, culminating almost in death—almost in death.

And when this crisis occurred and was brought home to the Defendant, here again his conduct speaks the language of deceit. And what does he do? I suppose the ordinary reaction of an innocent man would be great concern for his patient, but what was the Defendant's attitude? Gentlemen, it was this. Instead of, as one would have thought, immediately communicating with Mr. Hocking or with Dr. O'Hanlon, to get the full history of this matter, because it was so dramatic and so terrible that it demanded immediate investigation. And do not forget this—Dr. O'Hanlon has asked the Defendant whether a tube could have been left there—and what does the Defendant do? He waits either five or six days before he communicates with Dr. O'Hanlon—and what does he do in the meantime? That is not the first thing he does—as an innocent person would do—ring up the local doctor and say—" What is the strength of this? I did not leave any tube there." No human being could have helped doing that. No human being if he was innocent could have helped rushing to the phone and saying—" I cannot understand this—this is incredible—

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 20th January 1944, *continued.*

I did not leave any tube there—what is your explanation Dr. O'Hanlon What do you think ?—Is it hysteria and is she imagining these things ? "

But the Defendant did not do that. He goes into conference with Dr. Ritchie. That is what he does. And what do they discuss ? They discuss what is the best thing to be done. For whom ? Dr. Ritchie has sworn previously : " for Dr. Bell."

An innocent man, restraining his curiosity to hear how this remarkable cure, or suggestion, if you like, could be met.

There are no inquiries. He goes and sees his friend, Dr. Ritchie, to see what can best be done, as Dr. Ritchie has expressed it, for Dr. Bell.

There is no answer to it. There is no answer to it, gentlemen. Of course, if he left the tube there, it is quite natural that he would not want to know anything more. He said that the picture in Dr. O'Hanlon's letter was sufficient. He knew what was left there. He knew what came through and, that being so, his line of conduct was natural. His reaction was—I must see my adviser in the matter, Dr. Ritchie, and see what we can do. This is a bad position—it will need a wiser head than mine.

And that is what he does. And it is only after he sees Dr. Ritchie —only after then, and after he gets the letter from the Plaintiff, that he communicated with Dr. O'Hanlon.

You will remember, gentlemen, that on the 11th, the Plaintiff had written a most mild letter—the letter of a decent woman—" You have probably heard . . . left in my neck . . . almost choked . . ." I am not reading the whole of that letter.

Gentlemen, it is only after that—Dr. O'Hanlon's letter having been written on the 7th October—he would get it within a day—it is marked on the Exhibit—I think it is the 13th October—that he rang up. Five days after he got Dr. O'Hanlon's letter.

Mr. CASSIDY : The 8th was a Sunday.

Mr. SHAND : You can ring up on a Sunday. And what does he say when he rings up Dr. O'Hanlon ?

I suppose if he is innocent and Dr. Ritchie thinks he is innocent, even if he did not have the sense, the natural human instinct, to make inquiries of Dr. O'Hanlon, Dr. Ritchie would have said—" Get into touch with Dr. O'Hanlon, get details, and see exactly where we stand. Did he ?

We look at page 616—" . . . on the first occasion . . . single word . . . already given me a lot."

You would have thought he would have asked—What is the cause of this ? Is she hysterical ? What has happened in the meantime ? How do you account for it all ?

But we find—" Perhaps he had . . . test this remarkable story."

Mr. CASSIDY : Read the next question please.

Mr. SHAND : It is all in a line. Every bit of evidence in this case cries out aloud.

The next question—" But you did not ask him . . . cannot remember them." Is it not entirely incredible ? And then you get in the conversation Dr. O'Hanlon saying—" Perhaps it was as well that the thing was lost." That has a very important bearing on the case.

When Dr. O'Hanlon comes down, he said " it was a joke." Can you imagine a country practitioner putting it to a specialist in that way, a

specialist to whom he is speaking with respect and veneration—veneration, because Dr. O'Hanlon said that as soon as he knew that Dr. Bell had drawn the tube, he knew the story was false. Can you imagine gentlemen, this serious matter—a woman nearly dying—and it being referred to as a " joke.' Can you imagine any man putting such a matter to his senior in his profession as a " joke ? " " Perhaps it is as well it was lost." That is what he said.

Dr. Bell did not say it was a joke. It is only an afterthought of Dr. O'Hanlon's—the way that he is trying to get out of the difficulty which has been created.

Dr. Bell admits at page 614—" It was, was it not . . . hard to answer that question." Then I put it to him—" Then would it . . . I suppose that is what it means."

It makes one really writhe when one hears this going on between these doctors. This shockingly dishonest suggestion made and not objected to by Dr. Bell because he had left the tube there. Both of them knew. Each of them knew. The Defendant knew. Dr. O'Hanlon was quite convinced of what he had done, and he says to his senior medical practitioner that it is a good thing for him that it is lost. And there is no reprimand from Dr. Bell.

Dr. Bell said that he did not have the time to reprimand him. If he had not time then, he had time later on to do so.

This was a case of two practitioners getting together. They both knew, and the junior was currying a little favour with his senior. It was not a joke. That was Dr. O'Hanlon's beginning to signify his allegiance to the senior medical doctor of his profession.

The next thing is that the Plaintiff is brought down to the hospital.

It is well known from Dr. O'Hanlon's letter the broad outline of what happened—the throat specialist was not brought in for five days. Dr. Marsh was the throat specialist, and his actions were in line with all this conduct. There is incident after incident, and they all tell you that the Defendant knew that he had left this tube there.

He did not examine the Plaintiff's throat. You have your records gentlemen, and you find in those records what happened. You find that on the first day Dr. Bell examined her chest, back and neck. That is all. And I have drawn your attention to this. The throat is examined. The throat is stated to be examined. There are plenty of instances.

On 29th October, 2nd page, 3rd line—You have Dr. Bell—" Throat examination." That is the first time, I suggest, that it was examined. These records are made up by Sister Saunders, whom my friend has invited you to believe is a very accurate, honest and painstaking witness.

At page 846 I put to her—" You have said that you were not there . . . just her back and neck ?—A. Yes."

It was just Plaintiff's back and neck on the 26th and Sister Saunders was there then.

" I think . . . your writing ?—A. Yes . . . that is likely ?—A. Yes."

Gentlemen, the Plaintiff swears that her throat was not examined until the third day, which agrees with the hospital records. When I examined the Defendant about this—at page 662, I said " You have sworn . . . I meant her throat . . . the neck includes the throat in medical parlance . . . inside ?—A. Yes."

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 20th January 1944, *continued.*

I put the hospital records to him that they were against him—he said that everything was not put in the records. The three things that were examined were put down in the records in detail.

Now, gentlemen, I just draw your attention to this. At page 571—just listen to this. You will note from the hospital records—" Examined just back and neck." " Examined " is used in the records. Then his evidence-in-chief—listen, and see if it is not an attempt—perhaps a somewhat subtle attempt, to avoid the difficulty.

In chief, he says with regard to this—he was asked by Mr. Cassidy —" There is a note . . . back and neck . . . what you did . . . her throat ?—A. I *looked at* her throat—I examined her head and neck and chest."

Do you get that ? He examined these three things—the head, neck and chest—and as to the throat, " I looked at it." That is in order to leave the way open to say that everything is not put down. What I did to her throat was looked at it. An attempt to evade the accuracy of the hospital records which are sworn to.

Mr. CASSIDY : Please read the next three lines—and three questions on.

Mr. SHAND : I do not propose to. My friend used the word " examination " and that was objected to. I looked at her throat—I examined her head, neck and chest—that is the way he puts it.

And we find that Dr. Ritchie swore that he also examined her throat. There is no record of it.

The first day there—Dr. Ritchie—" Will examine throat to-morrow." But the next day there was no examination. It was reported that Dr. Ritchie had inquired. And on the 28th there is no suggestion on the records that he examined her.

What does that mean ? If they did not examine the throat, what does it mean ? It is nothing less than being in line with every bit of conduct in this case. They did not want to. They knew, or Defendant knew, at any rate, and if Dr. Ritchie did not know, he was convinced as to what had happened. They did not want to look at the throat—they did not want to find the evidence which was there.

And the Plaintiff is given inhalations as soon as she gets there—her voice was husky—she is given inhalations and told they will clear the throat and what is there. And the inhalations are continued until Dr. Marsh is called in on the fifth day, I think, to examine the throat. No one looks at it before.

Mr. CASSIDY : Dr. Bell looks at it on the 29th.

Mr. SHAND : After she is there three days. " Dr. Bell—throat examination." Not until then. Inhalations given for three days. He looks at the throat, and one day after looking at the throat Dr. Marsh is called in.

Looks at the throat on the 29th, continues inhalations on the 29th and 30th and Dr. Marsh is called in on the 31st.

Defendant had previously said that the inhalations were for a cold. He had admitted that the cold only appeared some three days after she went in—he could not explain why the inhalations were given on the first day.

Mr. CASSIDY : There were none given on the first day.

Mr. SHAND : On the second day then—he could not explain that. He said at this trial they were given for the huskiness. That covers up a weakness. What do you think the inhalations were given for ? Dr. Ritchie admits that he did not examine her on the first day which would have been natural to do, because he was there that day. He admitted that he did not examine her on the 26th. " Why not . . . I cannot tell you why . . . might have been in a hurry . . . surprisingly well."

Do not forget that Dr. Ritchie has sworn that when he first heard of this he conceived it as a bare possibility that a tube had been left there.

Mr. CASSIDY : That is not accurate.

Mr. SHAND : I will refer to the evidence when it is suggested that I am not accurate. At page 1022—" So you did contemplate . . . remote possibility." What is this interruption by my friend for ?

Mr. CASSIDY : Look at the reply.

Mr. SHAND : I do not care what he replied. That is what he swore. He regarded it as a possibility.

Mr. CASSIDY : A remote possibility. And in the reply—" I toyed with it for a while . . ."

Mr. SHAND : I do not care whether he said it was a remote possibility. If a remote possibility he would have been off post-haste to look and see what was there. Why did he not look ?

Mr. CASSIDY : The gullet.

Mr. SHAND : I think by the time I have finished, my friend will not wish to have any more to say about the gullet. That is one of the most important aspects of the case.

At page 1033—what he said at the first trial was something different. Never suggested examining her on the first day. He said that he had examined her. Then the records were produced, and there were no indications of him ever examining her, and then he retreated. This is what he swore at the first trial when he said that he had examined her throat, in chief—" When it was put to you in cross-examination . . . when you were faced with the hospital records . . . you are now ?—A. Yes."

It is utterly incredible. Here he is giving evidence at the first trial and at this trial too, that he looked at her throat and could remember that there was very little wrong with it, and with the hospital records put to him, he will not then pledge his recollection that he had looked at her throat at all—that was the state of things at the first trial. But now, he will pledge, at this time, two years later, though he had no complete recollection at the first trial, now he will pledge his recollection.

Gentlemen, whom do you prefer to believe—the Plaintiff, supported by the hospital records—or the Defendant and Dr. Ritchie, not only not supported by the hospital records, not only contradicted by the hospital records, but I suggest, so far as Dr. Ritchie is concerned, contradicted by his own attitude at the first trial.

Well, the story goes on. Inhalations are given. Dr. Ritchie does inspect her throat on the third day, more inhalations are given, and, finally, Dr. Tebbutt is called in.

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 20th January 1944, *continued.*

But before that, before the throat has been examined by Dr. Marsh (the Defendant examined on the 29th)—even before that. Before any examination of the throat, which you would have thought would be the first thing to be recorded—on the 27th a blood test is taken. What was ordered was a blood calcium test, not all the other things—(the records say—blood calcium test) and that is what the Defendant asked for. As to all the other things that were done—who asked for them to be done is a mystery.

On the 26th—the first day she comes in—a blood calcium test at 9 a.m. She gets there very early in the morning. The week-end passes and the blood calcium test completed on the 28th (I think a Friday)—it probably arrived on the 31st.

I understand that the 28th is a Saturday, so the test would arrive somewhere after the weekend, and what happens to this hysterical lady when it arrives—that is what she is supposed to be. On the 31st, the hospital records, halivol capsules are ordered—that is for tetany—and plenty of milk also. That is a diet which is also given for tetany. And that is the reason—the blood test had come along.

The throat was examined on that same day. We do not know whether the examination was before or after these things were given. But, let me remind you of this. The Plaintiff is supposed to have shown no indication in the throat of anything there, but after Dr. Marsh's examination she is still being given halivol capsules and plenty of milk, and right up to the end, so it continues.

Then, still taking the chronological order of events, the next matter we have after Dr. Marsh's examination, is that the Plaintiff's husband tells you he had a conversation with Dr. Marsh. In cross-examination —" And he told you that . . . the left tonsil was affected . . . not to tell her."

There you have it—there you have it, gentlemen.

Dr. Marsh at that time had seen something. He considered it was not necessary that Mrs. Hocking should be told, and that is what he tells the husband.

Dr. Marsh apparently was told nothing before he did this examination. He does not appear to have been told anything.

I asked him—at page 115—" Were you told at the time . . . I do not remember saying so . . . convinced of that."

Mr. CASSIDY : That was not all he said. Please look at the next page.

Mr. SHAND : " Why did you not deny it . . . not to tell his wife . . . exactly the same thing." It is quite fair to read that. First of all he said when put to him——

Mr. CASSIDY : No.

Mr. SHAND : Yes—and the first response—" I do not remember saying so." And an answer to that question must have been definite.

That was the conversation with Dr. Marsh, and the next and more important conversation is that which he had with the Defendant while his wife was in the hospital. Remember, gentlemen, the Plaintiff has said and the Defendant has agreed with this almost wholly—that while his wife was in hospital on the second occasion, Mr. Hocking said to

Dr. Bell : " There was some mention of a foreign body . . . I do not know . . . well, I do," and he walked away. And Dr. Bell admits that conversation.

At page 636—first I put—" Mrs. Hocking had written . . . yes he did practically . . . no direct reply ?—A. Yes."

" Mr. Hocking brought up the question . . . so far as I remember . . . I do remember something like that . . . that was the allegation . . . I had no doubt."

It was put to him what he had sworn before. " Do you . . . no the infection . . . do you remember him saying . . . ?—A. Yes, he alleged the tube was there." And to that there was no answer.

(The Court at 12.50 p.m. adjourned till 2 p.m.)

On resuming at 2 p.m.

Mr. SHAND : I had read to you the evidence about this conversation at St. Luke's when Mr. Hocking said that he knew the cause of the infection —that it was a tube—or words to that effect.

Just reading on a little from there because that was an allegation. By an innocent man, it could have been met by—" I left no tube there." He was dealing with a decent man. Mr. Hocking—you have seen him—he is not a forceful man who would argue anyone down—rather the reverse. That is his reputation.

At page 637—to Defendant—" He alleged that the tube was the cause . . . Yes and I said nothing . . . you did not see fit to correct him . . . your professional standing . . . it was an accusation."

His HONOR : It was *the* accusation.

Mr. SHAND : The accusation. " An accusation of a serious nature . . . no good arguing."

Just imagine gentlemen. There would be no question of arguing—it would be merely saying : " You are mistaken Mr. Hocking. I know I did not leave it there."

" You had in mind . . . proper place to deny this accusation. . . he has made a direct accusation . . . I did not think it wise to reply to it." That is closer to the truth.

" That was my reaction to it . . . that was what I did."

I need not put it before you, need I, gentlemen—here he is—told in these words—" I know what is the cause of this complaint. You left a bit of tube in the wife's throat." And the Defendant walks away and says nothing. And this is one amongst the many things that I put to you which establishes beyond doubt what the position was—because, no man, I do not care who he be, when he is wrongly accused and he knows that he did not do that of which he is accused, would just accept in silence such a serious accusation with regard to his professional behaviour.

The next matter I draw your attention to is this. Mrs. Hocking did not know until after she had been to St. Luke's, that anything had come through her tonsils. She only knew that something had burst into her throat. That was the state of her knowledge then. In point of fact my friend made a point. Plaintiff never alleged that it came through her tonsil until the first trial, and of course, my friend was quite right.

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 20th January 1944, *continued.*

This matter is of vast significance. I am going to show you (Dr. O'Hanlon did not know either). In Dr. O'Hanlon's letter there is nothing about the tonsil.

When the Plaintiff came down to St. Luke's on the second occasion she did not know. No one knew when she came down to St. Luke's that it burst through the tonsil. She said that it came through the throat, and yet I am going to show you the Defendant knew—Dr. Bell knew—and the only way he could know was by his inspection. He could not know from the Plaintiff because she did not know that it came through the tonsil, and there was no further source of information that it came through the tonsil—only his own inspection.

I am going to prove—to demonstrate—that when he looked at the throat on the third day (hospital records) he must have seen the eruption in the tonsil. Page 638—(bottom): "When Mrs. Hocking was in St. Luke's . . . for her tonsils . . . he was right."

"And of course it was not mentioned in Dr. O'Hanlon's letter . . . the œsophagus . . . that was right, nothing about the tonsils."

"He did not refer to the tonsil . . . guilt."

"You can take it there was no . . . first trial."

Mr. CASSIDY: It is mentioned by the Plaintiff at page 102 that she was sent to Sydney for tonsils.

Mr. SHAND: "When she was in St. Luke's or, up to the time she left there you had no . . . left tonsil?—A. No . . . What I say is . . . got that information . . . That is so, yes." So that he agrees. If he had learnt (and I will show you that he had) that something had passed from the left tonsil, it could only have been by an examination of her throat. That is the first step.

What is the next step.

Mr. CASSIDY: Are you reading the rest?

Mr. SHAND: No.

Mr. CASSIDY: I think it should be read.

Mr. SHAND: What do you suggest?

Mr. CASSIDY: Two questions before and the question after.

Mr. SHAND: I will go a little before that even. "Dr. Marsh examined her throat . . . I cannot remember that . . . if I cannot remember it I cannot swear it . . . of her throat."

Then where he agreed about the information coming to him from no other source than examination. "If you did tell Dr. . . . I understood your question to be . . . the only way . . . examining her throat . . . I could not see anything."

There it is gentlemen. We do not need his admission that this is the only source he could have got it from. Because it was. The Plaintiff did not know that anything had passed through her left tonsil at that time, and there was no other source than inspection of her throat that could reveal what had happened.

Dr. Marsh—at page 804 (bottom)—"What did Dr. Bell tell you . . . personally?—A. Yes . . . I won't deny it but I can't remember."

Then his evidence at the second trial—" Before you went to St. Luke's . . . through the tonsil." " That is your sworn evidence . . . it is 1939 . . . correct ?—A. Yes."

We not only have Dr. Marsh but we have Dr. Ritchie. Page 1003 (middle)—" Were you aware that unless Dr. Bell or Dr. Marsh . . . at that time . . . I do not agree with that . . . through her tonsil." That is wrong—I think he admits it later on.

" Do you know that . . . before the first trial . . . from her left tonsil . . . I believe that is so . . . that is so . . . Dr. Bell told you . . . it was not the Plaintiff . . . I think I may have . . . No, I won't deny it." " The significance as if Dr. Bell had told you he must have seen it when he examined . . . ?—Yes, I do."

There it is, gentlemen, if you have any doubt about it. The Plaintiff did not know that anything had come through the tonsil at that stage. She knew that it had burst through the throat and the œsophagus had been mentioned. Only an examination could have disclosed that information.

We have it then—that the Defendant made an examination and Dr. Marsh swore at the previous trial, and he admits it correct, that he was told.

Mr. CASSIDY : That the Plaintiff said that it had come through the tonsil.

Mr. SHAND : The Plaintiff did not say that at all. Dr. Ritchie won't deny or admit that the Defendant told him, but no one else could have told him except the Defendant. You have it plainly then what had been discovered at that inspection at the hospital.

These men were told. There is only one person who could have told Dr. Marsh and that was the Defendant. There were only two people who could have told Dr. Ritchie—that was the Defendant or Dr. Marsh who had inspected the throat. You have it there as plainly as can be—what was seen in the tonsil—something which indicated an eruption in the tonsil —indicating that something had come through. There is no getting away from it—no escape.

I put it to you—I have endeavoured to establish to you that you need not go away from the Defendant's evidence. You have everything there except the answer—" Yes "—to the question of " Are you guilty ? " There it is—plain, irrevocable, overwhelming.

Still dealing with the second trip to St. Luke's—and what happens ? The Plaintiff has come down, preceded by this graphic account in Dr. O'Hanlon's letter of how tube is supposed to have burst through, and the tube is the one that Defendant has used in the operation.

That is what is known, gentlemen. She comes into hospital. Put yourself in the place of the Defendant or Dr. Ritchie on his behalf. What would you have done ? Or what would any doctor have done ? Would he not have said—" Tell me all about this. How did it happen ? How long were you feeling sick beforehand ? What symptoms did you get ? Describe to me the object."

Not only permissible questioning, but necessary questioning for the sake of the Plaintiff herself if there was any question of hysteria. And what happens ? That reasoning too (it is not reasoning really—it just springs to the mind) applies to the husband. This man is regarded as a

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 20th January 1944, *continued.*

decent man. There had been no accusation at that time. Only that very mild and moderate letter had been written. And the husband was down there. Page 629: "After this telephone ring and the consultation with Dr. Ritchie . . . did you ask them one single word . . . No, I cannot remember asking them about it . . . no necessity." No necessity when he doubted the story! No necessity when he did not doubt the story. "No—I thought the thing was untrue . . . did not suggest that." It did in point of fact—she referred to the tube left in her throat.

"You took Dr. O'Hanlon . . . he appeared to believe it . . . Mrs. Hocking." "No, I did not . . . all the information."

Just imagine—here was the woman who had suffered the experience and the husband whose account of the story appeared in Dr. O'Hanlon's letter.

"I spoke to them . . . I did not believe it." These pages are vitally important.

"Well, why did not you at the time . . . at the time?" Why not? Why should not he go into it at the time. As a doctor, it was his duty. As a man and a professional man, it was his duty to himself. "But what about Mrs. Hocking . . . check up." "I just assumed the incident described by Dr. O'Hanlon."

What does that mean? He did not believe it. What does it mean?

"But Dr. O'Hanlon told you what Mr. Hocking had said . . . I did not see very much of him." What kind of an answer is that? They had had this conversation when Mr. Hocking had said that he knew the cause of the infection—the tube. What kind of an answer and excuse for not questioning him is that?

"Is that a reason . . . strange happening." Certainly it was and that was why it would, to an innocent man, require to be investigated."

"And that . . . the less I said the better."

The truth comes out at times.

"For your own protection . . . trying to get the truth."

Trying to get the truth by maintaining the silence of a mummy.

"I thought they might make further charges against me . . . it was for your own protection . . . Hocking is a decent man . . . why did not you question him . . . type of case where these unusual happenings take place . . . not to discuss the matter too freely with the patients." What kind of an absurd answer it that?

"How many occasions like this . . . I had a perfectly open mind."

This is an innocent man that knows he has left no tube there. He knows it. One of these things only three people knew, and he says: "I had a perfectly open mind."

It is necessary at times to cross-examine severely. It is necessary to get at the truth. It is inviolable, and here you have it. It comes time and again—the truth keeps peeping out. Here is a man who knows he is quite innocent, knows that an accusation is being made against him, and about that matter, has a perfectly open mind.

"Well, why did not you find out . . . that is my duty in this case." He has never had a case like this one.

"You did not know whether they were true or untrue . . . true position of the patient." And the correct way is not to say a word.

"Why did you not question the man . . . extravagent statement made." "By Mrs. Hocking . . . or her husband."

" So . . . conspiracy . . . Mr. Hocking is concerned."

" You said you thought . . . that is the answer. The answer is I was at that time . . . conversation had asked if it could happen." " I thought at a later stage there might be allegations." There we are getting down to the truth again.

" What did you say . . . I submitted it could not happen."

He did not say that it was ridiculous to ask him that because he had not done it, but he submitted to Dr. O'Hanlon that it could not happen—the tube coming through the throat.

" Will you swear you did . . . I won't swear.'

At page 635 : " In trying . . . people change . . . involve me."

" You have sworn that it was partly for your own protection . . . any more than you have . . . if you cannot answer it say so . . . in case there would be any further litigation . . . I mean in case there would be litigation."

" You have . . . I do not think I can answer it."

Mr. REIMER : In Mr. Cassidy's absence for a few moments, I think that page 734 should be read.

Mr. SHAND : I do not propose to read everything. If it is worth reading I will read it.

Mr. REIMER : Five or six lines from the bottom.

" The next thing was you were asked by Mr. Shand . . . witness box." I do not know what that has to do with it.

Here is a man who has left a tube in a lady's neck. They are decent people—they are not threatening litigation. There is the letter from Mrs. Hocking saying that she did not blame him at that time. She is brought down, as Dr. Ritchie has said, for the Defendant's sake, and he does not ask her a single question. Look at it from whatever angle you please. First from the Defendant's point of view to test this story. It is the first thing he would question for. Secondly, if he was interested on behalf of his own former patient, the Plaintiff, for her own sake, as to what extraordinary mental illness was causing her to make these complaints.

We do not need the judgment of Dr. Thompson. We do not need the judgment of anyone outside the medical profession. We have the judgment of Dr. S. A. Smith. At page 1355. I put to Dr. Smith whether, with regard to hysteria, you do question patients.

I put it to him : " Do you not remember this, that Dr. Bell asked her nothing about it at all . . . I found that impossible to believe." That is from their own expert witness. " You did . . . I find it impossible to believe." This is looking at it from the medical point of view, but you only want a commonsense point of view.

" You would not adopt . . . great number of questions . . . you knew that Dr. Bell . . . with your knowledge that Dr. Bell had some information . . . You cannot believe it still that he did . . . No, I cannot believe under those circumstances that no question was asked . . . I think I would have."

Some of the evidence has been read to you that neither of these two had been asked a single word.

And he said : " All I can say is that I would have asked . . . I would have asked the question."

Mr. CASSIDY : Read : " We propose . . ."

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 20th January 1944, *continued.*

Mr. SHAND : You will not want that, gentlemen. You can deal with commonsense matters—you have it there.

Mr. Smith clearly puts it that he does not think it credible that a man against whom this suggestion is made, when he gets the patient and her husband down, does not ask one question. Of course, it is credible if he did not need to. If he knew he had left the tube there, why ask the question ? But otherwise it is outside the borders of human logic.

Time and again you find this position coming up. You won't get the simple answer—" Yes, guilty "—but you get indications so strong, so cogent, that there is only one conclusion to be drawn. And it is not evidence in dispute, but it is the evidence of the Defendant.

And now gentlemen the next matter. You are told now—Dr. Ritchie too, I am putting it to you that Dr. Ritchie did not know that this happened, but he was convinced in his mind—there is no doubt about it.

At page 1059 : " That was a rather dramatic . . . at this length of time I cannot tell you." He cannot say whether his answer was correct.

" Well, it might have been incorrect ?—A. Yes."

" So that you might have sworn something that was incorrect ?—A. That is so."

We need not go further than that. He had sworn at the previous trial that he did not ask her anything about how the tube came through. Exactly the same category as to which Dr. Smith said " I cannot believe it." But you are asked to believe it. His professional brother cannot believe it, but you are asked to swallow it by my friend. You are asked to say that it has no significance.

What happened at the hospital ? This lady came down with a history of nineteen months of suffering from tetany. There are certain tests that can be given to persons suffering from tetany. Three of these tests are mentioned. And not a single attempt was made to administer any of those tests. Why not try ? An attempt has been made in this case to say : " What is the good ? " But it is admitted that you get very useful tests from them. Suppose they are not foolproof—they do not always give you results. These doctors know of them.

Dr. Ritchie was convinced it was pure hysteria from the start. Why not try them. They are tests to discover latent tetany.

Mr. CASSIDY : Mr. Shand has quoted a page—1052—where he is saying that Dr. Ritchie said something at a previous trial and refers to the page. And when Mr. Shand is asked to show that reference, he says that he cannot remember the page and he cannot find it.

Mr. SHAND: Where was that ?

Mr. CASSIDY : 1052.

Mr. SHAND : That will be adjusted.

At page 652, I asked the Defendant : " There are certain tests . . . did you apply one of those tests . . . of symptoms."

He took a calcium blood test and that was enough for him. One look at the tonsil was enough. That was why he did not apply any of these tests.

" But this was a case where . . . signs of tetany."

I put it that in this case there were serious allegations made.

With reference to Mr. Cassidy's remark made just now as to a reference to which I referred and which could not be found (page 1052), I am assured that my reference was perfectly correct.

Mr. CASSIDY : That is correct.

Mr. SHAND : At page 718—This is just another thing to make the whole story incredible. They all point in the one direction, in the right direction. He was satisfied with one look at the tonsil. He did not need a test. The calcium blood test that had been taken showed 7.2. All this evidence was given later on as to why he did not apply these tests. As to the Erbs test, the reason he did not apply that was not because there was no machine there. That is so much eye-wash. That is a bright crimson herring.

Listen to his own reason why he did not apply it. Page 718 (middle) —" Now if you did . . . that is . . . indication." So he had the indication of tetany.

" But having got . . . one of the tests . . . get tetany." What nonsense, when he wanted to make sure.

" But, according to you . . . I never thought of doing it." This nonsense about no machine to do the Erbs test—that was not his reason. He says, if you accept it, that he never thought of it. He gave the test of slapping the face—but when she comes down again, he never tries these tests, and again I ask him—Why not ? And the answer is not far to seek. The one he gave us was that she had no clinical signs—but at page 658— " Did you ever ask him whether he had ever applied any of these three . . . assume he would know . . . I cannot remember that."

Just imagine—when they were endeavouring to find out whether this is hysteria, which he won't even swear it is now, or true tetany, he never asked Dr. O'Hanlon whether he applied the tests. He never asked the question.

I asked Dr. Ritchie, about pages 1019 and 1020—" When the Plaintiff came down to St. Luke's . . . same responses." He said " not necessarily the Erbs Test." I said " The Erbs is recognised as a definite test . . . between hysteria and tetany . . . In Sydney . . . probably." That is Dr. Ritchie.

Why did not the Defendant endeavour to apply one of these tests —or all three ? I do not care whether they are certain or not. They are well recognised by the text-books and they are used, and Dr. Poate admits they are used, and they are useful, though he won't admit that they are final. But there was no attempt to try these tests.

The next incident in the history of this matter is that after leaving the hospital she goes to Dr. Ritchie—after leaving St. Luke's on the second occasion. And what does he give her, this man who believes that it is only hysteria ? He gives her calcium gluconate, which is for tetany—the same as was recommended the previous year.

While dealing with this matter in chronological order, I put it to you that what Dr. O'Hanlon believed and continued to believe, and to have no doubt, was that this was tetany, and that he really believed the tube was left by Dr. Bell though he swears the opposite now.

At page 914—" And do you remember in August 1941 . . . (after the Writ was issued) Mr. Hocking . . ." At page 915—" On an occasion at the time above mentioned, you said to him this . . ." This is the Dr. O'Hanlon, who after the telephone conversation with the Defendant in September 1939 said he had no doubt that the tube was not left there. " You said to him—" I do not blame you for taking action . . . in

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 20th January 1944. *continued.*

substance, yes . . . same myself." That is evidence beyond all doubt that if this man believed the story he would have done the same himself. " If it is true . . . agree to that." Can you imagine ? Here is a man who believes that something is being " put over " Dr. Bell.

Mr. CASSIDY : The next question please.

Mr. SHAND : I will read it. Gentlemen, here is a man who, according to him, thought Dr. Bell innocent, and he admits that he says—" If it is true that the tube was left behind, all my sympathies are with you." A man who had no doubt that no tube was left behind—and yet he says that. Does that need any comment—this is 1941 when he is saying this. " Although at this time . . . absolutely I agree with that."

Gentlemen, I do not know—comment fails me in these matters. Comment fails one. When a man tells you—" I have not the slightest doubt that no tube was left behind." And yet in 1941—two years afterwards—the doubt is removed. He says to the husband—" *If* the tube . . . all my sympathies are with you."

At page 923—is this characteristic of a man who thinks that a wrong story is being put up against Dr. Bell ? He denies that he suggests that Dr. Bell pays compensation.

" Will you deny you wrote to . . . admits it." He could not have forgotten.

" Will you deny . . . or admit it." You remember that he suggested they should come down and see Dr. Bell.

" Will you deny telling . . . will you deny it . . . wrote the letter."

This is wonderful. He knows whether he wrote down to Dr. Bell telling him that these were reasonable people—and he won't say one thing or the other.

" Will you deny telling Mr. Hocking . . . did not acknowledge it . . . may have told Mr. Hocking . . . probably did . . . did not answer my letter . . . the courtesy part of it." He denied the courtesy part.

" You told him . . ." I was putting to him that he had written to Dr. Bell telling him that these were reasonable people and that they were coming down. That would be in 1940—and he would not admit or deny that.

And I was putting to him that in spite of that letter, he said that Dr. Bell had not the courtesy to reply. He said that Dr. Bell had not replied and tried to put it to the letter of the 7th October—there had been no failure to reply there.

It is obvious that in 1940 he had written down to Dr. Bell in those terms, indicating them, as in his letter to the B.M.A. of April, 1940, that he fully believed in the facts of the Plaintiff's case.

He is simply a liar when he says that. Ever after the telephone conversation with Dr. Bell in October 1939, he had no doubt that this story was incorrect. We have to meet this combination, gentlemen. This man is a hopeless liar—his conduct makes him unfit to be a member of a decent community. He admits it an unfair thing in not getting a report to the patient, and it was more unfair in the giving of his statement to the Defendant. He has done the behest of the B.M.A., and they have no interest in him any further.

Mr. CASSIDY : I would ask Your Honor to note that remark regarding the B.M.A. not having any further interest in this man.

Mr. SHAND: When I said the "B.M.A." I should have said "the Defendant." The Defendant's conduct through his Counsel—he put up no defence.

In 1940, after the conversation with Dr. O'Hanlon, the Plaintiff and her husband come down to see the Defendant. They put the position to him and ask him what he is going to do, and the upshot of that is that, according to the Defendant's evidence, he says that if that is the attitude they are going to take, they had better see Dr. Ritchie. The Plaintiff says they were told to see their solicitors and Dr. Ritchie—the Defendant says that he did not say that—that he told them to see Dr. Ritchie. Page 140: "Tell these gentlemen what the conversation . . . would come down for . . . what you were going to do about the tube . . . you were removing the tube." She repeats the very incident. And was it not true when she repeated it to the man who would know if it was wrong. "You did . . . I remember . . . I felt a stinging pain and you said 'Damn' and I said 'Oh!' . . . see your solicitor . . ." We have a new solution now. Dr. Poate says now that it is just a natural thing—something to do with the ligaments.

"He said something about . . . Yes . . . went and saw Dr. Ritchie."

When any woman or man has the temerity to stand up in front of the man who knew everything and say: "You remember the occasion when you said 'damn' . . . sensation in my throat," must it not be the truth.

Then they see Dr. Ritchie. He appears to be the guiding force in this matter. When litigation was talked about, the Plaintiff was sent to him by the Defendant. With the incident about the tube coming through, the Defendant had a conference with Dr. Ritchie and they decided what was best to be done. When the Plaintiff went to St. Luke's the second time, Dr. Ritchie attended as well as the Defendant.

What happened when they saw Dr. Ritchie. He admits that when they go in he tried to deter them from bringing the case. He admits that, but he won't admit specific parts of the conversation.

Mr. Hocking says that when he went in Dr. Ritchie said: "If you go to Court you won't get a doctor to support you." Luckily, we have two excellent men.

"It will only be a doctor who is a marked man."

I suppose they would call Dr. Thompson a marked man because he is not a member of the B.M.A.

"In fact you have not a leg to stand on. I feel I must tell you this —it is only going to be painful for both sides."

It is pretty terrible, gentlemen, that in this community that kind of thing can take place, and, in your hands, in this case, there rests more responsibility than just a contest between person and person. In your hands there rests a higher principle—to protect the right of every person to get a fair deal, because, if it were a fact that a person who suffered at the hands of a medical man through his negligence was to be treated in that way, if it were a fact that he or she could not get medical assistance, then this country would not be what we know as a democracy.

Dr. Ritchie won't admit the whole of these words.

At page 1038: "In fact you have not . . . to that effect . . . for both sides . . . that is so, yes."

Take his own evidence. What right had he to say whether she was to proceed or not. Why deter her? He could not decide facts. It is in a

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 20th January 1944, *continued.*

Court of Law that facts are decided. No attempt should be made to prevent people bringing their case to people like you for justice, and yet this man is doing this, and telling them that they had not a leg to stand on. He was making himself judge and jury.

He stands condemned on his own words, and one only hopes, gentlemen, that that kind of thing is not repeated in this community—that *that* is not common, or the justice that our country has been built up on will be non-existent, and the respect which we accord to our laws, and to our sense of justice, would have gone too. The comment to come will be even stronger.

Now to the last—and if there could be a stronger incident than those which I have put to you, this is stronger—and that is, the state of the Plaintiff's throat.

At this trial, and I put it not at previous trials—there is one explanation, and one only, given for that hole in the tonsil. I will read you what the hole is like. Dr. Marsh examined it—only Dr. Thompson measured it.

During the second trial—page 804—" And you, did you see fit to put . . . that examination indicated . . . destroys tissue—quite so." He discovered a hole with a diameter equal to the blunt end of a pencil, or the tube you have seen. That is what they have to explain away. They did not seek to explain it as the supra tonsillar fossa before. They now do. But they could not do that because the supra tonsillar fossa is a natural hole which does not contract, and this one has contracted. Let me put this to you. Page 810 : " You have . . . the supra tonsillar fossa in its natural condition . . . immediately after the large mass had passed through . . . soon close. Yes. It would start to close."

Gentlemen, keep in mind that the blunt end of a pencil would go into it in 1942—that is three years afterwards.

Mr. CASSIDY : How far ?

Mr. SHAND : It has been measured with these glass tubes and you know how far.

Mr. CASSIDY : There was sworn evidence in 1941—only $\frac{1}{8}$ inch deep.

Mr. SHAND : There was not.

Mr. CASSIDY : There was such evidence—$\frac{1}{2}$ inch diameter—shallow oval depression—only $\frac{1}{8}$ inch deep.

Mr. SHAND : That is incorrect.

Mr. SHAND : It was measured by Dr. Thompson—so that we know.

Dr. Marsh admits that a glass tube would not go in the supra tonsillar fossa only where one of these pellets had gone—then it would only be open for three days—and this was three years afterwards. So it could not have been this, and this is the only explanation.

" But almost immediately after the passage starts to close . . . to be a very large one."

" Have you ever seen one big enough . . . that is the only suggestion you can give assuming . . . you know ?—A. Yes."

That is the only suggestion he can give, even assuming that this was the supra tonsillar fossa—that a tube could not have gone in, unless a pellet passed through, within one, two or three days—and yet we know this was three years after the incident.

" If a tube . . . fair sized hole . . . foreign body passed through."

Now, gentlemen, let us consider the bona fides of this evidence. I have shown you that this explanation of the hole being the natural supra tonsillar fossa is only now put forward as the explanation.

Dr. Thompson examined this lady, and you can take it that he has examined her during the case, when this proposition was put up, namely, that this hole was the supra tonsillar fossa.

Page 818—to Dr. Marsh—" I want to put to you . . . does not exist . . . does not exist . . . convenient time. Yes, I certainly would."

Gentlemen, no inspection has been asked for, Dr. Thompson has gone into the box in reply and has sworn this.

" Was anything suggested . . . there is no supra tonsillar fossa on the left side . . . happened to the supra tonsillar fossa . . . never."

There is the test of the story. I put it to Dr. Marsh that this explanation, and it is the only one they have now, that this hole is the supra tonsillar fossa, fortunately for the Plaintiff, it no longer exists, and he was not too sure of it, and I said he could have facilities for an inspection, and they have not allowed him to have one. They will not take the risk—is that a true case—their only explanation gone. There you have the test.

Between the evidence of Dr. Thompson and those other doctors who were called there is the test. Dr. Thompson is not frightened to come out into the open and he has said—" The supra tonsillar fossa is gone, and you can have a look at the throat and see."

Mr. CASSIDY : Dr. Marsh—at page 1612—recalled—and he said specifically—" And do you say to these gentlemen . . . that is the way he put it."

Mr. SHAND : I am not talking about that. You know what I am talking about. I said to Dr. Marsh "—— It is not there—have another examination if you would like to—a further inspection." And he said —" Certainly, I would." And he has never had it. That is what I am putting to you gentlemen, if my friend does not realise it. Dr. Thompson went back and said—" It is not there." And they are frightened to look.

They only have one man against them—there are four of them—four of them against one man and that man has told them what is not there—the whole case is not there. They will not take him on—they are invited to have this inspection and they have not had it.

It is unnecessary to say anything more about this matter, but there are certain aspects of it which I must mention.

They all admit where the supra tonsillar fossa is—in the top. Dr. Ritchie, when he put the probe in in December last, put it in transversely.

And, dealing with Dr. Steele, when he made his first inspection he referred to crypts.

Mr. CASSIDY : He says—a large crypt—he said it before and he said he agreed with the evidence of Dr. Marsh as to the supra tonsillar fossa.

Mr. SHAND : Yes. He is sensible all the time that he has changed his case, but that is how I put it to him.

Then as to how he starts to deal with it—page 1073—" These two . . . to bring it into line with crypt." He says—" large crypt "—" superior crypt." He admits there was destruction of the tissues—but not gross destruction.

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 20th January 1944, *continued.*

At page 1085 (bottom)—" Sometimes you said supra tonsillar fossa is a crypt and other times crypt is the supra tonsillar fossa . . . it is used in the text-books . . . correct name is ' crypt ' . . . always known as the supra tonsillar fossa or a crypt."

His HONOR : Have you seen it used by others ?

Mr. SHAND : " Given in the text-books as . . . have you used in any previous trial the word ' supra tonsillar fossa ' . . . for clarity . . . is it not the first occasion in the trial . . . as an alternative."

At page 1087—" You have discussed before . . . supra tonsillar fossa . . . quite correct . . . why did not you in other trials for clarity . . . my own term always."

He said that he discussed with Mr. Cassidy what Dr. Marsh had said about the supra tonsillar fossa and then he finally said—page 1089—" You have not minded what I am putting to you—(page 174, line 16)—you were shown a glass tube . . . you say this piece of glass tube . . . deep as that." He was asked that in the last trial. He said " Yes " (previously), but that probe faces down one of the crypts of the tonsil.

What he said was—" Yes, but that probe faces down ONE of the crypts of the tonsil.

" That is what you swore . . . of the tonsil."

Mr. CASSIDY : He swore it specifically.

Mr. SHAND : I am reading his evidence, not taking what my friend says.

I said " But one of the crypts . . . called supra tonsillar fossa . . . not necessarily . . . other crypts which open into it."

Page 1090 (bottom)—" Will you agree with what I have put to you . . . not necessarily . . . not necessarily."

This professional man—it is put to him that he has changed his evidence and he says " not necessarily."

" That means . . . as a professional man."

Mr. REIMER : Page 1092 as to his changing his evidence.

Mr. CASSIDY : The Jury will remember it.

Mr. SHAND : Only one more matter—Dr. Poate—page 1413—for the first time he emphasises the *main* crypt. " In this area . . . of a main crypt."

You know the distinction between main crypt and the supra tonsillar fossa, it would be nothing like the size that a pencil could go in.

Mr. CASSIDY : What do you suggest the main crypt is ?

Mr. SHAND : Dr. Poate at page 1439—" So there is a definite distinction between the main crypt as you call . . . superior . . . depression . . . ?—A. Yes. . . . will you agree . . . chronic infection in the crypts and the passages . . . Yes . . . Do you suggest you were referring there . . ."

Mr. CASSIDY : You left one question out.

Mr. SHAND : I will go back then—" In the superior . . . agree there is a depression there . . . other side."

(At 4 p.m. the further hearing of this matter was adjourned until the next day, Friday, 21st January, 1944, at 10 a.m.)

IN THE SUPREME COURT OF NEW SOUTH WALES.
In Causes.

In the Supreme Court of New South Wales.

No. 52.
Closing Address of Mr. Shand, K.C., 21st January 1944, *continued.*

Coram: EDWARDS, J., and a Jury of Four.

Friday, 21st January, 1944.

HOCKING *v.* BELL.

(The Jury expressed a wish not to be locked up on Saturday if it could be avoided.)

Mr. SHAND: I am very sorry gentlemen, that I have been so long. I know it is very trying to concentrate for such a length of time on a mass of evidence such as this. I would like now to express my thanks to you for your very earnest attention which has been given to me. I will not be very much longer.

I was dealing with what I suggest was a change of case with regard to this hole in the tonsil which they now suggest is the supra tonsillar fossa.

I dealt with Dr. Steel's evidence, where he will not deny his previous evidence. He said—" not necessarily."

With regard to Dr. Poate, I pointed out that he had previously referred to crypts in the plural. He said that he had not mentioned the words " main crypt " before, and when I pointed out that in the evidence before he had, he admitted the plural use, but admitted that he did not specifically suggest " main crypt."

Now, gentlemen—I put to him further—page 1442—" And you had heard Dr. Marsh suggest that a number of crypts . . . depression." And he said " Yes."

" And that is what you are suggesting here?—A. Not necessarily at all."

And I put it to him that he had not referred to the main crypt and he admitted that and I said: " You intended to refer to the main crypt . . . not by that particular term."

Now, gentlemen, you remember me calling your attention yesterday to the fact that when I put to Dr. Marsh that this supra tonsillar fossa did not exist at all, and suggested that he might see it if he wanted to and that the invitation was not accepted? You can see now why.

At page 1417—Dr. Poate's evidence in chief shows why, though you know without that.

Speaking about Dr. Thompson's examination on 11th December.

" Dr. Thompson after some little time . . . as Dr. Marsh has." " That is into the *remains* of this large crypt of the tonsil.' The *remains*—that is in chief; and in cross-examination I put it to him to make the challenge quite clear. What I put to Dr. Poate was this——

Page 1443—" Will you swear that at the present time there is no supra tonsillar fossa?" That is plain enough. That is a challenge to Dr. Poate as well.

" I do not use . . . it is, to some extent."

There you have got it in so many words, gentlemen.

In the Supreme Court of New South Wales.

No. 52. Closing Address of Mr. Shand, K.C., 21st January 1944, *continued.*

Now, gentlemen, your foreman asked a very pertinent question if I may refer to it as that. Dr. Poate said at the first trial—you will remember the sequence of events—Professor Welsh had seen the tonsil and at Mr. Hardwick's suggestion Dr. Poate looked at it and what he said I pointed out to you at the time, so that Professor Welsh did not consider it necessary to go into the box, and it was the little twist that Dr. Poate gave it that caused Professor Welsh to say that that was the reason he could not accept his evidence.

These two things that Dr. Poate said after he looked at the tonsil and was cross-examined. He said——

Mr. CASSIDY : He is asked long before that—four questions back. That is not right. After he looks at the throat—you are dropping about four questions before you start to read—you said you were reading what he had said after he had looked at the throat.

Mr. SHAND : Not directly after looking at the throat—I do not know what my friend is talking about.

Page 197 : " Will you agree . . . very remote possibility."

Page 205, it was further put to him : " At this very moment on the left tonsil . . . may holes in both tonsils."

Small crypts of course.

" I do not mean a natural hole . . . through the tonsil."

" I would not say coming through the tonsil . . . out of the tonsil. Yes."

One would imagine that that would have been enough.

Mr. CASSIDY : You don't suggest that is the whole of the evidence, do you ?

Mr. SHAND : Please Mr. Cassidy !

Mr. CASSIDY : Your Honor, is that a fair way of dealing with the situation as Your Honor sees it ?

Mr. SHAND : I can't read it all—there are 200 pages.

Mr. CASSIDY : There are not.

His HONOR : Mr. Shand is entitled to pick out any particular passages he likes.

Mr. CASSIDY : Is he ?

His HONOR : The Jury remember a lot of the other evidence.

Mr. SHAND : I cannot read it all to the Jury. I don't know, gentlemen whether my friend's remark was designed to make you forget what I was reading. You will remember what I quoted, " I would say—out of the tonsil. Yes."

This is the second trial—page 1455 (middle)— " This scarring of the tonsil . . . foreign body and your answer was . . . through the tonsil." Those are his words, gentlemen. That will be before you—if you want a reference to that, it is page 1455. That is what he said at the second trial —" Might have got a foreign body through the tonsil." That indicates exactly what he had seen, and the difficulty they have now, and the reason

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 3

(Pages 977 to 1546)

BLYTH, DUTTON, WRIGHT & BENNETT,
112 GRESHAM HOUSE, E.C.2,
Solicitors for the Appellant.

LIGHT & FULTON,
24 JOHN STREET,
BEDFORD ROW, W.C.1,
Solicitors for the Respondent.

The Solicitors' Law Stationery Society, Limited, Law and Parliamentary Printers, Abbey House, S.W.1.
WL1319-5970