

1967/13

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

No. 11 of 1966

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N:

CHIN KEOW
-and- (Respondent) Appellant

GOVERNMENT OF MALAYSIA AND DOCTOR
JOSEPH LOGANATHAN DEVADASON
(Appellants) Respondents

RECORD OF PROCEEDINGS

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91452

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INSTITUTE OF ADVANCED
LEGAL STUDIES
18 MAR 1968
25 RUSSELL SQUARE
LONDON, W.C.1.

(i)

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PRIVY COUNCIL

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(Appellants) Respondents

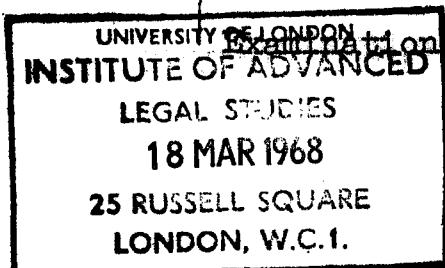
RECORD OF PROCEEDINGS

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IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 11 of 1966

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N:

CHIN KEOW (Respondent) Appellant

-and-

GOVERNMENT OF MALAYSIA AND DOCTOR
JOSEPH LOGANATHAN DEVADASON
(Appellants) Respondents

10

RECORD OF PROCEEDINGS

NO. 1
WRIT OF SUMMONS

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE HIGH COURT AT KUALA LUMPUR
Civil Suit 1962 No. 342

In the Supreme
Court of the
Federation of
Malaya

No.1

Writ of Summons
19th May, 1962.

B E T W E E N:

CHIN KEOW (f) Plaintiff

-and-

1. GOVERNMENT OF THE FEDERATION
OF MALAYA
2. DR. JOSEPH LOGANATHAN DEVADASON
Defendants

DATO SIR JAMES THOMSON, P.M.N., P.J.K.,

20

In the Supreme
Court of the
Federation of
Malaya

Chief Justice of the Federation of Malaya, in
the name and on behalf of His Majesty the Yang
di-Pertuan Agong.

To

No. 1

Writ of Summons
19th May, 1962
(Continued)

1. Government of the Federation of Malaya
2. Dr. Joseph Loganathan Devadason
c/o Social Hygiene Clinic,
Sultan Street, Kuala Lumpur.

WE COMMAND you, that within eight (8) days
after the service of this Writ on you, inclusive
of the day of such service, you do cause an
appearance to be entered for you in an action at
the suit of Chin Keow (f).

10

AND TAKE NOTICE that in default of your so
doing the plaintiff may proceed therein and
judgment may be given in your absence.

WITNESS Sarwan Singh Gill, Registrar of the
Supreme Court of the Federation of Malaya, the
19th day of May, 1962.

Sd. P.G. Lim
Plaintiff's Solicitors

Sd. A.W. Au
Senior Assistant
Registrar.

20

N.B. This Writ is to be served within twelve months
from the date thereof, or, if renewed, within six
months from the date of last renewal, including
the day of such date, and not afterwards.

The Defendant (or defendants) may appear hereto by
entering an appearance (or appearances) either
personally or by Solicitor at the Registry of the
Supreme Court at Kuala Lumpur.

30

A defendant appearing personally, may, if he
desires, enter his appearance by post, and the
appropriate forms may be obtained by sending a
Postal Order for \$3.00 with an addressed envelope to
the Registrar of the Supreme Court at Kuala Lumpur.

INDORSEMENT OF CLAIM

The Plaintiff's claim is as the mother of
Chu Wai Lian deceased under the provisions of the
Civil Law Ordinance 1956 Part III for damages in

respect of the death of the said Chu Wai Lian caused by the negligence of the second defendant as servant or agent of the first defendant.

In the Supreme Court of the Federation of Malaya

Sd. P.G. Lim

No. 1

Plaintiff's Solicitor.

Writ of Summons
19th May, 1962
(Continued)

10 This Writ was issued by P.G. Lim of Kuala Lumpur whose address for service is 92 High Street, 2nd floor, Malayan Bank Building, Kuala Lumpur solicitor for the said plaintiff who resides at 46-A Yew Road, Kuala Lumpur. Indorsement to be made within three days after service.

This Writ was served by me at on the defendant on the day of 1962 at the hour of

Indorsed this day of 196

(Signed)

20 (Address)

NO. 2.

No. 2

STATEMENT OF CLAIM

Statement of Claim
23rd May, 1962

(1) The plaintiff is the mother of Chu Wai Lian deceased and she brings this action for the benefit of herself and the other dependant - a son - of the deceased under the Civil Law Ordinance 1956, Part III.

30 (2) At all material times the deceased was a female attendant employed by the first defendant and worked at the Social Hygiene Clinic operated by the second defendant at Sultan Street, Kuala Lumpur.

(3) The first defendant at all material times managed, controlled and administered the said clinic to provide medical services to the public.

(4) The second defendant was at all material times employed by the first defendant as medical

In the Supreme officer in charge at the said clinic.
Court of the
Federation of
Malaya

No. 2

Statement of
Claim
23rd May, 1962
(Continued)

(5) On the 7th April 1960 the deceased consulted the second defendant about an ulcer in her right ankle and glands in her right thigh, and requested treatment for the said ailments. The second defendant acting in the course of his said employment instructed one Mrs. Chan Teik Chin, a nurse employed at the said clinic, to administer an injection of procaine penicillin to the deceased. Acting on the instructions of the second defendant the said Mrs. Chan Teik Chin administered an injection of procaine penicillin into the right buttock of the deceased as a result of which the deceased immediately complained of feeling strange and became unconscious. The second defendant gave instructions for an injection of adrenaline and two injections of coramine to be administered to the deceased. After the second injection of coramine the deceased's respiration ceased altogether.

10

(6) The death of the deceased was caused by the negligence and/or breach of duty on the part of the first and second defendants.

20

PARTICULARS

- (a) Causing an injection of penicillin to be administered into the deceased's buttock which he knew or ought to have known was not the safest and /or best area for administering such an injection.
- (b) Failing to instruct the said Mrs. Chan Teik Chin to avoid administering an injection of penicillin into the deceased's buttock. 30
- (c) Failing to inquire of the deceased whether or not she was allergic to penicillin.
- (d) Failing to take any or any proper or effective measure whether by way of examination test or otherwise to ensure that an injection of penicillin could be and would be safely administered to the deceased.
- (e) Causing or permitting the said penicillin to be injected into the deceased. 40
- (f) Permitting the said Mrs. Chan Teik Chin to

administer the said injection.

In the Supreme
Court of the
Federation of
Malaya

(g) Failing to be present at and after the injection to watch for reactions.

(h) Failing to take any or any proper or effective or timely measures to correct or to remedy the injection of penicillin into the deceased and in particular

No. 2

Statement of
Claim
23rd May, 1962
(Continued)

(i) Failing to provide equipment for administering oxygen to the deceased;

10 (ii) Failing to perform a cardiac massage on the deceased.

(i) The plaintiff will further, if necessary, rely on the doctrine of *res ipsa loquitur*.

(7) Particulars pursuant to the Civil Law Ordinance 1956 Part III are as follows :-

(a) Names of persons for whose benefit this action brought:

The plaintiff Chin Keow aged 48, the mother of the deceased,

20 Ng Kit Kheong aged 6, the deceased's son.

(b) The nature of the claim in respect of which damages are sought:

30 The deceased was 25 years of age and was in her said employment earning approximately \$90/- a month. She also worked in the evening as a ticket seller at a cabaret at an amusement park at \$80/- a month. The deceased's total earnings were in the region of about \$170/- a month. The plaintiff received from the deceased the sum of \$60/- a month part of which she maintained and kept the deceased's son but the deceased used to buy his clothes. The remainder the plaintiff kept for herself. The plaintiff and the son of the deceased were dependant on her for support and by her death they have lost the said means of support, and they have thereby suffered loss and damage.

In the Supreme Court of the Federation of Malaya

No. 2

Statement of Claim
23rd May, 1962
(Continued)

(c) The funeral expenses amount to \$800.00.

8. Further, by reason of the matters aforesaid, the life of the deceased was considerably shortened by reason whereof her said estate suffered loss and damage.

And the plaintiff claims against the defendants and each of them damages.

Sg. P.G. Lim.

Delivered this 23rd day of May, 1962 by P.G. Lim, Malayan Bank Building, 2nd Floor, 92 High Street, Kuala Lumpur, Solicitor for the plaintiff.

10

No. 3

Notice of Writ
23rd May 1962

NO. 3

NOTICE OF WRIT

The Government of the Federation of Malaya
Kuala Lumpur, State of Selangor.

TAKE NOTICE that Chin Keow (f) of 46-A Yew Road, Kuala Lumpur has commenced a suit against the Government of the Federation of Malaya in Our High Court in the above State by writ of the Court, dated the 19th day of May, 1962 which writ is indorsed as follows:-

20

The Plaintiff's claim is as the mother of Chu Wai Lian deceased under the provisions of the Civil Law Ordinance 1956 Part III for damages in respect of the death of the said Chu Wai Lian caused by the negligence of the second defendant as servant or agent of the first defendant and you are required within 8 days after the receipt of this notice to defend the said suit by causing an appearance to be entered for you to the said suit, and, in default of your so doing, the said Chin Keow (f) may proceed therein and judgment may be given in your absence.

30

You may appear to the said writ by entering an appearance personally or by your advocate and solicitor at the Registry of the Supreme Court at Kuala Lumpur.

By Order of the Court Sd. A.W. Au
Senior Assistant Registrar
Supreme Court, Kuala Lumpur.

40

The 23rd day of May, 1962.

NO. 4
 DEFENCE OF THE FIRST AND
 SECOND DEFENDANTS

In the Supreme
 Court of the
 Federation of
 Malaya

No. 4

Defence of First
 and Second
 Defendants
 10th July, 1962

10 1. The claim of the plaintiff, not having been commenced within twelve months next after act, neglect or default complained of, is barred by reason of the provisions of section 2(a) of the Public Authorities Protection Ordinance, 1948, and section 38 of the Government Proceedings Ordinance, 1956.

2. Alternatively, even if a cause of action does lie, the defendants say as follows:-

(1) Paragraphs 1, 2, 3, 4 and 5 of the Statement of Claim are admitted.

20 (2) The defendants deny that the death of the deceased was caused by the negligence and/or breach of duty on their part as alleged in paragraph 6 of the Statement of Claim and to the particulars contained therein as to -

particular (a) : deny that the area on which the injection was administered was not the safest and/or best area;

particular (b): aver that the injection was administered with the consent of the deceased;

30 particular (c): aver that the defendants were under no duty to inquire whether or not deceased was allergic to penicillin;

particular (d): aver that the defendants were under no duty to take such measures inasmuch as there is no test which is indicative that a person is wholly sensitive to penicillin;

In the Supreme
Court of the
Federation of
Malaya

No.4

Defence of First
and Second
Defendants
10th July, 1962
(Continued)

particular (e): aver that the injection
was administered with
the consent of the
deceased;

particular (f): aver that Mrs. Chan Teik
Chin, a qualified nurse,
was a competent person to
administer the injection;

particular (g): aver that in view of
particular (f) above, this 10
does not arise;

particular (h): deny that proper or
effective or timely measures
were not taken to revive
the deceased;

particular (i): aver that this is a
matter of law.

(3) Generally, the defendants deny that they
were negligent or that there was a breach of
duty on their part in respect of the death
of the deceased. 20

3. The defendants therefore pray that this
suit be dismissed with costs.

Dated this 10th day of July, 1962.

Sd. (ABDUL KADIR BIN YUSOF)
Senior Federal Counsel
for and on behalf of the
first and second defendants.

Delivered this 10th day of July, 1962.

No. 5

Request for
Further and
Better
Particulars of
Defence
29th October
1962

NO. 5

REQUEST FOR FURTHER AND BETTER
PARTICULARS OF THE DEFENCE

UNDER PARAGRAPH 1

of the provisions of section 2(a) of the
PUBLIC AUTHORITIES PROTECTION ORDINANCE 1948

stating under which of the particular circumstances enumerated in the said section protection is sought, and also stating, as the case may be, what the written law or public duty or authority was.

In the Supreme Court of the Federation of Malaya

No. 5

Sd. P.G. Lim

Solicitor for the Plaintiff

Request for Further and Better Particulars of Defence 29th October 1962 (Continued)

10 Delivered the 29th day of October, 1962 by P.G. Lim Advocate and Solicitor of Malayan Bank Building, 2nd floor, 92 High Street, Kuala Lumpur, Solicitor for the plaintiff.

NO. 6

FURTHER AND BETTER PARTICULARS OF DEFENCE

No. 6

Further and Better Particulars of Defence 17th November, 1962

The plaintiff's request for further and better particulars of the Defence under paragraph 1 is not understood. Nevertheless -

20 (a) The plaintiff in his Statement of Claim (see paragraph 6 thereof) alleges "negligence and/or breach of duty on the part of the first and second defendants". Protection is sought in respect of all such allegations;

(b) The plaintiff in his Statement of Claim alleges -

30 (i) in paragraph 3, that "the first defendant at all material times managed, controlled and administered the said clinic to provide medical services to the public";

and

(ii) in paragraph 4, that "the second defendant was at all material times employed by the first defendant as medical officer in charge of the said clinic".

In the Supreme Court of the Federation of Malaya

The defendant has admitted these allegations in paragraph 2(1) of his Defence.

No. 6

Sd. (Ibrahim bin Abdul Manan)

Ag. Senior Federal Counsel for and on behalf of the defendants.

Further and Better Particulars of Defence 17th November, 1962 (Continued)

Delivered the 17th day of November, 1962, by the Ag. Senior Federal Counsel whose address for service is c/o The Attorney-General's Chambers, Jalan Raja, Kuala, for and on behalf of the defendants.

10

No. 7

NO. 7

FURTHER AND BETTER PARTICULARS OF DEFENCE

Further and Better Particulars of Defence 1st December 1962

(Delivered pursuant to the Plaintiff's Request delivered the 29th October 1962)

The following are the particulars of Defence:

Under paragraph 1:

The act/neglect/default complained of in respect of which protection is sought under section 2(a) of the Public Authorities Ordinance, 1948, was done in the execution of a public duty under the authority of Article 80(1), item 14(a) of the List 1 Ninth Schedule to the Federation Constitution

20

Sd. (Ibrahim Bin Abdul Manan)
Ag. Senior Federal Counsel
for and on behalf of the defendants

Delivered the 1st day of December 1962 by the Ag. Senior Federal Counsel, whose address for service is c/o the Attorney-General's Chambers, Jalan Raja, Kuala Lumpur for and on behalf of the defendants (in substitution of further and better particulars delivered the 17th day of November, 1962)

30

NO. 8
EVIDENCE OF CHIN KEOW

In the Supreme
Court of the
Federation of
Malaya

No.8

Chin Keow P.W.1.
Examination
9th June 1964

Plaintiff's Witness 1 affirmed states in
Cantonese.

Age 49. I am amah in Female Out-Patient
Ward in General Hospital, Kuala Lumpur. Have
worked in this capacity for 16 years. I am
getting now \$134.13, formerly \$107. I had the
increase 2 months ago.

10 I live in own hut.

Deceased is my daughter.

She had 2 children, a girl and a boy. She
had separated from her husband. Daughter was 25
years old when she died. The daughter of
deceased had been given away in adoption - the
son lives with me - born on 2.6.53 - name Ng. Kek
Keong.

20 When his mother live he also stayed with me
part of the time. Deceased used to give me
monthly \$60 for my use and her son's. His clothings
were paid for sometimes by me, sometimes by his
mother. She paid his school fees.

30 Deceased was earning an amah, \$90 odd in the
Government Social Hygiene Clinic. She also
worked at Lucky World Amusement Park as ticket
seller for \$80 p.m. She lived alone in rented
room to be near place of work. She paid about
\$35-40 rent. I have no husband. Deceased is
my natural daughter. My husband had deserted
me many years.

My daughter died on 7th April, 1960. On
hearing of her death I went to the Social Hygiene
Clinic at Sultan Street. There I saw the staff
nurse - Mrs. Chan (identified). I asked her
where my daughter was and what happened. She
said my daughter was dead. I asked "how?". She
said because of injection of penicillin.

40 I said to her my daughter was not able to
take penicillin injection all along. She
kept quiet. Then I went in to see the body.
I asked her why no doctor was present. She said

In the Supreme
Court of the
Federation of
Malaya

No. 8

Chin Keow P.W.1.
Examination
9th June 1964
(Continued)

the doctor was not present at the time. I asked about resuscitative measures - and asked about oxygen. There was no oxygen apparatus there - I asked why no oxygen was administered. I have seen oxygen administered when patients suffer reaction from injections.

I know of daughter's allergy, because four years before her death, after an injection of penicillin, she suffered reactions, swelling of face and body and itching all over. I asked her to go back to see the doctor. She came back and told me she had been warned not to use penicillin in future. She had had that injection at Out-Patient Clinic in General Hospital. Her Out-Patient Card bore remark made in 1958. "Allergic to Penicillin". I found this card in her drawer. It was her habit to go to General Hospital for treatment of any indisposition. I produce the Out-Patient Card (Ex.P1).

10

I was present at the inquest.

20

Cross-
examination

CROSS-EXAMINATION: I knew my daughter was not fit to take penicillin. My daughter knew it also. She did not study English but she could understand a bit. My daughter knew very well she was allergic to penicillin.

No. 9

Chan Tet Chin
P.W.2
Examination
9th June, 1964

No. 9

EVIDENCE OF CHAN TET CHIN

Plaintiff's Witness 2 affirmed states in English.

I am staff nurse at Social Hygiene Clinic Sultan Street, Kuala Lumpur. I remember death of the amah in the Clinic, Chu Kee Thai. I had been working there since August 1955. Chu (deceased) was working there before me.

30

I gave her an injection of Penicillin on 7th April, 1960. I was instructed by the Medical Officer Dr. Devadason to give her an injection. At first the Doctor asked me to give her sulphatetrad tablets. Then, when we were coming out of the Doctor's office, she asked me what did

40

10 Doctor prescribe for her. I told her "tablets" - not mentioning the name. Then she asked 'why not give me injection instead of tablets?' So I took her in again to Medical Officer's office and told him she preferred injection. Then Doctor said "Give her 2 c.c. procaine penicillin". So I gave her the injection. That was all the doctor said and all he did. He also instructed me to dress her leg.

In the Supreme Court of the Federation of Malaya

No. 9

Chan Tet Chin
P.W.2
Examination
9th June, 1964
(Continued)

20 After I gave her the penicillin injection I turned to wash my hands. After washing I turned round and saw her lips slightly blue. I asked her how she felt. She said she felt a bit funny and straightaway I put her on the bed. Then I shouted for the Hospital Assistant who was next door to my Clinic and also sent the other amah to fetch the Medical Officer. Both the Hospital Assistant and Medical Officer arrived at the same time - in about 2 - 3 minutes. The Medical Officer asked the Hospital Assistant to give her an injection of Adrenalin, while I was preparing the hot water bag and blankets to cover the patient.

30 The Doctor was all the time with stethoscope on patient's heart. After that Medical Officer prescribed injection of Coramine. I was still busy with the patient and the Medical Officer and Hospital Assistant did their share of the work. She had 3 injections - adrenalin, coramine and again coramine. The patient saw Medical Officer at about 10.35 a.m. The penicillin injection was given at about 10.40 a.m. The adrenalin followed about 5-10 minutes after the penicillin. The Medical Officer was in the Male Clinic next door. First coramine followed in a few minutes. The second coramine was given about 10 minutes or a little more after the first. I gave the penicillin on the buttock - intramuscular. I had previously given this same patient procaine penicillin on instructions of Dr. Poulter in September 1955. I have no record - verbal instructions were given by the Doctor to me. She was on staff of Clinic and the injection given for sore throat.

40 I had not told Doctor Devadason that she had been given procaine penicillin before. She

In the Supreme
Court of the
Federation of
Malaya

had told me that some people were allergic to penicillin, but she had spoken in general terms and did not mention herself. I took no particular notice of her remarks.

No. 9

We have no oxygen apparatus in the Clinic.

Chan Tet Chin
P.W.2.
Examination
9th June, 1964
(Continued)

CROSS-EXAMINATION: The Clinic is for venereal disease and syphilis. Penicillin is the specific for venereal disease and syphilis. She saw the Medical Officer about her foot ulcer. She had seen me at 9 a.m.

10

Cross-
examination

When she said she wanted injection she mentioned penicillin. I told Medical Officer about it: "She does not want tablets. She prefers penicillin injection." He said "OK give her 2 c.c. procaine penicillin injection".

She did not say a word about her allergy. She had never told me of her allergy. When Dr. Poulrier prescribed penicillin for her I found no reaction.

The buttock is proper place for an injection.

20

I turned around - as I do to see all other patients - and noticing her condition, I put her on bed.

The Medical Officer used the stethoscope at once on her. Doctor did not do anything himself until after respiration stopped - then he tried artificial respiration.

I have worked with deceased every day for 5 years. She could understand English but could not speak it.

30

Shown P.1., I have never seen it before. Deceased never produced it to me or to the Medical Officer. Her name is on Ex. P.1.

On average I give 50 - 60 injections of penicillin every day.

I never gave any test to any patient before injection of penicillin. This was the only mishap in all these years - since I was there in this Clinic

RE-EXAMINATION: This case was the only fatal one. I have not come across any case of swelling. I know of only a few cases of irritation 2 days after the injection. They are regular patients.

In the Supreme Court of the Federation of Malaya

(Reminded of her evidence at the Inquest)

Plaintiff's Evidence

No. 9

10 - I was confused a bit in the evidence I gave then. I now say the Medical Officer did prescribe a choice of either the sulphatetrad tablets or penicillin injection and she asked for the injection as we were leaving the Doctor's room.

Chan Tet Chin
P.W.2.
Re-examination
9th June, 1964

20 To Court: Deceased was with me together when Medical Officer prescribed. She could hear it. She could understand, what the Medical Officer said. When we were going out she asked me, in Chinese, "Did Doctor prescribe tablets or injection?" I said "Tablets" only. I said "Tablets or injection". She said she preferred injection.

I don't know why she had to ask me when she had heard and understood what the Doctor had prescribed. I have no explanation.

She knew the Doctor well too.

NO. 10

EVIDENCE OF TAN CHEE KOON:
(Doctor)

No. 10

Dr. Tan Chee Koon P.W.3.
Examination
9th June, 1964

Plaintiff's Witness 3 affirmed states in English.

30 I am General Medical Practitioner at 329 Batu Road. I am L.M.S. Singapore in private practice almost 13 years. I have heard P.W.2. I have given a large number of penicillin injections.

When a patient comes to me for a penicillin injection - I will not allow patient to dictate to me what he wants. When penicillin is indicated, I would take a careful history - ask patient if he had had penicillin before. Next

In the Supreme
Court of the
Federation of
Malaya

Plaintiff's
Evidence

No. 10

Dr. Tan Chee
Koon P.W.3.
Examination
9th June, 1964
(Continued)

I would ask about itchiness of skin or difficulty in breathing or fainting after injection, then I would ask about asthma, if he had it before or other urticarial manifestations or other symptoms of allergy. Finally I would ask if any Doctor in past had advised against use of penicillin. With normal patients, their interrogation would not last more than 5 minutes. In any case all my staff had been trained to ask all these specific questions. These inquiries are necessary because penicillin has proved fatal in quite a number of cases.

10

If a patient has had an injection of penicillin before, it is possible that he may develop a subsequent sensitivity to that drug. I would be a little more careful in his case than in the case of a patient who has not had penicillin before.

If a patient has had penicillin previously without any reactions, I would still conduct penicillin sensitivity tests. I would do so always, e.g. (1) scratch test - scratch of skin and application of penicillin - (2) intra-dermal test - (duration at outside of 10 minutes). I am satisfied with these 2 tests. These tests are not necessary done by me. I have delegated the job to trained staff.

20

Ex. P.1. - I think is very revealing in showing the care the Doctor took to exclude penicillin.

In spite of tests showing the green light there have still been cases of sensitivity to penicillin. In such cases, I would prescribe adrenalin, anti-histamine, coramine, cortico-steroid. I consider a doctor in duty bound to have taken precautions - above all one must have oxygen available at all times. In emergency cases, it would be necessary to make the injections intravenous.

30

Mr. McGladdery wrote on penicillin poisoning in December 1960. Endo-tracheal tubes are useful.

If a patient is slipping, one would make an intra-cardiac injection. When all else fails, one could make a cardiac massage.

40

CROSS-EXAMINATION: No test is infallible. What I had spoken of are revival requirements. Buttock, in my opinion is not the best place for an injection.

In the Supreme Court of the Federation of Malaya

RE-EXAMINATION: Nil.

Plaintiff's Evidence

Adjourned to 10 a.n. on 11th June, 1964

No. 10

In Open Court, Thursday 11th June, 1964

(C.S. 342/62)

Dr. Tan Chee Koon P.W.3. Cross-examination 9th June 1964

Resumed at 10 a.n.

10

Counsel as before

NO. 11

No. 11

EVIDENCE OF DR. S.G. RAJAHRAM

Dr. S.G. Rajahram P.W.4. Examination 11th June, 1964

Plaintiff's Witness 4 affirmed states in English.

Private Medical Practitioner. President of Medical Association of Malaya. I wrote to Dr. Claxton, Assistant Secretary, B.M.A. on penicillin sensitivity. I wrote him on 22.12.60. I received his reply on 18.1.61.

20

CROSS-EXAMINATION: Nil

NO. 12

Defendants' Evidence

EVIDENCE OF DR. JOSEPH LOGANATHAN DEVADASON

No. 12

Defendants' Witness 1 affirmed states in English.

Dr. J.L.Devadason D.W.1. Examination 11th June, 1964

30

I am 50, L.M.S. Singapore. I have been in Government Service as Medical Officer 25 years. In 1958 I was posted to Sultan Street. P.W.2 was already there as staff nurse. We had an amah named Chu Wai Lian alias Chu Kee Thai. She is dead.

In the Supreme
Court of the
Federation of
Malaya

Defendants'
Evidence

No. 12

Dr. J.L. Devadason
D.W.1.
Examination
11th June, 1964
(Continued)

On 7th April, 1960 about 10.30 a.m. P.W.2 brought deceased to me. She had an ulcer in right ankle and swollen glands on thigh. I examined her. I prescribed sulphatetrad tablets or, as an alternative penicillin injection. They both went away, and staff nurse came back soon afterwards and told me that the amah preferred an injection of penicillin. The staff nurse had already told me previously that she had already given the amah penicillin some years ago, so I told the staff nurse she could give penicillin. The Hospital Assistant gave the injection.

10

Soon afterwards I was sent for from the Men's Clinic next door.

The amah had collapsed and was lying on the couch. She had shock after the injection. I asked Hospital Assistant to give injection of adrenalin. I waited a few minutes to see what effect it had. In the meantime the nurse was standing by. She was preparing hot water bottles and blankets. Ambulance from General Hospital was sent for. She did not come round (i.e. patient was unconscious). I ordered 2 c.c. coramine. It had no effect. I ordered another 2 c.c. of coramine. Her breathing became shallower, so I ordered staff nurse to perform artificial respiration. After about 10 minutes I took over and carried on until satisfied it was hopeless. She died.

20

30

My clinic is for venereal disease essentially.

Average number of injections 100 per day of penicillin. I never had any mishap except this particular occasion.

I have heard Dr. Tan.

That day I had made no test. Now we are doing the tests.

I made no test that day because it was not the hospital routine at the time. On my own I did not test because there were divided opinions about the test. I had no opinion myself. The divided opinion were about value of the tests.

40

Routine tests have become the order of the day after this case. (October 1960)

In Government Hospitals we never had tests. I was merely following government practice. I had never seen Ex. P.1. I did not know of her allergy.

In the Supreme Court of the Federation of Malaya

Defendants' Evidence

No. 12

Dr. J.L. Devadason D.W.1. Examination 11th June 1964 (Continued)

Cross-examination

10

CROSS-EXAMINATION: I prescribed dressing for sore leg. I did not do anything else. I had made no investigations into her history. Staff nurse had told me about her. I know of the possibility of a person developing hypersensitivity to penicillin after having penicillin before. In such cases there was remote possibility of danger. Knowing that, I carried on because I had had no mishaps before. Hypersensitivity to a person could prove fatal.

20

I agree that Ex. 1 is consistent with the Doctor having been put on guard. Not as a rule do I give choice of treatment to the patient. I realise now - after the event - it was dangerous to have given the injection without the test.

When I arrived she was blue - breathing shallow - pulse weak.

RE-EXAMINATION: Nil

NO. 13

No. 13

EVIDENCE OF DR. R.P. PILLAY

Dr. R.P. Pillay D.W.2.

Defendants' Witness 2 affirmed, states in English

Examination 11th June 1964

30

I am Consultant Physician, General Hospital, Kuala Lumpur, M.B.B.S., M.R.C.S. (Ed.)

Re penicillin tests - opinions sharply divided - tests not very valuable. Of 12 fatal cases in Taiwan 6 tests were negative - 6 others had no tests. Tests only show skin reaction.

40

In 1964, I would carry out tests rather than dispense with tests. Dr. Devadason did his best within his limited means in the circumstances. History of the patient should have been taken before injection.

In the Supreme
Court of the
Federation of
Malaya

NO. 14

CLOSING SPEECH FOR DEFENDANTS

Defendants'
Evidence

No. 14

Closing Speech
for Defendants
11th June, 1964

AU AH WAH:

Duty of plaintiff to prove negligence -
doubt as to any evidence of negligence.
Submit to negligence -
he followed general practice in Govern-
ment Hospitals.

Hankey v. Hooper, 173 E.R. 38

Munn v. Osborne, (1939) 1 A.E.R. 548

Warren v. Gred & White (Lancet) 1935 Vol. 1, 330. 10

Bolan v. Friern Hospital Committee (1957)

2 A.E.R.119

Hatcher v. Black (1954) C.L. Year Book

(1934) W.N. 171

(1950) W.N. 593

No. 8

NO. 8

FURTHER EVIDENCE OF CHIN KEOW

Chin Keow
recalled with
leave P.W.l.
Examination
11th June, 1964

Plaintiff's Witness 1 affirmed states in
Cantonese
(recalled with leave) 20

Funeral expenses - over \$700/-

I produce coffin receipt \$450/- (Ex.P.2.)

Total expenses about \$740 or \$750.

CROSS-EXAMINATION: Nil

I find for the plaintiff.

Special damages \$ 750

General damages - none under s.8

Under s.7 - \$8,000 to son

\$1,500 to mother 30

\$10,250 and costs

(sd) H.T. Ong.

NO. 15
FOUNDATIONS OF JUDGMENT

In the Supreme
Court of the
Federation of
Malaya

No.15

Judgment
2nd July, 1964

10 This is a claim by the dependants of a deceased person for damages under section 7 of the Civil Law Ordinance. The deceased had died of anaphylactic shock as the result of an injection of procaine penicillin and the plaintiff alleges that the defendant doctor was negligent in prescribing the injection without making any prior inquiry from the patient, which would have revealed that she was allergic or hypersensitive to the drug.

20 The deceased, aged 25 years, was a female attendant employed in the Social Hygiene Clinic at Sultain Street, Kuala Lumpur, for over five years. In April 1958 she was treated for ear ache as an out-patient of the Pudu Road Government Clinic and on that occasion had been found "allergic to penicillin". Her Out-Patient Treatment Card had those three words of warning indorsed thereon in block letters. On April 7, 1960 she spoke to Mrs. Chan Tet Chin, the staff nurse at the Clinic where they are both working, about an ulcer on her right ankle and swollen glands in the thigh. At about 10.30 a.m. the staff nurse brought the deceased to see the second defendant who was the medical officer in charge of the Social Hygiene Clinic at Sultan Street. He examined her.

30 What took place thereafter rested entirely on the evidence of the doctor and staff nurse. The only person who could testify against them was dead. Hence I thought that, where these two persons were seeking to throw the blame entirely on the deceased, it was salutary to remember the words of Brett M.R. in *In re Garnett* (1):

(1) L.R. 31 Ch. D. 1, 9

40 "The law is that when an attempt is made to charge a dead person in a matter, in which if he were alive he might have answered the charge, the evidence ought to be looked at with great care; the evidence ought to be thoroughly sifted, and the mind of any judge who hears it ought to be first

In the Supreme
Court of the
Federation of
Malaya

No.15

Judgment
2nd July, 1964
(Continued)

of all in a state of suspicion ..."

A similar note of caution was voiced by
Issacs J. in the Australian case of Plunkett v.
Bull (2).

The staff nurse was called as a witness for
the plaintiff and, in her evidence-in-chief, she
said as follows:

"I gave her an injection of penicillin on
7.4.60. I was instructed by the Medical
Officer, Dr. Devadason to give her an
injection. At first the Doctor asked me
to give her Sulphatetrad tablets. Then,
when we were coming out of the Doctor's
office, she asked me what did Doctor
prescribe for her. I told her 'tablets' -
not mentioning the name. Then she asked
'Why not give me injection instead of
tablets?' So I took her in again to
Medical Officer's Office and told him
she preferred injection. Then Doctor said
"Give her 2 c.c. procaine penicillin".
So I gave her the injection. That was
all the Doctor said and all he did. He
also instructed me to dress her leg."

10

20

Later she continued:

"I had previously given this same patient
procaine penicillin on instructions of
Dr. Poulrier in September 1955. I have no
record - verbal instructions were given
by the Doctor to me. She was on staff
of Clinic and the injection was given
for sore throat.

30

(2) (19) C.L.R. 544, 548-9

I had not told Dr. Devadason that she had
been given procaine penicillin before. She
had told me that some people were allergic
to penicillin, but she had spoken in
general terms and did not mention herself.
I took no particular notice of her remarks."

In cross-examination, however, by Federal Counsel
on behalf of the Government, she said:

40

"When she said she wanted injection, she mentioned penicillin. I told the Medical Officer about it: 'She does not want tablet. She prefers penicillin injection'. He said: 'O.K., give her 2 c.c. procaine penicillin injection.'

In the Supreme Court of the Federation of Malaya

No. 15

10 She did not say a word about her allergy. She had never told me of her allergy. When Dr. Poulrier prescribed penicillin for her I found no reaction."

Judgment
2nd July, 1964
(Continued)

20 Now, the deceased, according to the staff nurse, could understand English, but could not speak it. I thought that her evidence in cross-examination was inconsistent with her earlier evidence. Further, I thought it odd that the deceased herself should have specified penicillin, for five reasons. First, she was not English-speaking; secondly, if she had expressed her preference for "injections instead of tablets", simpliciter, as the staff-nurse said in the first place, it is plain that she could not have asked specifically for penicillin; thirdly, it is inconceivable that she could have remained in ignorance of her allergy discovered in 1958, and that she should, in the face of such warning, have asked for penicillin; fourthly, it seemed incredible that the deceased, holding a menial post, should have even known what to prescribe for herself and, all the more so, that she
30 should have had the presumption to instruct the doctor on his own job; fifthly, I was not a little surprised that he allowed a patient to dictate to him, as it were, what she thought best for herself.

Being dissatisfied with the staff nurse's evidence, I asked her a few questions myself, to which her answers were as follows:

40 "Deceased was with me together when Medical Officer prescribed. She could hear it. She could understand what the Medical Officer said. When we were going out she asked me, in Chinese, 'Did Doctor prescribe tablets or injection?' I said 'Tablets' only. I said 'Tablets or Injection'. She said she preferred injection.

In the Supreme
Court of the
Federation of
Malaya

I don't know why she had to ask me when she had heard and understood what the Doctor had prescribed. I have no explanation. She knew the Doctor well too."

No.15

Dr. Devadason's own version was as follows:

Judgment
2nd July, 1964
(Continued)

"I examined her. I prescribed sulphatetrad tablets or, as an alternative, penicillin injection. They both went away and staff nurse came back soon afterwards and told me that the amah preferred an injection of penicillin. The staff nurse had already given the amah penicillin some years ago, so I told the staff nurse she could give penicillin. The Hospital Assistant gave the injection."

10

I found it in the highest degree odd that the doctor should have "prescribed sulphatetrad tablets or as an alternative, penicillin injection." I could not understand any necessity for prescribing these alternatives. He had penicillin available, and he must have had sulphatetrad also. Nothing was said about the tablets being in short supply. Why, then, a prescription in this extraordinary manner? Surely the decision must be his, not the patient's, nor one left to the choice of his nurse or assistant consulting their own convenience. The explanation was too fantastic for me to give it any credence. Of course there was no other way to pass the blame on to the deceased except to allege that the prescription was in the alternative and that the unfortunate woman herself made the choice. Were there no alternative, as alleged, the prescription of Penicillin must be the inevitable conclusion. The nurse contradicted herself, and she and the doctor contradicted each other. As witness I believed neither of them.

20

30

I was satisfied, and I found as a fact, that sulphatetrad tablets were never prescribed by the doctor, that he prescribed a penicillin injection - and a penicillin injection only - as a routine treatment for the deceased, and that he did so prescribe without asking one single perfunctory question to attempt to discover whether she was sensitive to the drug. To leave no room for ambiguity, I am bound to say that I was also satisfied, and I found as a fact, that the deceased never prescribed for herself, or

40

asked specifically for penicillin.

The only issue in this case was a very simple one, and that was why I had no hesitation in giving judgment for the plaintiff forthwith at the close of the trial. Was the doctor negligent when he failed to ask even one, or at most three, questions of his patient before he prescribed the injection? The first and most obvious question should have been: "Have you ever had penicillin before? Other questions should logically follow according as the answer was in the affirmative or negative.

In the Supreme Court of the Federation of Malaya

No. 15

Judgment
2nd July, 1964
(Continued)

In coming to my decision I had not been unmindful of what Denning L.J. (as he then was) had said in Roe v. Minister of Health (3):

(3) (1954) 2 W.L.R. 915, 926.

"We should be doing a disservice to the community at large if we were to impose liability on hospitals and doctors for everything that happens to go wrong. Doctors would be led to think more of their own safety than of the good of their patients. Initiative would be stifled and confidence shaken. A proper sense of proportion requires us to have regard to the condition in which hospitals and doctors have to work. We must insist on due care for the patient at every point, but we must not condemn as negligence that which is only a misadventure."

He had also said that "we must not look at the 1947 accident with 1954 spectacles", a remark of which McNair J. reminded the jury three years later in Bolam v. Friern Hospital Management Committee. (4) In this latter case the negligence test was stated by McNair J. on page 586, in these words:

"The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill; it is well established law it is sufficient

(4) (1957) 1 W.L.R. 583, 586

In the Supreme
Court of the
Federation of
Malaya

No. 15

Judgment
2nd July, 1964
(Continued)

if he exercises the ordinary skill of an ordinary competent man exercising that particular art."

In another passage of the judgment, at page 587 he continued:

"In a recent Scottish case, Hunter v. Hanley (5) Lord President Clyde said: 'In the realm of diagnosis and treatment there is ample scope for genuine difference of opinion and one man clearly is not negligent merely because his conclusion differs from that of other professional men, nor because he has displayed less skill or knowledge than others would have shown. The true test for establishing negligence in diagnosis or treatment on the part of a doctor is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of, if acting with 'ordinary care'. If that statement of the true test is qualified by the words 'in all the circumstances, 'Mr. Fox-Andrews would not seek to say that that expression of opinion does not comply with the English law. It is just a question of expression. I myself would prefer to put it this way, that he is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art.'" 10 20

Although the discovery of penicillin by Sir Alexander Fleming was made thirty-five years ago, its general use in this country has now gone on for nearly 20 years, and it is, I think true to say that many an ordinary layman is aware that certain individuals are allergic and sensitive to this particular antibiotic, and that in certain cases its use had had fatal consequences. The defendant doctor in this case could not have been unaware of this possibility. Even granted that fatalities are comparatively rare, the consequences nevertheless were foreseeable, which distinguishes the instant case from the unfortunate mishap that 30 40

(5) (1955) S.L.T. 213

caused spastic paraplegia to the two men in Roe v. Minister of Health. In my view the test of foreseeability was satisfied in the instant case, on the doctor's own admission. In cross-examination he said as follows:

In the Supreme Court of the Federation of Malaya

No. 15

Judgment
2nd July, 1964
(Continued)

10

"I had made no investigations into her history. Staff nurse had told me about her. I knew of the possibility of a person developing hypersensitivity to penicillin after having penicillin before. In such cases there was remote possibility of danger. Knowing that, I carried on because I had had no mishaps before. Hypersensitivity to a person could prove fatal.

20

I agree that Ex. 1 is consistent with the Doctor having been put on guard. Not as a rule do I give choice of treatment to a patient. I realise now - after the event - it was dangerous to have given the injection without the test."

It is to be observed that what Dr. Devadason sought to explain away was his failure to carry out sensitivity tests on the patient. Dr. Pillay, who was the only other medical witness called by the defence, also doubted that tests are reliable. Nevertheless, he agreed that "the history of the patient should have been taken before injection."

30

What the defence appeared to have been unable to appreciate was that I was not in the least concerned with the doctor's failure to carry out sensitivity tests. The negligence did not lie in the omission to carry out such tests on the patient for individual idiosyncrasy. The essence of the negligence here was the failure to take the simple, elementary precaution of asking a few questions. Had he done so, the mishap would not have happened.

40

I should have thought that some probing at least into every patient's history was the very first thing any doctor would start with on seeing a patient. The doctor here was guilty of negligence by his omission to do so. It is quite irrelevant that up to 1960

In the Supreme
Court of the
Federation of
Malaya

No. 15

Judgment
2nd July, 1964
(Continued)

doctors in government and municipal hospitals habitually gave injections without tests. What could have been relevant was evidence that it was accepted practice among Government doctors throughout the country that the patients' history was never probed before prescribing a penicillin injection. I doubt that any doctor in Government service can be found to testify in court to this effect. In this respect there was no question of viewing this 1960 case through 1964 spectacles. 10

By way of gilding the lily, perhaps, it is not out of place to point out that one doctor at least in the Government service - which in practice was said never to have carried out sensitivity tests before 1960 - took enough precautions in April 1958 on the very same patient which enabled him to discover her allergy as he noted it on her Out-Patient Card. He exercised the standard of care which he must have thought necessary. Dr. Devadason did not, and his failure unquestionably was negligence. 20

As to general damages, I awarded \$8,000 to the deceased's son and \$1,500 to her mother: for special damage \$750. Until notice of appeal is given against the quantum of my award I do not propose to dilate on this subject.

(Sgd). H.T. ONG
JUDGE
High Court, Malaya.

Kuala Lumpur,
2nd July, 1964

30

Miss P.G. Lim for the Plaintiff.

Mr. Au Ah Wah, Federal Counsel for
Defendants.

NO. 16
ORDER

In the Supreme
Court of the
Federation of
Malaya

BEFORE THE HONOURABLE MR. JUSTICE ONG

JUDGE, MALAYA

IN OPEN COURT

No. 16

THIS 11TH DAY OF JUNE, 1964

Order
11th June 1964

O R D E R

THIS SUIT coming on for hearing on the 9th day of June, 1964 in the presence of Miss P.G. Lin of Counsel for the plaintiff and Mr. Au Ah Wah of Federal Counsel for the defendants
10 AND UPON HEARING the evidence of the plaintiff, the defendants, their witness and the submissions of both counsel AND UPON READING the pleadings in this suit IT WAS ORDERED that this suit do stand adjourned for hearing and the same coming up for hearing on this 11th day of June, 1964 in the presence of Miss P.G. Lim of Counsel for the plaintiff and Mr. Au Ah Wah of Federal Counsel for the defendants IT IS ORDERED that the
20 defendants do pay to the plaintiff the sum of Dollars ten thousand and two hundred and fifty (\$10,250.00) of which the sum of \$750/- (dollars seven hundred and fifty) is payable as special damages and \$9,500/- (dollars nine thousand five hundred) is payable as general damages AND IT IS ORDERED that the above mentioned sum of \$9,500/- be apportioned as follows:-

To the plaintiff - \$1,500

To the deceased's son
30 Ng Kit Kheong - \$8,000/-

AND IT IS FURTHER ORDERED that the moneys due to the child Ng Kit Kheong be paid to the Public Trustee and invested and then to be paid out to the child Ng Kit Kheong upon his attaining the age of 21 years AND IT IS LASTLY ORDERED that the Defendants above named do pay to the plaintiff the costs of this suit as taxed by the proper officer of this Court.

Given under my hand and the seal of the Court this 11th day of June, 1964.

40 (Sgd) E.E. SIM
Senior Assistant Registrar
High Court, Kuala Lumpur.

NOTICE OF APPEAL

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

No.17

CIVIL APPEAL NO. 57 of 1964

Notice of
Appeal
6th July, 1964

B E T W E E N:

- 1. Government of the Federation of Malaya
- 2. Dr. Joseph Loganathan Devadason ... Appellants

- and -

Chin Keow (f) ... Respondent 10

IN THE MATTER OF CIVIL SUIT NO. 342 of 1962
IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Chin Keow (f) ... Plaintiff

- and -

- 1. Government of the Federation of Malaya
- 2. Dr. Joseph Loganathan Devadason ... Defendants

NOTICE OF APPEAL

Take notice that (1) Government of the Federation of Malaya and (2) Dr. Joseph Loganathan Devadason being dissatisfied with the decision of the Honourable Mr. Justice Ong given at Kuala Lumpur on the 11th day of June, 1964, appeals to the Federal Court against the whole of the said decision. 20

Dated this 6th day of July, 1964.

(AU AH WAH)

Federal Counsel for the
Appellants

The Registrar, The Federal Court,
Kuala Lumpur.

and to:

The Registrar,
The High Court in Malaya at Kuala Lumpur

In the Federal
Court of Malaysia
(Appellate
Jurisdiction)

and to:

Miss P.G. Lim,
Advocate and Solicitor,
The Malayan Banking Building, Kuala
Lumpur

No. 17
Notice of Appeal
6th July, 1964
(Continued)

10 The address for service for the appellants
is Federal Counsel, c/o Attorney-General's
Chambers, Kuala Lumpur.

NO. 13

MEMORANDUM OF APPEAL

No. 13

Memorandum of
Appeal
31st August,
1964

20 The Government of Malaysia and Dr. Joseph
Loganathan Devadason, the Appellants above
named, appeal to the Federal Court against
the whole of the decision of the Honourable
Mr. Justice Ong given in the High Court in
Kuala Lumpur on the 11th day of June 1964 on
the following grounds:

1. The learned Judge was wrong in thinking
that the doctor and the staff nurse were seeking
to throw the blame entirely on the deceased.

30 2. The learned Judge was wrong in coming
to the conclusion that it was "odd that the
deceased herself should have specified penicillin
for five reasons, namely first, she was not
English-speaking; secondly, if she had expressed
her preference for "injections instead of tablets"
simpliciter, as the staff nurse said in the
first place, it is plain that she would not have
asked specifically for penicillin, thirdly it is
inconceivable that she would have remained in
ignorance of her allergy discovered in 1958,
and that she should, in the face of such warning,
have asked for penicillin; fourthly, it seemed
incredible that the deceased, holding a menial
post, should have even known what to prescribe
for herself and, all the more so, that she should
40 have had the presumption to instruct the doctor
on his own job; fifthly, I was not a little

In the Federal
Court of Malaysia
(Appellate
Jurisdiction)

No.18

Memorandum of
Appeal
31st August,
1964
(Continued)

surprised that he allowed a patient to dictate to him as it were, what she thought best for herself."

3. The learned Judge was wrong in finding that it was in the highest degree odd that the doctor should have "prescribed sulphatetrad tablets, or as an alternative, penicillin injection", and that the explanation was too fantastic for him to give it any credence.

4. The Learned Judge was wrong in finding that there was no other way to pass the blame on to the deceased except to allege that the prescription was in the alternative and that the unfortunate woman herself made the choice. 10

5. The learned Judge was wrong in finding that sulphatetrad tablets were never prescribed by the doctor, and that he prescribed a penicillin injection only as a routine treatment for the deceased.

6. The learned Judge was wrong in deciding that it was necessary, in the circumstances of the case, to ask the patient questions whether she was sensitive to penicillin and that failure to ask the question "Have you ever had penicillin before?" and the other questions constituted negligence on the part of defendant No. 2. 20

7. The learned Judge was wrong in holding that the Second Defendant was guilty of negligence by his omission to probe into the patient's history. 30

8. The learned Judge was wrong in holding that the Second Defendant was guilty of negligence because the consequences of fatalities were foreseeable.

9. The learned Judge was wrong in holding that it was quite irrelevant that up to 1960 doctors in government and municipal hospitals habitually gave injections without tests and that what would have been relevant was evidence that it was accepted practice among government doctors throughout the country that the patient's history was never probed before prescribing a penicillin 40

injection and that he doubted that any doctor in government service can be found to testify in court to this effect and that in this respect there is no question of viewing this 1960 case through 1964 spectacles.

In the Federal Court of Malaysia (Appellate Jurisdiction)

No.18

Memorandum of Appeal
31st August, 1964
(Continued)

10 10. The learned Judge was wrong in holding that because a government doctor carried out a sensitivity test in 1958 on the patient and found the patient to be allergic to penicillin, that government doctor had exercised the standard of care and that because the Second Defendant did not carry out a test, his failure unquestionably was negligence.

Dated this 31st day of August, 1964.

(Sd): (AU AH WAH)

Federal Counsel,
Solicitor for the Appellants.

20 To:
The Registrar,
Federal Court,
Kuala Lumpur.

and to:
Miss P.G. Lin,
Advocate and Solicitor,
Malayan Banking Building,
Kuala Lumpur.

No. 19

No. 19

30 NOTES OF ARGUMENT RECORDED BY THOMSON,
LORD PRESIDENT, MALAYSIA.

Notes of Argument
Thomson,
Lord President
Malaysia.
10th November
1964

Cor: Thomson, Lord President, Malaysia.
Syed Sheh Barakbah, Chief Justice, Malaya.
Tan Ah Tah, Judge, Federal Court.

10th November 1964

For Appts: Au Ah Wah

For Respt: Miss P.G. Lin

Appln: for extension of time

In the Federal
Court of Malaysia
(Appellate
Jurisdiction)

No. 19

Notes of
Argument
Thomson,
Lord President
Malaysia.
10th November,
1964

(Continued)

Ah Wah: Other side has consented.

Ct: No.

Ah Wah: Ask for extension.

Appln: Granted as prayed. Costs to Respt.
in any event.

On appeal

Ah Wah: J's reference to:

In re Garnett 31 Ch.D. 1,9.

was incomplete and misleading. He should have
quoted the whole passage. 10

This is not a claim against a decd. estate.

Nurse was Plaintiff's witness.

Plunkett v. Bull 19 C.L.R. 544, 548

Nothing said about deceased asking for
penicillin. She had been working in a V.D.
Clinic for several years.

Judge should have assessed the relative
credibility of the Defendant and of the nurse
who was the plaintiff's witness.

It was not negligence to refrain from asking 20
deceased whether she had had penicillin before.

Trial took place 4 years after the incident.

On Doctor's negligence -

Hancke v. Hooper 7 CAR. & P. 82.

Mahon v. Osborne (1939) 1 A.E.R. 535, 548.

Warren v. Greig & White 1935 Lancet 1, 330.

Vancouver Gen. Hosp. v. McDaniel (1934) W.N. 171

Marshall v. Lindsey County Council (1935) 1 K.B.
516, 540.

Whiteford v. Hunter (1960) W.N. 553.

Bolan v. Friern Hosp. Management Comm:
(1957) 2 A.E.R. 118, 128.

Coles v. Reading & Dist. Hosp. Management
Comm: "Times" 31.1.1963

Moore v. Lewisham Group Hosp. Management
Comm: "Times" 5.2.1959

Williams v. N. Liverpool Hosp. Management
Comm: "Times" 17.1.1959.

10 Adj'd. to 11.11.64

11th November, 1964

Ah Wah (contd.)

To make out negligence it must be made out there (1) a duty situation (2) Deft. owed that duty to Ptff.

Was injury to Ptff. a foreseeable result?

What is the relevant standard of care? That is a question of law.

20 Whether there has been a breach of duty is a question of fact.

Roe v. Minister of Health (1954) 2 Q.B. 66, 84.

There is no evidence as to what was the actual practice.

Hatcher v. Black (1954) C.L.Y.B. 2289

Ah Wah (contd.)

Eddy "Professional Negligence" p. 110.

J. applied too high a standard.

30 Case for Appts.

In the Federal Court of Malaysia (Appellate Jurisdiction)

No. 19

Notes of Argument Thomson, Lord President Malaysia. 10th November, 1964 (Continued)

11th November, 1964

In the Federal Court of Malaysia (Appellate Jurisdiction)

No. 19

Notes of Argument Thomson, Lord President Malaysia 11th November 1964 (Continued)

Lin:

Crux is whether enquiries should have been made before penicillin was administered.

Body of medical opinion says enquiries should be made.

Coles case supra ("Times").

Once it is conceded that the Dr. prescribed penicillin it is for defence to show she asked for it.

On pleadings defence denied a duty to enquire as to allergy. 10

Bolan v. Friern Hosp. Management Comm. (1957) 1 W.L.R. 584, 586.

Halsbury XXVIII p. 19.

Roe v. Minister of Health (1954) 2 W.L.R. 915, 924, 926, 932.

932 is the case on the foreseeability question.

The necessary degree of care was not exercised so appt. was responsible for the injuries to the deceased which he could have foreseen. 20

Ah Wah in reply

We exercised reasonable skill and care. Position must be looked at as in 1960.

C.A.V.

Intld. J.B.T.
11.11.64

TRUE COPYNO. 20

NOTES OF ARGUMENT RECORDED BY
BARAKBAH, CHIEF JUSTICE, MALAYA

In the Federal
 Court of
 Malaysia
 (Appellate
 Jurisdiction)

Kuala Lumpur, 10th November, 1964

No. 20

Au Ah Wah for Appellants,

Miss P.G. Lin for Respondent.

Notes of
 Argument
 Barakbah, Chief
 Justice.
 10th November
 1964

Au Ah Wah: Application for extension of
 time to file record of appeal.

10

Miss Lin's consent in writing
 under Rule 74 Federal Court Civil
 Appeals (Transitional) Rules 1963.

Asks Court to exercise discretion
 under Rule 73.

Application granted as prayed.
 Costs to Respondent in any event.

Sd. S.S. Barakbah.

Au Ah Wah: Cases in re: Garnett and Plunkett
 have no application - p.29

20

In re Garnett - 31 Ch. D.8.

Plunkett v. Bull - 19 Com. L.R.
 549.

Deceased consented to the treatment
 of penicillin.

Failure to ask questions by Doctor
 does not constitute negligence.

Hancke v. Hooper - 173 E.R. 37.
 Mahon v. Osborne - 1939 1 A.E.R.
 548

30

Warren v. Gred and White - Lancet
 1935 Vol. 1, 330
 Vancouver General Hospital v. Mc
 Daniel & Anor. - 1934 W.N. 171
 Marshall v. Lindsey County Council -
 1935, 1 K.B. 516

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No. 20

Notes of
Argument
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10th November
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(Continued)

11th November
1964

Whiteford v. Hunter - 1950 W.N.
554.
Bolan v. Friern Hospital Management
Committee - 1959, 2 A.E.R. 118
Coles v. Reading & District Hospital
Management Committee & Anor. - Times,
31st January 1963.
Moore's Case - Times, 5th February,
1959.
William's case - Times 17th January 1959

10

Sd. S.S. Barakbah.

10th November, 1964

11th November, 1964

Au Ah Wah for Appellants

Miss P.G. Lim for Respondent.

Au Ah Wah: 1. There must be a duty situation

2. Defendant owed that particular
duty to Plaintiff.

3. Whether the injuries were a fore-
seeable result.

20

4. Standard of care.

Whether there is a breach of duty
is a question of fact.

Roe v. Minister of Health - 1954, 2
Q.B. 66, 84. In 1960, it was practice
in Government Hospitals not to give
test. Drs. Tan and Pillay referred
to 1964.

Hatcher v. Black - 1954 C.L.Y. Book
para, 2289 Eddy on Professional
Negligence p.110
Doctor exercised due care and attention.

30

Miss Lim: Questions is whether inquiries should
have been made before penicillin
administered. P. 32D, P. 35D P. 24.

If Appellant had inquired, deceased
would have told him.

If he had made inquiries and had been told she had had penicillin before without evil results, he would be justified in giving her the injection.

In the Federal Court of Malaysia (Appellate Jurisdiction)

Defence said that she requested it.

No. 20

Williams' case - Times, 17th January, 1959

Bolan's Case - 1957, 2 A.E.R. 118, 120

Halsbury's Vol. 28 p. 19, 20

Roe's case - 1954, 2 W.L.R. 915 926.

Notes of Argument Barakbah, Chief Justice. 11th November 1964 (Continued)

10

Whether he exercised the degree of care required in the circumstances.

Au Ah Wah: He has exercised reasonable skill and care.

C.A.V.

Sd. S.S. Barakbah

11th November, 1964

20

2nd March, 1965

Federal Court Sitting at Kuala Lumpur

Coram: Thonson, Lord President, Malaysia, Barakbah, Chief Justice, Malaya, Tan Ah Tah, Judge, Federal Court.

Enche Wan Hamzah bin Mohd. Salleh for Appellants.

Miss P.G. Lim for Respondent.

Judgment delivered by Lord President. Chief Justice, Malaya and Federal Judge concurred.

30

ORDER: Appeal allowed with costs.

Sd. S.S. Barakbah,
2nd March, 1965

TRUE COPY

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

NO. 21
NOTES OF ARGUMENT RECORDED BY
TAN AH TAH, JUDGE

10th November, 1964

No. 21

Notes of
Argument
Tan Ah Tah,
Judge
10th November,
1964

Au Ah Wah for Appellants

Miss P.G. Lim for Respondent

Au: I apply for extension of time until
9.9.64 being the date on which the
memorandum of appeal was filed out of
time. The delay was due to the emergency.

10

Miss
Lim: I do not oppose.

The application is granted

Costs to Respondent in any event.

Sd. Tan Ah Tah.

Au: J. cited Re Garnett (1886) L.R. 31 Ch.
D.1 at p.9.
But that was a case where claims were made
against the deceased's estate. Therefore
the claimants' evidence had to be looked
at with great care.

20

The same remarks apply to the Australian
case of Plunkett v. Bull cited by J. The
nurse was not blaming deceased. p.29. The
nurse was re-Xd. at p.23. Her evidence in
re-Xn is same as D.W.1's at p.25 F 3.

At inquest p.53 D.W.1. said very much the
same thing.

Re Garnett (1886) 31 Ch. D. 1

Adjourned to 2.30 p.m.

30

Au: Plunkett v. Bull 19 C.L.R. 548

Ground 2. I submit there was nothing odd
about what deceased did.

Deceased had been working in a V.D. clinic and penicillin was a medicine for V.D. Penicillin must have been a byword in the clinic.

In the Federal Court of Malaysia (Appellate Jurisdiction)

No. 21

Notes of Argument
Tan Ah Tah,
Judge
10th November,
1964
(Continued)

Ground 3. Evidence at p.21 A to D.

10

I ask the court to accept D.W.1's evidence. The nurse was somewhat confused.

Grounds 4 & 5

Grounds 6 & 7

20

Failure to ask whether deceased had had penicillin before is not negligence. Dr. Tan Chee Koon (P.W.3) called by Plaintiff gave evidence at p.23, 24.

Dr. Pillay (D.W.2) did say the history of the patient should have been taken before injection.

Deceased had penicillin in 1955 and there was no reaction.

30

The nurse told D.W.1. deceased had had penicillin before. She said she did not tell D.W.1 but D.W.1 said she did. See p.25 G2 & p.54 B2.

In 1960 no tests were made.

Hancke v. Hooper 173 E.R. 37

Mahon v. Osborne (1939) 1 All E.R. 548

It is negligence if risk taken of a substantial character, not if it is a negligible risk. Warren v. Gred & White Lancet 1935 Vol. 50 p.330 Vancouver General Hospital v. McDaniel

In the Federal Court of Malaysia (Appellate Jurisdiction)

(1934) W.N. 171 at p.172 last 8 lines.

Marshall v. Lindsey County Council (1935)1 K.B. 516 at p.540.

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Notes of Argument
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(Continued)

"An act cannot be held to be due to a want of reasonable care if it is in accordance with the general practice of mankind." Bolan v. Friern Hospital Management Committee (1957)2 All E.R. 118; (1957) 1 W.L.R. 582.

Roe v. Minister of Health (1954) 2 All E.R. 131.

Coles v. Reading & District Hospital. Times 31.1.63 10
- this case can be distinguished because it was the doctor's duty to make enquiries.

Moore v. Lewisham Group Hospital Management Committee. Times 5.2.59.

Williams v North Liverpool Hospital Management Committee. Times 17.1.59.

Adjourned to 11.11.64

Sd. Tan Ah Tah

11th November
1964

Wednesday 11th November, 1964

Civil Appeal No. 57 of 1964
(hearing continued)

20

Counsel as before.

Au: There must be a duty situation. It must be shown D.W.l. owed a duty to the deceased. Then the standard of care must be considered.

It is not enough to be able to foresee the consequences.

The standard of care must be considered.

Roe v. Minister of Health (1954) 2 Q.B. 66 at p.84.

30

- "It may be said...."

J. has not considered the standard of care. He should have considered whether D.W.l. followed the practice accepted as proper by a

reasonable body of men skilled in that particular art.

See p.26 F1 - D.W.L. said "In Government hospitals we never had tests." "I was merely following Government practice."

In the Federal Court of Malaysia (Appellate Jurisdiction)

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See p.35. There is no evidence that in 1960 the history of patients was probed.

Notes of Argument
Tan Ah Tah,
Judge
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(Continued)

10

Nobody said that penicillin could be a cause of death.

J. laid down too high a standard of care.

Dr. Tan said Dr. McGladdery wrote about penicillin poisoning in December 1960 p.24 H2. That was some months after deceased died.

Hatcher v. Black 1954 Current Law Year Book para. 2289.

20

Eddy on Professional Negligence p.110

Miss
Lin:

The crux of this case is: Were any enquiries made before penicillin was used? J. at p.35 DE - his remarks are also relevant. Cases cited by Au concern tests e.g. blood test would have revealed leukaemia.

30

Dr. Pillay said, "History of the patient should have been taken before injection" p.27 D.

Dr. Tan p.24B said enquiries are necessary because penicillin has proved fatal in quite a number of cases.

See further passages of Dr. Tan's evidence at p. 24.

In 1956 deceased had known of her allergy because deceased's mother said 4 years

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before her death she had had a reaction.
In 1958 deceased must have told the doctor
of her allergy. That is why the card
contained the words "Allergic to penicillin."

D.W.1. said he did not know of her allergy
p.26 F 3. Nurse said p.22 B 2 deceased never
told her of her allergy. See D.W.1's evidence
at p.25, 26. This is not a question of skill.
It is a question of reasonable medical care.

Even if a doctor has not encountered fatalities 10
before, it does not absolve him from making
enquiries.

If D.W.1. had made enquiries he would have been
told she had had penicillin before and had
been allergic.

Nurse did not tell D.W.1. about deceased's
allergy. D.W.1. said he did not know about
deceased's allergy.

Au says deceased asked for penicillin. Once
it is conceded that D.W.1 prescribed penicillin 20
the onus of proving that deceased asked for it
is on Defendants.

As to Ground 10, there is no evidence that a
sensitivity test was carried out in 1958.

Particulars (c) and (d) of statement of claim
p.8 Williams v North Liverpool Hospital
Management Committee. Times 17.1.59.

D.W.1. should have made enquiries. He would
have found out deceased was allergic.

Bolan v Friern Hospital Committee (1957) 2 30
All E.R. 118; (1957) 1 W.L.R. 582.

28 Halsbury's Laws p.1.920

Foreseeability

28 Halsbury's Laws p.3 last 3 lines

Roe v. Minister of Health (1954) 2 W.L.R.
915 - impossible to foresee that cracks in
ampoules would be dangerous. But in present

case D.W.1. could have foreseen that hypersensitivity could be present and could prove fatal.

Moore v. Lewisham Group Hospital Management Committee Times 5.2.59.

Dr. Pillay said p.27 D the history of the patient should have been taken before injection.

10

Warren v. Gred & White (Lancet) - not relevant because it was a case of a blood test. We are concerned with enquiries. Precautions should be taken before a line of action is adopted.

D.W.1. owed a duty to deceased to make enquiries.

D.W.1. should have foreseen the results. He knew about hypersensitivity.

20

Au: D.W.1. exercised reasonable skill and care. Dr. Tan was not asked what the practice was in 1960. D.W.1. said thousands have been injected with penicillin without ill-effects.

C.A.V.

Sd. Tan Ah Tah

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In the Federal Court of Malaysia (Appellate Jurisdiction)

No. 21

Notes of Argument
Tan Ah Tah,
Judge
11th November
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(Continued)

In the Federal
Court of
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NO. 22

JUDGMENT OF THOMSON, LORD PRESIDENT,
MALAYSIA

No. 22

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR

Judgment of
Thomson,
Lord President,
Malaysia
2nd March, 1965

(APPELLATE JURISDICTION)

Federal Court Civil Appeal No:
57 of 1964

B E T W E E N:

1. Government of Malaysia
2. Dr. Joseph Loganathan Devadason ... Appellants 10

- and -

Chin Keow (f) ... Respondent

(In the matter of Kuala Lumpur High Court
Civil Suit No: 342 of 1962

B E T W E E N:

Chin Keow (f) ... Plaintiff

- and -

1. Government of Federation of Malaya
2. Dr. Joseph Loganathan Devadason ... Defendants).20

Cor: Thomson, Lord President, Malaysia.
Syed Sheh Barakbah, Chief Justice,
Malaya.
Tan Ah Tah, Judge, Federal Court.

JUDGMENT OF THOMSON, LORD PRESIDENT, MALAYSIA

This appeal arises out of a claim under
section 7 of the Civil Law Ordinance by the mother
and one of the children of Madam Chu Wai Lian who
died in Kuala Lumpur on 7th April, 1960.

At the time of her death Madam Chu was 25
years old and for over five years had been employed

30

as an attendant at a Government Venereal Diseases Clinic at Sultan Street, She also worked in the evenings as a ticket seller at an amusement park.

In the Federal Court of Malaysia (Appellate Jurisdiction)

No. 22

Judgment of Thonson, Lord President, Malaysia 2nd March, 1965 (Continued)

10 Prior to her death she had a small ulcer on her right ankle and swollen glands and on 7th April, 1960, she consulted Doctor Devadason, the doctor in charge of the Clinic where she worked, and he prescribed for her an injection of 2 c.c. of procaine penicillin. This injection was given and almost immediately afterwards she was taken ill and died in a matter of minutes. It is admitted that she died from what is called anaphylactic shock resulting from the injection.

20 In consequence of this occurrence proceedings for negligence were commenced against the Government of the Federation of Malaya (as it then was) as Doctor Devadason's employer and against Doctor Devadason himself on 19th May, 1962. In the event Ong, J., found that negligence on the part of Doctor Devadason was made out and he gave judgment for the plaintiff against both defendants for \$9,500 for loss of support and \$750 for funeral expenses.

Against that decision the defendants have now appealed.

30 It is not necessary to set out the grounds of appeal in detail. What they amount to in the sum is that the Judge's finding of negligence was not supported by the evidence.

40 Except on one point, not of very great importance, there was no question of credibility involved at the trial and the case accordingly falls to be considered in the light of the case of Bennax v. Austin Motor Co. Ltd. (1) In that case Viscount Simonds quoted with approval the following words of Lord Cave, L.C., in the case of Mersey Docks and Harbour Board v. Procter (2):-

(1) (1955) A.C. 370, 373, 374.

(2) (1923) A.C. 253, 258.

In the Federal
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No.22

Judgment of
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2nd March, 1965
(Continued)

"The procedure on an appeal from a judge sitting without a jury is not governed by the rules applicable to a motion for a new trial after a verdict of a jury. In such a case it is the duty of the Court of Appeal to make up its own mind, not disregarding the judgment appealed from and giving special weight to that judgment in cases where the credibility of witnesses comes into question, but with full liberty to draw its own inference from the facts proved or admitted, and to decide accordingly."

10

His Lordship continued:-

I have found, on the other hand, universal reluctance to reject a finding of specific fact, particularly where the finding could be founded on the credibility or bearing of a witness, and, on the other hand, no less a willingness to form an independent opinion about the proper inference of fact, subject only to the weight which should, as a matter of course, be given to the opinion of the learned judge."

20

The Plaintiff in her statement of claim averred a number of particulars of negligence and stated that, if necessary, she would rely on res ipsa loquitur. At the trial, however, it is not unfair to say that her case was this. The deceased woman had some sort of so-called allergy to penicillin; if Doctor Devadason had made a proper investigation of her case either by making physical tests or by asking questions he would have discovered this; he failed to make the investigation that a reasonable physician in his position would have made in this connection; his failure to do so was negligent; if he had not been negligent he would have discovered this allergy; if he had discovered this allergy he would not have caused penicillin to be administered as and when he did; and if penicillin had not been so administered then the dead woman would not have died as and when she did. That is the best I can do in the way of setting out the plaintiff's case syllogistically.

30

40

The Defendants pleaded limitation by reason of section 2(a) of the Public Authorities

Protection Ordinance, 1948, and section 38 of the Government Proceedings Ordinance, 1956, in that the action had not been commenced within twelve months after the negligence complained of. This defence, however, was either forgotten or abandoned and at the trial the defence which was relied upon was that negligence was not made out.

In the Federal
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No. 22

Judgment of
Thomson,
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2nd March, 1965
(Continued)

10 The trial commenced on 9th June, 1964 that is more than four years after the event in question. There was really very little controversy as to what actually happened on 7th April, 1960, although, as was to be expected in view of the period of time that had elapsed, there was a certain lack of correspondence in detail between the two witnesses who gave evidence on the point.

20 The first of these was one Madam Chan Tet Chin who had been working at the clinic as a nurse since August, 1955, and who knew Madam Chu very well. Her evidence was that on the morning of 7th April, 1960, Madam Chu had an ulcer on her foot and saw Doctor Devadason about it. Doctor Devadason told Madam Chan to give her some "Sulphatetrad tablets". There was then some sort of discussion in the course of which Madam Chu said she would prefer an injection and in the event the doctor told the witness to give her an injection of 2 c.c. of procaine penicillin. She did so and almost immediately while she was washing her hands Madam Chu's lips turned blue and she said she felt "funny". The witness put her on a bed and shouted for help. A hospital assistant and Doctor Devadason came; the patient was given injections of adrenalin and coramine but she was not given oxygen because there was no oxygen apparatus available; and in a few minutes she died.

30

40

Doctor Devadason's evidence was that he was a Government Medical Officer and in 1958 was posted to the clinic where he found the nurse Madam Chan and the deceased woman among the staff. On 7th April, 1960, Madam

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Chan brought Madan Chu to him. She had an ulcer on her right ankle and swollen glands. He examined her but did not make any "investigation into her history" because, he said, "The staff nurse had told me about her". In particular he said the staff nurse told him that she had given the deceased penicillin some years before. He prescribed sulphatetrad tablets or alternatively a penicillin injection. The staff nurse came back shortly afterwards and said that the deceased preferred the penicillin and such an injection was given by a hospital assistant. Shortly after he was called and found the deceased woman collapsed and lying on a couch. He did what he could for her, but after a few minutes she died.

10

The trial Judge was very critical of the evidence of these two witnesses. He took the view that their evidence as to the deceased woman expressing a preference for penicillin rather than sulphatetrad tablets was a concoction because: "there was no other way to pass the blame on the the deceased except to allege that the prescription was in the alternative and that the unfortunate woman herself made the choice". In the event he believed neither of them.

20

The Judge's views were based on the fact that both witnesses apparently gave their evidence in a somewhat confused way and that in any event he considered there was a strong element of inherent improbability in what they said. That may well be. It is, however, abundantly clear that at the very lowest there was no collusion between them because clearly the nurse, who in any event was the plaintiff's witness, if she had been concerned to concoct a false story in collaboration with Doctor Devadason to shield herself would almost certainly have adopted Doctor Devadason's evidence that it was the hospital assistant and not herself who actually administered the injection. And if there was no collaboration between the two witnesses it is inconceivable that independently and without consultation they should both have invented the story about the sulphatetrad tablets. The only reasonable explanation, then, of their telling that story is that it is true, and the confusion in the details of their evidence was due to the fact that they were searching their memories as to something that happened four years previously.

30

40

In any event, however, whatever the truth of that story be it is not really very material except that the confusion regarding it may to some extent have accounted for the feeling that something was being hushed up which seems to have found its way into the case.

In the Federal
Court of
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No. 22

Judgment of
Thomson,
Lord President,
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2nd March, 1965
(Continued)

10 Before departing from this portion of the evidence it is to be observed that the Judge has stated no opinion regarding one important point on which Doctor Devadason's evidence was in conflict with that of the nurse. He said that she had told him that she had previously given the deceased woman penicillin. But the nurse's evidence was that though she had in fact given the deceased woman a penicillin injection in September, 1955, on the instructions of another doctor, she did not tell this to Doctor Devadason on 7th April.

20 It is also to be observed that neither side invited Doctor Devadason to say just what conversation, if any, took place between him and the dead woman.

So much, or so little, for what actually happened at the clinic on 7th April, 1960. Whether it makes out negligence on the part of Doctor Devadason is something to be considered in the light of the rest of the evidence.

30 Throughout the case the words "allergy" and "anaphylaxis" have been freely used and I am not at all sure that I know what these words mean. There was, however, evidence that at different times the deceased woman behaved in different ways when she received injections of penicillin which goes to make out what I think is meant by an allergy on her part.

40 First of all Madam Chan, the nurse, said she had given her an injection of procaine penicillin on the instructions of a doctor who had prescribed it for a sore throat and observed no unusual reaction. This was in September, 1955.

Then Madam Chin, the mother, said that

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some four years before her death her daughter had had an injection of penicillin and suffered afterwards from swelling of the face and body and itching all over. The mother said she sent her back to see the doctor and she came back and said she had been warned not to use penicillin in future. That was said to have taken place in the General Hospital in Kuala Lumpur and in support of her evidence the mother produced an out-patient treatment card which she had found in her daughter's 10 drawer after her death. This was dated April, 1958, and bore the name of the dead woman and suggested she had been treated for carache. The words "allergic to penicillin" were legibly written on the card. The doctor who had treated the deceased on this occasion was not called as a witness. It is reasonable, however, to suppose that the card relates to the same incident as was described by the mother.

Finally there is the evidence of what 20 happened on 7th April, 1960, when the dead woman received an injection of procaine penicillin and almost immediately died.

For the purpose of these proceedings it has been admitted that the penicillin injection was the cause of death. That is not in any way in question. It is, however, to be observed, for it had a bearing on another aspect of the case, 30 that from the point of view of strict logic the causation was not proved. The body was examined shortly after death by a doctor who was not called as a witness but whose written report on his examination was admitted. According to this he made a thorough examination of the internal organs and apart from a slight congestion in the lungs found nothing abnormal. His conclusion was as follows:-

"Patient had an injection of Penicillin and died one minute later and in view of 40 negative findings at post-mortem-

Cause of death - Anaphylactic shock."

I am not being critical in any way and in particular I would not wish to question in any way this doctor's knowledge or competence or the thoroughness of his examination. What in effect, however, he said is this: I found nothing wrong

with the woman except that she was dead; she had had penicillin immediately before she died and therefore I am compelled to conclude that the penicillin was the cause of death. In other words post hoc, ergo propter hoc. That is not an academic criticism for it suggests that this particular doctor in April, 1960, may not have been very familiar with the behaviour of the human body when injected with penicillin and this has, of course, a bearing on the contemporary general state of knowledge among medical men which to my mind is the most important element in the case.

10

20

30

I pass now to the other medical evidence and would observe in limine that this was a case where it was necessary to evaluate the conduct of a professional man in the practice of his profession. For that purpose it was necessary to consider matters far beyond the knowledge and experience of even an educated layman and in particular the nature and properties of a powerful drug which in its modern form had only of recent years come to the notice of medical science. In the circumstances it was essential, if justice was to be done, that the Judge should receive every possible assistance from the parties in the way of professional evidence. Unfortunately the assistance he received was something less than adequate.

In the case of Roe v. Minister of Health (3) the Court had the benefit of the evidence of a number of medical witnesses "of the highest professional standing" (per McNair, J., at p.68), of the "greatest specialists in the land" (per Denning, L.J., at p.82).

40

Moreover it is usual in such cases to make copious references to the writings of distinguished medical men.

Here the Judge received no such assistance. The medical witnesses who were called were few in number and, though there can be no doubt as to

(3) (1954) 2 Q.B. 66

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No. 22

Judgment of
Thomson,
Lord President,
Malaysia
2nd March, 1965
(Continued)

In the Federal
Court of
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their individual eminence, they were not invited to state their views in more than a very cursory way. Again, with one exception so vague as to be valueless, no reference was made to any written work of authority.

No. 22

Judgment of
Thomson,
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(Continued)

First, a Doctor Tan, a licentiate of the Singapore Medical School who had been in private practice for about twelve years, was called for the plaintiff. He said he had given a large number of penicillin injections. When he thought the use of penicillin was indicated he would take a careful history, he would ask questions as to previous treatment with penicillin and as to whether it had produced such symptoms as shortness of breath, itching or fainting. If a patient had had penicillin before there was always present the possibility that he might have developed an abnormal sensitivity to the drug. If, therefore, there was a history of a previous injection then irrespective of whether there had been unusual reactions he would cause his staff to carry out certain tests, the nature of which he did not describe in any great detail but which apparently consisted in scratching the skin and rubbing in a little penicillin and then giving a very small injection under the skin. He considered such precautions were necessary because "penicillin has proved fatal in quite a number of cases", but he did not say whether these cases were within his own knowledge or whether he had read about them in books. His only reference to any published work was a statement that a Mr. McGladdery, who I assume to be a local surgeon of that name, "wrote on penicillin poisoning in December, 1960". This publication was not produced for the benefit of the Judge nor was it read. In cross-examination the only question he was asked as to physical tests elicited the very sapient reply "no test is infallible".

Then there was a Doctor Rajahram, the President of the Medical Association of Malaya who was also called for the Plaintiff. He was not invited by anybody to state any views about anything but he produced a letter he had written on 22nd December, 1960, to the Assistant Secretary of the British Medical Association and the reply he received from that functionary.

This letter by the head of the local professional organisation is to my mind of the greatest importance as illuminating the state of knowledge of medical practitioners in Malaya at the time when it was written for it is difficult to think of any reason for its being written if the answers to the questions which it raised were known. In it the writer asked for the view of the British Medical Association on the subject of penicillin sensitivity and asked six questions. The first two of these were as follows :-

In the Federal Court of Malaysia (Appellate Jurisdiction)

No. 22

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2nd March, 1965
(Continued)

10

"(a) Should inquiry be made of previous penicillin injections and of any reactions to these?

(b) Should inquiry be made of history of eczema, urticaria, asthma and other allergic manifestations?"

20

The other questions related to what if any tests should be performed before giving penicillin injections.

30

The answer is not of any evidentiary value for it merely sets out the effect of advice that the writer has had from an expert or experts whom he does not name. For what it is worth, however, the answer to the two questions which have been quoted is in the affirmative and the remainder deals with the question of physical tests none of which are said to be wholly reliable.

40

Only one professional witness was called for the defence. He was Doctor Pillay, the consultant physician to the General Hospital, Kuala Lumpur. His evidence was very brief. He said opinions as to physical tests were divided and in his opinion they were not valuable, though in 1964 he would carry them out rather than dispense with them. He said there had been twelve cases in Taiwan where death resulted from penicillin injections but he did not say, and apparently was not asked, when these cases came to his knowledge. As regards Doctor Devadason's conduct in relation to Madam Chu, he said that Doctor Devadason did his best "within his limited

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Judgment of
Thomson,
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means" but that the history of the patient should have been taken. There is no record of any cross-examination of this witness but as according to the associate's diary his evidence that of Doctor Devadason himself, the closing addresses of Counsel and any observations the Judge may have made when giving judgment only occupied an hour his cross-examination cannot have been very lengthy.

Finally there was the evidence of Doctor Devadason himself. He was aged 50 and was a Licentiate of the Singapore Medical School and had been a Government medical officer for 25 years. He had been posted to the Clinic at Sultan Street, which was a clinic for the treatment of venereal diseases, since 1958 and the average number of injections of penicillin given there was 100 a day. This figure sounds large to a layman but it finds support in the evidence of the nurse who said she herself gave 50 to 60 such injections a day and in any event it was apparently accepted by the plaintiff for the witness was not cross-examined on it. Prior to the death of Madam Chu he did not use physical tests prior to ordering penicillin injections because it was not the practice to give such tests in government institutions and, although he had no opinions on the subject himself, he knew that opinions were divided as to the value of tests which, however, since the present unfortunate fatality had become a matter of routine. In cross-examination he very candidly admitted that he knew there was a possibility of a person developing a "hypersensitivity" to penicillin after having had it and in such cases there was a possibility of danger which he regarded as remote but he himself had had no "mishaps" before this particular case.

Now, it is not as clear as it might be just what the plaintiff's case was in the sense that it is not very clear on which alleged acts or omissions she was relying to make out Doctor Devadason's negligence. From the many references to physical tests in the evidence it would seem to be at the lowest possible that the Plaintiff was relying at least to some extent on Doctor Devadason's omission to make such tests and the difficulty here is only increased by the fact that

at the close of the case counsel for the plaintiff did not address the Court or, if she did, no note has been supplied to us of what she said.

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Malaysia
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Thomson,
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(Continued)

10 The Judge, however, would seem to
have been under no misapprehension in this
regard. After demolishing the evidence of
the nurse and the second defendant he dealt
with the defence by saying that what the
second defendant "sought to explain away"
was his failure to carry out physical
sensitivity tests although Doctor Pillay
doubted whether such tests were reliable.
But, he went on:-

20 "What the defence appeared to have
been unable to appreciate was that I
was not in the least concerned with the
doctor's failure to carry out sensitivity
tests. The negligence did not lie in the
omission to carry out such tests on the
patient for individual idiosyncrasy.
The essence of the negligence here was
the failure to take the simple, elementary
precaution of asking a few questions.
Had he done so, the mishap would not have
happened."

30 With great respect I do not see how the
learned Judge could have arrived at these
conclusions without importing into the case a
great deal of personal knowledge and indeed he
prefaced this part of his observations by
saying:-

40 "Although the discovery of penicillin
by Sir Alexander Fleming was made thirty-
five years ago, its general use in this
country has now gone on for nearly 20
years, and it is, I think, true to
say that many an ordinary layman is
aware that certain individuals are
allergic and sensitive to this particular
antibiotic, and that in certain cases its
use had had fatal consequences."

Now, I do not say for a moment that this
is wrong; for all I know the subject of

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(Continued)

penicillin allergy may be a daily topic of conversation on the Petaling Jaya omnibus or among the patients at the Sultan Street Clinic. What I do say is that for myself I was completely ignorant of anything of the sort until I had to apply my mind to this appeal.

The state of my own knowledge is, of course, irrelevant as is the state of knowledge among laymen generally. What is relevant and what is important is the question what was the general state of knowledge on the subject among members of the medical profession in Malaya in 1960.

10

The witnesses were all speaking in the middle of 1964, and there is nothing to show that their attention was directed to conditions as they were in the early part of 1960 and not at the time they were speaking. Doctor Tan said penicillin had proved fatal in quite a number of cases but he did not say when these cases came to his knowledge and the only publication on the subject he mentioned was in December, 1960. Doctor Pillay mentioned 12 unfortunate inhabitants of Taiwan who had died apparently by reason of being given penicillin but again he did not say when this came to his knowledge.

20

On the other hand on 22nd December, 1960, that is some months after the fatality with which we are concerned here, Doctor Rajahram, the President of the Malayan Medical Association was writing on behalf of his Association the letter which has already been quoted which at the very lowest suggests there was doubts in the minds of the medical profession as to the desirability of ascertaining any history of previous penicillin injections. Why ask the question if the answer was as certain and well known as it apparently was four years later? Unfortunately, however, the significance of this letter would appear not to have been appreciated at the trial for neither counsel took the trouble even to ask the writer why he wrote it and it was not urged upon the Judge's notice at the end of the trial. It is accordingly perhaps not surprising that it was overlooked.

30

40

In all the circumstances and particularly in the light of Doctor Rajahram's letter it is very difficult to avoid the conclusion that in the early part of 1960 the potential dangers from penicillin injections was not very widely appreciated by the medical profession in this country and that it was not the generally accepted practice among doctors at that time to make enquiries as to a patient's history in relation to penicillin.

10

It is in the light of this that the present case must be considered. Doctor Devadason was engaged in a line of professional business where he was giving literally thousands of penicillin injections a year. Presumably he had far more experience of giving such injections than Doctor Tan and Doctor Pillay put together. He had had no trouble before. The woman whom he treated was not a stranger. She had been living in the atmosphere, so to speak, of penicillin injections for years and it may well be that the fact that she herself had suffered some discomfort from having such an injection some years previously had not shaken her belief in the efficacy of the drug. In the circumstances there seems nothing very surprising in her asking for an injection of it or in Doctor Devadason giving her such an injection. And if he did not know at the time he was doing something potentially dangerous there can be no question of negligence by reason of not taking precautions which at the time were not by reason of any potential danger considered necessary. As was said by Maughan, L.J., in the case of Marshall v. Lindsey County Council :- (4)

20

30

40

"An act cannot in my opinion, be held to be due to a want of reasonable care of it is in accordance with the general practice of mankind. What is reasonable in a world not wholly composed of wise men and women must depend on what people presumed to be reasonable constantly do. Many illustrations might

(4) (1935) 1 K.B. 516, 540.

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be given and I will take one from the evidence given in this action. A jury could not, in my opinion, properly hold it to be negligent in a doctor or a midwife to perform his or her duties in a confinement without mask and gloves, even though some experts gave evidence that in their opinion that was a wise precaution. Such an omission may become negligent if, and only if, at some future date it becomes the general custom to take such a precaution among skilled practitioners." 10

In the case of Roe v. Minister of Health (Supra) Denning, L.J., said this (at p. 83):-

"It is so easy to be wise after the event and to condemn as negligence that which was only a misadventure. We ought always to be on our guard against it, especially in cases against hospitals and doctors. Medical science has conferred great benefits on mankind, but these benefits are attended by considerable risks. Every surgical operation is attended by risks. We cannot take the benefits without taking the risks. Every advance in technique is also attended by risks. Doctors, like the rest of us, have to learn by experience; and experience often teaches in a hard way. Something goes wrong and shows up a weakness, and then it is put right. That is just what happened here." 20 30

That may not be a very profound statement of law. It does, however, contain a very great deal of very profound sense and to my mind it can and should be applied in the present case.

For myself I would allow the appeal.

Sgd. J.B. Thomson

Kuala Lumpur
2nd March, 1965

LORD PRESIDENT
FEDERAL COURT OF MALAYSIA

Au Ah Wah Esq. for appellants.
Miss P.G. Lim for respondent.

TRUE COPY

40

Dato Syed Sheh Barakbah, Chief Justice, Malaya and
Mr. Justice Tan Ah Tah, Judge, Federal Court
concurred.

61.

NO. 23
FORMAL ORDER

IN OPEN COURT

THIS 2nd DAY OF MARCH, 1965

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No. 23

Formal Order
2nd March 1965

O R D E R

10 THIS APPEAL coming on for hearing on
the 10th and 11th days of November 1964 in
the presence of Mr. Au Ah Wah, Senior Federal
Counsel, for the Appellants and Miss P.G. Lim
of Counsel for the Respondent AND UPON READING
the Appeal Record filed herein AND UPON
HEARING the arguments of Counsel aforesaid
IT WAS ORDERED that this appeal do stand
adjourned for Judgment and the same coming
on for Judgment this day in the presence of
Inche Wan Hamzah, Federal Counsel, on behalf
of Mr. Au Ah Wah, Senior Federal Counsel for
the Appellants and Miss P.G. Lim of Counsel
for the Respondent IT IS ORDERED that this
20 Appeal be and is hereby allowed AND IT IS FURTHER
ORDERED that the Respondents do pay the
Appellants the costs of this Appeal and in
the Court below as taxed by the proper officer
of the Court.

GIVEN under my hand and the seal of the
Court this 2nd day of March, 1965.

Sd: RAJA AZLAN SHAH,

CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA
KUALA LUMPUR

30

In the Federal Court of Malaysia (Appellate Jurisdiction)

NO. 24

ORDER GRANTING SPECIAL LEAVE TO APPEAL IN FORMA PAUPERIS TO HIS MAJESTY THE YANG DI-PERTUAN AGONG.

No. 24

Order granting Special Leave to Appeal in forma pauperis to H.M. The Yang di-Pertuan Agong 21st April 1966

COURTS OF JUDICATURE ACT, 1964

ORDER UNDER SECTION 76(1)

AT THE ISTANA NEGARA AT KUALA LUMPUR

THE 21st DAY OF APRIL, 1966

W H E R E A S there was this day submitted to His Majesty the Yang di-Pertuan Agong a Report from the Judicial Committee of Her Britannic Majesty's Privy Council dated the 8th day of February, 1966 in the words following, viz :- 10

"WHEREAS by virtue of the Malaysia (Appeals to Privy Council) Orders in Council 1958 and 1963 there was referred unto this Committee a humble Petition of Chin Keow in the matter of an Appeal from the Federal Court of Malaysia between the Petitioner and (1) The Government of Malaysia and (2) Doctor Joseph Loganathan Devadason Respondents setting forth that the Petitioner desires to obtain special leave to appeal in forma pauperis from a Judgment of the Federal Court of Malaysia delivered on the 2nd March 1965 allowing with costs an Appeal by the Respondents from the Judgment of the High Court at Kuala Lumpur dated the 2nd July 1964 whereby the Petitioner was awarded damages in the sum of 10,250 dollars in respect of her claim following a fatal accident which occurred to one Chu Wai Lian the daughter of the Petitioner on the 7th April 1960 at a Social Hygiene Clinic which was managed by the First Respondent and in the charge of the Second Respondent: And humbly praying your Majesty to grant her special leave to appeal in formal pauperis from the Judgment of the Federal Court of Malaysia dated the 2nd March 1965 or for such further or other relief in the premises as to Your Majesty may seem meet; 20 30 40

THE LORDS OF THE COMMITTEE in obedience to the said Orders in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree to report to the Head of Malaysia as their opinion that leave ought to be granted to the Petitioner to enter and prosecute her Appeal in forma pauperis against the Judgment of the Federal Court of Malaysia dated the 2nd day of March 1965 and that the proper officer of the said Federal Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before the Judicial Committee on the hearing of the Appeal".

In the Federal Court of Malaysia (Appellate Jurisdiction)

No.24

Order granting Special Leave to Appeal in forma pauperis to H.M. The Yang di-Pertuan Agong
21st April 1966
(Continued)

HIS MAJESTY having taken the said Report into consideration was pleased to approve thereof and to order as it is hereby ordered that the same be punctually obeyed and carried into execution.

WHEREOF the Federal Court and all other persons whom it may concern are to take notice and govern themselves accordingly.

BY COMMAND

Sd: TUN DR. ISMAIL BIN DATO ABDUL RAHMAN

MINISTER OF JUSTICE

(F.C.CIVIL APPEAL NO: 57/64)

Exhibits

E X H I B I T S

P.1

Photostat
copy of
Out-patient
Treatment
Card
9th June 1964

EXHIBIT P.1 PHOTOSTAT COPY OF OUT-
PATIENT TREATMENT CARD

EXHIBIT P.2 TRANSLATION COFFIN RECEIPT

Fook Tai Hing Coffin Shop,
No. 8, Ipoh Road,
Kuala Lumpur.

M/S Chow Ying Thai
Bought of: One Coffin

One item only \$450/-

7th April, 1960

EXHIBITS

P.2

Translation
Coffin Receipt
7th April 1960

EXHIBIT A(i) COPY REPORT OF POST-MORTEM
EXAMINATION

A(i)

10

RSU/KL/53/567

High Street Police Report No. 2335/60

Description of body of a female CHINESE named
Chu Wai Lian alias Choo Kce Thys

Apparent age 25 years. Date and time of P.M.
7.4.60 at 3.25 p.m.

Body identified by P.C. No. 14908 Hassan bin
Bujang of High St., K. Lumpur and
Lee Choon, S.L.181134 of No. 44
Q., Jalan Kuantan off Circular Road,
K. Lumpur.

20

Marks etc., and appearance of body :-

No external injuries or wounds on the
body seen

No gun shot wounds seen

Slight cyanosis at finger tips and
nails

Healing ulcer below right lateral malleolus
about 10 cent coin size

30

A needle puncture mark with $\frac{1}{2}$ "
surrounding redness on left deltoid.

Report of
Post-Mortem
Examination
7th April 1960

EXHIBITS

A(i)

Report of
Post-Mortem
Examination
7th April 1960
(Continued)

No other such marks visible elsewhere.

Internally:- Thorax Pericardium - intact,

Heart intact. No rupture and not enlarged.

No evidence of coronary thrombosis or infarction.

No signs of heart failure.

Valves and endocardium all healthy.

Aorta - no aneurysm. Walls healthy. 10

Coronary orifices and arteries patent.

Air passages patent

Lungs - slight congestion present.

Liver intact.

Kidneys - nothing abnormal detected.

Stomach - very little undigested food. Stomach mucosa - no haemorrhage. No perforated ulcers seen. 20

Intestines slight congested.

Bladder - not ruptured.

Brain - no haemorrhage seen. Vessels slight prominent.

Spinal cord intact.

Patient had an injection of Penicillin and died one minute later and in view of negative findings at post-mortem -

Cause of death - Anaphylactic shock. 30

Sgd: Dr. Chua Swee Hong, Medical Officer, General Hospital, Kuala Lumpur.

The O.C. 'A' Division, High Street, K. Lumpur.
c.c. Medical Superintendent.

EXHIBIT A(ii) COPY LETTER Dr. J.L. DEVADASON
TO MEDICAL SUPERINTENDENT,
GENERAL HOSPITAL, KUALA LUMPUR.
SHC/KL/1/14 MED/SEL/24/959.SJ(1)

Social Hygiene Clinic,
Kuala Lumpur

7th April, 1960.

EXHIBITS

A(ii)

Copy letter
Dr. J.L.
Devadason to
Medical Super-
intendent,
General
Hospital, Kuala
Lumpur.
7th April 1960

10 The Medical Superintendent,
General Hospital,
KUALA LUMPUR.

I have to inform you that Choo Kee Thys
I.C. SL. 00949, Amah of this Clinic was suffering
from septic sore right ankle.

She was given 2 c.c. Procaine Penicillin
at about 10.40 a.m. She collapsed about one
minute later. She was then given 1 c.c.
Adrenalin injection subcutaneously. Later 4
c.c. of Coramine was given intramuscularly.

20 She frothed a lot from the mouth and nose
and her respiration gradually failed.

Her respiration stopped at about 11.30
a.m.

Sgd: (Dr. J.L. Devadason)
Medical Officer I/C
Social Hygiene Clinic
Kuala Lumpur

c.c. C.M. & H.O., Selangor.

EXHIBITS

A(iii)

Copy letter
Miss P.G. Lim
to State
Medical
Officer,
Kuala Lumpur.
23rd August
1960

EXHIBIT A (iii) COPY LETTER MISS P.G. LIM TO
STATE MEDICAL OFFICER, KUALA
LUMPUR.

REGISTERED

E2868/6753/E1363

23rd August, 1960

The State Medical Officer
State of Selangor,
Kuala Lumpur.

Dear Sir,

Chui Wai Lian alias Choo Kee Thys (f)
deceased

10

We write to you on the instructions of Madam
Chin Keow the mother of the above named deceased.

2. Our client's daughter the above named Choo
Kee Thys was employed as a female attendant at
the Social Hygiene Clinic, Sultan Street, Kuala
Lumpur until her death on the 7th April, 1960.

3. We are instructed that at about 10.40 a.m on
the said date, Dr. J.L. Devadas, the Medical Officer
in charge of the Clinic was asked to treat the
deceased's sore on her right ankle. As a result of
instructions given by Dr. Devadas an injection of
penicillin was administered to the deceased from
which she collapsed and died one minute after the
injection. The report of the Postmortem examination
states the cause of death to have been Anaphylactic
shock as a result of the penicillin injection.

20

4. At the Inquest held in Kuala Lumpur on the
14th June 1960, Dr. Devadas admitted that he had
not given a test dose to the deceased to ascertain
whether or not she was sensitive to penicillin. He
also admitted that, to a person sensitive to the
drug, the administration of penicillin would be
fatal.

30

5. Dr. Devadas did not take any steps to examine
the medical history of the deceased before ordering
a penicillin injection. If he did he would have
discovered that on one of her out-patient treatment

cards issued by the General Hospital, Kuala Lumpur in April 1958 were written the words "Allergic to penicillin". These cards were found at her death among the possessions of the deceased.

EXHIBITS

A(iii)

Copy letter
Miss P.G. Lim
to State
Medical
Officer,
Kuala Lumpur.
23rd August
1960

(Continued)

10 6. In the circumstances we are instructed to claim damages from the Government for the negligent and unskilful treatment given to the deceased by Dr. Devadas and which led to her death.

7. The deceased was 25 years old and left behind her mother and two children a boy and a girl aged 8 and 7 years respectively.

We shall be very obliged if you will let us know whether or not liability is admitted.

Yours faithfully,
(Sgd) P.G. Lin

PGL/CKW

20 EXHIBIT A(iv) COPY LETTER Dr. S.G. RAJAHRAM,
PRESIDENT, MALAYAN MEDICAL
ASSOCIATION TO Dr. E.E.
CLAXTON, BRITISH MEDICAL
ASSOCIATION

A(iv)

Copy letter
Dr. S.G. Rajahram,
President,
Malayan Medical
Association to
Dr. E.E.
Claxton,
British Medical
Association

Dr. E.E. Claxton,
Assistant Secretary,
British Medical Association,
Tavistock Square.
London, W.C.1.

30 Dear Dr. Claxton,

(A) Penicillin Sensitivity

I shall be most grateful for the views of the British Medical Association on the above subject with particular reference to the attached letter from the Director of Medical Services, Malaya, and the list of questions below suggested by Dr. E.A. Hardy, Physician, Selangor.

EXHIBITS

A(iv)

Copy letter
 Dr. S.G. Rajahran,
 President,
 Malayan Medical
 Association to
 Dr. E.E.
 Claxton,
 British Medical
 Association
 (Continued)

- (a) Should inquiry be made of previous penicillin injections and of any reactions to these?
- (b) Should inquiry be made of history of eczema, urticaria, asthma and other allergic manifestations?
- (c) What tests should be done before giving an injection of penicillin? What is the most reliable test?
- (d) What is the standard of reliability of the various test: scratch tests, intradural, subcutaneous and conjunctival. 10
- (e) Could these tests be done by persons other than medical practitioners, e.g. nurses?
- (f) If the doctor does not perform these tests, could he be charged for negligence?

I am fully aware of the various snags and difficulties consequent to direct answers to the above questions, but your considered views will guide us in our reply to the Director of Medical Services. 20

I shall be grateful for any further advice you could give us in this matter.

(B) Medical Ethics

I must thank you for the help you gave us in the question of medical ethics, the Malayan Medical Association, is formulating a code of ethics and rules based on the British Medical Association practice, but before we could do this I feel that permission must be obtained from the British Medical Association. I should be grateful for such permission. 30

Kindest regards,

Yours sincerely,
 (Signed) (Dr. S.G. Rajahran)
 President,
 Malayan Medical Association. 40

EXHIBIT A(v) COPY LETTER DR. CLAXTON TO
DR. RAJAHRAM

EXHIBITS
A(v)

Dear Rajahram,

Copy letter
Dr. Claxton to
Dr. Rajahram

Penicillin Sensitivity

10 I am now in a position to reply to your
letter of 22nd December. I apologise for
this delay, but felt that you would wish me
to obtain the fullest and most up-to-date
answers on the matter. I have taken expert
advice on the clinical aspects of the
questions posed by Dr. E.A. Hardy about
penicillin sensitivity. Also, on the question
(f) I have spoken to the secretary of one
of the medical defence organisations.

20 (a) Yes. If the answer is positive,
penicillin should be given orally or another
orally administered antibiotic, should be
used. If it is essential to give penicillin
parenterally one of the techniques described
below should be applied.

(b) Yes. This type of patient is more
likely to have an immediate type of allergic
reaction, but if the administration of
penicillin is highly desirable it should be
given with the precautions described below.

30 (c) and (d). There is a consensus of
opinion that none of the tests is completely
reliable (e.g. 1, 2 & 4). Some observers (3)
state that a positive test is a warning but
that a negative test does not imply that no
reaction will result. There is no evidence
that either the patch or scratch test is
reliable. The conjunctival test is simple,
but it must be realised that the conjunctiva
may often be naturally suffused. Nevertheless,
it is recommended by Smith (4). Procaine
penicillin is said to give watering and oedema
within 15 minutes in sensitive subjects.

40 (e) The tests should not be done by persons
other than medical practitioners, since they are

EXHIBITS

unreliable even in skilled hands.

A(v)

Copy letter
Dr. Claxton to
Dr. Rajahran
(Continued)

(f) No. There is general agreement that questions under (a) and (b) should be put, whenever possible, but in view of the absence of completely reliable tests we do not believe that failure to perform one or more constitutes negligence.

It is possible to take certain precautions, and these might be suggested, but their use, in our view, must be a matter for decision by the doctor concerned. For example, penicillin can be given orally where possible severe reactions occur less frequently. For a severe reaction Hydrocortisone hemisuccinate is the best intravenous antidote. Penicillinase has been used (6). An Unobstructed airway is important. Another possible approach in cases in which there is the likelihood of an immediate allergic response (c.g. family history of allergy) is to inject a small amount intradermally (2). This may give a widespread local reaction in a sensitive subject, and may also give relatively mild general symptoms which are easily treated.

10

20

Medical Ethics

We are happy to know that the material sent to you has been of help. By all means make use of it in formulating your code.

Yours faithfully,

Sd: E.E. CLAXTON

Assistant Secretary
British Medical Association.

30

EXHIBIT A(vi) CERTIFIED TRUE COPY NOTES
OF EVIDENCE TAKEN AT
MAGISTRATE'S COURT, KUALA
LUMPUR RELATING TO INQUEST
NO. 13/60/Pt.54

FEDERATION OF MALAYSIA
STATE OF SELANGOR

IN THE MAGISTRATE'S COURT AT KUALA LUMPUR

Inquiry into the death of Chu Wai Lian

Inquest No. 13/60/Pt.54

NOTES OF EVIDENCE

14.6.60: Che Onar: Prosecuting Officer.

Miss Lin for mother of deceased.

Dr. J.L. Devadason, Medical Officer
in charge of Hygiene Clinic at Sultan Street.

I has a staff by name of Chu Wai
Lian. She was a female attendant (Identity
Card Produced as S.D.E.1).

On 7.4.60 she attended work.

20 At 10 a.m. that morning she
complained to me that she had an ulcer at her
right ankle. She wanted treatment. I gave
her the treatment. She was given a choice
of Sulphatetrad tablets or penicillin injection.
I told the nurse, Mrs. Chan, about the treatment
as the patient came with the nurse. I
instructed the nurse that she could give either
penicillin injection or sulphatetrad tablets.
That was the first treatment given by me.

30 At 10.40 a.m. I was called by Mrs. Chan who said
that the patient collapsed after penicillin
injection. I went to see the patient. I
ordered the hospital assistant, Mr. Yap Fook
Chong (identified), to give injection of
Adrenalin. We waited for sometime and since

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(Continued)

she did not come to, I ordered another injection, Coromine. Respiration improved for a short while but it went down again. I tried artificial respiration but without success. She died at 11.30 a.m.

The nurse told me that patient preferred penicillin injection. I understand she had had such injection before both at clinic and hospital.

CROSS-EXAMINED: BY MISS LIM:

10

She had been working since 1.10.54. I had been in charge since August, 1958. Mrs. Chan had been there before me.

Nurse told me about choice before injection. She collapsed one minute after injection.

I didn't know that she was allergic to penicillin.

The nurse told me that she had given same patient injection before.

I did not do a test.

20

We do not take a test before giving injection.

20 or 30 injections a day.

I took the risk doing that. Some people might be allergic and die as a result.

One minute denotes hypersensitiveness. Those who already had injections before might develop sensitivity. Incidence is low. In fact, the nurse sent for me. She was in semi-coma, pulse very weak, breathing heavy. She was foaming.

There were two injections of coromine. All 30 in the arm.

Penicillin in buttock.

I don't have our oxygen mask. It is a good precautionary measure to have oxygen mask.

The case was so rapid that a tourniquent would not help.

My nurse now applies test.

10 BY COURT: Intradermal on the skin is the usual test. If there is redness, it indicates sensitivity. Nurse told me before the injection that she had given patient penicillin injection previously. According to medical theory, there are cases where patients die very soon after the injection. That is the reason why precautionary measure has to be adopted.

The clinic is owned by the government for treatment of venereal diseases.

PW2. Mrs. Chan: Chan Tet Chin - Nurse at Hygiene Clinic at Sultan Street. I know person in S.D.I. She was amah in clinic. I have known her for 4 years and 8 months. She was there before I came.

20 On 7.4.60 at 9 a.m. she complained to me that she had ulcer on the right ankle and gland on right thigh. I told her to wait and see doctor of clinic. Doctor came just before 10 a.m. I took her to see the doctor. Doctor examined her then he instructed me either to give her penicillin injection or sulphaterad tablets. He also instructed me to dress up her leg. Then I took her to my office. On my way to office 30 she informed me she preferred penicillin injection. She did not tell me reason for preference. At about 10.40 a.m. I gave her two c.c. penicillin injection. A minute after injection, I observed that her face turned pale. She told me that she was feeling funny. I put her on bed and shouted for H.A. and doctor. Immediately both arrived. Doctor examined her and instructed H.A. to give injection of 40 adrenalin. I gave her the penicillin injection at the right buttocks. Yap Fook Choy is H.A. (Identified). She was in a coma. A few minutes later doctor instructed H.A. to give coromine injection. About

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two injections. Then her respiration stopped and she died. It was at 11.30 a.m. I had previously given per penicillin injection on instruction of Dr. Poulcier I gave then two penicillins. It was in 1955. There were two or three more injections on the instruction of hospital doctor. She was not sensitive at that time. I have given a lot of injections in that clinic.

CROSS-EXAMINATION BY MISS LIM: I have been a nurse for the last 23 years. She did not have a card. I only signed on the prescription chit.

10

Subsequently whenever she had trouble she was sent to hospital. I did not expect any sign when I gave her penicillin injection. She understood English and she said she wanted penicillin.

I am not aware that in a hospital card issued in 1958 are written the words "allergic to penicillin."

20

She did not tell me she was allergic. She was familiar with medical terms. She was bright. She knew what was good and not good.

She knew that some people were allergic to penicillin.

She told me that her mother told her once that there was a case in which the patient would not tolerate penicillin.

If you said you could not tolerate I would not give you the drug. I have heard that in private dispensaries doctors do give test for penicillin injection. I don't know what sort of test was given, but I know of intradermal test. I am giving this test now in my clinic. I do between 10 and 15 injections a day.

30

It is more troublesome to administer injection.

Ankle ulcer was quite septic.

P.W.3: Yap Fook Choy - Hospital
Assistant attached to Hygiene clinic at
Sultan Street.

EXHIBITS

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10 On 7.4.60 at 10.40 a.m. I was in
office, when Mrs. Chan called for me. I
immediately went to reception and saw that
doctor was examining deceased Choo Kee
Thys (S.D.1 identified). Doctor at the
same time instructed me to give an
injection of adrenalin which I did in
the arm. The doctor then examined again
and instructed to give an injection of
coromine which I did in the arm. Soon
after I was asked to give another
injection. The patient did not recover
and she died at 11.30 a.m. that morning.

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20 CROSS-EXAMINED: All injections on
different arms. The needle marks should
show. When I was called in patient was
bad. Face pale, eyes sunken, swelling
face, pulse feeble. She frothed 10 or
15 minutes interval between injections.

30 P.W.4: Kamarun bin Haji Mohamed.
Sergeant 7680 attached to N.S.P.S. At
11.55 a.m. on 7.4.60 I was told of death
at clinic at Sultan Street. I proceeded
to clinic at 12 noon. I saw dead woman.
I took down particulars and took
possession of S.D.1. Then I took body
to mortuary at Kuala Lumpur at 3.25 p.m.
on same day. Post Mortem was performed.
Grandfather of deceased identified body.
P.C. 14908 was also there to identify.
He was with me to clinic.

On 19.4.60 I received post mortem
report (S.D.2). Verdict: Death due to
misadventure.

Sgd. Chan Siew Yoon.

Certified True Copy.

40 Sgd. Pengadil, Kuala Lumpur
14.1.64

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

No. 11 of 1966

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N:

CHIN KEOW (Respondent) Appellant

-and-

GOVERNMENT OF MALAYSIA AND DOCTOR JOSEPH
LOGANATHAN DEVADASON (Appellants) Respondents

RECORD OF PROCEEDINGS

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