

Claim against Dr. Frazerhurst

NZMJ, 1923

The hearing of the action for damages brought by Margaret Alice Huyton (Mr. Singer), wife of Richard William Huyton, shipwright and carpenter, of Whangarei, against Dr. J. L. Frazerhurst (Mr. Northcroft), of Kai-kohe, on the ground of alleged negligence in the performance of a surgical operation known as the Cæsarean, which plaintiff underwent at the Whangarei Hospital in September, 1920, a swab being left in the patient, came before Mr. Justice Stringer and a special jury on 27th June, 1923.

His Honour, in summing up, said that no doubt the case was a most important one and would require very careful consideration. The jury was asked to give judgement on a practice which had been adopted for a very long period by the greatest surgeons in the world. In the first place it was necessary for the jury not to be influenced by sympathy for the plaintiff. Their duty was to ascertain whether defendant had been guilty of negligence in connection with this operation. So far as he could judge, His Honour stated, defendant had taken all reasonable precautions and it could hardly be said that he was lax in following the practice adopted by all surgeons of note. A point to consider was whether or not the surgeons were the best qualified to testify as to what was the best in the interests of everyone. It would be an unwarrantable assumption to say that surgeons made these rules purely for their own protection. They were the best qualified to determine what were the proper precautions to take. One could hardly conceive surgeons adopting a system which they had not found to be the best both for themselves and their patients. Defendant followed the regular system, which was followed by the most eminent surgeons in the world, and, so far as he could see, all steps had been taken with scrupulous care. As long as there was the human element there then there would always be a possibility of a mistake being made. In this operation speed was absolutely essential, as plaintiff had been in labour for about thirty hours and nature had refused to relieve her in the normal way and she was therefore in a

collapsed condition and it was important that she be removed from the operating-table at the earliest possible moment. The longer plaintiff remained on the operating-table the greater the shock and the less chance of recovery. All these factors were urging the surgeon to be as quick as possible. Otherwise plaintiff may have collapsed and died. All sorts of difficulties may present themselves to a surgeon as he goes along, and steps have to be taken to prevent them interfering with the operation. It seemed that if a surgeon kept a count of the swabs himself, he would be very likely to lose count of the swabs during the operation, and might disagree with the nurse as to the number of swabs that had been put in and the delay in searching for the supposed missing swab might prove disastrous.

The matron who assisted at this operation and the swab nurse were trained people, and they knew the absolute necessity of recovering everything that was put into the body. If they were there for that particular purpose, was it unreasonable that they should be trusted to devote their attention and knowledge to that particular function, so that the surgeon might not be distracted from other parts of the operation? It seemed to him, His Honour continued, that the jury were asked to say that this was a wrong system and that the duty of the surgeon was to count the swabs himself. If this was done the surgeon's attention would be distracted from the patient and the results might be most serious. The suggestion that two swabs had been treated as one would account for the mistake. The swabs were of varying thicknesses, and if two thin swabs were put into the body as one, with only one tape visible, and covered with blood, water, etc., when the swab was taken out one would remain behind. The counting by the surgeon would then be useless. He would have to inspect each swab first. The jury had to decide whether or not the defendant had used reasonable care, and whether or not he was at fault in following the practice adopted by all noted surgeons.

The verdict was for the defendant, Dr. Frazerhurst.