

Medicolegal**Injury to Bladder in Removal of Cervix***(Sampson v. Veenboer (Mich.), 234 N. W. 170)*

Edith Sampson, the plaintiff, gave birth to a six months stillborn child. Thereafter she suffered from severe backaches and a vaginal discharge. A subtotal hysterectomy was performed by a surgeon of Flint, Mich., in the early part of 1924, and the "body" or fundus and the fallopian tubes were removed on account of their diseased condition. The cervix was not removed. After the operation, the plaintiff's condition improved somewhat but the discharge did not entirely stop. Later she and her husband moved to Grand Rapids, Mich. The plaintiff continued to suffer. After failing to obtain relief at the University Hospital at Ann Arbor, Mich., she applied to the defendant, a surgeon, for treatment. He found the cervix in a "very bad condition" and the vaginal canal raw and bleeding. He suspected cancer and removed the entire cervix without abdominal incision. The area was carefully dissected, cleaned and sutured. After a few days, when the dressing was removed, it was found that micturition was taking place involuntarily. A vesical fistula, or opening, appeared in the bladder wall. The defendant and other surgeons undertook, unsuccessfully, to sew up the bladder wall seven different times, three of which operations were performed after abdominal incisions. At the Mayo Clinic, after another unsuccessful attempt had been there made to close the fistula by sutures, the ureters were transplanted so as to connect the kidneys with the sigmoid. The plaintiff instituted suit against the defendant, alleging negligence in the operation he performed to remove the cervix. The trial court gave judgment for the plaintiff, and the defendant appealed to the Supreme Court of Michigan.

The defendant claimed that if he was at all at fault it was because of an honest mistake of judgment in a difficult situation which he was unable to foresee. He testified that the cervix was attached to the bladder wall by scar tissue as a result of the operation in Flint, in 1924, when the fundus was removed, and that the granular bleeding and appearance of the cervix made him suspect the beginning of cancer. In his judgment he had to cut deep so as to remove all diseased parts. It was necessary, testified the defendant, to dissect very close to the bladder wall and he exercised his judgment in determining through a sense of touch how far to cut when his knife encountered scar tissue, which he could not see. It was wholly a matter of judgment in distinguishing between the cervix and the bladder wall, the thickness of which varies in individuals. The defendant claimed, and there was no evidence to the contrary, that the wall of the bladder in this case was exceedingly thin and that it broke or a fistula developed on account of its weakness.

To establish the defendant's negligence, Dr. Louis Thexton of Chicago was permitted to testify concerning the practice of surgery in Grand Rapids and similar communities in western Michigan. The admission of this testimony constituted no error, said the Supreme Court of Michigan. The witness was a physician of experience and had performed somewhat similar operations, even though not the identical one in question. The knowledge that the witness obtained in the court room listening to the defendant's testimony in regard to the practice of surgery in Grand Rapids, together with his own experience, was sufficient to qualify him as an expert, even though he had never practiced in Grand Rapids. The court found it unnecessary to decide whether or not the verdict was against the great weight of evidence, for the trial court erred in failing to charge the jury that a surgeon is not responsible for an honest error of judgment when he adopts a certain course of action. This was not an operation, observed the Supreme Court, similar to a tonsillectomy or appendectomy, where a surgeon usually can see the entire area around the diseased parts. Here he had to exercise his honest judgment and his best ability. If he cut out the tissue in accordance with his best judgment based on surgical skill and experience, and acted in good faith and to the best of his ability, lack of success would be due to error of judgment

for which he would not be liable. It would not be negligence. The judgment of the trial court was reversed for the error committed and the defendant granted a new trial.