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Negligence—Physicians and Surgeons—Surgeon's Liability for Negligence of Hospital Employees

BY EDWARD S. BARLOCK

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Plaintiff suffered serious injuries in a fall from a hospital operating table. After the plaintiff had been placed on the operating table and rendered unconscious by anesthetic, the defendant surgeon instructed an orderly employed by the hospital to secure the plaintiff to the table by a strap. The orderly left the room to get a strap, and while the surgeon turned to have his gown tied, the plaintiff rolled off the table. *Held,* judgment against the surgeon affirmed. Under the particular facts in the instant case, it was negligence on the part of the surgeon to order the attendant to do anything that might cause him to leave the patient unprotected. In such a situation neither the concurrent negligence of others nor the fact that the injury occurred prior to the operation will relieve a surgeon from liability. *Beadles v. Metayka,* 311 P. 2d 711 (Colo. 1957).

When the science of surgery was still embryonic, the rule that a surgeon is not liable for the negligence of hospital employees prevailed.[1] Many of the early decisions were based on a finding that the surgeon did not exercise *control* over the negligent employee.[2] Finally, in *Emerson v. Chapman*[3] the Oklahoma court departed from precedent, holding a surgeon liable for the negligence of a hospital nurse in preparing a patient for operation under the immediate supervision and control of the surgeon. At present there is a conflict in the decisions that have dealt with the question involved in the *Beadles* case. A majority of the courts have held that a surgeon is not liable in this situation.[4] Of course these decisions are to be distinguished from the so-called "sponge" cases in which the negligence occurs during the actual operation.

The precise question before the court in the *Beadles* case was one of first impression in Colorado and the instant decision has established an important precedent. Since the instant case has held that a surgeon is liable for the pre-operative negligence of hospital employees, it is clear that the Colorado court has extended a surgeon's liability beyond the traditional limits set out in the majority decisions which generally have held a surgeon's liability to be coextensive in time with the operation.[5] Under these cases an operation is said to begin when the incision is made and to end when the opening has been properly closed.[6]

[1] Broz v. Omaha Maternity and Gen. Hosp. Ass'n, 96 Neb. 648, 148 N.W. 575 (1914).
[2] *E.g.,* Harris v. Fall, 177 Fed. 79 (7th Cir. 1910).
[3] 138 Okla. 270, 280 Pac. 820 (1929).
[4] *E.g.,* Hohenthal v. Smith, 114 F.2d 494 (D.C. Cir. 1940); Blackman v. Zelig, 90 Ohio App. 304, 103 N.E.2d 13 (1951); Sacchi v. Montgomery, 365 Pa. 377, 75 A.2d 535 (1950); Shull v. Schwartz, 374 Pa. 554, 73 A.2d 402 (1950).
[5] Flower Hospital v. Hart, 178 Okla. 447, 62 P.2d 1248 (1936).
[6] See, e.g., Akridge v. Noble, 114 Ga. 949, 41 S.E. 78 (1902).

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In yet another respect the opinion in the *Beadles* case differs from other opinions on the problem. The majority of courts, under similar circumstances, have predicated liability on the basis of *control,* applying the doctrine of respondeat superior. For example, in *McCowen v. Sisters of the Most Precious Blood,*[7] where negligence on the part of a nurse employed by the hospital resulted in the patient's falling from an operating table, the court based its holding on the master servant relationship. In reversing a directed verdict in favor of the defendant hospital, the court distinguished the preparation of patients for surgery from the work usually done by a physician or by a nurse in assisting a surgeon during the actual operation.[8]

In a recent Pennsylvania case[9] the court, after weighing the factors involved in determining whether or not there existed a master servant relationship between the defendant surgeon and a nurse employed by the hospital, held that the question of control should have been submitted to the jury. The Pennsylvania court reasoned that if there was liability it arose as a result of the authority and control exercised by the surgeon. In the *Beadles* case, on the other hand, the court placed emphasis upon the particular facts, stating that the jury was justified in finding that the surgeon had been negligent. To support its somewhat nebulous position the Colorado court cited with approval the broad principal enunciated in a leading Oklahoma case[10] where that court concluded that, as a matter of policy, surgeons should be held liable for the negligence of those working under them. If surgeons were not held liable, "the law in a large measure would fail in affording a means of redress for preventable injuries sustained from surgical operations."[11]

In the instant case it is manifest that the intricacies of the doctrine of respondeat superior and the difficulties presented by the concurrent negligence of others were inoperative to dissuade the court from providing a just and efficient remedy for an injury wrongfully sustained. It was not disputed that someone had been negligent, and liability for this negligence extended to the surgeon.

[7] 208 Okla. 119, 253 P.2d 830 (1953).
[8] 253 P.2d at 834.
[9] Benedict v. Boni, 384 Pa. 574, 122 A.2d 209 (1956).
[10] Aderhold v. Bishop, 94 Okla. 203, 221 Pac. 752 (1923).
[11] 221 Pac. at 755.

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