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EVIDENCE

Hospital Records Not Admissible to Establish Manner of Occurrence of Injury to Patient

Hearsay statements are generally excluded from evidence because they cannot be subjected to the acid test of cross-examination. In the case of *Cox v. State*[1] the principal witness for the plaintiff was dead at the time of trial, but the plaintiff was allowed by the Court of Claims to prove her apparently valid claim by introducing certain hospital records containing an account of the facts as constituting an admission against interest, and also as constituting a record made in the course of business under section 374(a) of the Civil Practice Act, since the injury complained of occurred on the hospital premises. The injury apparently resulted from an assault upon plaintiff by another inmate.

The majority, relying on *Reed v. McCord,*[2] upheld the Appellate Division's reversal of the Court of Claims. The *Reed* case held that if a defendant who has no direct knowledge of an event adopts a particular account of the facts as his own it is an admission against interest, but that if he merely states that he was informed that an event occurred in a particular fashion it is not. The majority pointed out that one of the hospital records, "the Accident and Injury Report," was only an admission that patient Lantz had made the statement attributed to her and did not constitute an admission by the state of the factual correctness of its contents. As for the other record, "Clinical Notes", while it purported to be a statement of fact made by a hospital employee, it was essentially the same as the "Accident and Injury Report" since it could only have been based on Helen Lantz's statement, and therefore was not an admission against interest. The Court further pointed out that the hospital employee who made the second entry lacked one of the essential elements guaranteeing the trustworthiness of an admission against interest in that she had no interest in the outcome of the litigation.[3]

The majority rejected the argument that the records were entries made in the regular course of the hospital's business primarily on the basis of the narrow construction of section 374(a) adopted in *Williams v. Alexander,*[4] to the effect that hospital records must relate only to diagnosis, prognosis, or treatment.

The dissent argued that the records should be admissible as business entries under section 374(a) since one of the primary duties of the hospital's staff was to investigate assaults by one patient on another and to keep accurate records of such incidents.[5]

1. 3 N.Y.2d 693, 171 N.Y.S.2d 818 (1958).
2. 160 N.Y. 330, 54 N.E. 737 (1899).
3. Reed v. McCord, *supra* note 2.
4. 309 N.Y. 283, 129 N.E.2d 417 (1955).
5. Johnson v. Lutz, 253 N.Y. 124, 170 N.E. 517 (1930).

While the majority opinion appears to be generally consistent with precedent, its position may often result in the exclusion of the only available evidence, when through the normal course of events the most desirable evidence is unavailable. Sufficient proof may be at hand, as in this case, to render a decision morally certain. Surely the report of an investigation conducted by responsible and impartial hospital employees at the time of the incident is to some degree credible. Some jurisdictions[6] have met such problems by enacting statutes permitting the trial court under certain circumstances to admit into evidence the declaration of a deceased person in spite of the hearsay rule.

Presumption of Continuity of Ownership

In *People v. Scandore*,[7] defendant was charged with unlawful construction within a restricted area, and without a permit, of parts of a building.[8] At the trial the prosecution offered in evidence a deed showing defendant as grantee of the premises in question. Although the deed had been recorded nine years before the alleged violations, defendant made no objection as to its evidentiary value. On appeal, following conviction, however, defendant claimed that the deed was insufficient to prove that he had been the owner of the premises as of the critical date.

In unanimously reversing the Appellate Division and reinstating the conviction of the defendant, the Court of Appeals made use of a well-established principle in the law, the presumption of continuity or, as it is sometimes called, the presumption against change. This rule is to the effect that once conditions of a continuous nature are proved to exist, their continuance will be presumed for so long as is usual with things of like nature.[9]

The Court reasoned that since a recorded deed is the customary way of indicating ownership,[10] defendant's ownership will be presumed to have continued down to the critical date.[11] It concluded that it would be unreal to reverse

6. For example Massachusetts' Laws, 1898, ch. 535, as amended, 1920, ch. 233 §65 provides:

> A declaration of a deceased person shall not be inadmissible in evidence as hearsay or as private conversation between husband and wife if the Court finds it was made in good faith before the commencement of the action and upon personal knowledge of the declarant.

7. 3 N.Y.2d 681, 171 N.Y.S.2d 808 (1958).

8. ADMINISTRATIVE CODE OF THE CITY OF NEW YORK §532-11.0. NEW YORK CITY DEPARTMENT OF PARKS, RULES AND REGULATIONS §60.

9. RICHARDSON ON EVIDENCE, §73 (8th ed. 1955). Such a presumption is far from being irrebutable or conclusive and its strength and duration will be determined by the facts and rationale which support it. See Maggio v. Zeitz, 33 U.S. 56, 65 (1947).

10. N. Y. CIV. PRAC. ACT §384. N. Y. CODE CRIM. PROC. §392 provides:

> The rules of evidence in civil cases are applicable also to criminal cases, except as otherwise provided in this Code.

11. Accord: Collins v. Streitz, 95 F.2d 430, 433 (9th Cir. 1938). See Wilkins v. Earle, 44 N.Y. 172, 192 (1820).