

# Hawkins v. McGee

84 N.H. 114, 146 A. 641 (N.H. 1929)

## Keyword Subject

Warranty, Offer, Negligence

## Facts

A young man suffered an electrical burn on his hand that left him with scar tissue on his hand. He is solicited by a doctor who offers to perform a skin graft from his chest to his hand. He claimed that the man would recover from the surgery in 3-4 days and would be left with a "perfect hand".

The surgery was botched by the surgeon and resulted in an infection and hair grew from his hand. The man's usage of the hand was impacted and he sued for breach of contract.

## Procedural History

Trial Court: In favor of the Plaintiff

Appeal: In favor of the Plaintiff(?) [New trial ordered]

## Issue

Does the defendant's promise to give the plaintiff a "perfect hand" constitute a warranty for the surgery?  
Is this impacted by the fact the doctor solicited the patient for the surgery?

## Holding: Yes; New trial ordered

## Principle

The verbal warranty provided by the doctor entitled the patient to expectancy damages

## Reasoning

The previous instructions provided to the jury failed in both its points: - The pain and suffering felt by the patient were irrelevant because they would have been experienced regardless of the results of the surgery - The warranty provided by the doctor entitles the patient to more than just restitution damages

## Separate Opinions

## Notes

The writ (the lawsuit) included a count of negligence, and assumpsit.

Negligence - Malpractice (struck because the surgery was known to be experimental)

Assumpsit -