

13.2/83

HIGH COURT OF AUSTRALIA

RAMSAY v WATSON

Dixon CJ, McTiernan, Kitto, Taylor and Windeyer JJ

26 October 1961 — [1961] HCA 65; (1961) 108 CLR 642; 35 ALJR 301

EVIDENCE – GOVERNMENT MEDICAL OFFICER CALLED TO SAY THAT HE EXAMINED OTHER WORKERS WHO SHOWED NO SIGN OF LEAD POISONING – MEDICAL OFFICER'S EVIDENCE REJECTED BY TRIAL JUDGE – WHETHER JUDGE IN ERROR.

W., a former employee of the Government Printing Office, sued for damages for negligence, alleging that he was suffering from *Bright's disease* as a result of lead poisoning contracted whilst working in the Printing Office. A government medical officer gave evidence that after the action was commenced, he examined 21 other employees who had worked in the Printing Office under more or less the same conditions as W., and that none of them had any symptoms of lead poisoning. These employees were not called as witnesses. The trial judge rejected the medical officer's evidence of what the employees had told him about their state of health in the past.

HELD: That the evidence was rightly rejected upon the grounds that —

(a) it did not come within the rule whereby certain statements made by a person out of court as to his bodily symptoms and sensations are evidence of the facts they recount;

(b) as the employees were not called as witnesses, statements upon which the medical officer's opinion was founded were not confirmed, thus making the opinion of little or no value.

DIXON CJ, McTIERNAN, KITTO, TAYLOR and WINDEYER JJ: (at CLR p647) ... "It was argued before us that his Honour was wrong in upholding an objection to this question: "Will you tell us what history he gave you in that respect?" It was said that the answer would have been admissible as being a statement made by a person out of court concerning his bodily sensations. The most satisfactory brief statement of the doctrine relied upon is a passage in *Wills on Evidence* 3rd ed. (1938), p209 as follows:

"Whenever there is an issue as to some person's state of health at a particular time, the statements of such person at that time or soon afterwards with regard to his bodily feelings and symptoms are admissible in evidence. This medium of proof does not appear, like most of those which are known as Declarations, to possess any special sanction of credibility; like declarations accompanying acts it would seem to have been admitted on the ground of necessity and convenience..."

[After discussing the origin and scope of the rule, the Court said at CLR pp648-649]: ... "The rule, whatever its basis, could not be relied upon to justify the questions asked in this case. A sounder argument for admitting evidence of what the men had told the examining doctor might have been that it was part of the material on which he formed the opinion that he gave in evidence. When a physician's diagnosis or opinion concerning his patient's health or illness is receivable, he is ordinarily allowed to state the "history" he got from the patient. This practice accords with what seems to be the better opinion in the United States: see *Wigmore on Evidence* s688. It matters not whether the person whose health is in question was a regular patient of the doctor, or whether the doctor saw him for the purpose of qualifying as a witness. This, of course, is quite a different matter from the rule last discussed. That, in cases where it applies, makes statements made to anyone concerning present symptoms and sensations admissible as evidence that those symptoms and sensations, in fact, existed. This makes all statements made to an expert witness admissible if they are the foundation, or part of the foundation, of the expert opinion to which he testifies; but, except they be admissible under the first rule, such statements are not evidence of the existence in fact of past sensations, experiences and symptoms of the patient. Hearsay evidence does not become admissible to prove facts because the person who proposes to give it is a physician. And, if the man whom the physician examined refuses to confirm in the witness box what he said in the consulting room, then the physician's opinion may have little or no value, for part of the basis of it has gone. Each case depends on its own facts..."