Mary E. Schloendorff, Appellant, v. The Society of the New York Hospital, Respondent

Court of Appeals of New York
211 N.Y. 125; 105 N.E. 92
Decided April 14, 1914.

Facts:

Prepared by Tony Szczygiel

Mary Schloendorff entered New York Hospital in January 1908, "suffering from some disorder of the stomach." She agreed to an "ether examination" to aid in identifying a lump that had been detected. While the patient was under the effects of the anesthesia, the surgeon removed a fibroid tumor discovered during the examination. An infection, gangrene and the amputation of several fingers allegedly resulted from the operation.

Mary sued the non-profit hospital, seeking to hold the institution liable for the acts of the doctors and nurses it employed. This is the legal doctrine of respondeat superior. There was no claim of liability against the individual physicians or nurses in this case.

This oft-quoted and misunderstood decision gives a fascinating view of hospital care in the U.S. as it existed in the early 20th century. The well-to-do paid $7 a week for care, the needy paid nothing. The decision describes the nurse's role in advising the patient about a surgery planned by the physicians:

There may be cases where a patient ought not to be advised of a contemplated operation until shortly before the appointed hour. To discuss such a subject at midnight might cause needless and even harmful agitation. About such matters a nurse is not qualified to judge. She is drilled to habits of strict obedience. She is accustomed to rely unquestioningly upon the judgment of her superiors.

Case History:

Mary Schloendorff sued New York Hospital alleging that the doctors it employed performed the surgery contrary to her express direction. The judge was asked by the defendant hospital to rule that as a legal matter, even if her allegations were true, Mary would lose. The judge agreed, and directed that a verdict be entered in favor of the defendant hospital. The intermediate level court, the Appellate Division, First Department, upheld the trial judge's directed verdict. Schloendorff v. New York Hospital, 149 App. Div. 915 (March 1, 1912).

The case was then appealed to New York's highest state court, the Court of Appeals. To decide the case, the court had to define a non-profit hospital's liability for acts performed by the doctors and nurses it employed. Two theories were offered supporting the conclusion that the hospital was immune from liability for the patient's damages. One theory was that a patient waived the right to sue for negligent treatment when the patient turned to a charity for help (charitable immunity). In rejecting this, Justice Cardozo summarized the state of the common law regarding consent to surgery:

In the case at hand, the wrong complained of is not merely negligence. It is trespass. Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages.

This ringing phrase is technically incorrect. Rather than an assault, Mary Schloendorff's injuries resulted from a battery. A civil assault is "an intentional attempt to do injury or commit a battery upon the person of another." 6 N.Y. JUR. 2d Assault-Civil Aspects s 1 (1980). The assault requires an intent to inflict injury or put the victim in apprehension of such injury. 6 N.Y. JUR. 2d Assault-Civil Aspects s 1. A battery consists of the slightest touching, with the only intent required being the intent to make contact, not intent to do injury. Id. at s 4.

Primary Holding:

The Court of Appeals held that a hospital could not be held liable for acts of its employed physicians. The New York Court of Appeals has since rejected the "Schloendorff rule" and held that the principles of respondeat superior should be applied to render a hospital liable for the negligence of the physicians and nurses that it employs. Bing v. Thunig, 143 N.E.2d 3, 9 (1957).

Judges: Justice Cardozo wrote the opinion, Justices Hiscock, Chase, Collin and Cuddeback, concurred.