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Evidence—Hearsay—Admissibility of Hospital Record

debatable question, one not presented in the instant case, is the effect of the Twenty-First Amendment upon national liquor legislation enacted before the ratification of the Eighteenth Amendment. W. M., '36.

EVIDENCE—HEARSAY—ADMISSIBILITY OF HOSPITAL RECORD.—In a personal injuries suit it was attempted to introduce as evidence the plaintiff's hospital record, consisting of entries made by doctors, internes and nurses. Admitting the abstract admissibility of such evidence on the analogy of entries made in the regular course of business, the court excluded the instant record because it was not shown to have been made under the supervision of a physician qualified to give expert testimony. *Paxos v. Jarka Corporation* (Pa. 1934) 171 Atl. 468.

Considerations of logic and expedience would seem to demand that hospital and insane asylum records be peculiarly favored exceptions to the hearsay rule; they are "entries in the regular course of business"; the dual requirements of necessity and trustworthiness are conspicuously present: such records are commonly a composite of the observations of persons too numerous to be called from their hospital duties to testify as to easily forgotten matters of daily routine; they represent scientific data, far more impartial than many more favored forms of evidence. 3 Wigmore (2d ed., 1923) par. 1707. A few jurisdictions favor this view. *Ribas v. Revere Rubber Co.* (1914) 37 R. I. 189, 91 Atl. 58; *Boss v. Illinois Central Ry. Co.* (1921) 221 Ill. App. 504. Most courts, however, have been extremely chary in admitting such records. Some avowedly reject. *In re Hock's Will* (1911) 129 N. Y. S. 196 *Harkness v. Borough of Swissvale* (1913) 238 Pa. 544, 86 Atl. 478; *Jordan v. Apter* (1919) 93 Conn. 302, 105 Atl. 620. Others, as in the instant case, honor the rule by way of dictum but manage to find technical excuses to relieve them from applying it. Lack of necessity is frequently invoked. *Osborne v. Grand Trunk Ry. Co.* (1913) 87 Vt. 104, 88 Atl. 512. Where the superintendent of a hospital made regular case entries based on doctors' reports, and vouched for their authenticity, the entries were rejected because not made by an actual observer of the patient. *Price v. Standard Life & Acc. Inc. Co.* (1903) 90 Minn. 264, 95 N. W. 1118. It was elsewhere intimated that such second-hand reports would be admissible in cases of necessity, but, significantly, the court did not find such necessity present. *Delaney v. Framingham Gas Fuel Co.* (1909) 202 Mass. 359, 88 N. E. 773. This latter dictum seems correct in light of the frequency with which hospital records are compiled from a series of first-hand reports, by one who has not observed the actual case. Properly upholding their admission see *Ribas v. Revere Rubber Co., supra.* The holding of the instant case is not altogether blameless of sophistry; it would seem that case data regularly made by a hospital staff should fulfill the requirements of expert testimony whether or not the actual supervision of a physician is shown. For this general subject see 1 Wigmore (2d ed., 1923) par. 569.

The findings of official boards of health present similar problems; here the same narrow policy is pursued. A laboratory analysis of sputum made by a state board of health was rejected in *Fondi v. Boston Mutual Life Ins. Co.* (1916) 224 Mass. 6, 112 N. E. 612. The finding of a board of draft examiners during the World War has been ingeniously excluded as an *ex parte* proceeding. *Laird v. Boston & M. Ry. Co.* (N. H. 1921) 114 Atl. 275. Contra see *Casey v. Kennedy* (1920) 52 D. L. R. 326.

Where, however, the making of entries is a duty imposed by law they automatically become admissible as public records. This distinction is responsible for the exclusion of insane asylum records in *State v. Tarwater* (1922) 293 Mo. 273, 239 S. W. 480, and their admission in *Hempton v. State* (1901) 111 Wis. 127, 86 N. W. 596. See *Galli v. Wells* (1922) 209 Mo. App. 460, 239 S. W. 894, where a record of a city hospital was admitted because of a city ordinance requiring it to be kept.

Impelled by judicial unwillingness to cope with the problem on common law principles, several states have by statute made hospital and asylum records admissible. Massachusetts, Gen. L., 1920, c. 233, par. 79; New York, Cons. L., 1909, Insanity, par. 93. Missouri confines admissibility to proceedings under the Workmen's Compensation Acts, R. S. Mo. (1929) 3311.

C. B. P., '35.

INSURANCE—DEATH BY ACCIDENTAL MEANS—SUNSTROKE.—The insured, in good health and physical condition, while playing golf on a moderately hot day, suffered a sunstroke from which he died. *Held* on demurrer: his death did not result "directly and independently of all other causes from bodily injuries effected through external, violent, and accidental means" so as to permit recovery on accident and double indemnity life insurance policies. *Landress v. Phoenix Mutual Life Ins. Co.* (1934) 54 S. Ct. 461.

Decisions as to whether death from sunstroke while engaged in ordinary occupations falls within the category of death by accidental means are in sharp conflict, evidenced by the dissent of Cardozo, J., in the present case. And the distinction between accidental means and accidental result, though generally recognized, has not always been followed, some cases holding that when an accident in the popular sense and understanding of the ordinary layman has occurred, it is within a policy insuring against injury by accidental means, regardless of cause or effect. *Gallagher v. Fidelity and Casualty Co.* (1914) 163 App. Div. 556, 148 N. Y. S. 1016, affirmed (1917) 221 N. Y. 664, 117 N. E. 1067; *Lewis v. Ocean Navigation Corp.* (1918) 224 N. Y. 18, 120 N. E. 56; *Bryant v. Continental Casualty Co.* (1916) 107 Tex. 582, 182 S. W. 673, overruling (Tex. Civ. App. 1912) 145 S. W. 636. Another doctrine which allows the plaintiff to recover in the absence of exceptional circumstances is based on the theory that an unintended effect which is not the natural and probable consequence of the insured's course of action is produced by accidental means. *Richards v. Standard Accident Ins. Co.* (1921) 58 Utah 622, 200 Pac. 1017; *Pack v. Prudential Casualty Co.* (1916) 170 Ky. 47, 185 S. W. 496; *Continental Casualty Co. v. Clark* (1918) 70 Ok. 187, 173 Pac. 453; *Tate v. Benefit Association of Railway Employees* (1932) 186 Minn. 538, 243 N. W. 694; see *Western Commercial Travelers' Association v. Smith* (C. C. A. 8, 1898) 85 F. 401; *Note* (1932) 20 Geo. L. Rev. 512.

On the other hand, sunstroke is a pathological condition equivalent to a disease, and so is neither an accidental injury nor one produced by accidental means. *Sinclair v. Maritime Pass. Assurance Co.* (1861) 3 El. & El. 476, 121 Eng. Repr. 521; *Dozier v. Fidelity and Casualty Co.* (C. C. W. D. Mo. 1891) 46 F. 446. Other decisions deny recovery following the rule laid down in *U. S. Mutual Accident Association v. Barry* (1889) 131 U. S. 100, that there must be some unforeseen, unexpected occurrence (having a direct causal relation to the injury) in the act which produced it; and where the