

11th June 1929 Defendants Record made and sent to the Court of
Circuit, Maryland, per Registered Mail - Receipt
Filed.

140
5

86

1250
60

In The
Baltimore
City Court.

385

BOX 1430

Mary Cohen

Vs

J. Sheridan McClees trading
as Broadway Dental Parlors.

1430

D-E-C-L-A-R-A-T-I-O-N.

Mr. Clerk:

Please file etc.

Wesley R. Cardin
Attorney for Plaintiff.

JACOB L. CARDIN
ATTORNEY AT LAW
333 EQUITABLE BUILDING
BALTIMORE, MD.

FILED

FILED OCT 18 1927

Mary Cohen * In The
*
Vs. * Baltimore
*
J. Sheridan McClees, trading * City Court.
*
as Broadway Dental Parlors. *

** ** * * * * * ** ** * * * * * ** ** *

Mary Cohen, Plaintiff by Jacob L. Cardin her attorney
sues

For that prior to the happenings of the wrongs and greivances hereinafter complained of, the Plaintiff suffered from toothache caused by the presence in her mouth of two baby roots, and that the Defendant maintained and conducted in Baltimore City State of Maryland, an office for the purpose of practicing dentistry, holding himself and the assistants in his office as qualified and capable in the extraction of teeth and that there-upon and thereafter to wit, on or about the Twenty-second day of August, 1927, the Plaintiff presented herself at the office of the Defendant located at 103 South Broadway, Baltimore, Maryland, to have the said two baby roots extracted and submitted herself to one of such assistants in the Defendant's office under such circumstances as justified the Plaintiff in believing such assistant was aiding the Defendant in his professional work, relying upon the Defendant as the responsible head of the office and not upon the individual who proceeded with the treatment, and that the Defendant through his said assistant, while acting within the scope of his employment undertook, for a fee or reward to extract the said two baby roots as instructed to do by the Plaintiff but that notwithstanding the premises and against the wishes and instructions of the Plaintiff, the Defendant through his assistants while acting within the scope of his employment, did not treat her with care, diligence and skill but treated and operated upon her carelessly and unskillfully, in that the Defendant's assistant while acting within the scope of his employ-

ment did extract two good teeth other than the baby roots which he had been instructed to extract by the Plaintiff, and it became necessary by reason of the Defendant having extracted the wrong two teeth to undergo another operation to have the two baby roots extracted. That as a result of the Defendant having extracted the wrong teeth the Plaintiff suffered great and serious physical pain, disturbance and distress and mental anguish.

Wherefore this suit is brought and the Plaintiff claims Five thousand dollars (\$ 5000.00).

Judge R. Cardin
Attorney for Plaintiff.

Mr. Clerk:

The Plaintiff elects to have this case tried before a Jury.

Judge R. Cardin
Attorney for Plaintiff.

No. *P-18 1250*
86 Nov 60 R. D. 192

Baltimore City Court.

Mary Cohen

vs.

J. Sheridan McCles
et al

WRIT OF SUMMONS

Cop *7* of Nar and Notice to plead
within to be served on defendant.

J. L. Cardin
Attorney for Plaintiff

Filed _____ day of _____ 192

OCT 19 11 02 AM

RECEIVED AT
THE SHERIFF'S OFFICE ON

FILED NOV 14 1927

5

*Summons of Sheridan McCles published the
Broadway Dental Parlors and a copy of her and
notice to plead left with the defendant*

Rec'd 0.95 John E. Galt
Sherriff

11/9/27

(Kennedy)

WRIT OF SUMMONS

STATE OF MARYLAND

BALTIMORE CITY, to wit.

To the Sheriff of Baltimore City, Greeting:

You are commanded to summon.....

J. Sheridan McClees
trading as Broadway
Dental Parlor

of Baltimore City, to appear before the Baltimore City Court, to be held at the Court House in the same
city, on the second Monday of Nov next, to answer an action at the
suit of

Mary Cohen

and have you then and there this writ.

Witness the Honorable JAMES P. GORTEB, Chief Judge of the Supreme Bench of Baltimore

City, the 13 day of Sept 192

Issued the 18 day of Oct in the year 192

W. Carey Lindsay Clerk.

In the Baltimore City Court.

86 Nov

1250
60

Mary Cohen,

vs.

J. Sheridan McClees, trading as
Broadway Dental Parlors.

Plea.

Mr. Clerk:-

Please file.

Frank Russell

Attorney for Defendant.

✓
FILED NOV 23 1927

Mary Cohen,

In the

vs.

J. Sheridan McClees, trading as
Broadway Dental Parlors.

Baltimore City Court.

TO THE HONORABLE, THE JUDGE OF SAID COURT:-

The Defendant, by Frank Driscoll, his attorney, for
a first plea to the above entitled cause, says that he did not commit the
wrongs alleged.

Frank Driscoll
Attorney for Defendant.

#1252 Sep. Term

✓ 140
15
1250
60

Mary Cohen

*

IN THE

Vs.

*

BALTIMORE CITY COURT

*

J. Sheridan McClees, trading
as Broadway Dental Parlors.

*

*

** ** *

Mr. Clerk:-

Please enter my appearance for the Plaintiff.

Julius P. Robinson
B.P.

January Term, 1929

(Beginning Monday, February 25, 1929)

BALTIMORE CITY COURT

Mary Cohen

Sheridan Mc Clees trading as
Broadway Dental Parlor
John C. Sutherland

Jury Sworn 26 February 1929.

Stanley E. Eliason Foreman.

- 2 GEORGE E. ZEPP, Photo Supplies, 3042 Greenmount Ave.
Self—3044 Greenmount Ave.
- WM. A. LEIBOWITZ, President, 916 Chauncey Ave.
Franklin Davis Nurseries, Inc., 6909 Reisterstown Rd.
- FRANK SCHMITT, Retired, 13 S. Chapel St.
Coffee Roaster.
- STANLEY E. ELIASON, Bank Clerk, 728 Edgewood St.
Md. Trust Co., Calvert & Redwood Sts.
- 3 WM. M. ELDER, 1703 N. Caroline St.
E. C. Equipment Co., 1916 Maryland Ave.
- 4 EDMUND W. WINCHESTER, Manager, 3409 N. Hilton St.
Amoss & Dowsley, Inc., 218 W. Franklin St.
- WM. WEISS, Buyer & Salesman, 2100 Hollins St.
Cushner Pants Co., 2118-20 W. Pratt St.
- HARRY WAIDNER ALLERS, 3903 Dorchester Rd.
Ins. General Adjustment Bureau, Garrett Bldg.
- 5 CLAYTON R. NICHOLS, Shipping Clerk, 530 Brunswick St.
Myers & Hicks Co., 28-30 S. Paca St.
- THOMAS F. CONNOR, Acct., 3609 Ellamont Rd.
Frank W. Webb Co., 114 W. Mt. Royal Ave.
- 6 BERNARD L. EVERING, Merchant, 2401 Jefferson St.
- 7 HARRY J. SCHAFER, Clerk, 3113 Dudley Ave.
Balto. Steam Packet Co., Light & Barre Sts.
- 8 FLORENZ J. REESE, Foreman Plumber, 3706 Hamilton Ave.
- G. WM. LOBER, Bank Clerk, 310 Rossiter Ave.
Fidelity Trust Co., Charles & Lexington Sts.
- WALTER N. VALENTINE, Lithographer, 3138 Ravenwood Ave.
- MARION J. NASCO, Architect & Builder, 3822 York Rd.
Self.
- 9 LAURENCE E. YAKEL, Sec., Cambridge Apts.
Kohler Mfg. Co., 15 E. Lombard St.
- ALVIN HIRSCHMANN, Manager, Cloverdale Apts.
Hecht Co., 115 E. Baltimore St.
- 10 GEO. D. BRUCHEY, Foreman, 2825 Lake Ave.
Baumgarten & Co., Inc., 213 E. Fayette St.
- FREDERICK H. TOUCHTON, Teller, 5201 Tramore Rd.
Commonwealth Bank, Howard & Madison Sts.
- 11 RAY C. FAUGHT, Sales Engineer, Athol Gate La.
General Electric Co., 1000 Lexington Bldg.
- 12 WM. A. GAYNOR, Shoe Manufr., 5712 Oakshire Rd., Mt. Wash.
Self—101 E. Balderston St.
- ARTHUR J. ERVIN, Plastering Contractor, 2901 Poplar Ter.
- T. OLIVER HUGHES, General Mngr., 4017 Hawthorn Rd., F. P.
Mottu Lumber Co., Reisterstown Rd., Arlington.
- J. FRANK KENLY, JR., Draftsman, 2605 Elsinor Ave.
Bartlett-Hayward Co., 200 Scott St.

385

Chauntiff

Gerry Bush

Sealed Verdict

for \$150.⁰⁰/₁₀₀

385

Defendants
Jury List

1113 Duffer Ave.
2400 17th St. & Barr St.
Plumber 8700 Hamilton Ave.
"Mechanics" Inc. 8300 Potomac
215 Columbia Ave.
215 17th St. & Barr St.
215 17th St. & Barr St.
215 17th St. & Barr St.
215 17th St. & Barr St.

1113 Duffer Ave.
2400 17th St. & Barr St.
Plumber 8700 Hamilton Ave.
"Mechanics" Inc. 8300 Potomac
215 Columbia Ave.
215 17th St. & Barr St.
215 17th St. & Barr St.
215 17th St. & Barr St.
215 17th St. & Barr St.

1113 Duffer Ave.
2400 17th St. & Barr St.
Plumber 8700 Hamilton Ave.
"Mechanics" Inc. 8300 Potomac
215 Columbia Ave.
215 17th St. & Barr St.
215 17th St. & Barr St.
215 17th St. & Barr St.
215 17th St. & Barr St.

1113 Duffer Ave.
2400 17th St. & Barr St.
Plumber 8700 Hamilton Ave.
"Mechanics" Inc. 8300 Potomac
215 Columbia Ave.
215 17th St. & Barr St.
215 17th St. & Barr St.
215 17th St. & Barr St.
215 17th St. & Barr St.

1250
60

345

BEFORE THE JUDGE AT LARGE. No. 3.

3RD PANEL

January Term, 1929

(Beginning Monday, February 25, 1929)

BALTIMORE CITY COURT

Mary Cohen

Pheridan Md. (Lee) Trading Co
Broadway Dental Parlors

Dr. John C. Sutherland

Jury Sworn 26th February 1929.

Stanley E. Eliason Foreman.

2 GEORGE E. ZEPP, Photo Supplies, 3042 Greenmount Ave.
Self—3044 Greenmount Ave.

WM. A. LEIBOWITZ, President, 916 Chauncey Ave.
Franklin Davis Nurseries, Inc., 6909 Reisters-
town Rd.

FRANK SCHMITT, Retired, 13 S. Chapel St.
Coffee Roaster.

STANLEY E. ELIASON, Bank Clerk, 728 Edgewood St.
Md. Trust Co., Calvert & Redwood Sts.

3 WM. M. ELDER, 1703 N. Caroline St.
E. C. Equipment Co., 1916 Maryland Ave.

4 EDMUND W. WINCHESTER, Manager, 3409 N. Hilton St.
Amoss & Dowsley, Inc., 218 W. Franklin St.

~~W. WEISS, Buyer & Salesman, 2100 Hollins St.
Cushman Parts Co., 2118-20 W. Pratt St.~~

HARRY WAIDNER ALLERS, 3903 Dorchester Rd.
Ins. General Adjustment Bureau, Garrett Bldg.

5 CLAYTON R. NICHOLS, Shipping Clerk, 530 Brunswick St.
Myers & Hicks Co., 28-30 S. Paca St.

THOMAS F. CONNOR, Acct., 3609 Ellamont Rd.
Frank W. Webb Co., 114 W. Mt. Royal Ave.

6 BERNARD L. EVERING, Merchant, 2401 Jefferson St.

7 HARRY J. SCHAFER, Clerk, 3113 Dudley Ave.
Balto. Steam Packet Co., Light & Barre Sts.

FLORENZ J. REESE, Foreman Plumber, 3706 Hamilton Ave.

~~G. WM. LOBEL, Bank Clerk, 210 Rossiter Ave.
Fidelity Trust Co., Charles & Lexington Sts.~~

8 WALTER N. VALENTINE, Lithographer, 3138 Ravenwood Ave.

MARION J. NASCO, Architect & Builder, 3822 York Rd.
Self.

9 LAURENCE E. YAKEL, Sec., Cambridge Apts.
Kohler Mfg. Co., 15 E. Lombard St.

~~ALVIN HERSCHEMAN, Manager, Cleverdale Apts.
Hecht Co., 115 E. Baltimore St.~~

10 GEO. D. BRUCHEY, Foreman, 2825 Lake Ave.
Baumgarten & Co., Inc., 213 E. Fayette St.

FREDERICK H. TOUCHTON, Teller, 5201 Tramore Rd.
Commonwealth Bank, Howard & Madison Sts.

11 RAY C. FAUGHT, Sales Engineer, Athol Gate La.
General Electric Co., 1000 Lexington Bldg.

12 WM. A. GAYNOR, Shoe Manufr., 5712 Oakshire Rd., Mt. Wash.
Self—101 E. Balderston St.

ARTHUR J. ERVIN, Plastering Contractor, 2901 Poplar Ter.

T. OLIVER HUGHES, General Mngr., 4017 Hawthorn Rd., F. P.
Mottu Lumber Co., Reisterstown Rd., Arlington.

~~FRANK FENLY, Jr., Draftsman, 2005 Elkins Ave.
Bartlett Hayward Co., 200 Scott St.~~

PLAINTIFF'S 2nd PRAYER

The Jury are instructed that should the jury find for the Plaintiff they are to consider in estimating damages, the health and condition of the Plaintiff before the injuries complained of as compared with her present condition in consequence of said injury, and whether said injury is in its nature permanent also the physical and mental suffering to which she has been subjected by reason of said injury, and they are to allow her such damages as in the opinion of the Jury will be fair and just compensation for the injury which the Plaintiff has sustained.

Granted

Defendant's ^{4th} Prayer.

The defendant prays the Court to instruct the jury, that under the pleadings in this case, the burden of proof rests upon the plaintiff, ^{to show} by a preponderance of evidence satisfactory to the jury, that the defendant ^{Dr. John G. Sutherland} treated and operated upon the plaintiff negligently, carelessly, and unskillfully.

Granted

- DEFENDANT'S ^{5th} PRAYER -

The Court instructs the Jury that if they find from the evidence that the Defendants ^{were} ~~was~~ employed by the Plaintiff to extract two of the Plaintiff's teeth which were aching her and that the Defendant, ^{John B. Sutherland} attended the Plaintiff and extracted two teeth which his diagnosis showed were the teeth which then ached, and if the Jury further find that he ^{diagnosed the case and} treated the Plaintiff with ordinary care and skill, then the verdict should be in favor of the Defendant.

Granted

Defendant's

9th

Prayer.

The Defendant~~s~~ pray~~s~~ the Court to instruct the Jury that the degree of care and skill to be exercised by dentists and dental surgeons in the extraction of teeth or roots of teeth, and the treatment of patients is not the highest degree of care and skill known to the profession, but ~~that~~ ^{is} that reasonable degree of care and skill which dentists and dental surgeons ordinarily exercise in the treatment of their patient; and the burden of proof is on the plaintiff in this case to establish by preponderating evidence a want of such ordinary care and skill in the performance of professional duties for the said plaintiff.

Granted

- DEFENDANT'S 11th PRAYER -

60 Trial

The Defendant prays the Court to instruct the Jury that if they find from the evidence that the Plaintiff came to the office of the Defendant complaining that two teeth ached her, and if they further find that the Defendant examined the Plaintiff's mouth and made certain tests to ascertain which teeth ached the Plaintiff, and, after using *ordinary* care and skill, he extracted the teeth which ached the Plaintiff, then their verdict must be for the Defendant.

Granted

first, then their verdict must be for the Defendant.

care and skill, he extracted the teeth which ached the Plain-

certain which teeth ached the Plaintiff, and, after using ordinary

examined the Plaintiff's mouth and made certain tests to as-

certified her, and if they further find that the Defendant

case to the office of the Defendant's complaining that two

that if they find from the evidence that the Plaintiff

The Defendant prays the Court to instruct the

Granted

Prayer

Defendant's

17th

Prayer.

The defendant prays the Court to instruct the jury that under the pleadings in this case, the burden of proof rests upon the plaintiff, by a preponderance of evidence satisfactory to the jury, that the defendant treated and operated upon the plaintiff negligently, carelessly, and unskillfully.

* * * * *

Noted
John
Howard

The Defendants specially except to the granting of the Plaintiff's prayer for the reason that no evidence was submitted showing the condition of the Plaintiff before the teeth were extracted and her condition at the time of the trial, and for the further reason that there was no evidence showing that the injuries were of a permanent character.

Refused

Def'ds.
Special
Exceptions

and for the further reason that there was no evidence showing
testis were extracted and her condition at the time of the trial,
admitted showing the condition of the Plaintiff before the
of the Plaintiff's prayer for the reason that no evidence was
The Defendants specially except to the findings

Filed 26th February 1929.

Defendant's *1st* Prayer.

The Court instructs the Jury that under the pleadings there is no evidence in this case legally sufficient to entitle the plaintiff to recover and their verdict must be for the defendant. ✓

Refused

Defendant's *2nd* Prayer.

The Court instructs the Jury that under the pleadings there is no evidence in this case legally sufficient to entitle the plaintiff to recover and their verdict must be for the defendant.

Refused

Defendant's 3rd Prayer.

The Court instructs the Jury that the plaintiff has produced no evidence legally sufficient under the pleadings to show that the injury complained of by the plaintiff is due to the negligence, want of skill, or diligence on the part of the defendant or of the defendant's duly authorized agent, and the verdict must be for the defendant.

Refused

* * * * *

- DEFENDANT'S ^{6th} PRAYER -

The Jury are instructed that the Plaintiff has offered no evidence legally tending to prove any failure upon the part of the Defendant, ^{John B. Sutherland} to exercise ordinary care and skill in treating and extracting the Plaintiff's teeth and their verdict should be for the Defendant.

Refused

Defendant's 8th Prayer.

The defendants pray^s the Court to instruct the jury that if they shall find from the evidence that the injury of the plaintiff (if the jury so finds) resulted from the act of the plaintiff, or from some thing which the defendant is in no way responsible, then the verdict must be for the defendant.

Refused

* * * * *

- DEFENDANT'S 10th PRAYER -

The Jury are instructed that the Plaintiff has offered no evidence legally tending to prove any such failure on the part of the Defendant in the discharge of any duty he owed the Plaintiff in treating and extracting her teeth as entitles the Plaintiff to recover, and, therefore, under the pleading, the verdict should be in favor of the Defendant.

Refused

PLAINTIFF'S 2nd PRAYER

The Jury are instructed that should the jury find for the Plaintiff they are to consider in estimating damages, the health and condition of the Plaintiff before the injuries complained of as compared with her present condition in consequence of said injury, and whether said injury is in its nature permanent, also the physical and mental suffering to which she has been subjected by reason of said injury, and they are to allow her such damages as in the opinion of the Jury will be fair and just compensation for the injury which the Plaintiff has sustained.

Refused
Magazine

out, two small roots, commonly called baby roots, from her mouth; and after she had indicated them to the said Dentist, the said Dentist after treating her gums with some drug or medicine proceeded to operate, but notwithstanding the premises and against the wishes and instructions of the Plaintiff the said Defendants through their said agent, the said Dentist, while acting in the scope of his employment did not treat her with due care, or reasonable diligence and skill; but treated and operated on her carelessly and unskillfully, and negligently extracted two good teeth instead of the said baby roots as instructed by the Plaintiff.

WHEREFORE, the Plaintiff was seriously and permanently injured and suffered considerable pain, distress and mental anguish.

AND, the Plaintiff says that all of these wrongs and injuries were the direct result of the lack of skill, due diligence, carelessness, and negligence on the part of the Defendants, their agents and servants, and without any negligence on the part of the Plaintiff directly contributing thereunto.

WHEREFORE, this suit is brought and the Plaintiff claims the sum of Ten Thousand Dollars (\$10,000.00), damages.

J. R. Robinson

Jacob L. Carder

Attorneys for Plaintiff.

TO DR. J. SHERIDAN McCLEES, trading as The Broadway
Dental Parlors, and DR. JOHN C. SUTHERLAND, DEFENDANTS:

TAKE NOTICE:

That a rule has been laid in the Baltimore
City Court requiring you to plead to the above declaration within
the time required by law, else a judgment by default will be entered
against you.

*1500
1500
1500*

McClees

Attorneys for Plaintiff.

*1500
1500
1500*

MARY COHEN

:

PLAINTIFF

:

VS.

:

IN THE

:

BALTIMORE CITY COURT

:

DR. J. SHERIDAN McCLEES,
trading as the Broadway
Dental Parlors, and
DR. JOHN C. SUTHERLAND,

:

:

DEFENDANTS

:

::::: :::

MARY COHEN, Plaintiff, by her Attorneys Jacob L. Cardin and Julius
P. Robinson elects to have this case tried by a jury.

Attorneys for Plaintiff.

1 1250
60

Amended
Ver

MARY COHEN

against you.

Attorneys for Plaintiff.

of 26 Feb 1929

THE FINE PRINTED ON THE REVERSE OF THIS CHECK IS THE PROPERTY OF THE BANK OF AMERICA AND WILL BE RETURNED TO THE BANK IF NOT DESTROYED.

Mary Cohen

IN THE

Baltimore City Court

vs.

No. 385

Trials.

Sheridan McClees
Trading as Broadway
Dental Parlors
Dr. John C. Sutherland

January

Term, 1929

We, the undersigned Jurors having been duly impaneled and sworn in due form of law (affirmed) to try the issues joined in the above entitled case upon our oaths (affirmations), do say that we find our verdict for the Plaintiff, and we assess the damages by reason of the premises at the sum of

One hundred fifty

Dollars

and no cents. (\$ 150 ⁰⁰/₁₀₀).

Defendant .

And we do authorize and direct our foreman, Mr. Stanley E. Eliason to deliver this, our signed and sealed Verdict, to the Court.

WITNESS our hands and Seals this 26th day of

February 1929

Stanley E. Eliason {SEAL}

Geo. E. Bess. {SEAL}

Wm. M. Elders {SEAL}

William W. Winchester {SEAL}

Clayton R. Nichols {SEAL}

Bernard L. Evening {SEAL}

Harry J. Schaffer {SEAL}

Walter H. Galentine {SEAL}

Laurence B. Gabel {SEAL}

Geo. D. Brechey {SEAL}

Ray C. Fought, {SEAL}

Wm. A. Gaynor {SEAL}

60

DOCKET, 1927

PAGE 1250

City Court

Mary Cohen

vs.

J. Sheridan McChesney
P.O.

Dr. John C. Futherland

SEALED VERDICT

Filed 27th day of February 1929

Mary
~~COHEN~~ COHEN,

Plaintiff,

*

IN THE

vs.

*

DOCTOR J. SHERIDAN McCLEES,
trading as THE BROADWAY DENTAL
PARLORS, and
DOCTOR JOHN C. SUTHERLAND,
Defendants.

*

BALTIMORE CITY COURT.

*

The defendants in the above entitled cause by their counsel move the court to grant them a new trial upon the issues joined in said cause for the following reasons:

1. Because the verdict rendered by the jury, which was impaneled to try said cause on the twenty-sixth day of February, 1929, was against the instructions of the court.
2. Because the verdict is against the evidence.
3. Because the verdict is against the weight of the evidence.
4. And for other reasons to be shown at the hearing.

Frank Driscoll
Attorney for Defendants.

1250
60

IN THE
BALTIMORE CITY COURT.

Mary
~~COHEN~~ COHEN,

Plaintiff,

VS.

DOCTOR J. SHERIDAN McCLEES, trading
as THE BROADWAY DENTAL PARLORS, and
DOCTOR JOHN C. SUTHERLAND,

Defendants.

MOTION FOR NEW TRIAL

Mr. Clerk:

Please file.

Frank Dusevel

Attorney for Defendants.

Filed 24th Feb 1929

Order of Appeal and Affidavit.

MARY COHEN

IN THE

Baltimore City Court.

vs.

J. SHERIDAN MCCLEES, TRADING AS

THE BROADWAY DENTAL PARLOR AND

JOHN C. SUTHERLAND

Term, 19

2
MR. CLERK:

Enter an Appeal to the Court of Appeals on behalf of the

Defendants

Frank Driscoll

Attorney for Defendants

State of Maryland, Baltimore City, to wit:

On this 18th day of March, 1929,

personally appeared before the Clerk of the Baltimore City Court John C. Sutherland, (one of the Defendants and for himself, and for J. Sheridan McClees, the other Defendant.)

the defendant, and made oath in due form of law that the appeal to the Court of Appeals in the above-entitled case is not taken for the purpose of delay.

George Carey Sunday
Clerk of Baltimore City Court.

2

1250.
60.

MARY COHEN

vs.

J. SHERIDAN MCCLEES, TRADING AS

THE BROADWAY DENTAL PARLOR AND

JOHN C. SUTHERLAND

1430

Order of Appeal

—AND—

AFFIDAVIT

Fd. 18th day of March, 1929.

MRS. MARY COHEN,

Plaintiff

VS.

DR. J. SHERIDAN McCLEES, Trading
as the Broadway Dental Parlors,

and

DR. JOHN C. SUTHERLAND,

Defendants

:
:
:
:
:
:
:
:
:
:
:
:

IN THE

BALTIMORE CITY COURT

* * * * *

3

DEFENDANTS BILL OF EXCEPTIONS

Exception No. 1

The Plaintiff filed an amended declaration and the defendants filed a plea of limitation that the alleged cause of action did not occur within one year in which the amended declaration was filed, as to John C. Sutherland.

And the Plaintiff demurs to the plea of limitations and the demurrer is sustained, with leave to amend.

The Court sustained the Plaintiff's demurrer; the Plaintiff then and there excepted.

It was agreed prior to the taking of the testimony that Dr. J. Sheridan McClees operated the Broadway Dental Parlors at the time of the grievances complained of.

To sustain the issues on her own behalf, Mrs. Mary Cohen, the Plaintiff, testified as follows:

That on or about August 2nd, 1927, she visited the Broadway Dental Parlors, at 103 South Broadway, to have two baby roots pulled out, which she described as baby roots, because they had always been in her mouth since she was a baby. One was on the right side and one on the left side at the top of her mouth. She learned of the Broadway Dental Parlors through a lady downstairs from where she lived, who recommended the place to her, and mentioned Dr. McClees' name. She went to the Broadway Dental Parlors and asked for Dr. McClees and was told that Dr. McClees was out of town, and that a gentleman (who was Dr. Sutherland) took his place when he left, and he wanted to know what she wanted, and asked her to sit down, and that he would see. He asked her what the trouble was and she told him that she had those two baby roots in the upper part of her mouth, and indicated the baby roots to him. After injecting some medicine in her gums to deaden the nerve she could not feel, and the dentist proceeded to work; and that just after leaving the dentist's office she discovered that he had pulled two molar teeth from her lower jaw instead of the baby roots which she instructed him to pull out. She paid the dentist his charge.

She further testified that there was no pain and that she did not know what he had done. After they were pulled out, she left and went to her sister's house, and her sister took her to Dr. Nugers, and he pulled the two baby roots and treated her, and had her to come up for some time.

Defendants Second Exception

She further testified that she pointed out the two baby roots

the dentist; Dr. Sutherland, after examining her mouth said that "these two have got to come out". Upon a question from the court, the witness said "they must come out immediately", and he gave her cocaine with a needle, and he shoved the needle in her gums, but she felt no pain; she did not feel him working on her teeth; she said she paid Dr. Sutherland for the work he had done on her mouth, she still has a space in that part of her mouth where the molar teeth were extracted (T.P. 10), and the witness was asked the following questions.

Q. Now, has the extraction of these two molar teeth had any effect on you?

A. Indeed, it did have. (T.P. 11)

~~Objection sustained. The witness testified that she had no objection to that.~~

Mr. Driscoll: I object to that, if your Honor please.

The Court: Overruled.

Mr. Driscoll: Note an exception

Q. What effect, what has the effect of these two molar teeth extractions had on you?

A. I had to go to a medical doctor for six months.

Q. Now from your visit to Dr. Nugers' office where did you go and what did you do?

A. I went to Dr. Cater's.

Q. Then what did you do; what did you do there?

The Court: Why did you go there?

By Mr. Robinson:

Q. Why did you go there?

A. I felt sick. I couldn't eat; anything I ate turned me sick.

Q. Then you went home, the way I understand you. Did you do anything else after you went to Dr. Cater's?

A. No, just went to Dr. Cater's; and he gave me medicine, and that is about all.

The witness further testified as follows:

She lived at 1821 East Pratt Street; she said that the effect of the abstraction upset her whole system. She further testified that she

was twenty-six years old; had been married six years; had two children, the last child being born about five months ago, on September 17th, 1928. She further testified that she went to Dr. Nuger's office an hour after Dr. Sutherland extracted the two teeth; she first walked home, then went direct to Dr. Nuger's office. The reason she did not go back to Dr. Sutherland's office was that she was afraid to go in there again. (P.P. 1)

The witness on redirect examination was shown two teeth;

REDIRECT EXAMINATION

Mr. Robinson: I want to ask her something else that I forgot to ask on direct?

Mr. Driscoll: All right; go ahead.

By Mr. Robinson:

Q. I want to ask you to identify these teeth (handing same to defendant's counsel). Mrs. Cohen, what are these I hold in my hand?

A. They are the two good teeth and the roots.

Q. And where did they come from?

A. The two good teeth came from the bottom of my mouth and the roots from the top.

Q. And were these others the ones that were handed to you in the lobby by Dr. Sutherland?

A. Yes, sir.

Q. That is, the teeth?

A. The teeth.

Q. And the little roots - -

A. (Interposing) The roots by Dr. Nugers.

The Court: Are there two roots?

By Mr. Robinson:

Q. There were two but one is not here. I do not recall whether I had those two roots or not?

A. Yes, I gave them to you.

Mr. Robinson: That is all.

The Plaintiff then called Dr. N.S. Nugers, D.D.S. on behalf of the

plaintiff. He said that he was a graduate of the Dental School of the University of Maryland in 1926; that he has been practicing dentistry in Baltimore for about two and a half years; that his course at the University of Maryland was four years.

By Mr. Robinson;

Q. You say that you did treat Mrs. Cohen, what did you treat her for and for what time did you treat her?

A. What did I treat her for and what time?

Q. And what did you do.

A. Well, she came into my office, a very highly nervous person, and she told me what ~~had~~ happened and told me she had two teeth pulled. And she asked me to look in her mouth and when I did I saw two open places in her mouth. And I noticed the first two extracted areas, and I noticed the two baby deciduous roots in the top of her mouth and a very highly inflamed areas around them, and she told me she was suffering pain in the roof of her mouth and also was suffering severe pain from the recent extractions, possibly due to the going out of the anaesthetic that was injected into the gums, and I suppose it was, and she explained it to me. Being that she was in severe pain I thought it was necessary to extract these two deciduous teeth and I extracted these two baby teeth and I cleaned out the area near there and treated that area and then I took notice of the bottom extractions and I cleaned out that area; and there was some broken parts of bone, which happens in many cases and which I thought possibly was causing the pain to her. And I cleaned that out, and gave her a treatment for the pain. She had been suffering for all the time that she was there, and was in pain, and I treated the case as best I could, and finally it held up and she felt all right.

Q. What kind of treatment did you first give?

A. When a person comes in with pain we have to use some method to relieve the inflammation.

Q. Did you have occasion to look at the teeth of Mrs. Cohen which she said, as having been extracted from her mouth?

A. She came into my office and had the teeth in a piece of paper and

something, and I saw they were very recent extractions, and she told me to look what was done and I saw they were out.

Q. Did you look at them?

A. Yes, sir.

Q. And is it possible at all for you to look at these teeth and state whether they are the two teeth you say you saw that day?

A. Absolutely, they are.

He further testified that when he first saw these teeth at his office they looked like good teeth; that there was no odor there, and no pus or abscess formation on the roots and they had the appearance of good teeth.

Q. Did you locate anything about the gums of the lower part of the mouth to indicate anything that would cause the pain Mrs. Cohen complained of in her mouth that day?

A. I saw these recent extractions in the bottom portion, and she came to me for treatment -- and as she did not go back, it was best for me to do what I did first. The gums around there was inflamed, which also happens when any teeth were extracted. And that is about all there was.

Q. Did you see anything else present in the gums or lower mouth?

A. Just the inflamed condition, which would happen with any extraction, any separation around it.

The Court: I want to ask the witness a question.

Mr. Robinson: Yes

The Court: You can answer this question simply by yes and no.

The Witness: Yes

The Court: Prior, shortly prior to the extraction is it possible, from such an examination as you made, to enable you to have an opinion as to whether there was inflammation or was not inflammation before the extraction had taken place. Answer that yes or no.

The Witness: Yes or no would not answer the question.

The Court: Can't you answer that yes or not?

The Witness: Yes or no would not answer the question.

The Court: All right, answer it the best you can.

The witness: Sometimes, if there was a puss condition previous, the pus condition would possibly show inflammation, but very often you can't tell after an extraction.

The witness examined the teeth that had been extracted from Mrs. Cohen, and they had silver fillings in both teeth. The witness was then shown the root and said it apparently looked all right.

The witness further testified that he discharged Mrs. Cohen on August 31st, and that she had visited the office between August 22nd and the day she was discharged, making in all, seven visits; that he extracted ^{those baby} ~~some~~ teeth for her, and that there was inflammation from his extraction; that they were inflamed before the extraction and were inflamed immediately after the extraction; that the baby roots were not as deep as the two molars. He said that he did not know when the silver filling was put in the tooth and he did not know what the condition was when it was put in. He said that sometimes silver has been put in perfectly sound teeth to preserve the dentine; sometimes fillings are put in to preserve the teeth.

He further testified as follows:

Q. After a tooth has been filled, there are times that when there will be pain in that tooth again?

Mr. Robinson: I object

The Court: Overruled.

The Witness: Shall I answer?

By Mr. Driscoll:

Q. Yes, you may answer.

A. There are times when there would be pain in the tooth after it has been filed.

Q. And it sometimes happens that a doctor may take out a perfectly sound tooth, appear to be perfectly sound but would not be absolutely sound?

A. That condition might arise at times.

Q. Now in both of these teeth there was evidence of treatment for cavities?

A. I do not know why they were treated; it might have been for that.

Q. That is all. Just a moment. In your experience as a dentist would you say that there was something wrong with a tooth that was filled?

A. There are two methods of treatment, in order to preserve the dentine in the teeth. When there is nothing wrong with them, for whatever changes possible that might occur, and if you know that there is going to be trouble it is best to correct that before it happens. But the majority of teeth are filled only after something is wrong, and only after the cavities themselves occur.

Q. Did Mrs. Cohen come back to see you after August 31?

A. I didn't hear you.

Q. Did Mrs. Cohen come to see you after August 31 in reference to her teeth?

A. No, sir.

Q. Doctor, one other question. You were not present when these teeth were pulled out?

A. No, Sir

Q. Doctor, you said something about the bottom teeth being extracted?

A. There were, I said, that when she came, there were two teeth extracted in the bottom jaw.

Q. Bottom jaw?

A. One on either side.

Q. One on either side?

A. Yes, sir.

Q. What do you mean by that?

A. The lower jaw. This is the lower jaw (indicating).

He further testified,

Q. All right, Doctor, will you indicate, please, where you extracted the baby roots from Mr. Cohen's mouth?

A. On the upper jaw in this region (indicating) and in the upper jaw in this region here (indicating).

Q. You seem to point to a place high up on the one check.

A. This is just about the region where the tooth is located (indicating)

By The Court:

Q. Doctor, did you make an examination of the lower jaw on each side of the area where these had been when the patient came into your office?

A. Yes, sir.

Q. I wish you would state fully and in detail everything that that examination showed you, particularly with reference to whether or not it indicated any inflammation or pus condition before that extraction had taken place?

A. There was no indication of any inflammation or puss condition, other than the inflammation due to the application of the forceps to the gums in the boundary of the tooth, and that would happen in every case.

Q. Would or not that examination which you made enable you to form an opinion as to whether there was inflammation in the areas before the extraction had taken place?

A. No, because of the operation performed everything was obliterated so far as to tell whether there was an inflammation.

Q. If I understand your last answer it is this: That you were not able to form an opinion as to whether or not there was or was not inflammation there before the extraction had taken place?

A. Yes, sir.

Q. I want to be a little more specific about it. Referring to these two teeth, can you denote anything about the roots themselves to indicate a cause for extraction; that is these teeth.

A. Can I denote that right now?

Q. Yes.

A. No.

The Court: Now I suppose to complete that answer - - I want to ask a question. Can you see anything on these teeth to denote that there was no cause for extraction?

The Witness: There isn't anything on the teeth that we can go on, nothing to show why teeth should be extracted; but in the mouth it is another story.

The Court: If I understand your answer it is that looking at these teeth does not throw any light on the question?

The Witness: Very little, none at all.

By Mr. Robinson:

Q. Now, Doctor, assuming that the the time Mrs. Cohen went to Dr. Sutherland there was some inflammation or pus formation in the lower gums of the mouth and Dr. Sutherland saw fit to extract the teeth, in your opinion as a practicing dentist would you not feel that the dentist who extracted the teeth under such previous conditions would have ordered the patient back for further treatment?

Mr. Driscoll: I object to the question.

The Court: Sustained.

By Mr. Robinson:

Q. Doctor, assume that a patient comes into your office and upon examination you find that the roots to each of the molar teeth, or the lower molar teeth --I assume that there are four of them --assume that a patient comes into your office and upon examination you find that the roots of the two molar, lower molars are infected to such an extent that it is necessary to extract the lower molars, would you dismiss the patient, after extracting the lower molars, or would you order the patient back for further treatment?

Mr. Driscoll: I object to the question.

The Court: Sustained.

Mr. Robinson: Note an exception.

The Witness: Shall I answer?

The Court: Don't answer. Gentleman of the jury, of course, I have already explained to you that we decide the cases by the answers of the witness and not by the question. The question that the Court sustains the objections to, of Mrs. Robinson, are not evidence. Of course you understand that; and if the witness should answer one of the question to which objection has been sustained, of course, you are not to consider that testimony. As a matter of fact the question is one that should not be answered.

By Mr. Robinson:

Q. Doctor, you have treated, in your practice, you have treated patients

for infected teeth, or gums, I should say?

A. Yes, sir.

A. Now what is the procedure in treating a patient for infected teeth or roots?

Mr. Driscoll: I object.

The Court: Sustained

Mr. Robinson: Note an exception, Mr. Stenographer.

By Mr. Robinson:

Q. Now Doctor, suppose you were to extract one molar tooth out of a patient's mouth, would you order the patient back for observation?

The Court: That question was asked in almost identical words by you within the last two or three minutes. The court wishes to admonish you against repeating questions the objection to which has already been sustained.

By Mr. Robinson:

Q. Now, Doctor, look at these teeth please, (handing teeth to witness). What is the condition of those teeth, please?

A. What is the question?

Q. What is the condition of those teeth?

A. They look --they have got silver fillings in them.

Mr. Driscoll: What was that. They have fillings in them; two silver fillings?

The Witness: In both.

By Mr. Robinson:

Q. In both teeth?

A. What?

Q. You say in both teeth.

The Court: One filling in each ~~xxx~~ tooth?

The Witness: One filling in each tooth.

By Mr. Robinson:-

Q. Doctor, will you turn the teeth over so that the fillings, the filled portion will face the jury?

A. Yes, sir.

Q. Now then here is where the filling is (indicating)?

A

A. Yes, sir.

Q. And the same is true of the other?

A. Yes, sir.

Q. Now turn the root --turn the other portion to the jury. What does that show?

A. the Roots.

Q. Now what is the condition of that root?

A. Apparently it looks all right.

Q. And what is the condition of the root of the other tooth?

A. Apparently it looks all right.

(~~.. T.P. 26~~)

Mr. Robinson: I have no further questions.

Mr. Driscoll: Nothing Further.

Mr. Robinson: That is all, Doctor.

MRS. MARY COHEN

was recalled for further examination and testified as follows:

DIRECT EXAMINATION

By Mr. Robinson:

Q. Mrs. Cohen, the teeth which Dr. Sutherland extracted from your mouth, according to the evidence, contain a filling in each tooth. Now tell us please, when these teeth were filled?

A. They were filled about four years ago before I went to this man.

Q. Who filled them?

A. Dr. Wufner (?)

Q. At the time you went to the Broadway Dental Parlors, can you state the conditions of those two teeth which Dr. Sutherland extracted that day? Do you understand the question?

A. No, sir.

Q. The day you went there you had pain, did you not?

A. I had pain in my baby roots.

The Court: You have already answered that.

Where did you have the pain?

The Witness: On the top of these roots.

The Court: Can you hear, gentlemen?

A Juror: Yes, sir.

By Mr. Robinson:

Q. Did you have pain anywhere else in your mouth?

A. No, sir.

(After Recess)

MRS. MARY COHEN,

resumed the stand for further examination.

The Court: Mrs. Cohen, when you went into this Broadway Dental Parlor and saw Dr. Sutherland, I wish you would tell me and tell the Jury, and talk out loud, exactly what you said to Dr. Sutherland?

The Witness: Yes. When I came in he asked me what he could do for me, and I said I would like to have the two roots pulled out; and he says, "Come into the room and sit down in the chair"; and I sat on the chair.

The Court: You stated you wanted to have two roots pulled out?

The Witness: Yes, sir.

The Court: And you showed him where they were?

The Witness: Yes, I showed him. And he put his finger in there and said "They will have to come out."

The Court: Just how did you show him?

The Witness: Just like that (indicating).

The Court: Let the record show that in answer to the question the witness pointed, first to the rear portion of the left side of her upper jaw; and then pointed to the rear portion of the right side of her upper jaw.

That is what you showed him?

The Witness: Yes, sir.

The Court: You said a few minutes ago in answer to my question? I think, or in answer to a question of Mr. Robinson, that you had pain in your upper jaw?

The Witness: Yes, sir.

The Court: And did not have any pain anywhere else?

The Witness: No, sir.

The Court: Did you say anything to the dentist about your pain?

The Witness: I told him that these two roots were paining me and that is why I wanted them out.

The Court: Very well.

RE-CROSS EXAMINATION

By Mr. Driscoll:

Q. Didn't you know that the dentist was working on the lower jaw?

A. No, I didn't.

Q. You didn't feel that he was working on the lower jaw?

A. I felt that he was working, but I could not tell where.

Q. You didn't know it was in the lower jaw?

A. No, I didn't.

Q. Did you say anything to him then?

A. No, I didn't. He put some medicine in it.

Q. All right.

A. And I didn't know.

Dr. Sutherland adduced on behalf of the defendants, testified that he is a dentist, graduated from the Baltimore College of Dental Surgery in the year of 1890; that he has been practicing dentistry for 38 years; was a demonstrator at the Baltimore College of Dental Surgery for eight years after he graduated; that he has been connected with the Broadway Dental Parlors of Dr. McClees for three years; that Mrs. Mary Cohen, the Plaintiff, in this case, come to the Dental Parlors; that he saw her in the reception room and he waited on her; that he made the usual examination that he makes in all cases; she was suffering pain caused by toothache; he made an examination, located the trouble, he found in the two lower molar teeth there was inflammation, the dental membrane was inflamed on both lower molars; that they were giving her trouble. He examined the two baby roots, but that the trouble had centered in the lower jaws and was, and there was some periostosis which he said was an

inflammation of the lower region around the gums and showed that the teeth were in bad condition; and that he extracted the two lower molar teeth; then gave her the usual treatment; that she did not complain of pain; she did not come back for additional treatment; that as an experienced dentist and demonstrator, he treated the teeth in a proper manner; he gave the usual treatment and the usual diagnosis that he gives to all his patients. Dr. Sutherland was asked;

Q. Did Mrs. Cohen point out to you any particular teeth she thought was affecting her?

A. No, she came in suffering pain and she did not designate any particular teeth.

He further testified that he is 58 years old and that he has been with Dr. McClees for about three years; that the method of dentistry has changed since he graduated; that the sound principles are the same, but there are always some new things coming in; that he was qualified to demonstrate dentistry in the University or the schools now; that he keeps pretty well up with them.

Q. And did you have any particular reason for giving up your own office and working for someone else?

Mr. Driscoll: I object.

The Court: Overruled.

By Mr. Robinson:

Q. You may answer.

A. No, I had no particular reason. At the time I was on Monument Street and went on Fairmont Avenue; and then I went on Charles Street. I was on Charles Street for some time; and from Gay I went in with a doctor, went in partners with a gentleman on Gay Street; and then I left there and went in with Dr. Merrit (?); and then came with Dr. McClees.

Q. You went with Dr. McClees?

A. ~~Yes, sir~~ Sir?

Q. You say you went with Dr. McClees?

A. Yes, sir. (P. P. 54 --)

Q. And did you notice those roots in her mouth at all?

A. the Roots?

Q. That she spoke about.

The Court: In the upper part of her mouth?

The Witness: Yes, sir.

By Mr. Robinson:

Q. You observed them?

A. In my examination I saw them.

Q. What did they appear to be --

A. They simply appeared to be in -- in some cases these teeth are right sound. These roots were there but there was no sign of inflammation of these roots; and the trouble was in the lower jaw.

Q. Now doctor, as a demonstrator in a school, would you say that the baby roots should remain in the mouth or ought to be removed?

A. Well those temporary teeth should be removed. (~~T. P. 59~~)

That periostosis refers to an inflammation of the lining membrane; that he noticed the baby roots in Mrs. Cohen's mouth; that the roots were there, but there was no sign of inflammation; that the trouble was in the lower jaw; the baby roots were in the upper part of the mouth; that the temporary teeth should be removed and the baby roots should be removed, of course, but they didn't give the trouble, and if they had not been taken out they might have stayed there for years; that the molar teeth of Mrs. Cohen which he extracted were considerably inflamed and they were the teeth which were giving her the trouble. He determined this by the usual diagnosis, by passing the instruments around over them, and some were sensitive to the touch, and there was some inflammation; that inflammation will eventually lead to abscess.

Q. What is the normal and usual method of treating an abscess root in the mouth, of course?

A. There was no abscess in this case; there was no abscess there.

Q. Maybe I did not use the right word.

The Court: The word "abscess" has not been used.

Mr. Robinson I though he used it.

The Court: I have not heard it.

The Witness: There was no abscess.

By Mr. Robinson:

Q. Inflammation. Is there a difference between inflammation and abscess?

A. Yes. Inflammation will eventually lead to abscess. (~~P.P. 61~~)

Q. Is there any way of telling - -

A. (Interposing) Sir?

Q. Is there any method of determining the fact of inflammation without extracting?

A. By a long tedious treatment you might affect that, but even then it is not as satisfactory, because so often the tooth is going to die and you will have to pull it. He did not think it reasonable to make an effort to treat the roots to preserve the teeth; he always extracted teeth when he thought the inflammation was leading to an abscess.

Q. Now Doctor, will you look at these teeth, please?

A. Yes, (examining teeth).

Q. What is the condition of those teeth?

A. You can't tell anything about what they might have been after these two teeth have been extracted. There is nothing like the gums, or anything else; nothing to indicate anything about them.

Q. You can't tell anything about them?

A. There is nothing about those teeth that would indicate, or show you anything; nothing other than that they have been filed; but they are exactly like any thousands of teeth that you might see in a museum; they do not tell you anything now. What could they tell you?

Q. You would not classify them as rotten teeth, would you?

A. I would classify them, that they had had cavities in them and had been filed; and that is all I could say about them by looking at the teeth.

Q. There is nothing there to indicate that they still have cavities in ~~them and had been filled~~ the teeth?

A. Sir?

Q. You can tell whether the cavities have been filled in them; isn't

that true?

A. Yes, sir.

Where the pulp in the tooth is killed, you can fill it, but where it is abscessed, you are going to have all kinds of trouble; you have the dead pulp, or the abscessed roots of the tooth and the conditions of the tooth; that pulp is the nerve; that an X-ray was not necessary in this case the symptoms were too marked; it showed too clearly; you could tell without an X-ray picture. If there is any doubt, or if there is any question as to what should be done, it is best to take an X-ray; that is wasn't necessary to have an X-ray in this case; the symptoms were too marked, and when I saw the roots were pretty well inflamed, that verified my diagnosis on that question.

He further testified as follows:

A. I first noticed that these teeth were inflamed, and that they were slightly looser than the rest of them, and the usual percussion, that is, to take a steel instrument and go over the two teeth; and you can tell by the reaction of the patient that there was considerable inflammation on the roots; and there was no question about it; the roots were inflamed; and that was borne out by my diagnosis and there was nothing to do about these teeth, there was no question about these teeth giving her trouble.

Q. Now Doctor, when you see a person who is complaining of toothache and have filled teeth in their head, would that indicate anything to you?

A. It would indicate that you have had started -- have had a cavity. You could not tell how deep the cavity was unless you got down into the tooth.

Q. And if it had not been filled, the cavity would indicate that the tooth is about to decay?

Q. You say you found the tooth was in a near pus condition?

A. No pus had started to form; had not gotten that far.

Q. Now you could see that by feeling the tooth and pressing on it; you could determine the condition without the help of the X-ray?

A. By pressing on the tooth; it is a little sore.

By Mr. Robinson:

Q. Answer this again; Do you mean to say that by pressing on a tooth and rubbing it, rubbing the gums, that portion of them on the outside of the tooth, you can determine the condition of the roots without an X-ray?

A. By that pressure on both sides of it you can determine, yes, sir.

Q. What do you know-- do you hear something, or how can you tell?

A. You don't hear anything. You can tell; you don't hear anything, but you can tell by the reaction on the patient.

Q. Yes, Now Doctor, of course I mean no reflection by this question, but don't you think that for a gentleman of your age, with the condition of your hearing and the condition of your eyes, and the probability, if I may feel certain about it --the rather stiffness of fingers, that you naturally should have had an X-ray taken in this case?

A. No; there was nothing to indicate a necessity for putting the patient to that expense. (~~P.P. 69-70~~)

(~~P. P. 76~~)

Q. Yes, Now, as a matter of fact, is it not often true that a dentist, to prevent decay --that a dentist fills a tooth to prevent it decaying?

A. Fills to prevent decay? It is often done to prevent decay. After a tooth starts to decay that cavity must be filled up.

Q. How do you ascertain where there is a cavity?

A. You have to determine that and fill it to prevent further decay.

Q. How do you ascertain there is a cavity?

A. Principally by going over the teeth with an instrument to locate the cavity and after you have done that you cut it down so you will have it thoroughly sound.

He further testified that he extracted from 1800 to 2000 teeth in 1928.

WILLIAM H. WIMBROUGH, D.D.S.

testified that he has been a dentist since 1903, and was appointed prothetic dentist at the Baltimore Medical Dental School; that he knew Dr. Sutherland for several years.

By Mr. Driscoll:

Q. I will ask you this: If a patient came into an ordinary skilled practicing dentist, complaining that a particular tooth ached and pointed that tooth out to the dentist, would that dentist act on that statement, as a correct statement of the tooth that was aching, or would he make an examination of the teeth, all the teeth of the mouth?

Mr. Robinson: I object, if your Honor please.

The Court: Overruled.

Mr. Robinson: Just a moment. I can't determine whether he is qualified to state what an ordinary skilled dentist would do.

The Court: You make your objection to his qualification to answer that question?

Mr. Robinson: Do you want to show what his experience has been?

The Court: I will sustain the objection on that ground, until you have had opportunity to examine him.

Mr. Robinson: Yes.

By Mr. Robinson:

Q. Doctor, what school are you a graduate of?

A. Baltimore Medical and ---

Q. Have you practiced dentistry since you left home - -

A. Yes, sir.

Q. In the City of Baltimore?

A. Yes, sir.

Q. And you have had experience with various practices of dentistry?

A. I have got a Maryland State license.

Q. Belong to any associations?

A. No associations.

Q. No associations. Doctor, your knowledge upon the subject is gained from your own patients, your own diagnosis of cases. Do other dentists send patients to you for the purpose of having diagnosis made?

A. I have quite a number.

Q. Quite a number?

A. Yes, I have a number who send patients to me for extractions.

Q. For extractions?

A. Extractions and other work.

Q. And your work is limited, practically, to extractions of teeth?

A. No, sir

Q. You do not?

A. No, sir.

Q. You carry on a general practice?

A. Yes, sir.

Defendants Third Exception

Q. I think I asked you, but I want to ask you at this time: From what you heard him testify, would you say he, Dr. Sutherland, exercised the ordinary skill that an ordinary and skilled dentist would exercise?

The Court: Have you any authority for asking that question?

Mr. Driscoll: Not anyone especially.

The Court: I sustain the objection.

Mr. Driscoll: Note an exception. Doctor, that is all. I have no further questions.

He further testified under cross-examination as follows:

Q. Doctor, suppose a patient goes into a dentist's office, considering the dentist one of average practice, with prudence - - a careful man practicing in that profession, and the patient says "Doctor, I have two roots in my upper jaw which are paining me and I desire you to

pull them out". What would that dentist do?

A. He would look at the upper mouth first.

Q. Yes, and if he found those baby roots present, what would he do then?

A. Well, he might advise the patient to have them pulled.

Q. Suppose he wanted that dentist to take them out?

A. Well, if he didn't want to do that he would not have to do that. That is all.

Q. Of course, you couldn't force him.

A. No, you can't hold a patient down and take them out.

Q. Yes, but suppose the patient asks it and is willing for them to come out?

A. If he followed that part of the patient's instructions, he would take them out.

Q. And would that dentist do anything then to ease the pain? Would the dentist do anything to ease the pain prior to extracting the roots?

Mr. Driscoll: This is a cross examination, and I do not think it is proper.

The Court: I think it is.

The Witness: He would probably use a hypodermic.

By Mr. Robinson:

Q. To deaden the pain. What would that dentist do prior to extracting the roots?

A. He would have to use a hypodermic needle.

Q. And how - -

A. With novocaine or cocaine.

Q. Would he do that with a needle?

A. Yes, with a needle.

Q. What would he do with the needle, assuming he was going to use one?

A. Sterilize it and put in the hypodermic and syringe it out, and inject it into the gums where the extracting was to be done.

(T.P. 94 -----)

By Mr. Robinson:

Q. Assume that such a patient goes into a dentist's office -- a dentist who is one of these men that we have been talking about, an ordinary, skilled and prudent practitioner, and the patient asks the dentist to extract two baby roots from the upper jaw.

A. Yes.

Q. and specifically instructs that dentist to do that.

A. Yes.

Q. Would that dentist be apt to disobey those instructions and extract teeth from the lower jaw?

A. Now -- not without asking the patient whether he wanted them done or not.

I will tell you this much: Patients will come in and say that --

Q. (Interposing) Never mind what the patient will come in and say.

A. May I finish?

The Court: I think the Doctor is still answering the question. You may go ahead and finish.

The Witness: I would take that tooth out and then I would say to the patient --

The Court: (Interposing) Now then you are not answering. You are asked about what the ordinary practicing dentist would do. Don't tell us about yourself; don't talk about yourself.

The Witness: He would take out those teeth.

By Mr. Robinson:

Q. Against her instructions?

A. No; he would take out the baby teeth.

Q. The baby teeth?

A. Surely. In other words, I wouldn't do anything more than what she wanted done.

Q. Now Doctor, let me ask you this: Assuming that the nerves of a tooth, or the roots of a tooth are infected and inflamed and the patient goes into a dentist office and thus indicates to the dentist, and says that she is in pain and the dentist finds that the nerve or the root is involved or affected or inflamed, what would be that dentist's procedure?

Q. What would be his procedure?

A. Yes, sir.

Q. Why, to treat the tooth, if the patient wanted it saved.

Q1 And how would you determine that fact, whether the patient wanted it saved or not?

A. How would I determine it?

Q. Not you; how would that dentist determine that fact?

A. They have a method of X-raying teeth.

Q. How would that dentist tell whether that patient desired to have that tooth saved or not?

A. By asking her.

Q. What would you say of that dentist if he merely extracted that tooth without making an effort to save it or asking the patient whether the patient desired it to be saved or not?

Mr. Driscoll: I object.

By Mr. Robinson:

Q. (Continuing) Would you consider that act on the part of that dentist unskilled or negligent?

Mr. Driscoll: Now, if your Honor please I object to the question.

The Court: I sustain the objection.

The Witness: That is a little too deep.

By Mr. Robinson:

Q. Don't answer then. Would you say that that dentist having merely extracted the tooth without making an effort to save the tooth and asking the patient's wishes on the subject had done his duty towards his patient?

Mr. Driscoll: I object.

The Court: Sustained.

Mr. Robinson: The ordinary prudent dentist --

The Court: Reframe your question. When you say "that dentist" it might mean the defendant in this case.

By Mr. Robinson:

Q. All right. Assuming a patient went into a dentist's office and spoke of pain in the teeth and indicated to the dentist the roots or the nerves of the tooth that was involved, or infected or inflamed, and that the dentist found that the tooth or the root was inflamed, and merely extracted that tooth without making an attempt or effort to treat the root and save the tooth and without asking for the patient's wishes on that subject, would you say that that dentist had done his duty by the patient?

Mr. Driscoll: I object.

The Court: Sustained. If the question is intended to refer to the testimony in this case it does not because you have not had in it all of the testimony on that point in the case. The testimony in this case is that the teeth were so badly inflamed that it was apparent to him that it was of no use to treat the tooth and the only thing to do was to extract it; and the dentist took immediate steps, he said, to alleviate the pain.

By Mr. Robinson:

A. All right, Doctor, you have heard what the Court said about the testimony of Dr. Sutherland. You heard what his Honor just said?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. Very well, I understand the testimony of Dr. Sutherland is that the teeth were inflamed --

The Court: That is not his testimony.

Mr. Robinson: Sir?

The Court: ~~His~~ That is not his testimony.

Mr. Robinson: His testimony was that --

The Court: (Interposing) If you want to know what he said; it was not the teeth; he said it was the membrane around the teeth -- he called it --

~~The~~ Mr. Robinson: The periostosis.

By Mr. Robinson:

Q. The periostitic membrane was so badly inflamed that he extracted the tooth. Now Doctor, what is this periostitic membrane?

A. The fibrous tissue around the roots.

Q. Around the roots?

A. Yes, sir. It supplies the body of the nerve of the tooth with blood supply.

Q. Blood supply?

A. Yes, sir.

Q. And when that periostitic membrane is in such a bad condition that --as Dr. Sutherland testified to; you heard his testimony, Doctor?

A. Yes, sir.

Q. The testimony of Dr. Sutherland. Would the blood supply to the tooth be stopped?

A. Yes; evidently it would.

Q. Evidently?

A. Yes; the tooth would die and then ~~xxx~~ necrosis would set in.

Q. Necrosis. That is the breaking down of the structure of the tooth?

A. Yes, sir.

Q. And how would that manifest itself to the dentist?

A. Why it would evidently show decay.

Q. Show decay?

A. In the course of time.

Q. How long do you think that this condition must be present before the blood supply would evidently be stopped and the tooth begin to decay?

A. Why as soon as the nerve died. It is just a question.

Q. Can you say how long it would be?

A. No; we have different stages of decay.

Q. Is there any outward indication shown on the tooth?

A. The tooth turns dark.

Q. What is that.

The Court: What did you say? If you will talk a little louder we can all hear you.

The Witness: The tooth turns dark.

By Mr. Robinson:

Q. The tooth turns dark?

A. Yes, sir.

Q. And what happens if you tap on that tooth?

A. You would expect to hear the patient holler in pain.

He further testified that you might find inflammation in one portion of the mouth the cause of which would be in another part of the mouth, by leading across the little ducts or tracts where it would flow from one portion to the other; and the poison can flow all over the mouth; that you might find trouble in one part of the mouth and the cause might be in another location, and if the mouth is affected badly, you are liable to have trouble anywhere.

(~~T.P. 106~~ --)

Q. Now as a matter of fact, Doctor, if the ordinary dentist, that is a dentist of ordinary prudence and skill and so forth, should have a patient call, which patient says that she has two baby roots or teeth in the upper mouth, and those roots are so badly inflamed, does that bacteria cause trouble in another portion of the mouth?

A. Why, it depends upon what kind of bacteria you have.

Defendants Fourth Exception

Q. And then wouldn't you feel that -- wouldn't that ordinary practitioner, who had a patient to come in with two baby roots in the upper part of her mouth, with the request that the dentist extract those roots, and the dentist upon examination found inflammation in the lower jaw, each side of the lower jaw, would you not think that he would try to find whether it was not probably that the cause of the inflammation was the baby roots?

By Mr. Robinson:

Q. Until those roots are extracted, isn't it perfectly probably that the bacteria from the inflamed baby roots might in some manner move about in the mouth and affect the teeth, gums, roots and so on of that mouth, in the lower jaw?

Mr. Driscoll: I object.

The Court: Overruled.

Mr. Driscoll: Note an exception.

Defendants Fifth Exception

Q. That is what the bacteria does, as a matter of fact, it is what causes the trouble?

A. The bacteria and acid.

Q. The lactic acid?

A. Yes, if we had no acids in our mouth we would not have decay.

Q. Now, Doctor, if that be true and this patient originally complained of the pains in the baby roots and asks the dentist to extract them, and upon examination he found inflammation in other portions of the mouth, wouldn't that dentist look for the cause?

A. Oh, yes, I would think he would use his own discretion there.

Q. And don't you think that the prudent man, the kind of a practitioner that we have been describing, if he be prudent, would order an X-ray picture taken?

Mr. Driscoll: I object to that.

The Court: Overruled.

Mr. Driscoll: Note an exception. Go ahead.

The Court: You are asking about the ordinary --

Mr. Robinson: The ordinary prudent dentist.

By Mr. Robinson:

Q. Assuming that a patient went to a dentist's office, of the ordinary prudent dentist, practicing his profession and indicated two baby roots to the dentist, and instructed him to extract those roots and upon examination that dentist found that inflammation also on a part of the lower jaw.

A. Yes.

Q. Just state the things the dentist ~~was~~ should have considered. Don't you think that the ordinary prudent dentist should have ordered an X-ray picture taken?

A. Well, that just depends upon how much inflammation there is. You mean to X-ray the baby teeth?

Q. Sir?

A. X-ray the baby teeth?

Q. Assuming that the inflammation is quite bad.

A. You mean by taking out the lower teeth whether he would have them X-rayed, or ought to be able to tell any better --

He further testified that in extreme cases he would take out the teeth without an X-ray; where the inflammation is so great that you can see it and are striving to avoid more trouble you would take out the teeth; that he would determine the gums were inflamed by their being red; while the gums are red, inflammation is a different redness from what you see in the gums; that in inflammation, the gums are usually white and red; that in extreme cases, there is pus and an odor; that taking pictures by X-ray was expensive; that some teeth hold color longer than other teeth. In some discoloration sets in earlier. It just depends upon the lime salts in the teeth. How soon they will discolor and how long it will take them to color, he can't say; that the functions of the molar teeth are for mastication; that they are six year and twelve year molars, and their use, as a rule, are for a crushing surface for grinding purposes; that if the lower molars have been extracted from the patient's mouth, there would be poor mastication, and that the remedy for it would be bridge work.

He further testified on cross examination that other dentists sent him to extract teeth; that there are quite a number who some ^(S.P. 123) take X-ray pictures. He further testified that any tooth that has a filling in it is not a sound tooth, and that the teeth that were shown to him ~~as~~ After stating the effect of the lower molars being extracted is ~~them~~; leaving spaces in the mouth, and thus bringing about poor mastication, ~~that~~ the Doctor further testified: had been extracted by Dr. Sutherland) have silver in them, and of course when you have any metal you can't get a

Q. And what is the remedy for this? The space between the filling and the

A. Why, bridge work. If the teeth are not kept very clean, after a while

Q. And will you tell us what is necessary in order to put bridge work in the lower jaw where the two lower teeth have been extracted?

A. It is a grinding process.

Q. What is your procedure?

A. We have to cut the enamel off of the teeth and make the walls parallel and get the teeth even.

Q. Cut the enamel off the teeth; which teeth?

A. The good teeth.

Q. You have got to go into the good teeth?

A. Yes and get ready to put a bridge upon them, tie the bridge on to them.

acid will penetrate and cause decay to the teeth.

The Plaintiff was put on the stand in rebuttal and testified:

By Mr. Robinson:

Q. Mrs. Cohen, you heard Dr. Sutherland testify a while ago, did you not?

A. Yes, sir. (J.P. 124)

Q. You heard Dr. Sutherland testify that you came into his office and were complaining of pain and that he took an instrument and examined your lower jaw, the teeth in your lower jaw. Is that a fact?

A. No; no. (J.P. 130)

Q. Did he at any time say anything to you about your lower jaw?

A. Nothing at all. (J.P. 130)

Defendants Sixth Exception

WHEREUPON counsel for the respective parties offered the following prayers.

(The Clerk will please set out the prayers in full.)

To the action of the Court in granting the Plaintiff's prayer and refusing the Defendants' 1st, 2nd, 3rd, 6th and 8th prayers, and overruling the Defendants' special exception to the Plaintiff's prayer, the Defendants excepted.

The foregoing bills approved this 13 day of May 1929.

Joseph N. Helms

It is agreed between the counsels for the Plaintiff and the Defendants that the above is a correct bill of exceptions.

Frank Darroll
Attorney for Appellant

Julius P. Robinson
Attorney for Appellee
Jacob L. Carden
Attorney for Appellee

A copy of the foregoing bill of exceptions accepted this day of April, 1929.

Mary Cohen.

Dr. John C. Sutherland
and
J. Sheridan Wilkes,
acting as
Broadway Dental Parlor.

Defendants' Bill of
Exceptions.

Filed 13th May 1929.

A. Nothing at all
Q. Did he at any time say anything to you about your lower jaw?
A. No; no. (34-133)
lower jaw, the teeth in your lower jaw. Is that a fact?

excepted.
The Defendants' special exceptions to the Plaintiff's prayer, the Defendants refusing the Defendants' prayer, and overruling the Plaintiff's prayer and
The foregoing bills approved this 13th day of May, 1929.
Mary
The Clerk will please see to the prayers in full.
DEFENDANT'S BILL OF EXCEPTIONS FOR THE PARTIES OFFERED THE FOLLOWING PRAYERS.

In the Court of Appeals of Maryland

Mary Cohen.

vs.

J. Sheridan McLoles

trading as

Broadway Dental Parlors.

and

Dr. John C. Sutherland.

TRANSCRIPT OF RECORD

FROM

THE

BALTIMORE CITY COURT.

I HEREBY CERTIFY, that on the 12TH day of June in the
year Nineteen Hundred and twenty nine, I received from the Clerk of the Baltimore City
Court, the Transcript of the Record to the Court of Appeals of Maryland, in the above entitled cause.

James A. Young
Clerk of the Court of Appeals of Maryland.

Docket 60.

BALTIMORE CITY

Page 1250.

COURT.

Mary Cohen.

VS.

J. Sheridan McLees,

and

Dr. John C. Sutherland,

1430

RECEIPT FOR PROCESS.

Filed 13th day of June, 1929.

COURT OF APPEALS OF MARYLAND

No. 26 October Term 1929

Dr. J. Sheridan McClees, trading as the Broadway Dental Parlors, and Dr. John C. Sutherland.

vs.

Mary Cohen.

Appeal from the Baltimore City Court.
Filed June 12th, 1929.

January 7th, 1930, Judgment affirmed with costs.

Opinion filed. Op. - Sloan, J.
To be reported

Appellant's Cost in the Court of Appeals of Maryland,

Record	\$	64.50	
Brief	\$		
Appearance Fee	\$	10.00	
Clerk's Costs	\$	<u>1.30</u>	\$75.80

Appellee's Cost in the Court of Appeals of Maryland,

Brief	\$	24.00	
Appearance Fee	\$	10.00	
Clerk's Costs	\$	<u>1.45</u>	<u>\$35.45</u> \$111.25

STATE OF MARYLAND, Sct:

I, James A. Young, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this **seventh** day of **February** A. D., 19 **30**

James A. Young Clerk
of the Court of Appeals of Maryland.



1250.

60.

Mary Cohen.

vs.

Dr John C. Sutherland,

J. Sheridan M. Clee,

trading as

Broadway Dental Parlors,

1430.

Mandate of the Court of
Appeals of Maryland
Affirming the Judgment
with costs.

Filed 8th February 1930.

153
File

MARY COHEN

:

IN THE

:

vs.

:

BALTIMORE CITY COURT.

DR. J. SHERIDAN McCLEES, trading
as THE BROADWAY DENTAL PARLORS,
and DR. JOHN C. SUTHERLAND

:

:

* * * * *

Mr. Clerk:-

Please enter the above judgment "Settled and
Satisfied" upon the payment of the costs by the Defendant.

James B. Carden

Julius Robinson
Attorneys for Plaintiff.

1441
IN THE BALTIMORE CITY COURT.

MARY COHEN

vs.

DR. J. SHERIDAN McCLEES, trading as
THE BROADWAY DENTAL PARLORS, and
DR. JOHN C. SUTHERLAND.

1434

- ORDER OF SATISFACTION -

Mr. Clerk:-

Please file, etc.

J. P. Robinson
J. C. Cunniff
attys for plaintiffs
Filed 13th February 1930.