

ESTERHUIZEN v ADMINISTRATOR, TRANSVAAL 1957 (3) SA 710 (T)

SUMMARY

- Mere consent to undergo X-ray treatment, in the belief that it is harmless or being unaware of the risks it carries, cannot amount to effective consent to undergo the risks or the consequent harm.
- A therapist, not called upon to act in an emergency involving a matter of life or death, who decides to administer a dosage of such an order and to employ a particular technique for that purpose, which he knows beforehand will cause disfigurement, cosmetic changes and result in severe irradiation of the tissues to the extent that the possibility of necrosis (death of tissues) and a risk of amputation cannot be excluded, must explain the situation and resultant dangers to the patient - no matter how laudable his motives might be - and should he act without having done so and without having secured the patient's consent, he does so at his own peril.
- Intent and motive are different concepts, and the fact that the motive for an assault might be laudable does not negative the fact that the intention to assault or the assault itself might nevertheless be wrongful.
- Where the plaintiff had claimed damages from the defendant on the ground that in and during October, 1949, and at a hospital under the jurisdiction of the defendant, servants of the defendant had, while acting in the scope of their employment, wrongfully, unlawfully and intentionally assaulted her in that they had subjected her to radium treatment causing her serious injuries, alternatively that such servants had been unskilled or negligent in the application of that treatment, and the Court found that, there being no degree of urgency which would have justified it, the servants of the defendant had no right to subject the plaintiff to the particular X-ray treatment without her consent, and that the alternative claim had also been well founded, it awarded plaintiff damages in the sum of £10,000.