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Blood Tests as Evidence of Non-Paternity

P. J. De Niro

normal life, and inability to enjoy life as before the injury[24] have all been considered elements of damage where the plaintiff has suffered some form of mental anguish which was the result of disfigurement;[25] and, in a recent disfigurement case, the court instructed the jury that they might considered the plaintiff's evidence in a light most favorable to him.[26]

It has been said that when a court instructs the jury to disregard all the elements of mental suffering except that arising from physical suffering, it does so under the naive impression that the jury will sublimate their personal reaction to such mutilation, and substitute for it the impersonal rule of the court; and, that, it would be unnrealistic to think that persons who are charged wth the responsibility of weighing the elements of damages will take an abstract view of the sufferings of others.[27]

Whether the change in the law of damages was due to the practicalities involved, or whether it was the product of an altruistic attitude on the part of the court is not really important. What is important, is the fact that the members of society are no longer considered economic units which have no ability to feel pain. The recognition that phychological differences of individuals affects the degree of the injury, is but a recognition of human qualities which individual dignity demands.

M. L. VAN BENSCHOTEN.

BLOOD TESTS AS EVIDENCE OF NON-PATERNITY

X sued *Y* in a bastardy proceeding charging *Y* as the father of *X's* twins. Blood tests were taken by order of the court, and a medical expert testified that from the results of the tests *Y* could not possibly be the father of the twins. Nevertheless, the jury found against *Y* on the issue. *Y* moved for a new trial. *Held,* motion sustained; the jury could not determine how much weight should be given to blood tests, but could only determine whether the tests were properly made, and if so made, nonparentage of *Y* irresistibly followed. Here, a finding that the tests were not properly made would have been set aside, as not supported by the evidence. *Jordan v. Mace,* 69 A. (2d) 670 (Maine 1949). A prior decision by this same court held that the statute compelling submission to a blood test at the request of a party is not be construed as providing that the test results should be conclusive evidence;[1] *i.e.,* the court cannot enter judgment solely on the basis of the test results.

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24. Howard v. Baltimore & O. C. T. R. Co., 327 Ill. App. 83, 63 N.E. (2d) 774, 783 (1945).
25. Thompson v. City of Seattle, —Wash.—, 211 P. (2d) 500, 502 (1949).
26. Bartlebaugh v. Pennsylvania R. Co., 149 Ohio 538, 78 N.E. (2d) 410, 415 (1948), appeal dismissed 79 N.E. (2d) 912.
27. Merrill v. Los Angeles Gas & Electric Co., supra note 9.

1. Jordan v. Davis, 57 A. (2d) 209 (Maine 1948).

The holding in this case reaches a just result. As will be hereinafter demonstrated, other courts have not given proper weight to blood tests, as the discoveries of science require, and the unwillingness of judges to accept the progress of science has resulted in anomalous decisions.

In 1900 Dr. Karl Landsteiner discovered that all human blood falls into four groups, A, B, AB and O.[2] These four blood groupings are determined by the presence or absence of two genes, "A" and "B", in the chromosomes of red corpuscles. Absence of A and B is designated by O and A and B may be found together or separately, thus giving four blood groups. These blood groupings being based on genes in the chromosomal structure, applying Mendelian laws of inheritance, the possible blood type of an offspring may be predicted and likewise a blood grouping which an offspring cannot have can be determined, as illustrated by the following chart:

Types of Blood

Parents	Offspring Can Have	Offspring Cannot Have
AB and AB	AB, A, B or O	No group impossible
AB and A	AB, A, B or O	No group impossible
AB and B	AB, A, B or O	No group impossible
AB and O	AB, A, B or O	No group impossible
A and A	A or O	AB or B
A and B	AB, A, B or O	No group impossible
A and O	A or O	AB or B
B and B	B or O	AB or A
B and O	B or O	AB or A
O and O	O	AB, A or B

Thousands of tests have failed to show the blood of any human to be of a different type than the four blood groups or that a blood type does not remain constant throughout life.[3] The reliability of these tests is recognized throughout the medical profession in the United States[4] and foreign countries.[5] A further discovery by Landsteiner and Levine in 1928 of two additional substances in the blood called "M" and "N" has made it possible to detect thirty-three per cent of all false accusations of parentage.[6]

The blood test can be used only in an exclusionary form. For example, if the mother be of group A and the accused male of group O, if the off-

2. Ottenberg and Beres, *The Heredity of the Blood Groups:* in Jordan and Falk, *The Newer Knowledge of Bacteriology and Immunology* (1928) 912, as cited in 43 Yale L. Jour. 651 (1934).
3. Flacks, *Evidential Value of Blood Tests to Prove Non-Paternity* (1935), 21 A. B. A. J. 680, as cited in 21 Minn. L. Rev. 671 (1937).
4. *A Symposium on the Forensic Value of Tests for Blood Grouping,* led by Swetlow, Polayes, Wiener, Lederer (1932), 60 Medical Times and Long Island Medical J. 203, as cited in 20 Corn. L. Q. 233.
5. Ottenberg, *Hereditary Blood Quaities* (1921), 6 Journal of Immun. 363, as cited in 43 Yale L. Jour. 651 (1934).
6. Levine, Medical Jurisprudence: *The Use of Bood Tests in Paternity Disputes* (1938), 66 Med. Times 190, as cited in 22 Minn. L. Rev. 836 (1938).

spring has either group AB or B, the accused male clearly is not the father. But if the mother be of group A, the accused male of group O, and the offspring of Group A or O, the test only indicates the possibility that the accused male is the father; *i.e.*, it does not rule him out as the father. Many men of group O mating with the mother could produce an A or O blood grouping in the offspring. Thus only negative conclusions of the test are helpful in determing non-paternity.

A preliminary problem concerns the power of the court to order such blood tests taken. Most jurisdictions hold that a court has power to order a physical examination, in the presence or absence of statutory authorization, in the discretion of the court,[7] while a minority of jurisdictions hold that a court has no inherent power to compel submission to a physical examination.[8] Courts following the majorty view, when first faced with the problem of admission in evidence of results of blood tests, refused to take judicial notice of the validity of the scientific discovery and held that the refusal of a lower court to order a blood test was not an abuse of discretion.[9] The skepticism of the judges as to the validity of blood tests is evident in recent decisions. Thus in two cases where the results of tests conclusively excluded the defendant as being the father of a child, the jury found the defendant to be the father, but the verdict was not disturbed nor was a new trial ordered.[10]

However, several recent decisions hold that courts will take judicial notice of the scientific accuracy of blood grouping tests,[11] and where test results definitely excluded paternity, courts have regarded such results to be of sufficient weight to overcome a presumption of legitimacy,[12] and to require the granting of a new trial when the jury has found paternity to exist.[13] However, where non-parentage is definitely established by blood tests, the courts unanimously refuse to accept the test results as conclusive evidence of non-parentage, even where a statute authorizes the taking of such tests. No statute has been found which purports to make such test results conclusive evidence.[14] Such statutes uniformly provide that the results of blood tests are admissible in evidence only where they establish non-paternity.[15] One state makes it a matter of

7. Howard v. Hartford Accident and Indemnity Co., 139 Kan. 403, 32 P. (2d) 231 (1934); Flythe v. Eastern Carolina Coach Co., 195 N. C. 777, 143 S.E. 865 (1928).
8. Chicago, R. I. & P. R. Co. v. Benson, 352 Ill. 195, 185 N. E. 244 (1933); Dixie Greyhound Lines, Inc. v. Matthews, 177 Miss. 103, 170 So. 686 (1936).
9. State v. Damm, 62 S.D. 123, 252 N. W. 7 (1933); affirmed on rehearing, State v. Damm, 64 S,D. 309, 266 N. W. 667 (1936); on rehearing the court conceded the scientific validity of the tests at the time of rehearing but stated that at the time of the trial the tests were not judicially cognizable.
10. Arais v. Kalensnikoff, 10 Cal. (2d) 428, 74 P. (2d) 1043 (1937); Berry v. Chaplin, —Cal.—, 169 P. (2d) 442 (1946).
11. Shanks v. State, 185 Md. 437, 45 A. (2d) 85 (1945); State *ex rel.* Walker v. Clark 144 Ohio St. 305, 58 N.E. (2d) 773 (1944).
12. State *ex rel.* Walker v. Clark, 144 Ohio St. 305, 58 N.E. (2d) 773 (1944).
13. State v. Wright, 59 Ohio App. 191, 17 N.E. (2d) 428.
14. Cases cited in notes 12 and 13, supra.
15. N. Y. Civ. Prac. Act (1939) Para. 306-a; Ohio Gen. Code (Ann.) Page, (1939) Para. 12122-1; Wisc. Stat. (1937) Para. 325.23; N. J. S. A. 2:99-4 (P. L. 1939, Chap. 221).

right with a litigant to require persons to submit to a blood test.[16] The general rule with respect to such evidence is that it is to be regarded as expert testimony which the jury may accept or reject.[17]

In Wyoming no statute exists allowing a court to compel submission to a physical examination, nor has the court decided whether, without statute, it has inherent authority to compel submission to a blood test.

In view of the proven validity of these tests, and the unanimous acceptance of blood tests throughout the medical profession, there is no justification for a "cultural lag" in legal thinking.[18]

It is submitted that statutory enactment should make it mandatory on the court, on motion of a defendant in a paternity case, to order blood grouping tests, and should make the results conclusive where non-parentage is conclusively shown. This field of expert testimony is not subject to dispute among the experts. By compelling recognition of scientific facts, the proposed statutory enactment will insure that the doctrine of *stare decisis* is not given more weight than the laws of heredity.

P. J. DE NIRO.

INHERENT AUTHORITY OF A CORPORATE PRESIDENT IN WYOMING

Inherent authority has been defined as, "An authority possessed without it being derived from another."[1] The authority of the corporate president is conventionally divided into four classes which are as follows: (1) Express authority; (2) Implied authority; (3) Apparent authority; (4) Inherent authority. Express authority is that which is conferred by the by-laws and resolutions of the board of directors. Implied authority is that which is inferred from the express authority. Apparent authority is that which arises from the conduct of the corporation or that which the corporation allows the officer to assume without objection. Inherent authority is that which arises merely by virtue of his office.[2]

The nature of the corporation's existence readily brings to mind the thought that in order for the corporation to exercise its powers granted by the state it must do so through the use of agents.[3] In this respect a corporation's relation of agency differs from that of an individual's relation

16. Maine Rev. Stat. 1944, Ch. 153, Sec. 34.
17. 20 Am. Jur. 1055.
18. 21 Minn. L. Rev. 671, for a discussion of this backward thinking of the courts.

1. Bouvier's Law Dictionary, (Rawle's 3rd ed., 1914).
2. 2 Fletcher Cyclopedia Corporations 434, (Revised & Permanent ed., 1931).
3. Chicago, Burlington and Quincy Railroad Company v. Coleman, 18 Ill. 298, 68 Am. Dec. 544 (1857); George E. Lloyd & Company, Appt. v. Nelson Edward Matthews et al., 233 Ill. 477, 79 N.E. 172, 7 L.R.A. (N.S.) 376 (1906); 19 C.J.S. 455.