Much more reliable medical evidence would be available for the guidance of judge and jury if experts, selected from a panel of medical men experienced in that particular type of case, were summoned by the court. But this is too big a question to discuss fully in your correspondence columns.—I am, etc.,

London, W., June 5th. C. H. FAGGE.

"Sunshine Roof" Rheumatism

SIR,—With the advent of warmer weather and spells of sunshine the motorist is making full use of his "sunshine" roof, which is now becoming a standard fitting on all saloon cars, large and small. If the weather is really warm he will also discard his headgear, and enjoy to the full the fresh air and sunshine. In common with all new ideas, which are, on the whole, an advance and largely beneficial, the "sunshine" roof brings its little drawback, which, in my small experience, is becoming fairly common—namely, a subacute rheumatism affecting the musculature of the back between the scapulae.

The victim, who is usually quite unaware of the cause of his trouble, complains of a mild but annoying muscular ache between the shoulder-blades, which is more marked during rest when the head is rested on a pillow in the lateral recumbent position. It is usually the healthy young owner-driver who suffers—the man (or woman) who is keen on motoring and who "sits up" to the wheel when driving. The passenger who sits back against the cushions rarely complains, and often the small protection offered by the brim of a hat is enough to ward off the unnoticed but causative back-draught.

The cause of the rheumatism once discovered, the cure soon follows, and the "sunshine" roof motorist either wears a hat or pulls the sliding roof forward an extra foot and sits back in his driving seat. Iodex, radiant heat, and massage soon settle the condition if further treatment is required.

In spite of these observations I am an enthusiastic user of a "sunshine" roof, and believe that it is a most necessary fitting to the modern saloon car, which has so completely ousted the old-fashioned open tourer.—I am, etc.,

Colwyn Bay, June 1st. DONALD I. CURRIE.

South African Medical Congress

SIR,—In the *British Medical Journal* of March 11th this year you were good enough to publish a letter of mine expressing the hope that some members of the British Medical Association in England and elsewhere might be tempted to attend the twenty-seventh Annual Medical Congress to be held in Capetown, September 25th to 30th, and assuring them of a warm welcome should they do so. In response to that letter I have had several inquiries as to the possibility of obtaining some reduction of shipping fares and special terms for those attending the congress at certain hotels in Capetown. I have been able to do both these things.

Visitors to the congress can leave England and return as follows: *Armadale Castle,* leaving Southampton August 4th, or by the *Windsor Castle,* leaving Southampton August 25th, and return by the *Windsor Castle,* leaving Capetown October 6th. The first-class return fare will be £90 and the second-class return fare £60. The second-class accommodation on these ships is extremely comfortable, and no one need hesitate to travel by it. These ships belong to the Union-Castle Company of 3, Fenchurch Street, London. The Ellerman-Bucknall Company of Leadenhall Street have monthly sailings of very comfortable one-class ships, and the return fare is £72.—I am, etc.,

E. BARNARD FULLER,
President-Elect.

85, St. George's Street, Capetown,
May 11th.

Medico-Legal

NEGLIGENCE OF A SUBORDINATE

THE SURGEON AND THE THEATRE TEAM*

The surgeon performing an operation relies on his highly trained team to fulfil many vitally important duties. The question of the extent to which he is responsible for a negligent act by his anaesthetist, assistant, or nurse may therefore at any moment call for an answer. Considering the thousands of operations performed in this country every week, it is astounding that the hundreds of volumes in which English cases are reported contain no judgement by which this responsibility is measured, and hardly even a dictum from which it can be inferred. Judges seem to have been rather careful to avoid expressing a definite opinion on this important and difficult matter. There is on record, however, a case which originated in a South African hospital, and was heard by the Appellate Division of the Supreme Court of South Africa. The judgements given in this case are not, of course, binding on an English court, but they represent the opinions of three lawyers of great learning and experience. This was the case of Van Wyk *v.* Lewis (1924).

A girl was taken suddenly ill, and her general practitioner found her to be suffering from acute cholecystitis. He advised an immediate operation, and called in an eminent consulting surgeon, who performed the operation in the nearest hospital at midnight. He was assisted by an anaesthetist and by a qualified nurse on the hospital staff, who acted as theatre sister. The operation was a most difficult and anxious one: the gall-bladder was in a very bad state, and its substance was so friable that it would not hold the sutures. The condition of the patient was critical, and the anaesthetist warned the surgeon to get her off the table as soon as possible. At the end of the operation the surgeon searched for swabs as carefully as he could, but was chiefly concerned with closing the abdomen and getting the patient off the table. The patient made a quick recovery, and the wound healed over. Some months afterwards it broke again and discharged some gall-stones, and about a year after the operation she passed by the bowels an object which was undoubtedly a small swab with tape attachment. She sued the surgeon for negligence, and claimed £2,000 damages. The judge of the inferior court found against her, and she appealed.

The court first disposed of the contention of the patient's advisers that to leave a swab in the abdomen was itself proof of negligence, and that the surgeon must pay damages unless he could prove that he had not been negligent. Chief Justice Innes held that, on the contrary, all the facts must be considered, and that the patient must prove the negligence. The court quoted the words of Beven on Negligence.

"*Prima facie,* to sew up a sponge or an instrument in a patient after an operation is negligence. Very great care and method is to be observed in accounting for all appliances used, and this in proportion to the easiness with which they may escape observation; but even here the fact that some needle or portion of an instrument has been left in a wound is not conclusive, but the conclusion from the fact must be determined by a jury on a view of the whole circumstances."

Wessels, Judge of Appeal, said: "Since all the surrounding circumstances are to be taken into consideration, there is no room for the maxim" (namely, *res ipsa loquitur;* which means that the fact is itself adequate evidence of negligence). The case hinged on whether the surgeon was entitled to depute to an assistant the task of counting and checking the swabs, or whether he did so at his own risk and, if she (the assistant) made a mistake, was responsible for her negligence. Judge Kotzé said: "The operating surgeon no doubt has control of the operating room or theatre, and circumstances may arise where he *may* become liable for the acts of the nurse or sister in attendance."

The evidence had established that by the procedure of the hospital the duty of counting all the swabs, and particularly of keeping a tally of those used inside the body and checking them as they came out, was entrusted to the

* The first part of this article on "Negligence of a Subordinate," by a legal correspondent, appeared in the *Journal* of April 29th (p. 766); and the second part, dealing particularly with nursing homes and co-operations, and the paying patient, on May 27th (p. 941).

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