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THE COURT RESUMES ON 12TH JUNE, 1972.

COURT: 1972 we had a meeting in my office where all the different parties in this matter were present and where it was agreed that all the expert witnesses including my learned assessor, Prof. Simson, that is Prof. Simson, Dr. Scheepers, Dr. Gluckman, Prof. Koch and Dr. Shapiro would go to the laboratories of Dr. Gluckman and there examine these disputed sections under the microscope and see if they could resolve their differences or could try and convince one another what they each saw. I look upon that as a kind of an inspection in loco and I'm therefore going to ask Prof. Simson, my assessor, just to set out in detail what transpired there and what he in particular saw, I want to have that on record. And also after he has stated his, stated what he has seen, his finding there, I want to call upon everybody, all those interested to tell me whether what Dr. Simson actually saw there was in fact correct.

MR. CILLIERS: Your Worship, if I may just mention something if it can serve to save time, after the meeting which your Worship has referred to, my consulting attorney and myself paid a visit to Prof. Koch to see if we could obtain from Prof. Koch of the notes he had kept at that meeting a report of what the five experts had agreed was observed. I took down in detail what Prof. Koch thought was the agreed facts and I had that typed. I gave that to my learned friend, Mr. Maisels, on Friday a week ago, that is ten days ago from today and asked my learned friend if he could trouble the two doctors who are assisting him for comments and to see if the version which we had had typed out could be commented on to see if we could sort out amongst ourselves

/ an ...

an agreed version to put up to Prof. Simson. This morning for the first time, no doubt for good reason, I'm sure these gentlemen are busy, they submitted to me a list of comments which materially differs from the version which we have thought was the agreed version. I just wish to draw to your Worship's attention that for the sake of examining any witnesses with such questions as your Worship may allow, it would be virtually impossible for me to do so unless I have before me in writing those matters which are agreed upon and while obviously, as your Worship intends doing, Prof. Simson's record of what was agreed by everybody or indications what only some observed would be useful and should go on record. I would ask your Worship to allow opportunity to have a version which everybody agrees on reduced to writing so that it can be placed before witness and before Counsel when examination of witnesses are done. Just to listen to what Prof. Simson would read out would not make it possible to conduct proper examination.

COURT: As far as I'm concerned, I am not concerned about any other witnesses who are going to give evidence, Mr. Cilliers but I can quite see your point. I only feel that Prof. Simson is part of the Court and I want his views first of all to be placed on record. What he saw is part of the Court's seeing of what there actually was. And like any inspection-in-loco it must be placed on record. I mean the parties must know what is going on in the mind of the Court. Now Prof. Simson is there to advise me and he has already spoken to me and I feel that the parties should know exactly what he knows and also after he has given his version of what he saw, I expect the parties to tell me now look here, according to Prof. Simson that this they
/ agreed ...

agreed upon and I just want to find out was that said at the time and do they still agree and if they find fault with what he saw, then they must tell the Court exactly that they differ from him here and they differ from him there.

MR. CILLIERS: I just wish to draw to your Worship's attention that listening to Prof. Simson, which we are going to do now, on matters of highly technical nature, it would be extremely difficult for me to pick up just what Prof. Simson says without an adjournment to consider that.

COURT: Mr. Cilliers, I will allow you the opportunity once Dr. Simson has given his version of what took place. I also feel perhaps it would assist the Court a great deal and save a lot of time for everybody again to get together.

MR. CILLIERS: As your Worship pleases, I just wish to draw that to the attention of the Court.. between Mr. Maisels and myself also to save time.

MR. MAISELS: May I make our own view quite clear, we are very anxious to hear what Dr. Simson has said, I assume that what Dr. Simson has said has been written down, it is a simple matter to have a photo-copy of it made in a few minutes afterwards if we don't gather everything and let's get on with the thing, sir.

COURT: I think Dr. Simson made those notes... and what I propose doing after Dr. Simson has given his version of what took place and his findings, then I will adjourn the Court and Dr. Simson and I naturally won't take part in that discussion but among yourselves I expect you to get together and see what you can resolve and what the position is.

PROF. SIMSON: As your Worship has already mentioned, on the 24th May, myself, Dr. Gluckman, Dr. Scheepers, Dr. Shapiro

/ and ...

and Prof. Koch proceeded to Dr. Gluckman's laboratory to examine the sections which appear in the summary handed in by the learned Counsel for the Timol family on Exhibit KK. We examined all the sections and in addition two further sections which do not appear on this exhibit, namely Section O.1 and Section Q - I'm referring to histological sections. At Dr. Gluckman's laboratory we started off by looking at the sections through a discussion microscope in which there are two separate oculars and two investigators can examine the same section at the same time. After we had examined the first section it became clear that doing it in this manner would be an extremely lengthy procedure and on Dr. Gluckman's suggestion we proceeded to a room in the same building where we examined the sections using a projection microscope, a microscope where the image is projected onto a screen and where we were all able to see the same image simultaneously. We then examined the sections in order on the basis of what Dr. Gluckman had already seen and recorded and what Dr. Scheepers had already seen and recorded and all of us present pointed out any additional features or any features which appeared not to be in accord with the comments which had already been recorded by both Dr. Gluckman and Dr. Scheepers. If I can go through the sections and just record what I personally saw on the sections and I would like to emphasize that in the case of every single section/^{there}was accord on what was seen. The interpretation of what was seen was at no time discussed during this meeting. We started off with section A, this is the one over the middle third of the right clavicle. My observations on this section were in accord with Dr. Gluckman's in that there was a small collection of blood just underneath the epidermis; that there is also

/ haemorrhage ...

haemorrhage into the deeper layers, the dermis and the subcutis with collections of neutrophils and also macrophages. All these findings had been seen and recorded by Dr. Gluckman. But in addition to this, in the scab there was necrotic epithelium present in which melanin pigment was observed and there was regeneration of the epithelium underlying this. There is the formation of keratin and in addition necrotic epithelium extended over, there were regenerated epithelium at the edges of the lesion. Underlying this in the dermis dilated capillaries were present. Now in addition to this lesion which had been seen by both Dr. Gluckman and Dr. Scheepers, I saw a second lesion in the same section but separate from the first; in other words there appear to be normal epidermis between the original lesion and the second lesion. This lesion had a completely reconstituted epithelium which was flat, had the appearance of recently regenerated but completely regenerated epithelium and into it, in the dermis there were dilated capillaries and occasional fibroblasts present. The second lesion that we examined was D, on the outer aspect of the right iliac bone. Dr. Gluckman had already recorded and I'm in accord with this, that there was haemorrhage in the tissues beneath the surface of the skin without significant cellular infiltration. But in addition to this there was necrotic epidermis with melanin in the scab. This was seen in the section provided by Dr. Scheepers and that the scab extended laterally, the scab and the necrotic epithelium extended laterally for a considerable distance over epidermis that looked reasonably normal. In addition to this there was slight increase of fibroblasts in the capillary layer of the dermis,

The next is Section F on the outer aspect of the
/ right ...

right elbow and the right forearm near the elbow. Dr. Gluckman had already noted that there was haemorrhage in the tissues beneath the surface of the skin with an infiltration existing of neutrophils and macrophages. Again in connection with this section there was necrotic epidermis which extended well beyond the regenerated epithelium and covered an epidermis that appeared normal. A necrotic epidermis varies in thickness. In a section which Dr. Gluckman had the underlying epidermis had regenerated to the level of the granular layer, the granular layer is the layer just beneath the keratin layer. But in Dr. Scheepers' Section there was also keratin formation present. When we returned to Dr. Gluckman's laboratory we examined this section under the microscope again because the detail is not as easily seen on the projection microscope, to check whether there were in fact macrophages in the deeper layers of skin and I find that this is in fact the case.

The next section we examined was Section G, bruises on the right upper arm. This is the section in which there was some dispute about Dr. Scheepers' interpretation in the Court just before the adjournment. In this section I saw haemorrhage into the dermis and in the sub-cutis with evidence of fat necrosis and iron pigment in macrophages in the areas of fat necrosis. These are the findings which had already been recorded by Dr. Gluckman and after this meeting Dr. Scheepers was in accord with these findings.

Section H, on the right shoulder blade are bruises, multiple bruises and also an abrasion noted naked-eye. There was haemorrhage into the upper layers of the

/ dermis ...

dermis with dilated vessels. And in addition there were peri-vascular neutrophil infiltrates. In other words, neutrophil leukocytes around the vessels. There was a very small area of necrotic epithelium at the periphery of what appeared to be a fairly large area of reconstitute epithelium with a focus, a small focus of epithelial hyperplasia. In addition, when we looked at this section again in Dr. Gluckman's laboratory there was evidence of both haemorrhage, macrophages and neutrophils, and also some fibroblasts in the deeper layers.

Section K, it is from the upper aspect of the right thigh. Dr. Gluckman had noticed haemorrhage through the dermis and subcutaneous tissue and I agree with this. There are also neutrophil leukocytes and macrophages. I also saw which had not been previously noted, the presence of freelying fibrin in the area of haemorrhage and also small fibrin thrombi within vessels in the deeper layers of the skin. Looking at this section again in Dr. Gluckman's room it was also evidence that there were fibroblasts present within this area.

Section N is from the left forearm and is a fairly large abrasion. There is a very large area of regenerated and regenerating epithelium under a scab which consists of full thickness necrotic epithelium;

at the edges of this lesion it overlies an epidermis which appears fairly normal. Deep to this extensive abrasion there is a change in collagen and the underlying collective tissue which was described by various observers and I accept all these descriptions as increased basophilia or an appearance suggesting crushed collagen, crushed collective tissue fibres, crushing under the altered staining.

I think were agreed by everyone but not everyone was prepared to accept the term basophilia. I don't think this point is of much importance.

Section O, multiple bruises on the left side of the chest. Here I saw haemorrhage into the subcutaneous tissue with collections of macrophages and neutrophil leukocytes with areas of fat necrosis and the formation of large fatty cysts. This was an extensive lesion and large numbers of fibroblasts and large numbers of capillaries were also present.

Section O.1, a section from bruises on the left upper arm. This showed the presence of widespread haemorrhage in the sub-cutis but there was no significant increase in the number of neutrophil leukocytes.

And lastly, Section Q, which is a section from the left side of the neck. This showed the presence of a scab in which there was patchy epithelial necrosis, in most parts full thickness with an underlying regenerated epithelium and deep to this altered staining in the collagen on a much smaller scale but similar to the appearance present in Section N. There was also deep haemorrhage within the tissues beneath the skin but without evidence of cellular reaction.

These were the findings as I saw them and I believe that all the observers present on that day which involved investigation both before and after lunch were in accord with these findings.

COURT: Mr. Maisels, I don't know if you wish to have an opportunity for consulting with Dr. Shapiro and Dr. Gluckman before you tell me what ...

MR. MAISELS: Yes, sir, we^{are}/substantially in agreement, there

/ are ...

are one or two things that I personally didn't hear at all, I wonder whether it would be possible ...

DISCUSSION RE ADJOURNMENT - NOT IN MICROPHONE.

COURT ADJOURNS.

THE COURT RESUMES:

MR. MAISELS: As far as we are concerned we have no comment.

MR. CILLIERS: Your Worship, as far as we are concerned we agree with everything that Prof. Simson has said as having been observed and agreed that these things are present. I want to make one thing clear about this agreement, prof. Simson has used, I have taken down what he has said, has used terms such as reasonably normal epithelium and regenerating epithelium and regenerated epithelium. I do not or rather let me put it this way, the evidence of Prof. Koch will be given in a slightly more detailed way than the way in which Prof. Simson has offered ...

COURT: I don't wish to interrupt you, all I wish to know at this stage is are you in agreement with what Dr. Simson, Prof. Simson saw and what he has found?

MR. CILLIERS: I must put it this way, I can't put it any other way, your Worship will follow me in a moment. When Prof or if Prof. Simson for instance means by regenerating epithelium that there is a granular layer and by regenerated epithelium that that includes the presence of keratin, as I understand that would be the normal meaning of these expressions, then we agree with everything he said. But I want to make it clear, if for instance Prof. Koch says and my agreement is on instructions from him, of course, that the regenerated epithelium includes for instance the presence of keratin and it transpires that Prof. Simson by the generated epithelium did not mean the presence of
/ keratin ...

keratin then our agreement must not be mistaken. We think we understand his terminology and on that basis we agree but if it later transpires that there is a misunderstanding about the terminology then it must not be held against us.

COURT: I will ask Prof. Simson to reply to your query.

PROF. SIMSON: Your Worship, I think in the use of the word reasonably normal was the terms agreed to by all present at the meeting, so this is common ground as I see it. This was the description agreed to by all five people present.

MR. CILLIERS: I understand that, your Worship. I want to point out thing arising out of what Prof. Simson has now said, that I understand that the word hyperplasia is a word which occurs in literature and which Prof. Koch will use. Prof. Koch has the impression that reasonably normal epithelium includes the phenomenon of what Prof. Koch describe as hyperplasia and I would like to clear up, if possible, with Prof. Simson that what is called hyperplasia by some authors in the literature Prof. Simson is describing by the words reasonably normal epithelium.

PROF. SIMSON: I don't know whether your Worship wants me to give my interpretation of this or not?

COURT: I do not wish Prof. Simson at this stage to give any interpretation or any finding whatsoever. He is not a witness in this case, he has given the Court the benefit of what he say and he has stated that in open Court. If there is any difficulty in regard to terminology then I think you should just tell Prof. Simson exactly what terminology Prof. Koch will use and what meaning he will put to that terminology and ask Prof. Simson whether he is in agreement with that. Is that your trouble?

MR. MAISELS: Sir, may I make our position clear. I don't

/ think ...

think that Prof. Simson should as it were be cross-examined now.

COURT: I quite agree, that is the point that I'm trying to make quite clear.

MR. MAISELS: If Prof. Koch is in disagreement or understands things differently then in due course, I assume, a statement will be placed before us, he will give his evidence and the matter will be dealt with in that way.

COURT: No, I only seem to, I may be wrong, get the impression that there is a bit of a difference as far as terminology is concerned and if that could be cleared up I will be very very pleased. Just the question of terminology, I don't want Prof. Simson at this stage to tell you that from what he saw he draws a certain inference...

MR. CILLIERS: I understand that, your Worship, but your Worship must just understand my position too, that your Worship has asked me specifically, and correctly so, whether we agree with what Prof. Simson says. Now I understand from Prof. Koch who is included in the we that he uses certain terminology and he does not think that there is any difference between him and Prof. Simson but the terminology which they use may be different. We are prepared to say we agree with everything Prof. Simson says but if it should transpire that there is a difference in terminology, then it must not be taken as a difference of substance to say that at one stage we agreed and we have retracted.

COURT: No. I think we will accept.

MR. CILLIERS: We are prepared to leave it at that.

COURT: We will accept it and if Prof. Koch gives evidence then that matter could be cleared up.

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