

The 'misunderstood' doctor of Auschwitz

By Geoffrey Watson SC

Cases about costs are, as a general rule, rather ordinary – but if you bear with me I think you will agree that the reported costs decision in *Dering v Uris* is a clear exception to that general rule.

The background

In 1959 the American author Leon Uris published his international blockbuster, *Exodus*. Like many of Uris' novels, it was a fictionalised account based upon historical events.

In setting the scene for the mass post-war translation of Jews to Palestine, Uris recounted the horrors the Jewish people had suffered under the Nazis. This involved a description of the death camps, which included a brief reference to the activities of a 'Dr Dehring'. Uris recounted the shocking story of what went on in the diabolical medical unit at Auschwitz, under the infamous Dr Josef Mengele. Uris described how 'Dr Dehring' had performed surgical 'experiments', including sterilisations, and how if the 'patient' happened to be Jewish they were carried out without anaesthesia. Perhaps it is enough to say that, following the legal proceedings described below, the legal correspondent of *The Times* claimed that 'an English jury has never had to listen to such horrifying evidence'.

One claim made by Uris was that 'Dr Dehring' was involved in 17,000 such procedures.

In fact, there was a real person involved, but Uris had misspelt his name as 'Dr Dehring'. The real person was Dr Wladyslaw Dering. Before the war Dering was an obstetrician and gynaecologist in Warsaw. He had worked in the medical clinic at Auschwitz. He fled Poland after the war in fear of Communist retribution. Dering settled in the UK, where he successfully fought attempts to extradite him as a war criminal. His defence to extradition was that his identity had been mixed up with someone else.

In 1951 Dering went to the British Protectorate of Somaliland where he served for ten years as a director of a hospital working among the severely underprivileged. His service led to the Colonial Office recommending him for an OBE – which he was awarded in 1960.

In 1960 Dering returned to London. By the time *Exodus* was published Dr Dering OBE was a respected figure in the UK.

Dering was readily recognisable as the 'Dr Dehring' in *Exodus*. Dering sued each of the author, Uris, the publisher, Peter

Kimber, and the printer for defamation. The printer quickly settled by making a payment of £500.

Each of Uris and Kimber defended the proceedings on the grounds that the matters were *substantially* true, but they faced real problems with this because it had to be conceded that the reference to 17,000 procedures was a gross exaggeration.

The trial

The matter came on for trial in 1964 before Mr Justice Lawton¹ and a jury of 12. The trial ran for 19 days. It was a sensational event attracting wide publicity. Uris created a fictionalised version in yet another hugely successful novel, *QB VII*. In real life Uris was represented by Lord Gerald Gardiner QC² (in the television miniseries Uris's character was ably represented by Sir John Gielgud).

In opening for Dering, Colin Duncan QC told the jury of the 'indescribable hell' of Auschwitz, and how, 'under the most ghastly conditions', Dering had 'performed the most heroic acts of humanity'.

Dering then took the witness box³. He described his life before September 1939 and claimed to have fought with the Polish underground until he was captured by the Gestapo and sent to Auschwitz, where he became a 'prisoner-doctor'. Dering admitted undertaking the operations, but claimed that he had done so under extreme duress, and that if he had failed to do so he would have been killed by the Nazis. Dering claimed to be a misunderstood hero, describing how he had saved some 30 or 40 prisoners from being sent

to the gas chambers.

Gardiner, a tall and severe figure, rose to cross-examine. Much of his close questioning dwelt on the details of needless and unjustifiable experimental surgery; Dering fumbled for excuses. Gardiner then turned to the records which had been compiled against Dering at the time his extradition was sought. In reference to one, Gardiner asked:

Q. They were right, were they, to describe you as an admitted anti-Semite?

A. I was called by some people – rather a small group – anti-Semitic, but I can say I still have today very sincerely Jewish friends.



Dr Dering wins his case - half penny damages Photo: Keystone Pictures USA / Alamy Stock Photo.

I don't know about you, but I think the short answer would be 'Yes'.

Next Dering called a few former inmates at Auschwitz. They described Dering's kindness toward them. Then he called two of his fellow doctors at Auschwitz, who confirmed the duress under which they were compelled to work. There was also evidence of his undoubtedly excellent work in Somaliland.

The defendants then opened their own case. Now the construction of a defence in a case like this was extremely difficult – the events were 20 years old, and collecting eye witnesses was made more difficult because so many of them had died in Auschwitz (some, no doubt, on Dering's operating table). But the defendants had a key document upon which they could rely – the Nazis had carefully destroyed nearly all of the documentary evidence of their activities at Auschwitz, but one particular document – the Auschwitz Surgical Register – survived, and it documented these awful procedures. The Surgical Register included 130 cases in which Dering was directly involved.

A number of former prisoners were called, who described the most appalling abuse. They remembered Dr Dering. One described how, while Dering was castrating him without anaesthesia, he was told to 'Stop barking like a dog. You will die anyway'.

The defence also called other Auschwitz doctors who had refused to participate in the experimental surgery without suffering consequences.

It is here important to bear in mind the weakness in the defence case – ie the gross exaggeration in relation to Dering's involvement. Uris had written that there were 17,000 cases; in truth it was 130. But if you pause to think about that for a moment, it is a pretty poor argument from Dering's perspective – imagine telling a jury that you had been defamed because you had, in fact, only committed 130 atrocities.

The evidence finished. The parties addressed. Justice Lawton charged the jury. The jury was given the exhibits, one of which was the Auschwitz Surgical Register: the jury was instructed to take great care with it – 'what an awful thing it would be' said Justice Lawton 'if a tea stain or cigarette burn [was] inflicted on this register in London'.

The result

The jury returned with its verdict. The associate asked the customary question: 'Do you find for the plaintiff or for the defendants?'. The Foreman replied: 'For the plaintiff'.

Apparently there was an audible sigh of disappointment in the courtroom.

Then came the second question: 'What sum do you award the plaintiff against the defendants?'. And the foreman replied 'One halfpenny'.

The trial was a disaster for Dering; his reputation was destroyed. But that was only part of it.

The costs

At the conclusion of the trial Justice Lawton had to deal with the huge costs which had been generated by the proceedings – they would be over a million dollars in our terms. His decision is reported: *Dering v Uris* [1964] 2 QB 669.

Even though he won, and even though costs would ordinarily follow, Dering faced two fairly obvious problems in relation to recovering costs. The first was that, even though the jury had awarded him a halfpenny, he could not levy execution because he had already accepted the £500 from the printer.

The other problem was more curly.

Shortly after the proceedings commenced the publisher, Kimber, recognised the weakness of his position in respect of the claim that Dering was involved in 17,000 procedures. So he admitted the libel, and paid into Court the sum which he suggested reflected the true value of Dering's reputation – £2. No doubt that £2 offer was made by Kimber with a view to insult Dering, but, a little ironically, it ended up being a gross overestimate of the true value of Dering's reputation.

Justice Lawton ordered Dering to pay Uris' and Kimber's costs.

Endnotes

1. Sir Frederick Horace Lawton, b 1911; d 2001. Called 1935; silk 1957. Chancery Division 1961-1972; Court of Appeal 1972-1986. Fun facts: In 1936 he was the candidate for the seat of Hammersmith North for the British Union of Fascists. He once remarked that 'wife beating may be socially acceptable in Sheffield, but it is a different matter in Cheltenham'. One of his pupils was Margaret Thatcher.
2. Gerald Austin Gardiner, b 1900; d 1990. Called 1925; silk 1948; Lord Chancellor 1964-1970. Appeared in many great cases, including defending the publishers in the *Lady Chatterley's Lover* trial in 1960. He was the moving force behind the abolition of the death penalty in the UK.
3. Strange events unfolded. Dering took the oath in the then conventional method in Waspish old England – he swore on the New Testament. Justice Lawton – apparently under the misapprehension that Dering was Jewish – suggested that Dering should have taken the oath on the Old Testament. When Dering responded by saying that he was Catholic, Lawton insisted that in those circumstances 'You must take the oath on the Vulgate'. And instructed his tipstaff 'Fetch a Douai Bible'.