cinct terms: "What you will have to say is this, whether you are satisfied that the injury sustained is attributable to the want of a reasonable and proper degree of care and skill in the defendant's treatment. Every person who enters into a learned profession undertakes to bring to the exercise of it a reasonable degree of care and skill. He does not undertake, if he is an attorney, that at all events you shall gain your case, nor does a surgeon undertake that he will perform a cure; nor does he undertake to use the highest possible degree of skill. There may be persons who have higher education and greater advantages than he has, but he undertakes to bring a fair, reasonable and competent degree of skill; and you will say whether in this case the injury was occasioned by the want of such skill in the defendant."

It has been held in some American cases that the locality in which a medical man practises is to be taken into account, and that a man practising in a small village or rural district is not to be expected to exercise the high degree of skill of one having the opportunities afforded by a large city; and that he is bound to exercise the average degree of skill possessed by the profession in such localities generally. I should hesitate to lay down the law in that way: all the men practising in a given locality might be equally ignorant and behind the times, and regard must be had to the present advanced state of the profession and to the easy means of communication with, and access to, the large centres of education and science. For example: Port Perry is a two hours' journey from a city of a quarter of a million inhabitants, with three medical colleges and numerous hospitals.

There is no implied warranty on the part of a physician or surgeon that he will effect a cure. He can be treated as an insurer or guarantor of success only if there be an express agreement to that effect.

If a surgeon treat a patient improperly, he is liable to an action even though he undertook *gratis* to attend to the patient.

If a patient by his own conduct, or disobedience of orders, has aggravated his injuries to an extent that will account for the mischief complained of, he cannot recover damages from the medical man, having regard to the general law of contributory negligence. The burthen of proof to show contributory negligence is, of course, on the defendant in an action for malpractice.

The failure on the part of a medical man to give a patient proper instructions as to the care and use of an injured limb is negligence for which the medical man is liable for injury resulting therefrom.

These are the principal propositions of law involved in the consideration of the present case.