defendants can claim the benefit of the Statute, and that on this ground alone the action fails. But, as I said before, I deem it incumbent upon me to dispose of the other issues in the case.

The defendants are practising in partnership, but David Archer was the partner who was in charge of the case, and it is his alleged negligence which is in question here. But where physicians or surgeons engage in practice as partners all are liable for malpractice by any member of the firm.

Malpractice *(mala praxis)* is bad or unskilful practice by a physician or surgeon, whereby the health of the patient is injured. Negligent malpractice means gross negligence and lack of the attention which the situation of the patient requires; as if a physician while in a state of intoxication should administer improper medicines: that is not charged here, but what is charged is ignorant malpractice, namely, a course of treatment which was calculated to do injury, which has done harm, and which a well-educated and scientific surgeon ought to know was not proper in the case.

In 1697 the Court of King's Bench (Temp. Chief Justice Holt) resolved in Doctor Groenvelt's case, which Lord Raymond reports at page 214 in the quaint language of the day, "That *mala praxis* is a great misdemeanour and offence at common law (whether it be for curiosity and experiment or by neglect), because it breaks the trust which the party has placed in the physician, tending directly to his destruction."

The burthen of proof is upon the plaintiff in an action of this character, to show that there was a want of due care, skill and diligence on the part of the defendant, and also that the injury was the result of such want of care, skill and diligence. The general rule of skill required of a medical practitioner was thus ably summed up by Chief Justice Erle, in Rich *v.* Pierpont, 1862, 3 F. & F., at page 40: "A medical man was certainly not answerable merely because some other practitioner might possibly have shown greater skill and knowledge; but he was bound to have that degree of skill which could not be defined but which in the opinion of the jury was a competent degree of skill and knowledge. What that was the jury were to judge."

"It was not enough to make the defendant liable, that some medical men of far greater experience or ability might have used a greater degree of skill, nor that even he might possibly have used some greater degree of care. The question was, whether there had been a want of competent care and skill to such an extent as to lead to the bad result."

Chief Justice Tindal, in Lamphier *v.* Phipos, 1838, 8 C. & P., at page 479, charged the jury in the following clear and suc-