

more particularly as Dr. Anglin stated that the child was exceedingly restless, and that the displacement of the bone may have been occasioned by this, quite apart from any improper conduct on the part of the mother.

One thing is clear: that between the 22nd December and the 7th January, and probably almost immediately after the 22nd, the bone somehow became displaced and remained displaced sufficiently long to become firmly fixed by the 7th January.

The negligence which is now suggested—though this I think was not present to the mind of the parties when the action was brought—is that the defendant ought to have realised the necessity of inspecting the limb every four or five days, so that he might see if displacement had taken place, either by the restlessness of the patient or by the carelessness or worse of the mother, so that the bone might be restored to its proper position before an adhesion had taken place or it had become so firmly fixed as to necessitate a serious operation.

Upon this point there is a conflict of evidence. Some of the medical men thought that, under the circumstances, the defendant had done all that he was called upon to do; that, having explained the danger to the mother, he was justified in relying upon her communicating with him if any displacement took place. Dr. Anglin said that the danger was a real danger, and that Dr. Stratton "took a chance." Further than this he declined to go. Others went farther, and said that, having undertaken the case, the doctor was not justified in taking a chance which might result so seriously to the child.

After considering the matter as carefully as I can, I do not think that the defendant was guilty of any actionable negligence; and, in my view, the action fails.

Had I come to the opposite conclusion, the damages to be awarded would have been a comparatively small sum; as there is no possible liability of the defendant save for the failure to attend the patient between the 22nd December and the 7th January, which resulted in the improper union of the bone. This necessitated the operation in the Kingston Hospital. In Kingston, the child was treated as a free patient, and the items inserted in the bill with respect to hospital charges, Dr. Anglin's bill, and nursing, are fictitious. Dr. Wilson's bill is unpaid; and I am satisfied that it was prepared for the purpose of the litigation.

The whole financial loss to the father would be covered by a small sum, and I would assess his damages at \$50. The infant plaintiff would be entitled to something, because of the pain