

the wooden box splint with cotton batting packed about the limb, and a bandage outside the box, was not good surgery. I find that this position is not sustained by the preponderance of expert evidence. Dr. George A. Bingham says that what the defendant did was good surgery, and that the treatment suggested by the two witnesses of whom I have spoken would be practically "criminal." Mr. I. H. Cameron is equally pointed and incisive in his statement; he says that the box splint is quite good practice, and that the bandage next the skin and the rest of the treatment suggested by plaintiff's witnesses "would be the most undesirable that could be conceived." Dr. Herbert A. Bruce says that the splint box and bandaging adopted were perfectly suitable, and that the angular splint and the bandage next the skin would be very detrimental.

To what, then, if I find, as I am bound to do upon the preponderance of evidence, that the case was properly diagnosed, and that the proper treatment was adopted, is the present unfortunate result to be attributed? If it came down to a question between negligence or malpractice on the part of defendants, on the one hand; and the extreme improbability, even under favourable conditions, of perfect or even approximate restoration, I think the doctor in charge ought to have the benefit of the doubt.

But I am of the opinion that there is abundant evidence to show that the present unfortunate condition of the plaintiff is due to her own conduct.

I may premise by saying that it is clearly proven that it is impossible to say now whether the present dislocation is initial or is a dislocation subsequent to the injury of the 17th May, and the setting or reduction thereof on the same day. It is further to be observed that Mr. Cameron says that the X-rays show that the astragalus is still in its mortise; *i.e.*, in place as regards the tibia and fibula, but that there is a rotation of the joint, and a displacement of the head of the astragalus outwards. I think I understood Dr. Bruce to say that this condition of affairs was evidence that there had been a reduction of the original dislocation. Be this as it may, Dr. Windell swears that having diagnosed and set and reduced the injury with David Archer on the 17th May, he visited the patient on the 19th May and found her condition satisfactory, and again on the 22nd. He paid a visit on the 3d June, alone, and found that the bandages had been disturbed, and he asked her about it and she admitted that she had had the bandages loosened and had a nice sleep. That he then found a partial dislocation of the astragalus and that he replaced it, put the limb back in the splint and repacked it; that he could not tell what was the extent of that dislocation, but that he does not think that there was any dislocation except at the head. He