is not, at the plaintiff's time of life, to be expected. Technically speaking the breaking or carrying away of portions of the periosteum constitutes a fracture, and on the evidence such a fracture cannot be expected to be disclosed after a lapse of two years by the aid of the X-ray. The sciograph is not a photograph; it is a shadow, and at present is not an infallible guide in fractures; to this extent at least, that it will not always disclose the line of fracture; and the possibility is that the bony covering being re-united might not shew at all. Assuming the diagnosis to have been correct, the preponderance of evidence shews that the treatment adopted was in accordance with good surgery. If it came down to a question between negligence or malpractice on the part of the defendants on the one hand, and the extreme improbability, even under favourable conditions, of perfect or even approximate restoration of the patient, the doctors in charge ought to have the benefit of the doubt. But there is abundant evidence to shew that the present unfortunate condition of the plaintiff is due to her own conduct in relaxing the bandages. Action dismissed with costs.

Paterson & Sharpe, Uxbridge, solicitors for plaintiff.

W. H. Harris, Port Perry, solicitor for defendants.

FALCONBRIDGE, C.J. MAY 28TH, 1902.

WEEKLY COURT.

RE COVENANT MUTUAL LIFE ASSOCIATION OF ILLINOIS.

Life Insurance—Insolvent Foreign Company—Deposit—Surplus after Payment of Canadian Claims—Interest on Claims.

Appeal by creditors, certain policyholders, from certificate of Neil McLean, an official referee, in a winding-up proceeding. The company was admittedly insolvent when the winding-up order in Canada was made on 25th May, 1900, but the company went into liquidation in the United States in December, 1899. The deposit (required by the Insurance Act and amendments) is sufficient to cover the appellants' claims, and there remains a balance of $1,900. The certificate disallows interest upon the claims.

C. A. Masten, for appellants. The referee was in the position of a jury and could have allowed interest: McCullough v. Newlove, 27 O. R. 630; Attorney-General v. Ætna Ins. Co., 13 P. R. 459 : and interest is clearly allowable : secs. 113 and 115 Judicature Act. The rule followed by the referee that interest is not recoverable because of insolvency does not apply, because here there is a surplus: Re Hunter Iron Works, L. R. 4 Ch. 643; Woodcock's Case,