

## KEMPFFER VS. CONERTY.

BEFORE THE HON. MR. JUSTICE MACMAHON, AT PERTH, WEDNESDAY THE  
30TH DAY OF APRIL, 1902.

### JUDGMENT.

This case has been very thoroughly discussed, and the points have all been elaborated with great care by counsel on either side with their usual ability. No legal questions are involved, and I have simply to deal with the facts.

The boy, Thomas Kempffer, on the 11th day of September, 1896, being then ten years old, fell from a tree and sustained a fracture of the radius, commonly known as a Colles fracture. The height from which he fell is unknown, and he was unconscious when brought to his father's house. Dr. Bell, who occupies a distinguished position amongst the surgeons of the Dominion, and is connected with the principal hospitals in Montreal, says that in the production of a Colles fracture the force is almost always on the palm of the hand and the ball of the thumb. When the boy was brought home the defendant was called to see him, and after examining the arm returned to his surgery to get the necessary splints to be used after the fracture was reduced. He then returned to the Kempffer house and after washing the boy's hands, he, with the assistance of the two men, Jacobs and Hill, reduced the fracture and then proceeded to put the arm in splints. A question has arisen as to the size of the splints, and it has been urged that I should rely on the evidence of Jacobs and Hill as to their size in preference to the evidence of the attending surgeon. During Mr. Watson's argument I pointed out to him how often the man Jacobs said he did not recollect what took place, and since then I have procured from the stenographer a statement, taken from his evidence as to what he did not know. He said, "Before the doctor came I looked at the hand or wrist I suppose, I did not take much notice to it. Did not notice marks on hand. Did not notice where the material for bandages came from. Did not notice whether the splint differed in width throughout its length. Did not notice whether the doctor had other splints there. Did not notice whether much or little batting was put under splint. Could not tell whether anything was put between the thumb and the hand. Could not tell if springs were put around the bandage. Did not know anything about the boy's color; did not watch to see if it changed. Supposed the boy was unconscious, does not know. Does not know whether the arm was washed before the boy became conscious or not. Did not see where the splints came from. Could not tell where the batting came from. Did not