

TOWN VS. ARCHER AND ARCHER

IN THE HIGH COURT OF JUSTICE. TRIED AT TORONTO NON-JURY SITTINGS

Town v. D. Archer and R. Archer. N. F. PATERSON, K.C., and SHARPE for Plaintiff
AYLESWORTH, K.C., J. H. MOSS and W. H. HARRIS for Defendants.

JUDGMENT DELIVERED BY HON. CHIEF JUSTICE FALCONBRIDGE.

This is an action brought by the plaintiff, who is the wife of a farmer residing in the County of Ontario, against the defendants, who are physicians and surgeons residing and practising in partnership at the Village of Port Perry, in the same county.

In the month of May, 1899, the plaintiff fell and sustained injuries in her left ankle and foot, and the defendants were retained as surgeons, for reward in that behalf, for the purpose of treating the plaintiff for such injuries.

The plaintiff charges that the defendants negligently, improperly and unskilfully treated the plaintiff for such injuries; in consequence whereof the plaintiff has been suffering, and still suffers pain, and her foot has become distorted and twisted so that she has been rendered permanently lame, and her health has become otherwise impaired thereby.

The defendants plead, in their statement of defence, that they are both duly registered members of the College of Physicians and Surgeons of Ontario. That the defendants were not retained to treat the plaintiff, as alleged, but that defendant D. Archer was called in after the accident to the plaintiff, as a surgeon to set the plaintiff's ankle, and with the assistance of another surgeon did set the same in a proper and skilful manner, and that said defendant D. Archer was thereupon discharged by the plaintiff from any further attendance in the case. They also plead that the injury complained of by plaintiff was not caused by any negligence of the defendants, or either of them, but is due solely to the negligent manner in which the plaintiff's injuries were treated by herself subsequently to the treatment of her ankle by the defendant D. Archer. And the defendants further set up as a defence that the plaintiff's ankle was set by defendant D. Archer more than a year before the commencement of this action, and that the plaintiff's claim, if any, is barred by R. S. O., Chap 176, sec. 41.

The case was tried before me on the 18th, 19th, 20th and 21st of February last, and argued on the 27th of the same month. I have deferred judgment until now, not because I had any doubt as to what the disposition of the issues ought to be, but because the importance of the case to the medical profession, and to the community at large, seem to require that I should make a more formal and deliberate deliverance of my opinion than would be conveyed by an off-hand judgment pronounced at the trial.