at the end of the time she was compelled to use a crutch; and now many months after, and after treatment with electricity, etc., is still lame, the foot being very painful at times; she is forced to have a pillow under the back of the heel in bed or she could not sleep. Dr. G. thinks that the pain is caused by the implication of the nerve in the scar tissue and that an operation would be of advantage. Dr. R. once was of that opinion, but after consulting some who he thinks know more than he does and who have a different opinion, can only say: "My own opinion is still that there is a possibility of something being done by an operation.. . . . It is very questionable whether an operation would be beneficial or may be make it worse"; and he gives reasons. Dr. F. has his own opinion "that if this pain was being caused by a nerve fibre caught in the scar, as I supposed it was that if it could be severed, it might stop the pain."

After an examination of the cases, I laid down the rule in Bateman v. Co. of Middlesex (1911), 24 O.L.R., 84, at p. 87, that, "if a patient refuse to submit to an operation which it is reasonable he should submit to, the continuance of the malady or injury which such operation would cure is due to his refusal and not to the original cause. Whether such refusal is reasonable or not is a question to be decided upon all the circumstances of the case." This rule was not questioned by the Divisional Court or the Court of Appeal; 25 O.L.R. 137, 27 O.L.R. 122.

Dr. R., the plaintiff's own physician, who had attended her before and after being in the hospital, cannot do more than say the operation might do good and might do harm. He does not seem to have advised it. In these circumstances it cannot be said that the condition of the patient is due to unreasonable refusal to undergo the operation. Were I permitted to draw on my own experience I could tell of a patient who refused to allow his arm to be amputated—the surgeon advising the operation, but saying he could not be quite certain that it would do good. The patient made an excellent recovery, with the arm almost as useful as before.

Little evidence is given of pecuniary damage. Perhaps most of such damage is that of the plaintiff's husband, who is not a party to this action, and whom we must leave to bring his own action if so advised.

But the pain and disability, past, present and future, call for a substantial assessment of damages; and with every regard for the defendants' position as a most estimable charity, I think the sum of $900 cannot be regarded as excessive.

The appeal should be allowed with costs, and judgment entered for the plaintiff for the sum of $900 and costs.