

MIDDLETON, J.

JUNE 6TH, 1912.

RICKLEY v. STRATTON.

*Medical Practitioner—Malpractice—Negligence—Evidence—
Damages—Costs.*

Action by Benjamin Rickley, an infant of eight years, suing by his father and next friend, and by Elisha Rickley, the father, against a medical practitioner for malpractice in the treatment of the boy's broken leg, the boy claiming \$600 damages and the father \$400 damages.

J. L. Whiting, K.C., and J. E. Madden, for the plaintiffs.
W. S. Herrington, K.C., for the defendant.

MIDDLETON, J.:—The child was injured on the 12th December, 1911. The defendant was called in upon the same day; and, after ascertaining the nature and extent of the injury, proceeded to treat the child in a way that is characterised by the witnesses on both sides as being exceedingly skillful: to use the words of one of the witnesses, it was "a good example of up-to-date surgery." The leg, after being straightened, was duly fastened to splints, a weight was attached and the patient was then left till the morning, when it was intended to set the broken limb. On the morning of the 13th, it was found that the bone was almost exactly in place, and the setting was accomplished without difficulty. The patient was made comfortable and was left to the care of the mother. The defendant called several times and examined the limb, doing all that was necessary; and, up to a date as to which there is some uncertainty—but which I fix as the 22nd December—there is no room for any adverse comment upon his treatment or conduct, and apparently the child was on the high way to recovery. This would be some ten days after the fracture.

I quite accept the defendant's statement as to the course adopted by him in the treatment of the child; and, speaking generally, I much prefer his evidence to the evidence of the parents.

On that day it appears that he had an idea that the bandaging of the leg or the weight attached had been tampered with, probably with the view of easing the pain which the child necessarily suffered, incident to the healing of the broken limb; and he then very fully and carefully warned the mother, in whose