

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 hand, he with the assistance of the two women, 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 hand. Could not tell if strings were put around the bandage. Did not know anything about the boys 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 unconscious or not. Did not see where the splints came from. Could not tell where the batting came from. Did not notice whether a wad of batting was put in the hand. Could not tell whether the batting covered the whole hand before the splint was put on. Thinks the bandage was opened up once, but did not notice whether more batting was put in. Did not notice the width of padding placed in the hand."

It struck me at the time he was giving evidence, that either he was not an observant man, or that he was occupied in the duties assigned to him by the doctor of looking after the chloroforming of the patient;