

occurrence; difficult to diagnose, especially when there is swelling of the parts; and one in which perfect restoration is not, at the plaintiff's time of life, to be expected. I was strongly pressed by counsel in the argument, to find as a fact that David Archer and Dr. Windell did not make a correct diagnosis, or recognize the dislocation of the astragalus at all. Much stress was laid upon the somewhat different accounts given by these two, of the extent and position of the alleged fracture of the fibula. I think that the comments on this subject were somewhat hypercritical; and I fail to see their cogency in this regard. Technically speaking, the breaking or carrying away of portions of the periosteum constitutes a fracture; and I find, on the preponderance of the evidence, that such a fracture cannot be expected to be disclosed after the lapse of two years, by the aid of the X-ray or sciagraph. The sciagraph is not a photograph, it is a shadow, and it is, in the present state of the science, not an infallible guide in fractures, to this extent at least, that it will not always disclose the line of fracture; and the possibility is that the bony covering being reunited might not show at all. I therefore attach much less importance to what is now claimed to be shown by the sciagraph than the plaintiff's counsel wishes me to do. On the whole case, and having regard to the burthen of proof, I find myself unable to determine this point in plaintiff's favor.

The next point in the case is, assuming the diagnosis to have been correct, whether the treatment adopted was in accordance with good surgery. Two medical men were called to say that it was not. Having already been examined as witnesses they were recalled at the very end of the plaintiff's case to criticize the treatment that was adopted. One of them was, apparently, a very respectable country practitioner of eighteen years' standing; the other was the gentlemen who produced the sciagraph and gave evidence based thereon. These two witnesses found fault with the treatment in this respect, that in their opinion, the particular injury in question having been diagnosed a bandage should have been applied with some form of angular splint before putting the leg in a box; and they said that the treatment actually adopted, namely, the wooden box splint with cotton batting packed about the limb, and a bandage outside the box, was not good surgery. I find that this position is not sustained by the preponderance of expert evidence. Dr. George A. Bingham says that what the defendant did was good surgery, and that the treatment suggested by the two witnesses of whom I have spoken would be practically "criminal." Mr. I. H. Cameron is equally pointed and incisive in his statement; he says that the box splint is quite good practice, and that the bandage next the skin and the rest-