In addition to the cases cited above, I refer to Slater *v.* Baker, 1767, 2 Wilson, 359; Carpenter *v.* Blake, 60 Barbour, 488; same case 50 N. Y., 696; Beven, Negligence 2nd Ed., page 1390 *et seq.*; Smith on Negligence, Blackstone Ed., 195, *et seq.*; American and English Encyclo. of Law, 1st Ed., vol. 14, page 75 *et seq.*; Bouvier Law Dictionary, sub. tit. Physician.

Actions of this kind were, as a matter of course, formerly tried, both here and in England, by a jury; and it was the almost inevitable result that juries, perhaps innocently and unconsciously, looked more favorably upon the case presented by the patient than on that presented by the physician or surgeon. To remedy this condition of affairs, and not to leave doctors entirely at the mercy of juries, the courts in this country early became astute to lay down limitations and restrictions on the actions of the twelve; or, rather as to what matters ought to be left to them to deal with. For example, in 1869, the Court of Queen's Bench held in Jackson *v.* Hyde, 28 U. C. R. 294, that in an action against a surgeon for negligent malpractice, where the evidence is as consistent with the absence as with the existence of negligence, the case should not be left to the jury.

In Fields *v.* Rutherford, 1878, 29 C. P. 113, although there was professional evidence that a different course of treatment might preferably have been pursued, but the weight of evidence showed that the course of treatment pursued by the defendant was such as would have been adopted by medical men of competent skill and good standing in the profession, it was held that there was no evidence of negligence to be submitted to the jury, and a non-suit was entered. These cases were followed in McQuay *v.* Eastwood, 1886, 12 O. R. 402. The *ratio decidendi* of these cases was, that a medical man ought not to be placed in peril with a jury where their decision would involve the consideration of difficult questions in the region of scientific inquiry.

The next step in the practice was the suggestion by the courts that this class of cases ought more properly to be tried by a judge without a jury. This was the corollary or natural logical sequence of the cases which I have cited, and was first made in Kempffer *v.* Conerty, 1901, 2 O. L. R., page 658 (note); and the same intimation was given in McNulty *v.* Morris, 1901, 2 O. L. R. 656. In both these cases it was stated in the judgment that this intimation was not intended to fetter the discretion of the trial Judge in this regard. And so it comes about that this case is tried by me without a jury, the parties having practically consented to my so doing.

The injury which the plaintiff sustained, namely, dislocation of the astragalus, is one which is admittedly not of frequent