

were unfair and by other means endeavoured to prevent the plaintiffs carrying on their business.

*Held*, that this combined action on the part of the members of the union with the intention of inflicting damage on the plaintiffs was not justified by any countervailing prospect of pecuniary advantage to the union or the men and was therefore actionable and the members of an International Association of which the local union was a part having indorsed the action of the local members and rendered them financial assistance to carry on the strike were along with such local members liable in damages.

*Held*, also that an injunction should be granted restraining acts in furtherance of the conspiracy to injure except as to picketing, of which there was not sufficient evidence that such practice had been resorted to.

Judgment of MACMAHON, J., after trial with a special jury affirmed with modification.

*Riddell, K.C., and J. G. O'Donoghue*, for appellants. *Tilley and Strachan Johnston*, contra.

Boyd, C.]

HODGINS v. BANTING.

[May 1.

*Medical practitioner—Action against, for malpractice—Trial without jury—Negligence—Evidence—Costs.*

It is now the general rule, as recognized in *Town v. Archer* (1902) 4 O.L.R. 383, that actions against physicians or surgeons for malpractice, where the facts are not so much in dispute as the deductions of skilled witnesses upon the method of treatment disclosed, shall be tried without a jury.

The negligence complained of in this case was in setting and treating a fracture of the plaintiff's leg, the result being a shortened leg and a slightly everted foot.

*Held*, that this result could not be invoked as sufficient evidence of negligence, on the doctrine of *res ipsa loquitur*; and that the defendant's treatment was not to be condemned because somebody else of perhaps equal skill would have pursued another course; and there being no lack of care and attention on the defendant's part, and the evidence not disclosing any piece of negligence or ignorance which could be classed under the head of malpractice, the action was dismissed.

Upon consideration of a number of circumstances, one of them