

03/50 #23 23
STATE OF NEW-YORK.

SUPREME COURT.

JAMES L. VAN INGEN,

against

JOSHUA BENNETT.

J. G. McCHESNEY, *Atty. for Plaintiff.*

WM. A. BEACH, *of Counsel.*

A. HOUGH, *Attorney for Defendant.*

P. POTTER, *of Counsel.*

SCHENECTADY:
WILLIAM F. BOLLES, 81 STATE STREET.

1856.

Fig. 1.

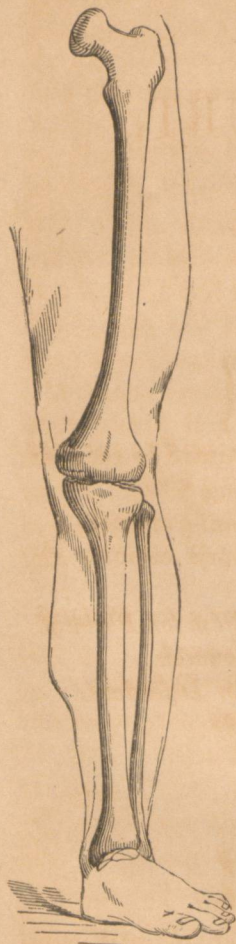


Fig. 2.

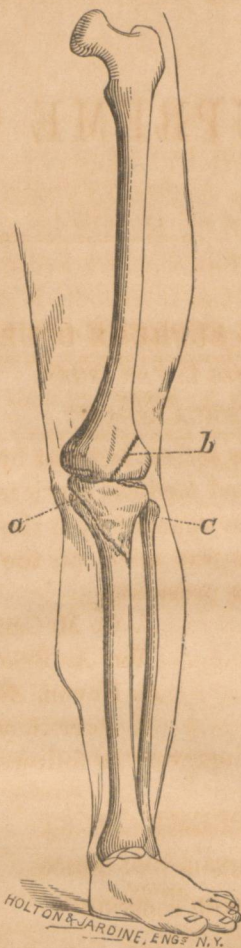


FIG. 1. The bones of the left leg and thigh in their natural state. The kneecap removed.

FIG. 2. The same showing the lines of fracture and the dislocation of the fibula.

- a.* The line of fracture through the head of the tibia.
- b.* The line of fracture through the outer condyle of the femur.
- c.* The fibula dislocated from its attachment to the head of the tibia.

STATE OF NEW YORK.

SUPREME COURT.

IN THE SUPREME COURT.

JAMES L. VAN INGEN,
against
JOSHUA BENNETT.

This was an action brought by the plaintiff to recover for surgical and medical services, claiming \$300.

The defence appears from the defendant's answer.

The action was tried at the last April circuit, Mr. Justice ALLEN presiding.

J. G. MCCHESENEY, *Att'y. for Plaintiff.*

WM. A. BEACH, *of Counsel.*

A. HOUGH, *Attorney for Defendant.*

P. POTTER, *of Counsel.*

The pleadings were as follows:

SUPREME COURT.

JAMES L. VAN INGEN,
against
JOSHUA BENNETT.

James L. Van Ingen, the above named plaintiff, complains of the defendant above named, and states and avers that the said defendant is honestly and justly indebted to him, the said plaintiff, in the sum of three hundred dollars for medical and surgical work, labor and services, medicine, visits, journeys and attendance, rendered, made, done, and performed by the said plaintiff to and for the said defendant, and at his request, from the 26th day of January, 1855, to the 8th day of June, 1855,

inclusive; that the aforesaid services, medicine, visits and attendances, were each and every of them done, rendered, and performed by the said plaintiff in the capacity of a physician and surgeon; that the plaintiff is and was during all the time aforesaid, a practicing physician and surgeon, and was employed by the said defendant in such capacity during all the time aforesaid, to wit: from the 26th day of January, 1855, to the 8th of June, 1855, inclusive, in the county of Schenectady, in and about reducing, setting, and replacing the bones of one of the defendant's legs which had been broken and displaced, and in the subsequent treatment thereof.

And the plaintiff says that the services, &c., aforesaid, were worth the sum of three hundred dollars; wherefore, the plaintiff demands judgment against the said defendant for the sum of three hundred dollars, besides the costs of this action.

JOHN G. McCHESNEY,
Plaintiff's Att'y., Schenectady.

SUPREME COURT.

JAMES L. VAN INGEN,
against
JOSHUA BENNETT.

1st. The defendant for answer to the plaintiff's complaint in this action, admits and alleges that the plaintiff was, as alleged in said complaint, a practicing physician and surgeon, and that he, pretending, claiming, and representing himself to be highly skilled in the art and science of reducing, setting, replacing, and treating fractured and broken limbs, did, at the instance and request of the defendant, undertake to reduce, replace, and set the bones of one of the defendant's legs on or about the 26th January, 1855, which had been fractured or broken on said day, and did undertake and have the sole charge of the medical and surgical treatment thereof from said day until down to the 8th day of June, 1855, or there-

abouts, which are the same services, &c., set forth in said complaint, and none other; but defendant denies that said services, &c., were worth the sum of three hundred dollars, or any other sum, and he also denies that he is indebted to the plaintiff therefor in *that* OR ANY OTHER SUM; and defendant further shows that said plaintiff *did so carelessly, negligently, and unskilfully reduce, set, and replace said broken or fractured bones, that by means thereof* said limb was rendered, and now is, much shorter than it formerly was, or otherwise would have been, and one of the pieces of the bone so fractured by such careless and unskilful setting, &c., was so improperly reduced as to obstruct the free and natural use of the knee joint, by means of which said defendant is now and ever will be deprived of the former free and perfect use of said joint, and defendant further shows that said plaintiff did so negligently and unskilfully apply the splints and other instruments used to reduce and keep in place said fractured limb, and did so negligently and unskilfully bandage the same; and did so negligently and unskilfully treat said broken and fractured limb during all of said period, that by means thereof three several running sores were caused and produced; one upon the ankle, and one upon either side of the knee of said fractured limb, by means whereof, *the ankle joint of defendant's said fractured limb was and is rendered permanently stiff and lame.* By means of all of which negligence and unskilfulness, said defendant suffered much unnecessary pain and anguish, and has been for a long time prevented from fully and properly attending to his ordinary business, and has been rendered permanently lame, and his said limb permanently stiff, and has been compelled to expend large sums of money in the treatment of said sores so negligently, unskilfully, and unnecessarily made, on account of all of which several injuries he has sustained damage in the sum of one thousand dollars.

2d. And for a further defence, said defendant further

shows that said plaintiff, on the 21st January, 1852, at Schenectady, made and delivered to C. S. Groot & Co., an instrument in writing, of which the following is a copy :

SCHENECTADY, January 21, 1852.

"Due C. S. Groot & Co., for goods received from them thirty-two dollars and thirty-five cents.

JAMES L. VAN INGEN."

That afterwards, and on the 7th day of August, 1855, said C. S. Groot & Co., for a valuable consideration, did sell, assign and transfer, the said instrument to said defendant, who is now the owner and holder thereof, which said demand with the interest thereon, said defendant will offset against any demand the plaintiff may establish against him in this action, and claims judgment against said plaintiff for the balance, together with said sum of one thousand dollars, besides the costs of this action.

A. HOUGH, *Defendant's Att'y.*

SUPREME COURT.

JAMES L. VAN INGEN,
against
 JOSHUA BENNETT.

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The plaintiff for reply to the new matter set up in the first part of the defendant's answer in this action, denies that he, the plaintiff, "did so negligently, carelessly and "unskilfully, reduce, set and replace, said broken or fractured bones, that by means thereof said limb was rendered, and now is, much shorter than it formerly was, or "otherwise would have been," as is alleged in said answer.

And the plaintiff also denies that "one of the pieces "of the bone so fractured by such careless and unskilful "setting, &c., was so improperly reduced as to obstruct "the free and natural use of the knee joint, by means of

"which, the defendant is now and ever will be deprived of said joint," as is also alleged in said answer.

And the plaintiff further denies, that he, the said plaintiff, "did so negligently and unskilfully apply the splints and other instruments used to reduce and keep in place said fractured limb," or "did so negligently and unskilfully bandage the same," or "did so negligently and unskilfully treat said broken and fractured" limb "during all or any part of said period," that by means thereof, three several running sores were caused and produced," whether on the ankle or knee, or elsewhere, "by means whereof the said ankle-joint of the said defendant's said fractured limb was and is rendered permanently stiff and lame," as in said answer is alleged.

And the plaintiff further replying, denies that by means of all or any of which negligence and unskilfulness, "said defendant suffered much or any unnecessary pain and anguish," or "has been for a long time," or any time, "prevented from fully and properly attending to his ordinary business," or "has been rendered permanently lame," or "his said limb permanently stiff," or "has been compelled to expend large sums of money," or any money "in the treatment of said sores so negligently and unskilfully and unnecessarily made," as in said answer is alleged.

And the plaintiff denies that the said defendant has, on account of all or any of which said several injuries, in said answer alleged, sustained damages in the sum of one thousand dollars, or any sum whatever.

And the plaintiff further replying, says, that as to whether the defendant is the owner and holder of an instrument of which a copy is set out in the second part of said answer—or when the same was transferred to him—he has not any knowledge or information sufficient to form a belief.

JOHN G. McCHESNEY,
Attorney for Plaintiff.

J. G. McCHESNEY for the plaintiff.

If the court please, this action, gentleman of the jury, is brought by the plaintiff, Dr. Van Ingen, to recover for services rendered as a surgeon and physician, in setting the bones of one of the defendant's legs, and in the subsequent medical and surgical treatment thereof.

Some time in the month of January, 1855, Mr. Bennett was thrown from a load of hay, and falling upon the frozen ground, broke one of his legs at the knee-joint. The injury was not only an unusual one, but also one of rather a serious nature. Any serious injury at the knee-joint is at all times to be regarded with apprehension and solicitude; but where the injury is of so complicated a nature as is claimed this was, the case not only becomes more difficult to treat, but also infinitely more hazardous in its consequences.

I propose simply to give you now a brief outline of the case, and when you shall have heard the whole case through on both sides, you will, I doubt not, be able to deal out between these parties such justice as the case requires.

Mr. Bennett at a distance of about 12 miles from home, was unable to return in the condition in which his fall had left him, he was therefore carried to Dr. Wilson, living near by, who temporarily adjusted the injured limb so as to enable Mr. Bennett to return home.

Dr. Van Ingen was called to see Mr. Bennett the same evening. He found him at his house lying on the floor, in a condition not much to be envied.

A fracture of the tibia entering obliquely into the knee-joint, and a dislocation of the fibula from its attachment at the head of the tibia, will not be controverted by the defence. We say, however, in addition, that the external condyle of the femur was also fractured obliquely into the knee-joint. Whether we or they are right in this position, the proof must determine; though I do not apprehend that the case will turn upon this point.

The Doctor gave the injured limb such care as it required at the time, setting and reducing it in a most skilful and scientific manner, and continued to treat and and take charge of it till about the month of June following.

Under the care and efficient treatment of Doct. Van Ingen the defendant improved as rapidly as could well be expected, so much so, as to be able to ride out in less than eight weeks from the day he received the injury.— But when about well, the defendant, to save expense, undertook to complete the cure himself. How he succeeded the sequel will show.

We shall show you the character of the injury, and the success of the treatment more fully than I can now take time to state. We shall also show the defendant's own opinion of the treatment when about well, and about what value he put upon the surgeon's skill. He expected to pay about \$200. Our bill is some larger, though I believe it to be moderate for the attendance given. The Doctor made in all, about thirty visits, the most of them in the winter, when the roads were bad, and a part of the way very difficult to travel.

It is not only the amount of skill and labor bestowed on the defendant that should constitute the foundation of our claim. There is an other feature of the case, and to the practitioner an important one. It is the risk he runs in effecting a cure. The liability to be prosecuted for *mal-practice*, and such is in fact the nature of this defence. The defendant not only seeks to reduce our bill, but claims in addition, to recover of us only a single thousand dollars besides.

The defendant complains that he cannot walk as well now as before the accident, and his defence here put in by his counsel, seems to proceed upon the absurd theory that ordinary care and skill exercised by the surgeon would *necessarily* have effected a *perfect* cure. In cases like this, a perfect cure is hardly to be expected; that

the cure here was an exceedingly fortunate and happy one, I think the proof will most abundantly show.

The defendant complains that the injured leg is shorter than before, whether this is really so I am not prepared to say; but the injury was one that not unfrequently requires amputation, and had the defendant fallen into the hands of some professional men, his leg would now be much shorter.

Some two years ago, a distinguished member of the Albany bar was thrown from his horse, and received an injury at the knee-joint—not a fracture. He is now and will doubtless ever continue lame.

Any one who has ever examined the knee-joint of an animal, knows how perfectly smooth the surface is, and how delicate the texture that lines it. Nature has not left it simply covered with a texture called the sinovial membrane, but has supplied the joint in addition, with a transparent liquid to obviate the slightest friction.

[Here a diagram and the corresponding bones, were shown and explained, illustrating the character of the fracture in the defendant's case.]

You will see, therefore, when the bones of this joint are fractured, how exceeding careful and skilful must be the operation and treatment to restore the joint to anything like tolerable usefulness.

Now, in the defendant's case, one would not readily detect any lameness, especially when he thinks no one sees him. If his leg had been amputated, he would have paid his bill with cheerfulness; but because he limps a little he seeks to recover of us.

I do not so much blame the defendant for this treatment, for I believe he would have paid his bill had he not been advised by medical men unfriendly to Doct. Van Ingen, to contest it.

The injury was of such a character as to render it almost, if not quite, impossible for any surgeon to effect a perfect cure. The result shows Doct. Van Ingen to have

been more successful than nine out of ten surgeons, as we will leave to any surgeon they may bring here.

It is the policy of the law to reward professional services amply, and to protect professional skill wherever found.

The defence will allege that Mr. Bennett has a stiff ankle; they will, perhaps, bring testimony to show that there were sores on his ankle, or that it is stiff. It can be shown on the other hand that these were unavoidable, and would not have been so bad, but for his trying to doctor himself. He complains that the bandages were too tight; if they had been less tight, his limb, which they allege is shortened, would have been shorter still. You will be able to judge whether the answer of malpractice is set up in good faith.

About the 7th of August last, apprehending that he would be sued for this bill, the defendant was able to find a small due bill which he purchased, and now sets up as an offset, to reduce our recovery. The defendant assumes that he may recover from us, because he cannot walk as well now as before. He forgets that the misfortune happened at the time of the accident. His case from that time has been a fortunate one.

It is perhaps difficult to say how the leg was broken. It was certainly occasioned by great violence. He might have fallen hard enough; or something very heavy, like a large stone or a block of wood, may have fallen upon him. But in whatever way it happened, the misfortune was his, and should not now be made ours.

With your verdict, gentlemen, be it what it may, these parties will, as they must, be satisfied. We are compelled to bring this action to obtain our just demands, withheld from us already too long, and you are to determine from the whole case, what we should receive.

John Prout sworn; I reside in this city, am acquainted with the parties; I went with Doct. Van Ingen last win-

ter, sometime the last of January, to the house of Mr. Bennett; he lives about five miles from the city, a little more than five I think; the Dr. went with his own team; we left the city about half-past four P. M.; we passed a toll gate on the plank road in going there; got to Mr. Bennett's after dark; the night was very stormy; had considerable difficulty in getting there; were obliged to get a man to pilot us part of the way; the road was very hilly, and it was snowing when we got there; Mr. Bennett lay on the floor; he said he had fallen from a load of hay and smashed his leg; that Dr. Wilson had attempted to set it, but told him he better send immediately to Dr. Van Ingen to take charge of it; he said the accident occurred on the western turnpike, near a school house; that the boys running out frightened his horses, and they sheered and ran the wheels into the ditch, overturning the load, and throwing him from it; he was on his way to Albany with the hay; he told the Dr. that somebody carried him to a house, and they fixed his limb so he was able to ride home; he said he didn't recollect much from the time the horses took fright till he got near home.

After this conversation, Dr. Van Ingen prepared the bed so as to get him from the floor. He put boards across the rails of the bedstead, and a straw tick on them, and then laid him on the bed; he then took his pants off, and removed the bandage that was around the leg, and laid the limb open, and proceeded to examine it; it was bandaged up over the cap of the knee and down half-way to the ankle, perhaps a little lower; think there was a piece of board on the outside of the leg bandaged to it; it was about 18 inches long, and came up above the knee.

After the Dr. had removed the bandages, he moved the leg sideways, swinging it out and in; it moved both ways; the leg was a good deal swollen, perhaps to near twice its ordinary size; the Dr. said the leg was broken under here (witness placing his hand just above the knee-joint, on the outside,) and asked us to take hold and see, and we did so; I could hear the bones grate as he called our attention to it; the Dr. placed his hand about where the black line is drawn in the diagram; he then pointed out the projection of the bone just below the knee, which rose or was projected as the leg was lowered and settled down when the leg was raised to a level; the projecting bone pressed the skin upwards; the

Dr. directed me to hold the leg up and not let it fall, as he feared the bone would break through the skin; the fracture below the knee was, I think, on the other, or the inside of the leg; the black line represents the position of the fracture as it seemed; I felt of the lower fracture; the Dr. told me to put my finger on the bone and press down; I did so, and felt the line of the fracture; I also felt of the other; the Dr. requested us to put our hands on and feel the bones grate; we did so, and could plainly feel them; others, besides myself, felt of them.

[The witness was shown a small drawing (similar to the accompanying diagram as to the line of fracture,) made at the time, by Dr. Van Ingen, and identified the paper by means of its appearance, and a peculiar tear in it, and said he saw the Dr. draw the representation on the paper.]

The diagram marks the line of the fractures as I felt them; the Dr. measured for the length of the splinters, and then went to work and set the leg; he reduced the upper fracture first, and we kept a pressure on that to keep it in place, while he set the lower fracture; I kept my hand on to hold the upper fracture while he set the lower; the Dr. put a splint on the outside of the leg, extending from the heel to above the knee, and a shorter one on the inside; bandages were then placed about the splints; these bandages were moistened.

The Dr. had a piece of board nailed across the foot posts of the bed, and after placing a cushion against it, bound the foot to the board so as to keep it elevated, and directed the patient to remain in this position, and not move his leg till he saw him again; he left a liquid with directions as to applying it; told them to keep the bandages wet constantly with the liquid.

Witness recapitulated the manner of preparing the bed, adding, that five or six pillows were placed under him to raise his head and back so he could rest easily; two or three bricks were placed under the foot posts of the bed to raise it; a piece of board was nailed to the foot posts, and the foot bound to it so as to prevent it from moving sideways; the space under the leg was filled up so that it rested on an inclined plane; the board was about three inches wide; bandages were placed about the leg before the splints were put on, then others were wrapped about them; the defendant made no com-

plaint of the bandages or splints hurting him; the Dr. left some medicine in vials for the patient to take to quiet his nerves.

Cross-examined.—Mr. Rynex, gate-keeper, was present; he piloted the Dr. and myself there; another man named Houghtailing, living at the foot of the hill, went up with us; Mr. Bennett's brother-in-law was also present; when we got there, there were no men in the house that I saw. [Repeated the particulars about the bed.] The bedstead stood in the room where he lay; the posts run up pretty well; run not as high as I have seen; he was laid on the bed upon his back before the examination of the limb was made; when directed by the Dr. I placed my hand on his leg on the outside, the fingers passing under the knee, and the thumb against the side of the knee-joint; when the leg was moved, I could feel and hear the bones grate; could detect the locality of the fracture best by my thumb; could not feel it with my fingers as much as with my thumb; when the leg was moved I could feel the bones just above the joint move; I used my right hand; placed it on the outside of the leg; my thumb was against the side of the leg under the cap, and the fingers under the knee; myself, with the others present, assisted when we were needed, in attending to the limb; some two hours were spent in this work; I did not hold my hand on the limb as explained, more than once; think it was with the right hand that I felt it; I stepped back after feeling of it, to allow others to do so; I stood near when the Dr. set the leg; all were helping more or less; he set the upper fracture first, then, while the leg was held, proceeded to reduce the other; he placed a bandage around the leg and held it tight, while the lower one was set, when he continued the same bandage lower down on the leg; did not say that I held the leg while the lower fracture was being set; did not smoke a pipe or cigar while the operation was going on; am sure of this, as I never smoke; do not recollect of Dr. Van Ingen's mentioning that any bones were out of joint; I felt the bones broken; two and perhaps three bricks were under the foot posts; the cross piece was nailed about a foot above the rail of the bedstead; think the space was six inches from the bottom of the cross piece to the top of the tick; I went to Mr. Bennett's because invited by Dr. Van Ingen to do so; I was lame, had broken my ankle some

time before, and he advised me to go out for the exercise ; I recollect distinctly the drawing made by the Dr., and the one shown me is the same, as near as I can tell, or an exact copy on just such a piece of paper.

John Swinburn, M. D., sworn, deposes ; I am a practicing physician and surgeon ; have been in practice about twelve years ; I am located at Albany ; I know the plaintiff, Dr. Van Ingen ; first met him some three or four years ago ; heard the description of the first witness of the defendant's broken limb ; I have examined the limb of the defendant within an hour past ; have noticed the diagram.

In my examination of the limb, I could not positively detect that there had been a fracture of the condyle of the femur ; found that the femur was thickened through the condyles, which is an indication of a previous fracture or excessive inflammation ; some cause of this kind must have occasioned the thickening perceptible ; if the union of the fractured parts was accurate, it would be impossible to determine accurately by an examination at this time, as to a fracture occurring so long since ; the indications of it would be slight, if there were any at all ; the present condition of the femur is rather indicative of a fracture, and a perfect union of the parts ; I discover below the knee indications of a fracture of the tibia on the inside ; the fracture I should judge to have been about in the direction indicated in the drawing ; it was an oblique fracture.

If the fracture extended into the joint, there would have been no perceptible shortening of the limb, on account of the support afforded by the unbroken portion of the limb—the continuation of the same structure ; if one condyle is broken, it will not shorten the limb, the other condyle being sufficient to hold the limb in place, and keep it from becoming shorter ; the common effect of an oblique fracture, when it does not extend to the joint, is the shortening of the limb ; this result is almost invariable, so far as my experience goes, when the fracture is of the tibia and fibula both ; if the fibula remains entire, it would prevent shortening ; this fracture apparently extended up between the fibula and the joint, perhaps involving the joint ; in such cases the continuity of the fibula would not be likely to prevent shortening ; a fracture of the tibia and of the condyle, is very unusual ;

a fracture of the condyle could be determined with a good degree of certainty at the the time by feeling, if the limb was not too much swollen; the *crepitation* or grating, as described by the first witness, is a positive indication of a fracture; it is the only indication, except the fracture be felt; in the natural condition of the limb, the joint cannot be moved laterally but little; the movement in that direction indicates a fracture, either that of the tibia or of the condyle of the femur; if the latter, a freer motion could be obtained.

When the upper part of the tibia rises with the depressing of the limb, so as to press against the skin it indicates an oblique fracture; the rising is evidence of a fracture below the attachment of the *patella*; I felt with care upon the defendant's limb, for the presence of indications of the oblique fracture below the knee; I should think the fracture to have been rather more oblique than is indicated in the diagram; I should regard the union of the parts in this case, a good one for the class of injury; shortening of the limb may be caused by absorption of the head of the bone, or absorption of the costilage which covers the head of the bone; these are the only causes of shortening, except the overlapping of the broken parts; this overlapping is produced by the power of the muscles drawing upon the broken limb.

I made an examination and measurement of the limbs of the patient, to ascertain if there was any shortening; I find if there is any shortening at all, it is very slight; with such an oblique fracture as this below the knee alone, avoidance of shortening the limb is very difficult; this slight shortening, if any, which I discover, with such a fracture, is strongly indicative of good treatment; the presence of the additional fracture of the condyle, as testified by the first witness, renders the case much more complicated and difficult.

In the course of my practice I never met with a case of double fracture like this; the treatment of broken limbs is very often accompanied by excoriations or open sores, depending very much upon the constitution and habits of the patient, and also depending somewhat upon the amount of force necessary to preserve the retension and position of the limb; these sores result either from excoriation or sloughing; the sloughing off of parts of a broken limb occasionally follows; the presence of sores is not a necessary indication of improper or unskilful

treatment; the sloughing may be produced by the bandaging and suspending circulation; or there may be a blistering, which finally, if the constitution is bad, results in sores; blisters are very common, particularly when the pressure comes on a projecting point of bone; these sores are very frequent with patients of bad habits.

The limb of the defendant can be flexed to a right angle with comparative ease; the lower fracture, of itself, with the inflammation following, would necessarily affect the flexibility of the knee-joint; in the course of time, with the use of the limb, this difficulty would diminish.

I examined the ankle-joint of the defendant, and found it had not its full flexibility, but it is still amply sufficient for perfect locomotion; there are no sores upon defendant's limb at this time; I have observed the defendant walking in the street; the freedom of motion of the limb was such that I should not have known that he was lame, had he not been pointed out to me as a man who complained of lameness; I was observing him by request, for the purpose of detecting, if possible, the presence of lameness; I saw him yesterday in the street below here, and I noticed there was little or no limp in his walk; this morning I see he is quite lame; if there was a natural cause for the lameness of to-day, which dates back of yesterday, he could not have walked so freely as I saw him yesterday.

I heard the description given by the witness of the nature of the injury to defendant's limb, and of the treatment made use of by Dr. Van Ingen; I consider that treatment scientific and skilful; it was judicious and proper to have the side splints extended below the ankle-joint: that is the practice recommended and followed; it is considered good practice.

Question.—Assuming that this limb, broken as described, had proper attention from the time of setting on the 26th of January, to the 8th of June, the patient living some five or six miles away, what would be a reasonable fee?

Objected to by defendant's counsel.

Judge.—There may not yet be sufficient evidence as to the amount of services rendered to base this opinion upon.

Plaintiff's Counsel, Mr. BEACH.—The answer of the defendant admits full attendance.

Mr. POTTER objected that there was not sufficient proof

as to the care and treatment subsequent to the setting of the limb.

Question was waived for the present.

Examination continued.—From my examination of the limb of the defendant, I should consider the treatment of the case skilful and successful.

Cross-examined.—The existence of a fracture of the head of the *tibia* is plainly perceptible from the indications upon the edge of the bone; under proper treatment, it might require several years to obtain free use of the limb; it would not, in an ordinary case, be less than three months before the patient could move around on crutches.

In simple fractures patients are not allowed to get up within less than from eight to fourteen weeks from the time of the injury; if the bandaging of a limb is too tight, the whole limb swells and becomes blistered; if the bandages were too tight they should of course be loosened; the fact that they were too tight could not be determined by the complaints of the patient, but by the appearance of the limb below the bandaging; sores may be produced by permitting the splints to press against the limb or bones without cushions between them; even by laying the heel on the pillow *sloughs* are produced; when there was evidence of such sores, skilful treatment would require that the pressure should be removed and placed upon some other point.

My practice has been somewhat extensive in the treatment of fractures; my experience has been as great as that of most young men of my age; it is perhaps more becoming for others to speak of this, rather than myself.

I never met with a case of a fracture of the condyle; I should not regard it as more difficult to treat than that of the bone below the knee; its results might be worse, but the difficulty in treating it would be less.

The fracture of the condyle might not affect the joint at all, and it might produce great stiffening of the joint; my experience with that class of fractures, is not sufficient to enable me to judge how inevitable the stiffness would be; a fracture of the *tibia*, just below the knee, would not of itself affect the ankle-joint at all; sores about the joint, as indicated by the scars, would not affect the joint; the scars seen on the leg, are on the shaft of the *tibia*, above the ankle-joint; in that location they would not be likely to affect the joint; ulcerations upon

the joint would of course tend greatly to stiffen it ; sores may be produced by too tight bandages, by the pressure upon the splints ; they may occur, no matter how skilful the treatment.

Ques.—What would be your opinion of the skill manifested in elevating the foot of the patient for the space of two months, 18 inches or two feet above the head ?

Ans.—It is the common practice of surgeons to place patients in that position, and to keep them there as long as may be necessary.

Ques.—What effect would such a position have upon the circulation of the blood to the head ?

Ans.—It would keep the blood from circulating too freely in the limb ; the principle in the treatment is so far as possible to prevent the settling of blood in the limb.

Ques.—How soon would it be proper to remove the bandages ?

Ans.—In such cases, bandages are sometimes not removed for a fortnight ; it depends very much upon circumstances ; if there were indications of swelling and no circulation below, it would be necessary to examine it at once, perhaps within 24 hours.

Ques.—What degree of swelling would prevent the ability to detect a fracture of the condyle ?

Ans.—If swollen to its fullest extent, so that the skin was full, it could not be detected ; it is impossible to tell just what degree of swelling would prevent it ; I should think in a swelling of twice the size of the limb, it would be hard to determine the fracture ; it would require skill.

Direct examination resumed.

Ques.—If an ordinary man should feel the leg, even if swollen to double the natural size, and could discover the grating of the bone, could he determine as to the existence of a fracture ?

Ans.—Yes. If he felt the *crepitation*.

Ques.—Do you say the flesh from a limb will slough off from the mere pressure in resting on a pillow ?

Ans.—Yes. Sores have frequently occurred by a pressure so slight that it had escaped the detection of the surgeon ; I have had that happen to myself in several instances.

Ques.—Unless there are indications of inflammation, how long is it well to keep the bandages on ?

Ans.—Till the limb is healed. If there were no indications of inflammation, and the bones appeared to be in place, the only necessity for the removal of the bandages, would be to cleanse and wash the limb. With a *scultetus* or short bandages, a limb can be examined with less trouble than when there is a long, continuous bandage.

Ques.—Would sores be more likely to appear if the patient is irregular?

Ans.—Yes. The union of the bone, too, might be delayed for weeks by the habits of the body. Drinking would undoubtedly have that effect.

Prof. JAMES McNAUGHTON, sworn.

Ques.—What is your profession?

Ans.—I am a physician and surgeon.

Ques.—How long have you practiced it?

Ans.—Nearly forty years.

Ques.—Have you been professor of surgery or materia medica in a medical college?

Ans.—I gave one course of lectures at Fairfield some years since, and have lectured on anatomy some nineteen years.

Ques.—Have you to-day examined the limb of the defendant.

Ans.—I have.

Ques.—In what condition did you find it?

Ans.—I found the knee-joint in a very good condition, for one having sustained such an injury, as I hear this was; I find a projection on the shin bone, in an oblique direction, making it probable that there has been a fracture at that point; the line runs upward and backward.

Ques.—How did you find the ankle-joint?

Ans.—The ankle-joint appeared to be all right.

Ques.—How is it as to the comparative length of the limbs?

Ans.—Very little difference.

Ques.—Were you able to detect that there had been a fracture of the outer condyle of the femur?

Ans.—I could not, from present appearances.

Ques.—Do the appearances indicate, that if there has been a fracture at that point, that it has been happily and skilfully united.

Ans.—Exceedingly so.

Ques.—What is the common effect of an oblique frac-

ture like this below the knee, upon the length of the limb?

Ans.—Unless the parts are perfectly joined, it would result in shortening; the shortening of the limb is the almost universal result; but rarely can a perfect union be obtained.

In this case there is no shortening likely to produce any difficulty in the use of the limb; I do not feel, by any means, sure that there is any shortening at all.

AFTERNOON.—Direct examination of Prof. McNAUGHTON resumed.

Ques.—Are sores and sloughing very common in cases of this character?

Ans.—Superficial sores are so, where the parts become heated from the dressing.

Ques.—Does not sloughing take place frequently?

Ans.—It is not uncommon to have it take place in consequence of the bandaging; the pressure of the splints and bandages may be sufficient to occasion it.

Ques.—Are these sores likely to be aggravated by the habits of the patient?

Ans.—Certainly. The same pressure would produce no effect with one patient, while with another, mortification would result.

Ques.—Did you notice a scar near the ankle-joint of the defendant's leg?

Ans.—I did.

Ques.—Could it have affected the ankle-joint?

Ans.—It could not have in any way affected the ankle-joint. A similar scar is seen on the inside of the knee, but the sore was of the same character, evidently not deeper than the skin.

Ques.—Please state whether from what you have heard, you deem the treatment of the limb skilful and fortunate?

Ans.—Judging from the result, if the injuries of the knee were as stated, I think the defendant exceedingly fortunate in getting off so well.

Ques.—Suppose there to have been but one fracture, that of the tibia, what has been the character of the treatment?

Ans.—Very good. He has done as well as could be expected, and is still more fortunate if both injuries were received. He is very fortunate to have recovered any thing like so free use of the joint as he has in so short a time, if both bones were fractured.

Ques.—Did you have a fracture of the tibia some 25 years ago?

Ans.—I did.

Ques.—What was the character of the fracture?

Ans.—It was from the left side, extending into the joint, and a portion of the bone penetrated the flesh.

Defendant's counsel objected to the opinion in a specific case. The court ruled the experience of the doctor in single cases, admissible; experience is gained from single cases.

Ques.—Are fractures of one of the condyles of the femur common?

Ans.—They are not.

Ques.—Have there been instances of such a character?

Ans.—Certainly. There are instances on record.

Cross-examination.

Ques.—Can you imagine any blow that could effect both fractures as represented to have occurred in this case?

Ans.—It is difficult to tell just what kind of a blow would produce a given result.

Ques.—Is it probable any blow doing one, would effect the other fracture?

Ans.—A blow that would fracture the bone below the knee, as represented in the plate, would be just the kind of blow that would be likely to break the external condyle.

Ques.—Did you ever see such a case?

Ans.—I don't know that I have ever had fractures of the condyle; but I have had fractures above the knee-joint when I could not determine what bone was broken.

Ques.—In having hold of the limb, could it be ascertained whether the *crepitus* was in the upper or lower bone?

Ans.—By keeping the lower one still it could be ascertained.

Ques.—Could an unskilful man, by holding his hand as described by the first witness, determine upon the moving of the leg whether the condyle was fractured or not?

Ans.—He might not be able to do so; it is difficult to determine what an unskilled man could do.

Ques.—Could you, from the examination you gave the limb, determine that a fracture of the condyle had taken place?

Ans.—Not conclusively.

Ques.—Are sores common in such cases?

Ans.—Blistering is common, and troublesome sores frequently occur under the best treatment; it is not always possible to prevent ulcerating sores; difficult to heal, however careful the treatment; we always guard against them as much as possible.

Ques.—Is the obliquity in this fracture sufficient to cause probable shortening?

Not great; and I am not sure that there is shortening at all; the injury is so near the joint that it is apt to create inflammation there, and is troublesome on that account.

Ques.—Are such fractures of the tibia of rare or frequent occurrence?

Ans.—They are comparatively rare and uncommon; Fractures usually occur lower down.

Ques.—Are single fractures like that in the drawing of the tibia, rare?

Ans.—It is unusual to have an oblique fracture of the bone so near the knee-joint; it is not so rare to have both bones below the knee broken; it is more easy to attend to a single fracture, than when both bones of the leg are broken at the same obliquity; when there is a single fracture, the other bone aids in keeping the limb in its place.

Ques.—How long does it ordinarily take to unite a single fracture so as to allow the limb to be used?

Ans.—If he could put it under him in less than three months, he would be very fortunate; in my own case, with no worse a fracture than is here represented, it was four months before I could put my foot to the ground at all, and seven months before I could walk without crutches.

Ques.—What do you think of elevating the foot above the head?

Ans.—The limb should be raised and placed in an easy position.

Ques.—What would you think of an elevation of 18 inches?

Ans.—I should not like it myself, unless the head was raised also.

Ques.—Could a man remain in health with his feet 18 inches higher than his head?

Ans.—That would not matter much if his head and trunk were comfortable.

Ques.—Is there any degree of pain that a patient may experience sufficient to determine that bandages are too tight?

Ans.—We cannot determine from the complaint of the patient; some complain a great deal with little pain others very little with much pain; it is possible for one, to experience such uneasiness as to require the bandages to be loosened; the practitioner is expected to see to the bandages; the patient can not tell how they should be.

William N. Duane, M. D., sworn; I am a physician and surgeon; have practiced since 1831, in this city and New-York; should think a fracture of the tibia as reported in this case, uncommon; the close vicinity of the injury to the knee-joint increases the danger and difficulty of the case; I should hope to get a patient with good constitution out with crutches, in about ninety days; such a fracture would be likely to interfere with the motion of the knee-joint.

Ques.—How should you regard the success which in such a fracture, at the end of the year, or a little more, presents a knee-joint playing easily as far as a right angle?

Ans.—I should think the success very great for the one having charge of it; think a fracture of the outer condyle of the femur in connection with the other, would very much increase the hazard and difficulty of the case.

Ques.—Suppose two such fractures to have occurred in January, 1855, if the patient was now able to move the knee-joint to a right angle with the femur, and the ankle-joint at full play, would you consider the case a very extraordinary one?

Ans.—I should.

Ques.—Cases of conjoint injuries of that character are very rare; are they not?

Ans.—I believe so.

Ques.—Am I correct, that but three or four are on record?

Ans.—I do not know as the actual number is quite as low as that, but they are very rare; I never have seen one myself.

Ques.—Are sores common in cases of broken limbs on the bandaged parts?

Ans.—They are.

Ques.—Upon parts where the bone has no covering but the skin, is it uniformly possible to avoid them?

Ans.—If the bandage was put on sufficiently tight, I hardly think it could be avoided.

Albert Ward sworn; I reside in this city; am acquainted with the parties; had a conversation with Mr. Bennett last summer which occurred in this way; Dr. Van Ingen called at my shop in May or June, and requested me to tell Bennett when he came in that he wanted to see him at his office to take a look at his leg; in a few days Bennett came in, and I told him; he replied that he would take care of his own leg, he wanted nothing more to do with Dr. Van Ingen; he might make out his bill, and if it was reasonable he would pay it, if not, he wouldn't; this is all of consequence that passed between us; I told the Dr. of this conversation.

Frederick Webb sworn; live in the first ward of this city; am acquainted with the parties; Bennett and I had a talk last summer about his leg; I was lame at the time, and he came up with a crutch and cane, and a rubber on his foot, and I asked him what was the matter, and he told me; I asked who was doctoring it, he said Dr. Van Ingen, and wanted to know of me what kind of a man the Dr. was; I told him a pretty good kind of a man, full of his capers, laughing and carrying on; he then told me that the Dr. got angry, and when the liquid he left was out, he put whiskey on his leg; Dr. told him if he didn't follow his directions he wouldn't have any more to do with him, and picked up his things and left; he said as the Dr. was going out he told his wife to stop him, and she did so; he then told him to keep on, and take care of his leg; Bennett wanted to know how Dr. Van Ingen charged; I told him he never used to be hard; he said some of his neighbors and the physicians told him all the Dr. wanted was to get his farm; he wanted to know what I thought he would charge him; I told him \$150 or \$200; he said if he got off with that he should think himself well off.

Cross-examined.—Did you tell the defendant that the plaintiff, Dr. Van Ingen, was a man he must keep the

right side of, or he would be likely to have trouble with him.

Ans.—Presume I might have said some such thing; have been acquainted with the Dr. 10 or 12 years; have been intimate with him; I mentioned this conversation to him.

Ques.—Did he tell you to remember it?

Ans.—No.

Ques.—Has the Dr. practiced in your family since?

Ans.—He did a little last evening.

Ques.—Is he in the habit of practicing at your house in the evening?

Ans.—Not unless he is called for.

In the absence of a witness by whom the number of visits was to be proved, the defence admitted that the plaintiff made 30 visits.

Dr. McNAUGHTON recalled.

Ques.—What would be a fair compensation for the sole attendance upon such a case as described, from the 26th of January to the 8th of June, in which time 30 visits were made at a distance of five miles or a little more, and regarding the character of the case?

Ans.—It would depend somewhat upon the state of the roads, the time occupied in going, and the delay it consequently was to business. In my own case, with as good roads as we have out of Albany, the early visits made in the winter should be not less than \$10 each; subsequent ones, perhaps, at an average of \$7 to \$10; of course the weight of responsibility, and the continuance of the case, would affect the charge.

Ques.—Suppose it to be a double fracture, uncommon as this, and like this, resulting happily, and the defendant a man of ample means, what would you charge for the whole case?

Ans.—I would not take charge of such a case myself, with the hazard, at that distance, on any account, as the patients in such cases expect as good joints as in slighter fractures, and it is hard to give satisfaction.

Ques.—Taking into account the character of the injury, and the peculiarly fortunate results, what would be a fair charge?

Ans.—I should think \$200 not more than a fair compensation, and \$300 not a liberal one; my own charge

would be, as I understand the case, between these points; I would not be willing to assume such a case, unless it was in one of my regular families; a straggling case I would not take for any compensaion.

Ques.—Suppose the fibula to be dislocated and remain so for hours, would not this reduce the strength of the support it would render the tibia, of which you spoke?

Ans.—Not materially, unless it remained out of place some time.

Cross-examined.—Ques.—Have you any acquaintance with prices in this city?

Ans.—I have not; I only state what I should be likely to charge at Albany under similar circumstances.

Ques.—Do you not know that your position enables you to command higher prices than others?

Ans.—I generally get what I charge, but do not know as my prices are higher than those of others.

Ques.—Would not the price be less to a man riding out of the city daily to make calls.

Ans.—Probably so. I would not charge as much as when a special visit is made,

Dr. Swinburn re-called by plaintiff.

Ques.—What, in your opinion, would be a fair charge for the attendance in this case, under all the circumstances?

Ans.—In the first place, I would not take such a case and run my own risk; without that risk, I am in the habit of charging from \$5 to \$10 per visit, according to the season of the year and the condition of the roads, for a distance of five miles out of the city. Taking the risk just as the plaintiff did, I would not do it for \$500, for any man.

Cross-examined.—I would agree to take the risk for \$500, but I would not agree to make as good a limb as before, for any money.

Here the plaintiff rested.

OPENING OF MR. POTTER FOR THE DEFENCE.

We are complained of for defending this action, and we are compelled to put in a defence rather than pay three hundred dollars. My client thinks he had better

ask a jury of twelve men if it is a reasonable price before he pays it. If you so decide, my client has enough of his farm unencumbered to pay the amount, and you will, at the same time, have established the price you are to pay when a physician calls to attend upon your wife or your children.

We deem it improper for us to pay this, for reasons which we shall present.

We are not going to show that Dr. Van Ingen on the occasion of setting the broken limb, did not do it with ordinary skill, but we deny that there was more than one fracture, and that the lower one. We are not willing that the plaintiff should manufacture another broken bone to make it an extraordinary case. We shall show cause of complaint of the treatment of the defendant by the Dr. It may be that this treatment is the result of his peculiar temperament. He is short, arbitrary, opinionated, and as my client thinks, is unfeeling. It is this harsh, unfeeling treatment, that kept the defendant in a condition giving cause for complaint.

It has already appeared from the testimony of the plaintiff, that the Dr. gave him notice that he should call no more, but as the defendant was on his back, with no one to do for him but his wife, he was induced to ask his wife to cool the Dr. down and recall him.

The fact of the tight bandages and the elevation of the feet, (lying on his back with his feet higher than his head, the blood being forced to his head,) produced consequences most disastrous.

The Dr. left him, too, with bad ulcers on his leg, for the treatment of which, Dr. Vedder was called. This, also, enraged Dr. Van Ingen, and he brought suit for the recovery of \$300, and we have defended it, and shall leave it for the jury to say what it is right to pay. We do not deny the attendance, and you will doubtless fix the compensation at a sum corresponding with the charges of other physicians and surgeons.

TESTIMONY FOR DEFENCE.

Dr. Alexander M. Vedder sworn; I am acquainted with Mr. Bennett; he called at my office less than a year ago for me to attend to some sores upon his leg; he had had a broken limb; I only saw the ankle; it was swollen; there was a sore on the inside of the tibia 1 1-2 or 2 inches above the joint; it was an ulcer extending down to the bone; there were no splints on his leg at that time; he walked with a cane; did not use crutches; think there was but one ulcer; it was as large as a cent at the top, and smaller at the bottom; there were no appearances that indicated from what it arose; I could not have told the origin of it; I treated it for a long time; used to see it once a week, or once in two weeks, and sometimes less often; I am a practicing physician and surgeon in this county; have been such since 1839; I practice in the county within a few miles of the city; think Dr. Van Ingen did also.

Ques.—What is a reasonable or fair price for such a physician as Dr. Van Ingen, to treat such a case as this, 5 miles distant, to give it the proper attention, paying 30 visits?

Ans.—I could answer better as to what I should myself charge; I should charge \$10 for the first visit, taking into account the trouble of getting there, and the time spent in setting the limb; the fair charge for ordinary sickness would be \$2 a visit; I should for such a case as this, add at least a dollar, making it three dollars a visit after the first.

Cross-examined.—First met the defendant when he called to see me regarding the ulcer; the covering of the bone at the point where the ulcer was, is very thin in a healthy state; the cellular tissue lies next below the skin, and then the covering of the bone, the periosteum; this cellular tissue does not exceed a quarter of an inch in thickness; this would, however, depend upon the condition of the patient, whether fat or emaciated; the periosteum is about twice or three times the thickness of writing paper; the limb was swollen at the time at this point; motion would not harm the ulcer.

Ques.—It had no influence upon the joint, then, of course, either directly or by sympathy, if motion would not harm the ulcer? Not answered.

Ques.—Did the ulcer affect the ankle-joint?

Ans.—It did; it produced a swelling of the joint.

Ques.—Was there a limitation of the motion of the ankle-joint, by the swelling and inflammation?

Ans.—There was.

Ques.—Do you think motion was under such circumstances injurious to the limb?

Ans.—No.

Ques.—Do you advise walking about in cases of inflamed joints?

Ans.—No. That is *loco-motion*; I spoke of motion; a moderate degree of motion would not be injurious.

Ques.—In the condition of that limb, what would you consider a moderate degree of motion?

Ans.—It might be injurious to walk as much as 3 or 4 hours a day; a little exercise would be good.

Ques.—How would such an ulcer affect the joint?

Ans.—It would cause inflammation, and that would be communicated to the ligaments and tendons.

Ques.—How long did you treat this ulcer?

Ans.—He was under my treatment four, five or six months; the swelling began to diminish soon, and went down very gradually; cannot tell exactly how long it was before it was reduced; should think it was three months; it was quite a slow case.

Ques.—Do you not think with the patient at rest, you could have effected a speedier cure?

Ans.—I think, to be *perfectly* at rest, would be injurious to the ankle-joint.

Ques.—Answer me; whether with the patient at rest, and the limb at rest, you could have effected a speedier cure?

After waiting a long while, and the witness not answering.

Plaintiff's Counsel.—Well, if the question is so very embarrassing Dr., we will not waste all the afternoon in waiting for an answer.

Ques.—Would the condition of the patients constitution affect the rapidity of the cure.

Ans.—It would.

Ques.—The ulcer was in a favorable locality, was it?

Ans.—Yes.

Ques.—Then how can you account for the inveteracy of the ulcer?

Ans.—One reason was, the loss of substance that had taken place in the ulcer.

Ques.—Do you mean the substance eaten out of the cavity?

Ans.—Yes, it required time to fill it up.

Ques.—In what way did the loss of substance so affect the case? It did not reduce the patient?

Ans.—No. But it required time to fill up the hole with new flesh.

Ques.—How long did it continue to discharge after he applied to you?

Ans.—Should think it was three or four months.

Ques.—During this period, was new flesh growing?

Ans.—Part of the time new and healthy flesh was growing, and part of the time unhealthy granulations were forming.

Ques.—Did not the inveteracy of the case indicate a bad condition of the blood or constitution of the patient?

Ans.—I never thought of it in that light.

Ques.—You say this ulcer was in a favorable spot, and was a very slow, inveterate case, and that the length of time necessary to heal such a sore depends on the constitution. Can you tell any cause except this?

Ans.—One was the inflammation of the cellular tissues, and it may be the patient exercised too much.

Ques.—Is not this inflammation of the cellular tissues an indication of a bad condition of the system? Not answered.

Ques.—If there was no bad usage of the limb, and the locality was favorable, can you account for its inveteracy in any other way than on account of the bad condition of the system?

Ans.—That may account for it.

Ques.—Can you think of any other cause?

Ans.—I do not.

Ques.—Did any other occur to you?

Ans.—None.

Ques.—Do you remember to have found any salve about the sore?

Ans.—I do not.

Ques.—Do you remember ever to have seen any bandage about it?

Ans.—I think there was something wound about it.

Ques.—Will you swear that there was any bandage or dressing about the sore at any time?

Ans.—I suppose so; there ought to have been something around it; and I think there was.

Ques.—Does such a sore require cleanliness ?

Ans.—Yes.

Ques.—What did he wear on his foot ?

Ans.—Think he wore a woollen sock and an India rubber shoe on his foot.

Ques.—Did you consider that proper clothing for a sore foot in summer ?

Ans.—Provided the sore was protected properly, it was good dressing.

Ques.—What did you apply to the sore ?

Ans.—I had washes, salve and lint, applied to it ; think I also applied blue stone.

Ques.—Did you intend to say that Dr. Van Ingen was accustomed to practice in the country daily.

Ans.—I frequently met him going into the country.

Ques.—Do you know upon what business ?

Ans.—I knew he went on professional business.

Ques.—How did you know it ?

Ans.—I knew when a man was sick, and he was tending him, that when I met him going in the direction of that person's residence, that he was going there.

Ques.—Can you give an instance when you met him going to see a patient in the country.

Ans.—I remember once, he was going to see a man at Mr. Houghtailing's, across the river.

Ques.—Do you know of any other ?

Ans.—I suppose—

Ques.—I did not ask what you *suppose* ; do you *know* of any other.

Ans.—I have no positive knowledge of any.

Ques.—Do you remember meeting him going to any patient in the county within two or three years past ?

Ans.—Not to my knowledge.

Ques.—Is it in your profession, as in some others the case, that the more important and responsible the case, the higher the charge ?

Ans.—It is generally so.

Ques.—When you spoke of ten dollars for the first visit in reducing a fracture, did you mean such a fracture of the tibia as is represented in this case ?

Ans.—Yes.

Ques.—Would an accompanying fracture of the external condyle of the femur very much complicate and hazard the case ?

Ans.—I think it would.

Ques.—Would it greatly increase the difficulty of treatment and amount of responsibility?

Ans.—I think it would.

Ques.—Would it greatly increase the worth and value of a successful treatment?

Ans.—Yes.

Ques.—Such a double fracture is very rare and uncommon, is it not?

Ans.—Yes.

Ques.—In such a case, would the preservation of the action of the knee-joint be very successful and extraordinary practice?

Ans.—Yes.

Ques.—Taking into account the aggravated character of the case, and its successful issue, would it not triple or quadruple the value of the services?

Ans.—No, sir.

Ques.—Do you not consider the nature of the case, and the success of its treatment, items of value to the patient?

Ans.—Yes.

Ques.—Do you not think the saving of the knee-joint in such a case, is not worth four times as much as an ordinary result in a simple fracture?

Objected to by the Defence, on the ground that the saving of a knee-joint has a value beyond estimate, and the proper question now is, not the value to the patient.

Mr. BEACH thought the question a proper one, as the value of a physician's services must depend upon the benefit conferred on the patient.

The Court ruled that the service to the individual was properly to be taken into consideration.

Counsel for Defence, thought that basis unreliable, as the benefit to some might be less than to others, as different individuals are of different value to society.

THE COURT.—The value to the community is not to be taken into account.

It was finally conceded that this point had already been reached by previous answers, and the examination resumed.

Ques.—Were you called last summer to set the limb of a boy on the canal?

Ans.—Yes, to reduce a dislocation.

Counsel for Defence desired to know the object of these questions; he was not able to perceive any.

Plaintiff's Counsel.—I am not to blame if you cannot see it.

The Court supposed the object was to learn the charges made by the witness.

The Plaintiff's Counsel.—I am happy to see the Court has keener perceptions than the Counsel. That is obviously the object.

Ques.—How far distant was this case?

Ans.—Four miles.

Ques.—What joint was dislocated?

Ans.—The hip joint.

Ques.—How long were you engaged in the operation?

Ans.—A couple of hours perhaps.

Ques.—Is the reduction of a dislocated hip as responsible and difficult as the setting of a broken limb?

Ans.—It is more so.

Ques.—Does it require anything more than to put the limb in a given position and apply force?

Ans.—It requires skill also.

Ques.—Does it require doing any other action than putting the limb in a particular position, and applying force?

Ans.—It does not.

Ques.—Is the proper manner of reducing a dislocated hip now perfectly understood by ordinary surgeons?

Ans.—I believe it is.

Ques.—What did you charge for that service?

Ans.—Twenty dollars.

Ques.—Was it twenty or twenty-five dollars?

Ans.—It was twenty dollars.

Ques.—How old was the patient?

Ans.—If I remember right, he was 18 or 20 years old; a driver on the canal.

Direct Examination by the Defence.

Ques.—Were not regular visits necessary?

Ans.—I gave no other visits; it was the patient of another physician who could not reduce it, and sent for me.

Ques.—Have you examined the limb of the defendant?

Ans.—I have.

Ques.—Could you ascertain that there had been a fracture of the condyle?

Ans.—I could not.

Ques.—Is it usual to have a fracture so healed as to leave no trace of the fracture?

Ans.—It may be, but is not very common.

By the Witness.—Mr. Potter, I am not satisfied with my testimony.

Mr. POTTER.—You have a right to make any explanation.

Witness.—I did not receive \$20; I received only \$10; I had to pay \$10 for the use of the instrument.

Cross-Examination resumed.

Ques.—Is a reduction of the hip-joint mainly accomplished by an instrument?

Ans.—Yes.

Ques.—What kind of an instrument?

Ans.—This was called “Jarvis’ Adjuster.”

Ques.—Is it simple in its operation?

Ans.—It is.

Ques.—You think the reduction of a dislocation of the hip, by an instrument which is simple in its construction, and the work mainly done by the instrument, is more difficult than the setting of a bone broken like this?

Ans.—Yes, *ten to one*.

Ques.—In what consists the skill necessary?

Ans.—In the proper application of the force.

Ques.—The force is mainly applied by the machine?

Ans.—Yes.

Ques.—There is no difficulty in affixing the instrument to the patient?

Ans.—No great difficulty.

Ques.—Then the difficulty is in the degree of force to be used, is it?

Ans.—No.

Ques.—I do not understand this; the force is mainly applied by means of the machine; there is no difficulty in affixing it, and skill is not necessary in the degree of force, and yet a great degree of skill is requisite; when is it needed?

Ans.—It requires a mind to direct it; I cannot explain farther, than to say that it requires skill to direct it.

Mr. BEACH.—I have always supposed a surgeon required a mind.

Ques.—To whom did you pay \$10 for the use of the machine?

Ans.—To Dr. Jenkins in New-York, who owned it.

Ques.—Did you get it for this particular case?

Ans.—No, sir.

Ques.—Did you pay \$10 for its use in this particular case?

Ans.—Yes. The machine belonged to a gentleman, formerly a student of mine, and cost \$50; it had laid in my office three or four years, and had earned nothing, and I thought as it had brought me \$20, it was no more than fair that I should give the owner \$10.

Teunis Houghtailing, Ephraim W. Rynex, Joseph Turnbull, John Turnbull, Robert Van Volkenburgh, and James McMillen, were sworn on the part of the defence, but their testimony in no way affecting the merits of the controversy, is omitted.

Dr. Andrew Wilson sworn; my residence is in the town of Guilderland, on the Western turnpike; I remember the occasion of the accident to the defendant; it occurred near my office; I set the leg for him; they at first tried to move him without reducing the fracture, but afterward brought him to my office, and I fixed him so he could ride.

Ques.—Where was the leg broken?

Ans.—Below the knee.

Ques.—Did you examine the leg before setting it?

Ans.—I did.

Ques.—Did you discover any other fracture beside that below the knee?

Ans.—Did not.

Ques.—Are you a practicing physician and surgeon?

Ans.—I am; have been so since 1837.

Ques.—What would be a fair and reasonable charge for services in attending such a fracture as that, traveling five miles, setting it the first time, and attending to it from January to June, making, if he pleases to make, so many as thirty visits?

Ans.—I must be governed by the charges of country physicians; I should charge from two to three dollars for each visit.

Ques.—What would you charge for the first visit?

Ans.—From five to ten dollars.

Cross-examined.—How many cases of broken limbs have you had in your practice?

Ans.—I cannot say how many; may have had from two to five cases a year.

Ques.—What is a compound fracture?

Ans.—It is when two or more bones are broken.

Ques.----Did you ever have a case?

Ans.----Do not now recollect of ever having had any.

Ques.----Such cases are more difficult, are they?

Ans.----They are; I now recollect of one case I had five or six years since.

Ques.----Did you apply a permanent dressing to this leg?

Ans.----Not quite such a dressing as if I had expected to have taken charge of the case; I was not quite so particular in fixing the splints; should have made them a little longer perhaps.

Ques.----Did you recommend the defendant to send for Dr. Van Ingen?

Ans.----I did.

Ques.----Is plaintiff a surgeon of high reputation?

Ans.----He is in my estimation.

Ques.----Did you make as accurate an examination of the leg as if you were to take permanent charge of it?

Ans.----I intended to make a thorough and accurate examination of it?

Ques.----How long was defendant in your office?

Ans.----Half or three-quarters of an hour.

Ques.----What examination did you make of the limb above the knee?

Ans.----I applied my hand to the knee, while others extended the limb; he lay on his back, one man took hold of his ankle, and one of his body; I then clasped the knee and brought the bones into juxtaposition, as I thought, I put my hands on the knee-pan and felt down the ridge as the limb was moved, till I felt the fracture.

Ques.----What is the technical name of the top of the knee?

Ans.----Do you mean the knee-pan; that is called the patella.

Ques.----Was the leg swollen above the knee?

Ans.----It was.

Ques.----Was it *considerably* swollen?

Ans.----It was somewhat so.

Ques.----All physicians agree, do they not, that when the leg is swollen, it is difficult to detect a fracture of the condyle?

Ans.----It is more so.

Ques.—Would the charge for surgical services be increased by the difficulty and danger of the case?

Ans.—I should think so.

Ques.—In a very difficult case, attended with happy success, would a larger charge than ordinary be proper?

Ans.—It is customary.

Ques.—Would the charge on the part of a city physician, with full practice, be properly larger than of a country physician?

Ans.—It is so usually.

Ques.—Was the *fibula* out of joint in this case?

Ans.—I supposed the head of it was.

Ques.—Did you make a sufficiently accurate examination to determine that it was?

Ans.—I supposed it was.

Ques.—Did you determine it positively?

Ans.—I did.

Ques.—Did you reduce it?

Ans.—I intended to, and suppose I did.

Ques.—Would it be likely to stay in its place, with the limb broken in riding?

Ans.—It might get out; that would depend on the manner in which he was carried.

Direct-Examination Resumed.

Ques.—Did you see the limb afterward?

Ans.—Sometime the following summer Mr. B., stopped at my office.

Ques.—Did you examine the limb at that time?

Ans.—Think I did; he showed me a sore on his ankle.

Ques.—What kind of a sore?

Ans.—It appeared to partake of the nature of an ulcer.

Ques.—Did you examine it closely?

Ans.—Not very particularly; I saw it.

Ques.—Can you tell how it was caused?

Ans.—I do not know that.

Ques.—Were there any indications to show the way in which it was caused?

Ans.—I hardly know how to answer; it might have originated from the application of extensions, from sloughing, or it might not.

Ques.—Were there indications by which you could tell how it was caused?

Ans.—From my examination, it is my opinion that there must have been blistering from dressing; perhaps it was owing to an imperfect state of the blood.

Dr. John Banks sworn; I am a practicing physician and surgeon at Duanesburgh; have been practising 30 years; have had some experience with fractures.

Ques.—Have you heard the evidence in this case as to the character of the injury?

Ans.—Yes.

Ques.—To travel five miles and reduce such a fracture, and attend to it, making 30 visits, what would be a fair compensation?

Ans.—I should think about \$10 for the first visit, and from \$3 to \$5, for succeeding ones.

Ques.—Did you at any time see a sore on Mr. B's, leg?

Ans.—Yes.

Ques.—When?

Ans.—I think, last June.

Ques.—Do you remember seeing more than one?

Ans.—I think there were two or three.

Ques.—Will you give an opinion as to their cause?

Ans.—I think they were caused by blistering or excoriation.

Ques.—Knowing that the limb had been bandaged, what should you think was the cause of the blistering?

Ans.—I could not say from the appearances, what the cause was.

Cross-examined.—Ques.—Are not blisters and excoriations quite common in the treatment of broken limbs?

Ans.—They are.

Ques.—In many cases I understand they are unavoidable?

Ans.—Yes.

Ques.—Are they aggravated by imperfect condition of the blood and bad constitution?

Ans.—Frequently.

Ques.—Would you agree with Dr. Wilson with regard to the cases in which increased charges would be demanded for professional services?

Ans.—I agree with him.

The defence set up a counter claim of \$41.89, consisting of a due bill and assignment thereof, which was admitted.

Here the defence rested.

His Honor the Judge, now enquired of the Counsel on both sides, as to whether the parties might not save much time and trouble, and obtain results equally satisfactory, by taking a verdict for the plaintiff for some amount to be mutually agreed on. After a few moments consultation:—

Mr. POTTER—*Counsel for Defence*.—We have attempted to arrange this matter upon the suggestion of your Honor. The issue now is simply one of dollars and cents—a mere estimate of the value of the professional services of Dr. Van Ingen. A matter not nearly so important as the Dr. says, as another question at first connected with the case. On that issue the Dr. and my client, when this suit was brought, thought differently. Differences had occurred between the Dr. and my client, and a bitterness of feeling sprung up between them.

The Dr. thought his reputation at stake, and he has made great exertions for his defence. He has brought several professional gentlemen here of high standing, and they all unite in speaking of his practice so far as known to them, as skillful, and his treatment of this case as fit and proper.

We had thought differently, and based our defence upon different premises. But we did not, when the plaintiff's testimony closed, see fit to attack it, but conceded the question of his professional skill, and now believe his treatment to have been correct and skillful.

The only question now remaining, is that of compensation. On this we have differed; but my client has yielded reluctantly to my advice, and consents to give more than he thinks he should. [Mr. B.—I am glad he has yielded to reason at last.] I advise him to allow \$150 for services, deducting the due bill of \$41.89, which has been admitted, rather than to contest the case farther, and therefore, instead of arguing it to the jury, we consent to have a verdict rendered against us of \$150, deducting the due bill.

BY THE COURT.—The main issue involved in this case, was the professional skill of Dr. Van Ingen. This issue has been abandoned, and all complaints as to his want of professional skill are withdrawn. It is but due to Dr. Van Ingen that this should be publicly stated, that his practice has been that of a skillful surgeon, and that he has met with very great success in this case.

The parties have agreed upon the compensation for the services rendered, the jury will find for plaintiff in the sum of \$150, deducting the due bill.

The jury rendered a verdict in accordance with this direction.