EXPERT TESTIMONY AND THE MEDICAL WITNESS.

BY LEO M. CRAFTS, B.L., M.D., MINNEAPOLIS, MINN.

Few other things have served to bring so much of obloquy and of ridicule upon the medical profession as have the work and testimony of experts on the stand in court. The spectacle of medical men expressing diametrically opposite and irreconcilable views and opinions, is a lamentably frequent occurrence in all our courts, and a problem that has not received the serious consideration which it merits by the organized profession. In its present status it would be far better were all medical testimony entirely eliminated. Many attorneys prefer this solution of the question. Yet they themselves are chiefly to blame for the present unfortunate situation.

With the attorney the one clear object in view is to win his case, and everything must bend to that end. Whatever will add strength to his case must be presented in most favorable light. Whatever would be detrimental to his cause must be kept out or minimized. Human nature easily becomes partisan and the thoroughly honest physician, unless most alertly on guard, and well-schooled in cool judgment and poise, will have his interest unconsciously swayed toward the side on which he is engaged. The instant this occurs in the slightest degree his testimony is so far warped or colored by the controlling effect of emotion. And beyond this if he is weak or lacking in principle, present methods of handling medical testimony open the insidious way for the most despicable form of perjury in the declaration of opinions which it is impossible to prove are false. Misstatements concerning facts it may be possible to verify. The genuineness of an expressed opinion cannot be determined.

Corporations are powerful. Their influences are devious and far-reaching, and when

judges, jurors and lay witnesses come under the compelling spell of their methods, it is not strange that medical men are sometimes vulnerable to the same golden shafts. They pay surely, sometimes they pay well. And so a witness, at times, finding himself compelled to admit the presence of every classical objective as well as subjective sign of a given condition, may still coolly assert that in his opinion that condition does not exist, and you cannot prove that he is lying. He must deliver the kind of testimony wanted by the attorneys, to win at all hazard, if he is to continue to serve as company surgeon. And sometimes the medical man becomes so zealous in service that when an operative, injured in a wreck, is taken, against his wish, by ambulance to a well controlled hospital, desiring to call his own physician is refused by the company surgeon; is told by that surgeon that he will attend whoever is called and is refused by the hospital the calling of a messenger that he may summon the physician he desires. These illustrations of occurrences are not extreme, but every day happenings calling for radical change in present conditions.

In a measure the same state of affairs obtains on the other side of the case, and blame is not lacking there. For the attorney is here, too, only looking to win. But the obloquy that the self-righteous corporation attorney would cast on the so-called "damage suit lawyer" is simply to divert attention from his own more grievous sins. Neither the plaintiff nor his attorney can have the organized enginery of power possessed by corporations. He has not the resources at command to designate the personnel of the jury panel, to keep elaborate card catalogue records of the attitude of all jurors on past

cases, to reach witnesses and jurors through their employers and other channels, nor the political power to sway judicial rulings and decisions. Yet he does his best, or worst, to win and to get in only the testimony he wants. So, on either side, the medical witness must be made of strong stuff if he is not to lend his aid, consciously or unconsciously, to the ends of injustice rather than of justice.

So while it may occasionally come to pass that a plaintiff gets damages he does not deserve, or recovers more than his injuries fairly warrant, it is as nothing to the number of crippled and maimed deprived of just compensation, so far as money can ever repay physical or mental suffering and disability, by the subtle control of court machinery to which the medical expert too often gives deliberate support, when he testifies to opinions he would never voice in a consultation with his peers on a similar case, without the elements of litigation surrounding it.

In the past ten years 5,000,000 have been killed in peaceful employments, 500,000 accidental deaths annually, a large proportion of these by the carelessness of corporations, who would rather take chances on winning damage suits than properly protecting the public. Over 100,000 are killed and maimed yearly by the railways alone, either through negligence or lack of proper protection of the public. And a leading railroad magnate, when informed that it would cost \$50,000 a mile to put his road in proper and safe shape, is credited with saying coolly, that he would rather pay half to the widows and orphans and put the other half in his pocket, was undoubtedly counting on the trusty services of his experts to help save the half for himself.

While this paper deals mainly with the work of the medical expert in civil cases, the same situation obtains in the conduct of criminal prosecutions, though perhaps to a less degree, and it will be a distinct advance when more cases of accidents are placed under the crim-

inal laws and corporation officials held personally to account themselves, with a penalty of imprisonment and no option.

So much for this anomalous condition. What is the true relation of the expert to the individuals concerned, the court and to himself? Normally his alignment is with the patient, for his real work is humanitarian. His relation to any corporation is artificial and purely mercenary, a matter of dollars and cents only. On the general question his one single duty is to see, so far as his participation is concerned, that the full and exact facts and truth are brought out.

Too often men entirely unqualified are permitted to qualify as experts on the stand. For work of this class the highest standard of attainments should be required. First of all come honesty and the highest ideals of character, firmness and decision, and a mind of broad grasp. He must have ample training and extended experience, an abiding appreciation of the meaning of his oath. He must be cool, unafraid, always alert, never losing his head, or his temper under the badgering of browbeating attorneys. He should volunteer little or nothing, yet be sure that he leaves no half truths or false impressions before the jury. Usually only clear, plain English should be used, and any technical terms must be explained. He should be brief yet explicit; direct in manner and deliberate in speech. Interested zeal should never be present in feeling nor apparent, and questions should never be evaded. Reading should be extensive in preparation for every case, to avoid carefully laid pitfalls. Yet the great field of our ignorance must be recognized and frankly admitted.

Authors quoted in cross-examination should be verified, and recognized simply as the opinion of the particular writer, and not as infallible authority. He should only, in short, take the position with preparedness, with no cause to espouse and nothing to conceal. Of direct knowledge of the law he needs little, save a fair understanding of the ordinary

rules of court procedure. He should present his facts clearly separate and distinct from his conclusions and opinions.

And what of the compensation fair for this kind of service? Most medical work, except that of the surgeon only, is underpaid. The physician, planning a skillful campaign against the great destroyer and winning, receives only his ordinary visit fee, yet has often rendered a more signal service to his patient than the surgeon who for an hour's work receives his hundreds or thousands. Fees in all fields of medicine should be measured by the value of the service rendered. But the corporation expects you to close your office for days, wasting time in a stuffy court room, and finally go on the stand, marshalling the fruits of all your study and experience and bringing them to bear, on the moment, at full command, for about \$50 a day, on the argument that they employ regularly and are sure pay, and, therefore, they should pay a minimum fee. While as a matter of fact they should pay the highest rate. On the other hand the attorney for the plaintiff expects you to be content with the same stipend if he wins, and nothing if he loses, while he appropriates at least a third of any verdict obtained. This class of work is special service and should command the highest pay. A contingent fee should rarely or never be considered. There should always be a frank understanding to begin with, just what the fees are to be, and that all testimony is to be fully on the true facts. A preliminary examination and opinion of conditions should not be rendered for less than \$25. And attendance and testimony in court should always claim \$100 a day.

Medical testimony can never be brought to the proper plane in this country under existing conditions. And if it is ever to be rescued from its present unenviable position, there must be complete change in the procedure.

The expert's sphere of activity must be removed as far as possible from all controlling influences from either side. To this end all experts should be designated by the judge as a court commission. And they should be required to subscribe to sworn affidavit of no interest, direct or indirect, in the case. In France and Germany they have lists of officially appointed experts from which the court may select, or the contending parties may jointly agree in the choice. The conclusions and opinions of such commission should be reported as a court function, impersonal and unbiased. Whether either or both parties might be permitted to call medical witnesses also may be open to debate, but preferably they should not, as such a procedure would only serve to confuse the true issue. With existing social and political conditions as they are in this country, such a reform must be considered a remote possibility, yet our urgent duty is to strive for its early accomplishment. And certainly it is better that all testimony of medical experts be elided entirely than as at present handled in all our courts.

Recently, in an editorial on "The Oath in Court," a metropolitan daily, severely arraigned witnesses of all classes for their disregard of their solemn obligation on the stand, and said, "They all tell some truth, few tell the whole truth, and scarcely any tell nothing but the truth." Strong language, but nakedly near the truth, and if so, then the very foundation of human right and liberty trembles. Therefore when the medical witness goes upon the stand to testify there is but one clear course to follow, to present the exact facts in full and his uncolored opinions drawn from those facts, regardless of which side it helps or hurts.

"This above all—to thine own self be true.
And it must follow as the night the day,
Thou can'st not then be false to any man."

EDITORIAL

PRESCRIPTION WRITING A LOST ART.

The caption of this editorial, while not correct as a whole, is a growing evil in the medical profession, especially among the doctors practicing throughout the country and smaller towns. This is not altogether their fault, as medical training in the art of prescription writing in all of its phases has been seriously deficient and without excuse. Some teachers take the position that the usual graduate should know enough about therapeutics and the combination of drugs to prepare prescriptions suitable to each case, and that the giving of prescriptions was simple if the diagnosis had been properly made. This is an error and no part of medical training is more important than proper instruction, not only in the physiological action of drugs, but the proper combination suitable to the case of whatever character, with due consideration to incompatibility as well as changed therapeutic result by combining with other drugs.

The result has been young men leaving college have felt their inability to properly combine their prescriptions to meet the exigencies of each case, and the fault lies not with them, but with their defective training. The other, and possibly the most potent factor, has been the wonderful influence exerted by representatives of commercial pharmaceutical houses, who have literally besieged the office of every doctor, young and old, with his eloquent appeal for the use of the various combinations gotten out by his respective firm, because of their pharmaceutical elegance, palatable taste, certain combinations for the purpose of relief in almost any and all conditions to which flesh is heir. This growing evil has tended to contract the sphere of legitimate

medicine, and render the doctors following the advice of these agents to become dispensers of combinations practically unknown to them in their composition as well as therapeutic value.

It seems to the writer that the time has come when the training in medical schools should be so improved that the men will not have to resort to the prescribing of these proprietary remedies, and that the young men of today who are assuming the toga of the pioneers who have gone before them have the moral duty, in receiving the pure escutcheons of the honorable medicine fresh from the hands of these hardy pioneers, to keep it untarnished from either stains of commercialism or confessed ignorance on their part to properly combine their own remedies to meet their requirements. In this way poly-pharmacy and shotgun prescriptions will gradually cease to exist, and the men will soon learn how to handle the few remedies well chosen and of therapeutic value in a scientific way, and the humiliation of having some ignorant agent, frequently not even a doctor, dictate to them what they should do for each case, will be avoided. The physician must learn that each case is a law unto itself, the management of which cannot be done by either routine practice or the universally successful remedy which can never be applied to each case even though the pathology be the same. In all kindness, we feel that the time has come when commercialism should cease to dictate to the doctors how they shall treat their cases, and while we welcome with pleasure those scientific houses who are expending time and money in the development and progress of rational therapeutics, we must protest against the dictation to the profession which has already placed it in an embarrassed position and contracted the usefulness of its followers.