

EXPERT MEDICAL WITNESSES; WHAT IS THE CAUSE OF THE SEEMING DISREPUTE IN WHICH THEIR TESTIMONY IS HELD IN CERTAIN RECENT CASES IN THE COURTS?

OBSERVATIONS FROM THE STANDPOINT OF THE COUNTRY DOCTOR.

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The criticisms by the daily press of the country on the expert testimony in recent noted cases in the courts where medical gentlemen eminent in our profession, occupying positions of great responsibility to the profession as teachers and consultants, and to the public in that from the position accorded them by the profession they become men whose works weigh much with the laity, have evoked considerable attention from the writing part of the profession. These articles I have read with the greatest interest, feeling that out of the discussion would be evolved valuable suggestions.

For quite a number of years past the idea of an "expert commission" to be created by law, and to which all questions of a medical nature arising in the courts would be referred for examination and solution, has been periodically sprung on a suffering profession. Recently it is noted that the same suggestion has been going the rounds of the medical press and is seemingly the more favored solution of this *questio vexata*. For a republican form of government it is more than probable that there are already too many men in "commission" to do this or that particular thing which the people could do for themselves in their own time and their own way, and perhaps equally well. Yet this idea of a commission, advisory to the court, seems to be the favored solution, the main remedy offered on various hands for the abatement of what is claimed as the source of great danger to the future character and influence of the profession. It is difficult to see how the proposed scheme could, if it were practicable to carry it into effect, prevent the troubles of which the doctors complain in regard to the operations of the present system. Take for illustration, the Carlyle Harris case in New York a few years since, or the more recent Luetgert case in Chicago; in each we have some of the most prominent medical gentlemen in their respective cities, going on the witness stand and flatly contradicting each other about scientific questions.

Now, if as is generally understood science knows no variation, if it consists of certain fixed laws, these gentlemen must have known what part of their testimony was scientific facts and what part was opinion, conjecture or possibility. Would medical men be more inclined to agree with one another before a commission than in the glare of the public's gaze in the open courts? Doubtful. But it is assumed that the idea of a commission would involve the submission of medical points involved in medico-legal questions arising in the courts to men of special and profound knowledge only. Just how this would make the matter better, except for the favored few who constituted the commission, can not at present be shown. The very prominent experts are those who are constantly getting into the newspapers with the odium of the courthouse "wranglings of the doctors" and resultant criti-

cisms attached to them, and through them to the profession for which they are assumed to stand. It is my opinion that in the smaller cities of the country and the rural districts where there are fewer or no "professors" of medicine, that the matter of expert testimony is developed in the courts with far less friction between the opposing sides and with a corresponding degree of credit to the doctors. In the past twelve years it has occasionally fallen to the lot of the writer to appear in the courts in the capacity of an expert medical witness, and he here records his court experiences as among the pleasures of his professional life. But certain rules have always been scrupulously followed. First, the witness has never received a fee from either side prior to his appearance in the courtroom. His cases have been carefully studied beforehand, and after conferring with the other medical men who were to appear in the case, and adjusting any great differences which might on first view have seemed to have existed between them, he has gone on the witness stand and told in the simplest language possible what he knew of the case, strictly avoiding all professional technicalities. When my opinion is asked as to a question which is unsettled in the minds of the profession I invariably, after a word of explanation, confess my ignorance. And right here, I believe, lies the trouble with so many of the modern metropolitan medical experts, they try to know too much, there is too vast an amount of professorial, professional or personal dignity at stake for the expert to say candidly "I don't know," and the clever attorneys fully appreciating this fact play on the doctor's weakness, and when the proper time arrives the expert's testimony and his foibles are shrewdly dissected before the jury. I have no criticisms to make of the attorneys. They can legitimately prey on any man who opens the way. My observation is, that as a rule medical men are themselves responsible for the ridicule their evidence is occasionally subjected to in the court room. On every hand the fact is appreciated that marked advances have been made along all the lines of human activity in the past two or three decades, and in none has there been a greater degree of activity displayed or greater results produced than in the field of scientific medicine. Far be it from the intention of the writer to cast one iota of obloquy upon the good work of our honored profession in detracting from the splendid record of progress in recent years, but the practical fact remains that every new idea has not, as some of our brothers would have us believe, been an improvement on the old or an advance to the front. While the general tendency of our professional life in scientific work has been distinctly and emphatically forward and upward, yet to borrow the figure of another in our evolution, "some of the branches of the tree of progress grow upward and to the light, some grow downward soon finding their terminal buds, some wither and die, yet it takes all to make the tree." So as honest men we must admit that while substantial advance is made every day, we are even now absolutely in the dark as regards the correct solution of countless scientific problems in medicine.

A distinguished savant makes an experiment today which he hopes will lead to something; the next day the details of the experiment are heralded the earth over as a most wonderful demonstration of established facts. The day following the same scientist, or hundreds of co-workers in the fields of science, repeats the experiment and finds that a certain element of error

not calculated for in the original experiment, renders null and void the assumed conclusions of the first day. The general public are not informed of this, however. Later they find out the facts and then their respect for scientific expounders and their science is proportionately lessened. Witness tuberculin! Call to mind the excited throngs, both of students and afflicted, who flocked to Berlin during the few months following the announcement of Koch's discovery. To bring it nearer home, look at the history of vaginal injections during and after labor. Only a few years since it was gravely announced by those high in authority in the medical world, that no woman should be permitted to bring forth offspring without her genitals being rubbed, scrubbed, scraped and injected with strong solutions of toxic drugs a certain number of times (the details of the process almost suggested Hahnemann's directions in his "Organon" for preparing a "potency"), then a pad of the famed spices of the Orient was to be placed at the vaginal entrance to frighten timorous microbes away. Such was the dictum that with "professorial" sanction went out over the country; notwithstanding this, there were intellectual "giants in those days" who dared to reason a little for themselves and questioning, said, is not this a violent perversion of nature's methods? And while perhaps the many of the profession were for the time swayed by the injection idea (largely because it was "new" and "the latest") there was a very large portion who rejected it as an illogical treatment. On my desk lies an ably written article recently published, from the pen of an acknowledged authority on obstetric science, inveighing against the practice of using vaginal injections in labor and criticising the monthly nurse for her disposition to use the douche whether so advised by the attending physician or not. Yet this article does not give a hint as to where the aforementioned nurse was indoctrinated with the supreme necessity of vaginal injections in labor.

The idea of the writer is to direct attention to what he believes to be one of the chief causes of the threatened disrepute into which it is gravely asserted expert medical testimony is in danger of falling, and incidentally to note that the general, every-day practitioner of medicine can not afford to endorse such ideas as tend to produce the belief that relief is to be found in putting "in commission" certain gentlemen who will attend to the elucidation of medico-legal questions for the profession and the courts. The severest wrangling over medical cases in the courts comes when gentlemen of the class, from which it is proposed that the commission be created, appear in the courts on opposing sides.

To get at the cause of the trouble is our first duty, then to remove it if possible. One of the dangers which an expert, and the more reputation he has to sustain the greater the danger is likely to encounter, is that of knowing too much. If medical men were as ready to admit in the court-room their real ignorance of many things, as they are in the privacy of the consultation room there would be far less wrangling of the experts, with the result that much more respect would be entertained for their evidence. Doctors are oftentimes, rather than make a frank confession of ignorance, tempted to build up on one known fact in medicine, coupled with half a dozen conjectures a theory which they may believe, but do not and can not know. This theory is then elaborated and given to the court as an exposition of the teachings of medical science.

This is all wrong, but we do not need to invoke the aid of legislation to set such things right, but rather the exercise of common sense. It is a family affair and should be settled by those most interested. In every case where medical witnesses are summoned, if these medical experts will get together and calmly and critically review the evidence of each man, throwing out what is only conjecture or rests on insufficient scientific foundation, leaving to be given out what is generally accepted by the profession as known facts; then later, when on the witness stand, with an eye more to trueness to professional honor than to being the plaintiff's or defendant's "doctor," tell what he knows and resist the allurements of keen-witted counsel to extract information which he does not know, that man will retire from the stand conscious of having maintained his self-respect. He will also merit and receive the respect of the court. A proper appreciation of this plan ought to make it possible to put it into operation with the masses of the profession who have regard for their professional honor. Apply the method herein suggested to the practice of medical jurisprudence in the courts and it is not likely that self-respecting medical men will, after carefully studying a case together, go into the courtroom and exhibit the spectacle presented in the recent Luetgert case, where given a small fragment of the upper extremity of a femur, one gentleman swore positively it was in his opinion the femur of a human female, the other with equal positivity asserted it to be the femur of a hog. On the day following the astute attorney produced in court bones known to have been derived from a chimpanzee, which bones were identified by the experts as human. Imagine the humiliating position of these gentlemen; amusing to the spectators and disgusting to every plain, common-sense doctor who followed the testimony. Both medical men should have testified that the bit of bone was the upper end of the thigh-bone of a mammalian, and mentioned some of the more common animals from which the bone might have come. They should have positively stated that with the very short fragment exhibited, it was impossible to say it was or was not a human bone (after days of wrangling this is really what their conjoint testimony amounted to). This course would have saved their credit and that of the profession in general, which is always affected more or less by the actions of its members. It is true this would have been indefinite, but (as the sequel proved) it would have been the truth, and when told in a simple dignified professional way would have enabled the doctors to have retired from the stand with more honor than attached to the experts whose perhaps too ample *ego* led them to know too much. These gentlemen were acknowledged expert comparative anatomists. The blunder as to the chimpanzee bones, the positive divergence of opinion as to the source of the piece of femur exhibited to them, presuming as we do that the experts told what they believed to be the truth, proves conclusively that comparative anatomy is not as yet sufficiently an exact science to enable one, from only a small part of a bone (unless it should be a part possessing some very special or pronounced processes or foramina, etc., rendering its character unmistakable) to positively identify it as coming from the body of a certain animal. Now to candidly admit this fact need bring no discredit to our profession or to the individual doctor so testifying. We are not expected to know everything in the courthouse, whatever may be the

demands made on us in the sick room. A clear recognition of this fact of the part of the professional man, coupled with a sincere regard for stating, when on the witness stand, only what are known to be established facts, and a disposition not to allow the erudite attorneys to lead him to become a partisan, will I think, contribute very greatly to advance the esteem in which expert medical testimony is held by the courts and the general public. These remarks are intended to apply more particularly to the general masses of the profession, the practical men who help nature save and prolong the lives of their fellow-creatures. Can not these gentlemen, so clamorous for special legislation, see that the very fact of their more or less valuable services being had by either side in any case, carries with it the death-warrant of the call for professional experts in the courts of justice. The American people are of a very practical type, and a few more exhibitions of medical experts *à la* Luetgert style will make the masses feel that these experts are all frauds. But long after this *genus* shall have for remembrance only a "trace of mould" in the sociologic layers of the past, there will still be more or less frequent calls from the courts of the land for some plain, practical observations on medical questions coming before them, from the plain every-day common-sense doctors who have opinions only about things of which they know (and are not embarrassed at not knowing all things), and not based on what might, could, would, should, or did not happen.

SOME SUGGESTIONS CONCERNING THE EXAMINATION AND COMMITMENT OF THE INSANE.

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The commitment of an individual to an asylum is an act of serious import, and often of far-reaching consequences, and it should be attended with more care and thought than is often awarded it. There are two considerations always to be borne in mind, the first of great importance, namely, the consequences to the patient, and second, a much less important point, but nevertheless one that must be considered, the consequences to the committing physician.

In regard to the first point, there is often rather too much haste in sending patients to an asylum. I have not infrequently been called to sign a commitment for a patient in whom the mental condition was simply one of depression from over-work or over-worry, which was relieved by a trip away from home. More often still have I been asked to commit a patient with hysteria. Another class that I am frequently asked to send to asylum is the class that may be called in a general way "eccentrics," persons who can not be classed as paranoiacs, but who do very illogical and foolish things. Finally, there are neurasthenics, hypochondriacs, mild dementals from organic brain disease, and persons who congenitally are, while not exactly feeble-minded, below par mentally. To be added to the number already mentioned are cases of distinct mental disease, concerning whom the question arises whether they are better off at home or in an asylum.

Thus it is evident that the duty of the physician is not to find out whether there is sufficient mental disturbance to warrant commitment to an asylum, but to decide the very difficult question whether the patient should or should not be sent away from home.

It is not intended, in this brief paper, to discuss the question of home versus asylum treatment, but merely to point out the method of conducting the examination. It is, in general, best to approach the patient in the capacity of a physician and not resort, as is often done, to some mild deception. The patient need not be told that an examination is being made to determine the question of sanity, but it is always easy to explain the physician's visit on the ground that the patient's friends or relatives wished something done to relieve the "nervousness." A little tact will always succeed in the mild cases, and in the violent there is no need of deception. One often sees patients thrown into a most suspicious attitude toward physicians after having been deceived.

A general physical examination should always be made of the organs of circulation, respiration, digestion, etc. Then the state of the nervous system should be inquired into, the state of the reflexes, the pupil, sensation, the existence or not of muscular atrophy, the presence or absence of paralysis and the like. It is extremely difficult to formulate, in words, the mental condition. After a careful examination one should be able to say in regard to the general intelligence whether it is good or not. The patient's social status, education and environment must be taken into account. Various current topics should be touched upon, and the condition of the memory, both for early and recent events, noted. If the patient is irrational the nature of the conversation should be observed. The general demeanor of the patient should be noticed, as to whether there is present exaltation, excitement, complacency, anger, fear, depression, suspicion, dread and the like. I am in the habit, for purposes of convenience, of classifying the mental state according to the various phases of alcoholic intoxication. For example, a patient will exhibit the mental state of an individual in the early stages, the furious stage, the emotional stage, etc., of alcoholic intoxication. It is to be regretted that we have no arbitrary standard by which to represent the mental condition. This examination has a twofold object: First, it is important to know the patient's general condition, so as to be able to judge how far disease of organs, other than the brain, may be responsible for the supposed mental symptoms. Then this routine examination offers an excuse for obtaining the patient's history and for asking any questions designed to test the mental condition or to elicit evidence as to the existence of hallucinations or delusions.

Some patients are eager to deluge any listener with their delusions, while others are very unwilling to speak of them. It is useful to obtain as clear a history as possible from relatives or friends regarding the patient's conduct or false beliefs. At the same time it is to be borne in mind that the relatives are apt to be very biased witnesses, sometimes refusing to admit evidence of marked mental disease or attempting to explain away certain incontestable symptoms, at other times laying undue stress upon hysteric or other functional manifestations. The history thus obtained indicates the presence or absence of delusions.

A great deal of tact is necessary in bringing out delusions, for insane individuals are often dimly aware