

surgery and mechanics seems to be as requisite as familiarity with the law. This being so, it becomes a serious question to consider what weight ought to be attached to this kind of evidence, and whether the judge who relies greatly upon its value in charging a jury, or the judge who entirely ignores it, is in the safer channel.

Some judges, here as well as in England are, it is well known, apt to criticise adversely opinion evidence, and they point to the undisputed fact that ten medical men, for instance, will swear to certain causes and corresponding results, only to be flatly contradicted by eleven other equally eminent practitioners, and they, not unnaturally perhaps, come to the conclusion that the evidence of medical men is moulded in the interest of the partisan. This conclusion may occasionally, but, I think, very rarely, be justifiable.

Members of the medical profession in Canada stand quite as high, and are actuated by as pure motives, as members of the Bar, and it very often happens in practice, that medical experts who have gone into the case with the counsel or solicitor engaged, are not called, because their conclusions are adverse to the party in whose interest they have been consulted. Medicine is not an exact science—perhaps not so much so as law. In numberless cases, the symptoms of the patient are purely subjective, and he misleads his doctor much more easily than the client misleads his legal adviser, either by the suppression of facts or by the coloring of matters wholly within his own knowledge.

Opinions must differ, and it would be as reasonable to make sweeping charges against judges who differ from each other, as to make similar charges against medical experts. Neither the judge nor the expert is speaking from a knowledge of actual facts as distinguished from evidential facts. Certain facts may be reasonably proved; others remain in more or less doubt. The medical man forms his opinion according to his best judgment on the facts as they are disclosed to and appreciated by him. The judge does the same thing. Both are liable to be mistaken. Other medical men and other judges differ from these opinions, and it would be cruel and unjust to say that those who differ are actuated by improper motives. The fact that one opinion is given under oath, and the other only indirectly so given, can make no difference, because the conclusions in each case are opinions at best, and the procedure in arriving at such conclusions is similar in both instances. Out of ten judges, five may find for the plaintiff and