

little matters which might modify them or affect their importance, show a bias. If the jury observe this, they say, "That man is a biased witness." His statements must be viewed with suspicion.

Now, doctors sometimes manifest the same spirit. They show too deep an interest in the side that calls them, in giving their testimony. We have all seen such cases. There are cases on record in the books in which judges have been compelled to tell the jury, "Well, gentlemen, you have heard the expert testimony given by learned gentlemen on both sides of this case. Their opinions appear to be irreconcilable; they differ so widely that I cannot assist you in saying which you should accept. You are not bound to give any weight to opinion evidence at all, unless it commends itself to your judgment. You had better discard it and use your common sense, and try and dispose of the case on the facts." It is an unfortunate position for a learned profession to merit sometimes such a direction.

Then we have those wondrous hypothetical questions, the unfortunate doctor is addressed: "Now, listen to me, doctor," (a long array of facts are narrated), ending with, "If this statement is correct, what would be the result?" The opposite counsel objects—discussion follows—and ends frequently with the weak suggestion, "Well, we will have the doctor's opinion anyway to see what it is worth." The poor man is tossed from pillar to post, he tries sometimes to hedge a little, and then the answer which comes aids no one, and only further mystifies the jury.

Then we have doctors who are perhaps a little eager in usurping the function of the jury. They will blurt out an answer which is no part of their function or duty to do. Take a will case, where the issue to be determined is that of testamentary capacity. The question whether a man possesses testamentary capacity or not is for the jury, not for the witness; the witness can properly describe actions and peculiarities, and can express his opinion whether such an action indicated an unbalanced mind, or mental disturbance, but he cannot properly express in the witness box the opinion that the person of whom the facts are stated lacked testamentary capacity. That, of course, as I said, is a question for the jury. Doctors may be asked whether pregnancy exists, the duration or stage at which the condition was. He may be asked the nature of disease, he may be questioned as to whether it was a chronic condition or the reverse, he may be asked the cause of death, and when death probably occurred, whether specified things would produce the injury, the nature and effect of medicines, mode of treatment, probability of recovery, whether the injuries are permanent or temporary. These are all matters for his judgment and opinion, and such opinions honestly and fairly expressed are of great assistance to the court and jury.

He is there, also, to explain medical terms, the use of surgical instruments.