

the other pathological. Law says they are one. Medicine declares that insanity, being a morbid state, no layman can properly pronounce judgment upon a patient's condition, nor in respect to facts that rise therefrom. Law asserts that a jury can, and should decide on the mental condition of the insane, based upon personal observation, just as an ignorant man would pronounce on the kind of disease a person had, from appearances alone. Medicine can show from living examples, that the sense of right and wrong, the possession of delusions, and many other tests propounded by the disciples of Coke and Blackstone, can have no value to discover insanity, when taken alone, for many insane have a keen sense of the former, and many not insane are troubled with the latter. Law says possession of the first is evidence of a sound mind, but the presence of the other shows insanity. Medicine extends the hand of charity to the mentally diseased, and asks that such be kept in durance for the purpose of cure or safety to themselves or others. Law applies its ironclad tests, and punishes all who can not pass the crucial ordeal. Medicine seeks after causes of action. Law deals out justice on the groundwork of appearances. Experts are called into court to testify in cases requiring the special aid of knowledge in chemistry, mechanics, or any other branch of science and art, and such testimony is accepted in its entirety; but medical men who make a special study of mental diseases, must have their opinions measured by the mental capacity of twelve jurymen, or worse still, by the dicta of judges, who accept rules laid down a century ago, when medical research was still in its infancy. Germany, France, and many of the States of the Union have accepted the medical basis of proof. It is expected that the British and Canadian courts will not ignore a system, that in every day practice will be found to be none the less effective in punishing the guilty, while it will save many a poor wretch from the infliction of a punishment which he had not deserved, as an irresponsible being, any more than a child unborn.

Judge Doe, of New Hampshire, in addressing the jury, *State vs. Pike*, says:

The legal profession, in profound ignorance of mental disease, have assailed the superintendents of asylums, who knew all that was known on the subject, and to whom the world owes an incalculable debt, as visionary theorists or sentimental philosophers, attempting to overthrow settled

principles of law; whereas, in fact, the legal profession were invading the province of medicine, and attempting to install old, exploded medical theories, in the place of facts established in the progress of scientific knowledge. The invading party will escape from a false position, when it withdraws into its own territory, and the administration of justice will avoid discredit when the controversy is thus brought to an end.

Judge Wharton, in his work on "*Criminal Law*," says:

No jurymen, if properly tender of his conscience and of public opinion, will base his verdict upon other evidence than that of those best able, from long training, and close attention, to understand the features of the case. In some cases the difference between a scientific, or technical opinion, and that of a layman, is not so much in the results attained, as in the guarantee afforded by the superior attainments and more minute expertness of a man of science. The declaration of such a man is insured against the possibility of error, to the full extent of the protection of science in its present state of development. *Pro foro*, this degree of certainty is sufficient, because it is the highest attainable; but the same can not be said of any other."

I make these few general observations, to show that our position in court would be much improved did caution, consistency, discretion, good judgment and candor prevail to a greater extent among ourselves. This would more readily be the case were all medical men, who might be subpoenaed upon a case, to meet together before being called as witnesses and in a calm, judicial way, discuss the different medical points bearing upon the approaching trial, and then go into the witness box, not as partisans "coached" for the occasion by counsel, but as unbiased witnesses, who "nothing extenuate nor set down aught in malice." These qualities are needed very much in the witness who gives evidence in cases of insanity. In most of such found on the criminal docket the disease is obscure, and to "make haste slowly" is very necessary that judgment may be just. The defendant may be a malingerer or a monomaniac, who cunningly hides his peculiarities (as many of them do). Such may be afflicted with melancholia, giving intelligent answers to questions, yet possessing homicidal or suicidal tendencies. The medical witness is often asked to give an opinion of the mental condition of such a person after a few minutes observation and conversation, or at most after one or two interviews of short duration. There