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### MEDICAL EVIDENCE IN COURTS OF LAW.\*

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Anyone who has paid even a superficial attention to medical evidence given in courts of law, must have noticed, from time to time, how easily medical witnesses can be procured to give evidence on both sides of a case. It matters not how clear may be the merits of the question, nor how little grounds exist for difference of opinion, yet medical men are found who will give positive testimony on either side, at the shortest notice, and on very flimsy premises. Lawyers take advantage of such conflict of opinion, and set up one medical man against another, until both judge and jury value the evidence by the reputed credibility and professional standing of each, and virtually neutralize the evidence of all by a system of offsets. This only refers to medical opinions, for in respect to facts all witnesses—lay or professional—stand on common ground, and state what are matters of observation, "without note or comment." It is true, medical science gives great room for difference of opinion, seeing it has not the exactness of mathematics. Herein lies the error in dogmatizing on much which is so obscure. Many of these varieties of opinion arise from a vain endeavor to explain everything connected with causes of litigation. In the presence of a court and the assembled multitude, it may not be pleasant to pronounce our ignorance; yet, in the endeavour to give answers hedged round with vain hypotheses of all kinds, the medical witness is apt to have unpleasantly forced upon him a display of how little he knows under a cross-examination, and thus what would have been re-

ceived as competent testimony, if it had been confined to sure opinion, is marred and doubted by pretending to know too much. In this plethora of opinion, lies one reason for so much contradictory evidence. It is well never to say more than the question covers, and to be guarded in even doing that, if the interrogation happens not to be relevant to the case at issue.

Another reason is in supposing ourselves as being witnesses for one side only, because we happen to be subpoenaed by one of the parties. The prosecutor or defendant, who calls a medical man, expects him to give *ex parte* evidence. He is paid a miserable pittance, to cover railway and hotel expenses. Is his testimony not bought and paid for, to be used on the disburser's behalf? This feeling, often involuntary, gets hold of the witness, and immediately the examination begins, he is on the alert against the wiles of the opposite lawyer, and often unconsciously is put upon the defensive to the injury of the truth. We have all felt this tendency. This position is not intentional, but the badgering of an indiscreet lawyer, may drive a medical witness to defend opinions which may give a coloring to a case not intended at the outset. This bias has to be guarded against. The witness is in court to tell *all and only* the truth, as far as in him lies. It is not for him to think of the result, consequent thereon, to any party. In giving evidence, it is not safe to weigh what will be the consequences flowing from its acceptance. "Let justice be done though the heavens fall." Unfortunately medical witnesses, giving opinions based on experience, are looked upon with suspicion by the courts. J. H. Balfour Browne, in the last edition of "The Medical Jurisprudence of Insanity," says: "That medical testimony, when received, should be received as of very *inferior worth*." Medical witnesses are said to be "rash," and to have expressed crude generalizations with an imperturbable effrontery," and that alienist physicians ask to be believed, "with an implicit faith, which was only compatible with the grossest ignorance; lawyers should assert the utter uselessness of the evidence of scientific witnesses in relation to questions of insanity." Lord Campbell says that "hardly any weight should be given to the evidence of skilled witnesses." Judge Davis declares in cases of insanity, "men of good common sense would give opinions worth more than

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