

administration of justice is based upon the common law. So far as these are concerned, one never hears abuse of the medical expert from bench or bar, and one rarely hears unfavorable criticism from either of these quarters. In my experience I think the severest criticism of the medical expert which I have known came from the members of the medical profession, and this is oftenest heard under oath from the witness box. No medical man who has had a considerable experience will fail to recall trials where what was afterwards called by the press and the public contradictory expert testimony was passed over without a single word of attack or insinuation from either counsel or the court.

It is worth while to say at this point that the medical profession owes it to itself to treat with very great respect the opinions of its members given under oath. To begin with, it does not add weight to the evidence of a testifying medical expert to treat lightly or as ridiculous the opinion of his brother practitioner. On the contrary, much more weight is carried by the testifying witnesses recounting the circumstance that he has carefully considered the opinion of his fellow-witness, and, in spite of this and the recognized ability and standing of such fellow-witness, the testifying witness is compelled to differ. To begin with, this is polite and considerate. It predicates an understanding and thorough knowledge of the other professional brother's opinion. It eliminates all suggestion of rivalry or taking sides; it eliminates any suggestion of egotism on the part of the witness; it eliminates any suspicion of spleen or ill-will towards one whom a jury is likely to regard as a rival witness; and, lastly, it takes out of the mouth of an over-zealous cross-examining counsel many weapons of attack. Let me mention some of these last as they occur to a lawyer. To weaken a witness in the eyes of a jury it is important to show that the witness is capable of being unfair. No easier way of showing that the witness is capable of being unfair is possible than to show that he is unfair to his professional brother. He does not think his professional brother knows much, when, as often appears, he has had no opportunity of knowing of his brother's knowledge, and, therefore, allows himself to swear without much foundation; he does not think it is a very serious thing for another doctor to swear to what is, as this testifying witness puts it, plainly and evidently untrue, and, therefore, the jury will probably be led to reason that the witness himself does not consider it a matter about which a witness may very easily go wrong, and that it is not of very grave importance which way a doctor swears upon matters of the kind in hand. This is as likely to lead the tribunal to think neither witness is on safe