The relations of the medical to the legal profession : being the introductory address delivered at the opening of the fifty-first session of the College of physicians and surgeons, of New York, October 20, 1856 / by Chandler R. Gilman.

GILMAN

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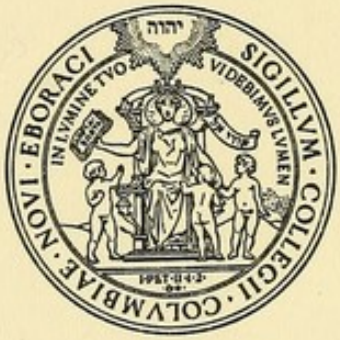
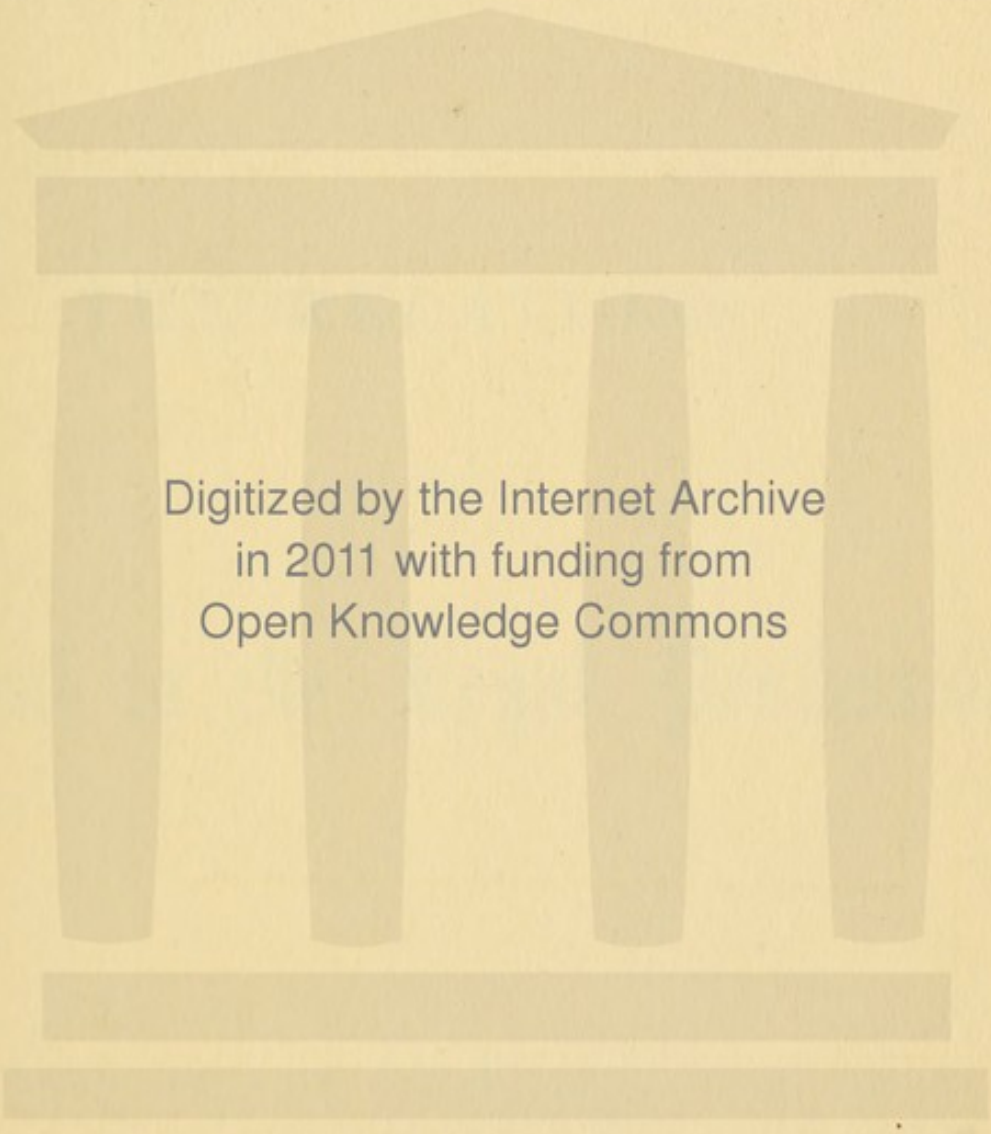
The Relations of the Medical to the Legal Profession





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INTRODUCTORY ADDRESS

DELIVERED AT THE

OPENING OF THE FIFTY-FIRST SESSION

OF THE

COLLEGE OF PHYSICIANS AND SURGEONS, OF NEW YORK,

OCTOBER 20, 1856,

BY

CHANDLER R. GILMAN, M. D.
Professor of Obstetrics and of Medical Jurisprudence in the College.

PUBLISHED BY REQUEST OF THE CLASS.

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1856.

At a meeting of Class of 1856 and 1857, of the College of Physicians and Surgeons, held November 19th, on motion of Mr. Foster Swift, Mr. R. H. Hinman was nominated to the chair. The following resolutions were then adopted:

1st. To appoint a Committee to confer and request the manuscript of Prof. Chandler R. Gilman's Introductory Address before the Class, on October 20th, for publication.

2d. That Messrs. Banks, Dana, Bird, Crook, and Schmidt, be that Committee.

Agreeably to the resolutions, the following correspondence was entered into:

PROF. CHANDLER R. GILMAN:

Dear Sir:—As Committee appointed by the Class, we, the undersigned, would solicit respectfully your attention to the above resolutions; and hoping that you will favorably consider them, we remain

Respectfully yours,

JAMES L. BANKS,
S. W. DANA,
JAS. R. BIRD,
JNO. T. CROOK,
D. W. SCHMIDT.

NEW YORK, NOV. 25TH, 1856.

MESSRS. JAS. L. BANKS, S. W. DANA,
JAS. R. BIRD, J. T. CROOK, AND D. W SCHMIDT:

Gentlemen:—Your communication requesting a copy of my Introductory Address for publication, is now before me.

The request is too flattering not to be granted by me with great pleasure. Be pleased to accept for yourselves my cordial thanks for the kind way in which you have communicated the wishes of the Class.

Very truly your friend,

C. R. GILMAN.

At a subsequent meeting, Mr. Hinman in the chair, the report of the Committee was read; and it was resolved, that the same gentlemen take charge of the publication.

ADDRESS.

GENTLEMEN :—

IT was but a few days ago that I was aware that the pleasant duty of welcoming you to these Halls would fall to my lot. In the regular course of academic duty, it belonged to one of my colleagues; and I am sure you will all agree with me, that the circumstances which have prevented his assuming it are the more to be regretted, as it is to his enterprise, zeal, and energy, that we are mainly indebted for the erection of this splendid building, provided as it is with all the means and appliances which prolonged experience has taught us to desire, either as facilitating your progress in study, or as adding to your personal comfort.

We are confident that in both these respects, it will compare very favorably with any college building in our country. To all its conveniences, and to all the advantages which you can derive from our best efforts to aid you in the pursuit of knowledge, we make you welcome. Use them with industry and zeal, improve to the utmost the opportunities here afforded you, and we have no hesitation in promising you the fullest measure of success.

Having spoken of the comforts and conveniences of this beautiful building, let me devote a single moment to one of its ornaments.*

* See Appendix.

On this tablet are engraven the brief histories of some who have gone before you, and who, after short service, have been enrolled among those whose names Science and Humanity will never allow to die. This tablet tells you, and those who come after you, that when pestilence was rife in our hospitals,—when in those wards devoted to public health, Death held high festival, selecting his daily victims at his will,—when to minister to the afflicted and dying, was almost certainly to share their fate, these graduates of the College of Physicians and Surgeons, were ready to labor night and day in the cause of suffering humanity, and as often as one of the number,—called to his rest,—left a place vacant, a score of candidates sprang forward, ready and anxious to fill that place of danger and death; and this continued till fourteen young physicians had, by an early death, earned a place among the martyrs of humanity. Such is the proud ornament of our Hall, and such the story it tells of those who have here been trained to something higher than medical science,—something nobler than professional skill. To the priceless heritage of their good example we make you welcome. It is yours; follow it; and may your professional career be, for your own sakes, as bright and as honorable as theirs! and, for the sake of your country and friends, may it be longer and happier!

With this much of cordial greeting, I shall ask your attention to some remarks on the relations of the medical to the legal profession, and the duties these relations involve.

It is a matter of common observation, that between lawyers and doctors, as such, there does not exist much respect on the one hand, or good-will on the other. It is doubtless true, that we of the medical profession have among the members of the bar many highly valued friends, for whom we cherish the warmest feelings of regard; and we should be

blind and senseless indeed, did we fail to appreciate those brilliant qualities by which many of them adorn their profes sion. But yesterday, such an one was here among us,—the pride and glory of the bar of New York,—the unrivaled advocate, on whose eloquent lips entranced thousands hung, borne aloft at his will on the wings of his brilliant fancy, or fast bound in the chain of his clear, convincing logic. Many of us knew him in private life, and delighted in his genial humor, his playful wit, his kindly temper, his warm, benevolent heart. Such was the Hon. Ogden Hoffman, of New York, as, a few brief days ago, he moved among us in the full perfection of his manhood, the ripe maturity of his intellect. One little week,—one brief period of seven days, passed by, and we heard the solemn voice of God's minister consigning earth to earth, ashes to ashes, dust to dust. Even so, Father! for so it seemed good in thy sight.

But I wander from my theme; I even forget it. Those who remember him will forgive me.

Admitting, then,—nay, even boastful of our appreciation of individuals, it still remains true, that our kind feelings are to the individual only. For lawyers, as such, and especially for cross-examining lawyers, the doctors, very generally, have no good-will; esteeming their rightmindedness very little, and often falling into the grievous error of supposing that the ethical standard of the bar is a thing altogether imaginary,—a pure figment, a myth. But if such are the feelings and opinions of the doctors towards the lawyers, how is it on the other hand? Truly, not much better; for though the members of the legal profession may respect and esteem individual doctors, and place in their professional skill, as practitioners of medicine, a full measure of confidence, yet when reciprocal duties bring them in contact as counsel and witness, we are often

treated with very little consideration. To puzzle a medical witness, to expose his inconsistencies, and laugh at his opinions, is, we all know, a very favorite amusement with the lawyers.

This ought not to be; these feelings ought not to exist between the two professions. They are bound together by ties which should insure good feeling and mutual respect. They are both learned professions; their members belong to the brotherhood of scholars; the associations of the school-room and the college-hall are theirs. The power of these kindly associations often binds individuals of the two professions in the ties of life-long friendship. Why should those thus linked together as scholars and as men, rarely meet as doctor and lawyer without ill-will on the one side, and something very like contempt on the other? And when they part, the one go away railing at the unfairness of the lawyers, while the other remains to amuse a court and jury with sneers at the blunders of the doctor. Why is this? As in most cases of difference between honest men, the main reason is that the parties do not understand each other,—do not appreciate their mutual position. My object, this evening, is to do something to promote a mutual good understanding, by removing from the minds of my medical friends some notions I think erroneous, and some prejudices which are certainly unfounded. Especially do I desire to point out to students and the junior members of the profession, some of the errors which medical witnesses most commonly commit, by which they do discredit to themselves and to their profession. I have already said that, to promote good feeling, a thorough, mutual, good understanding is essential. Each party must appreciate the position and duties of the other. This I think medical witnesses rarely do; they look at the acts of a lawyer from their own stand-point, not from his; and consequently make an utterly erroneous

judgment of them. Many of them are willing to join in the common cant, which imputes dishonesty to a lawyer because he is willing to argue either side of a disputed question.

I have myself heard—I say it with great regret—very honorable and intelligent physicians uphold the preposterous proposition, that a lawyer should not advocate any claim he does not believe well founded, nor defend any prisoner unless he believes him innocent. I have called this a preposterous proposition, and I think it such. Still, as it is very popular not only with the ignorant and the unthinking, but with many who surely ought to know better, I feel myself justified in attempting to set this whole matter in its true light before you.

A few very simple propositions will do this. The only difficulty is, that they are so simple, so elementary, that I feel almost ashamed to make a formal statement of them.

The true theory of all trials in courts of law, whether by jury or before judges, is this: a question being in dispute, the facts and arguments on the one side and the other are presented to the deliberate consideration of the court, and by them the case is decided. That their decision may be just, it is obvious that all the arguments on both sides should be fully before them. Who can doubt that this end will be best secured, when the arguments on the one side are prepared and presented by one man, while those on the opposite side are prepared and presented by another?

Neither advocate, observe, is required or expected to express his individual opinions on the matter; indeed, it is a violation of strict legal etiquette that he should do so. He is employed to present, in legal form, the argument on one side of a disputed point. His vocation "hath this extent, no more." Now, is there any thing wrong, any thing dishonest,

any thing dishonorable in this? Is it not, on the contrary, the most certain way of securing the best interests of truth and justice? The case seems to me so simple, that it is almost a waste of words to argue it. Away, then, with the idle notion that an upright lawyer should only argue that side which he judges the right one. He has no call to judge in the matter; and if he do so, he arrogates to himself the function of judge and jury, and exercises those functions when ignorant, it may well be, of many of the facts of the case, and the principles of law which apply to them. The truth is, that when a lawyer refuses to defend a criminal because he thinks him guilty, he does that criminal a positive wrong,—depriving him, so far as he can, of a fair trial. I know that lawyers sometimes do this, and are praised for it. But that an honest man should act thus, or an intelligent man praise him for it, is only to be explained by referring to that proneness we all have to do our neighbor's duty though we neglect our own.

Here the lawyers' duty is plain; he is to give his client the benefit of a complete legal defense; but your extra-conscientious man is, forsooth, so anxious that a guilty man should not escape punishment, that he abandons his own duty to aid in performing that of the judge and jury.

If men would only follow the simple rule, Do your duty and leave results to God, where they belong, we never should hear of this grievous error. Shall a lawyer say, This is a murderer, and he ought to be hanged, and I will do all I can, by refusing him legal counsel, to hang him. Whether he ought to be hanged or no, is not the question in which your duty is involved. That question is, Shall he have a fair trial? And your duty in the premises is to see that he has it. That duty done, you are free, and it remains for judge and jury to do theirs.

I have elaborated this point more than I had at first intended; my excuse is, that the error I combat, is widely prevalent, and excites a strong and most unreasonable prejudice against the members of the bar.

But it is not upon this point that the personal difficulties between medical witnesses and counsel occur. They arise on cross-examinations, and I regret to say, that they arise in the vast majority of cases from faults on our side. I do not assert that there are no faults with the lawyers. Some, even of the most respectable, will we all know, shout out their questions in the tone of a sailor hailing a ship; some will try to bully; and some (with all possible deference be it spoken) will resort to tricks, unworthy of a gentleman.

What then—Shall I get angry, because a man speaks too loudly, or tries to bully, or being a vulgar man, acts like a vulgar man? Is it not far better when he shouts, to assure him in the blandest possible tone, that you are not deaf and that consequently such straining of his voice is quite needless. Or if he bullies or vulgarizes in any other way, to treat him with ceremonious politeness. This often succeeds admirably: nothing confuses your vulgar man like politeness; he never knows what it means, and is always ready, like Grub in the comedy, to swear it is a plot for he can make nothing of it.

All due allowance being made for these small matters, the conviction remains strong on my mind, that the difficulties and bad feeling which arise between cross-examining lawyers and medical witnesses, are in the vast majority of instances the fault of the latter. This, I think, comes in most cases from the medical witness not appreciating the position of the counsel, and his duty to his client.

His duty plainly is, to sift the evidence that bears against his client; and if there be a flaw in it—if a fact has been stated

inaccurately, a principle pushed too far, an opinion rashly hazarded—the error must be exposed. How can this be done without rigid cross-examination? And why should a medical witness take offense at this? Yet how common it is to hear medical men complain, as though a grievous insult had been offered them! The lawyer, say they, tried to break down my evidence, tried to make me contradict myself. I believe he supposes I committed perjury. Now, all this is idle. He tried to break down your evidence; did he?—Of course! Your evidence was fatal to his client. He tried to make you contradict yourself?—Certainly! your self-contradiction would be his victory. Does he suppose you are committing perjury?—Not at all! He means by cross-examination to find out whether you have or not. If you have not, his cross-examination will do you good rather than harm. He is doing his duty in trying to break the force of your evidence; and it is your duty to yourself, and to the cause of truth, to present such evidence that he cannot break down.

But medical witnesses often fall into errors, not from failing to appreciate the lawyer's position, but by utterly forgetting their own. That position is one of absolute neutrality.

We are, as a matter of convenience, subpœnaed by one party. Now, medical witnesses often seem to suppose that they are enlisted on that side, bound to tell all that can make in its favor, and nothing that can prejudice it. They consequently lend themselves very willingly to the leading of the one counsel, and strive to give him just the evidence he wants; while to the other party, they assume from the first an attitude unmistakably belligerent. The extent to which this spirit of partisanship pervades the profession, is absolutely wonderful. I met, the other day, with a most remarkable and even an amusing illustration of this.

Consulting, for a different purpose, F. Winslow's Lectures on Insanity, I noticed that, in speaking of an error medical men may commit, he says, "The medical witness may thus injure the cause he is most anxious to serve;" and a little further on, he speaks of "the party in whose favor we appear."

Here is a teacher, and a very eminent teacher, of medical jurisprudence, seemingly ignorant of the first principles of all correct testifying.

He speaks with the most edifying simplicity, of "the party in whose favor we appear," just as though the doctor were the hired advocate of one party, instead of being sworn to testify to the truth without fear, favor, or affection.

Is it strange that when a lawyer finds a medical witness animated by this spirit, anxious (in the words of Dr. Winslow), "most anxious to serve the party in whose favor he appears," he should strive to break down such testimony? Is he to be blamed, if in so doing he is little regardful of the feelings of one, who has shown himself so regardless of his own obligations to truth and justice?

No one can doubt that this partisan spirit is abhorrent to every principle of right. Never allow it to influence, in the slightest degree, your testimony.

But it sometimes happens that witnesses are rendered partial, not by this foolish notion of being enlisted in the service of one or the other party, but by their own sympathies. They know, or what is much oftener the case they think they know, that all the right of the case is with one party, all the injustice with the other. Then comes the apprehension, that what they may say will prejudice the cause of justice. A fellow-creature is on trial for life or liberty, of which we think the law is about unjustly to deprive him. The best and most kindly sympathies of our nature, are

enlisted in his behalf, and we fear lest our testimony (though perfectly true) may do him harm. How difficult under such circumstances, to testify entirely without bias, especially when we speak to matters of opinion, perhaps to very nice shades of opinion! Here a word, a look, a tone of the voice, may give to your testimony a false coloring. To avoid errors from this source, as well as from partisan feeling, the medical witness should cherish a spirit of indifference as to the effect of his testimony on the case.

Let him never give the result a thought—it is a thing with which he has nothing to do. His duty is to tell the truth, the whole truth, and nothing but the truth; what use the court may think proper to make of it, is a matter for which he is in no shape or way responsible.

Here, as before, men often neglect their own duty in their anxiety that their neighbors should do theirs.

Another element often gives onesidedness to medical testimony. Physicians commit themselves—early in a cause, perhaps even before the trial begins—to opinions which, when compelled on cross-examination to review, they find require modifications. Now, it is often very difficult to make these modifications, be they ever so necessary. The counsel on the one side having secured the evidence his case requires, is unwilling to admit any change that may injure its effect; on the other side it is the business of counsel, and I repeat it again and again it is his duty, to compel you, if he can, to admit the inaccuracy of your first unguarded opinion, and either to withdraw it altogether, or so to qualify it as that neither force nor sense remain in it.

From all this it too often results, that between one lawyer, who wishes the opinion to stand absolutely unchanged, and the other, who will be content with nothing less than an

essential modification of it, the opinion is torn to pieces; lucky if the doctor's reputation for intelligence, or even for integrity, does not share the same fate. When all is over, our unlucky brother will weary all his friends with complaints of the unfairness of the lawyers; when the whole difficulty arose naturally, and indeed necessarily, from his own rashness in advancing an opinion which deliberate consideration would have shown him was untenable. To avoid all this, never give an opinion on a subject which you have not deliberately considered; and if asked for one decline to give it, and state plainly and frankly the reason. Say you have no opinion, as it is a matter you have not studied.

But here we come upon a very fruitful source of blundering, if nothing worse, in medical evidence: I mean professional pride, or rather professional vanity. Some of the brethren are very unwilling to admit, that there is any thing connected with the profession of which they are ignorant. They may not claim, in so many words, that their knowledge has no limit; but they are very unwilling to allow any one to fix this limit. The little words, "*I do not know*," are of all the words in the language, the most difficult to get out of their mouths.

Now, this foible, when displayed in ordinary talk, or in the debates of learned academies (where it is very apt to figure largely), is only ridiculous; but when paraded on the witness-stand, the result is very different. To the standers-by it is a rich treat, to watch one of these learned pundits as he shifts and turns, doubles and winds—now here, now there—in every path but the straight one; the lawyer all the while following him up with the scent of a well-trained fox-hound,—enjoying the chase and sure to be "in at the death."

This, as I have said, is rare sport to the by-standers; for, as

Rochefoucauld says, "There is something in the misfortunes of our best friends which is not disagreeable to us." To the poor hunted animal of a witness, it is rather annoying. How much better it would have been, to avoid all this by saying at once, I do not know, instead of having your ignorant pretensions made matter of proof, and commented on to a sneering multitude!

Here, as ever, honesty is the best policy; and the honest, the honorable course plainly is,—if you do not know, to say so at once.

I have thus, Gentlemen, dwelt on some of the errors which make the giving of medical testimony disagreeable to the witness, and unsatisfactory to the court. This I have done without any reference to the subject-matter of the testimony. There is, however, one subject on which we are often required to give testimony, which is so beset with difficulties, that a more special attention to it seems proper. *I refer to Insanity.*

The medico-legal investigations connected with unsoundness of mind are equally important and difficult: they often touch the liberty and sometimes the life of a fellow creature; and some of the questions involved are so exceedingly obscure, as to task the strongest intellects, and often to task them in vain.

The innate difficulties of the subject are unfortunately aggravated in a ten-fold degree, by the very unsatisfactory state of the law, and the strange unwillingness which many of its disciples show to make it keep pace with the advance of general science. There is in this respect, a wide difference between law and medicine.

The spirit of the law is conservative—it looks to precedents and authorities—it is the very reverse of progressive.

It is the boast of the cultivators of medicine, that their science is eminently progressive, and authorities have little controlling influence over us. On no subject is this difference between the two professions more marked, than on insanity. Speak to a lawyer of insanity, he will quote Sir Mathew Hale and Lord Coke as his unerring guides; he neither knows, nor cares to know, more than was thought by these lights of the bar. Speak to a doctor—will he quote authorities 200 years old? We should certainly think the man himself mad if he did. It is surely no matter for wonder that men should differ, when they look at a subject from standpoints two centuries apart. To some of these points of difference, I will now call your attention; and

First, as to the competency of medical witnesses in cases of insanity. By a strange inconsistency though medical men are constantly called to speak as experts on insanity; yet no sooner is their evidence obtained, than the lawyer to whose case it chances to be unfavorable, is sure to deny that a doctor is any authority on the subject; and he will often find support from the bench. Lord Denman, for example, says, "As to moral insanity, I cannot admit that medical men have at all more means of forming an opinion in such cases, than are possessed by gentlemen accustomed to the affairs of life, and bringing to the subject a wide experience." This question of the competence of medical witnesses has been widely discussed, and the arguments pro and con variously stated, by Kant, Hoffbauer, Regnauld, and many other writers on medical jurisprudence.

It seems to me, that the solution of it must depend on the view we take of the essential nature of insanity, as a disease of the body or of the mind. If it is a disease of the body, there can be little doubt that it may be most correctly judged

of by those who are familiar by their daily avocations and studies with such diseases.

If, on the contrary, it is a disease of the mind, the investigation of it properly belongs to those who study the mind,—the metaphysicians.

Let us look a little closely at this matter. We all speak familiarly of diseased mind. Did you ever ask yourselves the question, *Can the mind be diseased?* Is the immaterial, the immortal part of man, subject to disease? Disorder and decay can very properly be predicated, *a priori*, of the body; its destiny is death; it lives but to die; disease is the pathway by which it reaches that goal of its existence—*the Grave.* But how can that subtle mental essence, which has neither members nor parts, be disordered? How can the immortal principle within us decay? It cannot be. Disease, disorder, decay, all belong to the body, and to the body only; and consequently we must place the essential seat of insanity in the body not the mind.

I know that it is objected to this theory of insanity, that in many cases we can detect no lesion in the brain of the madman. This is true; but is it less true, that in very many cases we can trace insanity directly to diseases or injuries of the brain? And when we cannot do so, shall we say that structural change does not exist, because we cannot detect it? Who doubts that neuralgia depends on lesion of the nerves. Yet the scalpel, however well guided, the microscope however powerful, cannot always make the lesion palpable to our senses.

If, then, insanity be a disease of the brain, the right of a medical man to speak authoritatively as to its existence, is beyond cavil.

But though we thus insist on our right to speak as to the

existence of insanity because it is a bodily disease; yet we must not forget that it manifests itself chiefly by mental phenomena, is often produced by mental causes and cured by moral means; so that he who has not studied mind in its normal state, when its manifestations are not interfered with by disorder of its material organ the brain, cannot speak on insanity without the certainty of blundering. You all know how futile is the attempt, to study the pathology of the body when ignorant of its physiology. How can we expect to succeed with the far more obscure subject of mental disease?

The study of metaphysics is, then, essential to the acquisition of any accurate knowledge of insanity.

But metaphysics alone will not suffice; you must study the influence of mind on matter as well as that of matter on mind; in the former you have the therapeutics of insanity—in the latter its etiology. Study, then, mental phenomena in health as well as disease.

Thus prepared, you may go to the examination of an individual case of insanity, with good hope of success; and if your examination be patient and thorough, you may present the results of it to a court, with a reasonable certainty of doing yourself credit and promoting the cause of justice.

The first difficulty you encounter is with the definition of insanity. This is frequently asked for by the lawyers "*per ambages*," to use one of their own phrases. The prudent course is to decline, saying to the court that it is impossible to comprehend all the phenomena of insanity within the limits of a definition. If, however, you desire to give one, be sure that it is the result of careful and patient previous thought.

If you are quite sure that you can recollect a definition which satisfied your mind, in your study, you may give it;

but rely upon it, if you try to extemporize a definition it will be a bad one. The best I have been able to make, is this: "Insanity is a disease of the brain by which the freedom of the will is impaired." I suppose, some of my legal friends will say that the chief merit of this definition of mine is, it leaves so many loopholes for the medical witness to creep out of; to tell the truth, I do not myself think that its worst point. The definition of insanity being disposed of, the next question is, What is the mental condition of the party whose case is before you? To this you may reply in general terms, He is insane, should that be your opinion. Or you may state particularly, He is a lunatic, a monomaniac, or the like. I think it is best to use in the first instance the general terms, He is insane, and go into particulars only when required to do so. Even then, be sure to go no farther than the question leads; and above all avoid the use of technical terms. Their needless use (one of the vices of our profession, by the by) is always in bad taste, and in cross-examination it is sure to provoke court, counsel, and jury. No man likes to be addressed in terms he does not understand; it shocks his self-love, and you have at once his vanity up in arms against you. Technical terms are never necessary to those who understand themselves; the use of hard words is the refuge of the muddy headed: he who sees clearly will generally define accurately.

Having given your opinions (always without needless detail and in the simplest words possible) you will of course be asked for your reasons. You think this man insane—Why?

Here we come to a point where law and medicine diverge widely. The law demands a standard of sanity, or some single test of easy application. It seeks to draw a well-defined line, all above which is sanity, all below insanity. Medicine ignores

all this, and refuses to compare every man's mind with any arbitrary standard. As to tests of insanity, the law has for ages had one; medicine has none. Experience has taught us that in this matter, the establishing of standards and the application of tests is altogether futile.

The true idea of all the forms of insanity, except congenital idiocy, is set forth in the term mental alienation, mental change. This man is insane, not because he differs from another, not because he falls below any arbitrary standard, or responds to a certain test, but because he differs from himself, and has by force of disease fallen below the standard of his own better self. Here is the true theory of insanity,—"moral or intellectual change, dependent on disease of the brain." I have already said that the law has had for ages one favorite test for insanity. It is at least two hundred years old, and consists in "the knowing right from wrong." It is a very striking illustration of the non-progressive character of the law, that the twelve judges of England, when applied to by the House of Lords on this subject, in 1851, did not advance one step beyond this old test, but declared "a person was punishable if he knew, at the time of committing the crime, that he was acting contrary to the law of the land;" and again, they say, "To establish a defence on the ground of insanity, it must be proved that the party did not know that he was doing wrong."

Now, the utter futility of this test has been familiarly known to physicians for nearly a century; and, moreover, it has been disregarded in the administration of the law, again and again. Many persons have been acquitted on the ground of unmistakable insanity, who not only knew the difference between right and wrong in general, but were perfectly aware that the particular act they committed was contrary to

law. A remarkable case of this kind occurred in England in 1800.

James Hadfield fired a pistol at King George, in Drury Lane Theatre. He was arrested on the spot, tried for the offense, and acquitted as beyond all controversy a lunatic. Yet Hadfield avowed, that he knew perfectly well that what he did was illegal, and he would be hanged for it; and said that he did it for that very reason: he was tired of life, and wished to be hanged.

So much for the knowing right from wrong, as a test of sanity; and so much is the administration of the law better, and more humane, than the abstract idea of the law. Now, when the medical witness is required to apply this test, in any of its forms, to a case, he should, I think, ignore it altogether. If asked "Does this man know right from wrong?" my answer would be, "I suppose he does, almost all insane people do."

After these remarks on insanity in general, I will say a few words on some of its forms.

First of lunacy: The essential feature here is, the party has *lucid intervals*. Now, it is all important that the medical witness should know, that the legal and the medical signification of these terms are widely different. The legal definition, I as find it in Shelford on Wills, is "A lucid interval is not a remission of the complaint, but a total, though temporary cessation of it, a complete restoration to the perfect enjoyment of reason." In medicine, a lucid interval is something very different, it is a characteristic period of the disease, like the interval in a case of ague. Bear this in mind, or you may convey to the court an impression widely different from that which you design.

Let us now say a word as to another form of insanity.

We sometimes meet with men who, manifesting insanity unmistakable on some subjects, are yet upon others, to all appearance, perfectly sane. These cases of monomania as they are called, are of every day's observation with those who have charge of the insane. How are they to be explained? Are we to give to the words "partial insanity," by which they are often designated, a literal signification, and believe that part of the mind is sound and part unsound? Can we in accurate use of language, speak of the parts of the mind as we do of those of the body? I think not. "The mind," says Lord Brougham, "hath neither members nor compartments; and what we call its faculties, as memory, imagination, &c., are not parts, but modes of acting. We do not use one part of our mind when we remember, and another when we imagine. We use the mind in one particular way in the first case, and in another in the second."

From this theory we deduce, I think, the true explanation of these cases of partial insanity. The mind, through its organ the brain, is as a whole affected; but this diseased state, though always present, is manifested only when the mind acts in a particular way. An illustration from bodily disease will perhaps make this more intelligible. Suppose a man to have an injury of the thigh, which causes him to limp when running or going up stairs, though he walks well enough over level surface. You could not say, this man is partly lame, or only lame when he runs or goes up stairs. He is always lame, though his lameness is only manifested when he uses his leg in one particular way.

This is the true theory of monomania, and it is of the utmost importance in legal medicine, as teaching us the impropriety of ever speaking of any of the acts of monomania as those of a sane man. In relation to partial insanity the law

deems it necessary in criminal cases, that the delusion under which the party labors should be connected with or prompt to the crime he has committed. This notion the medical witness should never for a moment countenance. The associations by which the ideas of the sane are linked together, are, we all know, exceedingly obscure. How much more those of the insane! and how impossible it is to say, that this or that delusion could not have prompted the mind of a maniac to the commission of this or that crime!

There is yet one other form of insanity, which though fortunately rare, sometimes demands investigation in courts of justice; and on which I regret to say that a majority of the legal profession, have yet to acquire their first rational idea. I refer to moral insanity.

This form of madness presents to us the appalling spectacle of a disease of the brain, the chief symptom of which is an irresistible impulse to commit crime. The brain is touched, it may be that we can trace the physical lesion, or it may be that some hidden fibre is in some, to us, inscrutable way disordered; and the terrible result is that a man hitherto mild and gentle, or it may be a woman who has been decked with all a woman's tender and loving attributes, rushes upon crime with a fierce recklessness which depravity never equaled. He was a humane and kindly gentleman; disease makes him a human tiger. He riots in blood; and murder—ferocious, brutal, yet senseless and motiveless murder—is the necessity of his existence—the very breath of his nostrils.

His determinations seem to result from something external to his own mind—independent of his own will. He is driven to the commission of crime, by an impulse as blind and as irresistible as the fabled destiny of the ancients. It suggests motives at which he shudders and actions he abhors, and like

the furies of Orestes, it lashes him forward in the path of crime, every step of which he treads with horror. Such is moral insanity; a mystery, an appalling mystery it is that all this should be the result of physical disease. Yet is the existence of this form of insanity as certain as the existence of God.

How does the law deal with these cases? They are by Bar and Bench in very large majority altogether ignored—nay scoffed at.

"Moral insanity!" says a very distinguished member of the English bar, "call it rather immoral insanity, and punish it accordingly." And again he says, "The law utterly ignores this moral insanity."

"If a man has an irresistible impulse to commit murder, the law should have an irresistible impulse to hang him," said in my hearing a judge of our highest court.

Is not this amazing? I, as a man of science, testify as to a disease with which personal observation and careful study have made me entirely familiar, of the existence of which I have no more doubt and no more reason to doubt than of my own. And the legal reply is, "The law ignores the existence of this disease." If I remonstrate—if I say, "I have seen this disease, other men have seen it"—I hear something about Lord Eldon. I still insist, "We are not concerned with Lord Eldon, but with this disease which I will show you." "Nay, but Lord Coke," quoth my opponent, learned in the law. "My dear Sir, let my Lord Coke rest, which is, as you know, more than his wife was willing to do. Let poor henpecked Lord Coke rest, and let us look at this disease." "Nay, but Sir Mathew Hale." "Blessings on the memory of Sir Mathew Hale! and let us close the discussion, or in another moment we shall be sent back to the Pandects of Justinian, even if we escape the Twelve Tables."

Now, Gentlemen, I have just one remark to make on these cases and this way of disposing of them. It is your plain duty to take the ground that medical science has established beyond all reasonable doubt, that moral insanity and these blind impulses which the law so confidently ignores, are positive entities, the results of physical disease.

State this distinctly—hold to it firmly; and then for whatever the law may do—the law is responsible—we are clear.

I have now, Gentlemen, completed the task I assigned myself, when selecting as my theme the relations of the medical to the legal profession, and the duties those relations involve.

You have seen that these duties are of the gravest importance—to individuals, to Society, to your profession, and to your own reputation. If in detailing them, I have indulged in a strain more purely didactic than you are accustomed to on occasions like the present, it has been because I am so anxious that the graduates of this College, when called by their country to the most important of their public duties, may be able to perform them with pleasure to themselves, and credit to the time-honored institution to whose halls I again bid you Welcome.

APPENDIX.

The ornament here spoken of is a mural monument, erected in the College Hall by the Faculty, bearing the following inscription:

HÆC MEA ORNAMENTA SUNT:

GORHAM BEALES,
WILLIAM W. CAHOON,
HENRY W. CURTIS,
HORATIO W. GRIDLEY,
HENRY W. PORTER,
LEFROY RAVENHILL,
JOHN SNOWDEN,
FRANCIS BULLOCK,
FRANCIS P. COLTON,
ENOCH GREEN,
ELIHU T. HEDGES,
A. JUDSON RAND,
DAVID SELIGMAN,
SIDNEY B. WORTH,

STUDENTS OF THE COLLEGE OF PHYSICIANS AND SURGEONS,

DIED OF PESTILENTIAL DISEASE,

WHILE SERVING IN THE PUBLIC HOSPITALS OF NEW YORK.

This Tablet

IS ERECTED BY THE FACULTY

THAT THE MEMORY OF THESE MARTYRS OF HUMANITY MAY NOT DIE,

AND THAT, TAUGHT BY THEIR EXAMPLE,

The Graduates of the College

MAY NEVER HESITATE TO HAZARD LIFE

IN THE PERFORMANCE OF

PROFESSIONAL DUTY.