ON

# MEDICAL EVIDENCE

IN OUR

# LAW COURTS,

BEING AN

EXPOSURE OF ITS PRESENT DEFECTS, &c.,

WITH A

SUGGESTION FOR ITS AMENDMENT,

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# PREFACE.

The following pages were composed in the Autumn of 1856, and formed the presidential address of the author before the Gloucestershire Medical and Surgical Association, at the annual meeting (in 1856) holden at Cirencester. The paper was also read at the quarterly meeting of the Bath and Bristol Branch of the British Medical Association in the following November, and was published, after a few weeks, in the "*Association Medical Journal;*" and from which it is now reproduced.

About two years since the subject of medical evidence in our Law Courts was taken up by the "*Law Amendment Society*," and the objectionable features connected therewith were very fairly discussed; whilst the remedy suggested was —so far as the author remembers—precisely that which the following pages insist on. Some six months since the "*Morning Chronicle*" devoted its pages to the same important matter. The following remarks are so apposite and truthful that it is thought well to quote them.

"It is not every party to an action who can afford to pay ten or twenty guineas a piece per diem to half a dozen

physicians, who leave their patients to go into the witness box and support this or that theory, according to the view of the party who fees them. We have hardly seen a single important case depending on medical testimony, during the last dozen years, in which we have not had an array of members of the faculty of medicine on either side, swearing dead in each other's teeth, and especially in lunacy cases. Now, suppose a failure of funds on the part of plaintiff or defendant, the probability is that he will be cast, not from want of evidence, but from want of money to procure it. Thus a will may be invalidated, a man hanged, or a sane man committed to an asylum solely from want of money. This is a growing evil, and medical testimony will soon become worthless, if it has not become so already, unless it is stopped."—"They (physicians) come there to support the view of the party who calls them, and from whom they receive large sums for giving up their day's practice. They are, in the worst sense of the term, 'interested witnesses,' and with half a dozen swearing one thing and half a dozen swearing the direct opposite, a jury is far more perplexed in coming to a right verdict than if there were no medical testimony at all."

The editor of the "*British Medical Journal*," has, on two or three occasions, written in favour of the author's views on medical evidence ;* and in the very last number, he has adduced good and valid reasons why the present state of things should be altered. The editorial here alluded to concludes with these words, viz.:—

"We see no other way by which medical witnesses may escape from the technical subtleties of the law courts and take their fair share of responsibility in detecting crime or in exonerating the innocent, than that to which we adverted on a former occasion. We leave to others more learned in the law to say how a jury of doctors may be gathered together under government authority to assist the judges in sifting facts

* See volume ii. for 1861.

that have a purely medical significance ; but we feel convinced that until some such tribunal is established, the most eminent physicians and surgeons will continue to suffer personally from the free language of counsel, and to see their evidence rendered abortive by the licentious privileges of the law."

The newspaper press appears, just at this time, in no very good humour with medical men considered as witnesses in our Law Courts ; and scarcely less is to be expected, regard being had to the medical facts of a very recent lunacy case. However, a perusal of the following pages might prompt both the "*Morning Star*" and the "*Western Daily Press*" to admit that the *lawyers* share, to say the least of it, the blame attributable to our present shortcomings, whilst the *doctors* are not unwilling to endorse a "*progressive theory*."

It is hoped that Lord Westbury *will* carry through his "bill by which he intends to amend our lunacy laws," and that any thing like a repetition of "the recent Wyndham commission" will be rendered unlikely ; but it is *not* hoped by those of a matured judgment, and in the enjoyment of a healthful moral sense (*i.e.*, moral sanity*), that "the opinion or conclusion of any medical practitioner," to quote the LUNACY REGULATION BILL itself, shall be sought only when a "LORD CHANCELLOR" shall see fit and proper ; or what is the same thing, that the *opinions* and *conclusions* of non-medical persons

* See a leader in the "*Morning Star*" for 1st March instant.

shall be held as sufficient at any time, either to prove or disprove insanity in "the alleged lunatic."

The author feels satisfied that "the present anomalous relative position of law and medicine, *i.e.*, of lawyers and doctors," must cease; that "the practice now adopted of obtaining the testimony of medical men in cases of suspected lunacy, as well as in criminal cases, is throughout objectionable, and fraught with much mischief;" that "it is desirable for the sake of science, and not less for the honour of the medical profession, that, in all cases, of whatever kind, involving in any degree a knowledge of the principles and practice of medicine and its collateral branches, a plain statement of all the facts should be drawn up and submitted to a MEDICAL ARBITRATION," and that then the "various opinions" of medical men "would be found to approximate, and the medical chasms which now appear would be bridged over in an easy, graceful, and truthful manner."*

The present time is especially opportune to the ventilation of this question of "*medical evidence.*"

Northwoods, near Bristol,
March 14, 1862.

* The above are quotations from the body of this Pamphlet.

# ON MEDICAL EVIDENCE.

If we will be at the trouble to look about us, and keep our senses awake to the ever varying and oft succeeding phases of medical life and experience, we shall have no difficulty in convincing ourselves that much yet remains to be done to improve the character of our profession, as well as to ameliorate the status of physicians and surgeons, and not the less to promote the interests of society at large. The liberal education and peculiar knowledge of a medical man place him of necessity far above his neighbours, of whatever calling. Acquainted with the constitution of man, and well informed of the nature of the external world; appreciating also, as he does, the nature and extent of their adaptation to each other, and of the resulting health or disease to either the individual or the masses of mankind, the medical practitioner is even now recognised as the most fitting person to have the charge of the sanitary arrangements at this time in progress in all our large towns, and the general direction of all the details connected therewith. If we are but true to ourselves, we shall not fail to improve this occasion. The physician or surgeou thus, in point of fact, holds the office of a public functionary, with duties of the most honourable and responsible character; and whilst he would, on hygienic principles, defend the body from disease and physical suffering, and so maintain health and preserve life, he would, if he were allowed, and in the capacity of a psychologist, devise means whereby to preserve the *mens sana in corpore sano*, and thus increase his claims on the public regard and sympathy.

The appointment of medical coroners, the creation of local health officers, and of medical commissioners of lunacy, etc., assure us that we, as members of the medical profession, are improving our status, and, naturally enough, taking a foremost place among our fellow-men in all that relates to an advanced and advancing civilisation. The time may be perhaps looming in the future—but that future is not so far distant—when our

profession, being duly represented in a reformed, *i. e.*, a more intellectual and less vicious legislature, shall demand to be heard in defence of its just claims on public consideration, not to say gratitude ; and until then, but not much longer, shall we witness the present anomalous relative position of law and medicine, *i. e.*, of lawyers and doctors. We have already shaken off the trammels of superstition, and have substituted facts and reasoning for idle fancies and priestly sophisms : let us then pursue so commendable a course, and endeavour, through good and through evil report, to reach yet a higher stage of truth and independence.

Let us look at the position of the medical witness in our courts of law. Is the position assigned to him unobjectionable? Do his opinions and evidence receive that respect they are entitled to ?

The following remarks refer to the subject of *medical evidence*, and are intended to prove that medico-legal matters have their abuses, and as such demand to be remedied. I shall endeavour, in the first place, to show that the practice now adopted of obtaining the testimony of medical men in cases of suspected lunacy, as well as in criminal matters, is throughout objectionable, and fraught with much mischief; and that the same is rather calculated to conceal the truth than to bring it to the surface. This much I shall endeavour to prove to you by reference to two very celebrated cases—one that of Mrs. Catherine Cumming ; the other of very recent date—I mean the trial of William Palmer for the murder of John P. Cook. It is my purpose, in the second place, to suggest for your consideration a course of proceeding by which the objections at present existing may be avoided, and the medical witnesses escape the very anomalous and unfair position given to them as a body ; some of them being on the side of the prosecution, whilst others are on that of the defence—an arrangement, this, justified by custom certainly, but one calculated only, as it seems to me, to deprive them of the full force of whatever they may say, and not the less to deny to medical science its due weight and importance.

A reference to the published report of the trial, *in re* Cumming, reveals the astounding fact of so many as twenty medical men appearing to give evidence ; that is to say, ten "for the petitioners," and ten in opposition, or *for* Mrs. Cumming. Now, let us stop for one moment to mark the routine observed to enlist each one of such twenty medical

witnesses. Let us remember, that what the law attacks, the law defends; and that the lawyers on either side of the question are equally of the *red-tape* genus, and belong, in principle, to the Circumlocution Department. The lawyers are one and all bound down to rude and musty precedent, and from which they dare not so much as hope to escape. Well, then, both parties are on the alert, as time and circumstances are pressing; a rush is made for the best men, *i. e.*, those standing the highest in public estimation; the object being, on either side, the defeat of the opposition. Medical men are sought, not so much to give a fair and candid opinion, or to make an impartial and honest statement, as to offer that amount and kind of evidence most acceptable to the party they are called on to serve, and best calculated to accomplish the end in view. If the opinion of A or B in a given case harmonises with that which is expected of him, well and good; but if it does not so harmonise, A or B is viewed as an opponent, and other evidence is sought elsewhere—of C or D, for example. But, to be quite sure of his man, the lawyer requires from the hand of the doctor a written statement which shall not only corroborate what has been elicited by a personal interview, but which shall constitute a guide for the counsel engaged, enabling him the better to adjust and contrive his own attack or defence, as the case may be. Such is, in brief, the method by which medical witnesses are sought for and obtained—a method which, I cannot doubt, can hardly be said to be else than *ex parte*—a method which seeks to lessen the dimensions of science to mere *law*, and to curtail truth of its fair proportions.

You will remember that the question raised by Mr. Commissioner Barlow was, "Whether Mrs. Cumming was or was not an idiot, lunatic, or of unsound mind?"

I will beg your attention to the following extracts; they refer to the question of delusion, regarded as an indication of insanity; and the ability of patients to conceal the same when offered a motive for so doing, and under peculiar circumstances.

Sir F. Thesiger and Sir Alexander Morison exchanged the following questions and replies, viz.:—"*Q.* Do you find from your experience, that persons who are labouring under what are called monomania, or delusions, are cunning enough to conceal them? *A.* Oh yes, to conceal them completely, sometimes.—*Q.* Can persons in that state at times be tutored to conceal their delusions? *A.* I think so. I have occasionally

advised my patients in Bedlam Hospital that such and such delusions would prevent their being liberated, and that they ought to try to get rid of them. They have occasionally tried to get rid of them, and after a while they have returned. We had a remarkable instance there lately of a poor woman who destroyed herself. After a time she got rid of her delusion, so that I put her down in the convalescent list, and soon after she committed suicide.—*Q.* They are capable of repressing the exhibition of delusions for some time, but they will return. *A.* Particularly if they are spoken to, and told it injures them their talking of them." Now, you must bear in mind that both the gentlemen named (Sir F. Thesiger and Sir A. Morison) were concerned to prove that Mrs. Cumming was a "lunatic."

The following quotations from the evidence of Drs. Conolly and Winslow (who took the opposite line of conduct—that is, were interested to prove the lady of sane mind) demonstrate to you how, as I have observed, the dimensions of science may be reduced to those of mere law. Dr. Conolly is examined by Mr. James. The first question to which I would call your attention run thus:—"*Q.* You have heard, I presume, that she has been seen by a great many medical men, and submitted to a great many examinations, in the course of the investigation; now, if these alleged delusions existed in her mind, could she be tutored so as in any way to conceal them? *A.* I think it quite impossible that she could; many patients will conceal their delusions, that is, they will not spontaneously avow them; they will learn to do that; but if you examine and touch on the delusion, with a little care and patience, one never fails to bring it out.—*Q.* And you have heard the gentlemen who have gone and submitted her to examination on both sides, have at once put to her the alleged delusions, and brought the mind to the topic distinctly? *A.* I believe, repeatedly, it has been done.—*Q.* Assuming the existence of a delusion as the result of a diseased mind, and the mind brought to the topic, if it is the result of disease, is it not manifest at once? *A.* Perfectly so.—*Q.* So that if you are unaware of the delusion of the patient and speak in an hospital, or elsewhere, and do not touch on the particular diseased chord, you may leave that person under the impression that they are not insane? *A.* Undoubtedly.—*Q.* But if you do touch on the delusion you have discovered the disease; is not that so? *A.* Almost invariably, I should say.

—*Q*. Then is it your decided opinion that this lady—I use the expression which has been used or insinuated—could not have been tutored so as to suppress any evidence of insanity in these conversations? *A*. I do not think it possible."

Let us next see what Dr. Winslow says on the subject of delusion, in reply also to Mr. James, one of the counsel for Mrs. Cumming. "*Q*. There was a question I omitted to ask you last evening; there has been a suggestion, or an insinuation, made about this lady being tutored. You have heard the number of examinations from one side and the other, to which this old lady has been subjected? *A*. Yes, I have.—*Q*. And you have heard, perhaps, of the medical men going with the knowledge of what are alleged to be her delusions, and putting them distinctly to her, and hearing her answers and conversations on the subject? *A*. Yes.—*Q*. I will use the expression which has been insinuated, could she be tutored to conceal her delusions on these examinations? *A*. I do not think she could.—*Q*. For a period? *A*. For a short period. I do not think in Mrs. Cumming's case she could. In cases of diseased mind, if you refer to the delusion, or touch the chord that is diseased, or out of tune, the delusion becomes generally immediately obvious." The finale of the conversation between Dr. Winslow and Mr. James is remarkable for its boldness. "I ask you," said Mr. James, "in your opinion, could she (meaning Mrs. Cumming) be tutored to conceal her answers under any tutorage?" Dr. Winslow's reply was, "*It is impossible.*"

Now, I do not think that discrepancies so palpable could ever attach themselves to medical science, or opinions so much at variance with each other be attributed to medical men, and these of the very highest eminence, if the present very objectionable manner of obtaining medical evidence in cases of lunacy, and in other cases, was got rid of. I speak this in all sincerity, though with every respect for Drs. Morison, Conolly, and Winslow.

There is one other feature in the matter to which I would call attention; I mean the character of a "delusion," so called.

Sir F. Thesiger asked Sir A. Morison: "Suppose a person has placed his affairs in the hands of an attorney, who has conducted himself with the strictest propriety and integrity, and who has from time to time received money, and rendered due and proper account of the money, which has been sanctioned by the person by whom the attorney was employed, and

that person should afterwards represent, on several occasions, that the attorney had robbed her or him, I will put it, had left him penniless—had rendered no account whatever, and was rolling in luxury upon the property he had so acquired—would you consider that delusion or not ? *A.* I would consider it delusion, certainly," said Sir A. Morison.

The same question was put by Sir F. Thesiger to Dr. Winslow, in these words, viz. :—" Supposing a person had employed an attorney, and had confided her interests entirely to him—that that attorney had been in the habit of receiving money, and of attending from time to time, and performing the part of a faithful agent, and that the principal was aware of the faithful performance of duty by the agent. Supposing, without any new circumstances occurring, she was at a subsequent time to entertain the impression that the agent had robbed her of her money ; that he had robbed her of everything she possessed and left her penniless, and that he had never rendered her any account at all, should you be of opinion that that indicated a sound or an unsound state of mind ? *A.* Those notions," replied Dr. Winslow, "are consistent with soundness of mind, particularly if occurring to a person naturally of suspicious temperament."—*Q.* In a suspicious mind ? *A.* Yes.—*Q.* But, observe, this suspicious mind has been confiding for a considerable time, and relying confidently upon the party, and then, suddenly, and without any reason at all, turns round and charges that party with having robbed and plundered her, with having rendered no account, and having enriched himself with the spoils of her fortune. *A.* That shows great caprice, but it is possible that such a feeling might exist apart from insanity.—*Q.* I put my case guardedly. I put this case. The utmost confidence is expressed from day to day, and manifested in every possible way ; then there is suddenly a new idea started up that the party so trusted had been false in every respect, had plundered and left the person penniless, and was revelling in the spoils of that fortune ? *A.* That would show great caprice and an ill-regulated mind ; a mind suspicious without reasonable foundation.—Q. Now I will put this case. Suppose he had faithfully rendered an account, and money had been paid over, and a belief had been entertained that no accounts at all had been rendered, and that no money at all had been paid ? *A.* The impression may have resulted from a mere failure of memory.

After this much, does it appear or not, that medical evidence might, under some circumstances, assume the external features of partisanship ?

Bear in mind, if you please, that Sir A. Morison was for the petitioner, and Dr. Winslow for Mrs. Cumming ; their efforts or sympathies lay in different directions. However Dr. Conolly was with Dr. Winslow, but we find him expressing an opinion upon the

question of delusion, and the circumstances under which such may be recognised as an indication of mental unsoundness—altogether dissimilar to the foregoing. The Commissioner on this occasion was the examining party; he sought, you will perceive, a demonstration of the same fact, but on grounds somewhat modified.

"*Q.* Suppose a person has an idea that he is going to be married to the Queen, and that he has some ground for such a belief, that is not a delusion; but suppose the mind is altogether divested of that impression at a particular period, but that a year or two afterwards the mind reverts to the same impression without any fresh justifying cause, is that any test? *A.* I should say there was disease of the mind there.—*Q.* You must account for that, I am afraid, in one of two ways; either that the mind was never, in fact, divested of the original impression, or else that there must be something like a disease; am I right in that? *A.* Yes.—*Q.* If a gentleman has an impression that he is going to marry the Queen, from having received an anonymous letter, or something of that kind, that is intelligible, and it is no delusion; but it is no test of insanity; if, on the other hand, he is perfectly satisfied that that was altogether nonsense, and then the mind having got into that state without any cause whatever, the mind reverts back to the original impression, would you say that is a test of insanity? *A.* I should suspect it certainly."

So long, only, as inquiries of the nature considered, are commenced and carried through in the manner they are, can such things be; or in other words, can medical evidence be made thus to assume so dependent and equivocal a position?

I cannot think it compatible with the character of a medical witness to be so placed that he is compelled as well to retaliate the loose badinage, or even worse, the coarse invective of a legal functionary, as to give his opinion on an abstract, and it may be a difficult question. I ask you, then, if you do not think the following extract from my own cross-examination *in re* Cumming, a very objectionable specimen of its kind; one calculated to subvert truth, and pander to the low prejudices of mankind? Mr. Serjeant Wilkins's love of mischief, and his other peculiarities as a practising barrister, some of you may have also experienced. I can see him now, as he rose from his seat to question me, his massive solid form encompassed by its silken robes, and his large and broad head surmounted with that eccentric and ancient sheep-skin—or something very like it, by which his class is recognised. To look at him is enough; the eye of the physiognomist reads, and readily too, in his large square-built frame, his massive brow, broad features, and voluminous cerebral development, the man of an iron will, large intellect, and firm, if not high resolves. I had not seen Mr. Serjeant Wilkins on any former occasion, but I took his measure; it

fitted him but too well. You will not fail to perceive now entirely gratuitous and foreign to the enquiry on hand, was the course pursued by the gentleman named; but, as you are aware, truth is very like its description by an old writer—that is, it is like cork, the more you try to keep it down in water, to suppress it, so much the more does it rise to the surface, or what is the same thing, aspire to the high level which is its due.

Cross-examined by Mr. Serjeant Wilkins.—*Q.* "Are you a contributor to a work called the *Zoist?* *A.* I am.—*Q.* Do you believe in Mesmerism? *A.* I do.—*Q.* Do all right-thinking men believe in that? *A.* All those who have investigated the question; but I do not see what relation that has to the question at issue.—*Q.* Pray have you ever stated that you have cured insane persons by the influence of Mesmerism? *A.* I have.—*Q.* What is your definition of a delusion? *A.* A belief in that which does not exist.—*Q.* You think that is a perfect definition of a delusion? *A.* No, I do not pretend to give a *definition* of it—else than in a general sense, perhaps.—*Q.* For instance, I am not a right-thinking man, for I do not believe in the existence of Mesmerism? *A.* Because you have not had sufficient opportunities.—*Q.* I beg your pardon. Never mind whether I had sufficient opportunities; I do not at all object to breaking a lance with you, physician as you are; but do you say that the fact of my assertion that mesmerism is nonsense, argues unsoundness of mind on my part? *A.* Perhaps so, to a certain degree. *Q.* I am very glad I got that answer—it is what I anticipated. Then you would say every gentleman in the room who asserts the same thing is, to a certain degree, unsound in mind? *A.* His mental state is to be pitied; he does not know what is true.—*Q.* How the gentlemen of the jury will eat their lunch after that I do not know. Allow me to ask this;" etc., etc., etc.

You will, I believe, agree with me that such a dialogue is hardly of a kind to elicit the truth. Is it not, in an eminent degree, calculated to lessen the dignity of science, and reduce medicine to the bare dimensions of the law; the trash concocted by our forefathers, when society was in its childhood, and they, if not in their dotage, living, in point of fact, under the dominion, more or less, of their selfishness and lust?

I cannot forbear bringing to your notice yet another illustration of the manner, and not less the extent to which the lawyer and the doctor contend for the supremacy. The annexed quotation furnishes us with a very fair sample of legal *acumen*, and, I think I should add, of medical sophistry—a sophistry, mind me, which, in the most natural way, springs out of the present very artificial mode of procuring medical evidence, and making *sides* to a question of science, as if it were a mere cricket match, or some equivalent old English pastime or raree-show.

"Do you suppose," inquired Sir F. Thesiger of Dr. Winslow, "that a person who had faithfully rendered an account, and money had been paid over, and a belief had been entertained that no accounts at all had been rendered, and that no money at all had been paid; do you suppose that any one, under such circumstances, entertaining such a belief, would be competent to the management of his affairs?" The reply given is:—"*A.* That incompetency, *if the incompetency existed*, might be the result of advanced age, or from careless habits of business, or from a natural indisposition to attend to the ordinary business matters of life. It need not necessarily be an incapacity arising from unsoundness of mind.—*Q.* But I put the case of a person. *A.* I think it is possible that such a condition might exist, apart from actual insanity or unsoundness of mind.—*Q.* Apart from a capacity to manage the affairs of life. *A.* No; I draw a distinction between the incapacity and natural decay, which is, in many cases, the inevitable result of old age, and the incapacity which is clearly the offspring of insanity.—*Q.* But I am putting it to you now—do not vary the ground. I put a distinct question, whether such a person as I have described would, in your discreet judgment, be competent to the management of his affairs? *A.* In the proper acceptation of the term, such an amount of incapacity would not necessarily indicate unsoundness of mind or legal incompetency to manage the business affairs of life.—*Q.* Would such a person be competent to the management of his affairs? *A.* *Legally* speaking, certainly.—*Q.* *Actually* speaking, would he? *A.* There are many sane persons who are incapable of managing their affairs, and who leave all their business matters to their solicitors.—*Q.* You are running away from my question. I have put a particular case to you, which is clear and distinct. I have put the case of a person who had received from his attorney accounts of monies faithful and true throughout, and then believing that no accounts had been rendered, and that no money had been paid? *A.* I should say that such was a strange, but not necessarily an unsound condition of mind—*Q.* Would you consider such a person,—a person who had received money and accounts, and yet believed he had not received the money, and had not received the accounts, a person capable of managing his own affairs? *A.* I should say that such was a strange and unnatural condition of mind, but not necessarily an unsound condition.—*Q.* I understand, in one sense, what a natural mind is. *A.* You may have such an amount of incapacity co-existing and consistent with sanity. That is what I mean.—*Q.* But I put a particular case to you. Dr. Winslow, I know you are a match for me, but do confine yourself to the case I put. It is a very distinct one; it is this: I ask you in your judgment (of course appreciating your character) whether such a person is, in your judgment, competent to the management of his affairs?

*A.* I think the world would say not.—*Q.* What would *you* say ; do you agree with the world or not ? *A.* I have seen cases of incapacity to the extent referred to by yourself, associated with perfect soundness of mind.—*Q.* You have told us that the world would have an opinion upon the subject ; do you agree with the world, or do you differ from the world ? *A.* I do not bow to the opinion of the world as an authority upon points of abstract science.—*Q.* Then you look down upon the opinions of the world ? *A.* Certainly not. I consider the question as one of science. When I am asked whether, in a given case, there is an incapacity to manage property, my object is to ascertain whether that incapacity is the necessary result of a diseased mind, or whether it is a natural incapacity arising from old age, decay of nature, or from ignorance of the ways of the world, and a natural careless indifference to the affairs of life. That, in my opinion, is the scientific distinction.—*Q.* I am putting a case in which there can be no doubt about the moneys being paid and the accounts rendered, and in which the party believes that no money has been paid and that no accounts have been rendered, would you require to ascertain all the circumstances respecting a person's mind before you could come to a conclusion whether such a person was capable of managing his affairs or not? *A.* I think we could not take as a rule an isolated feature in a particular case, and draw safe conclusions from it. I should be very loth to say, if a case of great incapacity was established, that that incapacity was necessarily the incapacity of an unsound mind. Many men of mature age and vigour of mind are not of business habits, and are not capable of managing their property.—*Q.* There are circumstances which do not depend upon business habits at all. I put a plain and palpable case to you. *A.* I think in the case put by you the circumstances, of course, would be suspicious, but such an amount of incapacity might co-exist with soundness of mind.—*Q.* Then you are of opinion that the case I have put to you is perfectly consistent with entire soundness of mind ? *A.* It may be so ; I have no doubt upon the point.

So much for the case of Mrs. C. Cumming, who, you will remember, was found, after an investigation of many days, to be *insane*, and that by a jury remarkable at once for its general respectability and high intelligence.

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The particulars of the trial of William Palmer are, of course, fresh in the memories of us all. The medical part of this famous case furnishes an abundance of materials for thought and inquiry ; but these, in the abstract, it is not my place to consider ; my object being rather to demonstrate the objectionable routine observed in all medico-legal inquiries, and the consequent awkward position, and even difficulties, of the medical witness. You will remember the

apology offered by the Lord Chief Justice for the counsel engaged in the defence of William Palmer, as conveyed in these words: "*when a man enters upon the consideration of a case with a strong bias on his mind, he is liable to be led into error.*" Now, if this remark applies to one profession, it must to another; or if to one man, it must to another. I would, then, fain borrow it, for the benefit of certain members of our own profession, whose names are connected with the evidence on which the culprit was found guilty of the murder of his friend, and therefore executed.

I would premise, that whatever the doubts and difficulties in the way of getting at the truth in all its details, these could hardly have assumed the proportions they did during the twelve long days devoted to the investigation into the innocence or guilt of William Palmer, if the medical bearings of the case had been of another character; *i.e.*, if the medical witnesses had not been brought into so objectionable an antagonism as they were; if they had not been *made* (in point of fact) the supporters and defenders of either the prosecuting or defending party.

It is quite impossible to do else than conclude that if, for example's sake, Mr. Curling, Dr. Todd, and Sir B. Brodie, had met Messrs. Nunneley, Letheby, and Partridge in quiet consultation, away from the bustle and excitement of the Old Bailey, and out of reach of all the stale and wearisome formalities of a public court, and where they would have escaped the cross-questioning and worrying of the *bench* and the *bar*, their various opinions would then have approximated, and the medical chasms which now appear would have been bridged over in an easy, graceful, and truthful manner.

I will place before you the salient points of the evidence given by Mr. Curling, Dr. Todd, and Sir B. Brodie, and afterwards the same afforded by Messrs. Nunneley, Letheby, and Partridge; we shall then be in a position to judge whether or not I am right in the statement here made.

After describing the symptoms of traumatic tetanus, Mr. Curling, in reply to a question from the Attorney-General, says: "The *time* in which the disease causes death varies from twenty-four hours to three or four days, or longer. The shortest period that ever came to my knowledge was eight or ten hours. Tetanus, when once commenced, is continuous."

"*Q.* Did you ever know of a case in which a man was attacked one day, had twenty-four hours' respite, and was then attacked the next day? *A.* Never. I should say that such a case could not occur.—*Q.* You have heard the account given by Mr. Jones of the death of the deceased; were the symptoms there consistent with any form of traumatic tenanus that has ever come under your observation? No.—*Q.* What distinguishes it from such cases? *A.* The sudden onset of the disease. In all cases which have come under

my notice, the disease was preceded by the milder symptoms of tetanus, gradually proceeding to the complete development.—*Q.* Were the symptoms described by the woman Mills as being presented on the Monday night, those of tetanus? *A.* No; not of the tenanus of disease.—*Q.* Assuming tetanus to be synonymous with convulsive or spasmodic action of the muscles, was there in that sense tetanus on the Monday night? *A.* No doubt there was spasmodic action of the muscles.—*Q.* There was not, in your opinion, either idiopathic or traumatic tetanus? *A.* No.—*Q.* Why are you of that opinion? *A.* The sudden onset of the spasms, and their rapid subsidence, are consistent with neither of the two forms of tetanus.—*Q.* Is there not what is called hysteric tetanus? *A.* Yes. It is rather hysteria *combined with spasms,* but it is sometimes called hysteric tetanus. I have known no instance of its proving fatal, or of it occurring to a man. The character of the spasms of epilepsy is not tetanic.—*Q.* Not of the spasms; but are not the contractions of epilepsy sometimes continuous, so that the body may be twisted into various forms, and remain ridgidly in them? *A.* Not continuously.—*Q.* For five or ten minutes together? *A.* I think not. Epileptic convulsions are easily distinguished from tetanus; because in them there is an entire loss of consciousness.—*Q.* Is it one of the characteristic features of tetanus that the consciousness is not affected. *A.* It is."

The statements made by Dr. Todd, corroborative of the opinions of the first medical witness for the prosecution, were these, viz.: "the convulsions of epilepsy are essentially distinct from tetanus. In epilepsy the patient always loses consciousness. Having heard described the symptoms attending the death of the deceased, and the *post mortem* examination, I am of opinion that in this case there was neither apoplexy nor epilepsy. I apprehend that there was nothing to prevent the discovery of disease in the spinal cord, had any existed previously to death. I think that the granules upon the spinal cord, such as I have heard described, would not be likely to cause tetanus."

Sir Benjamin Brodie affirmed: "The symptoms were not the result either of apoplexy or of epilepsy. Perhaps I had better say at once that I never saw a case in which the symptoms that I have heard described here arose from any disease (sensation). When I say that, of course I refer not to particular symptoms, but to the general course which the symptoms took."

So much, then, for this part of the medical evidence; for the deliberate and expressed opinions of Messrs. Curling, Todd, and Brodie, on this most important trial. We will contrast them with the *salient points* to be found in the examinations of Messrs. Nunneley, Letheby, and Partridge:—

"I have heard the evidence as to the symptoms of Cook," said

Mr. Nunneley, "and had previously read the depositions as to that part of the case. Judging from those symptoms, I am of opinion that death was caused by convulsive disease. I found that opinion upon the symptoms described in the depositions, and the evidence before the court. From the symptoms described by the witnesses in court, I am of an opinion that death was caused by some convulsive disease."

Examination continued by Mr. Serjeant Shee: "I have been in court during the whole of the trial; I have heard the evidence as to the symptoms of Mr. Cook's health previous to his final attack at Rugeley, the description of the actual symptoms during the paroxysms, and the appearance of the body on the *post mortem* examination. I assume that Cook was a man of very delicate constitution; that for a long period he had felt himself to be ailing, for which indisposition he had been under medical treatment; that he had suffered from syphilis; that he had disease of the lungs; and that he had old standing disease of the throat; that he led an irregular life; that he was subject to mental excitement and depression; and that after death appearances were found in his body which show this to have been the case. There was an unusual appearance in the stomach. The throat was in an unnatural condition. The back of the tongue showed similar indications. The air vessels of the lungs were dilated. In the lining of the aorta there was an unnatural deposit, and there was a very *unusual appearance in the membranes of the spinal marrow.* One of the witnesses also said that there was a loss of substance from the penis. That scar on the penis could only have resulted from an ulcer. A chancre is an ulcer, but an ulcer is not necessarily a chancre. The symptoms at the root of the tongue and the throat I should ascribe to syphilitic inflammation of the throat. Supposing these symptoms to be correct, I should infer that Cook's health had for a long time not been good, and that his constitution was delicate. His father and mother died young. Supposing that to have been his state of health, it would make him liable to nervous irritation. That might be excited by moral causes. Any excitement or depression might produce that effect. A person of such health and constitution would be more susceptible of injurious influence from wet and cold than would one of stronger constitution. Upon such a constitution as that which I have assumed Cook's to have been, convulsive disease is more likely to supervene. I understand that Cook had three attacks on succeeding nights, occurring about the same hour. *As a medical man, I should infer from this that the attacks were of a convulsive character.* I infer that in the absence of other causes to account for them. According to my personal experience and knowledge, from the study of my profession, *convulsive attacks are as various as possible in their forms*

*and degrees of violence.* It is not possible to give a definite name to every convulsive symptom. There are some forms of convulsion in which the patient retains his consciousness. Those are forms of hysteria sometimes found in the male sex. It is also stated that there are forms of epilepsy in which the patient retains consciousness."

By Lord Campbell : " I cannot mention a case in which consciousness has been retained during the fit. No such case has come under my notice."

Examination continued : " I know by reading that that, although rarely, does sometimes occur. The degree of consciousness in epilepsy varies very much. In some attacks the consciousness is wholly lost for a long time. Convulsive attacks are sometimes accompanied by violent spasms and rigidity of the limbs. Convulsions, properly so called, sometimes assume a tetanic complexion. I heard the passage from the works of Dr. Copland read to the court yesterday. I agree with what he states. Convulsions arise from almost any cause ; from worms in children, affections of the brain in adults, hysteria, and in some persons the taking of chloroform. Adults are sometimes attacked by such convulsions. Affections of the spinal cord, or eating indigestible food, will produce them. I know no instance in which convulsions have arisen from retching and vomiting. I agree with Dr. Copland, that these convulsions sometimes end immediately in death. The immediate proximate cause of death is frequently asphyxia."

By Lord Campbell : " Death from a spasm of the heart is often described as death by asphyxia."

Examination continued : " I have seen convulsions recurring. I have seen that in very various cases. The time at which a patient recovers his ease after a violent attack of convulsions varies very much. It may be a few minutes, or it may be hours. From an interval between one convulsion and another, I should infer that the convulsions arise from some slight irritation in the brain, or the spinal cord. When death takes place in such paroxysms, there is sometimes no trace of organic disease to be found by a *post mortem* examination. Granules between the dura mater and the arachnoid are not common at any age. I should not draw any particular inference from their appearance. They might or might not lead to a conjecture as to their cause and effect. I do not form any opinion upon these points. They might produce an effect upon the spinal cord. There are three preparations in museums where granules are exhibited in the spinal cord, in which the patients are said to have died from tetanus. Those are at St. Thomas's Hospital. To ascertain the nature and effect of such granules, the spinal cord ought to be examined immediately after death. Not the most remote opinion could be formed upon an examination made two months after

death, more especially if the brain had been previously opened. Independently of the appearance of granules, it would not after that period be possible to form a satisfactory opinion upon the general condition of the spinal cord. If there were a large tumour or some similar change, it might be exhibited ; but neither softening nor induration of the structure could be perceived. The nervous structure changes within two days of death. To ascertain minutely its condition, it is necessary to use a lens or microscope. That is required in an examination made immediately after death."

It is not very possible to imagine medical evidence of a more contradictory character than that of Sir B. Brodie and Mr. Nunneley, for example's sake ; yet do I think that under other and more favourable circumstances, this difference of opinion would have been bridged over—to repeat an expression before employed—and so nicely approximated, that medical science would itself have gained thereby ; and what is a very material point, practitioners of whatever denomination—physicians or surgeons—would have escaped the very severe criticisms which the public have thought fit to indulge in, in reference to the trial of William Palmer.

Dr. Henry Letheby was examined by Mr. Kenealey. He said : "I have been present during the examination of the medical witnesses, and have attended to the evidence as to the symptoms which have been described as attending the death of Cook. I have witnessed many cases of animals poisoned by strychnine, and many cases of poisoning by nux vomica in the human body, one of which was fatal. The symptoms described in this case do not accord with the symptoms I have witnessed in the case of those animals." *Q.* "What do you attribute Cook's death to ? *A.* It is irreconcileable with everything with which I am acquainted.—*Q.* Is it reconcileable with any known disease you have ever seen or heard of ? *A.* No. Re-examined by Mr. Serjeant Shee.—We are learning new facts every day, and I do not at present conceive it to be impossible that some peculiarity of the spinal cord, unrecognisable at the examination after death, may have produced symptoms like those which have been described. I, of course, include strychnia in my answer ; but it is irreconcileable, with everything I have seen or heard of. It is irreconcileable with strychnia as with everything else ; it is irreconcileable with every disease that I am acquainted with, natural or artificial."

The evidence of Mr. Partridge is characterised by much practical good sense. It was in substance thus : "I have heard the evidence as to Cook's symptoms and *post mortem* examination. I have heard the statements as to the granules that were found on his spine. They would be likely to cause inflammation, and no doubt that inflammation would have been discovered if the spinal cord or its membranes had been examined shortly after death. It would not

be likely to be discovered if the spinal cord was not examined until nine weeks after death. I have not seen cases in which this inflammation has produced tetanic form of convulsions, but such cases are on record. It sometimes does, and sometimes does not produce convulsions and death.—*Q.* Can you form any judgment as to the cause of death in Cook's case? *A.* I cannot. No conclusion or inference can be drawn from the degree or kind of the contractions of the body after death. Some of the symptoms in Cook's case are consistent, some are inconsistent with strychnine tetanus. The first inconsistent symptom is the intervals that occurred between the taking of the supposed poison and the attacks."

In order to give a more positive character of completeness to these observations, I may add that Drs. Macdonald, Bainbridge, Robinson, and Richardson, all favoured the opinion that Mr. Cook's death was to be referred rather to some anomalous nervous affection than to strychnine.

The first-named gentleman said: "I have attended to the evidence as to Cook's symptoms. To the symptoms I attach little importance as a means of diagnosis, because you may have the same symptoms developed by many different causes. A dose of strychnia sufficient to destroy life would hardly require an hour and a half for its absorption. I think that death was in this case caused by epileptic convulsions, with tetanic complications. I form that opinion from the *post mortem* appearances being so different from those that I have described as attending poisoning with strychnia, and from the supposition that a dose of strychnia sufficient to destroy life in one paroxysm could not, so far as I am aware, have required even an hour for its absorption before the commencenent of the attack. If the attack were of an epileptic character, the interval between the attacks of Monday and Tuesday would be natural, as epileptic seizures very often recur at about the same hours of successive days."—*Q.* Assuming that a man was in so excited a state of mind that he was silent for two or three minutes after his horse had won a race, that he exposed himself to cold and damp, excited his brain by drink, and was attacked by violent vomiting, and that after his death deposits of gritty granules were found in the neighbourhood of the spinal cord, would these causes be likely to produce such a death as that of Cook's? *A.* Any one of these causes would assist in the production of such a death.—*Q.* As a congeries would they be still more likely to produce it? *A.* Yes."

The second, Dr. Bainbridge, gave in evidence that he "had had much experience of convulsive disorders. Such disorders present great variety of symptoms. They vary as to the frequency of the occurrence and as to the muscles affected. Periodicity, or recurrence at the same hours, days, or months, is common. I had a case in which a patient had an attack one Christmas night, and on the

following Christmas night at the same hour, he had a similar attack. The various forms of convulsions so run into each other that it is almost impossible for the most experienced medical men to state where one terminates and the other begins. In both males and females hysteria is frequently attended by tetanic convulsions. Epileptic attacks are frequently accompanied by tetanic complications. Loss of consciousness, not universally, but generally, accompanies epilepsy."

Dr. Robinson said: "I have heard the whole of the medical evidence in this case. From the symptoms described I should say that Cook died of tetanic convulsions, by which I mean, not the convulsions of tetanus, but convulsions similar to those witnessed in that disease. The convulsions of epilepsy sometimes assume a tetanic appearance. I know no department of pathology more obscure than that of convulsive disease."

You are aware that Dr. Richardson affirmed that Mr. Cook might have died of angina pectoris.

The toxicological part of the inquiry I have chosen altogether to omit. If, however, as Dr. Taylor declares, strychnia cannot always be detected, though administered in sufficient quantities to destroy life, the fact is very much to be regretted; for my own part, I would venture at the least to hope that Mr. Nunneley, Dr. Letheby, and Mr. Herapath are not mistaken, when they assert that the presence of this substance can, under any circumstances, be demonstrated, even to the twenty-thousandth part of a grain. But the chemists, not less than the doctors, have, ere now, disappointed public expectation.

Whilst the preceding observations point to the necessity of a change in the relative position of medical witnesses engaged in inquiries of this and a similar nature, they demonstrate likewise how very objectionable is that relative position of lawyers and doctors, which not only affords the opportunity, but allows a legal functionary thus to speak of gentlemen whose position and attainments belong, or should do, to a higher order of things, and to a more advanced stage of human progress, *i. e.*, civilisation. The Attorney-General remarked: "Bearing in mind Mr. Herapath's eminence in his profession, I should have had much confidence in his testimony were it not for the active and zealous feeling of partisanship which he has manifested on repeated occasions in the course of this inquiry. It had come to my knowledge that he had been heard to assert that this was a case of death by strychnine, but that Dr. Taylor had not gone the right way to find out the poison. I pressed him urgently on this point, and I am sure you will be of opinion with me that his explanation of his having formed his judgment merely from the newspaper reports, was anything but satisfactory. There can be no doubt that, in his conscience, Mr. Herapath believes this to be a case of death by poison—

indeed he has said as much; and yet we have seen him mixing himself up in this case with all the enthusiasm of a partisan, and suggesting to my learned friend questions with a view to the protection of a man whom he feels to be guilty of murder. * * * I reverence the man who, from a sense of justice and an innate love of truth, comes forward on behalf of any accused person who is in danger of being swept to destruction by the torrent of prejudice; but I have no language to express my abhorrence for that traffic testimony which, from professional pique or for the sustentation of a particular theory, men of science—I grieve to say it—occasionally are led to offer."

With reference to the evidence given by the medical men for the defence of William Palmer, the Attorney-General is made to say: "You have had before you witnesses who have resorted to the most speculative reasoning, and put forward the barest possibilities in support of theories for which there is little if any foundation. But this I undertake to assert, that there is not a single case to which they have spoken from their experience, or as the result of their own knowledge, in which there were the formidable and decisive symptoms of marked tetanus which existed in the present case. Having gone through these four sets of diseases, general convulsions, arachnitis, epilepsy proper, and epilepsy with tetanic complications—I supposed we had pretty nearly exhausted the whole of their scientific theories. But we were destined to have another, and that assumed the formidable name of angina pectoris. It must have struck you, when my learned friend opened his case, that he never ventured to assert the nature of the disease to which they refer the death of Cook; and it strikes me as most remarkable, that no less than five distinct and separate theories are set up by the witnesses who have been called—general convulsions, arachnitis, epilepsy proper, epilepsy with tetanic complications, and lastly, angina pectoris. My learned friend had an advantage in not stating to you what his medical witnesses would set up, because I admit that, one after another, they took me by surprise. The gentleman who was called yesterday, and who talked of angina pectoris, would not have escaped so easily if I had been in possession of the books to which he referred; for I should have been able to expose the ignorance or the presumption of the assertions he dared to make. I say the ignorance or presumption, or, what is worse, the deliberate intention to deceive. I lay to his charge one or other of these three; and in the presence of this court, and in the face of the whole medical profession, I assert that one or other of these charges I should have been able to substantiate."

However, there remains yet some little credit due to the Attorney-General for what follows. Our acknowledgments are, indeed, due to him for the manner in which even *he* has borne

testimony to the love of truth, which manifested itself in those whom, according to his own showing, the hard words just quoted did *not* include. "The medical witnesses," he remarks, "for the defence differ, one and all, in their views; but there is a remarkable coincidence between the opinions of some of them and the opinions of those who have been examined on the other side. All the medical men brought forward by the defence — Partridge, Robinson, and Letheby—concur with Sir B. Brodie and the other Crown witnesses in declaring that, in the whole course of their experience, and in the whole range of their learning and observation, they know of no disease to which the symptoms in Cook's case can be referred. When such men as these agree upon any point, it is impossible to exaggerate its importance."

Gentlemen, in bringing this subject to a close, I would submit to you if it would not be desirable, for the sake of science, and not less for the honour of our profession, that in all cases, of whatever kind, involving in any degree a knowledge of the principles and practice of medicine and its collateral branches, a plain statement of all the facts should be drawn up, and submitted to a MEDICAL ARBITRATION. Reverting for one moment to the case of Mrs. Catherine Cumming, and to that of Mr. J. Parsons Cook, do you not feel with me that, had the physicians and surgeons engaged on either trial constituted what may be called a medical committee (jury), *then* would the whole matter have been greatly simplified, the cause of justice very materially promoted, and science itself maintained in all its integrity, uncontaminated by the technicalities of law, or degraded by the sophistries of lawyers? Under such circumstances, would not law be made subservient to medicine, or, what is the same thing, mere precedent to scientific truth—the mere words of man to the glorious works of his Creator? In a word, would not mere art be made to fall prostrate before the natural or organic laws? The fact that the reverse of all this obtains to this hour is in every way sufficient to assure us that there is yet scope and opportunity for the medical reformer—for him who would venture on the responsible task of ameliorating the position of our own most honourable calling.

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