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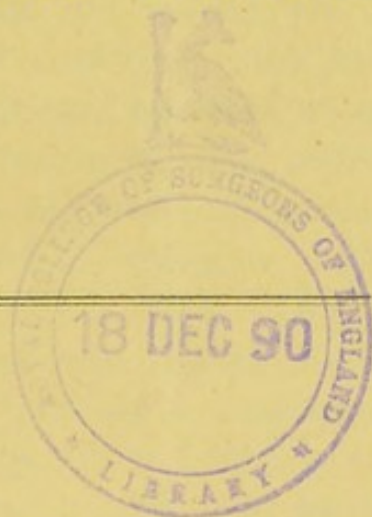
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MEDICAL JURISPRUDENCE
CLOSING ADDRESS.

BY

ALEXANDER LINDSAY, M.D.



GLASGOW :
HUGH HOPKINS, RENFIELD STREET.
1875.

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

CLOSING ADDRESS

BY

1950

CHICAGO, ILLINOIS

CONCLUDING LECTURE.

GENTLEMEN,—

FOR a time we have been as it were journeying together, the path over which we have passed displaying much to our view fitted to interest as well as instruct. Our companionship has been of the most pleasant kind, nothing having occurred to mar its harmony, or in any way to disturb the concord of our intercourse. This is so far satisfactory. May we hope, however, that something more has been attained; that we feel—teacher and taught—that we have mutually benefitted, that in short we have added to the sum of our knowledge, enlarged our experience, and widened the understanding.

The inevitable has now come—the time when we must separate, when the link that has held us together must now be severed. In the minds of some, reflections on such an event are not always pleasant. They feel discomfort when contemplating on such a severance. This should not be. While together we, each in his own way, have endeavoured to perform our allotted duty, imperfectly it may be, yet with honest effort—Why, then, regret a separation that is nothing more than the yielding to a condition—that of change or diversity—that everywhere and in all time is making and has made itself apparent?

As our union has been agreeable, our duty then is to make our parting pleasant, and, if possible, useful. To attain this end, we propose offering for your acceptance a few observations, on this our closing meeting, that may serve to guide,

should your services be required in aiding the administration of the law. In doing so, we desire at the outset to observe that we have nothing original to offer for your acceptance, nothing novel to stimulate your attention. Nevertheless, while such is awaiting—while our utterances may be so far commonplace—let us hope they may not be without their use.

To proceed: Some may consider that the claims of ordinary professional duty will afford ample occupation for their time and for the full exercise of their energies. Be it so. Still the requirements of the law are imperative; they can neither be gainsayed nor by any means evaded. The duty of the medical man is thus rendered obvious;—to be always so prepared as to act when called on with credit to himself as well as sustaining the repute of the profession of which he is a member. Nor should this preparation be indefinitely postponed, shunted aside to a more convenient season; such may never seem to come. But more, over time and circumstances we have no control; and so to our annoyance questions of a criminal or civil character may unexpectedly come to the surface, that demand our assistance in reaching their solution. This is no mere supposition. We have known a young practitioner scarce settled in a rural district, when he was called on to take part in the investigations of a suspected infanticide. We can also recall to mind others who for years had pursued the even tenor of their way, unexpectedly obliged to undertake work for which they were unprepared, that entailed anxiety and loss of professional reputation, which might have been prevented by a little forethought and preparation.

With the aims of Medical Jurisprudence you are all familiar; with its position as a department of scientific inquiry you are equally aware, as well as the relation in which it stands to the wellbeing, if not to the stability, of society. This being so, it needs not that we amplify on this matter; so we now proceed to offer a few hints that may serve to assist you.

At the outset, let us urge on you the duty of earnestness in all you undertake. Whatever is done, let it be with your might. Exclude from your mind that a given case is one of little importance; that the issues to be determined are of small moment. To you it may appear so; to others it may be fraught with importance. This should ever be remembered. It should so influence the mind, so that in all circumstances, when once the hand has been put to the plough, let the work done bear the stamp of thoroughness.

There are those who run off in a somewhat different direction. With them all is important. Not so much this on account of the matter itself, as the rather the feeling of inflation consequent on the position they may be called on to occupy. They feel big with importance, and evidence this by, it may be, fussiness of manner or grave pretentiousness. We have seen such men. Ordinary minds they may for a time blind, but sooner or later they are sure to sink to their proper level. In all cases let "self" shrink to its due proportions, and modestly seek its proper position. Let it ever be kept in mind that presumption can never hide mental nakedness, and that intellect never shows more grandly than when draped in the garb of modesty.

Facts, as you well know, form the foundation of all knowledge; yet, strange as it may appear, nothing is more difficult than obtaining an accurate view of facts. Why this should be so we wait not to enquire, other than stating that various influences are at work distorting or, it may be, obscuring accurate observation. To one only we specially refer: to that tendency of the mind to reach conclusions, to support which they mould everything relating to the subject to the special form they desire. This has in a greater or less degree retarded the progress of all science, judicial inquiries not excepted. Now of all men, the medical jurist should endeavour to free the mind from mental bias. He should guard against preconceived notions obtaining the mastery. It is no doubt a most difficult matter to accomplish. To know the truth should be his aim; to know it in its simplicity his determination.

Suppose, for example, a case of suspected homicide. At once rumour is at work with her thousand tongues; ears are ever open, ready to receive statements made without thought, repeated without consideration, and accepted as true without inquiry. This is, unfortunately, a frequent experience; with this result—that the emotional nature not alone of an individual, but even of communities, is so stirred as to unheed facts, overshadow the reason, and cloud the judgment. In such circumstances, how few seem to consider that guilt can only be determined after due consideration, conducted with the calmness and fairness of judicial investigation; that none are to be condemned till the crime has been proved, and that often circumstances, even the most suspicious, may militate against the innocent.

Divested as far as possible of prejudice, the medical investigator should set about his allotted duty calmly and without hurry. He should follow an orderly system. Suppose he is called on to examine an unknown dead body found in suspicious circumstances, he should note well its surroundings; nothing so minute that it should not be noticed, or so trifling that it should be deemed of no importance. The power of little things is nowhere better shown than in judicial research. Often in the course of our instructions has this been illustrated, and so need not again be insisted on, or urged on your attention.

Never be satisfied with the mere external examination of a corpse. This can never tell as to internal appearances. Not only so, but carefully inspect every cavity; this leaves no dubiety or doubt remaining.

To observe facts accurately is one thing; to interpret these is another. Facts may be multiplied; but unless they can be applied to the eliciting what is unknown, they may only tend to bewilder. The medical witness, then, has not alone to speak to mere facts; often he is asked as to the opinions or inferences he may have reached as the result of his observations. A capacity for careful induction is a needed requirement for those engaged in medico-legal pursuits. In this way the higher powers of the mind are brought into operation.

In no way can the exercise of our reason and judgment be better trained than by the study of examples of cautious, careful induction, in which master minds have shown their skill and displayed their superiority. Such studies quicken the mental aptitudes, necessitate thought, and strengthen and invigorate the mind.

A fatal wound is found in the chest of a corpse; at the same time the wrists are seen to be excoriated. The least observant may easily have noted all this, yet not every one that would have concluded that two or more persons must have been concerned in the murder.

Suppose that your observations have been made, the inferences drawn completed, a written statement may be required embracing the facts observed, the conclusions you have reached, and the grounds on which these are based.

To many this may be a comparatively small matter. Some have their special fitnesses; others may have their difficulties, and this, we think, will apply to the major part of those who for the first time draw up a medico-legal report. No doubt practice will lessen the difficulty. This is not, however, permitted to every one. Let it be observed we refer not to graces of style—such is not needed—even this is not to be altogether overlooked—what we more particularly refer to is the fitness of expressing in a clear, distinct, and precise manner what we desire to communicate; that happy combination of brevity with at the same time completeness, fulness without being diffuse.

What is worth doing, is worth doing well. To attain this end the occasional perusal of the writings of those eminent for the elevation and dignity of their style will afford to the medical man useful recreation, and will at the same time imperceptibly elevate the taste and improve the method of expression. This, we admit, is somewhat away from our subject; we have no desire to play in this respect the part of a teacher. Such hints may, however, not be lost, and so their intrusion may be excused.

To proceed: avoid everything like technical phrase. To some minds big words may look well in a report; they may seem to display erudition, soaring above mere commonplace. This is a mistake. It rather evidences a barrenness of resource in the not being able to suit yourself to the special circumstances in which you are placed. You are not dealing with medical men, but with those ignorant of professional nomenclature. Make your statements, then, in simple, plain language, fitted to be understood by the ordinary mind. In so doing, you will thus best secure confidence, most effectually serve the ends of justice, and save yourselves the risk of annoyance.

Carefully avoid offering any opinion on the general merits of the case under consideration. In doing so, remember you are usurping the position of those to whom this duty is intrusted. Mistakes of this kind have occurred, and, as a matter of course, were not permitted to pass unnoticed. So much, then, for reports. The remarks made may not remove all difficulties, yet they may serve more or less to afford a sometimes needed aid.

We now pass on to observe that to most well-constituted minds the occupying a position in the witness-box is a more or less trying ordeal. Even after some considerable experience, we have found it to be so. A witness in a court of justice is for the time the centre toward which all eyes are directed. This, with the feeling that the bearing of his evidence may have important relations with the issues to be determined, all tend to make the position one not to be desired; this, at least, to all who choose to reflect. That there are others differently constituted we all know. To such we have already referred, and need not again speak of their peculiarities.

To advise a witness sensitively alive to the grave responsibilities of duty, is easy; to carry out the advice is a different matter. Some are constitutionally nervous; by no effort can they shake this off. We knew a clergyman noted for his power as a preacher, whose coolness in the pulpit could not be surpassed; yet it was well known to his friends, never

entered the pulpit without betraying the greatest nervousness. Strange as it may seem to some, we believe the sensitive will make the best witnesses for attaining the ends of justice; that is to say, they will weigh well the gravity of their position, and so prepare with care to perform its requirements.

With the examination in chief, as a rule, there is little or no difficulty. You are only going over that on which you have been previously examined; with this, consequently, you should be familiar. However, let your answers be short, and see that you reply to the question. More, let them, after due consideration, be freely and openly given, and without reservation. If a simple Yes or No will serve the purpose sufficiently, this is all that is required. Let fall no word unless absolutely necessary, or in the way of explanation. In short, tell the truth without circumlocution; otherwise you may find your mistake afterwards.

The difficulties of a witness generally begin with the cross-examination, particularly so if this is conducted by one who regards the interest of his client as everything—justice with the feelings of the witness as nothing. It strikes us that the license exercised by counsel in the courts of Scotland is never so great as sometime happens in those of England and Ireland. This conclusion we have reached from a study of the trials in the different countries. In some cases we have seen examples of what we consider extreme license, that have caused us to wonder they were not checked by the presiding judge. This, then, is a contingency to which we must be prepared to submit.

If you are well prepared you have nothing to fear. In giving your answers follow the same course as in your examination in chief. Never lose your temper however much annoyed, else you will be apt to lose your head. Even when you have a good opportunity never retort—in doing so you may fail and so again lose yourself.

One difficulty that may not annoy so much as perplex is the being questioned on matters having not the slightest relation apparently to that being expiscated. We have been in the witness-box for two hours under cross-examination

and to this day have been quite unable to guess at the aim of the examiner. Likely enough he did not know himself. The process did not succeed. We knew the purpose for which we were called. Of this we never lost sight, with the result that while we were somewhat puzzled we never got confused.

Another cause likely to produce irritation in the mind of a witness lies not so much in the matter as the manner of the questioner. Thus we heard a witness asked do you remember so and so? He answered no. Oh, you don't remember? Do you think this newspaper might recall it to your recollection? read that, sir—read it aloud, sir. This done—Do you remember it now? And on an affirmative reply being given he remarks, oh, you do remember it now—as if the witness was doing his best endeavour to conceal the truth. All this is trying enough as we know. Still the rule is not to lose your temper. Take it quietly and you are sure to win.

You may be asked as to the opinion of others on a given point. Before you answer, make sure their views have been correctly stated.

There is another caution that Dr. Taylor in his work offers to the medical witness. It is that a general question may be put to which an affirmative answer is given—let it be observed, without any relation to, it may be, the one under review. Of this counsel at once, when the opportunity arises, takes advantage, and, to the surprise of the witness, applies the general acknowledgement to a special purpose. When such questions then are put it would be well quietly to ask if it is intended to apply to the case under trial.

As we know every opportunity is offered for the defence of an accused, in cases where the evidence of a medical man is likely to serve a purpose he may be retained for the defence. This is all right. If you can point out any matter of uncertainty or doubt, well and good. Do so. Let it, however, be done honestly. Counsel, it may be, well knowing the accused's guilt, defend to the best of their ability, making the worse appear the better reason. With the medical man

this is different. He should never appear as a mere partizan. He should never in appearance sacrifice truth. The saying is proverbial that Doctors differ. Its truth has never been more illustrated than in the witness-box—where the most opposite opinions have been given—in some trials it is absolutely saddening to see the opinions given so opposed to each other. Such displays have called forth from non-professional men the most withering sarcasm. Such as, in short, while it was deserved, yet was not the less keenly felt by every professional man who had the interest of science at heart. We ourselves were concerned in a case of this kind. It was a civil action in which a father in the humbler ranks sought compensation for injury carelessly inflicted on his child. The amount sued for was a mere trifle. The attendant on the family along with the speaker gave it as our opinion that the injury was one in which it was likely the child would sink before the healing process would be completed, or if she recovered she would for life remain a cripple. Without waiting to describe the nature of the injury, we may remark that this was the opinion of several surgeons who saw the case. Two surgeons were examined for the defence. They gave evidence that there was nothing serious in the nature of the results of the injury; that she would recover, and with a sound useful limb. We were never more surprised than when we heard the statement made, it was so opposed to all experience. She did recover after a tedious convalescence of fourteen months, but with a stiff joint, as we were certain would be the case. Now, one of the witnesses was occupying a high position in his profession. As we have said, by all means, aid the defence if you can do it honestly and with a clear conscience; otherwise, surely, it is best for your own sake, for that of truth, and the interests of our common profession that you should decline such a service.

Near two thousand years ago, there was one who sold Truth itself for thirty pieces of silver. In him, however, the moral feeling was not entirely frozen. He repented the deed, returned the silver, and quietly sought his own place, aided by a ligature. Now-a-days many are not so fastidious. They

transfer their truth-selling gains to their banker—if they have one—and save themselves the expense of a rope.

Some may wonder at our insisting on such an obvious duty—our apology is, that over and over again—we say it with profound regret, we have seen men act very differently. While saying this it is pleasant to reflect that there are many who keep to the line of strict duty who have honourably declined aiding in thwarting justice.

Sometimes it happens that in cases of difficulty of a strictly professional kind, counsel seek the aid of the medical man. This, again, is all right and it is your duty to be ready with your services—do your best to make clear what is obscure. If you can see doubtful points, well and good. Let them be sifted and probed; an accused person should receive every fair consideration—this, even, at the expense of justice. Better one hundred guilty escape than one innocent be punished. At the sametime be assured of the rightness of the cause you undertake. No mere quirk or quibble, no attempt at taking an undue advantage, give all that is due to the accused, at the sametime remembering the demands of society are of no less importance.

There are many other matters to which we might have directed your attention. On this occasion we did not intend to be exhaustive, and so have left intentionally something for your future consideration and study.

We must now draw to a close, before doing so let us offer for your acceptance a few observations of a more general character, bearing on your position as medical men, when once you have gained the needed entrance to the profession.

At the outset let us urge on you the need for you continuing to be students. Constantly seek to enlarge your acquaintance with disease in its varying aspects—enquiring into its causes, the signs by which it is made manifest, and the changes it produces. Above all seek to know the best means for its alleviation.

At the bedside consider all as equal as far as you are concerned—know not that there are rich and poor—whatever the

position, the sufferer seeks your aid; you have his confidence and so he deserves your care.

Remember, a word kindly spoken, sympathy expressed, often acts as a powerful anodyne. Do not be annoyed with a fretful sufferer, we cannot enter into his feelings, besides we know not how soon our own turn may come. At the same time never play the part of sycophant. No doubt this sometimes succeeds; well, be it so, what of that if it must be a success at the sacrifice of self-respect.

While duty should command the greatest portion of your time, yet a little rational enjoyment will add to your pleasures and break the monotony of life. Seek as often as possible converse with men of culture; this will secure against you becoming one-ideaded, and at the same time liberalise your views. Above all neglect not the study of general literature, and if at all possible, keep pace with the advancements of physical science. Time well apportioned will enable you to make all this a matter of easy accomplishment.

To your professional brethren comport yourselves as ought to be done with those having a common aim in view. So far as may be consistent with your duty to society, shut your eyes to a brother's weakness, and be blind to his shortcomings. Eschew scandal and turn aside from the backbiter. Should others not act so to you, turn as it were the other cheek, by so doing you may bring an offender to a better frame of mind. Sometimes it is needed we should answer a fool according to his folly. Before doing so see first you are in the right, and that you have given no cause of offence. This being so, let your chastisement be with a will, short, and with a severity proportioned to the offence. When done let the occasion be speedily forgot.

Never attempt to rise at the expense of another—it may succeed—but if you fail your reward will be merited contempt. In short, in all that concerns your medical brethren, keep the golden rule ever before you. As to your relations to society, let us say that as regards the common courtesies of life be all things

to all men. Where a certain deference is due accord it but without servility. Never forget your rights and duties as citizens. When conscience approves and duty prompts, fearlessly exercise these. In doing so you need not annoy those who may happen to differ from you by ostentatious obtrusiveness.

Should you feel convinced that you have it in your power to aid in improving the social condition of those around you, to advance them mentally, or elevate them morally, then without hesitation cast aside the bushel that may for a time obscure your light, and then fearlessly display it to your fellows.

If there are thinking minds among you who may have been led to have opinions not in harmony with current belief, we say to such keep in mind, these alone concern yourselves. For these you alone are responsible. At the same time respect those who differ from you; give them credit for sincerity and an equal honesty in seeking after truth. And above all never obtrude your special views where you are certain they would only displease. Remember that speculative opinions are mostly concerned with the unknowable and so, however important they may be in your view, yet on the mass of men they have little influence.

To sum up: cultivate the powers of mind given you. Remember that while only a unit in the great human aggregate, you have nevertheless your place and work to do. Strive, then, to leave the world better than you found it on your entrance on the stage of life. Let your conduct throughout serve as a guide and example. Further, keep in view the Godlike mission of the medical man, so that your every act will tend to advance the progress of, and raise in general esteem, the profession which you have chosen as your life-mission. This done, as the close approaches, you will be sustained by the reflection that while shortcomings will be evident, yet so far you have done your duty to self, society, and your profession.



