

INJURY IN RELATION TO ACCIDENT, WITH  
SPECIAL REFERENCE TO CONFLICT BETWEEN  
MEDICAL AND LEGAL OPINION IN PATIENTS  
WITH HERNIA

BY DR. JOHN KENNEDY

A MEETING of the Medico-Legal Society of Victoria was held in the Medical Hall, Albert Street, East Melbourne, on Saturday, 24th September, 1938, at 8.30 p.m. Mr. Justice Lowe occupied the chair, and there was a large attendance of members.

Chairman: Gentlemen, to-night Dr. Kennedy will address us on "Injury in relation to accident, with special reference to conflict between medical and legal opinion in patients with hernia," which may be interpreted to mean the rupture of the harmonious relations between the employers and workmen. I have pleasure in introducing Dr. Kennedy.

Dr. Kennedy read the following paper:—

All cases of disability, the result of injury due to accident, coming within the Workers' Compensation Act, can be divided into two groups:—

- (1) Disability, the result of accidental injury, and which can be nothing else, comprising most claimants.
- (2) Disability, the result of disease or congenital defect, which may be precipitated, accelerated, or aggravated by injury due to accident.

It is to consideration of this second group of case that I would direct your attention.

It includes many diseases, the result of degenerative changes:—Senility, cardiac or arterial conditions; certain specific infections (tubercle, syphilis, or gonorrhoea); results of non-specific diseases, as in joints and spine and various viscera; and, lastly, skeletal and congenital defects, such as herniae.

Such a group, comprising so many conditions totally dissimilar in origin and nature, presents one common feature: that, whilst this origin or cause has no relationship whatever to industry, exacerbation may be precipitated in the course of work, and give rise to disability.

Consideration must also be given to the fact that disability from such exacerbations is the natural course of such disease whether the individual is at work or not, and it may be coincidence that the climax arrived during working hours. Hence the problem facing one is not only that of making a diagnosis, but connecting that with the special incident alleged as its cause.

It is not sufficient to determine that it is the disease which is causing the disability, but whether or not such disability was precipitated by some incident in his work.

In dealing with such a problem as this, very careful consideration must be given to

- (1) Facts concerning disability, *e.g.*, injury and incident.
- (2) Clinical, anatomical and pathological data in the case.

When these can be co-related, a connection between the incident and the injury or disability may be established.

In certain cases, however, no such relationship can be established, although *the facts* of incident and disability seem definite, such as in epididimitis or appendicitis, and many other "itis" conditions. In other cases, where disability is delayed and heavy work is carried out in the interval, it is impossible, on underlying anatomical and pathological conditions present to consider any relationship, as in heart disease, most joint conditions, spines, and herniae. Hence it must be recognized that any decision given in such a case must be based on anatomical and pathological facts, a careful consideration of all the clinical data, and the facts surrounding the onset of the disability.

The problem arising in such cases is to determine what constitutes an "accident." As far as I can understand the word "accident" is used in the Act in the popular and ordinary sense of the word as denoting an unlooked-for mishap, or an untoward event, which is not expected or designed, or as denoting or including *any unexpected personal injury* resulting to the workman in the course of his employment from any unlooked-for mishap or occurrence, or any unintended and unexpected occurrence which

produced hurt or loss (Willis "Workman's Compensation," 31st Edition, Page 8). Hence the whole responsibility of determining the facts establishing or not establishing liability under an Act in respect of the drafting of which we were not consulted is thrown on the medical profession.

These are the broad general principles which guide one in dealing with these problems:

One can proceed to consider the subject of hernia as the result of injury due to accident.

Hernia, by its common term, "rupture," implies injury. The working man can therefore be forgiven if, when he learns that he has such a condition, he refers its cause back to some strain in his work. The development of the saccular origin by the late Mr. Hamilton Russell has been responsible, however, for the modern conception that it is due to a congenital defect and thus analogous to a condition of latent disease in the individual. In this way has arisen the contentious problem of determining to which of the two classes, i.e., disease or injury, any particular case belongs. Many papers have been written, many commissions have sat, and many legal decisions have been given on the subject, yet finality has not been reached, and these cases will still help to keep lawyers, doctors, and the new board occupied. Before presenting my own ideas on the subject, I would draw your attention to opinions and conclusions of various industrial authorities, doctors and commissions, and a few legal decisions which I have found of some assistance.

*Opinions of Authorities and Medico-Legal Cases re Hernia*

I. Dr. Coley, in a paper given before the American Railway Association in 1922, dealt extensively with the subject. He groups hernia into three classes:—

- (1) True traumatic hernia, result of great violence, which is very rare.
- (2) Hernia of effort—the contentious type.
- (3) Hernia due to muscle weakness—never due to accident or injury.

Regarding Group 2, he considers that such is never due to a single accident, and therefore is not the result of injury. He quotes many authorities, and reasons from his own surgical observations and work, in support of his opinion. He concludes his paper with the following:—

“Hernia developing in the course of duty incidental to a man’s work should be regarded as disease due to anatomical weakness in the man.”

II. Dr. Mock, quoted by Walnut, gives the same classification. In regard to hernia of effort, he states that those who regard the true traumatic hernia only as compensable do an injustice to the employee; that, on the other hand, those who regard all herniae as due to strain do an injustice to the employer. He concludes, re accidental hernia, that it is one in which force causes its development as the direct result of some unnatural occupational hazard, and injury is caused.

III. The Special Commission of Pennsylvania Railway (Annals of Surgery, 1929) concluded:—Hernia is a disease, not an accident, unless there is conclusive proof that the hernia was immediately caused by such effort or strain that proof being:—

- (1) The hernia followed immediately.
- (2) There was severe pain in the hernial region.
- (3) The disability came on at once.
- (4) There was a report to employer because of severity of symptoms.
- (5) The injured worker was obliged to see a doctor because of physical distress.

IV. The State of Nevada Industrial Commission reported that accidental hernia is one in which there is definite incident with proof of injury, e.g., hernia: pain: disability: reports to employer, and to a doctor, and laid down that it is not so much the predisposition as the degree in which the exciting cause contributed to the disability.

V. Dr. Moorhead (Boston), in a paper in New England “Journal of Medicine,” 1933, presents some interesting facts

regarding industrial hernia. He presented 300 operation cases—66% said to be due to strain. Pathological investigation of the hernial sacs in 52% showed well-marked evidence of chronic inflammation. This would be definite proof that the hernia was not a recent event. He states that no single stress can dilate the hernial ring. He supports Coley in this and presents as evidence the following:

- (1) Professional hernial dilators take a minimum of three dilatations to produce a hernia.
- (2) No case on record nor in his own observations of inguinal hernia resulting from accidents causing gross injuries to pelvis and abdomen. Such must necessarily have given rise to great increase in intra-abdominal pressure.

VI. Professor S. Jacques (Clinical Surgery, Montreal University) (article in Canadian "Medical Association Journal") states: Hernia of effort, if due to accident, must show the following symptoms and signs as evidence of injury—

- (1) Pain severe enough to cause disability.
- (2) Lump which was not present previous to injury, which is painful, which is tender, is not large, is not scrotal, and appears within twenty-four hours.

He quotes Brouardel (French leader on Industrial Medicine) and other authorities, who state: History of abnormal strain, followed by such pain that it forces the man to leave his occupation at once, the small size of the hernia, and it is unilateral.

Other forms of hernia may be compensable under similar conditions as aggravation of pre-existing hernia, when evidence of injury as above has been produced.

States of Alabama and Virginia:—

1. Injury, resulting in hernia.
2. Hernia appears suddenly.
3. Accompanied by pain.
4. Hernia follows an accident.
5. That hernia did not exist prior to the accident.

Otto May, Consulting Medical Officer to Prudential Approved Society in hernia and hernia plasty. Three groups:—

1. Severe pain, with the immediate development of hernia, he considered as one of accidental hernia.
2. Severe pain, if accompanied by shock and vomiting, with, later, one week, development of hernia, is probably an accidental hernia.
3. Pain, causing the worker to stop for a few minutes, followed later, one week or so, by hernia, is not, in his opinion, an accidental hernia.

I have found the following medico-legal cases of some assistance in findings that concerned accidental hernia.

(1). 1913. W.C. Acts (Gordon). Court of Appeal. *Scales versus West Norfolk Farmers' Manure & Chemical Co.* Accident arising out of and in the course of employment. Strangulation of a hernia whilst at work, and death. Appeal by the employer was dismissed. In this case our lawyer friends will remember that the deceased had suffered from a hernia prior to the accident. Whilst doing heavy work, e.g., straining with a heavy tool, he developed acute pain in his hernia and was immediately incapacitated. The hernia was found to have become strangulated. He was operated on and died. The summing up of the Judge in the Court of Appeal in this case is, I think, of very great value to any doctor in considering what constitutes injury due to accident in a case of hernia.

(2). In the same volume, p. 595, is the case of *Brown versus Kemp*. In this case, the injured worker appealed because of the decision of the County Court and the appeal was allowed. The man was engaged in lifting an empty cask off a stand. Pain came on in his groin; he suffered from shock and vomiting and immediate disability. On examination a hernia was found to be present. Evidence was produced to show that this hernia was the recurrence of an old hernia, which had been treated by a truss and had remained reduced for a considerable time. The Court held that the ordinary strain caused injury and recurrence of

the hernia, and that the case was one of injury due to accident.

(3). In the same volume, page 474, will be found the case of *Marshal versus Sheppard*. In this case the employee during the course of his work sustained strangulation of a hernia, of which he died. Appeal by the widow was dismissed by a Court of Appeal, on the grounds that there was no evidence of injury by accident during the course of his employment.

Other cases can be found of a similar nature in the Law Reports, but I think that these will be sufficient to indicate the nature of the evidence of injury by accident to be proved in the case of a hernia.

*Hernia*.—The common types met with are inguinal, direct and indirect, femoral and umbilical.

Incidence about 3%, all males (Keith, B.J.S., 1924). American Army, 2 $\frac{3}{4}$  millions examined, 4% rejected because of hernia (A., 21-30).

Males—Inguinal, 97%; Femoral 2%; Umbilical, 1%.

Females—Inguinal, 50%; Femoral, 34%; Umbilical, 16%.

Direct inguinal herniae are about 5% of all inguinal herniae; about 50% of direct herniae are bilateral. (Murray, H., 1910.) Significant of this is that this hernia is usually due to muscle wasting, weakness, senility, and is a gradual process. Murray reports that in 200 autopsies on men who in their life showed no evidence or sign of hernia a sac was present in 34%.

As herniae are the result, primarily, of a congenital or acquired defect, and usually develops because of that, in deciding the influence of trauma careful consideration must be given to:—

- (1) The anatomy of the part.
- (2) The factors influencing the development of the hernia.
- (3) Clinical facts associated with its onset.
- (4) Facts concerning the incident and injury.

For this purpose one will confine one's attention to the

inguinal group, as the same points can be applied to the other varieties.

(1). *Anatomy*

Inguinal canal,  $1\frac{1}{2}$  inches long (in groin) above the inner half of Poupart's ligament, surrounded by strong aponeurotic and muscular structures, which belong to the powerful muscles of the abdominal wall. These muscles are brought into action in all forms of work entailing strain. The canal lies obliquely in the wall, and is so placed that the upper and lower ends are closed, and the canal itself protected by a definite muscular mechanism during each strain. Along this canal passes the cord of the testis which contains the vas deferens, blood vessels and nerves. In 5% of men a small tube of peritoneum passes along with the vas. This tube is the remains of a congenital communication which existed between the abdominal cavity and the sac surrounding the testis, which normally should close just before birth. It is a very fine, delicate structure, difficult to locate and remove, closely applied to the vas, and occupies practically no space in the cord until it is converted into a hernia by the passage into it of some of the contents within the abdomen. Moreover, the hiatus or opening in dense fascia, which later constitutes the internal ring, is large enough only for the passage of the vas and this fine process. This hiatus, or ring, and the tissues of the cord, as well as the sac, must all be dilated for the passage of the contents and formation of a hernia.

Thus one finds a potential canal, a sac, a small opening or ring, a cord containing nerves, no dead space, surrounded by muscles, waiting to be disturbed by the passage down of some part of the abdominal viscera to form a hernia.

In the formation of any tumour or swelling in the body, the amount of pain, discomfort or disability varies directly with the rate of growth. Thus a slowly growing tumour or swelling can grow to a large size without causing any symptoms, whereas a rapidly growing swelling soon makes its presence felt, the amount of pain depending on the nerve

supply or sensitivity of the part, or the pressure of the tumour on the adjacent sensory nerves.

Everybody is familiar with the pain of an inflammatory swelling which may take a few days to develop, or with the pain of a haematoma or effusion of blood. Hence it can be readily understood how an acute or traumatic hernia, by stretching the tissue of the internal ring, the cord and the canal and causing pressure on sensory nerves, must always cause pain. It further can be understood how this pain must be increased by contraction of the muscles of the abdominal wall. This squeezes the hernia and increases the pressure on the nerves in the cord. It also affects the contents of or viscus within the sac, nipping or dragging on these, and may cause shock and vomiting. It also can be understood how a hernia can form slowly, without pain, and not betraying its presence until it passes outside the external ring and presents as a swelling for a lay person to see. Such a hernia makes room for itself in the canal and does its stretching in quiet fashion. It is clear, also, how many herniae are described as a "lump," which was not there before, and in which pain is not the dominating feature.

(2). *Factors Influencing the Development of a Hernia*

Fundamentally a rapid or sudden increase in intra-abdominal pressure must be regarded as the cause of any hernia. Hence the factors bringing this result about are the various physiological, pathological, or external conditions which raise intra-abdominal tension. Abdominal straining for various physiological purposes has long been regarded as a potential cause of hernia, and explains itself. Pathological changes in certain passages, such as the urethra or rectum, give rise to increased strain during these physiological functions, and thus render the individual more liable to hernia. Probably the commoner causes are the sudden attacks of increased intra-abdominal tension associated with violent coughing spasms, seen in many catarrhal conditions.

*External Causes.*—Heavy work and lifting of heavy weights always give rise to increased intra-abdominal tension. In this connection one finds difficulty in explaining why an individual can do such work for a long period of time and then quietly develop a hernia. Possibly some loss of control of the co-ordinating mechanism of closure of the canal, or presence of muscle weakness, fatigue, or muscle wasting may be factors in such a case. Such cases, as a rule, one would regard as of the occupational or gradual process type. The onset is not associated with pain or injury, but with the discovery of a swelling or lump in the hernial region. The other group of external causes is that in which sudden stress, effort or strain causes an explosive increase in intra-abdominal pressure. There is no doubt that the muscle reflex guarding the inguinal canal requires a certain reaction time, and it is quite certain that in cases of this type the muscle response is not rapid enough—"it is caught unprepared," with the result that, as in similar muscle conditions elsewhere, injury (or strain) takes place and an obvious hernia appears. The effort may be lifting an ordinary weight such as had been carried out on many previous occasions, or the weight may have jammed, caught or slipped, necessitating an unusual position of the body, or of handling the weight; or the worker's position may have changed; slip of foot, mis-step, or stumble, etc., necessitating a sudden effort at recovery. In other cases, such as a fall or a blow in the abdomen, I presume it is possible that increased intra-abdominal tension may occur; in one, in the effort to recover one's balance, or, in the other, to resist the blow. Both incidents, however, occur so rapidly, as a rule, that muscle effort must be quite out of the question.

In other cases which could be associated with injury, the force of the fall or blow on the abdomen would be sufficiently great as to leave no doubt about the resulting injury to the individual. Hence the two important factors in causation of hernia are:—

- (1) Sudden increase in intra-abdominal tension with possibly delayed muscle response.
- (2) Imperfect mechanism for closing the inguinal canal, due to muscle weakness, fatigue or wasting, or delayed reaction time.

Clinical facts associated with the onset of a compensable or accidental hernia:—There is a swelling in the inguinal canal, which (1) may be still confined to that region, or (2) may have extended into the scrotum, *e.g.*, passed outside of the external ring.

This swelling presents the clinical characteristics of a hernia. Inguinal swellings within the canal or muscular wall of the abdomen are often not obvious, and may be difficult to determine, even by an expert. Apart from other swelling, the bulge of weakened muscles often simulates a hernia. On the other hand, this class of hernia often reduces itself with rest, and may be very difficult to entice out again with the ordinary methods of examination. Hence the fact that Smith was examined a week ago and no hernia was seen cannot be accepted as evidence that the hernia which is present to-day has developed since that date.

It is quite a common experience with surgeons and medical referees that the case sent up as a hernia fails to produce it for examination, despite all his efforts at coughing and straining, walking, or running round the street block.

Scrotal herniae are easy to see and can be recognized by lay people. Excepting in very rare cases these are not recent, and have taken some time to reach this stage. One can conceive a gross injury forcing the contents of a sac to the scrotum in one stage; this would be associated with very definite evidence of trauma on both local and general manifestations that its relationship to the accident could not be questioned. I have not seen an example of such an injury. Other scrotal herniae, however, may be the result of trauma in the sense of injury to a pre-existing hernia, the recent accident forcing the hernia through the external ring into the scrotum. However, as this means a gross

increase in size and further stretching of the external ring and tissues in the neck of the scrotum, there would also be definite evidence of injury. Quite the majority of cases of scrotal hernia, however, base their claim on the presence of a swelling and one can find no other evidence of injury.

*Evidence of Injury—Pain at Onset*

Consideration of the anatomical facts already presented to you will, I think, prove that this must always be present; that it is not a pain to be lightly disregarded, *e.g.*, simple pain which lasted a few minutes and passed off. Definite injury to the tissues has taken place, and the pain persists until either the swelling is removed or the parts accommodate themselves to the new arrangement. This takes some days as a rule, not hours.

Because of the position of the injury and the swelling, the pain is exaggerated by any attempt at muscular effort. Moreover, there is also local reaction or pain due to the stretching of tissues in the inguinal canal and general reaction to compression on or squeezing of such an acute hernia. This often gives rise to abdominal pain, reflex disturbances (resulting from visceral injury), *e.g.* nausea or vomiting, and often shock. These manifestations depend on the viscera involved and the tightness of the compression (small bowel is more sensitive than colon or omentum). Hence in all cases of formation of, or injury to hernia, pain at the onset is probably the most important symptom. This persists and incapacitates, and thus forces notification to the "powers that be."

Tenderness is a sign usually given as an indication that the hernia is accidental.

I have seen this in a few cases when it has been associated with swelling of the cord and the pillars of the ring, as though an effusion had taken place into the tissues. Such manifestations would be definite evidence of a traumatic origin. The external ring and canal are always sensitive and tender to exploration with the examining finger in normal cases, and this must not be confused with the tender-

ness of injury. In one the finger must be inserted into the ring by pushing the scrotum up; in the other, however, this is unnecessary to determine tenderness. In most cases in which one is asked for an opinion, one or more weeks have elapsed since the onset and any effusion into tissues or abnormal tenderness has disappeared.

*Size of External Ring.*—Comparison of the size of the rings on the two sides is of value. Marked dilatation on one side, other causes being excluded, is evidence of stretching by the hernia, and, in the absence of gross injury and pain, of slow progressive development of a hernia over an indefinite period. When to this is added loss of obliquity of the canal, the case is definitely not accidental injury. A very definite period of time is required to give rise to painless displacement of anatomical structures. An exception must be made here for certain classes of direct herniae. In these cases the internal and external rings are one directly behind the other. The hernia goes straight back from the external ring. However, a traumatic origin of such a hernia in normal people gives rise to severe pain and there is no doubt about the evidence of injury. The exact nature of such a hernia can, as a rule, only be determined at operation.

Operative features which may be of value in determining the nature of a hernia are:—(1) The condition of the sac. (2) The presence of adhesions. (3) The evidence of old haemorrhage.

*Condition of the Sac.*—A thin-walled sac is of no significance. All reasonably recent herniae have a thin-walled sac. A thick-walled sac of peritoneum, however, is evidence of age in a hernia. This is due to inflammation over a prolonged period. Moorhead states 52% of apparently simple herniae sacs showed chronic inflammation on pathological (or microscopical) examination.

*Presence of adhesions* within the sac are definitely evidence of inflammation and age in a hernia. Signs of old or recent haemorrhage around the sac wall would be

definite evidence of injury. Such must be extremely rare. I personally have never seen it. Truss marks on the skin are usually given as evidence of age of a hernia and false claim, but it is rare to meet such cases in actual practice. General symptoms associated with onset of true accidental herniae are those of any sudden injury of the alimentary tract of a mild degree, *e.g.*, shock, abdominal pain, nausea, and vomiting, and these occur in most of the definite cases. These symptoms are singularly absent in all difficult and doubtful cases. They form a valuable guide to the nature of the hernia, and indicate the necessity of obtaining a very detailed account of the facts surrounding the accident and onset of the hernia.

*Disability.*—Again, anatomical facts would, I think, convince one that accidental herniae must always give rise to immediate disability for work. It is a matter of physical impossibility for any normal man to carry on work entailing strain in the presence of such an injury. I have put the question to many workers, the subjects of definite accidental herniae, and have always received the same reply; *e.g.*, “You can’t do any work, the pain won’t let you; any man who says he could do it is a liar.”

There is another large group of cases in which the symptoms of onset are not severe. General symptoms of shock and nausea are mild or absent, but there is definite persisting pain, associated with the development of swelling, immediate and relative or partial disability for work. Many of these cases show a hernia already at the neck of the scrotum; *e.g.*, of such a degree that its sudden complete formation would cause gross injury, severe pain, and shock. These cases, I think, have had a small hernia of gradual formation within the inguinal canal, and the strain has caused its sudden enlargement. In no other way can I explain the onset of such a hernia, with such mild symptoms.

In other cases there is muscle wasting, weakness, or even senility, such as is seen at times in the debilitated, or in workers past middle life. In these cases stretching of soft tissue easily occurs; there is not the resistance of good

healthy muscle to overcome, nor the resulting tension in the hernia, nor its pressure on nerves of the cord. These cases often present as a simple bulging of the wall in the inguinal region, with a relatively small hernia; or, in other cases, as a simple incomplete direct hernia.

In this latter group pain is not marked, and it is difficult to actually place the onset of the hernia. In other words they are cases of gradual development and not injury due to accident.

It cannot be mere chance that in one group the manifestations should be so mild, and yet in the true injury due to the accident group they are so definitely outstanding. One must look for something more than individual difference in response to the same stimulus or injury. The only difference I can conceive is as indicated above: In one group the hernial contents are forced into a virginal sac, or injury to a persisting hernia takes place; in the other there is an abnormal condition of the muscle wall. Hence, it must be concluded that in all cases of accidental hernia immediate disability, relative or absolute, for work must be present.

There is another large group of cases referred for examination in which the first manifestation is the presence of a swelling in the groin, discovered at some time during the 24 hours of the day, when a man may choose to examine himself. Sometimes his attention is drawn to the part by a transient pain on lifting a weight; a sense of discomfort, or as a swelling which was not there when last examined. Such swellings are liable to appear at some time during the life time of 5% of the populace of working age, caused as indicated above by any increase in intra-abdominal tension, and are not confined to manual workers. As for the purposes of a claim under the Workers' Compensation Act, some evidence of injury must be produced; difficulties in the case are at once apparent. The simplest evidence required is that of immediate pain and immediate disability, associated with some incident in his work, and unless this is forthcoming it is impossible to consider the case as

accidental in origin. There always has been stress and strain in manual work, and it is useless for the individual to claim that the condition was caused by a certain effort unless some connection can be established between the two conditions, incident and hernia. This can sometimes be supplied by sympathetic workmates!

For the purpose of establishing liability it is essential that these should be accurately determined, and later confirmed. In definite accidental cases, as in most other accidents, the incident immediate pain and disability leave no room for doubt as to the condition present and its cause. In the groups of relative or no disability, difficulty at once arises. Careful inquiry and close questioning is necessary to elucidate those essential facts. Often the claimant, because he has a hernia, is certain he should be compensated, and resents questions relating to its origin, and requires very tactful handling.

It is wise to obtain first the facts relating to the onset of the hernia—pain, swelling or disability—and then the manner in which, and why he connects it with his work; e.g., the incident in the case. As a rule, in his own language he can give a clear account of effort, strain, or untoward event which took place. It is the facts relating to the subsequent events on which great importance must be laid. In cases in which an interval of time elapses before symptoms develop, and certainly if there were continued heavy strain following the incident, injury could not be considered. In modern industry it is rare that men engaged to carry out work entailing stress can leave off or pass on to light work at their own sweet will. The work must be done, and an employer or foreman is present in charge of it. Hence, if a worker injures himself and cannot carry on, he must report to someone in charge, or the work is held up. As indicated above, an accidental hernia, even of a mild degree, causes pain, exaggerated by effort, and it is obvious that the disabled worker must report the condition. Hence, careful inquiry is necessary as to when and to whom the report was made. If this was not done

it is a fair assumption that pain and disability were not present; *e.g.*, that no injury had taken place. In most cases, all the facts relating to the incident, injury, and report can be confirmed or otherwise by inquiry from his employer.

In my experience in about 5% of claims for hernia, statements made are not confirmed; in other words, deliberate false statements are made.

Pain causes distress or incapacity; swelling causes fear; together they speedily send the individual to seek medical advice and aid. Hence, the subject of an accidental hernia consults his doctor as soon as possible.

The old or slowly developing hernia may, and often does, neglect the simple swelling, and may not see a doctor for many weeks after the injury. This always requires some explanation, which is very rarely forthcoming, and proof of the injury is, as a rule, also unobtainable.

Finally.—The subject of hernia due to injury arising out of and in course of an employee's work has been considered. In cases of disease or injury it has been shown that the injury must bear anatomical and pathological analysis. Anatomical consideration has conclusively shown that accidental hernia (or hernia the result of injury) must give rise to certain symptoms and signs. Of these the most important are: Pain, disability, and swelling. Certain facts surrounding the onset of the condition must also be present; *e.g.*, that there was a definite incident which could be regarded as an accident, and which could give rise to such an injury that it was definitely connected with the immediate onset of pain and disability for work; that the presence of these symptoms necessitated a report to the employer, and forced the employee to seek medical advice.

Hence, from a consideration of facts, it is evident that a proof of an accidental hernia depends on:—

- (1) Incident in the course of his work.
- (2) Evidence of injury—
  - (a) Immediate pain.

- (b) Immediate disability for work.
- (c) Swelling of hernia.
- (d) Report to employer.
- (e) Medical evidence.

And when these facts can be substantiated, liability must be accepted.

For the purposes of this paper, I have reviewed 300 cases of hernia, which I have examined as claimants under the Workers' Compensation Act:—

60 per cent.—There is a history of a definite incident.

50 per cent.—History of onset of pain.

86 per cent.—Manifestation by presence of a swelling.

40 per cent.—There was disability immediately following an accident.

38 per cent.—Reported the incident to the employer within 24 hours.

42 per cent.—Reported to a doctor some time later.

In these cases 36 per cent. were definitely admitted as cases of accidental hernia, or hernia as the result of injury due to accident arising in and out of the worker's employment.

In 24 of the cases disability was due to causes other than the hernia. In 18 of the cases the statements could not be confirmed.

#### DISCUSSION

Mr. Sawyer: Mr. Chairman and Gentlemen,—The title of the lecture suggests that it will raise controversial issues. So far as I raise any, it is because of the veiled hints or even threats of our medical secretary. He is, I understand, a heart specialist, and the innumerable heart cases on workers' compensation show that such gentry are of an inherently quarrelsome disposition. I cite as authority *Loynell v. Matutinovitch* ((1929) W.A.L.R. 82). In that case a timber getter had a sudden pain in the heart while lifting a log, was incapacitated, and claimed compensation. Five doctors gave evidence. One said that he had strained his heart by lifting the log. The second said that he had infected tonsils. The third said he had infected tonsils

and myocarditis. The fourth said his tonsils were all right, and his heart action was normal, but he had tachycardia and strained pectoral muscles. The fifth said there was nothing wrong with him at all. The arbitrator, I am glad to say, rejected the whole of the medical evidence, said that he accepted the man's evidence, and awarded him compensation on the basis of *post hoc, propter hoc*, and the Supreme Court upheld the award. The only other excuse I can offer for raising controversial issues of a quasi-political nature is that if they are not law, they are at any rate jurisprudence. That term is used to describe a subject in law courses which consists in odds and scraps of learning and individual impertinences dealing with every subject under the sun, and connected only by having some relevance to the growth, nature and working of legal systems. Thus, since a judge's decision may be affected by the state of his digestion, jurisprudence can properly include a discussion of dietetics, and since a medical witness's opinion of the origin of a hernia can be affected by his view as to the social morality of the Workmen's Compensation Acts, jurisprudence can include a discussion of dialectic materialism.

The scheme of the Workmen's Compensation Acts originated in Germany in 1885 as part of Bismarck's programme for stealing the thunder of the Socialists. The essence of the scheme was and is that workers injured by accidents happening in the course of their employment should be compensated out of insurance funds irrespective of whether the accident was due to anybody's fault, the cost of maintaining the insurance fund being cast on employers. Marxists would describe this as one of the gestures by which an expanding capitalism is able to pacify the working classes. The English Liberals copied the idea, with important modifications, in 1897, for the same motives as the Germans, and also because of the direct pressure of working class organisations and the genuine humanitarianism of such Liberals as Augustine Birrell. The scheme has since been copied by most of the civilised countries of the world, and also by the U.S.A. New Zealand and South Australia were the first British dominions to follow suit in 1900, and Victoria, as one would expect, was the last Australian State to fall into line, which it did in 1914. Victoria still lags behind in scale of compensation and in provisions for industrial diseases, though the Dunstan Government has made considerable improvements in substance by amendments which have the effect of making the reading of the Act

and the amendments a hard week's work. The social origin of the Acts is important. The Courts have rightly taken the view that they are intended to protect an exposed class—the proletariat—and on the whole have given the worker the benefit of doubts arising in the decision of compensation cases. I doubt whether the medical profession has taken the same attitude. The conservatism of doctors, like that of lawyers, tends to increase with their eminence in the profession, but at a faster rate. I have heard two eminent specialists express the opinion that the basic principle of the Acts is immoral, and oppose in particular the idea of compensating a man who has some condition which would disable him in any event, but which happens to be "lit up" by an incident in his work. For this reason, some doctors appear to think that they are absolved from giving an opinion favourable to a worker's claim if the causation of a particular disability cannot be established with certainty. Lawyers tend to be less timorous in handling the question of causation. As David Hume demonstrated, there is no satisfactory epistemological basis for causation. It is a figment of common sense, a working hypothesis. Dr. Kennedy remarks, somewhat bitterly, that the medical profession is asked in these matters to assist in the administration of an act which it was not asked to draft. The lawyers, however, can report that they cannot hold up the operation of measures which society demands until the philosophers shall have established the basis of causation, and the doctors the cause of all the disabilities from which workers may suffer. Where there is doubt, the decision must go on the basis of probabilities, and in considering probabilities, medical knowledge has to be eked out with the intuitions of common sense, in the light of the general assumption that the claim of the worker comes first.

One of the claims made for the Workmen's Compensation Acts was that they would greatly reduce litigation relating to workers' accidents, and strike a blow at that bogey of the laymen-lawyers' costs. The German Acts have done so, but the English have not. This is partly because the Acts have given rights to workers in many cases where the Common Law gave them none—to wit, where they are injured by the negligence of a fellow worker; and partly because of the complexity of the Acts themselves. Particular difficulty has been caused by the central words of the Act—"Personal injury from accident arising out of

and in the course of the employment." *Mackinnon, L.J.*, said in *Stenning v. Southern Railway Co.* (30 B.W.C.C. 439) —"I find myself more and more appalled by the menacing bulk of the row of compensation cases that are now stacked before me." *The Lord Justice Clerk* said in *Fergusson v. Shotts Iron Co.* (20 B.W.C.C. 749), "The word 'accident' has, during these 20 years, been overlaid by a wealth of definition and exposition which is bewildering rather than enlightening." This difficulty is met in considering the two types of cases referred to by Dr. Kennedy—heart and hernia cases. In both types, we find as a rule some pre-existing condition in a worker which his work has aggravated. When does this amount to "Personal injury by accident."

I have read all the English cases dealing with heart conditions. The leading case is *Clover-Clayton v. Hughes* (3 B.W.C.C. 275). A worker with an aneurism was tightening a nut with a spanner when the aneurism burst, and the worker died. The House of Lords held the case compensable, and the decision taken with subsequent cases in which it has been applied established the following propositions. Firstly, aggravation of a pre-existing condition by work establishes personal injury arising out of that work. Secondly, "accident" does not necessarily involve a catastrophic event external to the worker; it includes an appreciable physiological change in the worker causing disability. Thirdly, that the work need only be ordinary routine work, and need not be work involving any strain. Fourthly, that a relation of causation between the work and the "accident" does not have to be established with certainty; it need only be the more probable view. The medical evidence in the case amounted to this, that it was inconceivable that the tightening of the nut had nothing to do with the bursting of the aneurism. But in this case, the disability was undoubtedly associated with a particular incident in the work—the tightening of the nut. But the later cases—*McArdle v. Swansea Harbour Trust* (8 B.W.C.C. 489), *Treasure's case* (13 B.W.C.C. 28), *Hewitt's case* (15 B.W.C.C. 239), *James v. Jones and Paton* (26 B.W.C.C. 277), and *Hilton v. Billington* (29 B.W.C.C. 299)—show that this association with a particular incident is not necessary; it is sufficient if it can be shown as a probability that the whole of the work done on a particular day has materially contributed to the progress of the heart condition. Thus, in *Hilton's case*, a lorry driver had aortic

valvular disease due to arteriosclerosis. Through the whole of a day he had to start his truck on the handle, felt sick that night, and died two months later. The case was held compensable. On the other hand, if a condition has been slowly aggravated by work over a long period until the point of disability is almost imperceptibly reached, the case is not compensable. Thus, in *Miller v. Carntyne Co.* (1934 B.W.C.C. Supp.), a worker had myocardial disease due to chronic aortitis, and syphilitic degeneration of the walls of the great vessels. Medical evidence was that heavy labour over a period of years had materially accelerated the course of the disease, until on a certain day the worker suddenly became unable to continue. There was no appreciable physiological change on the last day. The case was held not compensable. The Lord Justice Clerk pointed out the arbitrary nature of a distinction between aggravating effect of one day's work, and that of work over a longer period, but on that arbitrary time-division the law now appears to stand.

One of the greatest disservices done to the working classes was the establishing by Hamilton Russell of the congenital origin of most herniae. Whether because the nature of this ailment is better known, or because surgical hernia specialists are less quarrelsome than heart specialists, the number of herniae cases is relatively small. The theory of congenital origin was accepted by the Supreme Court of New Zealand in 1911 in *Christmas v. Auckland* (13 N.Z. Gaz., L.R., 192). That case is another illustration of the difficulties which doctors create for lawyers. The worker's disability was diagnosed by different doctors as due to orchitis, lumbago, and an inguinal hernia. The court held that it could not say definitely what caused the disability and so made no award. The congenital theory was also recognised by Lord Birkenhead, L.C., in *Lancaster v. Blackwell Colliery Co. Ltd.* (12 B.W.C.C. 400). That case illustrates perfectly the elements of compensable herniae suggested by Dr. Kennedy. A worker, while lifting a heavy tub, felt severe pain, complained to a workmate, went home, vomited, and died about seven days later while being operated upon for a strangulated hernia. The case was held compensable. Dr. Kennedy's rules are those adopted by most of the American Courts, and indeed are expressly set out in the New Jersey Workers' Compensation Act, which goes to the length of requiring that a doctor be attended within twenty-four hours of the onset of pain. However,

it cannot be said that any English or Australian Court has expressly adopted them, and they are at most working guides. Thus, in many cases, such as timber workers, there will be no complaint to foreman or employer. Finally, can it be said dogmatically that the descent of bowel into a congenital sac is necessarily either very sudden—the result of a definite incident—or very slow and gradual? Is it inconceivable that an appreciable descent should take place in the course of a day's hard work, with consequently lesser pain and no immediate complete disablement? If this can happen, then on the analogy of the heart cases mentioned above, the case would be compensable. I leave the doctors to dispute this question. You will observe that in the interests of peace I have not left open any specific question for discussion by the heart specialists. (Applause.)

Chairman: I have pleasure in announcing that we have with us to-night Sir Henry Newland, of South Australia, who is President of the sister Society in that State, and I will ask you to welcome him by acclamation. (Applause.) Later this evening Sir Henry will probably join in the discussion. In the meantime I propose to call on Mr. Coates to continue the discussion.

Dr. Coates: I would like to congratulate both Dr. Kennedy, and our legal friend, Mr. Sawyer, upon their remarks, and Dr. Kennedy particularly upon his very able exposition of the subject of hernia. It has been most instructive and interesting to the medical men, and I am sure to the legal men. There is very much to be learned from Dr. Kennedy's own experience. I have been called upon during my 11 or 12 years' experience in hospitals, to give opinions to my own patients, particularly out-patients of hospitals, and to insurance companies, regarding industrial accidents. I am confining my remarks to the cases of men who complain of a "rupture"; that name implies that something is torn, and therefore that he must have had an accident. In the same way a woman comes along with a lump in her breast that is obviously cancer, and says, "I remember this, doctor, six months ago baby jumped and knocked me on the breast." In her own lay-mind there is an association of the trauma with the lump. That is pardonable. It is natural for us as human beings to try to find a cause for some mishap.

On the question of words, it is of interest to know that not only has the term "rupture" a very sinister influence on the layman's mind here, but in medical literature there

is a great deal of confusion. I propose to use the term "hernia" in the technical sense, and deal with the viscus, which fills a hernial sac. The late Mr. Hamilton Russell pointed out that the congenital sac, which was present in so many people, was a relic of foetal life. Many of us have hernial sacs. Dr. Kennedy has indicated that some people have gone through life with a potential hernial sac waiting to be filled. We have to remember that the hernia is a protrusion of a viscus into the sac. The result is an inguinal swelling through filling up an existing sac which existed since foetal life. We all have it before birth, but in the majority of cases it is obliterated, and it is never afterwards felt.

Another point is that the contents of the abdomen are not only the intestines, but the omentum. Legal members may not know what omentum is. A lacey kind of substance which you will frequently see surrounding carcasses of lambs or sheep is omentum.

There are cases in which a bit of omentum will slip into the hernial sac and will cause some disability, but not severe vomiting and shock, or severe pain. One must admit that there are some cases where a sac which has been pre-existing can be filled by a bit of omentum and a phlegmatic person may take no notice of it. He feels a little pain in his groin, and goes on working. I am never quite at ease in these matters from the workman's point of view, as to when I should say that an accident has occurred. If the case is an accident when a bit of omentum slips down during some obviously brief strain at work, and perhaps during the day symptoms become more marked, and the man becomes gradually disabled, is that an accident or some occupational incident?

I attach a great deal of importance to the mode of onset when dealing with hernia, or strangulation of a viscus. The mode of onset appears to me to be very important, but it is difficult for a doctor to get much information when perhaps a week has elapsed after the incident. The accident will be classified as such by the patient, but everybody will not agree that it was an accident.

The question that arose in those cases was, was this an accident, or was it to be classified as an occupational disease. I know that in Workmen's Compensation circles, occupational diseases have become recognized. Some doctors have diagnosed such cases as occupational diseases, and I have done so myself, but I was never sure whether I was doing an injustice to the patient or to the employer. I

would like some legal gentleman to give us enlightenment on that point.

Dr. Ostermeyer: I have listened with great interest to Dr. Kennedy's excellent lecture, and I have been struck by several points. Can Workers' Compensation be removed from the operation of the National Insurance Act? The effect of that will be that it is not to be the exclusive domain of the surgeon that it has been in the past. That is a very fundamental line of demarcation, and I am very glad that Dr. Kennedy, in his exposition to-night, has not merely gone on to the surgical history, but on to the genesis of hernia. And the genesis really comes down, not only to experts, but there are insurance surgeons nowadays, and they are going to come under the Third Party Insurance Act. There is a conflict between the insurance surgeon and the layman in practice. The development of a case is a very delicate matter. It often happens that you do not see the patient till a few days after the accident, and the patient objects to being questioned. They say, "I do not want to be asked all these questions." They think that you can put your finger on and tell the whole story.

Dr. Kennedy has stressed the really great intellectual skill, patience, and experience required by a surgeon.

There were many points brought forward by Mr. Sawyer as regards the legal aspect of the question, but the conflict is not merely between the lawyer and the doctor. I was very sorry to hear him describe how Western Australia dealt with the question. It is a condemnation of the specialist's system.

I am very glad that Dr. Coates made another good point when he said that lawyers were very good at spinning words. Dr. Coates has given us a definition, and any observer will see that it is not the art it used to be.

My experience of examining men in regard to hernia is that they resented it. It is not only intra-medical, but it is intra-surgical. We never refer to "surgical" evidence; it is always "medical" evidence except when an expert comes in, and then the surgeon comes to the surface.

My sympathies during this paper have been with the legal members, for this reason, if this was a medical evening the wall behind the chair would have been filled with lantern slides and moving pictures illustrating operations and giving a graphic account of the various processes. They could have seen the pieces of gauze that may be left in a patient, and other interesting things, and it would have

brought home to the legal profession in a very marked degree the great pressure and strain under which surgical work is conducted (hear, hear).

His Honor, Judge Foster: Dr. Kennedy, in a very interesting paper, has indicated to me, and possibly to other members of the legal profession, the very great difficulties that surround the problem of determining whether in any particular case compensation should be awarded or not. The difficulties to which he pointed are, in the main, difficulties that a doctor has to face, or a surgeon has to face in determining exactly what the patient suffers from, and when he suffers from it, and how it arose; but the tribunal which has to determine these matters has another problem which I think was indicated by something that Mr. Sawyer had to say, and which has occurred in the practice of all County Court judges when dealing with these matters. It has now disappeared from my particular jurisdiction, and has fallen on the shoulders of my brother Judge Stretton. The tribunal exists, but it has not yet functioned. According to the reports of the questions asked in the House quite recently, the tribunal has been appointed from the beginning or the middle of July.

The first problem that tribunal has to face is to find out what the doctors are saying, and, having found out what they are saying, to make up their minds which of the two sets of doctors, and sometimes more, is to be believed, having in view what they have not said; and believing comes to another question, about their honesty; but we believe that, from the point of view of the tribunal itself, which is unskilled in these highly technical matters as to which it has had to inform itself from the evidence given by the medical expert, and a case or two might illustrate that aspect of the difficulty.

Some years ago a claim was made in my Court for compensation for an elderly man who died of heart disease. There were seven doctors called, and I understood them to include all the greatest experts on the subject, and there were four on one side and three on the other side. The facts showed that he was a worker for one of the big corporations in the city, and his task was that of a stonemason, and his work consisted of lifting pitchers on the bench and axeing them. The facts showed that he lifted a stone and complained of a pain, sat down for awhile, proceeded with his work, went home, and died. The history also showed that he had suffered from syphilis at some

time during his career, and, as I gathered from the evidence, there was a great dispute as to whether he died as the result of the syphilis affecting the heart or from lifting the stone. However, his widow got full compensation.

I, possibly, was wrong, but if I was, then three of the doctors were also wrong. That is that.

Perhaps another illustration of the same sort of difficulty that that tribunal has to face, occurred in another case, which has nothing to do with hernia or heart, which is the subject of discussion to-night. This man suffered from an injury to his foot. The history of it showed that he was a seaman, and on a wild night on the coast of New South Wales, had fallen over a hatch, or into it, and injured his foot. He had gone to the hospital, and later came to Melbourne, and had further treatment. I will not weary you with the details of the case, but this illustrates perhaps as clearly as any, how difficult it is for a Court to make up its mind as to what the facts are. In a week he was in great pain and great difficulty, and he claimed compensation. There were some X-rays taken of the foot. I do not know how many doctors were called; but, looking at the X-ray photographs, which to a layman ought to disclose facts, one doctor said, "Yes, one of the metatarsal bones showed clear signs of having been broken." Another doctor said, "Yes, in my opinion two were broken." Another doctor said, "Yes, two were broken, and possibly a third." The fourth doctor said, "So far as I can see no metatarsal bones were broken at all." In that case, there was the difficulty of determining what the facts were, and that depends on the medical evidence that one gets, and one has to interpret it on the spot. As Dr. Ostermeyer has said, there is no "team work," and nothing to prevent such a case. As Mr. Sawyer pointed out, the tendency of one's mind is, "Here is a man who is certainly lame. He has some indication of broken bones, or some accident of some sort which indicates suffering, and the benefit of the doubt is commonly and generally quite properly given to the man who has suffered." But that is the first aspect of the difficulty. Having determined what the evidence showed so far as the medical testing goes, there is the next problem, and that is one which Dr. Kennedy and Dr. Coates have indicated to-night as one of very great difficulty indeed, and particularly so to a lay tribunal which has not the skill or the necessary knowledge, and only can be informed, generally incompletely, by the medical testimony that is brought

before them. That cannot be overcome, perhaps, by any amendment of the law, and will not be overcome so long as the tribunal remains a lay tribunal such as we have here. Whether it can be improved by the addition of skilled experts from the medical profession is another matter. It probably could not, because the division then would be as marked as on some of the tribunals existing in the States to-day, but I think from the medical aspect of Dr. Kennedy's dissertation to-night, he has shown clearly the difficulties that face tribunals who have to determine these questions, and how it is sometimes almost impossible to determine whether or not the injury for which the workman suffered was one for which he should get compensation under this Act. (Applause.)

Mr. P. D. Phillips: One word is quite clear from considering what Dr. Kennedy has been saying in general terms, and it was rather harmoniously suggested by Dr. Coates, that doctors looked on these matters in a different way from lawyers. If we really consider the Compensation Act, we shall see that the lawyers handed over very largely to the medical profession the solution of the kind of questions that are generally kept for the lawyers, and primarily for the Courts.

The very form of the Workmen's Compensation Act has avoided the question of causation. It adopted this very curious phrase, "Arising out of and in the course of his employment." It continued the expression "caused by the employment." The Parliamentarians hoped that they were avoiding all the difficulties which Courts and lawyers always feel in solving the problem of causation, or at any rate they created a jurisdiction where the technical rules of law would not be operative. Parliament succeeded in that task by dropping this possibly very useful expression, it did avoid entering into this branch of the law's work, the ordinary idea of causation, but it did not get away from the problem of cause, which in effect handed it over to medical science; because it still left the Courts to decide whether the injury did arise out of or in the course of the employment. As the whole trend of Dr. Kennedy's paper has shown us, while the lawyer was relying on solving his problems in terms which he understood of legal cause, the medical profession is presented with precisely the same query in trying to determine whether the condition of a patient arises out of the employment. I do not want to suggest that the legal profession are any better or any

worse in solving what the Court may regard as an insoluble problem, but when they face up to these difficulties in determining whether a condition arises out of the employment, then in many cases they see how difficult it is to give anything like a satisfactory answer. They can take this to themselves, that that is the kind of question that Courts and lawyers are trying to determine in other connections, and having to determine whether something has been caused by the defendant, the Courts and lawyers are solving by their methods precisely the same kind of questions and meeting the same kind of difficulties in the classifications which Dr. Kennedy set out, the three cases in which the condition was not caused by anything in the employment, and, on the other hand, the clear cases where the condition was caused by the employment. Those two categories are well known to lawyers in other problems of causation, and you are left with the very difficult class of case where you have to try to determine whether a series of pre-existing facts, some of which seem to be connected with the subject matter of the discourse, and some may not, which of those series of pre-existing facts is to be arbitrarily determined by the case. I do not think it is true, as Mr. Coates said, that lawyers and doctors think differently about these matters. The truth is that Dr. Kennedy applied to the question of the cause of these matters, exactly the same kind of approach which lawyers make when they are approaching those problems of law which the law compels them to solve.

The whole discussion seems to me to reveal the fact that the lawyer and the doctor do in point of fact approach the problem in precisely the same way.

There is just this further matter that I would add to that; theoretically the problem is the same. In this particular connection Parliament has in effect put upon the medical profession the solution of the problem of causation, but as His Honor Judge Foster has just put it, in the last resource the Judge has to determine on the medical evidence, and the difficulty will arise that the layman always has the view of disease as something which suddenly falls upon a man or suddenly breaks upon him, or suddenly sticks to him. Lawyers always think of disease as having some degree of immediate starting point, some germ comes into his organism, some spot has struck which has affected his organism, and the ordinary legal mind, including lawyers

and judges, and to the layman's mind all disease is a kind of spot that comes upon the body.

So that the real difficulty in these compensation cases seems to be this, the real problem of causation can only be solved by the expert medical evidence, applying medical knowledge. And it was truly the intention of Parliament, so far as it thought about the matter, to hand over to medical men the solving of that problem by the use of the words they put into the Act; but the medical man has to convey to the layman's mind this theory of causation, and to talk to the layman about causation of disease is indeed difficult by reason of the fact that in studying the causes of these diseases the experts' scientific qualities cannot overcome layman's mind thinking about disease in the way he does.

The interest I have had in listening to Dr. Kennedy arises largely out of his displaying how much that erroneous impression in the layman's mind as to the kind of injuries he has suffered and how much of those diseases have been longer lived than laymen ordinarily believe.

It must be a great comfort to the medical men present to know that Dr. Hamilton Russell's discovery as to the nature of certain herniae has now been put beyond doubt by the decision of the Supreme Court of New Zealand.

Dr. Johnston: I have come into contact with an industrial organisation of which I am medical officer, with such cases, but there are not many of them. I think over a period of about 5 years, there were about seven of those cases which came up on the question of accidental herniae, and of those seven I think five were regarded as being such. In other words, two were regarded as not being accidental, and those two cases created a feeling of resentment amongst employees out of all proportion to the number. As to the various accidents that do occur, and that come into the question of compensation, this question of hernia does assume a very important aspect. It is not my duty as medical officer in this particular concern, to have to decide that point, that is taken over by the legal officer of the Insurance Company concerned, but I have very often to see these men beforehand, and afterwards in cases where pain has occurred I have to explain why the pain is there, and it is very difficult to put the question along the lines of Mr. Hamilton Russell, or along the lines of Dr. Kennedy, to prove that that is the proper decision that has been made.

I do not wish to argue against the conservative principles which have been laid down, and I am not competent to do that, but I would like to stress that point.

I would not urge the insurance companies to be philanthropic institutions, but I would make this plea, that in this particular class of case, that they would direct the medical officers concerned first of all to have some regular and more or less standard criteria for their decision, and also to give a liberal interpretation of those cases.

Sir Henry Newland (South Australia): It is impossible for me to join in the discussion as I would wish, Mr. Chairman and Gentlemen, because I have not had the opportunity of seeing the paper presented by Dr. Kennedy. The paper has been given with the conciseness that is so typical of Dr. Kennedy in dealing with any subject.

The subject is a very difficult one to give the actual way in which it should be attacked. I think we may take credit in this respect, that the pathology of hernia has been placed upon a very basis by one whom Dr. Kennedy describes with the greatest respect, Mr. Hamilton Russell. Mr. Russell had a very difficult road to hoe in regard to the establishment of the truth of congenital hernia or accidental hernia. The theory was very much opposed by men of great authority when Mr. Hamilton Russell first advanced it in surgical literature. It must be a great satisfaction to the medical profession in this city to know that the truth of that theory to-day has been established, and is generally accepted. (Hear, hear.) It must necessarily have a bearing on the evidence which is produced in regard to hernia in the courts of law.

We have to remember that many of us are born with herniae which accident or injury may make obviously a hernia. There are closed spaces in the body which may give rise to evidence of injury; take for example the potential sac in front of the kneecap. It may give rise to a common ailment known as "housemaid's knee." That is but one of the instances where possibly the congenital theory would lead to the human being adapting himself to unusual conditions, but to which in course of time he would adapt himself.

Another potential source of injury which might be liable to render a patient entitled to compensation, is what is known as "the weaver's bottom," a condition affecting one intimately where one sits, and which is subject to injury as in the case of the weaver.

Hernia is a very difficult matter to decide in certain cases. Where a man is subjected to sudden strain and a hernia occurs, his intestine comes down to the scrotum, and there is not much difficulty in ascertaining and detecting that injury. There are other cases in which a man has really a slow hernia, where the injury leads to the pathological increase of the disease, and brings about compensation.

Hernia is one of the most difficult things to determine as far as compensation is concerned. I hope, however, that the discussion to-night is going to help very much in determining such cases on their merits. I am very glad indeed to have had the pleasure of taking part in this discussion. (Applause.)

Chairman: The matter has now been very fully discussed. There is a tradition dealing with the Chairmen of meetings which prevents me from saying anything, but I am going to permit myself one remark before I call on Judge Stretton to move a vote of thanks, and Dr. Macdonald to second it, and that is, I suggest to Mr. Sawyer as a topic for a forensic treatise the question of whether the language in which the criteria of the law about liability under the Workmen's Compensation Act as expressed is not an accident arising out of and in the course of the occupation of Parliament. I will call on Judge Stretton to move a vote of thanks to the lecturer.

His Honor Judge Stretton: I have pleasure in rising to propose a vote of thanks to Dr. Kennedy for his very illuminating paper. I, with my brother Foster, have suffered the embarrassment of contending witnesses expounding diametrically opposed theories and views, all of whom one believes to be perfectly honest. It is a truly amazing situation for a layman to find himself in, and if all evidence could be put as clearly and convincingly and with such little contradiction as Dr. John Kennedy's paper has been put to-night, the way would indeed be smoothed for us all.

I wish to tender to Dr. Kennedy a very sincere vote of thanks, which I hope will be duly carried by the members of this Society.

Dr. MacDonald: I join with Judge Stretton in thanking Dr. Kennedy for his excellent paper to-night. It discloses his very wide experience and equally wide reading. I am reminded that the proposers and seconders of votes of thanks to lecturers should speak more of the personality of

the lecturer than of the subject, but I may tell you, because I am not prepared to speak on this subject, nor am I qualified to do so, that Dr. Kennedy is known to his intimates as "Jock," and he is surgeon to in-patients at the Alfred Hospital. He is a man of high qualifications and repute amongst the profession of this city, but he is an extraordinarily poor handwriter. May I remind your Honor, the Chairman, of a story that you told a night or two ago, of the effects of bad medical handwriting on the career of a promising young medico, and I suggest that you deliver a gentle admonition on this subject to Dr. Kennedy in regard to medical handwriting. I can say nothing more derogatory about my old teacher and friend, Dr. Kennedy, but I will tell you this gentlemen, that in the medical profession in Melbourne he is known as a fair referee, possessed of sound judgment and great knowledge in the subject which he has so ably presented to us to-night. (Applause.)

(The vote of thanks was carried with acclamation.)

Chairman: Dr. Kennedy, I tender to you the hearty vote of thanks which has just been carried by acclamation.

Dr. Kennedy: Mr. Justice Lowe, and Gentlemen,—You have really embarrassed me by the many nice things you have said about me. His Honor Judge Stretton has embarrassed me by the compliments he has paid; but the subject is full of appalling difficulties, and it is very hard to hear you say that you have doctors on one side saying one thing and doctors on the other side saying another thing, but it should prove to you all how extremely honest we are. We all draw our own conclusions on the evidence, though probably they may be absolutely diametrically opposed to one another, on the same facts. No two grains are the same, and I think that the fact that four doctors on one side and three on the other, to whom His Honor Judge Foster referred, gave diametrically opposite evidence, should again prove that doctors are fools, but dead honest.

There is just one thing I would like to say in regard to doctors and judges in the Courts; you are presented with very difficult medical and legal subjects. Why cannot you get a medical assessor to sit with you? Years ago I was up before a judge in a very difficult case. It was a very abstruse case in which there was a lot of medical evidence on both sides, and at the end of the day the judge said, "Gentlemen, I do not feel that I am competent

to give a decision on this without a medical assessor to sit with me. Have I your permission?" And the two barristers agreed upon a medical assessor, and they agreed to appoint our dear old friend the late Sir George Syme. He came along next morning, heard the evidence, and went to the judge's chambers, and the judge came back and gave a decision which was accepted by everybody as a straight-out decision on the difficult medical case. I have thought of that when rather difficult problems of that nature come up before a judge who is not competent to decide straight out between two diametrically opposed opinions.

There is another case that Mr. Sawyer made reference to—a heart case, where a man died at the end of a period of very heavy work. He sat down and died. Surely that was due to accident? It was all heavy work, and the Board came to the conclusion that because of the heavy nature of the work in handling the last bit of work he did, he died in a few minutes. If a man contracted a hernia in the same way, he would have evidence of his injuries, and he would have pain, and he would not be able to carry on his work for the rest of that day, or night, and there would be no doubt about it. I think that applies to Dr. Coates' remark, too, that a man can keep a hernia down, but it is the hernia which causes pain and disability for heavy work.

Dr. Ostermeyer mentioned about the absence of slides and illustrations being used in this lecture. I went through the matter very carefully, and I decided not to use the equipment available, because it was not altogether suitable.

Dr. Johnston mentioned seven cases, and stated that five doctors were in favour and two against. I may say that I am terribly sorry, and it always hurts me, to turn a man down. I would rather anything than do so, and it puts me to a lot of bother. I think every doctor likes to see the worker get his claim paid. I agree that the word "rupture" conveys an impression to a working man that he cannot get rid of. I can assure you that that literal interpretation of those cases is always present. One does not expect a man in cases of accidental hernia to always show vomiting and shock, and to be completely disabled. There were instances which I emphasised, where the symptoms were not so manifest, but there have been the shock and vomiting, and the men were under absolute disability. I think one must interpret those cases in the ordinary way.

Sir Henry Newland has given us great pleasure by attending to-night and joining the discussion.

Chairman: Our next meeting will be on the last Saturday in November. On that occasion Mr. F. W. Eggleston will read a paper the title of which I understand has not yet been chosen, but it will deal with the legal method of handling social disputes.

Dr. McDonald provoked me to say a word in regard to medical handwriting. I do not want to spoil the effect of the vote of thanks to Dr. Kennedy; but at a gathering such as this, it is perhaps appropriate that I should repeat what Dr. McDonald has invited me to do.

This little story is concerned with the tragic effects which followed from the indistinctness of medical handwriting. The story is occasioned by the sad fate which befel a young medical man who set up in practice in a country town. His practice got along very well indeed, and he was invited socially by one of the local hostesses to dinner. He wrote a reply which the lady attempted to read, first by looking at the letter in its normal position, then by reversing it, and then by looking at it sideways, but utterly failing to get any sense out of it. She then handed it to her husband, and he had no more success than she had, but he had one brilliant suggestion to make. He said, "The local chemist is bound to be able to read the doctor's handwriting; we will take it to him." It was taken to the local chemist. He looked very hard at it, and retired behind a glass screen, and presently he emerged with a bottle in his hand which he put down on the counter and said, "Three and six, please." (Loud laughter.)