

## FUNCTIONAL DISORDERS AND WORKERS' COMPENSATION LEGISLATION

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IN about 1914 I had the privilege of being resident with Sir Henry Maudsley for six months. When I was leaving him he said, "Well, a functional disorder to a man who has got it is a very difficult problem." In my youth I said, "Oh well, poor old boy, he does not know what he is talking about", but I gradually realized that he did know exactly what he was talking about. The man who has got a functional disorder is an extremely hard man to treat. In regard to those so-called functional disorders, who is responsible for them? I, as a medical man, am very sorry to say that we are, very largely; and I am speaking now with experience extending over a number of years dealing with workers' compensation diseases. In 1922, I think, was the first case that I can remember. It was that of a man called Boyle, who was working at Wonthaggi and got hit in the knee by a truck, he being ill for about eighteen months with a stiff knee. He was sent along and I could not find anything the matter with his knee; but he had been told by his doctor that he had a very serious injury to the knee and that probably he would have a stiff knee for life. He had had it for eighteen months; he was X-rayed—negative; examination, negative; and with a fortnight's treatment his knee was moving normally and in a month he was playing football.

That experience has been repeated on many occasions during the last eighteen or nineteen years. Where do we get from there? The ordinary working man with responsibilities and so forth is worried in case he will not be able to earn his living and meet his responsibilities. This case is like that of a man who not so long ago got a cut in his thumb. His doctor said to him, "It is a bad thumb. Of course these tendons and nerves and so on are gone and you will not be able to work for six or eight months." He came along to me from the doctor and

displayed his hand with the fingers contracted very badly and was absolutely certain that he would not be able to earn his living for eight months. Of course there were no tendons cut or nerves damaged and in a fortnight with a certain amount of encouragement he was all right.

That gets me to the question, why do these people declare these functional disorders? We are responsible for a great deal of it. The Government in its wisdom, you might say, "sets the pace" and workers' compensation gives a man a chance to live—at all events to eat and sleep—so long as he cannot work. That is the beginning. Then the medical man very frequently entices the worker not to get well so quickly. It is absolutely true; I have seen those cases not once or twice or three times but dozens of times, of the medical man telling the worker that he will not be able to work for eight months or twelve months or sixteen months or possibly never again. Dr. Latham said that I might digress. I think perhaps I will. As to a functional disease such as heart disease, a man who, we will say, is lifting a post, gets a pain in his chest and becomes frightened and he goes along to the nearest doctor, and the doctor, of course, knowing that coronary thrombosis is a very popular disease, will suggest "That is your trouble, old boy; you will never be able to work again." I have seen six, eight or ten of these fellows in the last few years—pain in the chest—no more work—coronary thrombosis. The only thing that has been wrong, of course, is that not one of them has ever had coronary occlusion. The doctor "plays safe"; he says, "Pain in the chest and so forth. I am pretty sure you will have no further work." But they have not got it; they have a strained muscle and there is no danger of that sort nor is it due to coronary occlusion. In regard to heart disease or coronary occlusion, I would say that coronary occlusion so far as workers' compensation is concerned does not come into the picture. No man who dies from coronary occlusion should get compensation. A great many die when they are asleep; they may die when they are reading the paper and a few die while they are at work, which, of course, is bad luck; but it is good for the lawyer and very frequently it is quite good for the widow, when it should not be good for either. I will ask Dr. Wright-Smith to say a few words in regard to these heart cases later on as a common cause of sudden death.

Because you just simply drop dead is no proof of coronary occlusion. In fact, it is only very occasionally that you find a

clot; usually the coronary arteries are narrow and they cannot pump so much blood, but there is no clot. A man who gets a clot does not die straight away; occasionally he may, but generally it is a matter of minutes, hours or days; but the man who drops dead usually has not got a clot. He simply has a narrow artery that will not carry enough blood; and that is the case with nineteen out of twenty cases that come up for assessment before the Workers' Compensation Tribunal. The man is dead; nobody knows, unless there has been an autopsy, why he died, but he simply drops dead; and usually his condition is that he has narrow coronary arteries which just cannot pump enough blood. Should that man be paid or his widow or his dependants be paid on account of that? Personally I do not think so, unless some special factors come in. Possibly the work the man has been doing has been harder than he is used to and as a result his heart just cannot stand up to the extra pressure, and he dies; but generally speaking, you do not find those factors.

Getting back to the subject that I am supposed to be talking about, functional disorders, why do people get these things? First of all, of course, because the Government is helping. In other words, the Government says, "Well, after all, you can afford to get some sort of disease when you are paid for it." Secondly, we help, as I have already said; and now what about the thing that Dr. Kennedy said to me when I walked in about the malingerer? Well, I think malingerers are few and far between. Dr. Kennedy might not agree with me, but I do say that the class of man who deliberately says "I am sick and I am not going to work" and is a malingerer, is rare; you may see one or two or three but very few. How different is the malingerer from the man who has got hysteria — and how different, I should say possibly 10 per cent. The man who deliberately and nastily says, "Right, I have had an injury and I am not going to work" is different from the man who has had an injury and who subconsciously says "I cannot work"—I will not say consciously but he still does not get better. I would think that in 99 per cent of the cases where the insurance company has to pay an assessment the man is not a malingerer. In 99 per cent of the cases he is not, but occasionally he is. Dr. Maudsley will remember one case who was definitely a malingerer but I have seen very very few who I could prove to the satisfaction of any court were malingerers.

One of our big problems is the matter of head injuries. The man who gets a knock on the head is possibly unconscious for the time being and subsequently comes along with a headache; he cannot concentrate, he cannot sleep, and so on. He sees his solicitor and the usual method of dealing with these fellows as far as the solicitor for the company is concerned is to say, "Oh, this man is not trying. He is a malingerer." Yet in nine cases out of ten he is not. He has had a crack on the head and possibly very often concussion; he has had a brain injury and his headache causes him great pain. A great many of them may get well. Most of you have seen cases of that sort; I have got one now. He has been off work for two years with headaches and cannot sleep and cannot concentrate. He is a sick man. But the people who have got to pay say, "No, of course he is all right; he is overpaid though we cannot prevent it."

To get back to those people who begin with heart trouble, the men who suddenly get a pain when they are doing a lift. It is nearly always felt in the pectoral muscle, occasionally in the side, and they are told they have got coronary lesion or thrombosis. We see a lot of them but usually by the time we do see them they have the idea thoroughly fixed in their minds that they have got a bad heart. They cannot work because of the pain in the chest and they have been told they are invalids, and unless they are handled properly they will continue to be invalids. Not so long ago I was talking to Dr. Turnbull about this and he said that in nine cases out of ten they have not got heart trouble. Now and again it might be the heart but usually it is a muscle; but by the time the man has had that pain and the opinion of the doctor for nine months he gets what we call a condition of the reflex and he says "I cannot walk more than one hundred yards because I get a pain." I have seen dozens of those cases. Most of them are back at work but the longer they have the idea in their minds that they have got a heart the longer it takes to get them back to work. Hysteria is a most interesting subject. The following case will show you just how the thing develops. Some time ago a girl of fifteen or sixteen years of age had a pimply face and the girls at school used to laugh and say "Oh, look at her pimply face," and so on. She said to her father, "Look, Dad, can I leave school?" He said, "No, of course you cannot; keep on." What happened? She lost her voice and her voice did not return until she had got too old to go to school. Then she started to learn

hairdressing, and going down the stairs she slipped and tried to save herself by grabbing the banisters and thus wrenched her shoulder. She saw a doctor and he said, "Oh, yes, of course, too bad, you have ruptured your nerve centre"; so immediately she got paralysis of one arm, and then to make it really good measure she got paralysis of the other arm; and then, to do the thing properly, she got paralysis of both legs, and after she had had this for about eighteen months they thought they might do something about it. After treatment she got better in about a fortnight. The same thing is happening in these workers' compensation cases the whole time, and as I said early in the piece, we, as medical men, are largely responsible. Some years ago a man got an injury in the back. He was taken to the Royal Melbourne Hospital and X-rayed and was told he had a compressed fracture of the first lumbar vertebrae, and he was given the appropriate prognosis. He was told that he would not be able to work for two or three years. At the end of eighteen months he was going around walking very gingerly with a very stiff back; another X-ray was taken and it was found that he did not have a compression fracture at all and he was shown that. What happened? In about a month or so he was back at work; but eighteen months of that man's life had been lost through a thoroughly bad diagnostic effort.

Now we get to an important point and we as medical men have got to realize that you can make one bad mistake, and that is to give a bad prognosis when it should not be given. After having practised for a good many years I would rather miss a serious disease than diagnose one when it is not there. I have been through the mill a bit myself. I know how a pain or an ache day after day can niggle at you and eventually beat you, until somebody in whom you trust says, "Well, after all, it is only a name and there is nothing to it," and it is amusing the way that pain ceases to be a pain. It disappears, and the man who, you might say, is on the bread line and absolutely dependent on his own effort and who cannot see, say, a week or a fortnight in front, gets an injury to his hand that he depends on and some doctor says, "Bad—well, James, of course your tendons are cut and your nerves have gone and you will not be able to work again for about six or twelve months." How is that man going to feel? We see it time after time and we will continue to see it until the medical man realizes—and I do not like to say this—

"How beautiful upon the mountains are the feet of him who bringeth good tidings."

As a matter of fact that should be written over the door of every medical school in the world.

### *Discussion*

MR. P. D. PHILLIPS: Dr. McMeekin has raised a number of most difficult points from the point of view of legal practitioners in the compensation jurisdiction. He began by what seemed to me to be a very wise remark that it is easier to treat a man who has not a disease than to treat a man who has one. There is the problem that faces the lawyer or counsel to find out the law and to ascertain the true legal conclusions, but it is not so easy to persuade the judge. The problem is somewhat similar to the ascertainment of a disease and as a matter of strict analysis the treatment of the patient is a matter of human management and is not a matter of logic or precision. I make that remark because more and more is the task of handling this branch of the law being made infinitely more difficult to all concerned by a mistaken modification of the process of science and logic by an attempt at what is unrelieved sympathy and, indeed sentimentality; and, in just the kind of subject matters with which Dr. McMeekin has been dealing, I feel that we are beginning a period of unprecise and sentimental reasoning which will not protect the insurance company which bears the cost or the workmen who have the claims.

These problems of functional disorders or problems of concealed physiological causation—I mean by that an internal series of physiological facts and factors which no doctor can explain except in terms of the symptoms and feelings, the subjective evidence of the patient himself—present, of course, infinite difficulties from the point of view of the lawyer trying to find out the facts and the tribunal trying to determine them. But we are, I think, turning round now to a period of extraordinary sentimentality in a sphere where what we ought to be doing is increasing the rigours of scientific proof. I do not mean by that that I think it would be an advantage to deny claims for workers' compensation or to reduce the sphere of compensation. Of course, if it is designed to increase the sphere of compensations the thing to do is to modify the Statute to include cases which are not now included, and when that is done the insurance companies to base their risk and fix their premiums

accordingly, and the cost of maintaining the workers in industry will be distributed amongst the costs of industry in strict accordance with the nature of the cases. But it is not done. Particularly in the present field of functional disorders we are rapidly leaving behind the processes of scientific proof under the mistaken idea that it is humanitarian or progressive or liberal or in accordance with the spirit of the times; instead of which it is merely attacking what could be a scientific and harmonious body of law and making nonsense of it. Those are rather extreme terms and I know it would be impudent to proceed directly to the examples of judicial process in those regards after using terms as offensive as those, and I would therefore waste time if I do more than draw your attention to them; but a very good example of the kind of problem which is presented by these functional disorders is the latest decision of the High Court of Australia. It was a case in which a man died of coronary thrombosis and in the course of submitting a claim for worker's compensation by his widow before the police magistrate in Adelaide a good deal of evidence was called, including that of Professor Cleland, on the question of whether some method could be presented of the cause of coronary thrombosis and death, and there was a good deal of conflict of opinion as to whether there could have been thrombosis according to them. After listening to a body of expert opinion the innocent police magistrate, mistaking the fact that he was engaged on scientific principles, considered that the onus of proof had not been discharged and dismissed the claim. The Full Court of the Supreme Court of South Australia had no such opinion. Faced with the very considerable conflict of scientific evidence as to the nature of coronary thrombosis, they decided to rely on their unaided intelligence and without any hesitation rejected all the evidence on both sides, contenting themselves with the remark that they knew and had known for a long time that coronary thrombosis was caused by accident; and the end of it was that it was repeated in the High Court with emphasis by a majority decision without referring to the evidence of Professor Cleland and the others, and they said there were after all certain matters of common sense upon which scientific evidence was very nearly an embarrassment, and they upheld the decision of the Full Court of South Australia and left the unfortunate police magistrate with his plea of scientific process out in the cold.

To balance that true story you may think I am making a caricature of the case by quoting the classical instance of the learned justices who were invited to decide a case regarding a claim by a tradesman to recover a debt which had been incurred by a married woman and as to which her husband was being sued, and the question was how far a wife could pledge her husband's credit. The learned justices refused to listen to the leading authorities of the House of Lords on the ground that they were married men and knew all about these things themselves. In due course the Chief Justice of Victoria restored the authority of the House of Lords and reminded the justices that whilst not as learned as the House of Lords they must remember that the learned members of the House of Lords were just as much married as they themselves. That is a satisfactory way of deciding problems of that kind, but the habit of deciding that they are just as much learned as a professor of physiology and just as competent to decide questions of medical causation leads to my mind to peculiar results. We are undermining the rational part of the law by sentimentalizing our process of proof and this idea that common sense can take the place of accurate evidence is just sentimentality. There are other instances.

Firstly, I have not any doubt that anybody who practises in that jurisdiction knows of cases where the only cures for a man's ill is the termination of his compensation. When I began this work I found an attitude of severity and suspicion and a readiness to detect flaws which amazed me, which I could not understand and which I thought must be due to the individual persons with whom I was dealing; but I am satisfied, after having had a great deal of experience in workers' compensation litigation, that it is not peculiar to any particular individuals at all, but it is due to the fact that the very system of compensation begets an attitude towards claims which ordinary men would never think of applying to their ordinary civil claims in other courts, and a profound suspicion that many of the claims are just the subjective infirmities which Dr. McMeekin has been talking about, and in many cases the only real way to cure a man is to terminate his compensation, and when he is faced with the necessity of having to earn a living he immediately commences to adjust himself. It may seem a harsh doctrine and lacking in humanity, but in the long run, from the point of view of the welfare of the community and the man himself, it may be a highly salutary rule. In particular, of course, it presents

very practical and difficult problems as to whether it may not be advisable to eliminate periodical payments and substitute compensation in a lump sum; that is to say, he has got all he can get, he can see how much it is and he decides to do something about it, and you send him out to repair the subjective elements of disability; and that problem of substituting the lump sum for periodical payments I am sure does have very real curative effects upon these functional disorders.

The other matter I would like to say a few words about is the question of these heart cases. There has come about a change in the law which is little less than revolutionary, in regard to heart cases. It was possible to get some logic into the heart claims, claims for compensation arising out of particular deaths by heart failure, if you could distinguish the case of the suggested cardiac injury from the case of the accumulation of cardiac weaknesses ultimately resulting in death. The second cases do not seem to many lawyers to be merely a combination of disease and not an occurrence of an accident, and I suppose many of you have been cross-examined in these heart cases along the lines of being asked if it ever affected this man and his heart by performing the work day after day anything more than just making him a little weaker and a little weaker and a little weaker by putting additional strain on the heart muscles until ultimately his heart became too weak to carry on, and did not he really die of an accumulation of a series of weaknesses; and in many cases that is so. Then it was not a death contributed to by accident. But there were rare cases in which it was possible to say that the actual occurrence was due to a definite hysterical notion on a spectacular occasion. That distinction was a rational and logical one and it was borne out for ten or fifteen years and was watered down to a logical sequence that injury and accident did lead as requiring some particular mode and some spectacular incident—and when I say spectacular I mean capable of particular ascertainment; but recently the House of Lords in England, and I have no doubt the same thing would happen in this country, have abolished this distinction between the incident and the accident on the one hand and the slow accumulation of disease on the other, in two ways: they say about the heart, if you can point to a physiological change at the moment before death, that is death by accident even though it is an accumulation of a long series of additional pressure and constant wearing out. So that that kind of dis-

inction seems to have gone, and injury by accident has become less clear and less logical. The other thing is that the House of Lords seems to have got the idea that a disease is injury by accident. A man who is working continuously reaches the day when his knee, for instance, gives out, and he is injured by accident although the doctor insists that it is the accumulation of effort day after day that has caused it. I fancy the present House of Lords would say he ought to be compensated because it is an injury by accident. I mention these matters because they do illustrate that there is a process of sentimentalizing what is the real method of ascertaining what is true and if this can be compensated for it is a matter of law; but at present we are in the process of disregarding logical distinctions and in the same way the process of sentimentalizing the compensation law reacts to the credit of those people who are suffering from functional disorders by a more rigorous attempt to find out what is really the cause and to apply the law with a little more precision to those situations. None of those suggests that it is to the advantage of the community to limit the merits on which you pay. It would be a much better method to establish a system of health insurance and employment insurance and concentrate all cases of injury and sickness compensation to people below a certain level of income. At the present moment the scientific sentimentality, the unprecise revolutionary process, is going on, but it will really neither achieve the social purpose it is aimed at or improve the law which will render it uncertain and unsatisfactory as well as costly; and the cases which Dr. McMeekin has brought out show very sharply how that process is working out. It is mistaken humanitarianism and mistaken liberalism which blurs and blunts the sharp instrument of precision to the disadvantage of the whole community.