SCIENCE AND JUDICIAL PROCEEDINGS

BY THE HON. OWEN DIXON, a Justice of the High Court of Australia

A MEETING of the Medico-Legal Society was held at the Medical Society Hall on September 30, 1933.

The President, Mr. Wilbur Ham, K.C., occupied the chair, and Mr. Justice Dixon addressed the members upon the subject of "Science and Judicial Proceedings."

MR. JUSTICE DIXON said: The lawyer who engages in any discussion of his trade, feels that he is commonly expected to justify the ways of law to man. No doubt this lay expectation, which no wise lawyer attempts to fulfil, is often founded on some misunderstanding of the ways of law, and often, also, on a limited knowledge of the ways of man. As the ways of man are the prime concern of the law, the effect it produces upon them should be the chief study of the would-be reformer. Probably it is because they have been compelled to consider more than most people the complexity of human affairs and the infinite resources of man in his dealings with his fellows, that lawyers are seldom ardent law reformers. It may be said alike of lawyers in reference to the state of the law, and of medical men in reference to the state of medical practice, that they could improve it, if they had the mind. The mind is always the difficulty. But a further difficulty confronts those who imagine that their intellectual powers have proved equal to the formulation of basal legal reforms of enduring benefit to mankind. That difficulty is the sovereign legislature. On the one hand, reflect that the substantive law is, and must be, a reasoned body of principle, flexible in application, and capable of governing every contingency of human affairs. On the other hand, consider the methods of a modern representative legislature and its preoccupations. If you do so, you will, I think, turn from their contemplation with a feeling that lawyers may be forgiven if they regard themselves as absolved from any attempt at a scientific or philosophical reconstruction of the legal

system. But it falls to their lot to take part in putting the existing law into actual operation. None of them, whatever be his duties, undertakes any task the execution of which is not governed by, or at least directly conditioned by, the imperative requirements of the law. The degree to which the actions of those engaged in the work of the law are dictated by its rules is seldom understood, although it is an obvious consideration. Judges are almost completely deprived of free will. It is true that there is reserved to them the right to go wrong. But it is their duty to exercise it as little as possible.

In his chambers, counsel is bound to conform meticulously to the exact rules of law, for fear that he should fail the clients who wish to walk round, but not through, the legal obstructions which militate against success in modern business.

In court, the limits within which counsel may move are no less precise. But anxiety that he should not transgress them often appears to lie with the judge, rather than with him. Advocacy at its best confines itself to the issue which the law prescribes, and does not disregard procedural restrictions; because, before a competent tribunal, its effectiveness is thus weakened; and good advocacy avoids the error of underrating any tribunal, however high. But such considerations cannot restrain those who seek only the verdicts of juries that care for none of these things. Indeed, such advocates sometimes secure a large measure of judicial tolerance by preserving a virgin innocence of all rules of law, which makes expostulation futile. For the most part, counsel are concerned with the investigation and consideration of transactions which are closed. But solicitors are happily called upon to play a considerable part in the more constructive work of guiding and directing the course of transactions as they take place. Yet the shape and form in which they carry them out depend upon the inflexible requirements of the law, and not upon their own free choice.

Now, in dealing with the conduct of judicial proceedings,

the existence and rigidity of these restrictions is a fundamental consideration. It is a consideration which while it may not always justify, will explain, the course which is pursued in court. The objects of this Society, although wisely indefinite, appear to include the better understanding of the usefulness which the professions have, or may have, to one another. In the administration of justice, medical knowledge, in common with other scientific knowledge, is sought from those who can furnish it, as indispensable to the ascertainment of legal rights. The reason why this is so, and the difficulties which attend the use of such knowledge cannot be understood and appreciated unless the conditions are known in which the function of the judge is performed, the art of the advocate is exercised, and the investigations of the solicitor are pursued. Now, that which determines the character and scope of every judicial enquiry is the criterion laid down by the law as the measure of the rights of the parties. I venture to think that, in most discussions of the merits or demerits of our legal sysem, this cardinal fact is overlooked. The structure, composition and procedure of the courts are examined as if the complexity, length and cost of litigation depend upon these matters. Much more, it depends upon the nature of the questions which the courts are called upon to investigate, and answer. These questions depend upon the legal standards governing the existence of the rights which are asserted in the litigation.

The most important, intricate and interesting part of the law governing this, our capitalistic society, is the law of property. It governs the acquisition and disposition, whether by transfer or devolution, of beneficial interests in property, real or personal, and, subject to the operations of statesmanship and political economy, it attempts to give security to ownership. But its doctrines provide standards of proprietary right, which arise from conceptions of *meum* and *tuum*, perhaps obsolescent, and call for no contributions from science. If this is put on one side, it will be found for the most part that the daily relations of man and man

are governed by the common law, tempered but slightly with equity, and disfigured but little by statute. The preoccupation of the legislature has long been with industrial matters and with fiscal exploitation; consequently, it remains true that statute law has not much to do with the ordinary rights and duties between man and man.

The common law is a developed system of doctrine which we have received from our ancestors. It cannot be altered consciously by any agency but the legislature; but from Norman times it has undergone a continuous growth and expansion accomplished by continual deduction and induction. By deduction, a new application is given to an existing principle; many single instances having been thus produced, in course of time a new or developed principle is discerned in them and expounded. By this process of imperfect induction, the secondary principle is established as part of the doctrine of the common law, and plays its part in turn in the production of still more doctrine. The process is so gradual that, although the literature of our law is very old and very full, the exact steps are never easy to trace.

In the early stages of its development, the law, in considering the liability of one man to another, took little account of any question of moral fault. It was concerned in the main with external events or facts. A's cattle escape and eat B's hay. Let A pay. One did not stop to enquire whether A securely fenced his land: whether X maliciously opened a gate.

A borrows B's horse, and fails to return it. Let A pay. No one enquired whether it died or was stolen without A's fault.

A fire on A's land escapes to B's land and burns his corn. Let A pay, whether A lit the fire or not, or however the fire arose or escaped.

But, as society progressed and moral sentiment prevailed over men's minds, these simple conceptions were met by a desire to make fault, culpability, responsible agency, the ground of liability. Now, these notions involve

causation. The inevitable result of the introduction of cause as an element of liability was that, as the law developed, causality became the dominating feature of the standards of liability. Lawyers knew, and as a rule still know, but little of the philosophical and logical analysis of the conception of cause. But that has not deterred the courts of law from devising a formidable, if logically indefensible, system of causation of their own. Fortunately, it is unnecessary now to enter upon any discussion of its character. What does call for notice is the extensiveness of the category of liabilities in which causation forms a chief element, in one form or another. Sometimes, the statement of the legal criterion avowedly accepts cause as a ground of liability, sometimes it implies it, and sometimes it disguises it. But, in one way or another, an investigation of cause is made imperative. The general statement of the law of negligence expressly makes damage actionable, if caused by a failure to exercise reasonable care to avoid harm to others. The field which this general rule covers is enormous.

In the simpler conditions of social life prevailing when causation grew into importance as a standard of legal right, perhaps the difficulties of answering the question it propounds were not great. Before the mechanical and scientific age, the sources of enquiry were either relatively simple, or else entirely outside human knowledge. But science, particularly physical science, has completely changed the practical application of the legal tests. On the one hand, it has called for their application to all the varieties of human activity to which applied science has given rise. On the other hand, it has made available an immense stock of knowledge for the solution of the very problems which arise from this application of the standards of the law. Upon the diffculties which arise from the mere complexity and variety of the subjects of judicial investigation, it is needless to enlarge. They are sufficiently obvious. But my immediate concern is to speak of the embarrassment caused by the wealth of knowledge which science has

put at the disposal of those able to use it. Questions of fact, raised by the standards of legal liability, which formerly might have appeared simple, are now shown to contain ingredients calling for close and complicated examination. Where the rough and ready answers of the practical man might have once sufficed, an exact and reasoned solution is now called for. By way of illustration, I shall take three examples, and, for safety, I shall select instances which are not concerned with medical science.

First Example. One may suppose that formerly the question whether injury was occasioned by the emission of unnecessary and excessive smoke from a neighbouring chimney would be determined by a simple application of the *post hoc, propter hoc* method of reasoning. But the law reports show that now, upon such an issue, an unscientific tribunal may be encumbered with the assistance of science in reference to: (a) the sulphur content of the coal burnt; (b) the sulphur dioxide contained in the smoke; (c) the diffusion of this gas in the atmosphere under varying conditions of humidity and temperature, and the prevailing wind and its velocity; (d) the solubility of the sulphur compounds in rain, and, in the case of sulphur dioxide, the formation of sulphurous and sulphuric acid; (e) the acid reaction of blades of grass tested for acidity; (f) the removal of lime and other bases from the soil.

Second Example. In 1916, a claim to a peerage was put forward and was supported by the production of documents said to date from 1719 and 1772. Apparently, it was suspected that the aspiring peer believed that the pen was mightier than the sword, for the documents were attacked as forgeries. This attack was supported by evidence: (a) that, upon a microscopic examination of the paper, wood cells could be identified, whereas, at the date in question, paper was made of linen and cotton fibres; (b) that a chemical analysis of particles of red ink disclosed compounds of aniline dye; (c) that under the microscope, the marks of a divided steel pen were visible. Obviously

the weight of this evidence could be justly estimated only by a tribunal which understood the characteristic structure of wood cells, the methods of chemical analysis in identifying aniline dyes, and the microscopic appearance presented by writing done with a steel pen. Probably, in a less-informed age, the issue would have been quickly decided on the court's unaided opinion of the honesty or dishonesty of the man.

Third Example. A cast-iron water-pipe of large bore bursts in a city street, where it has rested for a quarter of a century. The liability of the Water Authority for the resulting damage to some extent depends upon the cause. But three causes are suggested: (a) That the pipe had always been weak because the metal had cooled before it was poured; (b) that the soil contained chemical constituents which affected the metal; and (c) electrolysis. To exclude these causes satisfactorily, three special branches of knowledge must be invoked.

I have two objects in laying before you these examples. In the first place, while none of the scientific knowledge is recondite, it is various, and, to assess justly its probative force, or appreciate its significance in relation to the thing to be established, some general scientific equipment is plainly necessary. In the second place, in each case, the need for it is created by the existence of a legal standard of right or liability based upon a moral notion, but, nevertheless, a standard open to question. It may well be thought that, whatever the nature of the injury, the emission of any considerable body of smoke should be restrained: that, whatever the cause of the outburst of water, the Water Authority should pay for the damage, and that the revival of a peerage which lapsed at the end of the eighteenth century was an unnecessary concession to the heredity principle, even in a democracy.

In other words, I think the examples provide illustrations of the cardinal mistake of the law in selecting upon supposed principles of justice uncertain criteria of liability, and thus raising issues the truth of which can be ascer-

tained only at too great an expenditure of time, labour and money, and they also raise clearly the consequential difficulty that a tribunal possessing no particular acquaintance with such matters is bound to form a judgment upon a composite issue which includes questions relating to a special branch of knowledge.

That tribunal may be a judge or it may be a jury. In New South Wales, almost every common law action is tried with a jury. In South Australia, no civil proceeding is tried with a jury, unless it appears that, upon the trial, a question will arise whether a party has been guilty of an indictable crime. In Victoria, either party may require a common law action to be tried with a jury, but, unless one of them does so, it is heard by a judge alone. The remarkable difference in the law of South Australia and that of New South Wales corresponds with a real difference of professional opinion in the respective States. In New South Wales, there exists a very general belief in the suitability of the jury as a civil tribunal. In Victoria, it is unusual for either party to seek a jury in a case involving a serious dispute on any complicated question. In all States, indictable offences are tried before a jury, usually a common jury. When a judge is confronted with some question which depends upon a scientific enquiry, however ill equipped he may be for the task, he is expected to acquire from the evidence of experts a sufficient knowledge of the subject to enable him to appreciate and even form a critical judgment upon the scientific facts, inferences and deductions which contribute to a correct solution of the question. No one expects a jury to do this. It is probably true that in mechanical matters, if no mathematical or other abstract reasoning is invoked, juries are as likely to understand them as judges. But, for the most part, it is useless to expect a jury to form any reasoned judgment on scientific or technical questions.

Now, the object of the parties is always victory, not abstract truth. They will rely upon the considerations and arguments which will actually affect the result, and accord-

ingly, the course they take in the conduct of a case is inevitably determined by their estimate of what will, in fact, influence the tribunal, whether judge or jury, before whom their litigation is tried.

Rules of evidence and of procedure exist for the purpose of excluding considerations and arguments which can have no rational bearing, or which substitute prejudice for reason. In jury trials, it is the duty of the judge and of courts of appeal to enforce these rules, and to attempt to confine the jury to matters which ought to influence a rational mind addressing itself to the true problem. A witness deposing gravely to matters of science who fails to grasp what actuates the persons who deal with him and his evidence is prone to form a low estimate of the intelligence and equipment of counsel. Often he is right. More often, his judgment of counsel is nothing but the counterpart of their judgment of the tribunal of fact. Their cross-examination of him, and their observations upon his theories, his experiments, and his exposition of what are to him, perhaps, indisputable commonplaces, are determined simply by their opinion of what, among the contentions and lines of examination and cross-examination which are permitted to them, are those most likely to appeal to the men who are entrusted with the function of determining the case.

Doubtless, in a trial before a judge, without a jury, the conditions are less unfavourable to the discussion and solution of questions involving matters of science according to processes of reasoning which an exponent of science would not disdain. But it must not be forgotten that the level upon which any such investigation is conducted cannot but be affected by the individual characteristics of the mind directing it, whose judgment is to be formed. Moreover, the infirmities of each judicial mind are fully understood at the bar, which finds a source of innocent pleasure, if not pride, in their exploitation. The fall, before which such a pride goeth, takes place on appeal. The court of appeal is, however, at times an unseen presence, which accounts

for some of the phenomena of a trial, even before a judge alone. Further, the rules of evidence are no less binding than in a jury trial. These rules are not held in such esteem as formerly. Perhaps they are not so well understood, or so efficiently applied. But they do not, I think, operate disadvantageously when scientific, or other expert evidence is given. The first restriction they impose is to confine the testimony to what is material to the question which the law propounds for solution. This seems merely common sense. But in every controversy there appears to be a fatal tendency to shift and extend the battle ground; and I have not noticed that learned or scientific disputations are remarkable for steady adherence to the point at issue.

The second material restriction the rules of evidence impose, is to exclude any but first-hand evidence when actual ocurrences or observable facts are to be proved. This means, in its application to medical cases, that the symptoms, history and treatment of the patient must be proved by those who have personal knowledge of them.

The third restriction allows no one, except those specially qualified for the purpose, to give evidence of scientific or technical facts or theories. The difficulty of this rule lies in its application. The courts often feel unable to deny to a legally qualified medical practitioner the capacity to speak for all sorts of questions clearly requiring the knowledge of a specialist, which his colleagues would unhesitatingly say he did not possess. Sometimes in Australia cases are tried at places where true expert knowledge is not readily available. Indeed, even at the capital of the Commonwealth, courts have experienced this difficulty. But they have not forgotten that among the blind, the one-eyed are kings.

The last restriction which I need mention is that which allows no inference or opinion to be stated by a witness, unless he be qualified in some special branch of knowledge, and confines him to inferences and opinions which depend upon that knowledge.

From these rules, the true functions of a scientific or medical witness may be deduced. They are, I think, three

in number. First, to supply the Court with the abstract or general knowledge which is necessary to enable it to understand and use the considerations which should determine its opinion upon the scientific or medical matters involved in the issue before it. Second, to describe the material facts of medical or scientific significance, which the witness has observed himself.

Third, to give his own inferences and opinions and the grounds upon which they proceed.

The ease or difficulty which attends the performance of these tasks will, of course, vary greatly with the nature of the thing to be explained. But perhaps two observations may be usefully made. The first is that it is not when medical or scientific conceptions are intricate, but when they are vague, that the process is troublesome. It is, perhaps, for this reason that scorn of the law is more widespread among psychiatrists than anatomists.

The second observation is, that courts cannot be expected to act upon opinions the basis of which is unexplained. However valuable intuitive judgment founded upon experience may be in diagnosis and treatment, it requires the justification of reasoned explanation when its conclusions are controverted. Reasoned explanation requires care and forethought—qualities the presence of which is not always transparently visible in expert evidence. A relaxation of the rules of evidence sometimes take place because neither of the parties wishes to insist upon them. Usually, it works to no one's advantage, not even to that of the witness. This is particularly noticeable in cases where the testamentary capacity of a deceased person is in issue. Alienists, who never saw the testator, who can depose to no facts or symptoms which are within their own knowledge, are permitted to peruse a mass of contradictory evidence relating to the testator's conduct, and to state their conclusions from it. There is, perhaps, no class of case in which the need is greater of general or abstract explanations, e.g., explanations of the effect produced by pathological conditions upon mental processes and states, of the course which

particular disorders may be expected to take, of the possibility and cause of great and rapid fluctuation in physical and intellectual power, and so on. But the only result of the course I have described is to deprive the court of any full and coherent statement of the scientific information which may be obtainable, and to involve the witness in an entirely unscientific argument with the cross-examining counsel, as to the effect of the evidence, and as to the irrationality of conduct which, perhaps, never took place.

I have not found the rules of evidence any impediment to the elucidation of technical matters, except in one respect. That is in the use of text-books. These cannot be resorted to unless in some way the parties themselves treat them as available, or unless passages in them are accepted as accurate by a witness in cross-examination.

I have now dealt with some of the chief considerations which affect the use of science in the course of judicial proceedings; what may be described as the conditions determining why, to what extent and in what manner scientific knowledge is used in the administration of justice. I desire now to offer some observations upon the desirability of changes or reforms in procedures or otherwise.

(1) To many the use of scientific assessors seems an attractive proposal. I think there are many objections to it. In almost every case in which scientific evidence is given, it is directed to part only of the complete question to be decided. The greatest part of the medical testimony called in the courts at present, relates to the issue of damages in actions for personal injuries. Those damages are assessed upon a consideration of actual loss of earnings, expenditure, future diminution of income, past and future pain and suffering, and discomfort and the like. The disputed medical facts often occupy a place of but minor importance, even upon the issue of damages and this is a subsidiary issue in the whole case. Often, scientific evidence is used in support of some contention of fact the main proof of which lies in other evidence, and the whole must be considered together.

The range of scientific subjects which come before courts is very extensive, and any comprehensive scheme for the use of assessors would require the approval and enrolment of a very great number of persons from various departments of knowledge. If the assessors are to be relied upon in substitution for the scientific witnesses, the parties to the litigation are deprived of an opportunity of putting adequately before the judge, who must in the end decide the case, their rival views of the scientific material upon which he relies, and of understanding on what basis his conclusion is reached. If they merely advise, and are additions to the evidence of experts, their utility is doubtful. No doubt, they would not be infected with the partisanship to which even the most scientific witnesses appear to be liable. But, after all, the courts are, for the most part, dealing with questions fairly open to dispute and difference of opinion; arguments and views upon such matters, if they proceed from an honest mind, deserve consideration, although they are inspired by a desire to persuade rather than to instruct. Where knowledge and honesty exist in a witness, courts are not likely to be greatly misled by him.

A further objection to assessors arises from our system of courts of appeal. Are the same assessors to sit upon the hearing of appeals as advised the primary judge? In Admiralty cases in England, two brethren of Trinity House not uncommonly sit as assessors. In the Court of Appeal other assessors sit, and, if an appeal is taken to the House of Lords from the Court of Appeal, two further assessors are summoned. Cynics of the Admiralty jurisdiction say that the Judge of the Admiralty Division usually considers that he is such a master of maritime knowledge that he consults the assessors merely for the purpose of ascertaining whether they agree with him, or, on the contrary, fall below his own standard of skill; that in the Court of Appeal, the assessors are often concerned to expose the marine errors and misconceptions of the learned primary Judge who conceived himself to be so well informed and experienced; but that in the House of Lords, the assessors,

impressed with the splendour of the tribunal they attend, seem more anxious to convince it of their own superiority to their colleagues who misled the Court of Appeal.

(2) A proposal sometimes made, and, in one instance, adopted, is that, in medical matters, special tribunals should be established which, according to some appropriate procedure of a more or less judicial character, should finally decide such questions of a medical nature as arise in the course of judicial proceedings.

A serious difficulty is to isolate and define the issues to be submitted to such a tribunal. When they are subsidiary questions, the answers to which will merely contribute to the solution of another question, the just application or true bearing and significance of the decision of the medical board will often be missed, and false conclusions drawn. Take such questions as the manner in or weapon by which a wound was inflicted; whether death should be ascribed to a specified cause; the date at which incapacity for work first arose; whether a particular pathological condition should, in given circumstances, be considered injury by accident, and, if so, whether it arose out of some employment; and whether, upon a certain occasion, a testator whose powers were progressively waning retained enough mental strength to make a will, and, if so, to what extent he was susceptible to influence. Whether, in an ideal world, such questions should, or should not, be submitted exclusively for medical decision, it is clear that they ought not to be divided into components, so that some components may be decided by one tribunal, and the rest by another. It is also clear that where, as in each of these cases, the ultimate conclusion will depend to a considerable extent upon facts to be ascertained from lay witnesses, that decision must, under existing conditions, be allowed to remain with the public tribunals of which our judicial system consists.

The case in which the plan has been adopted of remitting a medical question for the conclusive determination of medical men is under the Workmen's Compensation Acts, which confide to a medical referee the decision of the

existence of industrial disease, and the date of disablement thereby, and authorize, in the case of injury by accident, submission to a medical referee of the question of the condition of the workman and his fitness for employment, and to what extent his incapacity is due to the accident. How far this has proved satisfactory, I am not in a position to say. But one difficulty has arisen of the character I have described. When the medical referee is confined to deciding the "condition" of the worker, and it is for a legal tribunal to decide the question whether he has followed an employment to which that condition should be attributed, the demarcation of the functions of the tribunals has been found by no means easy.

A Medical Board certified to the New South Wales Compensation Commission that the condition of the workman was one of degenerative disease arising from lead poisoning. But the Commission insisted that it was for it, and not for the Medical Board, to say whether lead poisoning occurred; that the "condition" was for the Medical Board, but the cause of that "condition" was not. The High Court overruled the Commission. Rich, J., said: "The object of the section was to leave the condition or bodily state, physically and pathologically, of the worker to a medical authority, and to withdraw it from the lay tribunal. 'Condition' is a wide word, but it is pointed rather at an existing state of affairs than at prior events by which it was caused. At the same time, in considering the nature and character of diseases, the distinction between cause and effect, as in other departments of life, is often unreal, and cannot be strictly maintained. In the case of a broken skull, there is no difficulty in distinguishing between the blow and the injury, but it would be impossible to predicate of a man that he was suffering from alcoholic poisoning, and yet leave undecided the question whether he had imbibed alcohol. The question whether the finding of lead poisoning goes to the condition of a man is largely one of fact. When lead poisoning causes or contributes to such a state as that in which the worker was objectively found, is his diseased

condition, when regarded from the point of view of his present and future capacity, which involves prognosis and remedy, the same as, or different from, that of a person presenting like objective symptoms arising from other causes? My perusal of the evidence leads me to give a negative answer to the question. Consequently, the worker's condition includes 'lead poisoning,' and the Commission was not at liberty to find that his incapacity arose, or might have arisen from other causes."*

I think, in a small way this case well illustrates the dangers and embarrassments which attend any distribution of authority to decide separate questions on which a single result depends.

(3) The courts possess at present a power to refer any question arising in any civil cause, or matter for enquiry or report to any special referee. The report may be adopted wholly or partially by the court. It possesses another power, viz., when a cause or matter requires a scientific investigation which cannot be conveniently made before a jury or by the ordinary officers of the court, to send the whole case or any particular question for decision by a special referee. These powers are not often invoked, but, in my opinion, a free use of the first of them, and a more frequent exercise of the second, would be of much advantage. The manner in which referees would frame their reports is of much importance. The purpose of the report is to inform a lay tribunal, and to inform it of what it ought to know in order that it should give just effect to technical conclusions or considerations. It is evident that such reports must be clear and complete, and framed so as to meet in advance the difficulties which minds possessing little or no special knowledge are likely to raise.

Most questions of improving our institutions or methods are found, in the end, to depend upon the skill, competence, and personal qualities of the persons in whom the proposal would repose the duty of performing the work involved. But I think that, if medical referees became practised in

*_Smith_ v. _Mann_, 1932, 47 Commonwealth L.R. 427, at p. 440.

framing reports, and the legal profession grew accustomed to sending questions of medical knowledge to them in advance of a trial, the system might be found to possess many advantages over that of frequent recourse to oral testimony.

I began by saying that, in law reform, lawyers are not conspicuous for their ardour. I confess that I am always more alive to the defects of our existing system and methods than confident of the success of the alternatives which suggest themselves.

The relation of science and judicial proceedings is only a particular instance, although an extreme one, of the relation of all facts to the ascertainment of rights. Rights must depend upon facts, and facts are extremely difficult things. To obtain a complete and accurate understanding of the facts and considerations and calculations which, under the enactment of a provident legislature, governed the extent of liability to War-time Profits Tax, was, in the case of any large undertaking, probably more difficult than any task which science has imposed on the administration of justice.

There is no escape from the general necessity of investigating difficult and complicated sets of facts, and these can never be separated from considerations involving any special branch of knowledge which may affect them. No one who has an intimate knowledge of any ordered set of facts or ideas is ever satisfied with the attempt of another mind to acquire and use any part of the same knowledge. But it is the regular function of the courts to make these attempts, and, after all, there is not much reason for distinguishing medical science from other kinds of special knowledge which are exposed to the mischief of judicial and forensic misuse. Not much serious mischief will arise if judges and counsel are fitted for the work they do. The real service those whose pursuits are scientific can perform for the administration of justice is to lend what aid they can to the lawyers in the not altogether easy task of sustaining, if not raising, the standard of bar and bench,

whether in respect of capacity, knowledge, learning, intellectual equipment, or the other qualities upon which the proper performance of their respective functions depends.

DISCUSSION

Dr. S. V. Sewell said that, after the delightful and very clear exposition that Mr. Justice Dixon had given, there was comparatively little to say. But there were certain points which he would like to raise in connection with the address. The difficulty, so far as the medical profession, and perhaps those engaged in the other sciences, was concerned was, perhaps, that the law has been evolved at a time when the knowledge of the science of medicine was extremely limited. Any man of average intelligence was almost at an advantage over the so-called expert, because at least he was free from prejudice, and was not obsessed with mystery and the certainty of a lack of knowledge. Realization of a lack of knowledge particularly applies to the man practising at medicine. Reading of the condition of medicine 150 or even 100 years ago made one realize what difficulties confronted the man who had to determine the right or wrong procedures to be followed in sickness. Charles II suffered with an embolism or uræmic attack. Placed in the hands of about fifteen medical practitioners, he was first bled to the extent of a pint from his right arm. Next, his shoulder was cut, and the incised area cupped to suck out additional blood. After this, the onslaught of drugging began. Calomel by the drachm was administered, followed by a powerful emetic (calomel was now given in half-grain doses). Enemas and emetics were then continued, and, having failed, the druggists again returned to the attack with a number of unctions and powders. But, on the fifth day, the King died, in spite of the attentions of his medical advisers. That position with regard to medicine, it was no exaggeration to say, gave rise to homœopathy, and especially to the homœopathic dictum "the smaller the dose, the greater the effect." Obviously, the reason was that with small doses, the patient did not die. Therefore, it was held that they were cured by small doses. That was the line of reasoning at the time. To deduce the effect of an applied remedy when observation could not be controlled experimentally was a very difficult problem. The position, fortunately, was somewhat different in the realm of surgery and medicine to-day, although, it must be admitted that mystery and demoniac influences had been removed from

that realm of medicine dealing with mental diseases only a short time ago, and even now knowledge of mental disorders and their causes is vague and incomplete. That is the reason there is so much difficulty in dealing with disputed wills. Since exact knowledge is lacking, expert opinion will often differ. Some day, there may be invented a detector for deciding the truth in disputed wills. If there is, it will be a distinct help to the judiciary. Meanwhile, if medical assessors were appointed as consultants to the Judges, and only to be used at the discretion of the Judge, he thought the cause of justice would be assisted. Little benefit accrued from the present system of securing evidence from expert witnesses. Medical witnesses should only be used at the discretion of the Judge. In the elucidation of certain matters, they could be of definite help. To permit them to act in any judicial capacity would be quite wrong, although there are instances of them so acting, in connection with returned soldiers' appeals.

With the advance of years, physical defects are developing among returned soldiers, and, naturally, these are attributed to war experience. These cases go for assessment to a layman who has the services of a medical adviser. All the facts and papers are examined medically, and pathologically, as no layman alone could without the help of expert opinion examine them, and the result is an estimate more accurate than would be obtained otherwise. It always appeared rather extraordinary to him that, in a case in which the testamentary capacity is the issue, the expert is called upon to give his opinion of the facts deposed by one side, and one side only. Naturally, the expert not infrequently feels that he has been placed in a position in which it is quite impossible for him to give an expert opinion. He feels he is in possession of only part of the facts. Perhaps there is some reason for the existing procedure, but, nevertheless, he could not help feeling that the witness would be in a better position to assist justice if he knew the evidence given for and against, and then gave his opinion on the full facts before him.

Another point was, that often the expert was prevented from giving his opinion by Counsel so couching the question that witness has no opportunity to express his true opinion. During his experience as a witness he had been extraordinarily fortunate, and in very few instances had he not been able to say what he considered ought to be said. Still, he had been obstructed on a few occasions. On these occasions, he was not before the President (Mr. Ham),

whose delightful manner and courtesy, no matter whether he was his witness or the opposing Counsel's, made the proceedings not a worry, but a pleasure.

In conclusion he said that modern medicine, while still an art, had made sufficient scientific progress for him to urge that medical consultants should be appointed to whom Judges could appeal for advice and help in deducing the value of medical evidence. He would also urge that all expert medical evidence should be given at the end of the case and not during the proceedings.

Mr. Arthur Dean said he felt more or less at a loss in having to speak on the legal aspect of the question after it had been so admirably put by Mr. Justice Dixon. All those who heard the lecture must have been impressed with the lucid and logical exposition. On those rare occasions when he and Mr. Justice Dixon spoke in the same chamber, the order of speaking was reversed, he (Mr. Dean) spoke first, and Mr. Justice Dixon followed, and not always to the same effect. He had not intended to add anything to His Honour's very recondite exposition of the relationship between science and the law—he could not—but there were one or two observations regarding the use of expert witnesses in scientific investigations he desired to make.

Firstly, a very high tribute should be paid to the benches for the manner in which they handled such very difficult questions. Of course, Judges had to determine cases not so difficult as His Honour had described. A good deal of the law turned upon the meaning of a word, the grammar of a phrase, the meaning of a technical term, its derivation or history. Correct judgments on these matters are perhaps no less difficult than those scientific questions to which His Honour had very aptly referred. And, in the elucidation of questions of a scientific nature, difficulties arose from the point of view of the advocate, and the point of view of the Judge. The advocate's point of view is generally formed as the result of spending many hours with the expert witness, with the object of not being caught. This expert witness can generally be relied upon to tell how foolish is the other side's expert witness. But the jar is that both expert witnesses claim a like capacity.

Then another difficulty arises—consideration of the personality, character and reputation of the witness in the world of science. The advocate knows that the Judge pays a good deal of attention to character. In a word, what is the ability of the witness to answer questions, to avoid pitfalls, and to impress his personality on the bench. The

advocate, of course, has to know, too, where to get the man possessing the knowledge in the various fields of science. But the man possessing the best knowledge of the science may not be the best witness. Ability to skate on thin ice is an important qualification. The knowledge, too, that a Judge respects a particular witness is not to be overlooked. All these points have a bearing upon determining the real question of which side is right in a scientific enquiry.

Another difficulty which arises is, that the witness has to prepare himself to give good evidence. He does not just go into court and, without preparation, tell what he understands of the matter. He has to read and study, and he does not ordinarily bring into court the text-books upon which he relies for his information. Those are some of the difficulties associated with the present system, and it had always appeared to him that it ought to be possible, in some sort of cases, to make freer use of assessors. That did not mean that in every case experts should be employed, but many questions arose in which scientific questions had to be investigated, and he felt that, if a learned Judge had someone at his elbow to whom he could turn for advice when considering diverse evidence of facts, it would be a great advantage. Particularly would he urge that consideration be given to the suggestion that assessors be more freely used in determining questions requiring scientific investigation. One could not but be impressed with the enormous success of the bench in handling difficult scientific questions. In connection with some of the very abstruse problems that had arisen in connection with radio telepathy and electrical cases, some of the experts who had perused the decisions had admitted to him their profound admiration for the manner in which the scientific facts in the judgment had been stated by the bench. The very practical, clear and precise statement which had resulted from the investigation had astounded them. Lawyers, by their training, were generally able to state the essential facts arising from these investigations more clearly than men of science, and, when Judges had applied themselves to stating them, they had done so with remarkable success.

Mr. Victor Hurley said that he had noticed, at previous meetings of the Medico-Legal Society, a tendency on the part of the medical members to address themselves particularly to the legal aspect of the subject under discussion. He certainly had not the temerity to discuss the very able and learned paper presented by Mr. Justice Dixon from the legal point of view. He proposed taking the much safer

approach, to make a few observations from the medical aspect.

He assumed that the objective aimed at by all in dealing with these cases was that the ends of justice shall be served, and that the procedure to be used in eliciting the evidence of expert witnesses should be such that a correct decision is arrived at. His Honour was, perhaps, rather flattering to medical men when he included them as one with the scientific professions. In many ways, medicine was more of an art than a science. To scientific problems, figures and formulæ may be applied for purposes of demonstration, but to medical problems, experience and observation over a series of years in apparently similar cases was chiefly to be relied upon. Truly scientific problems can generally be determined by first stating the facts as ascertained by accurate methods of observation and then by a process of reasoned analysis of these, the results or effects can be confidently stated. Questions of fact, though sometimes difficult to determine, are usually present in a medical problem, but the conclusions to be drawn from them are very difficult and sometimes contentious. Take for example the question of making a reliable prognosis in the case of an accident as to the result of that accident in future years. It is a class of case on which an authoritative medical opinion is often sought, and it is one on which a medical opinion can only be based on past experience. In cases in which the injured person's sufferings are fortified by the benefits of an insurance policy, recovery is often prolonged and incomplete. Condemnation to a period of long suffering may become an obsession. But a reputation as a reliable expert may be made by a correct, though perhaps lucky, prognosis. An inoperable case which he attended was one in point. Friends asked how long the patient would be likely to live. He (Dr. Hurley) said three months, and, when the patient did die just about at the end of three months, his reputation was made as a reliable forecaster of the future. That prognosis brought him more success in that particular circle than much hard work in the real practice of his profession. Expert witnesses, in his opinion, were often valued not so much because they were expert in a particular branch of knowledge, as because they possessed other attributes—personality, and the faculty of making an impression on the jury or judge. It had been stated of one of the very respected members of the medical profession on the occasion of a serious railway accident some years ago, that, when one of the Commissioners was

informed by telegraph of the accident and asked what should be done, he replied: "Retain Dr. So and So at any cost." That doctor had the reputation of being a good witness, he had the right manner in the witness box, the ability to stand up to cross-examination, the capacity to superimpose his personality on the court. It was often not so much the material submitted to the court that mattered, but the person who submitted it.

If the medical witness could be associated with the bench, and not with one or the other party to the case, could retire with the presiding Judge, and, if the Judge so desired, be the only expert opinion given, it would be an improvement on the present system. No doubt, in many cases, such a procedure would be difficult to arrange. Obviously, the barrister has to do the best possible for his client. But, nevertheless, the medical witness should be absolutely non-partisan. His evidence should be such that it would be the same if either side called him, and he should only speak on matters on which he had expert knowledge.

There was also a practical difficulty in the way of the medical man who often could speak with the most knowledge of the medical condition of the particular person whose affairs were being investigated. That medical man would usually be the family physician, who had known the family and the habits of its members for years. That family physician would be placed in a difficult position, particularly in a small community, if he had to give evidence unfavourable to his patient if he were a party to the action. Therefore, he suggested that a more impartial opinion could be expected if it were obtained from expert assessors called in to consult with the Judge merely for the purpose of the case. There should be no difficulty in obtaining experts with a wide range of knowledge, for even specialists had a wide knowledge of the other branches of the profession. A specialist in skin diseases, for instance, requires much more knowledge than that of actual diseases of the skin. He had also to have a wide range of knowledge of general medicine. The statement that the specialist was a man who knew more and more about less and less contained but a degree of truth. There could be a definite danger in calling a person too much confined to one particular phase of the profession. In addition to having a wide knowledge of medicine, a competent assessor would also require other attributes to which another speaker has referred, e.g., the manner in which the evidence is submitted—and to the way in which the cross-examination is conducted.

A person may die as a result of a serious illness, or a simple wound of the finger. In the latter case, the medical witness may be asked by the cross-examining Counsel what caused the patient's death? The answer would be septicæmia. But the patient died from a small wound on the finger? Yes. Is it usual for a patient to die from a small wound on the finger? No. On hundreds of occasions such superficial injuries are received and nothing happens? Yes.

So far, there would be no complete statement with regard to the facts causing the death. The manner in which the particular information is elicited has an important bearing on its value. By cross-examination, the truth may be arrived at, but in the process the main issues may be considerably clouded. What the medical witness may regard as material truth may not be conveyed because the manner of the examination or cross-examination has not presented an opportunity to present his opinion with the relevant facts in their correct perspective and proportion.

Then there was the atmosphere of the different courts. In the Supreme Courts, the proceedings were orderly and straight forward, but in the lower Courts, the atmosphere was at times extremely different, and in one recent case more resembled an ordinary dog fight. If the matter for consideration is the question of the damage done to an injured person, it is a perfectly natural and human feeling that there should be an anxiety on his part to fix the responsibility for the accident on some other person or outside agency, and there was an almost irresistible tendency to exaggerate symptoms. The medical man, to give evidence, may have to examine the clients or litigants in order that he may draw up a report. To arrive at a true position of the physical condition may be very difficult. Various tricks have sometimes to be adopted to try and throw the person off his guard, so as to get a true position of his condition, but in spite of all effort, in the absence of a scientific instrument to adequately assess that particular type of person, the expert medical witness may be misled.

He was in complete agreement with the valuable suggestions made by the previous speakers. To those suggestions he would add one; namely, that where there is a very complex case for consideration, involving difficult medical questions, some sort of discussion or conference should take place between the expert witnesses before they go into Court. It might be regarded as a rather revolutionary suggestion, but it could be arranged so as not to act in any way derogatory to the Courts. If adopted, many of the

difficulties now associated with the proceedings in which medical witnesses are concerned would be considerably lessened. It would be a frank and open discussion of purely medical problems, and would be conducted in the same manner as an ordinary medical consultation on a patient suffering from some obscure and difficult complaint.

Dr. W. Ostermeyer said he would like to express his appreciation of the most able exposition of the manner in which scientific methods were employed in judicial proceedings. Since Bacon's *Introduction to Induction*, the application of science to legal proceedings has exercised the minds of lawyers and logicians. John Stuart Mill read Jeremy Bentham's *Principles of Legislation* in 1825, and he became a changed man. Mill was then in his twentieth year. In 1827, he re-wrote Bentham's *Rationale of Judicial Evidence*, which was the forerunner of his *System of Logic*, published in 1841. In this he laid down that liability involved causality and that science, logic and the law were interrelated. At the same time it had to be admitted that a good scientist may be a very poor scientific assessor, and a very unskilful practitioner. He thought that real tangible results would result from a conference of experts from both sides, as suggested by Mr. Hurley. As a matter of fact, Lord Sankey, according to an article in the *Fortnightly Review* on "New Steps in Legal Reform," laid down that expert assessors could confer and draw up a report which may be agreed to. The present system of giving verdicts on facts partially stated by experts was illogical.

Mr. P. D. Phillips described what occurred in the mind of everybody who began the practice of law. When he leaves the University, the law consists of certainty and justice. Leaving the Law School, his determination is to assist, by a strict application of the law, the justice side of the equation. After a little experience, he realizes that it takes such a long time to find out what the law is, that he gives up the search for justice, and spends his time endeavouring to find out what the law is. Having learnt something about what the law is, he most decidedly is left more uncertain as to what justice is. That discovery leads to the final stage in his development: a stage when he discovers that the justification for a great many things, even after considerable analysis, is unsatisfactory, that he is left with the feeling that his conclusions are unsound and incapable of rational justification. Any justification of the present system for dealing with problems of science, it seemed, would be based on premises:

(1) That the problem to be solved is an artificial one, the law describing the rights of the parties in the suit, and the judge giving his determination of those rights according to definite rules, after hearing permissible evidence of facts. The facts, thus, are limited by a whole series of compendia quite artificial.

(2) That the expert witness shall be competent to give an opinion. That did not suggest, for instance, that the medical witness should only be called and examined after all the facts are deposed, that he had to make up his mind as to the facts. That is the very thing he does not do, and which the system aims at preventing him from doing, and the reason is that if he is a witness, it is incorrect to permit him to engage in a part of the judicial process. The medical witness does not have to determine what are contradictory facts.

(3) The lecture suggested the artificial value of the concept of causality which the law involved. Naturally, the principle of the concept of causality was artificial, and it was one which every lawyer found most difficult to understand. Indeed, every problem is artificial when its solution is limited by legal rules. When the difficulties associated with solving problems under existing procedure are realized, the reasons for the rough and ready suggestions to appoint assessors can be seen. Such a suggestion, however, did not really approach a solution of the legal problem, and one was left with the feeling that there was a great deal to be said for the persistency of the law to accept no change. If the only difficulty to the appointment of assessors was the difficulty with regard to appeals, he felt it was one that could be overcome. When a jury is invited to determine on an issue, what it resolves is sacrosanct; there is no appeal, and nothing can interfere with it. The proceeding before the Admiralty Court in England was different, as Mr. Justice Dixon had explained. At times, an ordinary jury and Judge seemed inadequate to decide finally. A case in point was one in which a question for compensation for pain and suffering was involved. The Judge, in his direction to the jury, had said that money was no compensation for pain and suffering, that in that matter, it would have to do the best it could. The jury, not forgetting that advice, brought in a verdict sufficient to just about cover the medical expenses. Afterwards, Counsel met the foreman, and, mentioning that the damages were very low, asked how they arrived at their assessment. "Well," said the foreman, "the Judge said that money was no compensa-

tion for pain and suffering, so we didn't give her anything for it." Commonly, juries do not reason so logically in arriving at their verdicts.

As a final word on law reform: Is not the time ripe for the appointment of some government advisory body to consider some suitable measure of law reform? It was a matter that intimately appealed to lawyers. Parliament was too busy to give time to initiating the necessary reforms. Let the lawyers, then, undertake the task of suggesting measures to overcome the difficulties. The really learned lawyer was not likely to be iconoclastic. He knew what was required, and if he knew that his views would not be pummelled by Parliament, he could produce something that would be a really workable reform.

Mr. E. Gorman, K.C., said he had not come to the meeting to express any views, but simply as an interested auditor. Really, he had no views to express on the subject discussed, which ranged from the question of expert witnesses to law reform. His complaint regarding expert witnesses was not on account of their quantity, but their quality. From the discussion he realized that there were two classes of experts—one of the legal and the other of the medical profession. There are other experts, but the advice of his profession is to avoid experience of them. He never passed a prominent building in Melbourne without being forcibly reminded of an error in 300,000 bricks. Experts were called in on both sides, and, needless to say, a great majority journeyed to the site of the erection. It was expertly deposed that a mere error of 300,000 bricks was something about which no informed person could impute negligence. The other expert deposed that an error of 300,000 bricks could not be reasonably expected of a qualified architect. The building, however, was otherwise a triumph of scientific and architectural skill, and the Court found for the architect.

He was not able to address the meeting on the high plane of the previous speakers. He was not able to subscribe to the doctrine that the subject of the expert witness warranted minute attention. His uniform advice to clients, when expert witnesses have to be called in, was to get together and settle as quickly as possible. Personally, he had no enthusiasm for experts, and he doubted whether some of the medical profession had. Handwriting experts, despite the cloud under which they were in England, have gained a prominence in this community, and their testimony receives a great deal more attention than their merits entitle it. For the most part, members of the handwriting

profession are recruited from the ranks of retired bank managers over 70 years of age.

He was very sorry for not being able to follow the particularly high level upon which the discussion had proceeded. But did anyone seriously suggest that the expert witness assisted the case? There was the matter of vocabulary employed. At times, this contributed to openings for judicial humour. But surely the medical profession could condescend to use language which is readily understandable by all those associated with the case, from the Judge to the jury. The jargon employed by experts and scientific witnesses may be understandable if intended for Judges alone, but to employ it when discussing matters for the information of juries was quite indefensible. No intelligent man should have to use terms which require translation. It must be recognized that there is in the legal profession, and has been for many years a considerable hiatus between the judiciary and the jury. There was also the question of the expense incurred in the employment of expert witnesses, which only wealthy litigants are able to bear. There had been a suggestion that expert witnesses should be used by the Judges alone. It was one he trusted that those who made it could reconcile with their own consciences. With regard to the appointment of assessors, he did not think that litigants could be satisfied with the results. Under such a system, expert witnesses would probably become assessors, by reason of their frequent appearances in the Courts and the experience thereby gained. Furthermore, there were experts in many professions, and what was given to one profession could not be refused another. It was very surprising to him, and to many others of his profession, to witness a medical expert for the insurance company making a sworn statement that the injured person had made a splendid recovery, and would be completely well in a day or so, while the medical expert for the claimant gave it as his expert opinion that the injured person would not recover during the next seven years. And it was further surprising to see that experts could so readily be found, if the solicitor were sufficiently active to round them up and the client sufficiently willing to pay them.

In connection with medical experts in will cases, he did not think he was over-stating the position when he said that there is a marked inclination for Supreme Court Judges to attach no importance to the evidence of the medical witness. It must be remembered that "the expert witness is one retained to make sworn argument."

Mr. Justice Dixon, in replying upon the matters raised by the discussion, said he would like first to thank Dr. Sewell for informing him and changing his view upon the manner of the death of Charles II. Until that evening, he had always thought that the King displayed a whimsical humour in apologizing to those serving him for the remarkable time when he took for dying. But now, after having heard a recital of the treatment he received of those who attended him, he was inclined to think differently. In the circumstances, it was better that Charles did succumb. He would also like to thank Dr. Ostemeyer for perhaps not changing, but increasing his opinion of John Stuart Mill. He had read of the various changes which John Stuart Mill underwent; how his entire outlook was changed by reading Wordsworth, and the further change which resulted from his marriage, but he was not aware that his contributions to logic which affect us so much was due to his perusal of Jeremy Bentham. But a perusal of John Stuart Mill has caused others to reflect and change their ideas. He often wondered what view of human conduct would be taken by a medical man who judges things from a pathological and not from the merely external standard of experts. The changes which John Stuart Mill underwent, he was convinced, were completely due to some conditions which he experienced. At particular times, he (Mr. Justice Dixon) was conscious of being affected by the explanation of conduct which is quite outside the range of his experience, and he had felt that medical men would have taken an entirely different view from that he had taken. The observation which Mr. Gorman had last made proceeded from an enthusiasm for the cause of right, for which he is so well known in the Courts. His (Mr. Gorman's) own expert knowledge was very great, and lay in several domains, the area of which he had lately been increasing. After listening to Mr. Gorman Mr. Justice Dixon felt disposed to apologize for taking such a favourable view of the medical profession and expert testimony. Consideration of such matters had convinced him rather of the difficulties with which the medical profession are confronted by the law, and by the difficulties with which the law is confronted by expert testimony. The difficulty of the barrister is in the reconciliation of two considerations.

First of all, there was the undesirability of having experts who would willingly give testimony in such a way as not to kill the jaundiced views of those who may give a different opinion, and which he can show with care to be a complete

negation of the truth; witnesses with an ever willingness to supply answers to questions which no human being could be expected to answer. Still, the solution of the problem is the answer to those questions, and of those required to answer them, the Judge sitting in the Court of Appeal is the last. He is required to solve the unsolvable. He made no apology for appearing to defend the expert. Mathematicians who at times appear in Court possessed extraordinary knowledge. Medical evidence seemed to be the most easily obtained, although perhaps it is the most easily disposed of, because most lawyers believe that they have a knowledge of medicine almost equal to the medical man's supposed knowledge of law. That assumption in both cases is largely due to a lack of appreciation of the difficulties which both these involve. Mr. Phillips, in addressing himself to the subject, he was very pleased to observe, drew attention to the most important phase in connection with those difficulties, and the statement he made of the considerations or objects he (Mr. Justice Dixon) had in view was correct. Any society such as that was useful in that difficult questions could be discussed apart from the human equation, consideration being given only to the inherent difficulties in them. Mr. Gorman, speaking from the back of the audience, had reduced the discussion to the requisite level. He would like to say that he was by no means unconscious of the fact that expert evidence, even apart from handwriting, is often of little or no value because it is insincere. He did not think it desirable to discuss that fact. Most oral evidence suffered in a more or less degree from the same criticism. Few man engaged in the ordeal of close cross-examination could admit that they were in a position to give answers which they would have given in their calmer moments, or when under less pressure to preserve a personal interest. That was one of the particular difficulties of the method. Very few litigants are able to go through the entire process of a trial without having lost connection of memory with the direct facts as they actually existed. Of all these things people were perfectly well aware. The best to be done under the circumstances is to hope that the effect is not exaggerated.

Dr. Weigall said that to him had fallen the privilege of moving a vote of thanks to the learned lecturer. He hoped he was not out of order in stating that the lecture, to him, had been a wonderful illustration of what was meant by the judicial mind. To those like himself who were mere listeners it had been an extraordinary revelation of the type

of mentality which all should attempt to follow. Every fact was so complete and separated from and yet part of the preceding and following fact. This made one realize how different was the trained legal mind from the medical mind. With the medical mind, a doctor merely stated "the patient will get better" or "he won't get better." He relied on his opinion deduced from experience of similar cases.

Now we knew from the lecturer's analytical review what was really evidence and what was merely opinion, and it gave some justification for the alleged remark of a Judge to Counsel: "For heaven's sake, sir, get your facts *right* before you attempt to distort them."

It was a matter for appreciation that men such as the lecturer could afford the time to come and occasionally rest among ordinary men, and they were fortunte in having a society which gave opportunity to hear such lectures as they had been privileged to hear that evening.

Dr. T. C. Brennan, K.C., said he had very much pleasure in seconding the vote of thanks which had been moved by Dr. Weigall and he endorsed everything that he said. When His Honour started upon the lecture he said that he did not know whether some lawyers engaged in justifying the ways of the law. No wise man, he contended, attempted to do that; certainly he (Dr. Brennan) had no intention to attempt anything in that direction. But what the lecturer had done with his customary modesty was to justify the way of the law. His Honour taught them the importance of the expression of the judicial mind. He could merely hope that Dr. Weigall had not gathered from what he had heard that night that all judicial minds were the same. If he had, his awakening may not be pleasant. Much His Honour had told them was old and familiar, but he had dealt with his subject with that nice literary touch for which he is well known. As Dr. Weigall had stated, no word had been said which it was not necessary to say. The lecture was a model of clearness and condensation, and he seconded the vote of thanks with pleasure.