Draper (F. W., jr.)

THE MEDICAL PROFESSION

AND THE

COMMONWEALTH.

By FRANK WINTHROP DRAPER, M.D.
Professor of Legal Medicine in Harvard University.

THE ANNUAL DISCOURSE DELIVERED BEFORE THE MASSACHUSETTS MEDICAL SOCIETY, JUNE 8, 1892.

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Mr. President and Fellows
of the Massachusetts Medical Society:

The father of modern lexicographers defines a physician as "one who professes the art of healing." This definition, even with its evident limitations, accords with the popular idea of the doctor's proper place in the world's affairs; he is of value as a prescriber of remedies for sickness. His characteristic business is the cultivation of therapeutic skill. To this end, medical education is largely directed, with its clinical features made prominent. To the attainment of this result, hospitals lend their aid and specialties have been organized in such numbers and variety as to confound the traditions of conservatism. All this preparation and specialism fairly represent the current notion that the art of medicine, rather than medical science, is the physician's specific domain. How to defy successfully and to conquer effectively the foe of the household,—this is held to be the main purpose of our profession, our chief reason for being. "They that be whole need not a physician, but they that are sick."

But while the medical and surgical practitioner illustrates in his clinical round of duty his principal function, there are other relations in his

experience to which his profession necessarily exposes him. Some of these are imperative and cannot be evaded; others are voluntary but are full of noble possibilities; all of them, properly used, give increased value and dignity to our professional vocation. In the discharge of the distinguished duty which places me in your presence at this time, I shall endeavor to make clear the true attitude which our profession should maintain toward some of these external conditions. I ask your indulgent attention to a study of the relations which, as physicians, we hold toward the Commonwealth.

Our obligations to the State derive added significance from the circumstances attending the incorporation of the Society of which we are the Fellows. Our organic existence began in the troublous times at the close of the revolutionary war, when the more hopeful felt sure that they saw the dawn of an independent nation, but did not dream of the difficulties and delays that were to postpone for nearly a decade the establishment of constitutional government. The seat of military operations had been carried southward, leaving New England without serious apprehension of the further presence of hostile forces. Yorktown was the point upon which, during the early autumn of 1781, attention was centred, and here the war reached its triumphant climax. Meanwhile, here in Massachusetts, civil affairs, though still unsettled, had begun to take permanent shape. For a year, the people had been living under a constitution of their own devising, an instrument of solid framework, the

prototype and model of many others constructed after it.

It was at this time, when the national government was in revolutionary instability and our own Commonwealth was in its infancy, that a few medical men, chiefly resident in Boston, saw the desirability of an association that should bring qualified practitioners into closer relations for their own benefit and for the good of the public. No doubt there was ample ground for this feeling. The exigencies of the war then closing had called many Massachusetts physicians into the public service, where they met associates from other States and, with them, by the intercourse thus available, were stimulated to discuss the needs of the profession and were led into a community and cohesion of interests not possible otherwise. Out of this opportunity and experience grew a purpose to secure order in place of medical chaos. Medical knowledge was limited and the facilities for obtaining it were difficult; more difficult in New England, indeed, than in other sections of the country. There were already many pretenders and knaves who made easy prey of the credulity of humanity. There was no standard of medical knowledge or of fitness to assume the responsibilities of medical practice. Recognizing these conditions, the public-spirited founders of our Society resolved to come into closer union for the common good.

The preliminary deliberations which led to our incorporation are not matters of record; we simply know their results. But these results are sug-

gestive of the bond of attachment which, at this time, existed between the State and the better class of medical men and which has never been in serious peril since. The very name of our association is one evidence of this. Our fathers might have looked across the sea and found an appropriate title in some "Medico-Chirurgical" society or "Academy of Medicine" or "College of Physicians," which could be translated to the new world. But this would not have been in harmony with their purpose; their purpose was to make a "body politic and corporate" which should establish "a just discrimination" between educated practitioners and ignorant pretenders in medicine, a purpose that had in view the welfare of the community in its broadest sense. They therefore asked the General Court to give permanent expression to this object by granting the name of the Commonwealth to the new guild and by bestowing corporate privileges that should correspond therewith. That request was granted and we are the *Massachusetts* Medical Society, broader than medical sectarianism, abhorring exclusiveness, loyal ever to the State's highest interests, proud of the charter which, bearing the historic names of John Hancock and Sam Adams in attestation of its validity, the State bestowed upon us in 1781, the first document of the kind granted under the constitution. The commonwealth thus became our *alma mater*. She gave her name to our newly created body; she endowed us with valuable rights; and she bestowed other encourag-

ing assistance and recognition. If she did not actually rock the infant "body corporate" in the "cradle of liberty," she contributed an added flavor of legality and dignity to our first proceedings by loaning the "county court-house in Boston" as the place of meeting for Doctor Holyoke and his thirty fellow-founders, and placed us under new obligations of gratitude later by permitting meetings of the society in the state-house and in other public buildings belonging to the State.

Such was the beneficent and disinterested aim of our fathers in founding this association; such the gracious and helpful attitude of the Commonwealth in aiding that foundation. It is becoming in us, the heirs and beneficiaries of the endowment thus established, to ask how the aim of its creators has been fulfilled during all the years of the century now drawing to its close; to what degree the prosperity of the State has been advanced by the Fellows of this organization; and what are our present duties to the public in the discharge of the trust which our organic charter imposes. The little company of physicians which assembled in the county court-room near Scollay square, in November, 1781, has by normal growth become a multitude so large that it requires an entire block of buildings to supply the needs of its anniversary meetings, outgrowing all less adequate accommodations. Keeping pace with the progress which has made Massachusetts a leader in all things that make for the highest civilization, our organization holds and has long held the highest rank as the

representative of the best type of scientific and practical medicine. It is true that it does not include, nor has it ever included, in its fellowship, all those who by education and personal character have been entitled to avail themselves of its privileges. Undoubtedly there are many practitioners who ought to be on our rolls of membership but who are content to remain as medical gentiles. Any study of the relations of physicians to the commonwealth should not omit these from its scope. It is their misfortune, as well as their fault, that they neglect the invitation to affiliate with the only incorporated association which represents in the largest sense the principles which should be dear to every educated medical man. But I remember that what I have to offer to-day, while it may apply comprehensively to all who use the title and perform the functions of physicians, is addressed especially to a body which for more than a hundred years has stood for the best that is attainable in medical science and art, and it is therefore peculiarly appropriate that the physician whose relation toward the commonwealth we are to discuss should be the physician who is also the Fellow of this society. It is likewise fitting that the commonwealth concerning which we speak in this connection should be the one to which we owe allegiance as citizens and the one from which we derive our chartered rights as Fellows.

Massachusetts, in founding its constitutional government in 1780, established three co-ordinate, yet independent, departments; and ordained that

the legislative, the executive and the judicial functions should be forever distinct. This three-fold distribution of organic powers and duties in the State invites consideration of our relations, as physicians, to each of the fundamental departments, and leads us to ask what has been accomplished and what remains to be done in directions wherein the commonwealth and the medical profession are mutually concerned.

I. To what extent, then, in the first place, has the State, through its General Court, as its legislative department, enacted laws that are of particular interest to the members of our profession as a class? An inspection of the public statutes will be rewarded with the discovery of the following requirements, exemptions and prohibitions, in force at the present time:

"Practising physicians," with a few other equally fortunate public servants, are exempt from enrolment in the militia.

"Able and discreet men, learned in the science of medicine" are to be appointed medical examiners in each county.

"A physician who has attended a person during his last illness" must furnish, for the purposes of registration, certain specified facts relating to the patient and his illness.

"Physicians" shall make a monthly report of the births at which they were present, the penalty for neglect being double that for delinquency in the matter of death certificates.

"A physician shall give" immediate written notice of all the cases of such diseases under his care as the local sanitary board declares to be dangerous to the public health, and again the penalty for neglect is substantial.

Under carefully devised provisions and restrictions, "any physician or surgeon" may have the dead bodies of certain paupers, "to be by him used within the State for the advancement of anatomical science"; and, in similar fashion, he may have the dead body of an executed murderer; but if he "willfully digs up, disinters, removes or conveys away a dead body" without authority, or "buys, sells, or keeps for sale, the dead body of a human being," he shall be punished by imprisonment or fine.

No insane person shall be committed to a lunatic hospital except upon the certificate of "two physicians" having special qualifications and complying with specific requirements; and in each of the State lunatic hospitals, "an educated female physician shall be appointed assistant physician."

When the estate of a deceased person is insolvent, "the necessary expenses of his last sickness" stand as a preferred claim before all other debts; while if the insolvent debtor be living, "all debts due to physicians for medical attendance on him or his family" are third in the order of priority.

"Practising physicians and surgeons regularly licensed" are in the list of persons exempt by law from serving as jurors; but they are not excused from any of the requirements which pertain to

witnesses in courts of law, nor have they any special privileges if misfortune overtakes them and a judgment for debt is to be executed.

Among the "twelve reputable citizens" to whom the law accords an invitation to be present at the hanging of a condemned murderer, "a physician or surgeon" is especially included.

"A physician or surgeon" is mentioned in the list of the officers to be appointed by the Governor for the administration of affairs at the state prison and the reformatory prison for men; while the reformatory prison for women has, according to the statute requirements, a staff almost wholly composed of women, including the "one physician" whose term of service is "during the pleasure of the Governor and Council."

Such are some of the statutory privileges and obligations which to-day apply to Massachusetts physicians. It cannot have escaped your notice that the obligations far exceed the privileges. When we have mentioned exemption from jury and militia duty, some preferment of the claims of physicians against insolvent estates, the rarely used permission to dissect dead bodies, together with the happily infrequent opportunity of attending a judicial hanging, we have included all the essential benefits which the commonwealth bestows on medical practitioners. It is not a long list of special indulgences, nor a very valuable one.

Another feature of these statutes invites a word of comment. Is it just and equitable, on the part of the State, to exact gratuitous service and to

punish us by a heavy fine for non-compliance? This is a question which has exercised the minds of medical men who were entirely free from any purely mercenary bias. Take the matter of death certificates, for example; the determination and proper formulation of the cause of a death is a work requiring professional skill and judgment. It is not the easy task which it appears to be; and those who have to do with the registration of deaths know the truth of this, for they see numerous instances of failure and blundering in this seemingly simple matter. I doubt not that many of my audience have met with difficulty, again and again, in the satisfactory framing of a death-certificate, and have done some severe medical thinking in order to comply with the statute requirement. And this service the State exacts as a formal matter, without any return consideration; more than this, it makes neglect or refusal to obey the law forthwith a crime of the same grade and with similar penalties as the passing of a toll-bridge without paying the legal toll, or the wilful suffering of one's sheep, swine or fowl to trespass on his neighbor's land, or public indulgence in profane cursing and swearing. And the same reasoning applies to the requirement that every physician shall give immediate notice in writing, over his own signature, of every case of small-pox, diphtheria, scarlet fever, or any other disease which his local board of health declares to be dangerous to the public health and which he is called upon to visit, the penalty for disobedience in this in-

stance being not less than fifty not more than two hundred dollars. Let me not be misunderstood. I am not desirous for a moment of arguing that the State is wrong in requiring from physicians this service concerning the living and the dead; I regard the registration of vital statistics and of infectious diseases as fundamentally indispensable to all sanitary administration, and to take any position of apparent hostility to it or to suggest any course of conduct that would impair its value and completeness would show a deplorable lack of wisdom. Nor am I pleading for the principle of remuneration for all service rendered; for I believe that every intelligent and public-spirited physician, recognizing that his contributions to registration will aid in maintaining and promoting the public health and general welfare, would not be stimulated to better or readier obedience of the statutes if, for each certificate, he received a small fee. On the other hand, he is not inspired to do his duty more punctually through fear of fines which, like the Quaker guns of Manassas, are meant rather to intimidate than to destroy. Yet the criticism remains true, that there is an obvious want of equity in the fact that the State makes an unrequited requisition upon physicians for medical facts which they alone can supply at an expense of time and knowledge, and threatens them with punishment as petty criminals if they neglect or refuse to heed the requisition promptly. If a penalty in connection with registration is to be exacted at all, it would be more worthily attached

to wilfully false and fraudulent certificates, to certificates that try to cover criminal abortion under the disguise of septic peritonitis, or that conceal suicidal pistol-shot wounds under the euphemism "rupture of blood-vessels and hemorrhage," or that attempt to mislead by calling a suicide by laudanum a death by coma.

This matter, indeed, is not an important one; but it is worth while to mention that the commonwealth has shown some inconsistency by recognizing that the services of physicians do have a value, trivial in degree, yet real in fact, when applied to observations and reports requiring no special skill to make them. For if a physician reports punctually to the clerk of his city or town a correct list of all children born therein during the month next preceding, at whose birth he was present, he shall receive for this purely clerical duty a fee of twenty-five cents for each birth so reported; while neglect to report such list is punishable by a fine not exceeding twenty dollars. It is notorious that the registration of births in Massachusetts is defective, even under this legislation which has provided a hope of reward and a fear of punishment as the double incentive to the faithful discharge of a public duty.

The critical student of the public statutes who searches for any evidence therein that the commonwealth through its legislature has ever set up any standard of education or skill on the part of medical men, will find little in existing laws to reward him for his inquiry. In a few instances,

the general court has provided that special, though purely relative, qualifications shall be requisite in certain contingencies. Generally, however, the members of our profession are mentioned under their generic title simply, as "physicians" or "physicians and surgeons," and the undoubted intent is to include under this term all who publicly announce themselves to be practitioners of the art of medicine and undertake to treat sick or injured persons, either for reward or gratuitously. There is no attempt in the statutes to classify or to define "physicians," to declare by legislative act who may practise medicine and who shall not, to protect the people from the evil doings of ignorant pretenders, to establish a standard which would exclude both fools and knaves. Massachusetts has ever been hospitable to all sorts and conditions of men, and she welcomes with a reckless graciousness any who choose to pass her open door. She knows no sects, no schools, no differences among physicians; all doctors are alike to her and, according to the assembled wisdom of her law-givers, they can safely be left to take care of themselves according to the principles of the common law. There is no distinction, either natural or arbitrary, which our statutes recognize, to mark the fraudulent pretender from the educated and trustworthy practitioner. To the citizens of this State, there is absolutely unrestricted liberty in the choice of their medical attendants when they are ailing or are injured, a full realization of the very opening words of the constitution of the

commonwealth, that "the end of the institution, maintainance and administration of government is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquillity their natural rights and the blessings of life."

This attitude of Massachusetts, allowing unrestricted freedom in the practise of physic, has exposed the State to much criticism. It has given rise to the impression that her present policy of non-interference with medicine has always prevailed, and that she is now simply carrying forward a traditional rule of conduct in obstinate indifference to the lessons of experience learned in other and younger communities. This inference is incorrect. Long before any of the modern devices for statutory regulation of medical practice were announced, long before many of the commonwealths which are now taunting us had been staked out in the primeval wildernesses of the west and northwest, Massachusetts saw the need of controlling the pretensions and active arrogance of charlatanry within her borders and the clear duty of bestowing her recognition upon reliable men and women. As early as 1649, the colonial legislature enacted a law concerning "Chirurgeons, Midwives, Physitians," which forbade all "persons whatsoever imployed at any times about the bodyes of men, women or children, for the preservation of life or health . . . to presume to exercise or put forth any act contrary to the known approved Rules

of Art, . . . without the advice and consent of such as are skillfull in the same Art," upon such "severe punishment as the nature of the fact may deserve"; and the act has this quaint codicil, that the law "is not intended to discourage any from all lawfull use of their skill, but rather to incourage and direct them in the right use thereof." Does any statute of the many relating to medical practice, which the present generation has witnessed in various states of the Union, show a better spirit?

But we need not look beyond the words of our own charter of incorporation to find full evidence that long ago the State discriminated sharply between those who merited confidence and those who deserved to be restrained. The whole document, from its preamble to its conclusion, is filled with the flavor of this wholesome feeling. But that which applies itself chiefly to our purpose in this regard is the remarkable sentence which, like a strong back-bone, is built solidly into the very middle of the charter:—

"*And whereas it is clearly of importance, that a just discrimination should be made between such as are duly educated and properly qualified for the duties of their profession, and those who may ignorantly and wickedly administer Medicine, whereby the health and lives of many valuable individuals may be endangered, or perhaps lost to the community*:

"*Be it therefore enacted by the authority aforesaid*, That the president and fellows of said socie-

ty, or other such of their officers or fellows as they shall appoint, shall have full power and authority to examine all candidates for the practice of physic and surgery, who shall offer themselves for examination, respecting their skill in their profession."

This placed a premium on proper qualifications and proved fitness. It established a standard and made our society the keeper of that standard, and if with the recently accepted Bill of Rights in popular remembrance, it did not forbid the practice of medicine by those who neglected or failed to become licentiates under this charter, it nevertheless gave the community, what it had not had before, a chance to have its medical practitioners classified according to their worth and learning. It was a most responsible function to place upon this young society of physicians, but the trust was adequately fulfilled then and is to-day being fulfilled; and the men and women who possess the letters testimonial of the censors of the Massachusetts Medical Society attesting their demonstrated and approved knowledge and fitness need no further passport to the full confidence of the people and no better certificate to distinguish them from those who "ignorantly and wickedly administer medicine."

But Massachusetts, through its legislature, did not stop here. It supplied in our charter a standard by which it strove to distinguish the genuine coin from the counterfeit, and it created the agency for the application of this standard to all who wished. Subsequent enactments strengthened and con-

firmed this aim. The act of incorporation of 1781 was altered in 1803, the better to "effect the important and desirable purposes for which it was designed." The limit to the number of fellows, previously set at only seventy as its maximum, was removed; the councillors were created; and a board of censors was provided who were to examine candidates, and to give to such as were successful in their examination a certificate of approbation and of their license to become practitioners in medicine or surgery; "after three years of approved practice in medicine and surgery, and being of good moral character, and not otherwise," these licentiates were to be eligible for the higher honor of becoming Fellows. By this same act, district societies were allowed to be organized for purposes of medical improvement, and each district was endowed with the additional function of sharing with the censors-at-large the authority to examine and admit candidates for the regular practice of medicine. In 1831, the provision that required three years of probation for licentiates before they were admitted as Fellows of the Massachusetts Medical Society, was repealed.

These various enactments, designed specifically for the organization and development of this society, but having the fundamental purpose also to improve the character of the medical profession in general in this commonwealth, do not complete the catalogue of statutes which the legislature has made for the regulation of medical practice.

Broad as our charter was, in its permissive provisions, it was not in the least useful as prohibitive legislation. We might admit all duly qualified practitioners to our ranks, we had no control over the disqualified pretender who cared little for the privileges which the Massachusetts Medical Society offered. This weak negative side in the then current statutes came at length to be seen, and in 1818 a law was passed which was designed to remedy this defect. It is of interest to us that the State continued to turn to this Society to aid in the fulfilment of its purpose. The statute provided that every person practising physic or surgery in Massachusetts, without having received a medical degree from some college or university, or without being licensed by some medical society, or college of physicians, or by three Fellows of the Massachusetts Medical Society to be designated in each county by the Councillors, should not have "the benefit of law for the recovery of any debt, or fees, accruing for his professional services"; and every licensed practitioner was required to deposit a copy of his license with the clerk of the town where he resided. Just a year later, the general court modified its predecessor's work and enacted that no person entering the practice of physic or surgery after a specified date should be entitled to the benefit of law for the recovery of any debt or fee for his professional services unless, previously to rendering those services, he had been licensed by the regularly appointed censors of the

Massachusetts Medical Society or had been graduated a Doctor of Medicine in Harvard University.

This law, it will be observed, distinctly recognized the principle of the regulation of medical practice, and this was the only good purpose which it served. It had two ludicrously weak features; it did not provide any punishment for failure or neglect to procure the required license, and while it presumptively made the way of the irregular practitioner a difficult one in the matter of collecting his fees, it left him perfectly free to do what no reputable physician ever does, it left him free to take his pay in advance. Nevertheless, the law was so satisfactory and acceptable in its working, that it was re-affirmed in all its main features in the Revised Statutes of 1836, seventeen years later, this Society being still designated by name as the authority to manage the machinery of examination and licensing; but there was this important modification,—the courts were no longer closed to such unlicensed physicians as sought legal help in the collection of their fees. The penalty for neglecting to secure a license was still missing, and the only express reward for compliance with the law was the privilege of dissecting dead bodies acquired in accordance with well defined conditions and restrictions still extant. This anomalous statute (*vox et preterea nihil*) remained in force without amendment until 1859, when it dropped out of sight in the general revision of the laws made by the legislature of that year. Since its disappearance from the stutute book there has

been nothing unlawful in "ignorantly and wickedly administering medicine" to the people of Massachusetts in violation of any statute; the principles of the common law are the only safeguard.

Meanwhile, during this period of thirty years, a wave of legislative virtue has swept over the land with reference to the regulation of medical practice. One State after another has passed restrictive laws of greater of less stringency but with the single aim of discouraging quackery. How effective these laws have been in accomplishing their purpose, or how zealously they are executed, in the various communities, we are not now concerned in determining; the suggestive fact is that Massachusetts stands almost alone in her attitude of toleration. Of one result of this state of affairs we all are clearly aware. The action of neighboring States, near and more distant, in requiring irregular practitioners to move on and to stand not upon the order of their going, has brought to our too hospitable territory a horde of medical pretenders who have not been slow in discovering the advantages of an asylum here. Moreover, the unlimited freedom which characterizes medical practice has encouraged the growth of a native variety of charlatans and adventurers; the weeds are not all of exotic stock, some of them are indigenous and have been permitted to grow in rank luxuriance. It is safe to state that never in the history of the commonwealth has such a wide variety been offered to her people in the matter of choosing a medical counsellor in time of sickness,

and that never has the class of charlatans been so numerous or so haughty.

And what a motley company they are, these disreputable parasites upon the medical profession! They offer to the curious student of anthropology a great diversity of types, ranging all the way from the long-haired male Indian medicine-man to the short-haired female christian scientist; creatures with "natural" and supernatural powers, extraordinary owners of superior intellects who find no difficulty in the problem of curing incurable diseases; bio-chemists, nature-pathists, mesmerists, vivopaths, psychopaths, botanic healers, magnetic healers,—a great procession of social pests with labels designed to captivate the unwary and the credulous.

But these people who boldly affect superiority by announcing themselves openly as irregular practitioners, and by assuming an eccentric or distinctive title in proof of it, are not the worst representatives of their class. The charlatans who are most harmful are those who deliberately and fraudulently take on the simple designation of "physician," and so far as any outward sign is concerned are not to be distinguished by the public from the best and noblest members of our profession. It is possible that this variety of irregular practitioners shows, in their method of making a living out of the public, a higher degree of shrewdness than their fellows of the former class, because in their use of professional titles, the prefix, "Doctor," and the suffix, "M.D." are in no

respect different in their external application, from those employed in a genuine way by right.

Then, there is another form of medical fraud which manifests itself in the shape of "medical institutes." These are evidently business enterprises simply, and the management being in the hands of several persons, who are always announced as distinguished, successful and trustworthy exponents of medical science, the victims of disease read the obvious lesson that in a multitude of such counsellors there must be safety.

But however we may classify and differentiate these people, they all have certain characteristics in common; there is nothing beneficent in their motives or actions; they are to the last degree mercenary; they are busy obtaining money under false pretences; they add nothing to the common stock of knowledge; they contribute nothing to the social welfare; they are a constant menace to the public health. They defile the columns of the daily press and of the religious weekly journals with disgustingly suggestive notices of their pretensions and insinuating invitations to walk into their parlors. They make open solicitations through their advertisements to the victims of lustful practices to add crime to imprudence, and they cover with the thinnest disguise their public and defiant announcements that they will commit unlawful acts and will take all risks of detection and exposure. It is openly declared that, disguised as female practitioners of medicine, they conduct houses of prostitution. They deface all

accessible surfaces with their bold and lying promises, and offend good morals by their too open allusions to unmentionable subjects. Like juggling fiends, they take advantage of every form of human misery to raise hope where hope is vain, and they wickedly and cruelly draw the last possible dollar from their credulous victims, who get small comfort from the fact that payment has been made in advance for the wretched disappointment of unfulfilled agreements. If in such a case death comes to the relief of these double sufferers, the ignorance of the only physician recognized by the statutes in such a relationship is attested by the manner in which the required certificate of the cause of the death is executed, sometimes unintelligibly, sometimes fraudulently, covering a crime under the name of an innocent disease, and always raising a doubt and question of the value of such data for the purpose of vital statistics.

Can it be possible that Massachusetts, which has long defended its claim to the possession of superior wisdom in the care of all matters pertaining to public health and public morality, is willing to tolerate this state of affairs indefinitely? Is not her indifference reprehensible? And have not we, as physicians, remained far too quiescent under these growing evils? Have we not evaded a duty while we maintained a neutrality? Ought we not now to speak out boldly and persistently until some effective measure has been adopted to control and suppress the fungous growth of quackery? It is to legislation, supported by an enlightened

public sentiment, and rendered fruitful by an energetic enforcement, that we must look for the real remedy, legislation that shall be practical without being cumbrous or needlessly burdensome. This is not the occasion for outlining the details of such legislation; whether the statute should supply a method of registration administered by some already established board, like the State Board of Health; or should require examination and license through the agency of a purely medical board; or should be framed upon the model of the English law which forbids the false and fraudulent use of any name, title or description, implying that its user is a physician or surgeon, when he has not been educated or licensed as such,—all these matters may safely be left to legislative wisdom. But the main point is that the commonwealth should afford to its citizens some guarantee that the persons who are permitted to practise medicine are trustworthy by virtue of education. Above all, let it be understood and insisted upon that this guarantee, with its attendant conditions and penalties, is not a matter into which sectarian medicine enters in any degree. Let there be an avoidance of all differences relating to schools of practice. Let not the smoldering embers of medical contention be drawn out of the ashes and fanned into life for the gratification of controversialists. Let it be remembered that this is not a question of therapeutics or of medical ethics, but a question of medical education, with the fundamental purpose of excluding from medi-

cal practice those who are unfit for it through ignorance or wickedness.

But, some will say, how does this matter concern the Massachusetts Medical Society, as a society? Why need this organization trouble itself to take any part in securing legislation against quackery? Are we not in the possession of an indefeasible charter, with ample protection of our rights and privileges as physicians? Do we not enjoy, as a Society, the respect and confidence of the community? Does not the public recognize in this association a body of medical men and women offering ample evidence of the trustworthiness and intelligent skill that are desired? If any educated physician in Massachusetts wishes to acquire the privileges of this recognition, by entering this fellowship, is not the way easy and the method simple? Why need we, an old and honored body of regular physicians, fret about quackery? Do not the charlatans give us new and profitable business by their blunders? Why should we meddle with the inherent right of every individual to choose his adviser in case of injury or sickness? Will not the prudent man make seasonable inquiry and select the best; and cannot we wisely leave this decision without dictation, sure that in the long run the fittest will survive? Why need we ask to have new burdens and restrictions placed upon us?

From the point of view of expediency and propriety, as they apply to this Society, this purely selfish and pharasaical course of reasoning is clearly

correct. This organization will do well to maintain its independent attitude. It has no wish for a renewal of the legislation which formerly made it the sole censor of medical practice in this State. It is content to attend to its own affairs. It has no ambition to pose as a monopolist in medicine. It sets an example in medical tone, and in its traditions and present aim, cordially favors the highest attainable development in medical education and medical practice, but it has seen the mischief and disappointment which have attended attempts made, in its name, to influence and procure medical legislation. But this view does not absolve us, its individual members, from grave responsibility regarding questions of public welfare. We are citizens of the commonwealth as well as physicians; and, as citizens, jealous of the good name of Massachusetts, ashamed of her false position in the matter now under discussion, we have the right and the duty to protest that some remedy should be applied to eradicate the evils which I have tried to describe. We ought to do all in our power to secure some practical process of sifting which shall afford to the people an assurance that the State is unwilling to trust the lives and health of her inhabitants to charlatans and adventurers. We ought to insist, and insist again, that it is not for ourselves, or to promote our own interests, that we wish the State to interfere, but that it is in behalf of the thousands in her population who, through lack of knowledge or discrimination, become the victims of chicanery and fraud. We

ought to demand that protection for the classes of people that do not and cannot protect themselves. If professedly intelligent and cultured persons choose to demonstrate their wisdom in a peculiar fashion, by amusing themselves with the mind-cure, and christian science and hypnotism, and other genteel fads, it should be with the distinct condition that it is without the State's approval of their folly. The strong desire shown by a certain class of individuals in this community to imitate and emulate their prototypes in ancient Athens in eagerness "to hear and to tell some new thing" offers no excuse for indifference, for human life is in the balance as the material upon which the novelty is to be tried as an experiment.

In this matter, we can take a useful lesson from the very class of pretenders who are under our study. The lesson is that if we would accomplish anything with the legislature, there must be harmonious, energetic, associated action. Let there be but a whisper of an intended purpose to obtain legislation to regulate medical practice, and the swarm of charlatans, grown bold by its very numerical strength in Massachusetts, begins to organize for defence. The whole body comes to the rescue with a zeal and enthusiasm born of a resolve to ensure self-preservation. They raise funds, the manner of whose distribution it would not be respectful to intimate. They secure able counsel in the persons of eloquent lawyers or popular clergymen, who talk long and well of personal liberty and the rights of man. They publish a newspaper

of their own, which gives information of every movement of their "enemy"; and, by methods easily imagined, they convert to their views the newspapers which others publish and which derive from the advertisements of quackery a revenue not to be despised. And so it happens that the petitioners for legislation, only half prepared for effective action, usually representing a small coterie and a divided sentiment, have gone down again and again before this numerous and powerful alliance of falsehood and fraud, and have been given leave to withdraw. It is evident that this experience will be repeated until we realize the extent and the strength of the force which has intrenched itself in our midst, and until we emulate it in enthusiasm, sacrifice and persistency.

Is it not extraordinary that Massachusetts has always been so ready to legislate in an endless variety of directions affecting the life and well-being of her population, and is reluctant to interfere with uneducated and unfit practitioners of medicine? The general court has provided for the inspection of nearly everything that enters into domestic administration, and has ordained proper penalties for frauds and adulterations; we have ample protection in the matter of milk and vinegar, chocolate and nails, gas and leather, confections and drugs; but none against the charlatan. Massachusetts licenses her auctioneers and her pedlers, her pilots and her publicans, her pawnbrokers and her warehouse-men, her dentists and her druggists; she places even clergymen and

lawyers under regulations, but no difference exists in her esteem between the educated physician and the fraudulent healer which an adjacent State has spewed out upon our soil. We have statutes for the protection of lobsters and smelts, rabbits and partridges; but for sick people, the State offers no defence against quackery.

Let not medical men say that it is useless to seek a remedy from the legislature, that charlatanism has become too firmly rooted here to be eradicated by any means, however drastic. Repeatedly it has been demonstrated that measures of reform have been successfully accomplished with the aid of our profession in shaping and guiding legislation. Take a single illustration, the evolution of the methods prescribed for the commitment and treatment of the insane. As late as 1827, an act was passed by the Massachusetts legislature which included every excited lunatic with "rogues, vagabonds, common beggars, and other idle, disorderly and lewd persons," and provided for his incarceration in a jail or house of correction until he was "restored to his right mind." This barbarity continued until the State, in 1832, heeding the representations of physicians, established the first lunatic hospital at Worcester. For many years after this, the process of commitment continued to be a purely legal one, without any required medical examination. But the protests of physicians again prevailed. In 1844, the legisture passed an act which recognized, for the first time, that insanity was a disease, whose diagnosis

required medical knowledge, rather than legal acuteness. In 1862, it was enacted that for the commitment of an insane person to a lunatic hospital, "the evidence and certificate of at least two respectable physicians" should be required as a preliminary to establish the fact of insanity. Some modifications have been made in the amount and character of the medical evidence in these cases, but the recognition of the true nature of insanity and of the propriety of placing its humane treatment in the hands of physicians, rather than in those of the keepers of jails, was due to the labors of such men as Bell, Wyman, Ray and Jarvis. This result shows the effects which medical men may accomplish at the State House if only their efforts are rightly directed and persistently exercised. Other examples of this force might be cited. The statutes relating to the public health, to the registration of vital statistics, to compulsory vaccination, to the use of subjects for anatomical study, to the investigation of deaths by violence, are all memorials of the intelligent zeal of medical men in shaping and obtaining wise legislation. What physicians have accomplished in the past is an augury and proof of what they may now accomplish in the attainment of statutory regulation of medical practice. And not in this direction alone. There are other matters wherein wholesome laws are needed. I have only to suggest the desirability of legislation for the more effectual prevention of the spread of contagious diseases, including syphilis; for less barbarous

methods in the punishment of convicted murderers; for better dwellings for the poor; for medical inspection of schools; for the compulsory establishment of a local health-board in every town. In these, and other similar directions, the educated physicians of Massachusetts have it in their power to bring about salutary reforms. It is a power that is not sufficiently appreciated by us, its possessors. It is a power which may find its correct exercise in various ways: in the open and candid expression of opinion as we meet our acquaintances and clients; or in properly formulated memorials to the general court; or in attendance and spoken testimony at hearings before legislative committees; or even in service in the law-making body itself. It is to the credit of our Society that its members have shown their willingness to interrupt their professional labors and to respond to the call of their neighbors to represent them in the legislature. It is an honorable service, and nearly every session has found, included in its rolls, the names of reputable physicians, members of this Society, who have given intelligent and faithful attention to legislative problems, the satisfactory solution of which has been largely due to their wise counsel and to the experienced judgment derived from their medical training.

II. But the true test of the value of laws lies in their faithful execution and judicious application. Let us inquire, now, concerning the relationship of our profession to the Commonwealth's executive department.

In two instances, Massachusetts has selected its supreme executive magistrate, the Governor, from the medical profession and from the fellowship of this Society. Governor John Brooks was elected in 1816 and continued in office, by annual re-election, until 1823. He was a practising physician, and became a Fellow of the Massachusetts Medical Society in 1786. He undoubtedly received high political recognition on account of his services as an officer during the revolutionary war, for he held the rank of Major at the battle of Bunker Hill, and, later, was in command of a regiment and was held in high esteem by Washington. It does not appear, however, that his medical knowledge acted to discredit his reputation, or to limit his efficiency, as a Governor; for his long service in that office is good proof of the manner in which he commended himself to the people's favor. His standing as a physician is attested by the honorary degree of Doctor of Medicine which Harvard College bestowed upon him in 1810, six years before political success lent adventitious lustre to his name as a medical man. It is further attested by the fact that he was chosen in 1808 to deliver the annual discourse before this Society, and by his election to the presidency of the Society in 1823, as soon as he was excused from farther service as Governor of the State. He was greatly attached to this organization, and gave good proof of his interest in its welfare by bequeathing to it his entire medical library.

Governor Brooks was succeeded in 1823 by

another physician, Dr. William Eustis, who died in office in 1825. He, too, like his predecessor, had a reputation derived from his military services in the war of the revolution; but his services here were distinctly in the line of his profession, for he was associated with Dr. John Warren and Dr. William Gamage in the care of the wounded after the battle of Bunker Hill, he himself being the senior surgeon of the staff. Although he had studied medicine with Dr. Joseph Warren, who is better known by his title of Major General, it does not appear that Dr. Eustis ever took a medical degree. He remained in the army surgical staff till the close of the war. He joined this Society in 1785. He evidently had ambition to shine in other orbits than that of the plodding practitioner, for besides being governor of Massachusetts he was, earlier, a member of congress, a secretary of war and a minister resident at the court of the Netherlands.

These two physicians appear to have satisfied the desire of the people for governors having medical training and experience, although tradition suggests that, since the time of Eustis, other medical men have not been reluctant to assume the cares of the office if the opportunity appeared auspicious for their ambition. But it should be stated that long before Brooks and Eustis, long before our Society was conceived, Massachusetts had in her colonial history two other governors who were primarily magistrates, but who knew enough of medicine to add materially to their usefulness

and esteem. Governor Edward Winslow "was skilled in the practice of physic" and made his therapeutic attainments materially advantageous to the colonists of Plymouth and to their aboriginal neighbors as well. Governor John Winthrop, too, added to his other claims to the gratitude of the settlers of the Massachusetts Bay Colony, a practical acquaintance with drugs and their uses, which made his public functions all the more beneficent. His double service to his people was recognized by his venerated pastor, Rev. John Cotton, who described him as a "help for our bodies by physick, for our estates by law"; thus fixing his place as an ideal medico-legal practitioner. His son, John Winthrop, Governor of Connecticut, was an educated physician.

The second office in the gift of the people of Massachusetts, that of lieutenant-governor, has been held by three members of this Society, David Cobb (who presided as a judge when he was not practising medicine), Henry Halsey Childs and Elisha Huntington.

The executive council of the commonwealth has had many medical representatives in its membership in the course of its history. They have done excellent service in advancing the interests of our profession whenever occasion offered. This was especially the case in 1877, when the assistance of the late Dr. William Cogswell was of great value in the reform of the methods for conducting investigations of deaths by violence.

In municipal administration, our profession has

shown its adaptability for public affairs in numerous instances. Repeatedly, medical men have demonstrated their acceptability in the office of mayor and in various subordinate positions in city and town government. When we read, a few months ago, in the obituary notice of one of our oldest and most esteemed associates, that he had served continuously for forty years as the keeper of the records of the town in which he lived and died, we had good proof that his capability and fidelity were recognized by his fellow citizens. So, too, we may recall the admirable services of our brethren in the conduct of school-administration and in the interests of free education under the fostering care of the commonwealth.

Again, in the management of the public institutions belonging to the State, medical men have found a congenial field for the exercise of their wise judgment and executive ability. Ever since the establishment of the first lunatic hospital by the State in 1832, at Worcester, the boards of trustees of these and similar foundations have welcomed the acquisition and assistance of physicians as an essential element of their success. The credit for the progressively humane methods in the treatment of the dependent wards of the State in hospitals for the insane must be divided between the able medical superintendents of those asylums and the medical men in the boards of government. If one desired a demonstration of the executive ability of physicians, let him compare the State Almshouse at Tewksbury, as it is

to-day, with its scandalous condition before 1876; its discipline, its fine hospital service, its freedom from abuses, are in sharp contrast with the methods and results which characterized its management before a physician took charge of it under the authority of the legislature.

Why should not the executive efficiency of men trained as physicians be utilized still further in our public institutions? In India, the governorship of jails and the position of medical officer are combined in the one person of a medical man, whose united functions result in great advantage to the institutions and economy to the State. Doctors of medicine who can manage great hospitals, can govern penal reformatories; and convicts, as well as lunatics, would be none the worse if their full sanitary supervision were in the hands of specially trained officials. Who can doubt that the discipline of a convict prison would be improved if it were manifest that judicious care were taken to maintain the health of the inmates by the humane and practical methods of medical resident officers? By the gradual education of junior medical officers in this service, a supply of executive officials would be at the disposal of the State for the management of its correctional institutions in a proper and acceptable manner

There is one chapter of the Massachusetts laws whose administration has always been an agreeable duty for the members of our profession. The statutes relating to the public health have been especially interesting to medical men, and the in-

telligent practical application of them has always had its best agents among physicians. Ever since the board of health of Boston, ninety years ago this summer, fitted up an observation hospital on Noddle's Island and invited Dr. Benjamin Waterhouse and other physicians to demonstrate upon the patients therein the immunity from small-pox infection which Jenner's recently discovered operation of vaccination bestowed; nay, ever since Dr. Boylston, nearly a century earlier, fearlessly and successfully acted as the champion of variolous inoculation, and showed it, in the face of bitter prejudice and opposition, to be a means of protection against the justly dreaded and disgusting scourge which had swept periodically through the community, Massachusetts has found among her physicians the most zealous advocates of sanitary legislation, and the most faithful servants in executing her enactments. To the public, this paradox has always been a mystery. Why medical practitioners should desire earnestly to hinder or control the spread of disease, when their livelihood and material prosperity depend on its presence, and their reputation for skill and success is directly related to its prevalence, is a problem which the ordinary intellect is unable to solve. The reason is that the vulgar apprehension has not grasped the difference between a vocation and a trade. The enterprising tradesman is not accustomed to place obstacles in the way of the successful development of his business, and he cannot understand why physicians do not follow

his example. But we are not engaged in the pursuit of a trade, and our methods are on a higher plane than those of mercantile or of mechanic industries. We look to the welfare of humanity as our first and fundamental object, and the practitioner who forgets this and seeks primarily the gains which are the objective reward of diligence is not true to the high purposes of his profession. The majority of physicians follow the more unselfish course and are therefore ready always to aid and to adopt measures which will protect the people from preventable suffering. It is, therefore, not surprising that they are earnest allies of the State in the administration of sanitary laws. I refer, of course, to the statutes relating to municipal sanitation in its broadest sense, including those enactments, to which I have already alluded, requiring the service of physicians in giving information concerning the presence of infectious diseases and the registration of births and deaths.

And what a comprehensive array of enactments affecting the public health the statute books of Massachusetts present! The silence and indifference of the State with regard to curative medicine is in the sharpest possible contrast with the number and variety of laws relating to preventive medicine. There would almost seem to be a design in this, an evidence of a purpose, however chimerical, to make our profession a superfluity, needing no legislative regulation, by abolishing through manifold acts of the general court the diseases which call into exercise our therapeutic

skill. However this may have been, the authority with which the legislature has endowed municipal boards of health in this commonwealth is extraordinary.

Recall, for a moment, the almost bewildering array of laws which are at this moment in force, designed to promote health and resist the encroachments of disease. The board of health of your city or your town has the power, under the statutes, re-inforced by decisions of the Supreme Court, to interfere with personal and property rights in the most arbitrary fashion, if only the interference is in the name of the public health. It may remove sick persons from their homes and from the care of their friends and family physician, and place them in hospitals specially provided; or it may depopulate a neighborhood, and leave the patient in sole and isolated possession of it. It may turn back travellers who come from "infected places" across the boundary line of adjacent States, and may detain at quarantine those who come by sea from other ports. It may forcibly break open and enter any house in search of baggage, clothing or other articles supposed to be infected with diseases dangerous to the public health, and may take possession of other premises for the safe keeping and storage of such articles. It may call unpleasant attention to your dwelling by placing danger signals upon it if infectious disease has unhappily entered there. It may forcibly enter any building or premises for the purpose of examining into and destroying, removing, or preventing a nuisance,

source of filth or cause of sickness; and it may, in like manner, in its own way, but at the cost of the owner, remedy undrained land on which stagnant water stands. It may compel you to abandon the conveniences of the ancient cess-pool and privy vault on your grounds and, at considerable expense to you, connect your dwelling with the public sewer. It may surprise you by a declaration that a disease which you have not deemed to be formidable is hereafter to be classed as "dangerous" to the public, and that every case under your observation is to be reported, and the method of disinfection at the termination of the case is subject to its approval. It may vacate and close dwellings which it deems unsuited for habitation and may prohibit the exercise of any offensive trade outside the limits which it assigns. It has control of the cemeteries in which your dead are buried, it licenses the undertakers who have charge of the burial, and it stands in the way of a burial until the medical certificate of the cause of the death is satisfactory in form and substance.

This epitome of the powers with which every local board of health in Massachusetts is clothed, gives but a hint of the profusion and force of the laws which, since the establishment of the first board in 1799, the State has enacted. Substantial penalties are attached in case of their violation, and it would seem that every sanitary emergency and exigency had been anticipated. And it is worthy of remark that, with all this array of authority at their command and with the judicial

officers of the State under an obligation to render executive aid in case of need, the boards of health have never acted in an arbitrary or unjustifiably severe manner. Too often, indeed, sanitary administration has been characterized in some communities by deplorable laxity and shiftlessness, rather than by offensive zeal. The cause of this inertia lies in the lack of a genuine public spirit which should support and compel the enforcement of the laws. If our people would show for sanitary precautions and regulations the sympathetic interest which is deserved, the authorities who administer the health laws would not be indifferent. Wherever a city or town has provided for its people a proper local board of health, with an intelligent, energetic medical man as its executive officer, the result has been satisfactory, because physicians, better than the ordinary citizen, know what can be accomplished as well as what is needed.

There is an impression that the State Board of Health is endowed with an authority similar to, if not greater than, that of local boards. This is an error. The functions of the State board are largely advisory; its powers as a purely executive body, to make orders and enforce them, are quite limited and are inferior to those of the local board of health of the smallest town in the State. It has authority to make investigations concerning the causes of disease, to diffuse sanitary information among the people, to conduct experiments relative to the disposal of sewage, to recommend measures

for the prevention of the pollution of the water supplies of cities and towns, and to advise persons or corporations concerning proposed water supplies or plans for sewage-disposal, its recommendations and advice being a preliminary requisite before legislative action. It has special duties assigned to it with reference to the adulteration of foods and drugs, and may, by its agents, bring offenders to trial. Without doubt, the fact that the field of its operations is comprehensive, untrammelled by municipal limits and embracing whole communities and large territories, adds value to its conclusions and recommendations by relieving them of local or sectional influences. It is a pleasure to acknowledge publicly that, in all its investigations, the board has had the hearty co-operation and assistance of the members of this Society.

But the cynic will ask, of what use is all this cumbrous, expensive and complicated sanitary machinery? Of what value has it been to the State? Do not epidemic diseases prevail just as they did before all this legislation was piled up for our admiration? Has not pandemic influenza stalked defiantly around the world again and again in the last three years, without the least hindrance from any source? Do not scarlatina and diphtheria enter our households and take possession in spite of all precautions, official and personal, devised to bar them out? Do not the children die by hundreds in August, and the grand-parents perish by the score in March, just as they did a century ago? Has tuberculosis been controlled?

To all such pessimistic questioning, full answer has been made in the impressive address to which you listened three years ago,[1] and in the thoughtful essay[2] of last evening. It is unnecessary for me to add to their authoritative statements. But it is not improper to remind the sceptic that the general mortality rate has been made to diminish; that the average duration of life has been appreciably increased; that in communities which use vaccination with reasonable fidelity, small-pox is rare enough to be a luxury; that typhus fever, once so common, is now a genuine medical curiosity, and to most physicians is as unfamiliar a subject for his clinical study as a case of the plague. Is it of no consequence, moreover, that dwelling-house architecture has followed the admonitions of physicians and sanitarians and that ventilation and drainage are no longer left to chance? Is it of no importance that the water-supplies of the State are more carefully protected from pollution than ever before, and that every new supply is critically tested in all its relations, physical, chemical and biological, before it is accepted? Is it of no significance that the men and women of to-day find in athletic exercise and out-door recreation the surest road to robust health? These are some of the queries that are suggested by doubts of the unbeliever in sanitary teachings and practice. To you, who have always been in harmony with the progressive spirit in

[1] The Annual Address for 1889, by Dr. H. P. Walcott.

[2] The Shattuck Lecture for 1892, by Dr. J. F. A. Adams.

Massachusetts which is embodied in her health laws, obstructive criticism will appear unworthy of serious reply. Preventive medicine looks to the future hopefully. Many of its problems will be solved by the trained bacteriologist whose greatest achievements are still before him. Public sentiment will approve more stringent methods in the preventive management of communicable diseases. Tenement blocks for the poor will be better adapted to their purposes. And in all measures—scientific, practical, administrative—the commonwealth, in the future as in the past, will look to us and our successors as its best allies and most efficient agents for the protection of the people from harmful influences affecting life and health.

There is one other department of the State's affairs to which I wish to refer briefly, because in its administration our profession has been conspicuous. I allude to that chapter of the Public Statutes entitled "Of Medical Examiners." The Massachusetts law relating to inquests is no longer on trial as a questionable innovation; it has passed the experimental stage and is now as permanent and stable as any part of the judicial system of the commonwealth. The practical experience of fifteen years has demonstrated that the legislature of 1877 enacted a law of exceptional value, thoroughly adapted to fulfil the purposes for which it was designed. In all this period, only two material amendments have been made, and neither of these modified the essential principles and methods pecu-

liar to the original statute; one of these changes simplified the disposal of the bodies of strangers found dead, and the other required publicity of the official records of medical examiners. In all its main features, then, the new Massachusetts method of conducting inquests has remained without modification since it was put upon trial; and, as a piece of experimental legislation, radically departing from traditional and familiar usages, it has accomplished most gratifying and successful results. And the reason for this is easy to comprehend. When the general court of 1877 determined that the venerable but discredited and abused system of investigating violent deaths by means of coroners and their juries had outlived its usefulness in Massachusetts, it was under an obligation to substitute a legal mechanism that should be simple, practicable, economical and trustworthy. And this it did with such consummate success as to challenge admiration. It provided a procedure that accomplished the desired end promptly and without friction. It differentiated the purely medical elements of the inquiry from those which were essentially judicial. It created a medical officer whose sole function it should be to determine, in any case of mysterious or violent death, the anatomical proofs of unlawful acts entering into the cause of death; and it made his conclusions upon this purely medical question the basis for further inquest-proceedings by judges trained in the methods of taking and sifting evidence and required to solve the problem of accountability in

the case. The initial stage, then, of the inquest is always the medical determination of the cause and manner of the death, and for this determination the law provides ample resources.

It is obvious that the responsibility resting on the medical examiner in the discharge of such a duty is not of a trivial character. In simple cases, even, where his observations are but confirmatory of evidence clearly established beforehand, he cannot regard his task as a slight one. Suppose a person to have been murdered by a pistol-shot wound in the presence of witnesses; the tracing of the missile through the dead body, with accurate study of its course, direction and lesions in the various organs and tissues, made and described in such a manner as to be clearly intelligible to a jury and creditable to the witness, is an exercise which calls forth the best activities of the medical mind. But such instances are not those which test the merits of our Massachusetts system of inquests most conclusively. The highest evidence of its value is found in the mysterious cases in which there is entire want of such information as may furnish a correct guide to the examiner in his proceedings; or in cases wherein the facts are purposely and wilfully concealed, or falsely stated, with the intent to cover a crime. A young, unmarried woman dies suddenly in the office of a physician, to whom she has gone for advice and treatment; if the medical examiner believes the doctor's ready statement and his circumstantial account of the affair, he will call the cause of the

death "heart failure" and demonstrate his own failure in the discharge of a delicate duty; but if he recognizes his obligation as a public officer, standing between the community and the commission of crime, he will push his investigation beyond the voluntary statements of interested persons, and he may be rewarded by finding that the fatal issue was the result of an abortionist's manipulations upon a pregnant womb, admitting air to the blood-vessels and causing a death by unlawful violence. Such an instance illustrates the possibilities for usefulness and efficiency which our system offers; it shows that to the qualities of ability, discretion and learning, which the statute requires of medical examiners, there may properly be added a wholesome incredulity in doubtful cases, a conservative agnosticism which refuses to believe that which is not demonstrated.

That the Massachusetts method of conducting these inquiries is acceptable is shown by the entire absence of real criticism, as well as by the cordial approval of jurists who have studied its details. It has commended itself to the authorities of other States, who find in it the indications of a great advance in comparison with the clumsy and inverted coroner system. It is quiet in its operation. It does not, by the exercise of noisy authority, upset and demoralize households overshadowed by recent grief. Its results are certain and tangible. It secures for use at trials for homicide the testimony of trained men well fitted by experience to be witnesses. It has absolutely eliminated all

scandal and sensationalism from inquest proceedings. It has saved money to the county treasuries, at the same time affording better service to the people. Incidentally, it has gathered a large amount of valuable medico-legal observations in the transactions of the society conducted by the medical examiners, and it has supplied material for a full annual course of practical study in legal medicine to the students of the Harvard Medical School.

The credit for suggesting and initiating the reform which has wrought these results, and for framing the legislative bill whose enactment made the reform practical, belongs to a single member of the Suffolk bar.[1] The credit for making the change an accomplished fact belongs largely to a few representative members of this Society, who persistently and effectively urged the arguments in its favor, and, in the face of determined opposition, convinced the legislature that a new method of inquests was imperatively needed. But the credit of making the law itself, once enacted, a success, rests with the medical men who have been commissioned to administer it. Left to the care of a body of selfish, reckless or weak men, appointed indiscriminately, this law would have quickly fallen into disrepute. But it has not been so left. The corps of medical examiners in commission to-day represents a selection made with care by the executive of the State. From the time of the first appointments down to the present, the office has been

[1] Theodore H. Tyndale, Esq.

kept out of the demoralizing influences of partisan politics, and for this the community should be cordially grateful. The large quota which this Society has supplied to the present ranks of this useful corps[1] contains some of the best representatives of the medical profession in Massachusetts; the same is true of the recent past, and when I recall to your minds the names of Hosmer, and Cogswell, and Russell, and Winsor, among the dead, who while living served in this relation, you will not marvel that the law has been administered successfully, for it has been administered by conscientious medical men striving faithfully to perform their duty. In the last fifteen years, these medical examiners, drawn largely from the Massachusetts Medical Society, have investigated the circumstances of more than twenty thousand deaths, and it is not an exaggeration to say that no method has yet been suggested by which this great medico-legal service could have been discharged so efficiently, with proper guarantees for the protection of the interests of society and the administration of justice.

From this allusion to a special medico-legal function of great responsibility which our Fellows are discharging acceptably, the transition is easy to a consideration of the relationship which our profession, in general, bears to the judicial department of the commonwealth.

III. To state the proposition broadly, the medical man finds himself in a court of justice

[1] Sixty-four out of seventy-three.

under the same exigencies which occur to the ordinary citizen, service on the jury alone excepted. He is either a plaintiff seeking reparation for alleged wrong, or a defendant meeting a charge of wrong-doing, or a witness summoned to testify in an issue to which others are the parties. Although these are the three varieties of necessity which take him, as they take others, out of the routine of daily life, and subject him to novel experiences more or less unpleasant, he is conscious that his vocation as a physician places him in a peculiar attitude unlike that of the layman. And it is these peculiarities characterizing our position in court that I now ask you to consider with me.

As a plaintiff, appealing to the judicial department of the State to settle the issues of a quarrel or to determine the money value of imputed wrongs, or to solve for him other problems of a similar nature, involving the law of contract, or tort, or trespass, the physician is a spectacle of extreme rarity. I think it can be claimed with confidence that medical men, whatever their other characteristics may be, are not noted for litigiousness. They do not readily engage in contention. They are generally too busy to find in the behavior of their fellow-men the occasion for law-suits. Although there is a certain hyperæsthesia which is said to apply to the profession in connection with the subject of medical etiquette, this never finds its way to the gates of the temple of justice; and in the ordinary affairs of life the doctor of medicine is seldom found on the hither side of the abbre-

viated Latinism which in the court docket stands as a low barrier over which the parties to a suit defy each other. If litigation brought into being by physicians were the only business which engaged the attention of juries or equity sessions, the courts would have long vacations and the practitioners of law would find other more profitable employment. The doctor in court as a plaintiff, then, need not detain us longer.

But with the doctor in court as a defendant, strenuously bending his energies and using his resources to resent an imputation upon his skill and care, the case presents a theme of serious interest, for it concerns the whole domain of our legal rights as medical practitioners. Most of the suits in which physicians are the defendants are actions instituted by former patients to recover damages for alleged malpractice. The fact suggests, at the very outset, some consideration of the obligations which the law imposes on physicians and surgeons in their treatment of the sick and injured persons who employ them.

To the medical man as he stands in the presence of a person who has summoned him for professional aid and counsel in time of suffering, the law says: "You were under no obligation to respond to the summons which called you to this bedside. This person had no lawful claim upon you for your services. However strongly selfish interest, expediency, prudence, or humanity may have urged you hither, you had the right to decline the call and to remain at home in comfort, if you so

desired. But having responded, and having undertaken the care of this case, you have assumed certain obligations which the law fully recognizes, and which you cannot avoid, except at the risk of losing both money and reputation.

"Your obligation is that of an implied contract which, though less formal and specific than an express contract executed in writing, is not less binding it its nature.

"You must continue in attendance here, and may not abandon the case or desert the patient without reasonable cause, or without allowing sufficient time for the procurement of other attendance.

"In undertaking the medical care of this person, you shall attend upon him with reasonable diligence and skill, and you will be answerable to him for any want of ordinary care, diligence and skill which results in his injury.

"Under the obligations of the implied contract, in accordance with which you are employed, you do not warrant or insure that all the results of your attendance shall be satisfactory, that there shall be a perfect recovery, or that your treatment shall effectually stand in the way of unexpected complications.

"Your judgment relative to the application of certain remedies or modes of treatment may err, and the law will not hold you responsible for ill results growing out of errors of judgment. But you engage, under the law, to treat this case in such a way that any injury which the patient suffers, in its course or subsequently, cannot reasonably be

traced to a neglect of competent and ordinary care and skill on your part as its proximate cause."

Such are the principles established by the common law as the intangible environment of the medical or surgical attendant for his guide and control under the usual circumstances of his employment. They are the rules which underlie and govern those actions of tort wherein the claim is set up that negligence and unskilfulness on the part of the medical attendant have caused injury and distress to his patient, and that money will be the proper remedy to heal the wrong imputed to him. And it is reassuring to record the fact that these rules and principles, however difficult they may seem to be as practical guides, have been in effect a shield rather than a menace to the interests of defendant physicians, and that the cases are fortunately few in number in which it can be said that unjust and unfounded verdicts have been returned by juries upon the issue of imputed negligence and unskilfulness; where verdicts against the defendant have been recorded, the testimony has usually left little question that the decision was right, because the negligence charged was really inexcusable on any reasonable ground.

But while this is true concerning the issue of suits for damages, it is also true that the law interposes no obstacle in the way of initiating such suits. Let us suppose that the medical attendant has done all that the law requires in the care of his case, that he has to the best of his ability used ordinary and reasonable skill and diligence and

has avoided all measures that could be criticised as experimental, he may nevertheless, through circumstances and conditions over which he has no control, find himself a defendant in an action of tort brought by his patient. Perhaps the dislocated shoulder which he has reduced months ago, with proper attention to all surgical details, persists in giving pain and in refusing to resume its mobility. Perhaps the fractured femur is restored to duty with a permanent and irremediable though unavoidable shortening. Perhaps the broken forearm, when taken out of the splints, has an uncomely deformity in spite of the most assiduous care. Or, in a puerperal case, perhaps the woman on her recovery finds that she has a disgusting leakage of urine through a fistula in the vesico-vaginal septum, and she remembers that the doctor used forceps to deliver her; but she forgets that she consented to their use only after hours of ineffectual labor, during which the child's head lay low down, without progress, pressing upon the very spot that is now the seat of her misery. In any of these events, whatever has happened out of the ordinary course, it is easiest to blame the attending physician for it; and the next step is equally easy, the initial step in the proceedings for what is called "getting satisfaction." However clear the attendant's conscience may be that he is not blameworthy; however positive his memory may be that he has done nothing and has omitted nothing in his attendance that was in violation of the soundest teaching and

the tests of experience, these will not save him from the trouble and expense of defending himself against the charge of negligence and unskilfulness as it is formulated and openly made in court. The story is an old and familiar one. Too often the motive that initiates the suit and urges it forward is a most unworthy one, and is scarcely to be distinguished from the wickedness of blackmail. Too often it is nurtured and stimulated by lawyers more hungry for plunder than ambitious for a good name. Too often it is encouraged by the unfriendly words and actions of professional rivals. Sometimes, no doubt, a suit is well founded and the complainant really believes in the justice of the complaint, and is candid in accusing the physician of carelessness; but such apparently well-founded instances are exceptional, as we all know, and they cannot bear comparison with the number of suits brought with discreditable motives. Over these prosecutions, the physician is powerless to bring any control; however strong his defence may be, he cannot prevent a trial, with all its annoyances, risks and costs, except by adopting the course of paying money to settle the claim out of court,—a course which any self-respecting medical man will not adopt, though sorely tempted to escape thereby all the wretched miseries of a jury trial.

This constant menace of unjust lawsuits which every physician, and especially every surgeon, has constantly before him, as the law is now practised, is an evil which we may properly criticise and

denounce. There is one remedy for it which might well have general application; if every complainant of the class we are considering were required, upon initiating the suit, to demonstrate his sincerity in the justice of his cause by filing a sufficient bond, with sureties, to indemnify the defendant physician for all the costs of the trial if the jury should give a verdict unfavorable to his claim, we should hear far less of these iniquitous suits than we now do.

It has often been suggested that, in view of their liability to unwarranted claims for malpractice, medical men would do well to organize co-operative defence unions for their own protection. Such a suggestion has much to make it attractive, and it has actually borne fruit in England in a flourishing and fully equipped association prepared to assist its members when they are brought to bar as the victims of irritable, or avaricious, or depraved human nature. The way is so easy for ungrateful or unprincipled convalescents to institute charges, and it is so burdensome and costly to refute such charges, that a medical defence union appeals to the imagination very strongly as a real relief. But while such a fellowship might serve to deter the unscrupulous from bringing suits against physicians, in such suits as are pressed to trial, the appearance of a medical defendant backed by the money and the sympathy of a numerous company of his professional brethren might have a reactionary effect upon jurymen, who are notoriously ready to render verdicts against corporations and corporate interests.

But the incivilities of the so-called civil suits which we have been studying do not exhaust the opportunities offered to physicians to become defendants in legal proceedings. There is a kind or a degree of negligence and unskilfulness which, while offering no bar to an action of tort, is sufficient ground for the State's interference and may become a subject of investigation on a criminal charge. It is when the death of a patient is charged to the carelessness or ignorance of the attending physician that the machinery for criminal prosecutions is set in motion for his discipline. All law-writers use nearly identical terms in their definition of the degree of dereliction which constitutes criminal malpractice; and this general definition is so tersely expressed by Mr. Bishop in his work on Criminal Law that I quote it: "If a person, whether a medical man or not, profess to deal with the life or health of another, he is bound to use competent skill and sufficient attention; and if he cause the death of another through a gross want of either, he will be guilty of manslaughter."

It is, then, that degree of malpractice which the law characterizes as "gross" which renders the practitioner liable to punishment under a criminal charge. As in the law of civil malpractice, so here, definitions hardly define; for the term "gross" conveys a relative and not an absolute meaning, and in many cases where a man's liberty, or possibly his life, depended on the decision, a real difficulty might easily arise in applying it.

When we remember that such a decision is to come from twelve unenlightened and perhaps prejudiced jurymen, we may well contemplate with something akin to awe the immunity of medical men, and feel a sense of gratitude that all deaths are not made the subject of judicial investigation. On the other hand, however arbitrary the criminal law may be in theory, the leading cases which are reported demonstrate that, in practice, medical defendants under the accusation of criminal negligence have been dealt with leniently.

Chief Justice Parsons, in his charge to the jury in the notorious Thomson case, said there was no reasonable doubt that the patient had died by the unskilful treatment of the prisoner and that the latter's ignorance was very apparent; but that if the prisoner acted with an honest intention and expectation of curing the deceased by his dosing, although death, unexpected by him, was the consequence, he was not guilty of either murder or manslaughter. The defendant's acquittal followed promptly. This statement of the law served as a precedent in Massachusetts for seventy-five years. It has been somewhat modified within the past ten years, the Supreme Court having set aside a convicted charlatan's reliance upon it; in this latter case, it was decided that a verdict of guilty was correct because the death, which followed the prolonged swathing of a woman's body with flannels saturated with petroleum, was the result of reckless and foolhardy presumption judged by the

standard of what would be reckless in a man of ordinary prudence under the same circumstances.

But it is incomprehensible that any individual in my present audience can have any personal or direct interest in these legal decisions concerning homicidal malpractice. The judicial history of Massachusetts contains no mention of any reputable medical man in the position of a defendant indicted for the destruction of his patient's life through gross carelessness or reckless and foolhardy presumption. Such an exhibition is monopolized by the representatives of quackery.

Let us turn, then, to a far more familiar relationship between medical men and the courts of law, that sustained by physicians as witnesses. Rightly considered, the function of a medical witness establishes one of the most dignified and honorable positions in the service of the commonwealth which a member of the medical profession can discharge. That the function has been abused and has experienced a measure of disrepute, is quite true. That there are certain features of it which are deplorable and most unsatisfactory is also true. But it is likewise true that, with all the criticism and disparagement of which it has been made the subject, medical evidence will continue to be an indispensable element in judicial proceedings, and the medical witness, if he be properly equipped for his service, if he be duly appreciative of the real responsibilities which rest upon him, and if he studiously avoid certain well-defined errors and evils which have grown up in connection

with medical testimony, has it in his power on every occasion to command the respect of all who observe him, and to be, in the court of justice as in the sick-room, the representative of sound learning and of manly deportment.

It has been customary, in treating of medical evidence, to classify medical witnesses as of two distinct varieties, according to the assumed character of their testimony; they are regarded as ordinary witnesses if they testify to facts, and as expert witnesses if they express opinions or undertake to interpret facts. This purely arbitrary distinction has had a mischievous tendency affecting every medical witness, hampering his usefulness on the witness-stand and opening the way to faulty practices. The differentiation of facts from opinions is of service practically, so far as physicians are concerned, in establishing a basis for remuneration and in impressing juries favorably by creating a presumption of superior attainments on the part of so-called experts. But if we recall the usual methods under which medical witnesses are employed, we shall see how artificial is such an attempt at classification. The truth is that nearly every piece of medical testimony is a composite of facts and opinions in which the facts largely predominate. But they are medical facts, the correct determination and statement of which require medical knowledge, skilled training, and a special aptitude. In a trial for homicide, for example, the medical examiner who describes the post-mortem appearances observed at the autopsy is dealing with

anatomical facts, and the correct inference of the cause and manner of the death rests, as an incident only, on these many ascertained data, the fruit of his observation. So, too, when the chemist exhibits to the jury the arsenical mirror which is the result of his analysis of suspected organs or remnants of food, he is submitting, not opinions, but incontrovertible facts. When Professor Wood, in a recent capital trial in a neighboring State, described the methods and stated the results of hundreds of micrometric observations of blood-globules recovered by him from stains upon clothing worn by the accused, and testified that his observations were consistent with the view that the stains were made with human blood, he was giving medical facts. When Professor Austin Flint testified that in his microscopic and chemical examination of the material found under the finger-nails and on the clothing of a degraded criminal accused of the murder of a woman and the mutilation of her body, he detected crystals of tyrosine and other substances which must have come from no other part of the intestinal tract than that found cut open in the victim's abdomen, he was giving an indisputable physiological demonstration of objective facts, which fastened the guilt of the homicide upon the prisoner. When Professor Jeffries Wyman, in the memorable case which so engrossed public interest in this community in 1850, established by his evidence the identification of a mutilated human body, the work that he did was not guess-work, but was again a demon-

stration based upon accurately observed anatomical material.

These are illustrations of the highest type of medical testimony, commonly called expert, but really an extraordinary grade of ordinary testimony relating to facts. The same principle is seen in the numerous civil suits growing out of imputed negligence, whereby accidental injuries result. The testimony of medical men connected with these cases is largely directed to the description of symptoms and conditions of a purely physical and objective character; to the establishment of the proof of genuine lesions and the elimination of what is subjective or feigned; to the reasonable connection of well-ascertained causes and effects. Even in the comparatively rare cases in which a medical man answers purely hypothetical questions, and gives his opinion upon assumed facts, of which he has no personal proof, the examination does not end with this exhibition of the expert's technical office, but wanders away into the various regions of medical knowledge pertinent to the questions at issue; the hypothetical recedes from view and the actual becomes prominent.

Conversely, the physician who responds to a subpœna as an ordinary witness, without any intimation that his testimony will extend beyond simple matters of fact, is generally asked some questions when on the witness-stand which call for the expression of an opinion; and this entitles him to recognition and remuneration as an expert.

He may evade the dilemma by declining to answer the questions, and may, for his reward, have a mercenary element imputed to his motives. Or he may take the risk of personal embarrassment by attempting to formulate on the spot opinions on difficult issues adroitly presented. In either event, the fact remains that a purpose has been shown to use him as a medical expert when his call to court gave no suggestion of such a purpose.

The conclusion, then, which I wish to draw from these considerations is that all medical testimony is of the nature of skilled service, and deserves appreciation as such. The State has no right to place the usual low value on evidence which, though denominated "ordinary," implies under every possible contingency an adequate degree of learning, skill and training in medicine. It has been held repeatedly that knowledge, in science or art, is its possessor's capital, accumulated through years of study and application; and that neither the commonwealth nor any individual can make any lawful requisition upon that capital without substantial reimbursement. This is the well-recognized and universally applied rule governing the employment of medical experts, who go to court to state opinions with facts. Why should not the same rule attach to the services of surgeons and physicians who, heeding the peremptory summons, respond as witnesses to give evidence of clinical facts, of physical appearances, the presence or absence of signs and symptoms, and all those other matters the correct observation

and description of which require a definite amount of knowledge, the fruit of much patient study or long experience? The demand which in the name of the commonwealth is made upon medical men, wasting their time in tiresome delay, interrupting their professional routine of duty, subjecting them to disagreeable and irritating experiences, extorting from them facts acquired under the confidential relations of the sick-room, is not one which, under prevailing conditions, is answered with cordiality. It is among the unpleasant incidents of professional life. It reminds us that of all departments of our practical work, the medico-legal service is the only one which we cannot control, or evade, or transfer to others. The call of a judicial summons is imperative, and physical disability will alone excuse its neglect. When, therefore, we consider the nature of the testimony which the medical witness will impart, its indispensable value in determining disputed questions, and the degree of technical knowledge required for its correct presentation, we do not exceed propriety if we ask that the State shall in some way provide fit methods for the adequate reward of such involuntary service, or shall place all purely medical testimony in the relation now held by expert testimony and subject to the ordinary customs of preliminary adjustment and agreement.

One other feature of medical testimony solicits attention; it relates to the deportment of the witness in court. The ideal medical witness possesses these qualities: his demeanor is dignified and un-

constrained; he has large stores of well-seasoned knowledge; he is quick in apprehension, firm and immovable in his convictions, but conservative and judicial in reaching them; he has a retentive memory, a reserved courage and an imperturbable temper; he is terse, direct, clear and concise in statement, and especially is an adept at translating every technical term into words and phrases clearly intelligible to every juryman; he abhors garrulity, flippancy and trickery; he aims to be candid and strives to be impartial, disinterested and free from bias.

Sometimes, though very rarely, one sees a physician on the witness-stand who represents faithfully all these requirements; he is the object of our emulation and envy. Much more commonly, however, medical testimony illustrates characteristics quite in contrast with the ideal. The physician whose methods on the witness-stand we do not desire to copy is garrulous, affected, pedantic, flippant, ready to engage in controversy, dogmatic, and above all saturated with partisanship. Of all these faults, the last is the most common and conspicuous and the one which has brought the greatest reproach on medical men as witnesses; it is this which has led judges on the bench to disparage and belittle medical experts; which has caused writers on jurisprudence to discredit their value; and which, in practice, has induced juries to ignore their testimony altogether in trying to reach a verdict. But while admitting that partisanship is a too common element of medi-

cal evidence, I insist that it is an evil for which medical men should not be held responsible. It is the unavoidable and legitimate fruit of the conditions under which the modern practice of the law is pursued. The physician in the sick-room does not exhibit the disposition here depicted; but place him under the novel and subtle influences of the court-room and he becomes another creature. In this new relation, he inevitably finds himself subject, in greater or less degree, to peculiar temptations. For nearly all that is objectionable in the exhibitions of partisanship made by medical witnesses, I blame the methods under which such experts are employed; the system, and not the witness, is at fault. A case, for example, occurs which offers an opportunity for the use of medical testimony. You receive a politely insinuating invitation from the counsel, to serve as an expert. You do not inquire very closely into the grounds that have determined the selection; you feel complimented, at all events, and you consent to be retained. Now, having fully committed yourself to the service of your employer, your independence is almost necessarily laid aside. You are expected in preparing for the trial to develop all the elements in the case favorable to your employer's side only. The advocate consults with you, nourishing in you a controlling partiality, and doing all in his power to stimulate a cordial interest in his client's cause. The witness thus appproaches the trial, expert chiefly as a partisan medical advocate. Against the insidious influences which

promote this surrender of mental equipoise, few physicians could successfully defend their judgment. Ordinarily, the exigencies of his service, his sympathy with the client's claim, his sense of obligation to fulfil an implied contract, all draw the medical witness from a judicial independence.

Then at the trial itself, still more compulsory influences encompass him. He now finds himself in the arena, marshalled with others to defend his own side, to defeat the opposing side. He is harassed by the technical limitations of the rules of evidence. Through the inability of lawyers to conduct acceptably an examination on medical subjects, he is made inadvertently to state views which, under other circumstances, he would not think of supporting. The leading questions with which the cross-examination bristles ensnare him into unexpected and embarrassing corners, out of which the easiest way lies through extraordinary expositions of medical knowledge. Professional pride compels him to defend stoutly his position, a retreat from the ground being deemed worse than the blunder which took him there. First, last and always, he is to shape his course with the single aim of helping to win a verdict favorable to his side, and of earning thereby the dollars which are his reward for faithful service.

It is cause for regret that the English and American methods of employing medical experts have fallen away so far from the primitive practice. Under the Roman law, the physician in court as an expert witness held a relation of exceptional

honor and responsibility; he was *amicus curiæ*, an independent and unprejudiced interpreter of medical facts. He was summoned to instruct the court and jury in matters of which they had, presumably, an imperfect knowledge. His duty was to aid in establishing the whole truth. In such a position, a physician occupied an office of honor. He was chosen because of his fitness; he truly represented his profession. And in still more recent times, even down to the present period, the system in vogue in France and Germany is far in advance of our own in securing the end which the theory of medical expert testimony designs. Either under the German plan which provides for official experts, or under the French method which leaves the choice and employment of the expert to the discretion of the court, the medico-legal results are admirable and in striking contrast with the procedures with which we are familiar, and which permit a suitor to come into court with a company of medical Hessians enlisted to defeat his opponent.

Now, what can be done—and this is the one important question for consideration—to modify, or, if need be, to revolutionize these unsatisfactory methods? Without pausing to review the various propositions that have been made from time to time for accomplishing this end, I remark at the outset that, as may readily be inferred from what has been presented, the first thing to be desired is the removal of the medical witness from the influences and temptations of partisanship; he must be

lifted far above the plane of bias. This is the corner-stone on which the entire new structure must be built, if the evils of which we complain at present are to be eliminated. Other provisions are mainly correlative and subordinate details growing out of this.

To secure this end, the best way, because it is the most in accord with American notions of fairness, is that which would provide that the medical expert in any action at law, civil or criminal, should be the choice of the two parties interested in the litigation; or, in the event of their disagreement or neglect, the choice of the court.[1] Grant this primary principle, and all other secondary questions and exigencies will find comparatively easy adjustment. The advantages of such an innovation, both theoretical and practical, are too plain to be mistaken. Theoretically, such a plan would secure experts in fact as well as in name, since it would obviously be for the interest of all concerned that the best available medical judgment should be obtained upon technical questions involved in the issue on trial. Instead of the present deplorable exhibitions, so amusing to lawyers, so discreditable to our profession, so subversive of justice, we should see a true representative of medical science, selected because he is recognized as such, appearing in court as the interpreter of the medical data established in the

[1] The practicability of this method was demonstrated by the New Hampshire Supreme Court in a case which occurred during the preparation of this discourse.

evidence. We should see him the impartial exponent of the most recent authoritative advances in science, as well as of the settled principles which are the fruit of long experience. We should see him, with the same judicial independence which the presiding justice himself must display, passing judgment, without fear or favor, on matters which legitimately fall to his office as an expert. There would be little danger that this altogether honorable function would fall into unworthy hands under such a system; the man chosen would, from the necessities of the case, be well known as the possessor of knowledge fitting him to comprehend and to elucidate the points presented in the testimony. The man of pronounced and peculiar views, the man of hobbies, would not be sought; his judgment is already discounted.

In practice, the expert thus selected would make such investigations as the case demanded, would listen to all the testimony, and at the proper time would report his conclusions, either as oral evidence or, preferably, in the form of a written statement. Here would occur an opportunity for professional distinction. The name of medical expert, instead of conveying with it a questionable flavor, would become a term of good repute, attracting rather than repelling the master-minds in our profession; while the many-sided questions presented in legal suits and actions would offer occasions for medico-legal reports such as have made Germany and France confessedly the leaders in forensic medicine.

But at just this point, the typical barrister, with a gesture and in tones familiar to those of us who have ever served as witnesses, says: "Stop a moment! I object!" And when asked to state his objection, he replies: "I object because such a scheme would interfere with the constitutional right of the individual citizen to defend his life, person, property or character by producing 'all proofs that may be favorable to him.' I object because when I undertake to prosecute a suit at law or when I am engaged to defend a client, I wish to know precisely what the evidence favorable to my cause is to be; I have no intention of remaining wholly ignorant of the medical conclusions up to the time of the expert's appearance in court. Moreover, I object because I will not waive my control over all accessible proofs that will aid my purpose. I am in court theoretically to see that justice is administered; but I am here in reality to do what I can to win a verdict for my client, and I wish, in order to secure that end, to employ all lawful means, including medical evidence of my own choosing; and if this evidence is skilfully warped and stretched to meet well the exigencies of my claim, it will be so much the more useful and acceptable." This is the lawyer's view of the matter; and it is this spirit which has hitherto stood as an insuperable obstacle in the way of a much needed reform of the present methods. It is a purely selfish spirit held by a large part of the legal profession, but repudiated by a few conspicuous and honorable exceptions. It will continue to offer

objections to the advent of better procedures, however fully it may have been demonstrated that they are entirely feasible and satisfactory in practice.

Meanwhile, we as physicians have a plain resource. When required to discharge the duty of medical witnesses, let us diligently aim to illustrate a high standard. Let us avoid well-recognized errors to the utmost of our ability. Let us decline to act simultaneously as medical advocates and medical witnesses. Let us endeavor to give our testimony with the same candor and the same independence which would characterize our statements if instead of the peculiar environment of a court of justice, we were in the presence of an audience of friendly, but critical, medical associates. Difficult as such a duty is, it is not impossible of performance.

IV. This review of the relationship which our profession holds toward the commonwealth will be incomplete without some reference, in conclusion, to a still higher obligation resting on us. It is the obligation of loyal citizenship, involving duties superior to any of those which I have undertaken to discuss. Men sometimes speak of citizenship as a privilege, to be used or laid aside with easy indifference. Properly considered, it is much more than this; it is a living trust, a priceless heritage, involving duties as well as rights. In the presence of educated physicians, there is no need to emphasize this. They recognize their obligation and their opportunity,—their personal

obligation of earnest loyalty, their opportunity, through the place they hold in the community and in the household, to raise the level of civic virtue by precept and example. To them, the service to the State which the best type of citizenship presents is not expressed in political zeal, in greed for office, or in an active partisanship which in medical men is always especially offensive and objectionable. It means, on the other hand, absolute independence of all machine methods in politics. It leaves practical politics to "professional" politicians, but it never fails or omits to register its convictions through the agency of the ballot. It is found in sympathy with all reasonable methods of moral and social reform, but avoids impracticable radicalism and sensationalism. It stands for popular education and defends the public schools from all assaults, overt or insidious, that would impair their usefulness and freedom. It insists on fidelity and honesty in official station. It aims to aid in shaping a healthy public opinion upon all matters pertaining to the welfare of society and the elevation of mankind. It protests against the fastidious indifference which too often marks the attitude of educated men toward civic affairs. When the nation's life is assailed, it is found at the front represented by such men as Derby and Otis, and Sargent, and Hooker, and Bell and Lyman, adding new lustre to the proud title of Massachusetts volunteers.

Fellows, these closing years of the nineteenth century are making an extraordinary record of

progress in all that pertains to the science and the art of medicine. The brilliant, almost audacious, achievements of modern surgery and the beneficent triumphs of rational and preventive medicine, inspire our admiration and stimulate our zeal. In the rapid movements of our noble profession along all the lines of advanced development, we find it difficult to keep our leaders in sight; star-eyed science certainly does not encourage loitering on the part of her votaries. But while we strive to keep in touch with this spirit of progress in all that belongs to our domain as physicians, let us not forget the claim which the commonwealth may properly make upon us as citizens. Let us seek earnestly, each in his own community, to illustrate the highest ideals of loyalty and fidelity. So may we, in a double sense, as physicians and as citizens, discharge our duty to humanity.