

**Part I.—Original Articles.**

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**THE ELEVENTH MAUDSLEY LECTURE :**

**“ TRUTH . ”**

*Delivered by Mr. JUSTICE McCARDIE at the Quarterly Meeting of the Royal Medico-Psychological Association, November 20, 1930.*

It would have been a privilege to address you to-day on the vital and urgent question of the sterilization of mental defectives. It would have been an equal privilege to discuss the validity at the present time of the famous but ancient McNaughten Rules with respect to insanity and criminal responsibility.

It was, however, the wish of those who so ably guide the Maudsley Trust that the lecture for this year should be free from technical detail.

So I decided, perhaps unwisely, to choose the subject of “ Truth.”

Truth, as a word, is the most majestic in the English language. Truth, as a living principle, is of deep concern to all citizens. Dr. Maudsley was, throughout his long life, a devoted lover of the truth. My subject is therefore a tribute to his memory. For ten years he was Professor of Medical Jurisprudence at the University of London. I will therefore, if you will allow me, devote the major part of my time to those aspects of truth which arise in our Courts of Justice.

This lecture is held under the auspices of the Royal Medico-Psychological Association. Whatever be the precise range of psychological activities, it is, I take it, clear that the primary purpose of psychology is the study of the human mind, the human instincts and the human emotions. That, perhaps, is the greatest study of all. The day has gone by when psychology was but a mere aggregate of uncertain data. It is now more than a division of philosophy, more than a branch of science. It may be said justly

that it has become a practical art as well. Psychology may establish itself as the dominant influence of the future.

I give this full recognition to the present status of psychology, because I conceive that as the range of its operations widens, it will devote a full measure of attention and energy to that greatest and most comprehensive of all matters, which men call "truth."

I will not pause to examine the many definitions of "truth." I will not touch on the distinctions between truths which are immutable and fundamental and those which are mutable and contingent. Nor do I more than point out that there is truth of fact and truth in the statement of fact—truth of opinion and truth in the statement of opinion.

It will suffice for the purpose of this address if I define truth broadly as "conformity to fact and reality." Time will not permit me to consider those courteous inaccuracies of statement which lubricate the daily intercourse of life, or to analyse their influence on our standards of honour and character. Nor will I dwell on those merciful rules of reticence which so often save not only the living but also the relatives of the dead from the bitterness of unneeded exposure.

Let him who will discuss the ethics of such matters and determine, if he cares to do so, the conflict between the claims of mercy and the claims of truth.

Still less is it necessary to examine the questions raised by a remark made by Mr. Bernard Shaw in *Heartbreak House* (published just after the Great War), when he says :

"Truth telling is not compatible with the Defence of the Realm Regulations."

These and other fascinating matters must be left to other occasions. I will ask you, in due course, to come with me to a Court of Justice and to see with me the problems of truth-finding with which a Court must deal.

I will ask you to consider whether psychologists can offer any practical suggestions as to the tests to be applied by those whose duty it is to discover the truth. He who can give such suggestions will indeed be a benefactor to the cause of justice.

You will, I think, agree with me that the small world of human nature to be seen within the walls of the Courts of Justice is very much the same as the larger world to be found outside those walls. I should like to bring to your attention some of those grim realities of falsehood which affect the administration of justice, and which touch the interest of every citizen, be he psychologist or not. For

you and I are alike searchers for the truth. The doctor in his consulting-room, the psychologist in his study, the surgeon in his operating hall, are much the same in their purpose as the Judge who sits on the Bench. Over each there stands the august but invisible figure of Truth.

I speak to you to-day, not as a scientist, but as one who for nearly forty years at the Bar and on the Bench has watched the subtle phases of human nature, the constant workings of self-interest, the powerful influence of bias, and the unceasing struggle in the Courts to vindicate or defeat the truth.

It is well for scientists, as for others, to step aside, now and again, from their accustomed grooves of work and thought and to enter another path of observation and inquiry. It is so easy for each of us to overlook things of importance.

But before we go to a Court of Justice, shall we glance at the world around us, and also look for a minute or so into our own minds and instincts? How often is truth still upon the scaffold? How often is truth still kept in the dungeons of suppression? These are indeed great questions!

But truth is a vast subject and, as John Stuart Mill once remarked:

“On all great subjects there is much to be said.”

I can therefore deal with a few aspects only.

And first, in what spirit shall I approach the topic of truth?

In the spirit of enthusiasm? Surely not, for, as the late Lord Balfour acutely observed:

“Enthusiasm is a great thing, but it is a pity that so few enthusiasts can be trusted to speak the truth.”

That is a hard saying, but it seems to me to be one of profound and far-reaching significance. No more potent cures for enthusiasm are to be found than in the comparative study of science, of history, of economics and of law. The words of Lord Balfour may well be taken to heart by those eager and ambitious propagandists who from time to time advocate, in so feverish a manner, their vast and numerous schemes of social change.

Enthusiasm is an enemy to truth unless it be guided and restrained by a knowledge and love of truth. The psychology of enthusiasm awaits the attention of expert students of human nature.

I should myself ever wish to deal with the subject of truth in the spirit of a fearless and unbiased man of science. How profoundly different would our public life be to-day if that spirit had been

adopted by those who profess to deal with the grave social and economic problems that beset the Nation. I venture to think that the key-note for honourable public life was given by the words used by Prof. Parker of T. H. Huxley :

“ He never faltered in his firm determination to speak the truth at whatever cost of popularity.”

Equally striking, I feel, are the words used by Charles Darwin in his *Autobiography* :

“ I have ” (he says) “ steadily endeavoured to keep my mind free so as to give up any hypothesis, however much beloved, as soon as facts are shown to be opposed to it.”

It was once observed that “ the greatest tragedy in life is to see a theory killed by a fact.” But the tragedy is a tragedy only for the error. It is, for truth itself, a triumph.

Public controversy in this country will never, I feel, rest on a righteous basis, until the spirit of the fearless and unbiased scientist is recognized and adopted by all who address the people.

The task of psychology towards establishing that spirit may be a hard one, but it will, I believe, be achieved ere many decades have gone by. Happy the day when each public controversialist can apply to himself the great words framed by the late Lord Balfour and say :

“ I prefer truth to victory.”

Looking broadly at the world of public and argumentative speech and print around us, it seems to me that truth has three major though latent enemies. They are—(1) lack of courage, (2) self-interest, and (3) bias. How often we overlook them! How rarely do we rightly estimate their reality and force! May I say a word as to each?

(1) *Lack of courage*.—Shall we not all agree that lack of courage lies at the root of much that lowers the standard of our public life? Too many men whisper to themselves the words of Voltaire :

“ I am fond of truth but not of martyrdom.”

Surely they should strengthen themselves with the nobler spirit of Russell Lowell when he says :

“ I honour the man who is willing to sink  
Half his present repute for the freedom to think.”

(2) *Self-interest*.—Here is a grave enemy attacking truth in many ways—sapping it in innumerable directions. If we watch the play and movement of life around us we shall see on every side how wide-reaching and deadly is the influence of self-interest.

With respect to every controversial utterance, whether written or spoken, I should myself put the question: What, if any, self-interest has the writer or speaker to serve?

If we put that question and press it with severity, then we shall be able to fix the real worth or worthlessness of much that is said and written.

(3) *Bias*.—The history of bias has yet to be written. The psychology of bias has yet to be fully revealed. Here, indeed, is a subtle and powerful enemy to truth, with its tentacles spread in every direction and working with constant and cogent pressure. How little do we realize all that bias means in the great sphere of argument and opinion!

There are, I think, two vital facts to be remembered at all times. First, that bias works not openly but surreptitiously; and second, that it produces evil effects which are beyond measurement or calculation. I venture to suggest that with respect to every book, every newspaper, every article, every speech there should be asked the question, What is the *bias* of the author or speaker?

Few, indeed, are the publications and utterances (other perhaps than the rigorously scientific) which are not tainted with the insidious workings of bias. How greatly a frank admission of partisanship (if only we could get it) would weaken the force of many arguments! It would create a corrective and beneficial mistrust in those who read or hear. The evil would be known and therefore half destroyed.

It seems to me that one of the dangers to-day is the assumption by too many of an attitude of impartial outlook as a mere cloak for subtle and misleading assertions. The vast majority of ordinary folk have not yet learnt the psychology and methods of propaganda.

But as we mention the outside world we must be reminded of ourselves. Do we perceive the foes of truth that may be lurking in our own minds and instincts, whether these foes be lack of courage, bias, self-interest or the like? Has our analysis of the faults of others been accompanied by a like analysis of our own mental and emotional equipment?

We may say now and again, *That* man is biased. Does it occur to us that such a remark may spring from the fact that we ourselves are biased against him? The subtleties of human nature are indeed strange.

"*Thou art the man*" are words of Scripture. They might well form a text from which psychologists could preach.

It is more than three centuries since Francis Bacon published his famous *Novum Organum*. You will remember the well-known *idola*

(or obstacles to truth) there set forth. They are much the same as those named, some three centuries earlier, by Roger Bacon in his *Opus Majus*.

To the enemies of truth I have expressly mentioned may therefore be justly added others, *viz.*, (1) undue regard to ancient authority, (2) habit, (3) prejudice, (4) false conceit of knowledge, and (5) indolence of mind. All these enemies are around us to-day, and it is for psychology to play its part in defeating them. I believe that the worthier part of the nation is yearning for a fuller measure of truth. Nay, more—it is yearning for a new attitude to truth. I myself trust that the day is coming when a fresh spirit will awaken, and when, above all, the bitterness and bias of the mere partisan will be regarded as the symptoms of a moral defective.

May I now speak to you on “truth” in our Courts of Justice? It is a subject far too rarely discussed. It is a grave matter. It touches all citizens, although, of course, the litigant and the accused are, of all men, the most deeply concerned with truth.

To-day I need not deal with decisions on points of law. They are technical aspects only of the Courts and of comparative rarity. Questions of fact are the most vital concern of the Courts. Upon those questions depend fortune, character, freedom—aye, life itself.

In 1845 Daniel Webster, of the United States, in addressing Mr. Justice Story, said :

“ Justice, Sir, is the great interest of man on earth.”

These were noble words—alike for the ordinary citizen and the trained psychologist. Truth of testimony is essential to the right administration of justice. Perjury is the great enemy of justice. There is no more difficult task in the world than to discover the true and expose the false.

May I venture to hope that those who engage in the study and practice of psychology will give a generous measure of their future attention to the momentous problem of truth-finding in our Courts? I myself will gladly welcome every practical suggestion that responsible psychology can give. You may recall the interesting forecast by the late Lord Birkenhead in his recent book entitled *The World in 2030 A.D.* There he said (p. 196) :

“ In the year 2030 forensic eloquence will cease in Courts of Law. Prevarication, whether by prisoner, witness or advocate will be instantly detected and therefore worse than useless. What will it avail a murderer if a Demosthenes demand his acquittal from a jury which has been scientifically convinced of his guilt on psychological grounds ? ”

Happy the day when that prediction is fulfilled !



Now the question at once arises : Is perjury (that is, wilful false evidence as to facts) widely prevalent in our Courts to-day? The question is a serious one. I answer it at once. In my view perjury can never have been much more rife than it is at the present time. It is, I fear, equally rife, perhaps more rife, in other countries. Perjury is, of course, not a new thing. I observe that towards the close of the seventeenth century a well-known judge (he was called Lord Jeffreys—Lord Chief Justice) said :

“ We live in an age when truth passes for nothing in the world and swearing and forswearing is taken for a thing of course. Had the zeal been half as much for truth as it was for falsehood it had been a commendable zeal.”—“ The Case of Bradden,” 1684, 9, Howe, *State Trials*, p. 1198.

Perjury exists to-day to a most deplorable extent. I feel compelled to say that it is committed in greater or less degree in a majority of the civil and criminal cases that come for trial before the Courts. The ordinary layman, be he of worldly experience or not, has but little conception of the repulsive amount of false evidence that is given.

All of experience must agree that perjury is the greatest of all evils in the Courts. I think that the public should realize the extent to which it exists. Complaint is sometimes made of the length of legal proceedings. Let me point out at once that if perjury could be stopped the length of the trials would, in the large majority of cases, be incredibly short. It is, as a rule, the basic cause of prolonged hearing on questions of fact. Moreover, if perjury were generally renounced as an instrument of misleading the Courts, civil litigation would at once fall to a fraction of its present volume, and criminal trials would occupy less than half the time they now demand.

Perjury is indeed a terrible evil and menace. Perhaps the most glaring type of perjury has arisen since the *Criminal Evidence Act* 1898, which enabled all persons charged with crime to give their evidence on oath in the witness-box. The psychological and sociological effects of that legislation are well worthy of attention. Broadly speaking it may be said that, if not pleading guilty, those who are accused avail themselves of the right to enter the witness-box. Now a man charged with crime gives evidence, as a rule, not to admit an offence but to deny it. Go, if you will, to any Criminal Assize Court and you will hear day by day an almost incredible amount of deliberate falsehood committed not only by the man charged, but also, I may add, by wife or child or relative or friend who may be called to support his defence. Perjury by a

person accused is now, I regret to say, regarded as being the normal incident of a contested criminal trial. It has ceased to surprise. It has become almost a matter of course.

So far as I can recall, few prosecutions have taken place within the last ten years in respect of perjury committed by those who have been tried for criminal offences at the Assizes or the Quarter Sessions. The average total each year of prosecutions for perjury in all classes of cases and throughout the country is about fifty. If the offence was followed by prosecution (assuming that technical requirements could be fulfilled) in every case, then the Criminal Courts of this country would, I fear, be engaged every day of the year in trying offenders against the law of perjury.

It would take too long to consider with you the reason for this lack of prosecution. Perjury in the Divorce Court by those who enter the witness-box in answer to charges of misconduct is but little less prevalent than in the Courts which administer the Criminal Law. I venture to repeat what I have said already, *viz.*, that in the majority of contested cases, whether criminal or civil, perjury is committed by one or more witnesses. In many civil cases, moreover, evidence is, at some stage or another, given on affidavit. Every experienced lawyer knows that the aggregate of knowingly false or misleading statements in affidavits passes belief. The chief motive for this lamentable and widespread commission of perjury is, of course, self-interest, *i.e.*, a desire to escape a conviction and punishment; or to establish or defeat a claim for damages, debt, or property. But there are many other motives for perjury, which range from the loyalty of wife or child, or relation or friend, to a mere desire for revenge. All motives play their part. Here, indeed, is matter for the psychologist to examine.

I should like here to point out that far too many witnesses, both in civil and criminal trials, seem to hold the belief that an action or prosecution is not a public search for truth, but a mere contest or game played between opposing parties.

Now there are two broad statements I desire to make with respect to the incidence of perjury:

Firstly, I think that deliberately false evidence is but rarely given for the prosecution in criminal cases of anything approaching a serious nature. The exceptions to this general statement are to be found in cases where children or girls and sometimes grown women give evidence against men who are charged with sexual offences. In those cases the evidence of children, girls and women is often and most seriously tainted with falsity.



*Secondly*, that perjury is but rarely committed by those who are petitioners for divorce or by witnesses who are called in support of the petition. The bulk of perjury in the Divorce Court is committed by those who are actually charged with misconduct.

I have mentioned perjury by wife, child, relation or friend. As to wives, I can recall but few cases where a wife had not been ready to follow a husband's example and to support his perjured testimony with her own false evidence. Of children the same may be said with respect to their parents, and so, too, of many relatives. In many instances also the loyalty of a friend to a friend has been greater than his loyalty to truth.

Mr. Chairman, I have drawn a dark picture. I doubt if the colours are black enough. It is, I fear, a grave and significant fact that the administration of the Oath affords but small security to-day against false evidence. The personal character of a witness is, in many cases, more important than the Oath itself. So far as the Oath is efficient at all, it is the fear of prosecution rather than the mere ceremony which effects the desired purpose. The Oath is rapidly losing its sanctity. Too often it is looked upon as a mere formality.

I recall that at a Northern Assize a witness was about to take the Oath. The officer of the Court said to him, "Now kiss the Book." Suddenly the voice of the opposing litigant called out, "Kiss the Book! Kiss the Book! Why, he could not speak the truth if he swallowed the Book!" The point of that incident might be applied to very many witnesses.

The form of the Oath seems in itself to be suitable, inasmuch as the witness is required to speak "the truth, the whole truth and nothing but the truth." I am bound to say, however, that even the honest witness may have sometimes a difficulty in speaking the whole truth, for the reason that the testimony given by the witness is so often limited by the carefully framed question of the counsel who calls him. Too rarely is the honest witness allowed to tell his own story in his own way. Too often, therefore, is the dishonest witness enabled to present an untrue picture to the Court. How just is the observation of Lord Darling:

"Much truth is spoken—that more may be concealed."

There is, I think, an ever-growing tendency for the witness to regard himself as an advocate or supporter rather than a simple speaker of the truth. And here I must face a question which I have more than once put to myself. It is this: Does the fulfilment

of a barrister's functions as an advocate tend to implant a false standard or conception in the mind of the average witness present in Court, and watching with eager interest the conduct of a case by counsel? I fear that the answer must be, Yes. The effect of a barrister's advocacy on a witness is subtle and psychological. But it is, I think, a real influence. Many uneducated and some well-educated witnesses fail to realize the exceptional function of members of the Bar.

May I give you a passage from Boswell's *Life of Johnson*, which sets out with pleasant clearness what I think is an accurate view of the barrister's calling?

“ ‘ I asked him ’ (i.e., Doctor Johnson) ‘ whether as a Moralist he did not think that the practice of the law, in some degree, hurt the nice feeling of honesty ? ’

“ Dr. Johnson replied : ‘ Why no, Sir, if you act properly. ’

“ Later I said : ‘ What do you think of supporting a cause which you know to be bad ? ’

“ Dr. Johnson replied : ‘ Sir, you do not know it to be good or bad until the judge determines it. ’

“ And the learned Doctor added (upon the legal aspects of a case), ‘ An argument which does not convince yourself may convince the judge to whom you urge it, and if it does convince him why then, Sir, you are wrong and he is right. It is his business to judge. ’

A little later Boswell said : “ ‘ But, Sir, does not affecting a warmth when you have no warmth and to be clearly of one opinion when you are in reality of another opinion, does not such dissimulation impair your honesty ? ’

“ Dr. Johnson replied : ‘ No, Sir. Everybody knows you are paid for affecting warmth for your client. ’ ”

Dr. Johnson has, I think, correctly explained in broad terms the basic features of the advocate's calling. I may venture to add here, with regret, that I think perjury in the Law Courts is in some degree encouraged and increased by the low standard of frankness and honesty so widely and unhappily shown in various aspects of our party political system. These things act and react on one another in a grave and significant manner.

Now you may justly ask the question here, How, if perjury be so rife in our Courts, can justice be done at all either in criminal or civil cases? My answer is that through the experience and knowledge of the Judges, informed by a long experience at the Bar, and through the powerful weapon of cross-examination wielded by counsel, justice is in fact done to a very large and satisfactory degree.

As to criminal cases, I can say from my own long experience of Quarter Sessions and Assizes that so far as my own knowledge goes, I do not recall a single case in which a really innocent man has been convicted. Acquittals are frequent; sometimes they are given on technical grounds. Not a few of the guilty escape. The

law assumes innocence : it requires adequate proof of guilt. Juries are often lenient. Sometimes they are very merciful. If doubt exists they are willing to acquit.

Perhaps as an example of a very merciful jury I may mention to you a case that was told to me by a chairman of Quarter Sessions. A man was charged with stealing fowls. He lived not far from the hen-house that had been despoiled. Footmarks, identified as the prisoner's, led from the hen-house to his cottage not far away. A trail of feathers also led to his cottage. There were other suspicious circumstances. But the verdict of the jury was rendered as follows :

" We find him guilty of the footmarks. We find him guilty of the trail of feathers. But we find him *not* guilty of stealing the fowls."

As to civil cases, I am satisfied that in the great majority of these justice is achieved. Erroneous decisions on questions of fact are, I suppose, sometimes given. But in view of the deplorably dishonest material on which Judge and Jury so often have to act, the wonder is not that occasional injustice may be done, but that so often the right decision is given.

Now what can be done to stem this tide of perjury ? Here is a grave and far-reaching question not only for psychologists but for all responsible citizens. The psychologist who can discover some reliable and practical test of veracity will indeed be the greatest benefactor known in the long history of human justice. Just as alchemy advanced to chemistry, just as astrology advanced to astronomy, so I hope that the present system of ascertaining truth will progress in the future to what I may call a practical science of "*veritology*." That forward movement will call for all the help that the ablest psychologists can give.

Now how do the tests of truth stand in the Courts to-day ? No one as yet has tried to formulate them fully and clearly, and time does not permit me in this brief lecture to attempt to do so in detail now.

At present the tribunal of fact must do the best it can by observation, psychological instinct, knowledge and experience of human nature, by considering probabilities, by examining correspondence, diaries and documents, by weighing motives, by observing bias, and by detecting so far as possible the influence of pecuniary or other interests.

Somewhat recently public reference was made to a most interesting mechanical invention called the " lie detector." That machine has not yet been fully applied so far as I know in this or any country

either to litigants or witnesses or to others. It depends for its operation on the reactions, revealed by an ingenious device, to the impact of chemical messengers discharged into the blood-stream at the behest of a fear-stricken sensorium. Fear (*i.e.*, the fear of detection) is said to produce definite and measurable states of blood and body which enable us to know whether a person is speaking the truth.

It would indeed help profoundly in the administration of justice if by some magic means a reliable and practical detector of deliberate falsehood could be discovered and could be applied in our Courts. The task of a tribunal would become infinitely easier. The golden age might almost seem at hand. But I must point out at once that there may always be a grave difficulty in distinguishing between the blood and body states produced by acute nervousness (as distinguished from conscious dishonesty), and the blood and body states produced by the fear that deliberate perjury will be detected. It has, moreover, to be remembered that much evidence is given in the Courts which, though quite erroneous, is not intentionally false. It is difficult to see how this latter class of evidence can at any time be dealt with by any mechanical detector or by any existing psychological test.

I wish that all here present would from time to time pay a visit to a Court of Justice, and there listen for an hour or two to an action, not necessarily of a sensational nature, but even to an ordinary action for debt or damages. They would then realize the difficulties of those whose duty it is to find the truth and give judgment on the finding. They would realize also the infinitely various aspects of human nature, and the numberless subtleties of motives, passions and tendencies.

As the late Sir John MacDonnell wrote :

“A trial is a living picture. It brings us nearer to life than the best literature. You hear the voices. It is life itself.”—*Historical Trials*, p. 2. (Clarendon Press, 1927.)

Those who watch a trial would, I think, agree with Shakespeare when he said :

“There's no art  
To find the mind's construction in the face.”  
—*Macbeth*. Act 1.

It would take too long to tell you the result of many years' observation of witnesses. But from the psychological point of view it is of interest to examine a few points with respect to those who enter the witness-box. Some have at times asserted that they can detect from a witness's demeanour or bearing whether or not

he is telling the truth. The quiet, self-possessed witness is often assumed to be giving honest testimony. The nervous and anxious witness is often assumed to be giving false testimony. In my view both these assumptions are without foundation. I take the quiet, confident, and self-possessed witness. He is attractive to judge and jury. But there are several things to be remembered :

(1) That such a witness is often assuming a well-considered pose for the purposes of the trial.

(2) That he is usually possessed of ability and memory, and is fully alive to the importance of giving his evidence in a manner agreeable to the tribunal.

(3) That the ablest and most sustained perjury usually comes from witnesses of such a type as that in question.

And here it may be asked : Which of the persons charged with an offence gives evidence in the coolest and most self-possessed manner ? My answer is, it is the person charged with *murder*. I have tried many persons for murder, and in the majority of cases those accused have entered the witness-box. I recall but few who have not given their testimony in a quiet, confident, almost dispassionate way with adroitness of reply, ingenuity of explanation and singular ease of manner.

In view of that fact I wonder how any possible mechanical lie-detector would operate in such cases, and what chemical reaction would be shown by guilty but self-possessed persons who employ perjury in order to defeat if possible the demands of the law for punishment. The ease of manner I have mentioned might perhaps be expected from those who have been guilty of deliberate and calculated murder. Instances of such persons will readily occur to you. But, strangely enough, even in cases where the murder has been one of sudden passion or anger, the person accused when he enters the witness-box often displays a noticeable degree of self-possession and adroitness. Broadly speaking, moreover, it may be said that the greater the criminal the more able and effective he is as a witness. The habitual criminal is often the best witness of all.

There are ladies here to-day, and ere I pass from the murderer, as typical of the cool witness, to witnesses who may be described as nervous, it may be as well to give a passing observation to female perjurers, whether as litigants or witnesses, or as charged with criminal wrong-doing. I think it may be said that nothing can exceed the skill, the self-confidence and the audacious reliance on sex that is so frequently displayed by the intelligent female perjurer. She has, moreover, a histrionic sense which is not, as a

rule, possessed by the male. Many women, alas! seem to have a peculiar faculty for the attractive and plausible presentment of false evidence. Gallantry must yield to truth in this address to you.

I have spoken of self-possessed witnesses. May I now say a few words on the nervous witness? His symptoms are well known, *viz.*, uneasiness of manner, rapidity of speech, the appearance of acute anxiety, uncertainty of words, and sometimes an obvious confusion.

Those who sit in Court, whether barristers or the public, regard him with suspicion. Now what bearing have the symptoms mentioned on the question whether the nervous witness be speaking the truth?

In a well-known and delightful book by Lord Darling called *Scintillæ Juris* (p. 59) it is said:

“A nervous witness generally means to speak truly, and seldom does so.”

But that is a humorous epigram by a distinguished man, and it is correct to a very limited extent only.

Nervousness (apart from bad health) is often caused by the unusual position and elevation of the witness-box. In many cases the witness is speaking in public for the first time in his or her life—a fact often forgotten by observers in Court. The occasion is absolutely novel, and the witness, moreover, has to face a judge, jury and opposing counsel—a somewhat embarrassing array. Small wonder, therefore, that many a witness is nervous. But there are many other reasons for nervousness, and the psychologist and student of human nature may like me to give two illustrations:

(a) Many years ago a man occupied the witness-box as plaintiff in a claim for money lent. He was a man of powerful physique, strong face and vigorous mind. As it turned out, his claim was absolutely honest and well-founded. But when giving his evidence, and particularly during cross-examination, he displayed the most pitiable nervousness. To the untrained observer he might well have given the impression that he was making a grossly false demand against the defendant. The mechanical lie-detector might have given an adverse verdict. His chemical reactions would have been, I assume, most suspicious. But what was the real reason for his nervousness? I will tell you. He was a man of middle age, who had gained a good position and an adequate fortune by hard work and merit. He was happily married and with several children. His wife and two of his daughters were in Court. Now that plaintiff, when a youth of twenty-one, had been convicted of embezzlement. He

knew before he entered the witness-box that the defendant's counsel was aware of the conviction. The nervousness of the witness was due to the fear that a question might be put to him, in order to discredit his testimony. The question would be this: "Have you not been convicted and sent to prison for embezzlement?" If that question had been put, the plaintiff's wife and children would have known for the first time of a tragic fact in the life-history of a man who for more than thirty years had borne an exemplary character as citizen, husband and father. I am glad to say that the question was not put, for the case was settled in the plaintiff's favour before he had finished his evidence.

(b) I take as a further illustration the case of an East End Jewish trader. He was sued before me for about £200 in respect of goods supplied. His defence was that the goods did not agree with the contract. The plaintiffs, however, asserted that this defence was not an honest one, and that the real reason for his omission to pay was that he had not got the necessary money. The defendant was cross-examined before me as to his financial position. He became extremely—almost ludicrously—confused, but asserted that his means were ample. Here, again, the ordinary observer in Court would have regarded the man with the gravest suspicion. I never saw a more uneasy witness. He was asked as to his balance at the bank but his memory seemed uncertain. He was asked for his pass-book: he said he had forgotten to bring it. I myself, however, suspected that there might be a special reason for the man's nervousness. So I adjourned the case until the morrow. The next morning the defendant again entered the witness-box. His bank manager was in the body of the Court. The witness produced his two bank-books, *viz.*, his current account book and his deposit account book. I examined them. The current account showed that the amount to his credit was nearly £3,000. The deposit account showed that the amount to his credit was over £40,000.

Now those amongst you who are trained psychologists will perhaps infer at once the cause of the man's nervousness. For the benefit of others, however, I may state the real reason—a reason that I had previously suspected. The fact was that the defendant had never made honest returns for income tax, and he was in a state of terror lest the hearing of the case should lead to the truth becoming known to the Revenue Authorities, with somewhat serious consequences for himself. I may add that upon the merits of the case, and not upon the character of the defendant, I felt bound to give judgment in his favour.

Here, again, I wonder what the chemical reactions of that man were when he was being sternly cross-examined as to the extent of his financial resources.

The fact is that a nervous witness often means to speak the truth—and frequently does so.

Before I pass to another type of witness as to fact, I should like to say a few words on the “expert” witness. He has been the subject of much criticism and some denunciation.

Now the expert witness deals primarily with questions of opinion. In so far as he asserts facts he stands on the same footing as the ordinary witness. I am glad to say that as a rule there is but little difference on questions of fact between the expert on one side and the expert on the other. But the conflict of opinion is often striking, and sometimes astounding. Why is this? There is, of course, the broad circumstance that many experts differ just as much outside the Court as within the Court. Nothing is more singular, *e.g.*, than the variations of view between so-called economists or financial experts on broad questions of trade or financial policy, whether they relate to tariffs, the gold standard or the like. But apart from the honest and perhaps unavoidable clash of opinion, there is undoubtedly a tendency, sometimes a strong one, for the expert in the witness-box to become a partisan. It is this tendency, I think, that leads to the greater part of the invective against the expert witness. The expert too often forgets that he is a witness on Oath and not a well-rewarded advocate. It is somewhat curious that the Oath administered to the expert witness is exactly the same as that administered to ordinary witnesses of fact. He is sworn to tell the “truth, the whole truth and nothing but the truth.”

This form of Oath seems somewhat inappropriate to cases where the facts as between the experts are not in dispute, but where the question at issue between them is one of opinion only. The Oath does not in words refer to matters of opinion.

The subject of expert testimony is one of singular interest, but I will only add—and with pleasure—that in my view the quality of that testimony is steadily improving. The explanation of this is to be found, I think, not in any greater appreciation of the Oath, but in the ever-growing standard of integrity, fairness, honour and dignity amongst the members of the expert professions.

May I now speak briefly and in conclusion of the type of witness who is free from conscious dishonesty, and who enters the witness-box with a normal measure of desire to speak the truth?



The achievement does not always equal the desire. A vast amount of inaccurate testimony is given day by day by honest witnesses. When weighing this type of witness it is always important to ask several preliminary questions :

- (1) Is the witness intelligent ?
- (2) Is he observant ?
- (3) Has he a good memory ?

But even when the answer to each of these questions is " Yes," there still remains the vital matter of bias or partisanship.

Perhaps the most striking illustration of bias or partisanship is to be found in the numerous—almost innumerable—civil actions known as " running-down cases." Here is a type of litigation which the psychologist may study with advantage. For what is the problem for the Court? It was, you may recall, humorously described not long ago by Lord Hewart, the Lord Chief Justice, when he said that he sometimes grew weary of trying to ascertain the truth as to negligence in cases where, according to the evidence given by the respective parties and witnesses, each motor car was, at the time of the accident, on its proper side of the road, each was under the most perfect control, and each was absolutely stationary a few seconds at least before the collision took place.

I confess my own view to be that in a large number of these accident cases the testimony of many witnesses is not only inaccurate but is consciously false. Many of the points of fact at issue in controversy cannot be the subject of really honest mistake. But however that may be, the conflict between witnesses (all apparently honest and respectable) on the one side and witnesses to an equal number (all apparently honest and respectable) on the other side often passes belief.

As an illustration may I recall an action in which the collision had taken place between two *chars-à-bancs*, each of which was filled with passengers. Each side asserted that the other was driving very fast and on its wrong side of the road at the time of the collision. The questions of fact were of the simplest. You would think that no honest and intelligent person would have the slightest doubt as to the answers. Yet upon each of the points in issue some sixteen passengers from one *char-à-banc* swore one way, and some sixteen passengers from the other *char-à-banc* swore exactly the opposite way. Every witness seemed to be most respectable, honest and intelligent, and none of them had any pecuniary interest in the result of the trial. Now what is the explanation of so strange a phenomenon? It lies, I think, in two facts :

*Firstly*, that the passengers in the one char-à-banc all belonged to one club and were engaged in a day's excursion together, whilst the passengers in the other char-à-banc all belonged to another club and were also engaged in a day's outing. Each body of passengers therefore held together in their testimony.

*Secondly*, that each passenger identified himself consciously or unconsciously with the vehicle in which he was riding. This spirit of partisanship or bias is singularly strong in running-down cases (I may call it the "*esprit de voiture*"), and it exists in other classes of action also.

The witness links himself resolutely to the litigant whose case he supports, and this adherence colours and taints the whole of his testimony. A judge and jury must always be alive to this aspect of human nature. It explains many things not only in the Courts but in many branches of our national life.

The effects of bias are enormous. Few recognize adequately its influence on the thought and conduct of other people. Fewer still recognize its influence on their own personal thought and conduct. Theologians and propagandists, sectional leaders and submissive followers may well give thought to the significance and the implications of the bias and partisanship shown in an ordinary running-down case in our Courts.

But here I must end this address and thank you for your courteous patience. Time runs so quickly when we touch the vast and fertile theme of truth. We shall gain much if we perceive the grievous failings of the past. We shall gain still more if we realize the faults and perils that exist to-day. It is, I venture to think, our duty to future generations to take a part in building a new and higher standard of truth. If we strive towards that end we shall aid the march of righteous progress, we shall strengthen the souls of men and women, and we shall give a fuller and more gracious dignity to our public and national life.

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