

tions on the rank that may be assigned to Cope in the world of science.

Among those that have cultivated the same branches of science that he did—the study of the recent as well as the extinct Vertebrates—three naturalists have acquired unusual celebrity. Those are Cuvier, Owen and Huxley.

Cuvier excelled all of his time in the extent of his knowledge of the anatomical structure of animals and appreciation of morphological details, and first systematically applied them to and combined them with the remains of extinct Vertebrates, especially the mammals and reptiles. He was the real founder of Vertebrate paleontology.

Owen, a disciple of Cuvier, followed in his footsteps, and, with not unequal skill in reconstruction and with command of ampler materials, built largely on the structure that Cuvier had begun.

Huxley covered as wide a field as Cuvier and Owen, and likewise combined knowledge of the details of structure of the recent forms with acquaintance with the ancient ones. His actual investigations were, however, less in amount than those of either of his predecessors. He excelled in logical and forcible presentation of facts.

Cope covered a field as extensive as any of the three. His knowledge of structural details of all the classes of Vertebrates was probably more symmetrical than that of any of those with whom he is compared; his command of material was greater than that of any of the others; his industry was equal to Owen's; in the clearness of his conceptions he was equalled by Huxley alone; in the skill with which he weighed discovered facts, in the aptness of his presentation of those facts, and in the lucid methods by which the labor of the student was saved and the conception of the numerous propositions facilitated he was unequalled. His logical ability may have

been less than that of Huxley and possibly of Cuvier. He has been much blamed on account of the constant changes of his views and because he was inconsistent. Unquestionably he did change his views very often. Doubtless some of those changes were necessitated by too great haste in formulation and too great rashness in publication. The freedom to change which he exercised, and which was exercised too little by at least one of his predecessors, was an offset to his rashness. He exercised a proper scientific spirit in refusing to be always consistent at the expense of truth.

His reputation at present is much inferior, at least among the people at large, to those of the men with whom he has been compared. Immediate reputation depends on various circumstances, some of which are quite adventitious, and it is often long before men find their true levels. It is scarcely premature to prophesy that Cope's reputation will grow and that in the future history of science his place will be at least as large as that of any of his predecessors.

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EXPERT TESTIMONY.*

It will be remembered that a would-be facetious barrister once remarked that prevaricators might be properly arranged in an ascending series, to wit: ordinary fibbers, liars and experts; an arrangement which I fear meets with the approval of many members of the bench and bar to-day. The cause for such harsh classification is not so very far to seek. It is based upon ignorance on the part of the bar, and at times upon what is worse than ignorance on the side of the 'expert.' With the culpable acts of the pseudo scientist we cannot waste our time. That he merits

* Address of the Vice-President and Chairman of Section C (Chemistry) at the Detroit meeting of the American Association for the Advancement of Science.

prompt condemnation is axiomatic, but a word is wanted touching upon what may be termed the ignorance of the Court.

"When I take my place upon the witness stand," said a prominent toxicologist once to me, "I can never predict in what shape I shall be upon leaving it;" a feeling with which most of us can, I fancy, sympathize pretty keenly.

Is it that we fear exposure of the weak points in our professional armor? Do we dread to say in public, "I do not know?" Hardly that, I take it. We are now possessed of so very little of that which one day may be known that no true scientist hesitates for an instant to plead legitimate ignorance. What really troubles us upon cross-examination is that the Court does not speak our language, a language often quite difficult of direct translation; that it is but rarely schooled in the principles of our science; and that, in consequence, it frequently insists upon categorical answers to the most impossible kind of questions.

The hypothetical questions showered upon the expert witness are sometimes veritable curiosities, so peculiar are they in their monstrosity. Who among us but has felt that the layman, who has simply to testify to observed facts, has an easy time of it, indeed, when compared with him from whom there is expected an opinion under oath?

All scientific men are willing and anxious to have their work scrutinized carefully by their peers; but to be exposed to the one-sided criticism frequently encountered at the bar is quite another matter; for it must be remembered that, after the adverse counsel has opened up what appears to be a glaring inconsistency in the testimony, the re-direct examination may utterly fail to repair the breach, because of a lack of familiarity with a technical subject on the part of the friendly attorney.

This leaves the witness in the unenviable

position of disagreeing with the general drift of his own testimony, while it deprives him of suitable means of insisting upon its revision and correction.

According to the writer's view, there is but one way to escape such dilemma, and that is by direct and immediate appeal to the Judge, urging that the oath taken called for a statement of the whole truth, and not the misleading portion already elicited.

To illustrate how serious a matter the partial testimony of an expert witness may be, and to show also to what extent lawyers may go who look only to the winning of their causes, permit me to refer to an already reported poison case in which I was employed by the people. It may be roughly outlined as follows:

Much arsenic and a very little zinc were found in the stomach.

The body had not been embalmed, but cloths wrung out in an embalming fluid containing zinc and arsenic had been spread upon the face and chest.

Medical testimony showed that no fluid could have run down the throat. Knowing the relative proportions of zinc and arsenic in the embalming fluid, the quantity of arsenic found in the stomach was twelve times larger than it should have been to have balanced the zinc also there present, assuming them to have both come from the introduction of the said embalming fluid by cadaveric imbibition. Other circumstantial evidence was greatly against the prisoner.

At the time of my appearing for the people, on the occasion of the first trial of the case, my direct testimony brought out very strongly the fact that a fatal quantity of arsenic had been found in the stomach, but no opportunity was given me to testify to the presence of the zinc found there as well, although the fact of its existence in the body was known to the prose-

cution through my preliminary report. Through ignorance of the nature of such report on the part of the defence, no change was made in the character of the testimony during the cross-examination, and I was permitted to leave the witness stand with a portion of my story untold. No witnesses were called for the defence, and the case was given to the jury with the darkest of prospects for the prisoner.

For many reasons, unnecessary to recount here, I was distinctly of the opinion that murder had been committed, but I felt nevertheless that common justice demanded that the prisoner should have been entitled to whatever doubt could have been thrown upon the minds of the jury, no matter how far-fetched the foundations for such doubt might have been.

The first trial having resulted in a disagreement of the jury, I was pleased to learn, before the second hearing of the case began, that the defence was prepared to go into the question of the embalming fluid; for the responsibility of permitting only a part of what I knew to be drawn from me, to the entire exclusion of the remaining portion, was greater than I wished to assume. The nature of my report to the Coroner having been established, and certain opinions relating thereto having been fully ventilated, the jury were possessed of 'reasonable doubt' and acquitted the prisoner. What now were the duties of the expert upon the occasion of the first trial of this case and how should he have construed the meaning of his oath?

One eminent legal light, to whom the question was referred, held that the expert was distinctly the property of the side employing him, and that his duty was simply to answer truthfully the questions put to him, without attempting to enlighten the Court on facts known to him, but not brought out by the examination, no matter how vital such facts might be.

Another held that although the above course would be proper in a civil case, yet, in a matter involving life and death, the witness should insist upon the Court becoming acquainted with his whole story. Do not such differences in legal opinion make it very desirable that the expert, at least in capital cases, should be an employee of the bench rather than of the bar, in order that whatever scientific investigations are made may be entirely open to public knowledge and criticism?

Although the expert should earnestly strive to have what he has to say presented in the best form, he must remember that to secure clearness, particularly before a jury, technicalities should be reduced to a minimum. To a degree they are unavoidable, but let them be as few as possible. Illustrations should be homely and apt; capable of easy grasp by the jury's minds, and, if possible, taken from scenes familiar to the jury in their daily lives.

It is an unfortunate fact that the expert must be prepared to encounter in the court room not only unfamiliarity with his specialty, but also deep-rooted prejudices and popular notions hoary with age and not to be lightly removed from the mind by the words of a single witness. As President Jordan has well said, "There is no nonsense so unscientific that men called educated will not accept it as a science;" and, let me add, they will calmly attempt to shove the burden of proof upon the scientific man who is opposed to their views. Sanitary experts, in particular, run up against all sorts of popular superstitions and are inveighed against as 'professors' by those who consider themselves the 'practical' workers of the time; and, let it be noted, the burden of proof is uniformly laid upon these 'professors' shoulders, while the most astounding and occult statements made by the 'practical' men may be received without verification.

One source of trouble, which perhaps is

peculiar to the water expert, lies in the impossibility of utilizing analytical results such as were made many years ago.

Those who are not chemists fail to grasp the fact that the examination of water may not be looked upon from the same point of view as the analysis of an iron ore. The statement that water analysis is of recent birth, and that it is yet in its infancy, is hard for them to appreciate, holding, as they naturally do, that what was true twenty years ago must be true to-day, if science does not lie.

A pit into which many an expert witness falls is prepared for him by insidious questions leading him to venture an opinion on matters outside of his specialty. It is a fatal error to attempt to know too much. Terse, clear answers, well within the narrow path leading to the point in question, are the only safe ones; and when the line of inquiry crosses into regions where the witness feels himself not truly an expert, his proper course is to refuse to testify outside of the boundaries of his legitimate province.

Unfortunately, the expert is as often invited to take these collateral flights by the side employing him as by the opposition. Affidavits in submitted cases are commonly written by the lawyers and not by the expert, although they are, of course, based upon his reports. In the strength of his desire to win the case, the lawyer often prepares a much stronger affidavit than his witness is willing to swear to.

The writer has had no little difficulty just at this point, and has had plenty of occasion to observe the irritation displayed by counsel upon a refusal to endorse statements which have been 'too much expanded.'

Every expert witness, especially in his early cases, is sure to have adverse authorities quoted against him; therefore it behooves him to be so familiar with the litera-

ture of his subject as to be capable of pointing out that such and such a writer is not up to date, or that such and such a passage, if quoted in full, would not bear the adverse construction that its partial presentation carries. When the expert reaches a position of such prominence that he can state a thing to be so because he says it, irrespective of whatever may be written on the subject to the contrary, his course then is greatly simplified; but long before he attains that altitude he will have put himself upon record in many cases, and happy for him if the record so made be such as cannot be quoted to his disadvantage.

"If I had only not written my first book," is the reflection of many a distinguished author; while one of the great masters of music, referring to an opera, said: "It is one of my early crimes."

Above all things, the expert should "provide things honest in the sight of all men."

It is well for him to be deeply interested in his case, to feel in a measure as if it were his own, but it is unwise in him to become so partisan as to let his feelings affect his good judgment, and it would be indeed criminal should he permit his interest in any way to contort the facts.

Before the case is brought to a final hearing, it may be apparent that experiments before the Court are possible and they may be demanded by the counsel in charge of the case. If such experiments be striking, easy of execution, and not too long, by all means make them.

Practical illustrations, particularly such as involve some fundamental principle, have great weight with the Court; but these illustrations must not be such as would turn the court room into a temporary laboratory and involve the loss of much time in vexatious waitings.

Such experiments as are determined upon should be thoroughly rehearsed beforehand, no matter how simple they may be; for, of

all failures, the court-room experiment which declines to 'go off' is perhaps the most dismal.

This brings to mind a kindred topic upon which there should be a word of caution; laboratory experiments which work to perfection may utterly fail when expanded to commercial proportions, so that it is wise to bear in mind the danger of swearing too positively as to what will happen in large plants, when the opinion is based only upon what is observed to occur upon the smaller scale. Like conditions will, of course, produce like results, but it is marvellous how insidiously unlooked-for conditions will at times creep into one's calculations, and how hard it is even to recognize their presence.

When preparing his case for presentation, the expert often errs in not dwelling more largely upon certain points because he thinks them already old and well known. To him they may be old, but to the public they may be of the newest. Not only is the public unequally posted with the specialist, but what it once knew upon the subject may have been forgotten. It is well, therefore, to insert, in a special report, matters that would be properly omitted from a paper prepared for a professional audience.

Sanitary problems are of especial interest to the public, but the amount of ignorance, or rather false knowledge, displayed concerning them is surprising and often difficult to combat. The sanitarian is not unfrequently called upon suddenly to defend a position involving complex statistics; and, because the data cannot be forthwith produced, the inference is drawn that his points are really without facts to support them and that they are consequently not well taken.

Long before he gets into Court, particularly if the time for preparation of the case be short, the expert may well 'pray to be delivered from his friends.' He may receive a peremptory order by telegraph to

'determine the mineral qualities of this rock,' when the telegram should have read 'Assay this ore for silver;' and later it may be a matter of surprise that a quantitative knowledge of the copper present was not obtained while passing along the line for the determination of the silver; for it is generally not known that the complete analysis of anything is quite rare and correspondingly tedious and expensive.

Toxicologists who hear me may call to mind some case involving a search for the presence of an alkaloid, strychnia for example, during which search the District Attorney, in his eagerness for information, may have asked to know what the indications were as to the presence of the poison, at a time when the extraneous organic matter was not nearly removed. He may have wished no final report, but only the simple probabilities, whereon to base a possible arrest. Such requests are very common, and are akin to a demand for a proof of the pudding during the early baking, when we all know that such proof comes at a much later stage of the proceedings.

Finally, "When doctors disagree who shall decide?"

This question is often very vigorously settled by the jury, as was instanced in a recent celebrated murder trial in New York City. In that case what the experts had to say on either side was simply thrown overboard as a whole, and the finding was based upon the testimony of the remaining witnesses.

What can be said upon this question of the disagreement of expert witnesses? First, it must be noted, they are far from being the only class of people who fail to agree, and that too on very important subjects. Do my hearers think it would be a very difficult task to find a small army of men who would testify very variously and very posi-

tively upon questions of politics or religion? Would it be hard to find 'good men and true' who would give under oath greatly differing opinions concerning the propriety of instituting free trade or establishing an inheritance tax? Experts are subject to the same errors of judgment as befall the rest of professional humanity, and when their opinions clash they are entitled to the same respect that we grant to the members of the bench when they hand down the decision of a divided Court.

One fruitful opportunity for disagreement always arises when questions are brought into Court touching upon matters newly discovered and apart from the well beaten path of common professional knowledge. Doubt is often left upon the minds of those seeking the light, even when the testimony is given by the specialist who originally developed the new point in question, for one cannot be expected to be thoroughly educated in that which he has himself but recently discovered.

Many of us have dreaded to see the 'ptomaines,' or putrefactive alkaloids, make their way into Court with their mystifying influences upon Judge and jury and their tendency to protect crime. Now they are in, what is to be the end? Even with no 'Ptomaine theory' possible, the ptomaine form of argument is not unknown. The writer was once asked in an arsenic case whether he was willing to swear that at some future time an element would not be discovered giving the stated reactions now called arsenical. Such nonsense is, of course, instituted to impress the jury, and is suggested by similar questioning in the alkaloid cases.

A recent and somewhat amusing instance arose from an attempt to introduce the rather new conception of 'degeneracy' into a murder trial. The defence sought to show that the prisoner was a 'degenerate' and offered expert testimony as to the

meaning of the term and as to the signs whereby such a condition was to be recognized, whereupon the prosecution called attention to the fact that the defendant's experts themselves exhibited every one of the signs in question.

Having said all that he was to say, and having stated it to the best advantage, should the expert depend upon the stenographer so recording it as to allow of its being used in future without correction? Decidedly not.

The average stenographer is unfamiliar with technical terms, especially such as are chemical, and the witness who fails to supervise the minutes may find out later that he has sworn to a most remarkable array of 'facts.' The writer once discovered that he had recommended, as a very efficient method of purifying a city water, the filtering of the entire supply 'through a layer of black mud.' Not to take your time further, let us summarize what has thus been briefly said:

The expert witness should be absolutely truthful, of course; that is assumed, but beyond that he should be clear and terse in his statements, homely and apt in his illustrations, incapable of being led beyond the field in which he is truly an expert, and as fearless of legitimate ignorance as he is fearful of illegitimate knowledge.

Mounting the witness-stand with these principles as his guide, he may be assured of stepping down again at the close of his testimony with credit to himself and to the profession he has chosen.

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CURRENT NOTES ON ANTHROPOLOGY.

ARAUCANIAN STUDIES.

DR. RODOLFO LENZ continues his excellent studies on the Araucanian dialects and folk-lore, in the 'Anales de la Universidad