A HUNDRED YEARS AGO

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MEDICO-LEGAL NOTES: MALINGERING

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ANYONE WHO HAS spent weary hours in a stuffy County Court, may have noticed that the back benches are filled by a nondescript audience composed mostly of unemployed and unemployable. There is never a more attentive audience; many are there to learn how to conduct themselves in the witness box when they are making a claim, and what line of conduct is best to pursue as regards resuming work during the long wait before their cases come into Court. Incidentally, they also learn how best to circumvent their *bête noir*, the medical man who is interested in malingering. The points which specially amuse and interest this motley mass are noteworthy. Their idea of humour and the evident sympathy shown towards men of their own class, even in palpably fraudulent cases, give a low comedy interest which helps temporarily to brighten an otherwise dreary experience.

Most working men believe that all pains, aches, and ill-health of any kind, with which they may be afflicted subsequent to an accident, must necessarily be due to it. Lawyers appear, under instruction, readily to accept it.

Many working men adopt a line of conduct which seems to necessitate their being branded as malingerers; but so to characterize them should never be done only when prepared with incontestable evidence of fraud. However confident you are that the plaintiff is grossly exaggerating, is untruthful, and is attempting to deceive the Court, it is unwise to allege malingering unless it can be proved up to the hilt. Nothing pleases the plaintiff's counsel better than for a medical witness to use the word malingerer, for he knows that he can then appeal to the class prejudice of the jury.

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What, then, is a medical witness to say when invited to use the word malingerer in a case in which there is only a strong suspicion of malingering?

One may say with truth that the plaintiff is not a malingerer. When asked, "If, as you say, this man is not a malingerer, and you disagree with the doctor's evidence, which is to the effect that he is still ill, why, then does he claim that he is still not fit to return to work?"

The reply is that he is weak-willed, and will not face the necessary inconvenience (perhaps the small amount of pain) which he must have whenever he starts work. It should be explained that the plaintiff is irresolute, and has postponed and will continue to put off, actually starting work because he feels that he is likely to suffer some inconvenience for a few days. That this inconvenience is such that a reasonable man would put up with; everyone who is accustomed to use his muscles, and has been off work for many weeks, has something to put up with at first.

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Delay in returning to work, after the original disability has been recovered from, is a very frequent cause of an employer withholding payments, with the result that the case ends in court. It is obviously unfair to expect an employer to pay indefinitely for a condition which is avoidable.

What one generally finds is that the workman's attention, and too often that of the medical attendant, is directed solely to the question of the healing of a wound or the union of a broken bone; the effect of immobilization upon muscle and other tissue is ignored. It is well known that work is a better restorative for muscles than even the best massage.

If a man does not really desire to become fit, no amount of massage or passive movements will ever bring him into a condition in which he can commence work without some inconvenience or some discomfort.

This was well expressed by a County Court Judge, who said:

" I have often pointed out in previous cases that the sole object of the Act is to compensate workmen for the loss of wages so far as that loss is due to the accident.

"If a workman who has been injured has so far recovered that he is able to earn some wages, but makes no effort to earn those wages his loss of these wages cannot be said to be due to the accident, but is simply due to the workman having made no effort to earn them.

"If the workman has chosen not to work, when the evidence shows that, so far as the accident is concerned, he is nearly as fit to work as he was before the accident, I cannot find that the loss of wages is entirely or even mainly due to the accident.

"A workman can be compensated for what he is unable to earn, but cannot be compensated for what he declines to earn."

Liderdale V Robinsom, 132 L.T.12

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