As superintendent of the Provincial Lunatic Asylum in Toronto from 1853 to 1875, Dr. Joseph Workman came in contact with most of the medical practitioners in Ontario. One of these was Dr. John Galbraith Hyde of Stratford, a fellow Ulsterman with whom Workman appears to have corresponded regularly. Hyde emigrated to Canada from County Tyrone, Ireland, in 1841, having received his license to practise medicine from the Faculty of Physicians and Surgeons at Glasgow the previous year. In 1849, after practising for seven and a half years in various backwoods settlements throughout the London District, he settled at Stratford. The date of his first acquaintance with Workman is unknown, but Workman mentions having family in Stratford, and it is possible that the friendship arose during Workman's visits with them. It is also interesting to note that when Workman took charge of the asylum in Toronto, the bursar was a James McKirdy. The postmaster at Amiens (where Hyde spent his first year in Canada) also had this name, and it is conceivable that Hyde came to know Workman through this connection as well.¹

¹ Peter J. Mitham, R. R. #1, Hampton, New Brunswick E0G 1Z0.
Two of Workman’s letters to Hyde remain extant. The first, dated 12 November 1866, accompanied “a little fresh vaccine” and upbraids Hyde for the “superlatively dirty” condition of Stratford. Workman also comments on his health and activities, and the Hussar’s band practising just over the asylum wall that he is sure Hyde’s eldest daughter would enjoy. The second letter is more interesting, however. Not only is it a literary gem in which Workman displays the wit that distinguished him in the 1840s while writing for the Toronto Mirror, but it reveals Workman’s reactions to the controversy surrounding Hyde’s trial for malpractice on 26 October 1868.

Although many observers predicted the verdict awarding $250 to the plaintiff would cause surgeons to be more cautious when considering an operation, Workman urged Hyde to appeal the verdict because he believed that professional animosity within the Stratford medical community lay behind the suit. Although Hyde was well established in his practice by the early 1860s, he was not immune to the increasingly competitive character of the Ontario medical profession. Professional consultations concerning patients became opportunities to discredit a rival’s professional credibility and reputation. Heightened tensions eventually manifested themselves in litigation. Feeling their livelihood threatened, doctors took their disputes to court in an effort to effectively eliminate their rivals.

AN 1857 INQUEST INVOLVING DR. HYDE

Stratford’s doctors had a history of resorting to the courts. In June 1857 a renowned local inebriate died while under the care of Dr. Edward Jaques. An inquest convened on 3 June to confirm suspicions that the deceased, John Conacher, had died as a result of frequent drinking sprees. New suspicions were aroused following the post-mortem examination and testimony by various witnesses, however. Witnesses could not agree on the medicine Jaques had prescribed nor on the amount Conacher’s wife Christina had administered. Furthermore, Jaques had variously told witnesses that Conacher had died “of disease of the brain” and “some disease of the lungs.” Hyde, who performed the post-mortem, told the inquest that he had “found the lungs healthy, but slightly congested; ... the brain was unusually soft; the membrane[s] were inflamed, especially the arachnoid; ... there was sufficient disease in the stomach and brain to cause death.”

Hyde, however, harbored feelings against Jaques, and closed his testimony with the suggestion that Jaques may have murdered Conacher, a suspicion held by many. “Powerful medicine in the case of [the] deceased would hasten death,” he observed, “morphine to the extent of more than half a grain at a dose—it affects the brain; croton oil and mor-
phia might hasten death. . . . [I]f the deceased had been treated rationally he might have recovered." Dr. Peter Shaver, the coroner, believed Hyde fully competent to render an unprejudiced post-mortem report. Yet Shaver "had no ill feeling towards Dr. Jaques as a man, [although he] would not meet him because he was in partnership with a Quack." Hyde later maintained, "My examination and evidence would have been the same whoever had attended the unfortunate Conacher." Jaques had clearly blacklisted himself by forming a professional association with an irregular practitioner, and Conacher's death provided the local profession with an opportunity to expel him from the community. Jaques occupied a truly unenviable position.

Owing to conflicting testimony and the possibility of a public quarrel among Stratford's doctors, Conacher's stomach was sent to Toronto for chemical analysis. The report returned to the jury exuded dissatisfaction: "On examining the stomach it was found that the post mortem examination had been made in the most bungling and disgracefully unprofessional manner." Hyde received a strike against his reputation and testimony, but the report criticized the jury with equal severity for what it sent for analysis: "The duodenum was not sent,—no portion of the intestines was sent,—no portion of the liver was sent,—the kidneys were not sent,—all of which any person in the least acquainted with medicolegal investigation would of course have forwarded." When he knew the facts of the case in greater detail, the examining chemist, Henry Croft, recanted his grievances. This helped to restore Hyde's credibility in the estimation of his fellows. In the meantime, however, Croft confirmed that Conacher had received morphine "sufficient (when calculated for the whole quantity taken) to have caused the death of a healthy person if administered within a few hours." The jury consequently declared Dr. Jaques and Mrs. Conacher equally culpable in Conacher's death, and the two were immediately arrested and committed for trial in November.

The case duly came before the fall assizes, conducted by Judge John Sandfield Macdonald. To Macdonald's surprise, Hyde was not scheduled to appear before the court, despite his role as post-mortem examiner. This, Macdonald remarked, was "for fear of defeating one of the foulest conspiracies ever brought before a court of justice!" Macdonald therefore summoned Hyde, who repeated the testimony he gave in June and maintained it under cross-examination. Hyde confessed that his bias against Jaques would have convinced him of Jaques' guilt "had there been grounds." In Hyde's estimation, however, Conacher simply died from "effusions of blood on the brain" and he therefore could not condemn Jaques. Having heard Hyde's testimony, Macdonald dismissed the case for lack of evidence, declaring it "a most
disgraceful” affair. The prosecuting counsel agreed, and rose at the end of the trial to say:

[I] would advise the medical practitioners of Stratford to settle their differences, and not to trouble the Courts with such cases as the present, involving not only unpleasant disclosures to the parties, but also much trouble and expense to the country. It was only at the last Assizes that a medical man was charged with manslaughter, and no evidence was adduced to convict him. Such conduct was ungentlemanly and unprofessional in the extreme.17

Hyde’s father-in-law questioned the practicality of the counsel’s advice, and clearly believed that doctors deserved a degree of immunity and privilege in a court of law. In a letter to Hyde at the beginning of December, he writes, “who is the wiseman Q.C. who advised the doctors of Stratford to be more unanimous, I should like to see how he & others who talk in this way would agree with a cutpurse that assailed them.”18 Nevertheless, the medical profession continued to be at odds in Stratford, and when Hyde’s case came before the courts in 1868 it took place at the York Assizes in Toronto, where the possibility of an impartial jury was greater.

THE 1868 CHARGE OF MALPRACTICE AGAINST DR. HYDE

In 1862, 14-year-old Susanna Jackson mangled her right hand while feeding straw into a thresher on the family’s farm 22 kilometres east of Stratford.19 Hyde had arrived to consult with Dr. John Flynn concerning the best course of action. Although accidents with machinery were not uncommon, each case presented its own difficulties. Hyde overruled Flynn, who assisted the following morning when Hyde amputated Susanna’s arm above the elbow joint. Susanna’s father, John Jackson, contended that Hyde should have attempted a more conservative operation that might have left more than a stump to his daughter’s arm. The thresher had removed the little finger and that next to it, however, and severely traumatized the muscles of the hand and forearm; Hyde deemed the damage serious enough to warrant action that would prevent worse problems—possibly death—in the days ahead. The testimony of several doctors at the trial supported Hyde’s management of the case.

Following the accident, a local prosthetician advised Susanna to wait until maturity before acquiring an artificial limb. Six years later nothing satisfactory could be procured, and she charged Hyde with malpractice, requesting damages of $500. The suit sparked a discussion in several newspapers concerning the extent of a doctor’s responsibility in undertaking to operate on a patient, as well as the standards of conduct doctors should maintain in controversies surrounding their colleagues. The
Toronto Leader, "at a loss to understand upon what grounds such a verdict [for the plaintiff] could have been properly given" suspected that the jury took a "sympathetic view of the case" instead of acknowledging Hyde's 30-year career and license to practise as sufficient testimony of his ability to judge the best treatment of a case.

If [a physician] be liable to be brought to book in every case he is called upon to take in hand [wrote the editor]—to be dragged before a jury who may know as much of medical practice as they do of Latin epigraphy—his position is one of continual insecurity. ... [If he violate no rule or principle of his profession, but simply makes a mistake in judgment, it does seem to us that he cannot properly be said to leave himself open to a charge such as that made against the defendant in this case.]

Stressing the fact that the doctors who testified at the trial were themselves divided as to the proper course, the Leader suggested that the verdict would cast a chill over the medical profession. The Toronto Globe qualified its condemnation of the verdict by recognizing that a license to practise does not guarantee flawless conduct. "Licensed practitioners... are sometimes rash, foolish and dissipated;" if the jury decided against Hyde unfairly, it was for the good of the medical profession as a whole. "It is better for him and all his professional brethren that there should be the possibility of such unfairness, than that he and they should merely plead 'privilege,' or good intentions, and be relieved from all responsibility."

The general reaction of the profession, however, favored Hyde and the Leader. "I, for one," wrote Dr. William O. Eastwood of Whitby to the Globe, "think that an action for mal-practice ought never to be brought against a surgeon, who is legally qualified, and who has done his best, though perhaps not some other man's best."
The Canada Medical Journal agreed. "Actions for malpractice have become too frequent in Ontario," it observed. "We would beg of our medical brethren to beware of the temptation to express an opinion upon the professional conduct of a brother practitioner, regarding a subject with which he can be only imperfectly acquainted."

Similarly, the journal's corresponding editor for New Brunswick, Dr. William Bayard, observed in an Address upon the Progress of Medical Science (1871) that "should a practitioner get into the hands of a jury, here again he has to contend against ignorance of medical power and responsibility, and expects to be told that if he does not save life or limb he must pay the penalty." Part of the penalty, Bayard noted, was the surgeon's obligation, regardless of guilt, to cover the legal costs of the action. (Even many years later, according to Charles Godfrey, the Ontario Medical Association would demand that the plaintiff furnish security for costs.) Clearly, Hyde's trial drew calls not only for the immu-
nity of a practitioner’s reputation from charges of malpractice, but also for the protection of his pocketbook!

The reaction of Hyde’s colleagues to the outcome of the trial indicates the medical profession’s defensive stance in a period where malpractice suits were becoming increasingly common. The commercialization of health care—the perception of doctors as entrepreneurs receiving payment for work done rather than gentlemen deserving an honorarium for a noble deed—was eroding the trust implicit in the relationship between physician and patient.27 Doctors became keenly aware of the implications of their actions, even those performed with the best of intentions. As James C. Mohr points out in his analysis of medical jurisprudence during the same era in the United States,

Doctors no longer looked like designated healers or well-meaning neighbors who served their local communities as best they could in an interactive and organic social system that involved mutual trust and obligations. . . . Increasing numbers of patients decided that the physician agents they retained could have and should have done a better job than they did.28

In 1870, Hyde himself faced two more malpractice suits. One charged that Hyde had set a broken wrist improperly, while the other “endeavoured to show that the doctor’s treatment [of the defendant’s late wife] was not correct.”29 Unlike the backwoods settlements in which Hyde had initially practised, the communities of post-Confederation Ontario were increasingly litigious.

Notably, the local press consistently supported Hyde, defending his skill and reputation against the claims of dissatisfied patients. The editor of the Berlin Telegraph encouraged Hyde, “a gentleman of acknowledged skill and experience as a surgeon,” to appeal “such a nefarious proceeding.”30 Sympathy for Hyde stemmed partly from the suggestion that motivation for the suit involved an element of professional animosity. Although John Jackson signed a statement declaring that none of Hyde’s colleagues instigated him to sue for damages,31 suspicion centred on Dr. Shaver, who, for unknown reasons, testified against Hyde at the trial and thereby rendered the proceedings “nefarious.” Joseph Workman wrote his letter to Hyde soon after Jackson’s declaration appeared, and it illuminates attitudes towards doctors who broke ranks when the interests of the profession were at issue.

JOSEPH WORKMAN’S LETTER TO HYDE

In his letter of 12 November 1868 (see Appendix) Workman agrees with Hyde that Shaver was the actual writer of Jackson’s statement. Workman, who acquired a reputation in the 1840s for a sarcastic pen, also denies writing a letter to the Toronto Leader signed “Cut-safe” that con-
demn the malpractice proceedings. Instead, he satirizes the protestations of Hyde's opponents in a riotous manner that reflects an increased sense of solidarity among medical professionals.

Do you really regret that a writer in the Stratford Herald who has forgot or omitted to append his name to his letter (because no doubt he knew that no reader in the County of Perth would fail to recognise the ass by his braying) has honoured me with his compliments & still more, with the credit of having written the communication in the Leader, signed Cut-Safe? . . . He does me no small honour; for in Toronto, at least, that letter has been read with universal admiration and approval.32

Cut-safe went further than Workman, however, setting Hyde's experience forth as an example of the besieged state of the medical profession:

If the vulgar public, and juries drawn from it, do not treat surgeons as men, as educated gentlemen, who, in the discharge of their most painful duties, disregard all other considerations than the ultimate safety of their patients, then on the shoulders of this vulgar public, and on the shoulders of jurors sent forth from such a vulgus, be the consequences . . . If the public treat the medical profession as knaves, cut throats, as jackasses, then let it be served as knaves, cut throats, and jackasses may serve it. Honest and honorable men, educated as medical gentlemen ought to be, will cease to enter a department of life so degrading; and the practice of surgery will revert to the class of shavers, or barber surgeons, who once ornamented this branch of science.33

Cut-safe asserts that medicine deserves respect because it possesses special, advanced knowledge. The benefits it confers on humanity obliges the general population to treat its practitioners with respect, or face the consequences—reversion to "shavers," an obvious allusion to Peter Shaver, Hyde's antagonist at the trial.

In light of the work of historians R. D. Gidney and W. P. J. Millar, Cut-safe offers a spirited defence of the medical profession that highlights the profession's changing circumstances. Since Hyde's earliest days in Canada, the number of doctors in the country had been steadily increasing, while the privileged place of professions in the society had eroded. This erosion occurred largely because the people demanded a right to decide for themselves among the various sects of practitioners. The people could freely choose their minister of religion, ran the argument, so why not their minister of medicine as well? Gidney and Millar note, "We, at least, have not located a single complaint about 'quack' surgery," meaning surgery badly performed by an irregular practitioner. Yet Cut-safe implies that the suit against Hyde amounted to the same thing. Moreover, he predicts that if juries further insult licensed, regular-bred medical practitioners with convictions of malpractice, they would ironically serve to increase the number of "shavers, or barber surgeons" while gentlemen withdrew to safer occupations. When the
various medical sects amalgamated in 1869, the outcry from regular practitioners echoed Cut-safe's rhetoric, as Gidney and Millar imply:

The quacks, the protest asserts, didn't even know the collateral sciences, let alone the broader world of literature and science. . . . The emphasis here falls not so much on medical doctrine or practice as on the notion of the regularly bred doctor as a member of a learned profession, including all that entailed, from the right to self-governance possessed by gentlemen to the liberal education and the social standing they had a right to claim because of it.35

For many doctors, Hyde's conviction was yet another sign of the indifference in Ontario society towards a profession that they believed rightly deserved respect.

Ultimately, Hyde took the advice of Workman and others and appealed the damages the court awarded Miss Jackson.36 The appeal was successful, possibly on account of the indignation the original decision elicited from doctors throughout the province. Through his victory, Hyde contributed to his profession's struggle to find its place in post-Confederation Ontario. He undoubtedly appreciated Workman's sympathy and support in the process, enough, at least, to preserve the following letter as a witty memento of the trial and his friend.

APPENDIX: JOSEPH WORKMAN'S LETTER TO JOHN HYDE, WITH ANNOTATIONS

Toronto 12th Novr 1868. p.m

My dear Hyde

Are you [illegible]? Do you really regret that a writer in the Stratford Herald who has forgot or omitteda to append his name to his letter (because no doubt he knew that no reader in the County of Perth would fail to recognise the ass by his braying) has honoured me with his compliments & still more, with the credit of having written the communication in the Leader, signed Cut-Safe?b Be assured I am not hurt—I am not disturbed—I am too much accustomed to "idiotic ravings," to be seriously moved by such a production as that incorporating the names of John Jackson & Alex Thompson; and, miserabile dictu, stumped by some diabolical barber-surgeon of that brilliant appendage which would so

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a "Or omitted" inserted between "forgot" and "to" with a caret.
b Cut-safe, letter to the editor, Leader (Toronto), 4 November 1868: p. 2; Cut-safe submitted a correction to the Leader, 6 November 1868, p. 2.
c Workman refers to a notice in the Stratford Herald, 11 November 1868, p. 2, signed by John Jackson and prosecuting lawyer Alex Thompson that was undoubtedly the immediate catalyst for his letter to Hyde. Workman quotes it at several points, including the phrases "idiotic ravings," and later "highly amused." It states that "no medical man had anything to do whatever in inducing" Jackson to bring the malpractice suit against Hyde.
much have added to its force & grace. It is bad enough to cut off arms negligently or maliciously, but to cutting the tail off why, Sir—it is worse than sloughing—it was an act of suicidal purpose seldom, I trust, to be rehearsed in this country—Since the chewing up of the Kilkenny cats, it has had no parallel—Parallel! do I say? It was beyond the Kilkenny cat parallel, for they spared the tales. Is it moulding time at Stratford, that the Peacock should forget to shew his tail? How the poor bird must feel under the unfeeling ridicule which ever falls upon a tailless peacock!

And this curtailed bird of sweet note actually ascribes to me the credit of having written the Cut-safe letter in the Leader! He does me no small honour; for in Toronto, at least, that letter has been read with universal admiration and approval. I would rather be entitled to the credit of its authorship, than to the best supper of peacock's brains that ever graced the board of a Roman Emperor—But I wish not to wear any other's tail, just as much as I abhor stumping my own—I do not say that I do not know Cut Safe—I do know him; and I am proud of his acquaintance. I never admired his graphic powers more than I did after perusal of that letter; & I venture to say he has many as hot in his locker yet, which will stir up the dust, and make the peacocks glad to doff their tails, and take refuge among the donkeys—Cut-safe,—my word for it—can cut both square & sharp—and if he applies the Knife on any of the barber surgeon tribe, it will cut an inch beyond & beneath the edge—and it will cut, too, where the patient will be so stupefied—(if not beforehand too stupid)—to know that he is cut at all, until other people see it, and call out to him—where's your tail? Was that it we saw stuck up on the barber's poll, down street yonder?—Won't that be awful? O, the "unfortunate beings"! how their "idiotic ravings," under the loss of their tails, will amuse the wicked scamps who will twit them on the ugliness of their coccygial stumps! I wonder if some obliging John Jackson, or kind Alex Thompson, will come to their aid, and certify that they actually once had tails, and that said tails must have been cut off by some mal-practitioner of surgery—and that before a York jury, their stumps would be sure to command a sympathetic verdict—though in Stratford nothing more than a verdict of general ridicule and in Toronto, a most captivating catch call for the boys selling the Telegraph and Leader.

And John Jackson has certified a clean bill of health for the benefit of the tail-less peacock! Kind John! good John! noble John!—Asinus asinum fricat. One scratch for another—The ass with a tail switching the flies off the ass with no tail. The ass whose ears might be cropped, licking the ears of the ass whose tail is cropped! It is very pretty—& a very interesting picture—It would look nice in

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d Hessian troops stationed at Kilkenny in 1798 found diversion from garrison duty in tying cats together by their tails and hanging them across a clothesline. The cats fought until one emerged victorious.
e "Stumping" is inserted above a word that Workman's cancellation renders illegible.
f "& beneath" inserted between "beyond" and "the edge" with a caret.
g Asinus asinum fricat: the ass rubs the ass.
h "The flies off" inserted between "switching" and "the ass" with a caret.
Punch—Now my Dear Hyde, be comforted—for I am infinitely amused—and if
the intelligent public of your region fail to be amused with that rich specimen of
classic English and fine taste, which stands above the name of John Jackson, all I
can say is they must be very green and very slow—Why, Sir, it is worth the
whole price put on Miss Jackson’s arm, & the law costs to boot—

Dogberry told his audience to “write him down an ass.” There was not the
least necessity for the instruction. The peacock in the Herald has avoided the
error of Dogberry—He knew that nobody could mistake him—tail or no tail—and
nobody has mistaken him—for whether he had assumed the skin of the
lion, the tail of the peacock, or the neck of the giraffe, it would have been all
one—there was only one man in the whole county who could write so silly a
letter—and every body knows who he must be—

Every body here whom I have spoken to, save one, commends your pluck, and
wishes you success—

I am proud to learn that you think Doctors are better than Lawyers—I have
often felt ashamed of the meanness and the ignorance of many of our body; but
of many, perhaps the majority—I have a high opinion; and I thank you for cor-
roborating it—I hope your family (& mine in Stratford) are all well—I seldom
hear from the latter now—but I know it must be from want of time for letter
writing

Very truly and undisturbedly

Yours J Workman

NOTES

1 Second Annual Report of the Directors of the Provincial Lunatic Asylum, at Toronto, with a
Report of the Medical Superintendent (Toronto: N.p., 1852), p. 3; and The Canadian
2 Both letters, as well as several others Hyde received during his career (including that
cited in note 18), are in the possession of the author.
3 Thomas E. Brown, “Workman, Joseph,” Dictionary of Canadian Biography (Toronto:
4 Jacalyn Duffin, Langstaff: A Nineteenth-Century Medical Life (Toronto: University of
5 “Inquest on the Late John Conacher,“ Beacon (Stratford), 12 June 1857, p. 3.
6 “Inquest on the Late John Conacher,” p. 3.
7 Beacon (Stratford), 20 November 1857, p. 2.
8 “Inquest on the Late John Conacher,” p. 3.
9 Beacon (Stratford), 20 November 1857, p. 2. The “quack” in question is David Waugh.
10 Beacon (Stratford), 19 June 1857, p. 3.

Dogberry, a constable in Shakespeare’s Much Ado about Nothing, has a gift for misapplying
words. Workman refers to IV.i.69-72 of the play where Dogberry declares, “O that
he were here to write me down an ass! . . . Though it be not written down, yet forget not
that I am an ass” (Harmondsworth: Viking, 1969).
Workman and a Malpractice Verdict against John Galbraith Hyde

11 "Inquest on the Late John Conacher," p. 3.
12 "Inquest on the Late John Conacher," p. 3.
13 "Inquest on the Late John Conacher," p. 3.
14 Beacon (Stratford), 20 November 1857, p. 2.
15 Beacon (Stratford), 20 November 1857, p. 2.
16 Beacon (Stratford), 20 November 1857, p. 2.
17 Beacon (Stratford), 20 November 1857, p. 2.
19 Details of the accident and subsequent events are as recorded in the Globe (Toronto), 27 October 1868, p. 1.
20 "Liability of Medical Men to Be Assessed for Damages," Leader (Toronto), 28 October 1868, p. 2.
22 William O. Eastwood, letter to the editor, Globe (Toronto), 30 October 1868, p. 2.
24 William Bayard, Address upon the Progress of Medical Science, Read before the New Brunswick Medical Society (Saint John: New Brunswick Medical Society, 1871), p. 22.
29 "Hyde, Dr. John," Stratford-Perth Archives, biographical card index; and Advertiser (Mitchell, Ont.), 17 June 1870, p. 3. Further details regarding these two cases are unavailable.
30 Beacon (Stratford), 20 November 1868, p. 1.
31 Herald (Stratford), 11 November 1868, p. 2.
32 Joseph Workman, letter to John Galbraith Hyde, 12 November 1868.
33 Cut-safe, letter to the editor, Leader (Toronto), 4 November 1868, p. 2.
34 Gidney and Millar, Professional Gentlemen, p. 50-51, 317.
35 Gidney and Millar, Professional Gentlemen, p. 100.
36 Godfrey, Medicine for Ontario, p. 205; despite checking with both Godfrey (telephone conversation, March 1995) and the Ontario Archives, I have been unable to determine the date of the appeal.