

EXPERT TESTIMONY.*

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It is expected, I presume, that this topic shall be discussed critically, and in the severer sense of that word. The history of expert testimony would no doubt be an interesting story, certainly its employment must have been coeval with the establishment of regular jurisprudence. In the Old Testament we find several allusions to expert decision on highly important cases. The diagnosis of leprosy is committed to the charge of the priests under the operation of a general sanitary law, and reference is made also to the determination of virginity.

It is the almost unanimous opinion of intelligent people that expert testimony as at present exhibited in our courts of justice offers much for unfavorable criticism. Not only do the newspapers frequently inveigh against it in general, and in given cases against the experts themselves, but judges often express severe condemnation in their rulings and opinions. Indeed in many cases professional men are seriously discredited, by the very fact that they are called to the witness stand in a professional capacity. Sometimes the court picks out of the conflict between expert opinions a judgment in favor of one side. Thus, in a suit brought in a Philadelphia court by an ignorant laborer who had been first employed about a factory as a carter, and subsequently hired to work in a room in which strong acids were used and through his ignorance was poisoned, expert testimony was produced on both sides. One set of experts testified that the gases were dangerous and that the employer—who was a trained chemist—should have known the fact; while another expert testified that the gases could not have caused the illness. The court of last resort in affirming a verdict for large damages, said that if experts differed so much as to the danger of a certain occupation, an ignorant workman

could not be expected to know and should have been carefully warned.

When this question of conflict between experts is discussed, it is usual to think only of medical experts, and in this meeting it will not be expected that any other class should be considered. There is, however, a much larger field, which, so far as I can judge from a limited experience, is more corrupt than that of medical testimony. Indeed, a noted English lawyer says in his autobiography, that he had found experts in engineering questions more difficult to deal with than any other class. "The inside of a bar of iron," he says, "is a *terra incognita* more abstruse than any organ of the human body." In the graver issues of jurisprudence in which only physicians are likely to be called, cases involving the forfeiture of life or restriction of liberty, the procedures take place in open courts, and the very publicity is a protection against extravagance in statement or misrepresentation; but in the private hearings that are given in equity, especially cases involving the nature of patents or the value of real estate, expert testimony runs riot.

To illustrate the variety of opinions expressed by lawyers concerning expert testimony, I quote the following paragraph from a recent work, *The Law and Medical Men*, by a member of the Canadian bar:

"Some judges and writers have very little respect for the evidence and opinions of experts." An Iowa judge says: 'Observation and experience teach that the evidence of experts is of the very lowest order, and of the most unsatisfactory kind.' One from Maine speaks of 'The vain babblings and oppositions of science so-called, which swell the record of the testimony of experts when the hopes of a party depend rather upon mystification than enlightenment.' An Illinois judge quotes a distinguished occupant of the bench as saying: 'If there is any kind

* Read before the American Academy of Medicine at Baltimore.