

sons driving when they' meet should turn out to the right—and, generally, things everyone ought to know. The judge, too, takes judicial cognizance of the facts of mathematical and natural science and of the laws he is administering.

Outside of such matters and the like, at the present time the jury (I use this word to indicate not only the jury proper, but also the judge sitting to try facts as a jury) must find the facts from the evidence. Centuries ago this was not so; jurors then were taken from the neighborhood of the *locus* of the facts to be tried; and they determined the facts from their own knowledge. Now, however, the very reverse is the case; jurymen are not permitted to utilize their own knowledge at all—they must “find a verdict according to the evidence”—if they have any knowledge of the facts they must, to make that knowledge available, take their place in the witness box and state the facts under oath as any other witness.

Evidence is (1) documentary; or (2) by witnesses. I need not speak of the former, but pass at once to evidence given by witnesses.

There are two classes of witnesses—the ordinary witness and the skilled or expert witness. The former is allowed to speak only of facts within his knowledge: being sometimes allowed to refresh his memory by the use of a written memorandum or entry in a book. He may not express his own belief or opinion except on some particular subjects where positive and direct testimony may be unattainable, as for example, the identity of persons and things, the genuineness of disputed writing, whether two persons are attached to each other, and the like.

Where, however, on questions of science, art or trade, persons skilled in the particular branch of science, art or trade are called upon not only to testify to facts, but also to give their opinions, they are called skilled witnesses, or more commonly “expert witnesses.” So far as their evidence is as to the existence or non-existence of facts which can be conclusively established or demonstrated, it is not generally called expert evidence—that name being given to the opinions expressed by them as distinguished from the facts upon which such opinions may be based. Indeed it is by no means uncommon for an expert witness