

THE LAW OF EVIDENCE AND THE SCIENTIFIC INVESTIGATION OF HANDWRITING.

ternal appearance of the documents, is, if we go no further, of no kind of value whatever, and that we should oftener get justice in such cases by resorting to the old method of settling doubtful questions by casting lots. Indeed, it seems to me that the present system, like loaded dice, is vastly in favour of the expert forger, if not also of the mere beginner or bungler in the art.

In the continuance of his comments upon the rules of the courts in respect to the comparison of handwritings, Judge Breese, goes on to say, "It has been already stated, that a witness who testifies on the subject of a handwriting, gives at best but the result of a mental comparison made by him of the disputed writing, with that which he has seen, and the impression of which remains in his memory." "What difference could it make if this comparison was carried on in the mind, which the rules of evidence allow, or was actually made in the presence of the court and jury? Is speaking from an impression made on the mind more convincing, more worthy of regard and belief than a present conviction produced by actual comparison?" In *Pennsylvania, in Farmers' Bank v. Whitehall*, 10 S. & R. 112, the court, in discussing the matter, say, "It is more satisfactory to submit a genuine paper as a standard and let the jury compare that with the paper in question, and judge of the similitude, than the evidence continually received of allowing a witness who has seen the party write once, to compare the disputed paper with the feeble impression the transient view of the writing may have made upon his memory."

In a recent English case, 4 Phil. Ev. (Cow. and Hill's notes), part 5, p. 478, it is said "Why is it not as reasonable when a doubtful paper is sought to be made evidence that the opposite party should show a genuine paper and by a comparison of a disputed paper with it that the probability is against its genuineness."

The arguments in favour of the rules of the courts it will be hardly necessary for me to notice. They all of them seem to me of as little value as the first mentioned, which contains in its very proposition its answer, *e. g.* where *genuine* papers are

brought forward for comparison, &c. Objection, "The danger of admitting fraudulent ones; of course no paper should be used for the purpose which would not be admitted by all parties to be genuine. No comparison of the kind would be of the least scientific value except under such conditions.

"1st. The testimony of experts may be received to prove that an instrument was written by the same hand, with the same ink, and at the same time." Suppose every latitude should be allowed in such a case, still, under the received methods, if the paper should be skilfully executed, the witness is pretty sure to come to a wrong conclusion. If he guess at the matter, or is governed by his prejudices, which is very apt to be the case, his statements surely ought not to be received as evidence. It is very easy so to prepare ink, and this is constantly done, that it may appear to the eye to be of the age required. Microscopical and chemical tests may be competent to settle the question, but *these* should not be received as evidence, I think, unless the expert is able to show to the court and the jury the actual results of his examination, and also to explain his methods so that they can be fully understood. Surely, in matters involving such important questions, this is not too much to demand of the scientific witness, and he will as surely court such test if he have the least self-respect or regard for the honour of his vocation.

The investigations under this rule have been, heretofore, usually made by the eye, sometimes aided by optical instruments, which are like edge tools in the hands of unpractised persons; sometimes with chemical reagents, which in the present state of the science, can tell nothing in regard to the age of writing, but can tell sometimes as to the kind of ink. The practice has been, and still is, to call on both sides professional experts and others who have seen the party write, or are qualified in either of the ways described, to give an opinion upon the question at issue, and such opinions are to go to the jury as evidence which they are to weigh, say the court, and the value of which they must estimate as one end or the other of the scale shall preponderate.