

Dr. John D. Lawson, in "The Law of Expert and Opinion Evidence," 2nd edition, at p. 74, lays down as Rule 22, "Mechanics, artisans and workmen are experts as to matters of technical skill in their trades, and their opinions in such cases are admissible"; citing numerous authorities and illustrations.

"The derivation of the term 'expert' implies that he is one who by experience has acquired special or peculiar knowledge of the subject of which he undertakes to testify, and it does not matter whether such knowledge has been acquired by study of scientific works or by practical observation; and one who is an old hunter, and has thus had much experience in the use of firearms, may be as well qualified to testify as to the appearance which a gun recently fired would present as a highly educated and skilled gunsmith": State v. Davis, 33 S.E. 449, 55 S.C. 339, cited in "Words and Phrases Judicially Defined, volume 3, page 2595."

In Potter v. Campbell, 16 U.C.R. 109, the Court of Queen's Bench held that a person not being a licensed surveyor is a competent witness on a question of boundary.

It is quite manifest, therefore, that these six witnesses were persons "entitled according to the law or practice to give opinion evidence."

Defendant's counsel, however, contends that even admitting that the statute has been disregarded there has been no miscarriage of justice. There would, of course, be no question about the matter if the case had been tried with a jury, but as it is I find myself unable to accede to this view. It would be impossible to determine the exact effect which the evidence of the three witnesses whose evidence was improperly admitted had on the mind of the Judge. Day, the fifth witness of this class was admittedly an expert, and a very forcible witness; and the learned Judge seems, on both branches of the case, to have attached great importance to the evidence of Elliott, the last witness who was called.

But, leaving out these considerations altogether, the mere refusal of the learned Judge to obey the plain provisions of the statute, in my opinion, constitutes a mistrial, and defendant's counsel (while it appears to have been unnecessary for him actively to oppose the objections), accepted and profited by the rulings of the learned Judge, and, therefore, there must be a new trial, with costs of the last trial and of this appeal to be paid by the defendant.

BRITTON, J.:—I agree.

SUTHERLAND, J.:—I agree.