

THE LAW OF EVIDENCE AND THE SCIENTIFIC INVESTIGATION OF HANDWRITING.

I next proceed to quote other learned authorities on this part of my subject, some of them opposed to the rules, but all resting upon the false idea, as I conceive it to be, that *opinions* based upon a comparison of handwritings as a question of resemblance or non-resemblance in form alone should have weight as testimony in courts of justice. The more close the likeness the more danger is there, of course, of coming to a false conclusion, and herein lies the danger as I have illustrated more fully in another part of my paper. Again, there is as great difference in the ability of persons to recognise variations in form as there is in the power of distinguishing colour. Many persons are *form-blind* as well as colour-blind, and of this they are, of course, themselves unaware.; hence, perhaps, in many cases, the conflicting testimony of witnesses in this respect. Were they required to give reasons for their opinions in such cases, the discrepancy would be self-evident.

This rule would not include such comparison as a means of showing points of difference in handwriting, where such points of difference were made use of by the expert, in connection with other facts which, on account of their relation to each other and to these first also, might help him to come to a conclusion.

"Evidence of handwriting, like all *probable* evidence, admits of every possible degree, from the lowest presumption to the highest moral certainty, and affects the jury accordingly." 21 Ill. 415, per Breese, J.

It will be seen that this dictum is based upon the idea that such evidence is deducible from a comparison of handwritings, as before explained, which, as I have said before, is less conclusive in those cases where the samples compared most resemble each other; for the expert forger as has been frequently proved, finds but little difficulty in producing *fac similes* of the writings he wishes to imitate; and of course, the so-called expert, in these cases, under the usual methods of examination, can only testify that in his opinion such specimens are genuine. Thus the highest "moral certainty" of the learned judge (and I submit of the courts generally) becomes the

strongest physical uncertainty, so that when the court and jury were most affected in this direction, there would be the greater reason to doubt, or at least to make a thorough scientific examination of the writing in question.

"All evidence of handwriting," the judge goes on to say, "except when the witness has seen the disputed document actually written, is in its nature comparison."

"It is only the belief which a witness entertains upon comparing the writing in question with an abstract picture in his mind, derived from some previous knowledge, and he must upon the moment apply that picture or example to the particular writing in question." The exception here laid down in regard to the document not being subject to the same law of recognition, provided the witness saw it written, seems to me not to be quite correct, unless the document had remained in his keeping up to the time of its presentation. He could only recognise it by comparing it with the abstract picture in his mind, painted there at the time it was written, and this same statement would hold good had the document in question been the work of his own hands. It is as necessary to the success of the forger that he be able to bring all parts of his falsified paper in perfect harmony with his model, as that the writing itself should be in the same condition, and this is very often done, and is indeed much less difficult of accomplishment under the rulings of the court than the falsification of the writings itself even.

I have had case after case of the kind where the parties themselves, who had made documents for the express purpose of testing this fact, failed to distinguish between the true and the false; not from the comparison as expressed above of the simulated papers with the image remaining in the mind, or recalled by memory alone, but by the actual presence and comparison of the true and the false documents with each other. From these facts alone I think we should be warranted in coming to the conclusion that testimony based upon the resemblance or non-resemblance of handwriting, joined with the evidence deduced from the ex-