

opinion of the witness which we get?—an opinion which depends for its value on many factors, such as observation, opportunity, circumstances, appreciation, the senses, preconceived ideas, mental condition, etc.

In the late unfortunate occurrence of shooting a constable, several apparently truthful and personally disinterested witnesses were called to give a description of the man who supplied the weapons. No two of these witnesses agreed, and yet each was supposed to be describing an actual fact which occurred before his eyes and within a few hours prior to the evidence being given. What is this but opinion evidence? A car is running at fifteen miles an hour, and we will suppose this is capable of being established by scientific means as a certainty. Twelve men, the most reputable in the neighborhood, testify as to the speed of the car. They will be found to vary from perhaps ten to twenty or twenty-five miles an hour in their evidence on the question of speed. This again is opinion evidence, its correctness being dependent upon some of the many factors above alluded to. The mere repetition of a conversation is often more the result of opinion as to what the speaker said, than it is of the actual words spoken by him. One reason for this state of things is that our appreciation and knowledge of facts are purely relative, and to the extent to which the relation is defective or in error, to that extent the evidence is distant from the line of exactness.

In dealing with a question of this nature, we cannot overlook the principle necessarily underlying all evidence. Facts, as such, in reality cannot, as a rule, be presented to the Court. They can only be established through witnesses, and the facts that are proved are those established by the evidence, and not the real facts themselves. The real fact may be, and doubtless often is, quite different from that proved. A judge or jury pronounces on evidential facts. These facts reflect, to a greater or less extent, the mental bias and feeling as well as the imperfections of the witnesses. The evidence is but the impression made by the reality. It is a conclusion arrived at by mental process through the senses. Is it, therefore, much higher after all, than what is known as mere opinion evidence?

If this argument be correct, there is, therefore, but little distinction to be drawn between the evidence of the medical expert and that of the ordinary witness, assuming both to be equally honest. The testimony of either is generally to be more relied on than that of the party litigant. Medical men differ in the witness box in no greater degree than they do in the treatment of a patient, and it would hardly be safe to argue that they administer medicine with a bias or from improper or interested motives. *Very great weight ought to be*