

question was never investigated as to how the practice worked in England and Connecticut. As late as in 1911 one of the U.S. State courts refused to adopt the new practice and cited an old English opinion before 1854, instead of discovering how successful the new rule was across the border in the State of Ohio, a few miles away, where it had been followed for more than forty years.

In law the question may arise as to whether enlarged photographs should be used. A scientific investigation would endeavor to answer the following questions: What are their purpose and what is the argument for their use? Will they aid in shewing the facts? How will they aid? May they mislead or deceive and are they objectionable in any way? Finally, have they been used before and what has been the result of the experience in other cases?

There is no good reason why scientific methods cannot be applied in greater measure at least, in connection with these general subjects. The vital question in law as in science is to discover and prove what is true. The investigation ought to be unhampered and free, in which everything is considered that may throw light on the question and what has before been said should be used for what it is worth and only for what it is worth, and should be tested as all else is tested. There is no doubt that this too rigid dependence upon precedent has tended to retard progress by making legal discussions unscientific and perhaps making legal investigators lazy. There is, however, an awakening on the question, stimulated in large measure by able legal authors who have the courage to put into the law the methods of science, and who argue and prove that the science of the law is alive and growing.

Under the ancient restrictions regarding the introduction of evidence, cases relating to handwriting and documents were surrounded by a violent prejudice that weakened all technical evidence on the subject involved. Then the decisions rendered in these cases under the restrictions that made the evidence weak if not valueless perpetuated and intensified the criticisms and prejudice that actually grew out of the procedure imposed. Numerous of the old text books, reflecting the past, also contained violent and undiscriminating criticisms of technical evidence of this class.

This retention of these ancient ideas is discussed in an illuminating manner by Professor Roscoe Pound, Story Professor of Law and Dean of Harvard University Law School, in a book review in *Harvard Law Review*, March, 1911, in these words:—

"The dogmatism of many really competent experts, the obvious limitations of the crude empiricism of bank tellers, the extravagances of graphologists, and the unhappy operation of over-technical rules of evidence in many jurisdictions, which preclude the use of sufficient data on which to base a sound conclusion, have given rise to a distrust of expert evidence as to writings which to-day is not justified. Mr. Harris's account of the expert in handwriting, written, it is fair to say, over thirty years ago, but unaltered in the current edition of 'Hints on Advocacy,' has no application to the fair, temperate and reasoned statements of what may and what may not be discovered and determined with respect to the authorship and authenticity of documents which is given us in this book. Modern experimental psychology has furnished a sure foundation, confirmed in its application to handwriting