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TESTIMONY OF EXPERTS.

On page 57, *ante*, reference is made to the decision of the Supreme Court of Alabama, in the case of *Ex parte Dement*, holding that physicians may be called as witnesses and compelled to give professional opinions, without receiving any remuneration therefor. There seems to be something extremely unjust in forcing a professional man to apply the knowledge gained at the cost of much toil and self-sacrifice, without allowing him any compensation, and it will be seen by reference to page 57, that the authorities are not uniform on the subject. The more equitable rule seems to be laid down in *Webb v. Page*, 1 Carr. & Kirw., 23, distinguishing between the case of a man who sees a fact and is called to prove it in a court of justice; and that of a man who is selected by a party to give his opinion about a matter with which he is peculiarly conversant from the nature of his employment in life. Such is the opinion enunciated by the Supreme Court of Indiana in a more recent case than *Ex parte Dement*—that of *Buchman v. The State*. On the trial of one Hamilton for rape, Dr. Buchman, a physician, being called, was asked "whether, in female menstruation, there is not sometimes a partial retention of the menses after the main flow has ceased." Refusing to answer this, or any other question depending on his professional knowledge, without being first paid as for a professional opinion, he was committed for contempt. From this judgment he appealed to the Supreme Court, where the decision was reversed and the commitment set aside. The court referred specially to the case of *Ex parte Dement*, among others, but did not consider the decision a sound one. "It is unnecessary to determine in this case," remarked one of the judges, "whether all classes of experts can require payment before giving their opinions as such. It is sufficient to say, that physicians and surgeons, whose opinions are valuable to them as a source of their income and livelihood, cannot be compelled to perform service by giving such opinions in a court of justice without payment." This was not

the first case of the kind in Indiana. The Court held *Blythe v. The State*, 4 Ind. 525, to be exactly in point on principle. In that case, Blythe, an attorney of the court, had been appointed to defend a pauper on a criminal charge. Declining to render the service without compensation, he was committed for contempt. The Supreme Court, however, held that he was not bound to perform the service gratuitously, on the ground that to hold otherwise would be to subject a particular class to a tax, in violation of the constitution, which provides for a uniform rate of assessment upon all citizens.

The reluctance to provide for the payment of professional witnesses, may arise from the difficulty of assessing the value of such services. The time of professional men varies immensely in value, and it is impossible for the law to fix a compensation that shall be equitable in all cases, but this is hardly a satisfactory reason for failing to make any attempt at rendering justice to professional witnesses under such circumstances.

APPROPRIATION OF PAYMENTS.

The decision of the Privy Council in the case of *Kershaw & Kirkpatrick et al.*, an appeal from the Court of Queen's Bench of the Province of Quebec, though turning in some measure upon matters of fact, touches a point of great interest in the rapid transaction of commercial business. The defendant, Kershaw, was a broker of Montreal, who had been employed by one Stevenson to buy two cargoes of wheat on his behalf. The wheat was bought from different parties, and Stevenson received separate invoices for the cargoes. Kershaw afterwards sent his clerk to Stevenson's office, to request payment, or to get as much money as he could on account of the indebtedness. Stevenson could only spare \$8000, and on handing the clerk a check for that amount, the clerk (as he said, by accident), acknowledged receipt on the invoice for the cargo secondly purchased from the defendants, Kirkpatrick & Co. When Kershaw became aware of this, he endeavored to get the appropriation altered, but Stevenson declined to make any change. Stevenson having become insolvent, Kirkpatrick & Co. sued Kershaw for the \$8000 and were successful. This judgment has been confirmed in England. Their Lordships adopt