

## The Legal News.

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### TESTIMONY OF EXPERTS.

As judges have so often said, and we have so often drawn attention to in these columns, expert witnesses, in nine cases out of ten in which they are called, are inclined to give their evidence as if they were retained as advocates for the respective sides subpoenaing them. This fact among other circumstances has tended greatly to depreciate in the minds of jurymen that just weight which their evidence should have. The recent Liverpool poisoning case has brought prominently before the public the difficulty which a jury must feel in estimating the exact worth of the evidence of even so eminent experts as the medical witnesses in that case undoubtedly are. We doubt, however, that any one will receive much comfort from learning what the medical profession in America think of the evidence of their own members. At the meeting of the Medico-Legal Society of Chicago, held on the 1st of December, 1888, the attention of the society was given to the consideration of a suit for malpractice in which one of the members of the society had recently been a successful defendant. Dr. F. C. Hotz said: "From a medical point of view I think we may disagree with some applications Dr. G. made, but I am sure on the whole the case was managed well. We all have our individual views in regard to treating a case; I may use one medicine and another person another medicine for the same purpose, but that does not make the other treatment unjustifiable. We are none of us infallible; one may use corrosive sublimate and another something else, for conjunctivitis; and if one makes a mild application of nitrate of silver I should not be justified to condemn the treatment of the other as long as the majority of oculists consider it a valuable remedy. But this meeting, I believe, was called for the purpose of bringing out the medico-legal aspects of a recent case. An important medico-legal point is this: I became thoroughly convinced of

the utter uselessness of expert testimony. All it can do is to muddle the heads of the jury. The expert is not allowed to give his opinion upon the merits of the case, from a medical point of view. Oh, no, that is for the jury to decide. He is given a hypothetical case. Those of you who have been there and heard all that was put in a hypothetical case by the one side first, and then by the other side, will certainly agree that it is the easiest thing in the world to prove anything with these hypothetical cases. The prosecution will put in the strongest way against the defence. They make it appear that the doctor has been as cruel as a butcher at the stock-yards, handling the poor woman worse than an animal, and showing ignorance in everything; they put all this into a hypothetical case to the expert, and of course he has to answer that such treatment is all wrong. Then comes the defence and puts another hypothetical case. In the light of their evidence of course the expert will say, 'he could not treat it any differently; that was elegantly done.' And there sit the twelve wise men, unfamiliar with medical technicalities, and they are to form an opinion out of this chaos of hypothetical cases! I am sure no jury has ever gone into the jury-room and paid any attention to the expert evidence in the case." Judge Oliver H. Horton said: "As to expert testimony, I do not think, as a rule, that lawyers have the highest appreciation of or place the highest value upon it. In the matter to which Dr. Hotz referred, of hypothetical questions as being so misleading to laymen—in any profession, for instance in your profession, to a jury who are utterly inexperienced, a hypothetical question is so misleading as to oftentimes result in injustice, but until somebody is sagacious enough to give us a better mode, I know of no way to stop the present. Counsel for the plaintiff cannot be required to put a hypothetical question upon the defendant's case, but a suggestion from the doctor, it seems to me, would be very valuable. Instead of putting a hypothetical case, where the doctor had seen and examined the patient, the question should be: 'You saw the patient, what is your judgment?' and I think the question would have influence, from the doctor as an expert.