

States, the large majority of which had followed the English restrictive practice, continued to follow the old practice long after 1854. The change was not made in New York till 1880 and Pennsylvania courts continued the old practice till 1895.

A few American States, to their credit let it be said, never followed the old English practice at any time but adopted the sensible rule that recollection of a thing was not more reliable than the direct, sustained examination and comparison of a thing. A judge in an early Connecticut case, *Lyon v. Lyman*, (1831) 9 Conn. 54, 55, where it was sought to exclude standards, says of witnesses who had testified, "A fair paraphrase of their testimony is, that they *believed* (italics by judge) it to be his handwriting from having seen him write. This, according to the second position would render the testimony admissible. But they *knew* it to be his, by comparing it with his other writings. . . . But I forbear. It has always appeared to be a very feeble objection; and I rejoice to see it overruled."

The early violent prejudice against "the comparison of hands" in large measure grew out of the *Sidney* case in England in 1683 (9 State Tr. 817, 896) and the subject became in some degree a political question and for a long time this case had an unfortunate effect on handwriting testimony, which in some degree continues even to this day. For many years no comparison of any kind was permitted and then finally when it was permitted no standards for the purpose of comparison were admitted. Then for a long time many other restrictions prevailed, reasons could not be given and only a bare opinion could be expressed.

During much of the period of this gradual change there also was a continuous controversy over the question as to whether even a magnifying glass could be used, and the same controversy arose over enlarged photographs, illustrations on a chart, or anything in connection with such evidence by which it was made more effective and in which it differed from the old practice. Naturally the old decisions are full of criticisms of the weak and inconclusive evidence which naturally grew out of these various restrictions and exclusions. Many of these old opinions, defending and justifying the old practice, contained inaccurate and unscientific ideas which have trickled down through the decisions for more than a hundred years and muddled the stream of justice.

In justifying the exclusion of standards of comparison, Coleridge, J., in an old opinion advanced the view that standards of comparison were not necessary because the most reliable means of identifying handwriting was from a recollection, or memory, or impression of the "general character" of the writing, undoubtedly meaning its general appearance. This idea tended to make the evidence of the opinion witness who had simply seen the person write, or casually observed the writing, more valuable than any opinion that could be obtained from study or comparison *even by the same witness*. This ancient idea, although utterly unscientific and refuted numberless times, has continued down to the present day. It has been appealed to time and time again for the purpose of discrediting scientific handwriting evidence. It has been necessary in many modern decisions to refute the old idea. In the case of *Green v. Terwilliger*, 56 U.S. Fed. 384, as late as 1892 the writer of the opinion felt obliged to say, in combating the old error,