

I have just a last word or two to add in regard to this subject, and that is counsel should always keep to the level of his witness; and I will illustrate that by a well-known story of Lord Jeffrey. The counsel, an academic man, was examining a poor Scotchman at the court in Edinburgh. It was a question of the mental capacity of the testator, and the information he desired to get from this witness was, how well he knew the deceased, and the lawyer put to the witness questions in various forms—"were you on terms of intimate relationship with the deceased?"—and the witness looked at him and said, "Eh?"; he repeated the same question, using big words, away over the level of his witness—who didn't understand the question at all. Lord Jeffrey finally became impatient and said, "Now let me ask the witness a question," and he turned to the witness and he said: "James, did you ken Sandy Thompson in his lifetime?" "Well, I did." "How well did you ken him?" "Ken him—why me and him sleepit in the same kirk for 40 years." Now there was a degree of intimacy that could not be gainsayed, and developed because Lord Jeffrey came to the level of the witness. I believe that very often questions are asked witnesses that they do not understand, and if they do understand them the complex form or high sounding words may be a pretence that they don't, and it only gives them the advantage of getting, as I say, a certain time for reflection and a certain amount of consideration before answering.

In concluding I will add that a general division might be referred to, and that is what I might call a direct and indirect method of cross-examination. I shall only point that out because you can consider for yourselves exactly how it works. The direct examination deals with the aggregate; the indirect is of a psychological character and deals with the foundation of items which, brought together, form the aggregate without putting the question of aggregate. As an instance of direct cross-examination, that is coming to the aggregate at once, I can point to a very forcible, perhaps the most forcible example we ever had at the Canadian Bar—the late Mr. B. B. Osler. As to the indirect or