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EXPERT MEDICAL TESTIMONY.

By His Honor the late Jos. E. McDougall, Senior Judge Co., Court Co. of York.

YOUR worthy President, about ten days ago, had the temerity to enter the Court House, without a subpoena, came to my room and made a request to me that I would be good enough to say a few words to the Association when it assembled, upon the subject of medical testimony, or, perhaps, more particularly, on an important branch of it—expert testimony. I pointed out to your President that my time was very much taken up at this particular period of the year, and that I feared very much I would not be able to consent, but like very many other persistent men he would not take “No” for an answer, and later in the week he saw me again and persuaded me to make the effort.

I was tempted, also, to refuse upon another ground, and that was, that I have some fairly strong views on the subject of medical testimony, and I did not know but that some of the matters I might care to discuss here would possibly not be as palatable to my audience as they might be to the laity, or to lawyers. (Hear, hear). But on reflection, as one of those concerned in the administration of justice, and as one who has much interest in improving all our methods, it struck me it would be a golden opportunity to frankly and candidly use the scalpel a little, if advisable, in dealing with this important subject.

Now, of course, there are one or two elementary questions which it is necessary, perhaps, to briefly glance at to place ourselves, as it were in apposition with our subject.

In the first place, there are two kinds of evidence, that is, the evidence as to facts, which come under the observation of the witness, under the observation of a doctor just as much as under the observation of the layman; but evidence as to facts is not expert testimony. Then, there is evidence relating to the interpretation of facts founded on the knowledge possessed by the witness of the special subject, matter of interpretation, of inference, of conclusions based upon special knowledge, this is commonly called opinion evidence, or, in other words expert testimony.

* An address delivered at Toronto, on 4th June, 1902, before the Ontario Medical Association. *Canadian Law Review*.