

ORDRONAUX (J.)

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IN RE WILLIAM WINTER.

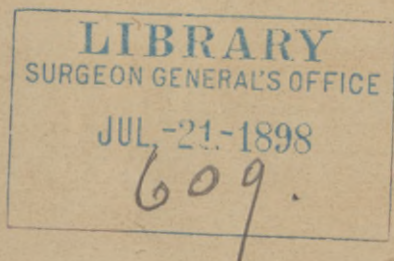
(THE VALUE OF EXPERT TESTIMONY.)

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BY JOHN ORDRONAUX,

PROFESSOR OF MEDICAL JURISPRUDENCE IN THE LAW SCHOOL OF  
COLUMBIA COLLEGE, NEW YORK.


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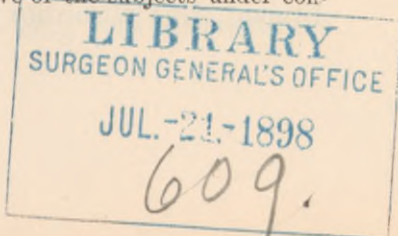
PROFESSOR OF MEDICAL JURISPRUDENCE IN THE LAW SCHOOL OF  
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[From the *American Journal of Insanity* for July, 1870.]

It is not as generally known as it should be, that the testimony of experts in any branch of science, is the least fallible of all the forms of human evidence. In fact it is that one which, beyond all others, approximates most nearly to certainty in judgment, because it consists of circumstantial evidence, superadded by way of corroboration, to skilled perception. To lawyers indeed, this assertion will seem paradoxical, accustomed as they are to summon experts for the express purpose of contradicting each other. But it should be remembered at the outset that it is a rare thing for any skilled witness to contradict himself or others on an examination in chief, if precisely the same questions be put to both. Assuming that the expert testifies without bias,

\*This case arose from a Commission *de Lunatico Inquirendo*. The finding of the jury for the respondent disposed of it absolutely, and it has never therefore been reported in print. This is greatly to be regretted as the testimony of the experts was exceedingly voluminous, as well as exhaustive of the subjects under consideration.



and that the subject under investigation is one within the range of demonstrative knowledge, all the probabilities are in favor of agreement, rather than disagreement between experts.

Of course we cannot undertake to discuss here the vexed question of qualifications in experts. That it is a very grave one, and the pregnant source of many errors in judgment and much consequent condemnation of skilled testimony, is every day made painfully manifest. Nor, until courts shall more nearly agree in some standard of qualifications for such witnesses, can we hope to see this evil remedied. But taking the word expert to import one *skilled by experience*, we repeat that there is a logical necessity for considering such testimony as the least fallible of any. We will admit, nevertheless, that upon cross-examination experts are often *made* to contradict themselves and each other. The reason for this can be easily given, and it flows from the paradoxical position in which they stand before courts. The object of cross-examining an *ordinary* witness is to test his memory or veracity. But it is not as readily evident what the object (and if he were not called most improperly as a *witness*) where the right can be to cross-examine an expert. For, *cuiuslibet in sua arte perito credendum est*. Certain facts are admitted, and a professional opinion required upon them. This opinion is founded upon a special interpretation of those facts, and the skill and experience necessary for that interpretation resides exclusively in the expert. Now to admit that a man is an expert by allowing him to testify as such, and to permit his skill to be afterwards questioned, and tested by one who is not an expert, seems little else than a judicial farce.

So long however as experts are called by parties litigant, this absurdity will continue to be inevitable.

But the worst feature of this is, that it entails upon counsel the necessity of endeavoring to invalidate such testimony by cross-examination. Consequently leading questions are put to experts precisely as to ordinary witnesses; propositions are laid down containing the most irrelevant premises, and courts permit counsel to insist upon categorical answers to such questions. It is not difficult to foresee the result. When one man can compel another to draw conclusions from premises already prepared for him, he becomes master of that other's opinions; and when those premises are purposely intended to entrap his judgment, and though discovered by him, he is still compelled to use them in forming his conclusions, he is doubly at the mercy of counsel. A man who requires me to look through his eyes, and to tell him what I see, asks me virtually to see precisely what he does. My personality becomes practically merged in his, and his judgment thenceforth overrules mine. Can it be surprising then, that experts should appear at times so unable to defend their own opinions, as to give rise to the suspicion that those opinions are based more upon conjecture than upon demonstrable truths? The fault, surely, belongs not so much to them as to the agency of counsel, to the variable latitude allowed to cross-examination by courts, in many instances, and the unwillingness to permit experts to explain the value and application of technical words.

All persons daily recognize the fallibility of their special senses, as vehicles for transmitting impressions to the mind, and when made aware by critical demonstration, of the tendencies to subjective error under which those senses lie, in their apprehension of the most patent objective truths, are forced inevitably to the conclusion that, without the revising and ex-cogitative

power of the judgment we should become the sport of every passing impression. There is a popular saying that "seeing is believing." It is an aphorism with the multitude who give it currency, and who are surprised whenever its truth is questioned, believing as they do in its axiomatic character. Yet ask the most self-opinionated witness to assert under oath that an oar which is seen propelling a boat is broken, because it *appears* so to the sight, and he will at once contradict the testimony of his vision. Again, ask him to roll a bullet between his crossed finger ends in the palm of the opposite hand and to state what he *feels* there, and he will say two bullets. But if required to swear to the truth of this impression he will refuse, on the ground that he *knows* better. Now how does he know better? That is the point. His own aphorism, or axiom as he has been deceived into considering it, is shown to have no foundation in fact, (for it *is* not so,) nor in reason, for the judgment will not affirm it. The senses are thus proved to be incompetent interpreters, negligent servants, and deceitful messengers for translating and conveying impressions from without to within us. Deprive them of the assistance of that revising, appellate tribunal, the judgment, whereby alone we are able to *ex-cogitate* truth from error, and their testimony is wholly unreliable and therefore valueless.

It is in the *pari passu* march of the senses with mental development that lies the difference between the infant, who, not being able to judge of distances, grasps at the moon or the chandelier, and the skilful engraver, who, by the slightest scratch under a magnified vision, perfects the distant points of his perspective. The eye which can interpret the mystic symbolism that lurks in and distinguishes the paintings of Raphael or Titian, from those of Rubens, Correggio or Salvator

Rosa, is not a better physical eye than that of the ploughman which detects the blight in the wheat, or the mildew in the corn, but it is one illumined by the amplified mental vision that not only apprehends, but also weighs, analyzes, reviews and corrects before affirming or contradicting the physical verdict below. The process is, in truth, a purely judicial one, and the judgment springing from it is the offspring of debate none the less close and severe because performed within us. It is here, particularly, that is exhibited the difference between a narrow and an ignorant mind judging questions *ex parte* and influenced by prejudice alone, or an imperial intellect sitting upon some Olympian height of its own, far above the range of fear, favor or passion. On this turns the difference between a Bacon and a Jeffreys—a Marshall and a Bradshaw.

It is chiefly in these great essentials of combining circumstantial evidence with skilled perception and judgment, that lies the preponderating character of expert testimony. Necessarily, therefore, it is higher than ordinary evidence as to mere facts, and it is higher than circumstantial evidence *per se*, since the value of this latter will always depend upon the qualifications of those who seek to interpret it. But when circumstantial evidence is indisputably interpreted by a skilled judgment, then human testimony may be said to approximate to certainty as nearly as it can, since nothing higher, in the direction of establishing truth by demonstration can be accomplished by the uninspired intellect of man. It becomes a moral certainty based upon both internal and external evidence.

The main purpose of ordinary evidence in law, is to furnish data whereby conclusions may be drawn. Its office is to treat of past facts exclusively, and to link them in a chain of mutual dependence which will justify

some *a posteriori* conclusion. Every ordinary witness must testify to facts alone that are within his knowledge. His duty is simply to exercise his memory in acts of a retrospective character. Beyond this he is not allowed to go, and can express therefore, no opinions upon facts in dispute. He narrates circumstances, but does not interpret their value, nor their relations to the issue before the court. His functions are ministerial, not judicial. Memory, veracity and a belief in moral accountability are the only qualifications exacted from him.

To all these prerequisites in an ordinary witness there is further and distinctively added in the case of an expert, special skill and experience. Armed with these, he rises at once from the plane of a simple narrator of facts, to an interpreter of their value, and a judge of their consequences, not only direct and actual, but remote and contingent. He does not alone draw conclusions from past facts, but must at times reason *a priori*, and thus *foreknow*, from experience of nature's laws, what their inevitable tendencies are, and in what way they will accomplish themselves. This is the science of prognostics. It is not a mathematical one, it is true. It has no equations to express the definite value of any of the factors which complicate its results, and yet it has a basis in truth, and in experience, and may be relied upon, because flowing from the recorded operations of laws known to govern the course of immutable nature. In the lower strata of material agencies, these laws operate with a precision which belongs to the necessities of chemical combination, and the balancing of forces that have no choice of action allowed them. This is generally enough perceived and admitted, but it is not as well known as it should be outside of the science of psychology, that the laws regulat-

ing mental action are governed by principles as fixed as any in the material world; and although the operations of minds under the disturbing influences of bodily disease, or moral freedom, are sometimes inscrutable, and their future phenomena not positively to be anticipated, there are nevertheless limits within which science may foreknow them, with almost the same certainty with which she foreknows the probable results of disease.

Hence the value of expert testimony in determining whether under a given state of circumstances the probabilities are in favor of, or against certain results, as in the sea-worthiness of a ship, the surgical treatment of a limb, the architectural perfection of a bridge, or of a building in relation to bearing a given weight. All will admit these to be legitimate scientific problems, and every day furnishes proofs of the importance of solving them correctly. There cannot of course be equal precision in predetermining and foreknowing the manifestations of mental action. Yet, as before said, laws bind and obligate even here. Their orbit is less circumscribed perhaps, but it is not wholly inscrutable on that account. Measured absolutely it never can be. But relatively, we can see that probabilities are not the work of mere chance, and that every mind will be tending constantly to act in the direction most consonant to its predispositions. This law explains the mystery of style in different men, and well shows how impossible it is to successfully imitate genius for any length of time. It is by a study and faithful observation of these rules of mental action, that men learn to acquire ascendancy over each other. Judging the future through the law of probabilities they infer what has not yet come to pass, and in proportion as they can thus read the deeds of time, and travel out of the lanes of prejudice

into the broader highway of philosophy, they become statesmen, and shining lights among men.

The case which we have selected as the basis for these remarks affords so full and sufficient a proof of the value of expert testimony, even in matters that seemed to border on foreknowledge, that none will question its right to a place among those leading trials which constitute the landmarks of rational jurisprudence. The facts upon which it rested, extending as they did over a period of more than thirty years, were so patent that their uncontradicted establishment should have been sufficient to convince any unprejudiced and enlightened mind; and yet it is easy to see how, without even the mistifying assistance of legal casuistry, jurors ignorant of mental physiology, and swayed by crude ideas of our moral nature, might be petrified in the belief that moral freedom is superior to organization or condition, and may rise above it at any time by an act of simple volition. It is in the nature of a primary belief with most men that they are masters of themselves, forgetful all the while that they are begirt with laws of temperament, prejudices of education, or locality, and teasing hereditary tendencies which perpetually *obsess*, if they do not possess them, and thus abridge the range of their independent action. We have called these elements of character laws, rather than fetters, despots or obstacles, and yet they exhibit traits that belong to all three of the foregoing. It is the glory of Revelation that it teaches the mind how to conquer, and curb the quadruped instincts that energize our material nature, and sustain it through the wasting changes of life. Nor is this conquest perfect until all the members and all the instincts are brought under subjection to the mind, in as complete a relation of homage as was that of the feudal vassal to his lord paramount. Moral

freedom depends wholly upon mental health and mental power, and it approximates to perfection in proportion as that power controls our instincts and actions in obedience to our unfettered will.

Turning now to the facts in the case, we will let the Record tell its unvarnished tale in the dry, technical phraseology of the law :

SUPREME COURT—CITY AND COUNTY OF ———.

IN THE MATTER  
of  
WILLIAM WINTER, a person of  
unsound mind.

*Affidavit.*

I, ———, of said city, being duly sworn, do depose and say as follows :

\* \* \* \*

The above-named William Winter, who is a bachelor, was born on the 6th of February, in the year 1810, as appears from a record or entry of his birth, made by, and in the handwriting of his father, in the family Bible, now in my possession. He is the son of the late Gabriel and Jane Winter, of ———; the former of whom died on the 27th day of February, 1862, and the latter on the 19th of April, 1862, leaving him their sole surviving child, and leaving my two sons, who are the infant petitioners herein, their only grandchildren.

\* \* \* \*

*Second.* Ever since the autumn of the year 1849 I have been well acquainted with said William, who lived with his parents, at their residence in ———, and chiefly under the care and charge of his mother, from that date, to about the time of her decease, in April, 1862.

\* \* \* \*

William was provided for by his father, and lived in the same house; but he did not, during any part of this period, take his meals with, or live in the same manner as the other members of the family. From 1850 to 1857, his meals were prepared for, and taken by him upon a small pine table in the kitchen, where much of such portion of the time as he spent within the house was passed by him in the presence and society of the cook and other servants, between whom and himself there were frequent controversies and

quarrels, which occasionally terminated in combats. He assumed the government and control of the kitchen, where he ruled in person, and where his manner, conduct and conversation were generally peculiar and eccentric.

In opposition to the wishes and request of every other member of the family, he insisted upon taking, and for several years did take, his baths in the kitchen-pantry, where the family crockery was kept, nor could he, for a long time, be persuaded to desist from so doing.

His orders to servants were usually given in a loud, peculiar, screaming or howling tone, and in a way to alarm nearly every person who heard it. He would often insult and abuse the servants, by calling them by the worst and most offensive names; and he would also frequently seize water-pails, slop-pails, or such utensils as were standing in the kitchen, or the kettles of hot water on the range, and empty the contents of the same upon the kitchen-floor.

His continued presence, and his extraordinary and irrational conduct in the kitchen, rendering it very difficult to induce servants to remain with the family at any price, about the year 1857 his father proceeded to erect, for his special occupation, an additional wing to the premises; and, upon the completion thereof, his father having prohibited and prevented him from continuing to eat in the kitchen, his meals were, thereafter, usually served up to him in his bed-chamber.

He did not often associate with other members of the family, seeming most of the time to be morose and desponding, going about the house partially clothed in an imperfectly buttoned shirt and pantaloons, and often without boots or shoes, thus having a very unrepresentable appearance.

His bed-chamber was usually in a very filthy and confused condition: old moth-eaten, cast-off garments, empty, and filled bottles, cans, jars, packages, vials of patent medicines, drugs, segar-ashes, boxes, trunks, bundles of newspapers, and sundry parcels and chamber-vessels, as well as numerous other articles and utensils, being strewed upon the dirty floor. He was in the habit of soiling his bed-linen very much, in consequence of which servants often objected to washing it.

In rising and retiring to rest he was very irregular, sometimes rising before dawn, and frequently sleeping, or remaining in bed, until one o'clock in the afternoon, and sometimes during the whole day. He also frequently retired to his bed in the day; sometimes in the forenoon, and sometimes in the afternoon.

His conversations with other members of the family were seldom. He evinced singular distrust and hatred of his nearest relatives, and especially of his father, with whom I do not remember ever, at any time, to have heard him converse, otherwise than in an abusive, quarrelsome, or boisterous manner. His conversations, usually without much sense, or inconsequential, were mostly confined to the subjects of the family property; expressions of hatred towards his relations and especially his father; his disgust of that law relating to inheritance, which gives to the father the estate of an unmarried son dying intestate, and of the Legislature which enacted the law; his fears that his father would make a will, cutting him off; his desire for his father's death; remarks upon the servants; very vulgar and obscene expressions; and remarks concerning the state of his own health, about which he generally complained, continually alleging, however, that it was improving.

About every three weeks, and some times oftener, he would suddenly, and without apparent cause, become very angry, his rage being generally directed toward some member of the household, but usually his father. On these occasions his conduct was, usually, very violent, sometimes terminating by his breaking furniture, or other articles in the house, or deluging the kitchen-floor with slops or hot water, as hereinbefore stated. During one of these angry paroxysms, several years ago, he suddenly overturned the table at which the family were sitting at their evening meal, thereby breaking the table-lamp and crockery into fragments, as I was informed by his sister, and verily believe.

Again, about three years since, he suddenly ran into his father's library and seizing the table at which his father was taking breakfast, threw it across the room with so much violence as to break both the table and the crockery thereon, as I was informed by his said father, at the time, and verily believe. On another occasion, about four years since, he ran into the room where his father, his mother, myself and sons, were taking tea, seized his father's new hat, and thereupon, in our presence, instantly tore it into fragments. These exhibitions usually came without previous warning or apparent cause, and were of short duration, lasting from less than one minute to about five minutes.

From the period of my earliest acquaintance with him, he seemed to have conceived the most unnatural hatred of and antipathy toward his father, whom he did not visit in his last illness, and whose funeral he could not be induced to, and did not attend.

I have frequently heard him, in the lifetime of his father, express

the wish that his father was dead; and I have also heard his father express the fear that his own life and that of other members of the family was in danger of personal violence from said son, and have heard his father express the belief that it would become necessary to take measures to have his said son placed under restraint.

I was informed, by his father and sister, that the mental alienation of said William, who was a student at Columbia College, did not manifest itself until he was about nineteen years of age; when, according to information derived from his sister, it was remarked that his mind was becoming affected; that subsequently his conduct became strange, and he wandered away from home, without his father's consent, going South and remaining for a considerable time; that, on his return from the South, he studied for the law, in the office and under the direction of his father, who after several unsuccessful attempts to instruct, and render him useful in the business of his profession, finally, in despair, abandoned the undertaking, having become convinced that his mental condition was such as to render him wholly unfit for the transaction of its duties; that, after thus giving up the attempt to pursue the law, he turned his attention to the study of medicine, for which he also proved himself to be equally incapable; that, in or about the year 1845, his late brother, Gabriel Henry Winter, perceiving his apparent fondness for the study of medicine, and desirous he should do something for his support, purchased for him a small stock of drugs, and having placed the same in a small store, then owned by said Gabriel Henry, and procured a competent person to superintend it, established said William there, in the retail drug business; but that, after about one month's trial, he was found to be wholly incompetent, and the business was therefore abandoned. I am not aware than any successful attempt was afterwards made to get him to do any thing in the way of business. I know, that after repeated attempts to aid him, his father finally became convinced that his mental infirmities were such as to render him incapable of any useful occupation, and unfit for the transaction of business.

At no period during my acquaintance with said William, did his father, to my knowledge or belief, intrust him with the transaction of any business whatever; and his father often stated to him, as well as to others, that he was not capable of transacting business. His father often expressed the opinion that William was of unsound mind, treated him as such, and frequently stated that he did not intend leaving him any property he could call his own, for the alleged reason that he was not capable of taking proper care of it.

In a letter dated Feb. 15, 1859, written by said Gabriel, to his (said Gabriel's) sister, he makes the following statements concerning said William's mental condition and conduct at that time :

"William is very bad; exhibits decided symptoms of an unsound intellect. His conduct towards me is not only very abusive, but violent. I do not consider myself safe in the house with him; \* \* \* and Mrs. Winter and the servants advise me to keep away as much as possible. He says that I shall not come there. . . . GABRIEL WINTER."

In another letter, bearing date "Monday, April 23d, 1860," written and signed by said Gabriel Winter, he uses the following language concerning said William :

"With respect to my son, he has not, for some years, been of perfectly sound mind; is hypochondriac, flighty, tampers with his health, prescribes for himself, and will not have a physician. His nervous excitement is so great sometimes as to border very closely upon insanity. . . . GABRIEL WINTER."

In another letter, under date Thursday, May 31st, 1860, written and signed by said Gabriel Winter, he makes use of the following concerning said William :

. . . "Of my son's unsoundness of mind I have long been aware, and of the danger of his committing personal violence upon me. . . . GABRIEL WINTER."

\* \* \* \* \*

*Seventh.* His conduct seems to evince monomania on the subject of music, and the purchase of musical instruments; and designing persons have availed themselves of their knowledge of his weakness in these respects to defraud him of money, by selling to him a considerable number of old, and as I believe, nearly worthless violins, at exorbitant prices. Although he is incapable of performing upon a violin, except in a very slight and imperfect manner, I have counted fourteen violins in his possession, and of which he claimed to be the owner.

*Eighth.* For many years past said William has been in the habit of consuming some of his time in writing in a peculiar manner, generally using for that purpose refuse-scrap of paper, old blank-books, and old cards, as also, to some extent, the doors and walls of his room. His manuscripts comprise short quotations, and also his own thoughts, and statements of his wrongs and grievances, real or imaginary. Much of his compositions, evincing but little continuity of ideas, containing incongruous juxtaposition of fragments, absurd comparisons, rapid transitions and unions of

discordant subjects, relations of imaginary events, very vulgar, obscene, and profane sentences and expressions, are interspersed with drawings of nude and singular figures and strange objects, the whole being jumbled together in disorder and confusion. The style of his penmanship is as remarkable as the matter, some of the words being written in letters more than two inches long, and others on the same line being of the usual size, as will more fully appear by some of his manuscripts, marked *Exhibit A, No. 1 to No. 40* inclusive, hereto annexed.\*

*Ninth.* Said William Winter, at an early period of his life, became addicted to the practice of the secret vice of onanism, and continued the same for many years, as I have been informed and verily believe, and as also appears by the evidence furnished by his own admissions and statements contained in manuscripts in his handwriting, marked *Exhibit A, Nos. 2, 5, 8, 14, 39, and 40*, and also by the extract marked *Exhibit B, No. 1*, hereto annexed.

*Tenth.* His manner when leaving the house was often peculiar; he would walk away from the door a few steps, and return, repeating this process several times in as many minutes, and each time trying the door, as if to ascertain whether the same be properly fastened, as will more fully appear by the manuscript paper, in his handwriting, marked *Exhibit A, No. 21*, and by an extract from other of his writings, marked *Exhibit B, No. 2*, hereto annexed.

*Twelfth.* His writings and conversation are, for the most part, inconsequential; and although he does not seem to possess proper reasoning powers, he has a degree of cunning. But his credulity and want of judgment are such as to render him incapable, to a great extent, of distinguishing what is probable from that which is improbable. He evinces fondness for low company, and his manners are eccentric, and often peculiarly childish. During my residence in ———, in the same house with him, I observed that while about the house he was of dirty habits with respect to his clothing and room, and manifested a propensity to express himself in hyperbolic and filthy language. He generally considered himself to be the especial victim of wrong and oppression. He was easily led astray, easily induced to believe the most absurd statements, yet usually obstinate and unwilling to be advised, except when the advice coincided with his own preconceived notions or appetites.

\* Of these exhibits, which amount in print to nearly 200 octavo pages, we give a few extracts selected at random.

While he was thus residing with me, he was continually approached by ———, an attorney at law, who was a stranger to the family, but had, as I am informed and believe, made said William's acquaintance about the time of his father's death, and who had, since that time, induced said William to permit him to act as one of his attorneys, and counsel.

It soon became apparent that said ——— had obtained a great degree of influence and control over said William; and, on or about the 4th day of July, 1862, said William left my house, and went to reside, and has ever since continued to reside with the said ———, he, said ———, having, as I am informed and believe, given up his former lodgings over his office, where he slept prior to, and for several weeks after making said William's acquaintance, hired a house in this city, to which he removed said William's personal effects, and in which house he has undertaken house-keeping for the express purpose, as I verily believe, of thus getting said William to live with him. Said William has recently informed me that said ——— had obtained an agreement from him, whereby he was to pay him, (———,) fifteen hundred and twenty dollars a year, namely, one thousand dollars for counsel, and five hundred and twenty dollars for board.

Said William has stated to me, and I believe such to be the fact, that he had never known or seen said ——— until after his father's death, on the 27th of February, 1862. On the 22d July, 1862, in giving testimony before his Honor Judge Alker, of the Marine Court, in an action between John Henry Wright, plaintiff, and said William Winter, defendant, being asked, on cross-examination, how he became acquainted with ———, said William testified as follows:

*"I became acquainted with ——— by a God-send: it was through a heavenly source, and came down from above. He is a true friend, and I hope I shall find other like friends."*

*Sixteenth.* On the 17th day of March, 1862, upon my application, an order was made, by this Court, at a special term thereof, at the City Hall, in the city of Brooklyn, in King's County, said William then being a resident of the county of ———, in such district, that a commission *de lunatico inquirendo* should issue against said William; and on the 26th day of the same month such commission was thereupon issued, directed to ———. A jury was thereupon summoned, by virtue of such commission, for the 31st day of March, 1862, on which day the said commissioners, said Winter, and ———, his counsel, met, and without swearing any

jury or taking any other proceeding, than naming a committee, consisting of ———, medical experts, to inspect the said William Winter, and examine him, as to his mental condition, by the consent of the parties, adjourned to the 7th of April, 1862. The said physicians thereupon inspected and examined said William; but, on the 5th of April, 1862, and before they had concluded their investigation, I signed a stipulation with said ———, that such proceeding should be discontinued; and on the 7th of April, 1862, and before said physicians had made their report, upon the consent of both parties to such proceeding, an order was duly made and entered, by this Court, at a special term thereof, held for the second judicial district, at Brooklyn aforesaid, that the said order of March 17th, 1862, should be, and the same was, thereby vacated, the said commission superseded and all proceedings thereunder discontinued.

*Seventeenth.* For more than twenty years last past, his mind has been, and now is, in a condition of legal unsoundness, as I verily believe, and as will more fully appear by the exhibits hereto annexed; I verily believe that he is incapable of governing himself or managing his affairs; that he is wholly unfit to manage property or protect his own interests; that if left to the management of himself and his affairs, he will become the victim of fraud or folly, whereby his estate will be wasted or squandered, or he will, in some fraudulent manner, be deprived thereof.

#### EXHIBIT A.

[*Being Manuscript in the Handwriting of William Winter.*]

No. 1.

Enamoured Spiritualist. "Who will show us any Good.???"  
*Ans.* 'My Kingdom is not of this world!'—*Christ.* 'A Tale just one that memory keeps For golden music—'till some 'chance' Vibrate the chord whereon it sleeps.' The Withering Curse. *N. P. Willis.* 'Curse God and Die.' *Job.*

At the age of Fourty four, four months, and seventeen days, I resided with my Parents in the Village, and kept constant company at Hicks' 'Pavilion.' Being in a 'Psychologic state' from ill health arising from Acraisy of the Brain or Dementia. 1 "who shall show us any Good? "He shall enter into his House! page 2 "Without our shame; within our consciences—Angels and grace—eternal hopes and fears. Yet all these fences and their


whole array One cunning Bosom—Sin blows quite away,” on  
*Title=page* of ‘E. S.’ *George Herbert*. Fell into the ‘Turba’ of  
 Death: June 23, 1849.


“There is a Divinity that shapes our Ends Rough=hew them as  
 we will.” K. “When he that is guilty most thinks him secure  
 Heaven’s vengeance against him is nearly mature.” : ‘the under-  
 standing (or “Reason”) only perceives facts and draws infer-  
 ences—this induction is completed *and* after it experiences no  
 tendency to *Adore* the God whom it has *discovered*.” Combe on  
 ‘*Veneration*.’

### EXHIBIT A.

[*Being Manuscript in the Handwriting of William Winter.*]

No. 4.

G. The Almighty—there’s not much to love about him—and if  
 he wants us to Fear (!) he’s a Fiend. The Almighty himself is  
 Two=faced to wit—the Fire Hidden by Light Spirits —|— Between  
 two Fires. “Those that “Use” y Sword Shall Die by the Sword.  
 Friendship. Love & Hate are Stimulants of Life. God—as a  
 Ruler—is a Disgrace to Himself. Ed. Eglee. ‘Why havn’t you  
 been over our way?’ *Winter*. ‘oh, it was an accident’ (!) *Ed. E.*  
 ‘I hope you won’t Die by an ‘*Accident*’! ‘Why?’ Because I  
 want you to die a natural Death. and ink. *Edward Eglee*. (and  
 not ‘out of Common = course): ‘Turba takes it—and makes a  
 figure of it!’ does Behmen say so. K. and in the very same con-  
 versation spoke of *mine* being an ‘unnatural Father’! (such a man  
 as that is! Burling P. Wright, &c) and also in the very same  
 conversation made use of the words ‘*we’re never satisfied!!!*’  
 “Search the Scriptures.” : “The Spirits searches thro’ all things:  
 even y *Deep* things of God.” Spiritual = Raps” *St Paul*. A  
 “God is the great—out=worker who by his works—shows his  
 attributes” Revd. Dr. Bethune “on Works & Labor.” N. Y. Tri-  
 bune of Jan. 19 | 54. 9. “For we shall here describe a very earn-  
 est matter: —viz. (Duality of God): : “*Be not deceived, God is  
 not mocked*”: he has in his Power *Heaven & Hell* (“order” and  
 dis“order”) or *Harmonious Dischor*. ‘Particular Hell!’: 23.  
 Behmen. Ques. 30 on tomb=stone: nail in Sure place “or Goad  
 (God)  : For from the History of the (of the Bible none  
 should take upon him to  $\Lambda$  be a master (or call himself a knower  
 of the Essence of God—but from the Holy=Ghost (which ap-  
 peareth in *another Principle*: viz., in the Third: for none can find

God,, without the Holy Ghost: Behmen's Works. p. 7. call Bible :  
 "I never could get the—sense o' that" (viz: the 'Harmonious Dis-  
 chord)" Harry Vale. Harry French Little Cat=killer at Howards.  
 "Salus Populi Supremalex." We—The people—will put Hell to  
 any man that does not come up to the chalk=line of Duty (to his  
 father)  There was a whole 'Posse' of them!' Squire Wil-  
 lets 'I'll set the Hounds on to you! B. A.

## EXHIBIT A.

[*Being Manuscript in the Handwriting of William Winter.*]

No. 5.

'A victim of Sensuality and Paralysis of mind the following morning I remained late in bed: the following reflections there came across my mind, to wit, that 'The Sensual life has always proved to be a blind delusion and a bitter disappointment. Its realizations are widely different from its flattering promises, &c. 82. A victim of *Sensuality* and consequent *Paralysis* of Brain *Mind*, the following morning I remained late in bed. Biondetta, you know not what you are about, 'in the day that you eat of my body I shalt surely die!' Genesis 166. A victim of "disguised selfishness" it laid me open defenceless to my enemy, who abused his power and made *Errata*, for Paralysis of Mind—but Paralysis of Brain—see above.

When our repast was ended, they proposed taking a walk to-wards y Ruins of Gehenna. We immediately set off 'Arrived. 56 He was sitting on the side of his bath, placidly gazing in a mirror, whether or no it was y 'Mirror of the Graces' we are at present utterly unable to determine. You had evoked the adversary of souls, and supplied him by a long series of indiscretions. I had no sooner spoken the word than the Earth opened just outside the circle and swallowed the dog; and from the chasm thereof issued a sulphurous flame, which though more 'blue' in its tint, yet rivalled in majesty the rays of the noon=day sun. The earth closed the flame was extinguished, when, as soon as my eyes had recovered their vision, I beheld a woman in the place the dog had just occupied. might ennoble my essence: with inward pain my heart=strings sound, I groan with fiendish spite Horror and fear beset me round 223 Among the — Shades of Night how could I hesitate long. to adopt those measures by which I might ennoble my Essence and become another Principle.

When I had ended my story, he collected himself a little and said: ‘*Your Guilt is all your own*; you had evoked the Destroying Angel throughout the whole course of your life, and supplied the Prince of Darkness—by a long series of indiscretions—but more particularly that of Portici—with the various disguises that might.

Shortly after the discontinuance of the proceedings under the above Commission *de Lunatico* in April, 1862, Winter went to reside with his self-appointed guardian, the lawyer heretofore alluded to; and having received moneys from time to time from his father’s estate, evidently disposed of it for the benefit of others more than himself. From April, 1862, to January, 1863, a period of nine months, he received \$2,150, of which he gave the following account :

Expended at his home, (for what not stated,) - -	\$283
Paid on account of law proceeding, (meaning the Commission <i>de Lunatico</i> , which it will be remembered never sat nor came to a trial,) - - -	\$375
Paid Mr. ————’s allowance (his counsel,) - - -	500
Purchase of family articles at auction, - - -	104
Outlay for <i>iron safe</i> , and other articles, - - -	300
Personal expenses, - - - - -	200
Board, - - - - -	260
	\$2,022
I owe ————, (mentioning four lawyers by name, and others,) - - - - -	\$500

Recalling the fact that this man had voluntarily lived on the same plane as his father’s servants, or even lower, so far as dress or wages were concerned; that no change in his habits occurred from April to December, 1862; that he was a bachelor, and boarding at as cheap a rate as a mechanic, and that no legal proceedings occurred during that time to which he was a party, except the Commission *de Lunatico*, which Commission, issued on

the 19th of March and discontinued April 7th, never came to a final hearing—recalling these things, it will be seen that the expenditures in superfluous fees to counsel, the first one of whom was immensely overpaid, and the four others, unnecessary in every sense—all exhibited an utter ignorance of his real condition; an incapacity to use money prudently, or to protect himself against imposition and undue influence; and lastly, mental weakness in submitting himself and his property to the dictation of an unprincipled lawyer.

In view of these circumstances, a second Commission *de Lunatico* was issued upon the petition of his relatives in January, 1863, and upon the trial of the issue therein raised, all the allegations set forth in the affidavit hereinbefore quoted were verified and corroborated by a large number of witnesses who had personally known Winter for many years. It is here that the chief interest in the case centres so far as the testimony of experts is concerned, and it is here also that the question will naturally suggest itself whether a Commission in Lunacy, without a single psychological expert upon it, deserves to be considered in law as a competent tribunal.

The composition of every court is always understood to be related to the nature of the subject matters with which it deals. Wherever these matters greatly differ in their essential character it has been found not only expedient but necessary to create correspondingly different courts to adjudicate upon them. Hence, the origin of separate tribunals with separate jurisdictions; hence, the origin of Courts of Common Law, of Equity and of Admiralty; courts with and courts without juries, Courts of *Nisi Prius* and Courts of Appeal. As a rule of practice based upon the necessities of qualification, and universally recognized as most equitable to all

parties in interest, the same judge never presides in two courts of essentially different jurisdiction. The wisdom of this course is too obvious to require comment, and the rule is in itself the best test of a high civilization.

In the course of a trial counsel are often called upon to demur to the jurisdiction of a court. This plea will always be listened to if offered at a proper time. But courts are not equally ready to have their composition questioned, because it is an undoubted reflection upon their competency or impartiality, and the point in consequence is seldom raised.

Nevertheless the fact remains patent, that in a special tribunal created to try a special issue like insanity, some degree of special acquaintance with that issue should be represented in the composition of the court. It is not like an ordinary *Nisi Prius* trial, where insanity is introduced as an interlocutory plea, whose validity is to affect the general issue. There the question must be adjudged according to the rules of the forum in which it is raised. For it is part of a system of pleading, though subordinate always to the main question under discussion. The court therefore must decide it *in situ*, and under the best light it can obtain from experts summoned for that purpose. It is different however with Commissions of Lunacy. They are tribunals created for a specific purpose, and for no other. They have no discretionary powers outside of the field of their appointed duties, and those duties are purely inquisitorial. Hence, they differ legally as much from any other tribunals as these do among themselves; and though derivative in character, and their judgments without legal value until affirmed by a superior court, they are still entitled to be constituted with some relation to the subject matters coming before them.

It should not therefore require any argument to

show that, upon the simplest principles of analogy and justice, a Commission of Lunacy can never be a *competent* tribunal to try such an issue where one or more experts are not members of the court. Nor can we see how the presence of a jury adds aught to the competency of the tribunal, or the illumination of its investigations. Certainly, the summoning of experts is a virtual confession of the want of light by some one, and inasmuch as the jury are to be the final triers of the issue, it is plain that it is more on their account than that of the Commissioners that experts are called. In other words, in enlarging the court, we have diminished its competency. The conclusion which follows is inevitable. If a judge can sit in equity without a jury, and administer justice impartially, simply because he is both competent and honest, by parity of reason a Commission of Lunacy properly constituted can as justly, in the same way, determine an issue of insanity. Numbers by themselves can add nothing to the competency of a tribunal, where one branch of it is notoriously below the level of the other in judicial capacity. Nor, because insanity is an issue of fact can a jury of laymen decide it better than expert commissioners, or, even be of any assistance to the latter in helping them to a conclusion. It is always seen that experts have to be summoned for the purpose of illuminating the minds of the jury, because, although the latter are judges of the facts, they are not able to pass upon them until they have first first been taught how to read and interpret their value. The competency of a lay jury to decide an issue of insanity is thus shown to owe its origin solely to the agency of experts. In the presence of these facts, we are forced to the conclusion that the introduction of a jury into an Inquisition of Lunacy is superfluous, and more of a hindrance than a help to the discovery of truth.

It is generally thought, upon a superficial view of the elements out of which a Commission of Lunacy should be formed, that, by placing *a* physician upon it, the medical qualification of the court is sufficiently secured. But *any* physician is not qualified, *virtute officii*, to supply the court with that measure of light upon the subject of insanity which it needs in forming its deliberations. The fact that the Commissioners may summon to their aid experts is not sufficient, either, in itself to supplement this deficiency of special knowledge in the court. Its judgment, as a rational exposition of the relations of allegations to proofs in the determination of an issue of insanity, can only be properly pronounced by those who are professionally habituated to inquiries of this kind. The law of truth springing from contraries is nowhere more signally exhibited than in investigations of this class, and as between a non-expert physician and a lawyer sitting to examine witnesses, the lawyer would have the superior advantage in eliciting facts, even though at the same time, neither he, nor the ordinary physician could set their proper value upon such facts, or apply them with the greatest scientific accuracy to solving problems compounded of physical, mental and moral manifestations. Both would simply be in the condition of Milton's angels, who

"reasoned high,  
Of Providence, foreknowledge, will and fate,  
Fix'd fate, free-will, foreknowledge absolute,  
*And found no end, in wandering mazes lost.*"

Winter's case was tried with extreme care and fairness. The issue was too plain *in presenti* to afford much ground for special pleading. A score of ordinary witnesses substantiated the allegations set forth in the affidavit heretofore quoted by us, and the numerous

volumes of distempered and incoherent compositions in Winter's own handwriting, dating back a score of years, were an unanswerable proof of mental weakness, such as has no necessary connection with simple eccentricity. The point to be decided was one relating, not to his present, so much as to his future capacity. It was a point which rested upon past and present facts, and which, assuming the laws of nature to be immutable, was, *ex hypothesi*, demonstrable by the experience of experts in this, their habitual and therefore legitimate field of inquiry. The circumstantial proofs sustained the allegations of the petitioners, and the experts not only expressed their opinions corroboratory of these statements, but in giving their opinion of future capacity were sustained by legal presumptions as well as by their special experience.

Divested of all adventitious coloring, the issue was simply this, "*Whether a man who, for thirty years had shown all those traits of character which belong to imbecility, and had shown no other, was competent to take personal charge of a large estate, having never had any experience whatever in business, nor been accustomed to handle any but the smallest sums of money?*" Of course this was, in the eyes of laymen, a pure question of foreknowledge bordering upon prophecy, and the experts introduced by the petitioners labored under the disadvantage of being compelled to assume that, which they could not bring proofs absolute to support. In every ordinary proposition, something is always omitted, because understood to be generally conceded. Every conclusion of judgment, implies antecedent though latent premises. As for instance, if we say "the sun will rise to-morrow at six," it is understood that we mean, "provided always the economy of nature continues as in the past." This is not prophecy, but logical inference, susceptible of demonstration.

From the very first it was seen that the difficulty of establishing the fact of future incompetency would arise from two causes, viz., first, the inability to prove acts of wanton extravagance in the past, and second from that delusive creed of the multitude, that no one knows what will occur in the future. Between these two horns of the dilemma the petitioners were compelled to take their position. On the first point indeed they could adduce some proof, as for instance the many violins purchased, and the unnecessary employment of counsel. But to both these allegations a rejoinder might be, and was made to the effect that the former argued simple eccentricity through love of music; the latter might be due as much to the wishes of counsel asking for assistance, as to the weakness of mind of the defendant. In any event the point was not considered pivotal, nor one determining anything in relation to his future conduct. Seven physicians examined on behalf of the petitioners, agreed substantially in their diagnosis of imbecility, and several among them, well recognized as experts in insanity, unhesitatingly pronounced that it was unsafe to entrust a mind as weak as Winter's with the charge of a large estate. Judging by analogy from the case of a child, whom all would agree was not competent to handle large sums of money, however sane he might otherwise be, we should say that this opinion of experts relating to a man of fifty, with a mind never advanced beyond that of childhood, was an opinion resting as much upon common sense as upon scientific skill and circumstantial evidence. To all men who are willing to see, this judgment seemed inevitable from the premises. It was the only one which could be logically defended under the light of positive demonstration. The problem as stated to the jury upon uncontradicted evidence was simply this: Given a man proved to have

continued an imbecile for thirty years, and what is the inference as to his future capacity to manage a large estate?

To be sure it would have seemed like arrogant presumption in the experts to aver that they *knew* his future incapacity. They did not undertake however to speak as prophets nor absolutely in relation to the certainty of this fact, but simply as to their *belief* in the premises, for they spoke only as men of science, and science does certainly possess the faculty of prevision. If science be worth anything it is precisely for the revelation it makes to us of fundamental laws, under whose government the world of matter exists. Nor, because of our inability to trace the operations of the mind, are we authorized to infer that it is above the reach of analogical laws specially adapted to its own character. The acceptance of this proposition as a necessity flowing out of our moral freedom would force us at once into a domain of chaos, where education becomes an absurdity, and all is left to chance or miracles.

It is unquestionably true that we can legally prove little or nothing relating to the causes of mental manifestations. Remembering this embarrassment in matters belonging to the present, it would seem to follow that the perplexities of the problem must increase with the length of the perspective. But in reality this is not so. For, we can as little infer what *will* happen a minute hence as a century hence; and contrariwise, what *should* happen under a recognized system of laws an hour hence, should, under similar circumstances, happen a century hence. All that is necessary to prove is established and immutable laws, whence must flow the corollary of similar effects from similar causes. The weakness of Winter's mind was proved, and although there was some quibbling over the term imbecility as applied

to its condition, it remained an uncontradicted fact that he had made a foolish and injudicious use of the little money received by him, which fact when taken in connection with the state of mind in which he had been for thirty years, justified the experts in asserting their belief in his future incapacity to handle large sums of money.

To all these propositions the defence argued speciously that what seemed weakness of mind in money matters was nothing more than any man might exhibit, who, never having had any experience in financial operations, begins his acquaintance with them by committing errors. When the best financiers in Wall Street, with the ripe experience of a life time before them, occasionally missed their mark and were ruined, was it to be wondered at, or unexpected, that a novice should err in his first use of money? And after all how did men ever acquire prudence except by the experience of loss? To argue that a man was unfit to control a large estate because he had never previously done so, was to say that no man should ever be allowed to acquire more means than he had: that he should never undertake what he had never before done, and finally, that we must all stand still until we had first learned to walk.

In reference to the opinion of the experts, other physicians were called to show that they did not consider the respondent absolutely incompetent to transact business. They thought him an eccentric and weak man, but they had seen others as weak as he transact business, and they could not pronounce him less competent to manage a large estate than any similarly inexperienced person. Under this light counsel argued that it was impossible to foreknow what a man would, or would not do, under varying circumstances; and as every one was entitled to do with his own what-

ever he pleased, so long as no one was injured thereby, the respondent was at least entitled to a trial, and if found squandering his property and unable to manage it, then it would be time enough to restrain him in its control. The jury were also told that experts can only interpret the present and actual, but never the future and potential. That in these latter respects they are on a footing with other men, and their opinions of no greater consequence. How, for instance, could any man foreknow how another would act under circumstances not yet in existence? And if we could only judge of the future from the past, how could it be said that a man not only was, but was to be incompetent in the future who had never been tested in the present? If Winter had never managed a large estate, how could any one know that he was not competent now, or would not be in time? His previous life was treated simply as that of an eccentric man whose pride had been wounded by an unkind and parsimonious father, and who had acquiesced from necessity in the position of dependence and social inferiority occupied by him.

These points, founded in sophistry, yet appealing to popularly accepted ideas of the legitimate range of human knowledge, produced their desired effect upon the minds of the jury. Prognosis to laymen is simply absurd, if not unintelligible. They believe, indeed, that, somehow or other, by figures mixed with guesswork, an astronomer foretells an eclipse, because every year affords recorded proof of this fact. But when it comes to human conduct, there is a superstitious haze surrounding incentives, causes of action and powers of self-control, which, with the multitude serves to obscure the intellectual vision, and the man who undertakes to pierce through these mental cobwebs and apply systematic laws to the government of this interior realm, is

considered to be somewhere between a fool and an atheist. Yet the wonders of transmutation daily effected by modern chemistry so far transcend the wildest dreams of mediæval experimenters that this age, rather than theirs deserves to be called the age of romance, as well as the age of positivism and law. The inquisition which condemned Galileo would have made an *auto da fe* of Sir Humphrey Davy, Faraday or Morse. A man who could convert a dung-heap into the most fragrant extracts for the toilet; or obtain from sooty coal-tar the most brilliant and variegated colors; or make a messenger-boy of the lightning, would, in the early colonial days of our own country, have been punished as a sorcerer.

It is true that the triumphs achieved by psychical medicine within the same time, may not have been as glittering to the eye, or as exciting to the imagination as those accomplished by chemistry, but they have been so magnificent of their kind, as shown in the greater number of recoveries, and the general amelioration of all the conditions of the insane, that the treatment of insanity to-day is, in the largest proportion of acute cases, one which give as logical foundations for forming a correct prognosis, as in most bodily diseases. In fact the rules of recovery as between acute and chronic cases are found to be analogous to those regulating other diseases. These laws are familiar to experts. They cannot be known of course to the world at large. When all these facts are taken into consideration, no one will be surprised that a jury of laymen placed between the difficulties of intricate scientific problems, and the incapacity of those frequently undertaking to expound them, should, at times find themselves led into realms of mystification where all the roads seem to cross each other, and all the guide-boards speak in a foreign tongue.

As has been doubtless anticipated, the jury found for the respondent's competency. In doing this they imagined themselves protecting an innocent man against the cupidity of relatives. The sequel shortly proved that their verdict placed this unfortunate imbecile not only pecuniarily in the power of those who surrounded him, but that even his person was subjected to restraint and sequestration by them. A few brief lines will suffice to complete this dismal epic. Soon after the defeat of the Commission de Lunatico, Winter executed a deed of trust to an imprincipled lawyer, who thereupon took charge of his property. He himself disappeared from public view, and once or twice in the interval of several years was seen clad in his usual slovenly way, and exhibiting the same traits of incurable imbecility.

Meanwhile his trustee giving evidence of a wealth somewhat rapidly accumulated, some two years ago proceedings were sought to be instituted against him in Equity, by Winter's relatives, for the statement of an account, and on attempting to make service of papers upon the *cestui que trust*, and to have him unite in the proceedings, his *locus in quo* could not, after many months of fruitless search, be ascertained. There is no doubt that he was kept concealed either voluntarily, by being told that another commission was impending, or perhaps involuntarily, and through coercion, without sanction of law. This virtual restraint of his person has continued for several years, and may, for aught that we know, still continue. This is not the place to inquire what remedy exists in our jurisprudence for such a wrong. Under the general maxim, *Ubi jus ibi remedium* there doubtless is one. But he to whom this remedy primarily belongs, either cannot, or will not move in the premises, and in order to invoke the in-

tervention of a court of equity, wrongful acts must be shown, which it may be difficult to prove absolutely, balancing as they do between *torts* and *breaches of trust*.

Our motive in commenting upon this most instructive case was mainly to show that the value and precision of skilled testimony is generally underrated because not understood. We have endeavored to show the foundations upon which it rests, and the causes which render it less fallible than ordinary testimony. Nor do we think the differences of opinion occasionally occurring between alleged experts any refutation of our doctrine. There are, and can be, no true oppositions in science. The Apostle Paul properly stigmatized such ideas as errors, because "falsely so-called." It must be remembered also that many men are called experts *ex comitate*, who are not so in fact when critically examined. We cannot tell from a man's opinions what his competency is, until we examine the evidence upon which those opinions are formed. Sir Matthew Hale writing the history of the Common Law, is a different man, mentally, from Sir Matthew Hale presiding at the trial of witches. In both instances he judged from circumstantial evidence, but in the one he saw its import clearly, in the other darkly and as through a glass.

All men are not equally trained in the art of sifting evidence, and until the law of antinomies be mastered, how few there are who acquire experimental knowledge of the fact that truth springs from contraries. Without this experimental test any man can find refutation at the end of every universal proposition; for when modal conditions are excluded from particular instances, the point is soon reached where affirmation and negation meet. This is the quicksand in which experts sink who attempt to justify their opinions to others by too much amplification of application. They lose themselves midway of

similarity and identity, and being thus readily confuted in their conclusions, the idea arises of a practical disagreement between them, when in fact it is only a difference in the angle of vision under which the subject is viewed.

To obviate this tendency, which springs from the dialectic necessities of an oral examination, let the interrogatories be propounded in writing, and agreed upon between the parties as in commissions to take testimony, and we feel sure that differences *toto cælo* between experts will become in future so rare as to be considered exceptional, instead of usual. It is more often counsel that force experts to disagree than any virtual difference of opinion between them. When, therefore, the expert is allowed that freedom of mental action in which no conclusions are forced upon him by premises of another's selection, but only by those of his own, then he will cease to be treated as a party witness, and stand where he belongs as an *amicus curiæ*, whose opinion is in itself a judgment to guide as well as to inform the court.

#### CHEMICAL EXPERTS.

We cannot bring this discussion to a close without anticipating the refutation which may be offered by the citation of disagreements between a class of experts, whose labors are performed in the field of molecular physics. We allude now to chemical experts, particularly when engaged in making qualitative analyses. But the fact of a disagreement does not necessarily imply a positive contradiction, nor is it unsusceptible of explanation, or even reconciliation, with the theory under discussion. Chemistry *per se* is one of the most precise of sciences, being in fact a branch of positive mathematics. Her results can be expressed in written

formulae, having definite numbers representing ratios of equivalent combination. No error can occur in her laws, because nature never contradicts herself. The disagreements of experts can only arise from want of skill in laboratory manipulations or dishonesty. With the latter, as a purely moral question, we have nothing to do, since it is beyond the purview of our inquiry. As to the former, it is sufficient to say that, no man can be considered a chemical expert who is not a proficient in laboratory manipulations. The presumption of this proficiency must be sought for in general reputation no less than habitual occupation. If a man be truly an expert and honest, then the charge of paucity of tests, or inferiority of instruments employed in a given research, can never be laid at his door, because of the necessary number of the former, or quality of the latter he must ever remain an acknowledged and competent judge.

Again, when it comes to the question of whether all possible means of discovery in analysis have been exhausted, it may be said that whatever is universally regarded as a characteristic test is as absolute proof in itself, as though that one test had been multiplied into fifty others; and while, relatively to the importance of a subject like the search for a poison in a case of homicide, it is eminently proper that an expert should duplicate and triplicate his proofs, he should not be compelled to go beyond a reasonable point even in this particular. Cumulative evidence indefinitely collected gathers no additional value from the fact of its extent. The fall of one apple proves the law of gravitation just as indubitably as a shower of meteorites. Where, therefore, an expert of unquestionable skill finds a substance by two or more characteristic tests, it is not a disagreement in fact, if another expert could not find it short of

ten or twenty, and would not have been able to recognize it through the fewer tests employed by the first experimenter. For, if an indestructible substance exists in combination with any given body, there is a greater presumption that a chemical expert will be able to discover it, than that he will not; and if no such substance be there present, there is a greater presumption of his discovering this fact, than there is of his producing such a substance in the course of his manipulations, and mistaking it for an original constituent of the body under examination. These presumptions flow from that law of disjunctive judgments, in which, to quote the very terse words of Sir William Hamilton, "a plurality of judgments are contained, and which stand in such a reciprocal relation, that the affirmation of one is the denial of the other."\*



