

Case No. 15,404a.

UNITED STATES v. HOWE.

{12 Cent. Law J. 193.}<sup>1</sup>

District Court, W. D. Arkansas.

1881.

WITNESSES—MEDICAL EXPERTS—RIGHT TO FEES.

[A physician cannot lawfully be compelled, even in criminal cases, to testify as an expert to matters of medical science, against his objection, unless first compensated by reasonable fee, as for a professional opinion. Refusal to so testify is not punishable as a contempt.]

This was an indictment against Arena Howe for the crime of murder.

Dr. Bennett was called as an expert. Being sworn, he refused to testify unless first paid a reasonable compensation for giving the results of his skill and experience to the court and jury. PARKER, District Judge, declined to regard this refusal as a contempt of court, and held that there was a wide distinction between a witness called to depose to a matter of opinion depending on his skill in a particular profession or trade, and a witness who is called to depose to facts which he saw. When he has facts within his knowledge, the public have a right to those facts, to be used in a court of justice in criminal or civil trials; but that the skill and professional experience of a man are so far his individual capital and property, that he cannot be compelled to bestow them gratuitously upon any party; that neither the public, any more than a private person, have a right to extort services from him in the line of his profession or trade, without adequate compensation; that a physician cannot lawfully be compelled to testify as an expert to matters of medical science against his objection, unless first compensated by a reasonable fee, as for a professional opinion; and his refusal to testify as to matters of medical science without such compensation, cannot be punished as a contempt.

<sup>1</sup> [Reprinted by permission.]