

EXPERT TESTIMONY—NOTES OF CASES.

Secondly, that the distinction between experts for the accusation and the defence should be abolished; that they should be selected by the advocate for the defence and the Attorney-General conjointly, and the number required should be drawn by lot. I may have trespassed too much on your space in bringing this subject before you, but any one who has watched the proceedings of criminal courts in Naples, and has noted the excuses for crime which are urged almost as a matter of course, will acknowledge the importance of the question. That it has been brought to the attention of the public by such a man as Professor Tomassi, at a congress of the medical men of Italy, is certain to insure some reform. Had his proposals at the time been the law, we should not have such ridiculous exhibitions of so-called medical science on the occasion of the trial of the cook of Salerno, the would-be assassin of the King. Nor would our courts be so frequently disgraced by the often unjustifiable plea of '*forza irresistibile*.'"

And in a recent issue, the Albany *Evening Times*, in commenting upon the opinion of Surrogate Calvin, in relation to the weight to be given to expert testimony, says:—

"The actual value of experts in legal trials continues to receive merited attention. The drift of public opinion coincides with that of the *Evening Times*, as published a few days since. We then said, that as experts only favour the side that calls them, they are of little or no value to courts or juries as aids in administering justice. Surrogate Calvin, in the hearing of the Hesdra will case in New York on Saturday last, expressed a similar opinion, after an exhibition of experts regarding the genuineness of a certain signature.

The surrogate said that he was becoming more and more convinced of the dangerous character of expert evidence. It invariably happens that the expert's testimony supported the theory of the side by which he was retained, and it was as little to be expected that any expert's evidence would not help those by whom he was paid, as that

a lawyer would give an argument or opinion in court contrary to the interests of his client. The result was that the expert's opinion had come to have about the same value as that of the lawyer.

The surrogate thought that this might be cured by a law which should make skilled experts officers of the court instead of servants of parties. The court might then name three experts to be agreed upon, who should not be retained by either side, but who would decide the question brought to them for decision without regard to the effect upon the case. Their pay would not be contingent upon the success of either side, and they would be under the same restrictions and control as a referee now is."

NOTES OF CASES

IN THE ONTARIO COURTS, PUBLISHED
IN ADVANCE, BY ORDER OF THE
LAW SOCIETY.

QUEEN'S BENCH.

VACATION COURT.

Hagarty, C. J.] [May 7.]

IN RE BIRDSALL ET AL. AND THE CORPORATION OF THE TOWNSHIP OF ASPHODEL.

Municipal corporations — By-law to close road — Insufficiency of notice — Application to quash.

Held, that the notice of intention to pass a by-law to close a road should state the day on which the Municipal Council intended considering the by-law.

Semble, that actual knowledge on the part of a relator of the day on which the by-law was to be so considered did not disqualify him where he was a party interested, from moving to quash.

Bethune, Q. C., for relators.

Marsh, contra.

Galt, J.] [May 11.]

FRYER V. SHIELDS ET AL.

Action for wages — Discharge in insolvency — Pleading.

To an action by the plaintiff, a clerk of defendants, for the full amount of his wages,