

"10. Where it is intended by any party to examine as witnesses persons entitled according to the law or practice to give opinion evidence, not more than three of such witnesses may be called upon either side without the leave of the Judge or other person presiding, to be applied for before the examination of any of such witnesses."

The first witness of this class called was A. W. Connor, who is by profession a consulting engineer, and who is admitted by defendant's counsel to be an expert. The second witness was Charles Butler, whose business is that of cement construction. The third witness, who is alleged by plaintiff to be of this character, is Herbert Croft, whose business is concrete work, in which he has been engaged about nine years. The fourth witness is Charles Strange, who stated that his business was general concrete construction. At this stage the plaintiff's counsel pointed out that Mr. Dunbar, defendant's counsel, was limited to three expert witnesses. His Honour overruled the objection, saying simply, "we will take the evidence," and it was taken accordingly. The next witness called was George Day, and the same objection was raised by plaintiff's counsel. This witness is admitted by defendant's counsel to be an expert. The next witness, William Elliott, is a farmer and cattle dealer, who has a silo and professes to know what the object of a silo is, and what people should strive to obtain in order to get a perfect silo, and he passes an opinion upon this particular one.

If these six witnesses are all experts, three witnesses of that class more than the law allows have been examined. Mr. Dunbar contends that the only experts are Connor and Day, arguing, that the statute applies only to one possessed of science and skill—that is, a man of science having a school of science degree or other special technical education on the subject.

I do not find that this is a correct proposition. No authorities on this branch of the case were cited by either counsel.

It is to be observed that while the section in question is headed "expert evidence," and while the side-note says "limit of number of expert witnesses in action," yet the word "expert" is not used in the section itself: the phrase being, "persons entitled according to the law and practice to give opinion evidence."

The term "expert," from *experti*, says Bouvier, "signifies instructed by experience."

"The expert witness is one possessed of special knowledge or skill in respect of a subject upon which he is called to testify:" Words and Phrases Judicially Defined, volume 3, page 2594.