"And this Court did further order and adjudge that the action of the said Elizabeth Russell against the said Julie Morin should be and the same was maintained with costs against the said Julie Morin."

Without entering into the particular merits of this decision, the result of the litigation is unsatisfactory, and even disquieting. In the first place it was confidently stated in Quebec early in December, 1882, that is to say, more than a month previous to the rendering of the judgment, that the appeal would be successful. The knowledge of this secret may have been obtained surreptitiously, but it is unfortunate, to say the least of it, that an accident should have occurred which gives room to suspect an exchange of confidence between the partisans of the interesting and disinherited niece, and those who were to be her judges.

The next disturbing element of the judgment is, that it presents the spectacle of four judges overwhelming seven on a pure question of evidence, and particularly one where the burden of proof was on the appellant. Of course the theory of the law is that the last judgment is presumed to be right, and that the decision of the majority is to be considered as infallible as the unanimous finding of the whole Court. It is impossible there should be any other theory, but people cannot be set at ease by telling them that it is convenient they should be satisfied. It is impossible to prevent an illogical public from saying, "we know that convenience and not "superiority dictates the selection of judges "to some extent and decides almost entirely "in what court they shall sit." They will not believe that the echoes of the preponderating voice are a bit more authoritative at Ottawa than in some rural district, or that the scarlet and ermine adds a tittle to the discriminating powers of the judge. Again, there is a sixth judge, who might have sat and who ought to have sat; and it is quite possible that if he had been in his place the judgment would have been the other way. We have therefore the judgment of two courts reversed, three to two, with the opinion of one member of the Court suppressed.

No importance is to be attached to the argument that the case was one of evidence, and that therefore it should not be touched. It is more than clear that if the evidence is submitted to a court of appeal the judges are bound to consider it, and it is only to waste time for the three judges to tell us indirectly that they are now aware they fell into an egregious error when they gave Mr. Gingras $3,000 for the end of his finger. Everybody already knows they were wrong, notwithstanding the theory of authority. If, then, the majority was convinced that the courts below had misjudged the evidence, they were bound to reverse. When it is said courts do not readily reverse on questions of fact, reference is made to an operation of the mind and not to a function of the Court. Unfortunately the three judges of the Supreme Court thought themselves justified in ordering the appellant's intervention to be amended by adding the allegation that the bequest was null from error, that it was made to the testator's wife, Julie Morin, whereas she was not then his lawful wife. The power to rectify mere errors by amendment is very beneficial, and it should be extended as much as possible; but nobody ever heard of a whole cause of action being introduced in an appeal to bolster up the appellant's case, or indeed anywhere without giving the party an opportunity to meet the allegation. The Supreme Court could not know judicially that Julie Morin was not the wife of William Russell, and legally speaking there is no evidence of the fact.

In face of a proceeding so utterly at variance with all ideas of fair-dealing and so contrary to the usages of courts, it is difficult to escape from the conclusion that the amendment indicates want of a very firm faith in the justness of their decision as to the case before them.

The power to amend which the Supreme Court, acting as a Court of Appeal, claims exceptionally to possess, is based on a Statute which, by the peculiarity of its phraseology, is remarkable, even amidst the curious remains of our legislative literature. It is in these words: "At any time during the *pending* of any appeal before the Supreme Court, the Court may, upon the application of any of the parties, or without any such application, make all such amendments as