

III.

THE JUDGMENT OF THE COURT OF KING'S
BENCH FOR LOWER CANADA.

(Appeal Side.)

This judgment dismissed the appeal of the fugitives and confirmed the judgment of the Honourable Mr. Justice Davidson of the Superior Court for Lower Canada, refusing their application for a Writ of Prohibition to restrain Judge Lafontaine from proceeding with the enquiry upon the ground that he was acting in excess of his jurisdiction.

This judgment was delivered by the Court of King's Bench, which is the highest Court of Appeal in the Province of Quebec, composed of the Honourable Sir Alexander Lacoste, Chief Justice, the Honourable Justices Bossé, Blanchet, Hall, and Trenholme, on the 19th day of May, 1905. The judgment was unanimous. (Montreal Gazette Report.)

Sir Alex. Lacoste, C.J., delivering judgment, said:—

The appellants have been arrested for certain offences committed in the United States. The American Government asks for their extradition. They are actually on trial, at Montreal, before Mr. Lafontaine, commissioner in extradition, appointed by the Federal Government.

The appellants declined the jurisdiction of the commissioner, and on the latter's refusal to desist, they asked the Hon. Mr. Justice Davidson, one of the judges of the Superior Court, authorization to take out a writ of prohibition (C.P., 1003-993). The judge refused to grant it; and it is from that decision that Gaynor and Greene have appealed.

They take exception to the jurisdiction of Mr. Lafontaine, because he holds his commission from the Federal Government, which, according to them, had no power to appoint extradition commissioners.