that the public has confidence in the opinion of a majority of judges.

I remember very well the outcry for a fifth judge in appeal. With a great many other inexperienced people I helped to swell the ridiculous cry against the true legal principle which the Commissioner styles a legal fiction and an abstract thesis. Sir Louis Lafontaine remonstrated strongly against the change, but his warning was disregarded, as it is the habit to disregard all advice from judges—at least while in office—and the fifth judge was added. Then came the spectacle of four judges in the Superior Court and two in Appeal being over-ruled by three judges in Appeal. Before, this could not have happened, for the opinions of the two judges would have secured a confirmation. We may beat about the bush, and moralize on changed days and altered circumstances, we may stick names to principles to make them look ridiculous, but they are not to be overcome, and until we recognize that an Appeal Court should never consist of more than four judges, we shall have the recurring unmeaning discussion as to appeal, and suggestions more or less extravagant to get over a self-created difficulty. With the quorum fixed at four it would be very rarely necessary to call in an *ad hoc* judge; but when necessary it is much better to take a judge from the Superior Court than to take one who does not, and perhaps may never, belong to the judicial order.

Fixing a period at which a case must be finished appears to me highly unpractical. A year may be a very long period for the instruction of one case, and totally insufficient for another. Besides, this is a matter in which the State has no interest, and with which, consequently, its interference would be unjustifiable.

I also disapprove of charging the Prothonotaries and Clerks with the initiative of Procedure. People capable of looking after their own business, should bear the responsibility of their neglect. Neither do I think should the judge be expected to invent defences for parties.

I regret being obliged to put my views on the important subjects treated of in the Report in a form so unfinished as that I have adopted. But the immense drudgery in the way of writing imposed upon the judges in this country, most unwisely, I think, suggests laconic expression, and must be my apology.

I have the honour to be, Sir,

Your obedient servant,

T. K. RAMSAY.

To the Honourable
The Attorney General,
for the Province of Quebec, Quebec.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 18, 1881.

DORION, C. J., RAMSAY, CROSS, and BABY, J J.

THE QUEEN v. BULMER.

Criminal Procedure—Defect in Indictment.

The words "feloniously and of his malice aforethought" were omitted in the averment of the intent, in a count of an indictment for wounding with intent to murder. Held, that the count was insufficient and that the offence was not described in the words of the Statute.

On a Reserved Case.

RAMSAY, J. The prisoner was indicted on six counts. He was convicted on a count in the following terms for an offence under Sec. 13 of 32 & 33 Vic., cap. 20: "William Bulmer on "the 15th day of August in the year of Our "Lord 1881, at the City of Montreal, in the Dis-"trict of Montreal, a certain revolver then "loaded with gun-powder and divers leaden "bullets, at and against one B. P., feloniously, "wilfully, and of his malice aforethought did "shoot, with intent thereby then the said B. P. "to kill and murder."

The question submitted is whether this is sufficient, it not being said that the intent to murder was "feloniously and of his malice aforethought." It seems to me the question is a very narrow one, and turns entirely on the interpretation to be given to Sec. 79 of the Criminal Procedure Act, 32 & 33 Vic., cap. 29. But the argument took rather a discursive turn, and it was maintained that the words "feloniously and of his malice aforethought" having been used to qualify the shooting, they were understood to qualify the murder.

I think this proposition is quite untenable. The word "murder" does not of itself define murder. This may seem to be an extraordinary conclusion, but there is no question it is the purport of the common law. See Hale, Pleas of the Crown 186-7; Foster, Crown Law Discourse 2, of Homicide, p. 302, chap VII. The words "with malice prepense" are sacramental. What Dwarris means when he says that being once used they need not be repeated, but were understood by the use of the conjunction *and*, is that they need not re-appear in the narrative. For instance, that having been used to qualify the shooting it was not necessary to repeat them when alleging that by the