appeals from interlocutory judgments at Articles 1116, 1119 and 1120, in the following words:

"1116. An appeal also lies from interlocu-
"tory judgments in the following cases:

"1. When they in part decide the issues;

"2. When they order the doing of anything
"which cannot be remedied by the final judg-
"ment;

"3. When they unnecessarily delay the trial
"of the suit.

"1119. If the appeal is from an interlocutory
"judgment, it must first be allowed by the
"Court of Queen's Bench, upon a motion, sup-
"ported with copies of such portion of the re-
"cord as may be necessary to decide whether
"the judgment in question is susceptible of ap-
"peal, and falls within one of the cases speci-
"fied in Article 1116. The motion must be
"made during the term next after such render-
"ing of the judgment, and cannot be received
"afterwards; saving, however, the party's right
"to urge his reasons against such judgment
"upon an appeal from or proceedings in error
"against the final judgment.

"1120. The motion must be served upon the
"opposite party, and, if required, is followed by
"a rule, calling upon such opposite party to
"give his reasons against the granting of the
"appeal; and the service of such rule upon
"him has the effect of suspending all proceed-
"ings before the Court below."

Article 1116 comes immediately after that which declares that an appeal lies from any final judgment of the Superior Court, save certain exceptions therein enumerated. In the French version, it begins by the words: "Il y a *également* appel de tout jugement interlocutoire," &c.

I contend that under these Articles of the Code, the only thing left to be determined by the Court of Queen's Bench, upon motion to appeal from an interlocutory judgment, is whether or not such judgment falls under one of the three heads given in Art. 1116, and that where the Court comes to the conclusion that it does, it can exercise no further discretion, but must allow the appeal to go as of right. Therefore, it cannot, upon such a motion, look into the merits of the judgment, but can only decide, as a preliminary matter, whether it is, under Art. 1116, susceptible of appeal or not. In the first place, the law no longer provides that an appeal *may be had and obtained*, in the cases mentioned, but positively enacts that *it also lies*, that is, that it lies as well as from final judgments. Moreover, Art. 1119 does not require that the motion to allow the appeal be supported by such portions of the record as are necessary to adjudicate upon the merits of the judgment, but such only as are necessary *to decide whether it is susceptible of appeal and falls within one of the cases specified in Art.* 1116.

The policy of the law is therefore to give litigants a right of appealing from certain interlocutory judgments, not to vest the Court of Queen's Bench with an arbitrary power to allow or refuse appeals according to its fancy. To pervert its meaning and to hold that the merits of an interlocutory judgment may be inquired into upon the preliminary motion, must have the following effects prejudicial to both parties:

1st. The Court forms an opinion at the outset and never recedes from it, so that where the appeal is allowed, all the subsequent proceedings are a farce.

2nd. The party moving for the appeal is placed, without reason, in a more favorable position than if the judgment he sought to reverse were a definitive one; for he brings the case to the Court, compels his adversary to argue it upon its merits and gets the equivalent of a judgment in appeal, without having to give security for costs or to submit to the other restraints put upon appellants.

3rd. The opinion of the Court is formed upon the record and an oral argument, neither party having the privilege, as in ordinary cases, of putting before it printed factums. I think I may safely add that cases submitted on motion do not receive as full consideration as those in which all the procedure in appeal is gone through.

4th. The profession are called upon, for insignificant fees, to discharge duties for which they would properly be entitled to full costs of appeal.

5th. The party moving is compelled to produce (and it may sometimes be at great expense) portions of the record which would not otherwise be required.

I am quite aware that the jurisprudence established under the old Statute has invariably been acted upon under the Code, the difference in the wording of the law having evidently escaped attention, and it may be a question whether this continued jurisprudence should not prevail over the express text of the law. I leave it to be solved by wiser heads than my own.

I have the honor to be,

Sir,

Your most obedient servant,

W. C. LANGUEDOC.

P. S.—The foregoing is an argument I had meant to urge at the term now being held, at Quebec, of the Court of Queen's Bench, on a motion for leave to appeal, in a case of Tourigny vs. The Ottawa Agricultural Insurance Co., from an interlocutory judgment dismissing defendants' declinatory exception. My object was to avoid the necessity of obtaining, at rather heavy expense, copies of the whole evidence taken in the Court below. However, I had scarcely begun to expound my views when I was told by Mr. Justice Ramsay that it was mere waste of energy on my part, and the Chief Justice peremptorily ruled that I had not the right to say a word upon the matter.

W. C. L.