which the appellant was not called upon to submit, and which might be regarded as an indirect refusal. After having attentively examined this important point of the case, I find that it is sufficiently proved that from time immemorial it has been the custom, not only in the Parish of Montreal, but also in all parts of the Diocese, and further, in all parts of the country, to make in the cemeteries the division made at Montreal, and of which the appellant complains; that one of those divisions is appropriated for the burial of the bodies of those Roman Catholics who are entitled to the ecclesiastical sepulture, and the other destined for those who have not this right; that in this last part are buried those who find themselves in the position of Guibord at the time of his death; that it would have been contrary to the general rule and usage if they had accorded to the said Guibord what would have been refused to others. It is unreasonable, it appears to me, to pretend that this refusal on the part of the Fabrique, in the case of Guibord, is injurious to his memory and to the character and reputation of his family. If, in reality, there were reflections and dishonor to the deceased in being interred in the place assigned by the Fabrique, it could not surely be attributed to it, but rather to him who, knowing the consequences, voluntarily subjected himself and his family to a disgrace he could so easily have avoided.

Duval, C. J.—There can be no pleasure in listening to the repetition of a twice-told tale. The Bar will therefore be pleased to hear that I intended to say very little. No doubt, the question is one of the highest importance. It affects the feelings and interests of every family in the country, and therefore it is not a subject which should be treated lightly.

It is to be regretted that the question should be disposed of on what may be considered a question of form. We think the writ of *mandamus* is not of such a character as the writ which has been taken out in this case. Whatever our own opinions may be as to what might suffice, if we are satisfied that the law is imperative, it is our duty, not to judge the law but to respect the law. If on reading the Code and the law which preceded the Code we find the law stated in such terms as to admit of no doubt whatever, I say it is the duty of the Judge to respect the law, and to obey it.

The first question in this case is: Has the writ issued in accordance with the requirements of the law? I say, most assuredly it has not. It has issued in the very teeth of the law. We have been told that we have nothing to do with the English law in this instance. Nothing to do with the English law! Then, where are we to find the law? Is it the law of Canada which has told us what a writ of *mandamus* is? So far is this from the case, that the Code informs us, after mentioning two or three cases in which the writ of *mandamus* may be obtained, that the writ is to issue in all cases in which the writ of *mandamus* would lie in England. I turn to Article 1,023 of the Code of Procedure for Lower Canada, and I find no definition of what the writ of mandamus is. Here is what is stated. "In the following cases," (two or three instances are given) "4: In all cases where a writ of "mandamus would lie in England, any per- "son interested may apply to the Superior "Court or to a judge in vacation and obtain "a writ, commanding the defendant to per- "form the act or duty required, or to show "cause to the contrary on a day fixed." What right have we to say that the direction of the writ shall be other wise than to show cause on a day fixed? This does not admit of any doubt. Must we not look to that writ?

The modern writ of mandamus is a high prerogative writ, not a writ of right. The subject is entitled to it on a proper case shewn to the Court. It was founded on Magna Charta. In England, what does the writ contain? Here is what we are told by a writer on the subject. (His Honour cited the form of the English writ) The writ must expressly state the act. The absence of such a form will render the writ liable either to be superseded or to be quashed. I will now show that our own statute, our own Code, expressly enjoins the observance of this form. It is only necessary to refer to the commencement of Chapter 10. We find, in Article 998, that "the "summons for that purpose must be pre- "ceded by the presenting to the Superior "Court in term, or to a judge in vacation, of "a special information, containing conclu- "sions adapted to the nature of the contra- "vention, and supported by affidavits to the "satisfaction of the court or judge; and the "writ of summons cannot issue upon which in- "formation without the authorization of the "Court or Judge." Here we are told in one page what the defendant is to do. In the other page we are told that the writ of summons is merely to call him in. Can it be said, then, that the Legislature has not pointed out what the defendant is to do? It is to be a mere writ of summons to call him in. But it is said that the man is to answer a petition. The law, however, has made a distinction as to the proceedings. The law says in the one case, that a corporation violating or exceeding its powers, you are to do so and so—a simple writ of summons. In the other case you are to take the English writ of *mandamus*, and that the writ must enjoin upon the defendant what he is to do. (Several references were here made to Tapping and the writ of *mandamus*) Then the Code says that the proceedings after the service are to be in accordance with the provisions contained in the preceding section. He who runs may read. There is a positive injunction. I find the Legislature making a distinction between the mere writ of summons and the mandamus, and it is not for me to judge the law. But if we are to be left without any rule at all; if we are to