

was cited by Mr. Justice Meredith, in his judgment in the present case (see Record, p. 22), in which he himself and all the other Judges of the Queen's Bench appear to have concurred.

In the judgment now under appeal, Mr. Justice Meredith, although he thought it right to agree with the majority of the Court, declared that his own contrary opinion (expressed in *Gugy v. Ferguson*) still remained unchanged; and Mr. Justice Mondelet agreed in that unchanged opinion, and differed from the other Judges of the Court.

Mr. Justice Aylwin appears to rest his judgment mainly on the argument that the tariff gives fees to attorneys only, and thus in effect denies them to parties who are not attorneys, and that a person who appears in person cannot call himself an attorney. In answer to this it may be observed, that an attorney who conducts his own case, and describes himself on the face of the proceedings not as a party suing or defending in person, but as attorney on record, accepts by that very act all the duties and responsibilities which the practice of the Court imposes on attorneys acting for ordinary clients. Mr. Justice Meredith founds his judgment merely on the propriety of a judge's deferring to the authority of adjudged cases. Mr. Justice Badgley, in substance, takes the same view as Mr. Justice Aylwin, with the addition that he relies on the circumstance that in the case of an attorney appearing for himself, inasmuch as in the proceeding by way of "inscription en faux," the law requires a special procuration from the party to his attorney, as the foundation of the proceeding, there would be an absurdity in taking such a special power of attorney from a man to himself; and further, that the proceeding by way of "distraction de dépens" would not be practicable, because the occasion for it could never arise. But their Lordships are constrained to observe that they cannot understand how these are good reasons for disallowing to the attorney his fees for services performed in the cause as an attorney.

It will be observed that in no one of these judgments is there any dealing with the authorities cited on behalf of the appellant from the old French law books in favour of the at-

torney's right. The judges do not at all deny that there are such authorities, or attempt to distinguish them. Mr. Justice Duval alone, in his judgment in the earlier case of *Brown v. Gugy* (printed in the appellant's case, page 4), says that the opinion of Serpillon on this point is of little weight, being founded on faulty reasoning only, and quotes a passage from De Jousse, as to the rights of advocates, as a conflicting authority. But Mr. Justice Meredith observed (11 Lower Canada Reports 412), "That authority (De Jousse) is not applicable here in Canada, where advocates are also attorneys. It must be recollected that in France the right of action for fees was not only denied to advocates, but such as claimed them were struck from the Rolls." And this appears to be the only authority which has been cited on behalf of the respondent from the French law books in denial of the attorney's right to fees.

With respect to the argument founded on the Tariff of Fees, the Court of Queen's Bench of Lower Canada is authorized by several statutes to make and establish Tariffs of Fees for the counsel, advocates, and attorneys practising therein. But the object of such a Tariff appears to us to be, not to confer fees on any one, or to deprive any one of them, but simply to fix the amount of them for particular services done by such officers. If at the time of making the Tariff an attorney acting for himself in a cause was, according to the authorities cited by the appellant, entitled to such fees as would have been payable to another attorney acting on his behalf, it surely was not meant by the Tariff to alter the law, and deprive him of such fees altogether, but merely to regulate the amount to be paid to him. On this point their Lordships concur with the view taken by Mr. Justice Meredith in *Gugy v. Ferguson* (11 Lower Canada Reports, p. 418), where that learned judge says, "It is undeniable that the appellant is an attorney, and that he has performed certain services in this cause for which, when performed by an attorney, the Tariff allows certain fees; and I really cannot see anything in the law, or in reason, to prevent the appellant, an attorney, from receiving the fees usually incident to the services which he performed."