

I relied, borrowed from the Roman law, was intended to prevent the rich from oppressing the poor. It is clear, too, that inasmuch as it tended to diminish litigation, it was not popular with the class who profit by, and, it must be admitted, occasionally encourage litigation. That, class then, which is always at the service of the rich—many members of which could at all times be found to aid and abet the rich in their contests, however iniquitous the cause—would naturally be very loath to enforce such a rule. In all cases the parties urging its enforcement *must* be poor men, unable to “come down handsomely,” and the defendants would invariably be rich men, able to bribe, or at least willing gratefully to repay in current coin, the considerate abstention of professional men. I make no allusion to contemporaries, but confine myself exclusively to the Attorneys of Domat’s time. Now, a Judge, and especially a Chief Justice, is supposed to know the causes of things, and were my quondam fellow-student a man of capacity (which, in my opinion, he is not by any means) he would have known that a provision of the law, enacted altogether for the protection of the poor, the wretched, and the helpless, would be very likely to be, as Domat says, “seldom enforced,” nor would it have been now enforced in this country had I not been, by God’s grace, competent to assert my own rights.

But those are the words of the author named by Chief Justice Duval. The author does not “say that the ordinance had gone almost out of use.” Not at all. He *says* nothing of the kind. He did not speak of the ordinance but of the rule, nor did he say that the ordinance “had gone almost out of use,” but that “the rule was seldom enforced.” As the author cited by the Chief Justice uses the words “so seldom enforced,” he evidently means that the rule was *sometimes* enforced. For the reasons herein above submitted it is evident that it could not be often enforced ; but between the occasional, though rare, enforcement of the *rule*, and the