

TESTAMENTARY BREVITY.—One Charles Breusing, the proprietor, in his lifetime, of the music store at No. 701 Broadway, died in 1863, leaving an estate of \$35,000, and the following will: "When I die, Regina Kaufman shall have all I leave behind me. C. Breusing. A. Hirsch, M. Hirsch (witnesses)." After some years of litigation the will has been declared to be valid.

LAW JOURNAL REPORTS.

PRIVY COUNCIL CASE.

GUGY v. BROWN.

Advocate conducting his own case—Right to fees.

Held, that an advocate of Lower Canada, acting as attorney of record for himself in a suit to which he is a party, is entitled to the usual "attorney's fees."

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Guky v. Brown, from Canada: delivered 1st February, 1867.

Present:

SIR JAMES W. COLVILLE.

SIR EDWARD VAUGHAN WILLIAMS.

SIR RICHARD TORIN KINDERSLEY.

This case is an Appeal from the Decree of the Court of Queen's Bench for Lower Canada, dated the 19th of December, 1862. By this Decree a judgment dated the 2nd of November, 1861, of the Superior Court of the District of Quebec, was reversed. That judgment was pronounced by a single judge (Taschereau) on a motion made by the present appellant to review the prothonotary's taxation of a bill of costs which had been submitted to him to be taxed, by the appellant, under a prior judgment of the last-mentioned Court upon a proceeding called "an opposition," awarding him costs as against the respondent generally by the words "avec dépens." The question, and the only question, raised and decided in the two Courts was whether the appellant, who was an advocate and attorney duly admitted therein, and had appeared personally in Court and conducted his own case as attorney on record, was entitled under the said judgment to charge in

his bill of costs, and to have allowed, on the taxation thereof against the respondent, certain fees claimed and charged by him in respect of his character of attorney. Judge Taschereau decided in the affirmative; the Court of Queen's Bench in the negative.

The rule for deciding this question, as it was said by C. J. Lafontaine, in *Brown v. Guky* (11 Lower Canada Reports, 407), must be furnished by reference to the French and not to the English law, because the then existing French law was dominant in Lower Canada when it was conquered in 1759, and consequently that law continues to be dominant there, subject to any alterations which have been introduced by Legislative Acts or other competent authority.

It is necessary, therefore, to inquire what the old French law was with reference to this subject.

On behalf of the appellant several authorities were cited, the principal of which are, "Le Parfait Procureur" (Edition 1705), Pigeau, Ferrière, and Serpillon. These are for the most part stated in the appellant's case, and referred to by Mr. Justice Taschereau in 11 Lower Canada Reports, 484-485. And their Lordships are of opinion, in accordance with the opinions of Mr. Justice Meredith and Mr. Justice Taschereau, that the passages cited from these books constitute a preponderance of authorities in the French law, for allowing fees to an attorney who appears as such in his own case.

But it was argued for the respondent, that the old French law has, at all events, been displaced by modern authorities. It is certainly true that although in the case which is the subject of appeal, when in the Superior Court of Quebec, Judge Taschereau adhered to the old French law, and decided the case accordingly in favor of the attorney's claim (see 11 Lower Canada Reports, 493), yet on three earlier occasions the Court of Queen's Bench decided the contrary, in disregard of that law, and held that an attorney conducting his own case is not entitled. Two of these cases were decided by a majority of three to two Judges, in *Brown v. Guky* (11 Lower Canada Reports, 401), and *Guky v. Ferguson* (ibid 409); and a third case of *Fournier v. Cannon*