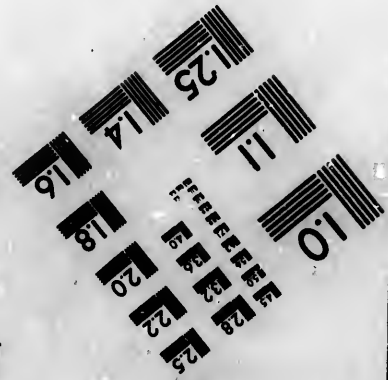
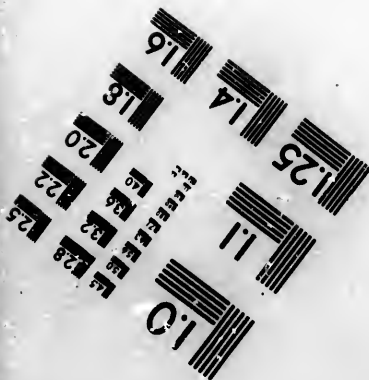
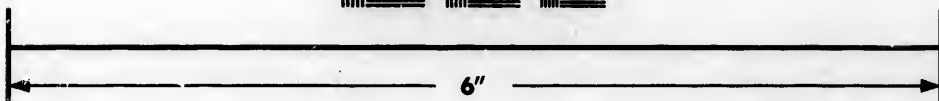
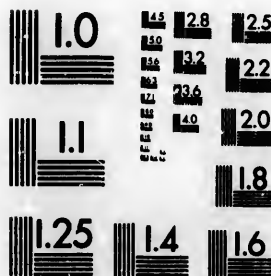


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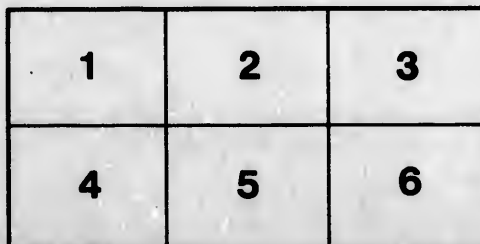
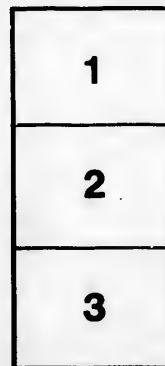
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F A C T U M

OF THE CASE OF

WILLIAM POWER, ESQUIRE,

CIRCUIT JUDGE ;

RESPECTFULLY PRESENTED

TO

The Honorable Members of the Government.



Q U E B E C :
1853.

The following Pages contain a Copy of all the papers sent in by me to the Government, respecting the claim to which they refer and as, hitherto, it has not been found convenient to honor me with an answer, I now, in order to facilitate the answer and obviate the trouble and inconvenience to the Constitutional Advisers of His Excellency, of taking communication of and perusing so many written papers, respectfully furnish them with the present printed *Factum* of the claim, in the hope that when its turn for consideration will arrive, they may be simultaneously in possession of the facts.

It will be observed, that independently of the other reason stated, the claim involves an abstract question of right. A question, not only important as regards myself, but also as a principle of Government, namely : Whether one administration will maintain, towards an individual, the engagement of a preceding administration—or in other words, whether or not, the Government, which comprises all the administrations, will maintain its own engagement.

The *Factum* has been printed by a confidential printer and its circulation will not go beyond, but be strictly confined to, the Honorable Members of the Cabinet.

W. POWER.

Quebec, 7th June, 1853.

QUEBEC, 24th September, 1852.

SIR,

I have the honor to transmit herewith, a memorial to His Excellency the Governor General, with the accompanying inclosures, Nos. 2, 3, 4, 5, 6, 7, 8, and 9, and to request of you to be pleased to lay them before His Excellency.

I have the honor to be,

Sir,

Your most obdt. servt.

W. POWER,

Ct. Judge.

The Honble. A. N. MORIN, }
&c., &c., Secy. }

List of Papers submitted to the Government by the undersigned.

- No. 1.—Memorial,
2.—Attested Copy of Letter of the Honble. D. DALY, referred to in Memorial,
3.—Observations in addition to Memorial,
4.—Copy of Letter to Mr. Solicitor General DRUMMOND,
5.—Copy of Letter to the Honble. J. LESLIE, Secretary,
6.—Letter in answer from Mr. Secretary LESLIE,
7.—Office copy of Letter of Mr. MURDOCH,
8.—Printed Addresses,
9.—Report on the Administration of Justice.

W. POWER,

Ct. Judge.

Quebec, 21st September, 1852.

No. 1.

To His Excellency the Right Honourable
JAMES, EARL OF ELGIN AND KINCARDINE, K.
T., Governor General, &c., &c., &c.

The Memorial of **WILLIAM POWER**, of Quebec, one
of the Circuit Judges of and for Lower Canada :

RESPECTFULLY SHEWETH,

That your Memorialist after having duly studied for the profession of the Law at Quebec, under the Attorney General for the time being, was commissioned in the month of June, 1826, a Barrister, Advocate, Solicitor and Attorney in all the Courts of Judicature in the (then) Province of Lower Canada, and as such, acquired and continued in the possession of a lucrative practice for a period of fourteen years.

That in virtue of an Ordinance of the Governor and Special Council of the 11th April, 1839, intituled "An Ordinance to establish Circuit Courts of Requests in the Districts of Quebec, Montreal and Three Rivers, and for other purposes," a Commissioner's Court was created and a Jurisdiction to the amount of £10 sterling, given to the Commissioner with also in a variety of other matters "the same powers and authority " as any Judge of any Court of King's Bench"—"such Commissioner to be a Barrister of at least ten years standing and " to be Chairman of the Court of Quarter Sessions of the " Peace in the District wherein he shall be Commissioner of " the Court of Requests."

That the late R. A. Hamel, Esquire, Advocate General of Lower Canada, was appointed Commissioner of this Court for the District of Quebec, and it was universally admitted that his office, as such Commissioner, was more arduous and laborious than any other judicial office in Lower Canada, because the Ordinance required forty-five terms of the Court to be held yearly, to wit : five terms at each of nine different places and some of those places distant two hundred miles from each other, it was necessary for him, in order to perform his duty, to abandon the comforts of his home and spend the entire year without an interval of repose (with the exception of the period allotted to him for presiding in the Court of Quarter Sessions at Quebec) between his sittings in Court and travel-

ling over mountainous and bad roads, and that he died upon one of the Circuits within the year of his appointment while in the act of returning to Quebec.

That your memorialist in the month of May, 1840, had the honor to receive a letter from the Secretary of the Province conveying to him the offer of the office then vacant by the demise of Mr. Hamel, in which letter it was mentioned, that a change being then contemplated in the Judicature System of the Province, His Excellency the Governor General, would not guarantee to memorialist the continuance of the office, but nevertheless, would view his acceptance of it, under this circumstance, as evidence of a desire on the part of memorialist to advance the public service, and would take the first favorable opportunity to promote the interest of memorialist, in the event of such change taking place.

That thereupon, your memorialist animated with the desire to distinguish himself, in a service alike honorable and meritorious, and not doubting the promise of the Government, thus formally and officially expressed, accepted the office; nor independently of such promise, could he hesitate to relinquish his practice at the Bar and assume those judicial duties, because according to precedents and the usage which then prevailed, the members of the profession of the Law who, in the employ of Government, rendered services to the public, were promoted in preference to others, to seats in the Courts of King's Bench and Provincial Courts. To be appointed Chairman of the Court of Quarter Sessions, was considered a title and an immediate step to such promotion, as in the cases of the late Mr. Justice Fletcher, of Mr. Justice Thompson, of Mr. Justice Gale, at Montreal, and of the late Mr. Justice Taschereau, at Quebec.

That the annual allowance by the Government to the Commissioner of the Court of Requests was £666 13s. 4d. currency, *i. e.* £500 sterling salary and £100 sterling for travelling expenses.

That the memorialist performed, without any failure, the whole of the duties of this office, from the day of his appointment thereto, the 19th May, 1840, to the 1st January, 1842, when a change was made in the Judicature System of Lower Canada by the creation of Inferior Districts and District Courts, and the appointment of seven District Judges; whereupon the memorialist was appointed Judge of the Inferior

Districts of Quebec, Portneuf and Saguenay, with a jurisdiction limited to £20 (wherein was included the whole of the business of the City of Quebec to that amount) and a yearly salary of £500 currency. The newly appointed District Judges in the rural districts had lesser salaries.

That afterwards, on the 9th December, 1843, a further change in the Judicature System ensued, under which the District Judges were converted to Circuit Judges, Commissioners of Bankrupts and Chairmen of the Quarter Sessions of the Peace, and were all of them placed upon an equal footing with salaries of £500 each, but without any allowance for travelling expences, whereby the salaries of the Junior Judges were augmented without any increase to that of the memorialist.

That on the 30th May, 1849, the Judicatory of Lower Canada was again remodelled, and a more extensive jurisdiction granted to the Circuit Judges, with a salary or allowance of £550, in lieu of all emoluments, whether for travelling expences or otherwise.

That the memorialist has with the most unremitting zeal devoted the whole of his time and energies to the faithful discharge of the sacred duties of those highly important offices for a period of more than twelve years, and with the advantage of never having had his conduct the subject of censure or complaint, yet nevertheless, owing to the changes of the governmental ministers and their multifarious avocations, the government has lost sight of its promise to promote your memorialist's interest, so that the just and reasonable expectations of your memorialist have not been, as he was led to believe by the said promise, realised, but on the contrary, he has suffered a heavy pecuniary loss, in the difference between the amount of his salary when first he had the honor to be appointed Commissioner of the Court of Requests and its subsequent and present diminished amount.

Wherefore Your Excellency's memorialist humbly prays of Your Excellency to be pleased to take the premises into your favorable consideration, and do therein what in your wisdom may seem, as to right and justice to appertain, and the memorialist in duty bound will ever pray.

W. POWER.

Quebec, 24th September, 1852.

No. 2.

Montreal, May, 1840.

SIR,

I am commanded by the Governor General to offer for your acceptance the office of Commissioner of the Circuit Court of Requests for the District of Quebec, vacant by the demise of the late Mr. Hamel, and at the same time to inform you that the appointment will be only temporary and will be subject to change or even to be discontinued, should the measures in contemplation for remodelling the judicature of the Province render such a step necessary—and, moreover, that in the event of its being discontinued, no indemnity or retiring allowance will be guaranteed to you—nevertheless, I am directed by His Excellency to add, that he will view your acceptance of the appointment under these circumstances, as evidence of a desire on your part to advance the public service, and will take the first favorable opportunity to promote your interest, in the event of the office being discontinued or changed.

I have the honor, &c.

Signed, D. DALY,

Secy.

W. POWER, Esq., }
 Advocate, Quebec. }

I, CHARLES ALLEYN, of Quebec, Advocate, do solemnly and sincerely declare that the foregoing copy of a letter from the Honble. D. DALY to Mr. Justice POWER, is, to the best of my knowledge and belief, a true copy of the original letter of which I had communication at the time, being then a student at law with Mr. Power, and to which letter my attention was particularly drawn by Mr. Power, he having spoken to me several times on the subject before answering said letter; and I make this declaration conscientiously believing the same to be true, and by virtue of the provisions of the statute in such case made and provided.

(Signed) CHARLES ALLEYN.

Declared at Quebec, this }
 26th August, 1852, }
 before me,

(Signed) E. BAQUET, J. C. S.

I, WILLIAM POWER, of the City of Quebec, one of the Circuit Judges for Lower Canada, do solemnly and sincerely declare that the foregoing copy of a letter from the Honble. D. DALY is, to the best of my knowledge and belief, a true copy of the original letter which was received by me and answered a few days previous to the fourteenth day of May one thousand eight hundred and forty, and I do further solemnly and sincerely declare that the said original letter was destroyed by fire in the great conflagration that occurred at Quebec in the month of June one thousand eight hundred and forty-five; and I make this declaration conscientiously believing the same to be true, and by virtue of the provisions of the statute in such case made and provided.

(Signed) W. POWER.

Declared at Quebec, this }
22d day of September, }
1852, before me, }

(Signed) E. BAQUET, J. S. C.

No. 3.

Observations in addition to Memorial.

In attempting to make a few general remarks upon the unfavourable combination of circumstances which has necessitated my Memorial to the Government, I am not insensible of the respectful regard which ought to be paid to the distinguished individuals who assist in administering it, but above all to the representative of my Sovereign, upon whose recognized discrimination and justice I rely with perfect confidence. My object is to give a just apprehension of my position as affected by the system of responsible government; without wishing to interfere with the interests of, or impute blame to, any person. Whatever I may express beyond that object will be humbly intended to refresh the memory, rather than presumptuously to communicate, by way of information, what any person may draw from his own reflection.

I owe it to myself, to my family and friends, to invite inquiry into the nature and extent of the laborious public services I have rendered, for the last twelve years—of the manner in which they were rendered, it would not become me to speak. That I shall leave to the candour of a profession from which I have uniformly received indulgence: but there can be no violation of

modesty in my stating, as an irrefragable fact, that whilst unavoidable failures of Courts, on some Circuits less arduous than mine, have occasionally though rarely, occurred, owing to the illness of the Judge, the obstruction of the roads or the inclemency of the weather, in no single instance, upon the Circuits allotted to me, (and I have held Courts during at least 300 terms, some of them of six days duration,) was a term put off or the Court retarded, even an hour, either in Town or Country, from my absence on any account.

Without the possession of a strong constitution, inured to hardship and stimulated by an untiring spirit in the path of duty, my efforts would have been, like my predecessor's, unsuccessful. Another fact into which I challenge inquiry is, that no single Judge in this District within a given period has decided more causes than I have and from whose decisions compared to the number of appealable cases, fewer appeals have been instituted—these are matters of record, easily verified if called for, which will afford the best proof in corroboration of my statement.

I must presume that these facts have not at all attracted the attention of the government, any more than the engagement which forms the subject of my memorial—and I ascribe it to the changes of Ministry since my appointment to office—*Mutability* in the Council arising from the succession of new members, creating change of opinion and correspondent change of measures is well known also to create a change of patronage, and I think it is not objectionable that men in power should in the necessary distribution of their patronage satisfy their predilections and even their prejudices, when it can be done without the sacrifice of justice to individuals; but in a matter of strict justice and where governmental honor is involved, there is an enlightened *permanency* in the government, which I invoke with a confidence not yet subdued.

In no instance that I am aware of, except as regards, myself, have the emoluments of an officer, who has faithfully performed his duty, been reduced without affording him an indemnity or equivalent.

By the 63rd section of an Ordinance of the Governor and Special Council, passed the 15th June, 1840, (4 Vict. cap. 45,) which would have had the effect of abolishing the Court of Requests, had that ordinance not been almost immediately superseded by another law, it was provided that, "it shall be lawful for the Governor of the Province on any claim which may be

" made by any of the persons holding office, which will become
 " and be abolished under the provisions of this Ordinance, for
 " compensation for loss, by reason of the abolition of the said
 " office, to determine by and with the advice of the Executive
 " Council, whether such claim has or has not a reasonable
 " foundation, and if such claim be admitted to be well founded
 " and just, to assess and award thereupon such compensation as
 " by the said Governor with such advice as aforesaid may be
 " deemed reasonable and proper, regard being had to the tenure
 " under which the said offices have been held and to the
 " appointment which might be made of the said persons, if
 " qualified to offices of a similar nature to be filled under the
 " provisions of this Ordinance, and to all such circumstances
 " as may and ought to be considered in relation to such claim,
 " and the compensation that may be assessed and awarded as
 " aforesaid, shall be paid out of any of the unappropriated
 " monies for public uses in the hands of the Receiver General
 " of this Province."

This Ordinance, although not in force as strict law, consecrates a principle which has not been deviated from by the government, except in my case, and it arises from the obligation not to disappoint the Incumbents in their reasonable expectations of being permitted to retain their original salaries. The following extract from Paley's moral and political Philosophy, p. 86, agrees with the Ordinance.

" From the account we have given of the obligation of
 " promises, it is evident that this obligation depends upon the
 " expectations which we knowingly and voluntarily excite—
 " consequently any action or conduct towards another which
 " we are sensible excites expectations in that other is as much
 " a promise, and creates as strict an obligation as the most ex-
 " press assurances." * * * * * " and you cannot afterwards
 " recede from it without a breach of good faith." *Ib.* p. 87.

The same righteous sentiment is found, although in language more delicate, in the Despatch of His Excellency The Earl of Elgin to Earl Grey, dated 31st Decr., 1850. It is in these words:—" I think less injustice would be sustained by those
 " who render services to the public entitling them to such
 " consideration, if it were understood that the Crown had not
 " the means of rewarding them in this manner, than is done by
 " permitting them to form expectations which may be doomed
 " to disappointment even when most legitimate." And Earl

Grey's answer in his Despatch to the Earl of Elgin, dated 14th March, 1851, is nearly the echo of that sentiment. It resounds thus:—"The interest of office-holders must be protected, because they accepted those Offices with expectations which cannot be justly disappointed."

When it was found necessary to reduce the Salaries of the Judges of the Superior Court, care was taken, by the government, that the reduction should be only prospective and not affect the actual Incumbents. When Mr. Parent who had £600 Salary as Clerk of the Executive Council, was appointed to the office of Assistant Secretary, an office of £500, care was taken that he should retain his former salary, and when Mr. McCord, Circuit Judge, was removed to the Office of Police Magistrate, an Office of £300, his salary of £500 was preserved to him. May I not be permitted humbly to inquire, if there is any reason, why I should be dealt with differently to others? Although I am not aware of having a single personal friend in the Council, to answer my question, yet I am persuaded, that personal friendship is not necessary, for all the Honble. Members who compose it are friends to justice; as to political friends or enemies, I can have none, as I have religiously abstained, during the last twelve years, from interfering in any manner in politics, believing it to be incompatible with the sacred duties of my office.—I am therefore removed from the position to promote or oppose the views of Ministers—such was not the case at the time when I held a seat in the Legislative Assembly of Lower Canada, when the Honble. Messrs. Caron, Morin, Leslie and Lalontaine, who since became Ministers of the Crown, also sat there, and then taking a different view from these gentlemen of the public questions that agitated the Province, although desirous to be considered their private friend, I spoke and voted as their political opponent. My voice cannot now be directed to promote that echo, called public opinion, nor ought it to be necessary for the success of my memorial, that to the strength of truth should be added the force of numbers; because, all just governments, acknowledge as superior to the will of the individual, that controlling law, known by the name of reason, morality or justice, from the dictates of which, he cannot permit his conduct to depart, without making either an absurd or culpable use of his power, for as M. Guizot in his admirable treatise on governments has said, "It is not the power which creates and imposes on man, those laws of

“ obligation, the existence of which, he cannot deny. He receives them from a higher source, they issue from a more exalted sphere than that of liberty, from a sphere where the question lies not between what man desires or disapproves, but between what is true or false, just or unjust, conformable or contrary to reason.”

The damage which the non-fulfilment of the promise made me by the government and the reduction of my salary, caused me, may be briefly stated. At the time of that promise I was the proprietor of four houses in the city of Quebec, and a large farm in its vicinity which I had acquired during the preceding fourteen years by a successful practice at the bar, and the greater part of this property I was afterwards obliged to sell in consequence of my diminished revenue, which combined with a severe loss that I sustained by the burning of 1845, forced me to put away my carriages and horses and deprive my family of many of those comforts, to which they had been previously accustomed.

Having confined the foregoing remarks, principally to the promise of government and the strict question of right, I shall now attempt to explain, how my reasonable expectations, independently of that promise, have been defeated, by the natural consequence of the new system, called responsible government, and I beg it to be understood, that I am not finding fault with a valuable dispensation of good, because it is not what no human system ever was, perfect in all its parts; that it is good in itself, upon a broad scale, is sufficient for its commendation, but as I have been injuriously affected, by that portion of its machinery which regulates the administration of justice, and which I conceive to be defective, I should be wanting in sincerity, while I am not wanting respect, if I did not point it out.

It is properly admitted that no person ought to be appointed to the office of Judge, for any political or other consideration unless his fitness for the office be manifest, and it is also correctly admitted, that a gentleman possessing such fitness, ought not to be deprived of that honor because he has rendered political services to the government of his country, that such services should be rather an advancement, than an impediment, to his promotion.

It must be also conceded, that a person will necessarily

gather more knowledge of the law, during his administration of Justice for a few years, than he could by a longer practice at the Bar, however extensive that practice might be.

The recent judicature acts have distinguished three classes of Judges, 1st the Judges of the Queen's Bench, 2nd the Judges of the Superior Court, and 3rd the Circuit Judges. These are the artificial distinctions of the law, and although the last is in rank and emolument inferior, it is not so in importance, to any other judicial office.

Under the Circuit Judges' jurisdiction, which in civil suits is limited to £50, more than three fourths of the recovery business of the country is comprised, and in the aggregate in this respect, he decides upon a larger sum and upon interests more extensive, than any Judge of the Superior Court. In all other matters such as the interdiction of insane persons, the election of guardians and curators, the issuing of the Writ of Habeas Corpus, &c., he has the same powers as the other Judges, and over and above he sits as a Court of Review or Appeal, to confirm or set aside the Bye Laws of the various Municipal Corporations. A jurisdiction of this description, which controls deliberate local legislation, is the highest that any individual can exercise—moreover, various provincial statutes of late years have multiplied Appeals to the Court of Quarter Sessions of the Peace, and the Circuit Judge, being in that Court empowered to act alone, presides there, as a Court of Appeals, from the decision of Magistrates in a vast number of cases.

From the nature of his duties therefore, it will not be pretended that the possession of any greater qualification, is required in a Judge of the Superior Court, than in him, and it is evident that no person can be qualified to fulfil the duties of Circuit Judge, without the necessary attainments to perform those of Judge of the Superior Court.

These three grades of Judges, acquire the same legal education, undergo the same initiatory process of qualification for the Bar or Bench, as required by law, and are therefore equal to each other, save and except, as to that portion of talent, which one man in a greater or lesser degree may possess more than another, and which will not belong to the highest, any more than the lowest grade. When I say that these grades established by law are artificial, I mean only, that they must be so, as regards the natural endowments of the men, but when we consider the degree of esteem to which each of them is intitled, if promotion

according to seniority be observed, we shall then find them to be natural and reconcilable to reason. Esteem is said to be the value which is set upon the person according to which he may be equalled or compared to another and rated either higher or lower than that other. The degree of esteem which seniority confers, is founded upon the universal persuasion that experience and long observation in any department of life, but particularly in the administration of justice, will produce caution and prudence, and when gradation depends on seniority, those upon the higher or highest steps, are naturally intitled to the higher or highest esteem; but all minor degrees of esteem are destroyed and the persons and their offices dishonored, by placing above them their juniors in rank and experience; of course I here except the case of rare talent in a junior, when transcendent genius commands universal homage and also that last stage of seniority, at which the vigor of mind and body is impaired.

For these reasons, I had indulged the hope, for some time, that gradation according to seniority would have been adopted and then, being the senior Judge amongst the Circuit Judges of Lower Canada, (for I had succeeded to Mr. Hamel, before Mr. Guy became the successor of Mr. Buchanan,) I should have been the first to be called upon to accept a seat in a higher Court. I could not without a feeling of self-debasement make application on any particular occasion; besides, the idea of the indelicacy of asking for that, which I had expected would be the spontaneous offering of the government, restrained me, and I preferred waiting in respectful silence, from year to year, in the confident expectation, that a just appreciation of my length of services, would in the end effect, what the forgetfulness, or change of the Ministry had prevented. But the longer I waited, the more repeatedly it was proved that a gentleman of the legal profession, when in the Ministry, will not accept a Circuit Judgeship, when a seat on a higher Bench is equally within his reach and to the vacancy which he will supply, the Circuit Judge will not be considered eligible, and therefore, long judicial services—the close study and application of twenty years—the *viginti annorum lucubrationes*, which according to the ablest writers on law, is no more than sufficient to afford the Judge a complete knowledge of his duties, will not be weighed against the services of a short political career.

I feel that I am sketching a very tender subject, but I know that some tenderness will be shewn to my own feelings, when I

am forced to portray, however slightly, *that* by which they have been deeply wounded; because the system that denies progressive promotion to a Circuit Judge, according to seniority, in my humble opinion, erroneously implies, that the difference between him and the Judges of the higher Courts, is not an artificial distinction of law, but a natural or personal difference as to intellect and capacity, marking his inferiority.

It has been said that the sacredness of the judicial office forbids the Judge to seek promotion, and that it ought to restrain his ambitious views, but this could only apply to Judges who holding offices "during good behavior," are independent; because the motive of the man who in a position of dependence, behaves well and seeks to render *his* "good behaviour," independent, is a laudable motive deserving of encouragement rather than blame.

Having stated why I waited, from year to year, in respectful silence, without making any application, I must now relate how and when I broke that silence, and what occurred.

In the year 1849, when the Judicature bill, creating the Superior Court, was passing through the Legislature into a Law, I addressed an un-official letter to Mr. Solicitor General Drummond, a copy of which is herewith inclosed, (No. 4,) requesting him to call the attention of his honorable colleague, Mr. Attorney General Lafontaine, to the promise made to me by the Government, as mentioned in my memorial, and at the same time I addressed another private letter on the subject of the promise, to the Honorable Mr. Secretary Leslie, but to neither of these letters was an answer returned. I then wrote to Mr. De Beaujeu, a member of the Legislative Council, requesting him to call the attention of Mr. Lafontaine to the engagement of the Government towards me, and he wrote to me that Mr. Lafontaine said to him without adding anything further, that no injustice would be done to me.

The appointments having been afterwards made to the Superior Court, and finding myself excluded, I wrote officially, (No. 5,) for a copy of two letters, namely, the one written by Mr. Daly, offering the office of Commissioner of the Court of Requests for my acceptance and containing the conditions upon which the offer was made, and the other from Mr. Murdoch, informing me of my appointment. In answer I received a copy of Mr. Murdoch's letter, (No. 7,) and was informed, (No. 6,) that no trace of the other was to be found in the office.

I inclose herewith an attested copy of the lost or mislaid letter of Mr. Daly, (No. 2.) I also inclose some of the Addresses referred to in my letter to Mr. Drummond, which were published and which I cut out of newspapers, (No. 8,) the others and the originals of these, were burned in 1845, with all the papers in my library. It may not be improper here to mention the circumstance which induced these addresses.

At the time of my appointment party feeling ran high at Quebec, and the "Canadien" newspaper came out strongly and in unmeasured terms, against my appointment, alledging my total unfitness for the office under the erroneous pretence, that I did not understand French. Two or three members of the Bar, who were displeased that I had succeeded to Mr. Hamel, a French Canadian, agreed with the "Canadien," but although those gentlemen had shortly afterwards the honor to avow that they had prejudiced me unfairly, the "Canadien" never had the candour to retract or republish the addresses.

I am not conscious of having ever spoken disrespectfully of any member of the Government, on the contrary, while impressing respect for the law, in the performance of my duty, I have always availed myself of every suitable occasion, to inculcate respect also for the public constituted authorities. But I have heard it said that in a report made by me upon the administration of justice, I censured the Attorney General for the time being, for the manner in which he brought his Judicature Bills into, and got them passed through, the Legislature, and that the report caused displeasure. I inclose a copy of this report, (No. 9,) (which escaped the fire, by being in my drawer in the Court House,) for the purpose of shewing whether, what may have been termed censure, was any more than the performance of an imperative duty.

I will add and I do so with heartfelt sincerity, that there is not a single gentleman who is, or has been connected with the Government, during the last twelve years, to whose personal truth and honor my claim might not be confided with perfect safety; but I have myself seen in the case of corporations, and I concur in the opinion, that this check is in some measure removed, where men act together, since a man is sure to be approved of by his own party, for whatever seems to promote the common interest, and he soon learns to despise the clamours of adversaries, and Judge Story has observed that "this opinion" lies at the foundation of the political reasonings of the great-

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"best men in all ages, as the result of a close survey of the passions and infirmities, of the history and experience of mankind."

However, having been entirely aloof, for so many years from political parties and political contentions, I cannot allow myself to believe, that political resentment could have pursued me into the sanctuary of justice.

I have never importuned the ruling authorities on any occasion, and if I now for the first time submit my claim, it is in the firm persuasion that there is an enlightened discernment in the Council, that justice is reigning at the head of the Government, and that while the material interests of the Country are fostered with care and rapidly advancing, its moral interests will be equally cherished.

W. POWER.

Quebec, 24th September, 1852.

No. 4.

[UNOFFICIAL.]

Quebec, 7th June, 1849.

MY DEAR SIR,

Your connexion with the Government and my belief of your desire to see justice rendered, prompt me to address you privately in a matter affecting my interest, which I cannot with delicacy make the subject of official or public correspondence. I beg, therefore, you will excuse me if I take this liberty, without the honor of your personal acquaintance.

Between nine and ten years ago, when I accepted the office of Commissioner of the Court of Requests, it was well understood to be a step ascending to the Court of King's Bench. The allowance to the office was £666 13s. 4d. currency, *i. e.* £500 sterling salary and £100 sterling for travelling expences, and the letter of the Civil Secretary which conveyed to me the offer of the appointment, contains the promise, that in the event of a change in the Judicature system, which was then contemplated, occurring, the Government would take the first favorable opportunity to promote my interests. I continued to perform the arduous duties of this office for nearly two years, and the valedictory addresses which I received at every seat of the Court's jurisdiction, when the period of its abolition had arrived, (one of which was penned by the present Speaker of

the House of Assembly, who was then at the Bar,) bear testimony of the satisfactory manner in which those duties were performed. To this Court, the District and afterwards the Circuit Courts succeeded, and my salary in each of those Courts was limited by law to £500 currency, without any allowance for travelling expences, so that instead of my interest having been promoted, as I was led to believe, the changes of the Judicature System caused a reduction of exactly one-third of what I was at first allowed. I believe that I am the only person amongst the Judges who has been without any fault of mine, or intention on the part of Government to reduce me, thus aggrieved.

When the Legislature reduces the salary of an officer, the Government generally takes care that such reduction does not affect the actual incumbent, but it applies to future appointments, and when under a change of system, an office is abolished, an equitable obligation arises on the part of Government, to indemnify the officer, or, the opportunity offering, to restore him to as favorable a position as that in which he was at first placed.

Having, with a large family, suffered this loss of the reduction of my salary, without having made any remonstrance on the subject, not having had until now a favorable opportunity, I have felt the loss the more severely, because, enjoying as I did, a popularity, I had a *clientelle* and a practice at the Bar that yielded me far more than the emoluments of the office of Commissioner of the Court of Requests, which I surrendered for the honor of that office, with the reasonable expectation of being afterwards promoted to the Court of King's Bench.

Since I am a Circuit Judge I have been elected and re-elected President of the St. Patrick's Society, an honor which I resigned from the belief of its being incompatible with my judicial duties. I mention this circumstance to shew that the public confidence which I enjoyed when at the Bar, is still continued to me by a large portion of the community, who doubtless would be pleased to see an act of justice done towards me.

In making appointments to the Superior Court under the new law, the Government will be enabled to do me the justice which heretofore it had not the opportunity of rendering, and I shall be much obliged to you if you, will be so kind as to call the attention of your colleague, the Honble. Attorney General, to the facts of my case, and have no doubt from his high cha-

racter, that when in possession of them, he will assist in doing what is right and just towards me.

Mrs. Power unites with me in praying to be remembered to our old acquaintance, Mrs. Drummond, whilst I remain with the greatest esteem,

My dear Sir,

Yours truly,

(Signed) W. POWER.

No. 5.

[COPY.]

Quebec, 17th December, 1849.

SIR,

I beg leave to request through you, as a favor of His Excellency the Governor General, to be pleased to allow you to let me have copies of two letters addressed to me by the Executive Government of Lower Canada, in relation to my appointment to the office of Commissioner of the Court of Requests, for the District of Quebec, which took place the 19th May, 1840.

The letters to which I allude are:—One from the Honble. D. DALY, then Secretary of the Province, offering that office for my acceptance, and containing a statement of the conditions upon which the offer was made—and the other from Mr. MURDOCH, (Chief Secretary,) referring to Mr. DALY's letter and informing me of the appointment. Both these letters were written at Montreal, a few days previously to the 19th May, 1840, I should say between the 1st and 19th May, and must or ought to be of record, or in the letter book, in your office.

I respectfully tender as an excuse for this trouble, the circumstances, that the originals of these letters were destroyed by fire, in the memorable conflagration that occurred at Quebec, in June, 1845, and that I have at present occasion to refer to the copies in a matter deeply affecting my interests.

I have the honor to be,

Sir,

Your very obdt. servt.

(Signed) W. POWER,

The Honble. J. LESLIE, }
 Secy, &c., Toronto. }

Ct. Judge.

No. 6.
SECRETARY'S OFFICE,
Toronto, 28th December, 1849.

SIR,

I have the honor, by command of the Governor General, to acknowledge the receipt of your letter of the 17th instant, requesting that copies of certain letters therein mentioned might be furnished to you, and in reply I am to inform you that no trace of Mr. Secretary DALY's letter to you, of the 12th May, 1840, can be found in this office. A certified copy of Mr. Secretary MURDOCH's letter to you of the 14th of May following, is however transmitted herewith.

I have the honor to be,

Sir,

Your most obdt. servt.

(Signed) J. LESLIE,
Secretary.

WILLIAM POWER, Esquire, }
Circuit Judge, }
&c., Quebec. }

No. 7.

[COPY.]

CHIEF SECRETARY'S OFFICE,
Montreal, 14th May, 1840.

SIR,

I am commanded by the Governor General to inform you, with reference to your letter to Mr. DALY, of the 12th instant, that His Excellency is pleased to appoint you to be Commissioner of the Court of Requests, in the District of Quebec, on the conditions agreed upon in that letter, namely, that the appointment is only temporary, and that it will be subject to change or even to be discontinued, should the measures in contemplation for remodelling the Judicature of the Province render such a step necessary.

I have the honor to be,

Sir,

Your most obdt. servt.

T. W. C. MURDOCH,
Chief Secretary.

WM. POWER, Esq., }
&c., &c., Quebec. }

[A TRUE COPY.]

(Signed) E. PARENT,
Asst. Secy.

No. 8.—Printed Addresses.

On the 8th October, at the close of the Court of Requests for the County of Saguenay, several of the leading persons of the County presented an Address to Wm. POWER, Esq., the Commissioner of the Court. The following is the translation :

To WILLIAM POWER, Esq., *Commissioner of the Court of Requests for the District of Quebec.*

We, the undersigned inhabitants of the County of Saguenay, considering the change about to take place in the Judicature, by which the Office of Commissioner of the Court of Requests for the District will be abolished, take the liberty of respectfully expressing to you the sentiments of high esteem and confidence with which your judicial conduct has inspired us ; sentiments which we can assure you are equally entertained by the inhabitants of this County, who are only deprived by your sudden departure of joining us in this address.

We further take the liberty of expressing our regret that this County will, for the future, be deprived of your services.

In concluding we beg of you to accept our best wishes for your future welfare.

County of Saguenay, 8th October, 1840.

(Here follow the Signatures, amongst which are those of two Curés, one Colonel, several Captains of Militia, Notaries, Merchants and others.)

To which Mr. POWER made the following reply :—

I beg of you gentlemen to receive my sincere thanks for the confidence with which you have honored me in the exercise of my office as Commissioner of the Court of Requests, and for the flattering manner in which you are pleased upon my departure to express that confidence.

When I undertook the important functions, which my situation in that Court imposed upon me, I felt that it was my duty to use my best exertions, not only to render impartial justice to all suitors, but also to convince those suitors that justice had truly been rendered to them ; and having, as I believe, attained this object, I am far from attributing my success to my own feeble efforts, but ascribe it rather to the intelligence, to the liberality, and to the absence of all prejudice evinced by the inhabitants of your County.

Whilst with regret I bid farewell to you and to a County where I have witnessed so much decorum and respect for the

administration of justice, I nevertheless feel happy in believing that the change in the system of Judicature will be for your advantage, and I beg of you all to believe that I shall ever entertain the most sincere wishes for your happiness and prosperity.

We have received copies of Addresses presented to Mr. POWER, Commissioner of the Court of Requests, from the Parishes of L'Islet and St. Gervais, which we have inserted, together with that gentleman's answers. We do so as much in justice to Mr. POWER as to ourselves, for it will be recollected that we came in for our share of the scurrility and abuse which was poured out by some of our cotemporaries against his appointment. The event, however, has fully justified the anticipation we then indulged in, and our friend appears during his short judicial career to have given general satisfaction. Indeed the partizans of those who were loudest in condemning his appointment have made the *amende* by expressing their full satisfaction with his conduct as Commissioner, and many of the members of the Bar have had the generosity to acknowledge that they had prejudged him unjustly.

[TRANSLATION.]

To WILLIAM POWER, Esq., Judge of the Court of Requests for the District of Quebec, &c., &c., &c.

We the undersigned, principal inhabitants, (*habitants notables*,) of St. Gervais, in the County of Bellechasse, believing that we should fail in the performance of an agreeable duty, if previous to your departure from amongst us, on an occasion which perhaps may be the last that will be afforded us, of expressing to you our sentiments of esteem and confidence, we should not make known to you how very much we have been satisfied with the impartial, attentive, and enlightened manner in which you have discharged your judicial functions.

We will add, to what precedes, the expression of our sincere wishes for your health and happiness.

St. Gervais, 19th November, 1840.

(Signed by the Clergy, Magistrates, Notaries Public, and other leading men of St. Gervais.)

[ANSWER.]

I can find no words, gentlemen, that will adequately convey to you my thanks. Having come in the first instance an almost perfect stranger amongst you, and with a very unfavorable introduction from one of your public prints, and to have acquired in a short time afterwards your esteem and confidence, is to me doubly flattering—and is towards you a proof of your liberality, and that you consider candor and truth as things still more sacred than party; as you approve of the manner in which I have discharged my judicial functions, I would beg leave to observe that, called upon, after a laborious journey, and with little time to deliberate, to pronounce judgments affecting your interests, it is not probable that they are all exempt from error; to err is human—to be liberal and indulgent is divine;—if in the present instance the one is my attribute—the other, the divine virtue, is yours.

In bidding you adieu, I offer you my best wishes for your happiness and prosperity, and beg of you to believe that the recollection of the honor done me at this seat of the jurisdiction of the Court of Requests, will always dwell in my memory, and be ever associated with a feeling of gratitude.

[TRANSLATION.]

To WILLIAM POWER, Esq., Commissioner of the Court of Requests, &c., &c,

We, the undersigned inhabitants of the County of L'Islet, take the opportunity this day of discharging an agreeable duty, that of expressing to you as well in our own names as on the part of the inhabitants of this County, the satisfaction which we have derived from the integrity of your conduct as Commissioner of the Court of Requests. We further take leave to declare here our approval of the principles which have guided your judicial conduct and to make known to you our gratitude for the zeal and assiduity which you have evinced for our interests. Be convinced that it is very flattering to us and to the inhabitants of this County to have it in our power to render this tribute of praise to your candour and impartiality, and we shall for a long time preserve the remembrance of that urbanity by which you are so highly distinguished, and which gives additional merit to your talents.

In expressing to you our regret at the cessation of your

functions as Commissioner, and your removal from us—we must add, that your conduct and qualities are such as lead us to hope that they will contribute powerfully to procure for you in every place and at all times happiness and satisfaction.

And please once more to accept the expression of our esteem and affection.

L'Islet, 14th November, 1840.

(Signed by several of the Curés, Magistrates, Lieutenant-Colonel of Militia, Notaries, and other leading men of the County.)

[ANSWER.]

GENTLEMEN,—The affectionate terms of your Address go deeply to my heart, and awaken every grateful feeling of my nature. If I were an entire stranger to you, I could not believe that the simple performance by me of a duty which another would have discharged with more ability, though not with more integrity of purpose, could entitle me to so high a tribute of praise, but as I have the advantage to have been long known to many amongst you, I must ascribe the Address more to the partiality of friendship than to any merits of my own. I do not, however, renounce the ordinary claim to integrity of conduct and zeal and assiduity in the discharge of my judicial duties—to any more I do not pretend—but even if my merits were as great as those with which your kind partiality has invested me, the honor which you now confer upon me would in a hundred-fold overpay them all.

I regret that the abolition of the Court of Requests will deprive me of the pleasure of continuing to witness your confidence and reciprocate your esteem, and I beg of you to be assured, that wherever my lot may be cast, I shall not fail to bring with me a grateful sense of your kindness, and the most ardent wishes for your prosperity and happiness.

No. 9.

Quebec, 23d January, 1845.

SIR,

Since I have had the honor to receive your circular of the 13th November last, informing me of the desire of His Excellency the Governor General to receive from the several gentlemen charged with judicial functions in Lower Canada,

communication of their views respecting the alledged defective character of the system of judicature in that part of the Province, and the nature of the changes which in their opinion may be best calculated to effect the desired object of placing the system on a satisfactory footing, I have not been able, owing partly to the pressure of my official duties and partly to illness, to report my views on this important subject, notwithstanding my anxious wish to do so. Hoping that His Excellency will be pleased to excuse me for this inevitable delay, I now respectfully submit for his information the following observations :—

The constitution of the existing Court of Appeals is opposed to that which should be its essential attribute, namely, the preservation of uniformity and stability in the Jurisprudence of the Country.

The Court being composed of ten members who are Justices of the several Courts of Queen's Bench in Lower Canada, and the members of the Court appealed from being declared incompetent to sit or act in cases brought up from their respective Courts, upon an appeal from the unanimous judgment of four of those members, rendered by them in the Court of Queen's Bench at Quebec, to their six competent colleagues sitting in appeal, two of the six may coincide in the correctness of the judgment rendered in the Queen's Bench, and, nevertheless, the remaining four may decide against the opinion of a majority of the whole. On the other hand, as men cannot be expected to forego their conscientious convictions, should there be an appeal from the judgment of the Court of Queen's Bench at Montreal, in a similar cause, the six other Justices, now competent in appeal, could not fail to reverse such judgment.

That provision of the statute which directs, whenever any number of the Justices shall be either recused, disqualified or rendered incompetent by reason of interest or otherwise, to sit in the Court, the Governor of the Province to appoint *ad hoc* a like number of members of the Bar to sit and act in their place, is in my humble opinion, calculated rather to produce distrust than to inspire confidence in the Court so composed, for it is placing gentlemen of the Bar, however eminent in character and talents, in the suspected situation of promoting by their judgments *ad hoc*, interests, which in analogous and

latent cases, they may have espoused and undertaken to establish for their clients.

Purity in the administration of justice requires that the position of the Judge should be beyond the reach of suspicion.

It is obvious, therefore, that the constitution of this Court, which allows a minority of its members to lay down the Law and rule in a manner contrary to the opinion of the majority, which permits the rendering of judgments opposed to each other in like cases and which suffers practising Barristers to sit and act as judges, is in its nature *anomalous* and requires to be abolished.

The exercise by the Court of Queen's Bench in Inferior Term, which the existing Law sanctions, of a concurrent jurisdiction with the Circuit Courts, throughout the Districts, in matters under twenty pounds currency, is productive of much hardship and inconvenience to the rural population. A trader living in a country Parish will prosecute several of the parishioners at the same time and retain an Attorney residing at Quebec to take out the actions. (I speak in particular of the extensive District of Quebec, but presume from the nature of the Law that the same evil exists in the other Districts.) The Attorney will find it more suited to his own convenience to take out the actions from, and bring the Defendants before, the Court at Quebec, than to travel fifty, seventy-five, ninety, or one hundred and eighty miles, to the place where the Circuit Court may be held in the neighborhood of the Defendant. This facility, so advantageous to the members of the legal profession, of concentrating all the business in the chief Towns, is too detrimental to the community at large to be permitted to endure.

The Bankrupt Law is susceptible of some amendments.

The Judicature Act which declares that the Circuit Judges shall be Commissioners of Bankrupts and may act alternately as such, is at variance in some particulars with the Bankrupt act, although both these Acts passed the Legislature simultaneously.

The complaint against, and abuses of, the Commissioners' Courts in the Country Parishes, which in former days led to their abolition and to the appointment in their place of a Circuit Court of Requests, warranted the belief that they never again would be brought to life. The latter Court was considered, by the inhabitants of the District of Quebec, as a great

boon after what they had suffered from the Commissioners' Court, and it relieved the Inferior Term of the Court of King's Bench from the accumulation of business, with which the Judges of that Court were overwhelmed. It was, however, superseded by the creation of District and Division Courts—an evident approach to assimilate the Judicature of Lower to that of Upper Canada. These Courts, would in my humble opinion, with a few amendments, have suited the wants of the country and satisfied the popular desire of having impartial justice brought home to the poor man's door. They tended, however, to render the practice of the law more diffuse and the present system which favors the concentration in the Chief Towns of all cases above six pounds five shillings, has again as a necessary evil, in order to promote what in the opinion of its framers, must have been considered a greater good, revived the Commissioners' Courts.

Important as is the regulation of the manner in which the high and transcendent functions of the Court of Appeals are to be exercised, by far more important and more conducive to the harmony and well being of society in general, is the creation of enlightened and impartial Courts for the summary trial of small causes.

The mode of proceeding which I am about humbly to suggest, as in my opinion the best calculated to procure for the country an efficient system of judicature, renders it unnecessary that my suggestion should be accompanied, by any recommendation of my own in favor of a particular system. Experience during the last six years has shewn, that the speculative wisdom of individuals, high in the profession of the Law and opinion of the Government, has failed to anticipate all the difficulties, that have beset their favorite systems. Hasty and incoherent legislation, within that short period, has produced change after change, in such rapid and destructive succession, as almost to work the entire subversion of consistency and order in the administration of justice,

It is by no means surprising that the eminent individuals from whom the late and former Judicature Bills are said to have emanated, should have failed in their praiseworthy intentions in relation to the Judicature, if it be considered that the proper initiatory steps, to which I am about to allude, were

not taken by them, so as to divest the Bills of the appearance of having been got up for party purposes, and to inspire the members of the Legislature with such a confidence in the measure, as to prevent the interfering with, or altering, its details, while passing through Parliament into a Law. There is not a single intellect, however powerful and enlightened, capable of grasping so comprehensive a subject as a general Judicature system in all its details, and the honorable gentlemen who are invested with a variety of functions, as Ministers of Government, cannot be supposed to have time, to give to such a subject, the long, arduous and profound meditation which it would necessarily require, and whenever a Judicature Bill is introduced into Parliament, and that supposition prevailing, although the crowd of members, if even adequately qualified, will not be expected to submit, during the short space of one session, to the tedious and irksome task, of bestowing upon it an acute and patient examination; some, nevertheless, may be found in their zeal for its improvement and without much consideration, to add to, or take from it, some clause, (as has already occurred,) that will render it more defective than when first introduced for their sanction.

The surest and most prudential course, and that which I beg leave humbly to suggest, in order to place the Judicature System upon a satisfactory footing, would be for His Excellency to appoint, after having procured from the Legislature, an enactment, authorizing the appointment of a Commission, to be composed of some of the most experienced practitioners of the Law, including in it also some of the Judges, whose labor as Commissioners should not be held to be incompatible with the performance of their judicial duties. It should be the business of these Commissioners, to frame and digest the project of a general Judicature System for Lower Canada, or such alterations and amendments to the present system, as they should deem advisable; and one year, at least, ought to be allowed them for this purpose. After which they should be obliged to furnish every member of the legal profession in Lower Canada with a printed copy of their project, and an invitation to each, to communicate such amendments, or improvements to it, as his wisdom and experience might suggest.

After a little further time, say six months, they should be

bound to produce the final result of their labor, in the form of a Bill or Bills, ready for the sanction of parliament.

I have the honor to be,

Sir,

Your very obdt. servt.,

W. POWER.

P. S.—Should a Commission be appointed, my letters or reports, one of the 23rd November, 1841, and the other of the 15th March, 1844, concerning the Administration of Justice, addressed to you as Secretary of the Province, if referred to the Commission, may be found to afford information and suggestions, not altogether useless.

W. P.

The Honble. D. DALY, }
Secretary, &c., Montreal. }

Quebec, 18th December, 1852.

SIR,

Not having had the honor to receive an answer to my humble Memorial to His Excellency the Governor General, inclosed in my letter to you, of the 24th September last, with eight other papers, I presume that the claim set forth in the Memorial, has not, as yet, been taken into consideration, and, therefore, now take the liberty to inclose to you seven other documents, being statements, in Tabular Forms, of the business of the Courts, and the share therein performed by me, and I pray of you to have the goodness to lay them before His Excellency, particularly the "*Summary of the Tables*," as proof of my allegation of the indefatigable manner in which I have performed the duties of my office.

I have the honor to be,

Sir,

Your very obedient servant,

W. POWER,

The Hon. A. N. MORIN, }
Secy. &c., &c. }

Ct. Judge.

Table No. 1.

TOTAL NUMBER of Cases issued from, and entered in the Superior Court, at Quebec, during the years 1851 and 1852,—not including any Cases since the 6th December, 1852.

1851.	
Issued,..... 452	Entered,..... 300
1852.	
To the 6th Decr. . . 589 Whereof deduct, being Alias Writs. 18—571	Number not counted, but assuming the entries of this year to be in proportion to those of 1851, as regards the number issued, we have..... 379
Total—1023	Total—679

This Table may not be precisely correct, the entries for 1852 not having been exactly ascertained, but it is sufficiently so, for the purpose here intended.

W. POWER.

Table No. 2.

STATEMENT of the number of Judgments and by whom rendered, in the Circuit Court at Quebec, during the years 1851 and 1852, not including the present month of December, 1852.

NON-APPEALABLE CASES.											
1851	Jan. P 8	Feb. P 19	Mar P 287	Apr P 183	May P 200	June P 10 D 215	July P 2 D 4 T 266	Sept T 134 M 120	Oct. D 242	Nov. P 150	Dec. P 174
1852	D 161 P 6	D 87 P 57	M 82 P 88	D 47 P 126	P 163 M 2 D 1	D 27 M 29 P 134	D 314 P 6	P 413	M 206 P 14 D 1	P 231 M 11	

APPEALABLE CASES.											
1851	D 5	P 2 D 3	P 56	P 27	P 25 D 1	D 26 P 6	T 30 P 2 D 4	T 15 P 1 M 20	D 20 M 2 P 1	P 21 M 2 D 3	P 10 M 1
1852	D 21 P 6	D 10 P 12	M 16 P 15	D 1 P 9	P 35 D 1 M 1	D 4 M 14 P 18	D 37 P 6	P 44 D 1	M 28 P 6	P 47	

RECAPITULATION.			Non Appealable.	Appealable.
Total number by Mr. Justice Duval.....			1099	137
Do. do. do. Meredith.....			450	84
Do. do. do. Power			2271	349
Do. do. do. Taschereau...			400	45
Grand Total.....			4220	615

The Letter over each particular number in the Tables denotes the initial of the name of the Judge who rendered the Judgments in that number.

Total number of Non-Appealable cases issued from the Circuit Court during the year 1851.... 3900
 Of Appealable cases in 1851..... 512
 Total of Non-Appealable cases issued in 1852, to the 1st December.... 4595
 Of Appealable cases in 1852, to 1st December..... 572
 Certified, Quebec, 13th December, 1852.

(Signed.) BURROUGHS & FISET,
 C. C. C.

Table No. 3.

STATEMENT of the number of Terms of the Circuit Court, and when and where held by the undersigned Circuit Judge during the years 1851 and 1852.—exclusive of the Quebec Circuit.

1851.						
Feby. Leeds.	March. Beauce. Lotbinière.	June. Leeds.	July. Beauce.	September. Rimouski.	Octr. Leeds.	November. Beauce. Lotbinière.
1852.						
Leeds.	Beauce. Lotbinière.	Leeds.		Port Neuf.	Leeds.	Lotbinière.

RECAPITULATION.

In 1851.....	9
In 1852.....	7
Total.....	16

Quebec, 15th December, 1852.

W. POWER,
C. J.

Table No. 4.

WRITS OF HABEAS CORPUS issued from the Crown Office, Quebec, during the years 1851 and 1852.

1851.												
January.		February. P Rule of 2 Court.			March. M T		April. P D		May. T P		June. Pan. Bow.	
None.		4			1 2		2 1		1 1		1 1	
July. T Panet.		August. M T Ba.			September. M T D Bo.			October. D Bacq.		November. P D		December. M
2 1		1 2 2			1 1 4 1			1 1		1 2		2

1852.													
January. None.		February. D		March. D M Bow.			April. D P		May. D P Bac.			June. M Bac. D	
		2		1 1 2			1 1		2 2 1			1 1 1	
July. P D		August. D P		September. P			October. P Bo. Bac.		November. P		December. P		
4 2		2 1		1			1 1 2		3		4		

RECAPITULATION.

	D	T	P	M	Rule.	Bacquet.	Bowen.	Panet.	Total.
1851	8	8	6	5	4	3	2	2	38
1852	11	0	17	2	0	4	3	0	37
	19	8	23	7	4	7	5	2	75

Certified (Signed) J. GREEN,
Clerk of the Crown.

D.—Duval, M.—Meredith, P.—Power, T.—Taschereau.

Table No. 5.

Montant des Assemblés de Parens tenues à Québec, devant les Juges ci-dessous, pendant les années 1851 et 1852.

L'Honorable Juge-en-Chef Bowen.....	60
Honorable Juge Baquet.....	74
Honorable Juge Duval.....	130
Honorable Juge Taschereau.....	105
Honorable Juge Meredith.....	47
Honorable Juge Power.....	162
	578

Certifié, L. J. P. FISET,
Dept. G. C. C.

Québec, 18 Décembre, 1852.

Table No. 6.

COURT OF QUARTER SESSIONS of the Peace during the years 1851 and 1852.

1851.	January.	April.	July.	October.
	Mr. Justice Power.	Justice Taschereau, From 4th to 5th inclusive. Justice Power, From 7th to 14th inclusive.	Justice Taschereau.	Justice Power.
1852.	Justice Power.	Justice Power.	Justice Power.	Justice Power.
Total.	38	37	75	

Certified,—Office of the Peace,
PERRAULT & DOUCET,
Clerk of the Peace.

Québec, 15th December, 1852.

SUMMARY OF THE TABLES.

(NOTE.—The Judicial Year is eleven months, August being devoted to recreation or repose. Although these statements comprise 23 months, the present month of December not being included, the services mentioned were rendered during 21 months.)

Tables 1 and 2.

Number of actions issued from Superior Court.....	1023
Entered.....	679

The proceedings in appealable cases between £50 and £15, in the Circuit Court are conducted plenary, in the same manner as cases in the Superior Court, they differ only in the sum demanded, which to the Judge can make no difference.

Number of appealable cases issued from Circuit Court..	1084
Judgments in do. actually rendered in do.	615

By this it appears that this branch alone of the business of the Circuit Court, is fully equal to the whole business of the Superior Court.

Of the said 615 Judgments there were rendered by me 349
Being 42 more than one half of the whole.

The efficiency of this part of the service can be easily tested by ascertaining the number of Appeals, and of that number, the number of reversals. I should feel glad if the Government would call for this information.

Table 2.

No. of non-appealable cases issued from Circuit Court...	8495
Judgments rendered in non-appealable cases.....	4220
Whereof rendered by me.....	2271
Being 161 more than one-half of the whole.	

Table 3.

Shews that within the period stated I made 16 Circuits and held 16 Terms of the Circuit Courts in the country places.

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Table 4.

Exhibits a performance by me of more than a share of the business in relation to Writs of Habeas Corpus.

Table 5.

Gives a similar result with respect to Meetings of Relations and Friends for the Interdiction of Insane Persons and the Appointments of Tutors and Curators.

Table 6.

Manifests that within the same period I have presided in the Court of Quarter Sessions of the Peace during Seven Terms, with the exception of two days, on one occasion, when Mr. Taschereau commenced a Term, and was too unwell to continue it.

No calculation is here made of Appeals from the Circuit to the Superior Court, the number being so very small. Neither is there, on the other hand, any account taken of Appeals to the Circuit Court from the By-Laws of Corporations, nor from the decisions of Magistrates under the Municipal Acts.

The number of Terms of the Circuit Court, at Quebec, which I have held during the period stated, being.... 10
 Of the Country Circuits..... 16
 And of the Court of Quarter Sessions..... 7

In all..... 33

If the Judgments and sentences in the 16 and the 7 were procured and added to those of the 10 already given, the addition would produce a most extraordinary number, and would manifest, even as a question of finance, the cheap rate at which a very large portion of the judicial duties of this District is performed.

W. POWER.

Quebec, 18th December, 1852.

Quebec, 8th February, 1853.

SIR,

It being a matter highly important to me, to be informed, whether the Government are pleased or not, to acknowledge the

E

claim set forth in my humble Memorial to His Excellency the Governor General, transmitted with my letter to you, on the 24th September last, I beg leave respectfully to solicit from His Excellency, the favour of an answer to the claim, in order to enable me to regulate my future conduct and the interest of a large family, by whatever prospect such answer may afford.

I have the honor to be,

Sir,

Your very obedient servant,

W. POWER.

The Hon. A. N. MORIN, }
 Secy. &c. &c. }

I beg leave also to solicit attention to my letter to you of the 18th December last, and its inclosures.

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* A Copy of the Factum has already been
transmitted to the Hon^{ble} Mr. Justice
W.D.

A D D E N D A .

*The following Correspondence has taken place
since the foregoing Factum was printed.*

Quebec, 19th August, 1853.

SIR,

I take the liberty to call your attention to the claim contained in my humble petition transmitted to the Government on the 24th September last, to which I have not as yet had the honor to receive an answer.

The subject having reference to the department of the Government over which you preside, would, in the course of official business, be referred to you, and if your report were intended to be unfavorable, you might perhaps have delayed it under the erroneous impression that an answer would be useless to me. However this may be, after having waited anxiously for more than four months, I addressed a letter to the Honble. Mr. Morin, Secretary, praying for an answer, "to enable me to regulate my future conduct and the interest of a large family by whatever prospect such answer may afford," which letter also remains unanswered.

I am a supplicant, not for a favor, but to have a promise, for which ample consideration was given, fulfilled, and you know well, Sir, that between debtor and creditor, when the former does not disclaim the debt, no apology is due by the latter for demanding it, and where the Government is a party, an answer, as the common right of the humblest subject, must be expected.

I feel, with regret, that the unfortunate conversation I had with you, has disposed you unfavorably towards me. It conveyed more of truth than satisfaction. I complained not of any individual, but of a system by which I have been injured,

and you told me plainly, that that conversation would neither serve nor injure me. Hitherto you have kept your word, and it certainly has not served me. Your own character is said, by those who know you, to be one of frankness and sincerity, and in speaking to you, I could not think that you would blame in me, qualities for which you take merit yourself. Where the least sympathy exists, credit is freely given for what is fairly earned, and after having placed before you and the Government incontrovertible documents, shewing the extraordinary fact, that nearly one half of the whole of the judicial business of this District, was performed by me during the last two years, I cannot imagine the reason that withholds from me, not only any credit for the service, but even an acknowledgement of the documents. I fear that some enemy, (and yet I am not conscious of having made one) must have injured me in your estimation. If you know or have heard of any wrong that I have done, I ought not to be made suffer without being informed of it, and the obligation rests with you to make it known to me, for there is no act of my life that I am not prepared to justify.

My future arrangements and family concerns must be regulated by whatever answer the Government, from your report, may be pleased to give. If the answer is intended to be unfavorable, it should have been given to me ten months ago, for with such intention, every day that it is withheld is a day of additional injustice towards me.

I have the honor to be, Sir,

Your most obedient and humble servant,

W. POWER.

The Hon. L. T. DRUMMOND, }
Attorney General. }

SECRETARY'S OFFICE,

Quebec, 23d September, 1853.

SIR,

I am commanded by His Excellency, the Administrator of the Government, to inform you that His Excellency has taken

into consideration your Memorial, submitting a claim to an absolute right to promotion, urged chiefly on two different grounds; the first, that you had accepted office as Judge of the Court of Requests, in 1840, upon certain conditions; the second, that your seniority and the amount of labor performed by you, as a Circuit Judge, entitles you to a preference over all other persons.

Upon the first ground, His Excellency is of opinion that the express notice which was given to you of the temporary nature of the office tendered for your acceptance, and the intimation which you received that, if by the measures then in contemplation for remodelling the Judiciary of the Province, your office was to be discontinued, no indemnity or retiring allowance could be guaranteed, you are clearly debarred from any claim to an indemnity or to promotion founded on a reduction of salary which was the necessary consequence of the contemplated change.

His Excellency is of opinion that you have failed in your attempt to identify your case with those of ordinary incumbents, who, having accepted office of a permanent nature, with a fixed salary, are generally and justly exempted from the operation of any subsequent reductions. The promise made to you that in the event of your office being discontinued, the Government would take the first favorable opportunity of promoting your interests, has been fulfilled by your appointment to the office of District Judge, subsequently changed into that of Circuit Judge, which you now hold.

The duties of both those offices were of the same nature, but not quite so arduous as those of the office which you had first accepted, and for that reason were as well remunerated although by a salary somewhat inferior.

The promise on which you rely could not have meant that under any circumstances you would be maintained precisely in the same position as to salary, otherwise the claim to an indemnity which the Government evidently intended to avoid, would have existed to its fullest extent. All that you could have expected under that promise was to be appointed to another judicial office, under the new arrangements, such as they would be made.

The extraordinary amount of labor and of travelling which had to be gone through by the Judge of the Court of Requests,

to which you allude, as the cause of the death of your predecessor, was precisely one of the evils of the Judiciary System to which a remedy was intended, and it was natural to anticipate that a reduction of salary proportionate to the diminution of labor would be among the proposed changes. The fact is that three Judges were appointed to administer justice over the same extent of territory which was formerly under the jurisdiction of a single Judge. The reduction from £666 to £550, (the present salary) does not seem out of proportion with the relief afforded by the diminution of labor.

His Excellency has therefore come to the conclusion that you have no right to an indemnity nor to promotion, founded upon the terms of Mr. Secretary Daly's letter.

Upon the second ground, His Excellency is of opinion that the principle of promoting Judges from one Court to another, according to their seniority, cannot be recognised consistently with a good administration of public justice, and even, if that principle was to be admitted, you will remark that Mr. Justice Thompson, who was appointed Provincial Judge for the District of Gaspé, in the year 1827, would have a better claim than yours.

I have the honor to be, Sir,

Your most obedient servant,

(Signed)

PIERRE J. O. CHAUVEAU,

Secretary.

W. POWER, Esquire, }
Circuit Judge. }

Quebec, 22nd December, 1853.

To HIS EXCELLENCY, WILLIAM ROWAN, Esquire, C. B.,
Administrator of the Government of the Province of Canada,
and Lieutenant General commanding the Forces therein,
&c., &c., &c.

May it please YOUR EXCELLENCY,

I beg leave to return you my most sincere thanks for the official letter of the Honorable Secretary of the Province, dated

the 23rd September, 1853, given in answer to my memorial of the 24th September, 1852, a few days after I had had the honor of speaking to Your Excellency on the subject. The anxiety which I felt, during nearly a year, to obtain an answer to my claim, was (notwithstanding the unfavorable nature of the answer) removed by the kindness of Your Excellency. I received this answer on the 1st October last in the County of Megantic, where I continued for several weeks afterwards, to be occupied as Commissioner of the Legislative Assembly in the investigation of the controverted Election for that County, and being unwilling to allow my own private business to interfere with that and other public duties, I have waited hitherto, for a moment of leisure, to consider respectfully the reply which the nature of the answer rendered necessary,

I did not expect that Your Excellency, administering temporarily the Government of the Province, and without a personal knowledge of the circumstances attending my claim, could give to it any other answer, than such as would be suggested by the Honorable Gentlemen who act as your constitutional Advisers, and I take the answer, therefore, to be really theirs, although according to official usage, it purports to be from Your Excellency, and hope it will not be deemed improper on my part to point out the errors and inadvertencies, prejudicial to my interest, which, in my humble opinion, it contains.

Mr. Secretary Chauveau has inadvertently in the letter, stated my claim in a manner differently from that in which I gave it in, and, as follows: "His Excellency has taken into consideration your Memorial, submitting a claim to an absolute right to promotion, urged chiefly on ~~the~~ two different grounds; the first, that you have accepted office as Judge of the Court of Requests in 1840, upon certain conditions; the second that your seniority and the amount of labour performed by you as a Circuit Judge, entitles you to a preference over all other persons." I regret this inadvertence, for I never set forth in my memorial *an absolute right to promotion*, but prayed for an indemnification in whatever way the Government should see fit to give it. The difference (during the period elapsed since the reduction of my salary) between £666, and, until very recently, £500 per annum, would make a sum exceeding £1700, which, I had supposed, if promotion were not intended to be granted, the Govern-

ment would award me, upon my establishing clearly, if required to do so, that I relinquished a revenue of more than £800 yearly, derived from the practice of my profession as an Advocate and from the office of Registrar of the Vice Admiralty Court which I held together with that practice, and which I also surrendered, not for £666 temporarily, for such interpretation would be an absurdity, but for that sum temporarily, *and upon the faith of a written promise to promote my interest.* Promotion, it is true, would, after a few years, be an indemnification, but my Memorial concluded for nothing more than to have right and justice done to me. Neither did I ever assert that my seniority and the amount of labor performed by me, as a Circuit Judge, entitle me to a preference over all other persons, but, I humbly urged in the paper of observations, accompanying my Memorial, independently of the first ground, and also for the purpose of strengthening it, that, as a reasonable and natural principle, *seniority, (ceteris paribus,)* is a claim in preference to juniors, having excepted at the same time “the case of rare talent in a junior, when transcendent genius commands universal homage, and also that last stage of seniority at which the vigor of mind and body is impaired.”

The Honorable Secretary in the 2nd paragraph of the letter is pleased to say:—“Upon the first ground His Excellency is of opinion that the express notice which was given to you of the temporary nature of the office tendered for your acceptance, and the intimation that you received that, if, by the measures in contemplation for remodelling the Judiciary of the Province, your office was to be discontinued, no indemnity or retiring allowance could be guaranteed, you are clearly debarred from any claim to an indemnity or to promotion, founded on a reduction of salary, which was the necessary consequence of the contemplated changes.”

The conclusion of this paragraph appears to me correct, when the consideration of the promise is excluded from it; but considering the *express notice and the express promise* together, an augmentation of my salary would seem to me to be the necessary consequence of the contemplated changes; otherwise my interest would not be promoted.

In the 3rd paragraph it is stated:—“His Excellency is of opinion that you have failed in your attempt to identify your

“ case with those of ordinary incumbents, who, having accepted offices of a permanent nature, with a fixed salary, are generally and justly exempted from the operation of any subsequent reduction.”

The ordinary incumbent of a permanent office, with a fixed salary, is as above admitted, generally and justly exempted from a reduction of salary by any subsequent changes of his office, and this exemption results from the equitable obligation not to disappoint his reasonable expectations. The individual who is invited to relinquish a certain established income, in order to perform an arduous and important service for the Government and Public, and who does so, is, *quoad* the equity of his claim, identified with the incumbent of the permanent office, because he surrenders what, to him, is as permanent as the permanent office is to the incumbent; but to this equity of my case is superadded the formal promise to promote my interest, thereby rendering this equitable obligation doubly binding.

The 4th paragraph states:—“ The promise made to you that in the event of your office being discontinued, the Government would take the first favorable opportunity of promoting your interests has been fulfilled by your appointment to the office of District Judge, subsequently changed into that of Circuit Judge which you now hold.”

I cannot understand how the promise of the Government to promote my interests, could be fulfilled by my appointment to the office of District Judge, subsequently changed into that of Circuit Judge, when, instead of being granted a salary exceeding £666 which would be the promotion of my interest, one-fourth of that sum (until very lately) has been withheld from me. If I were asked why I accepted these offices, my answer would be—the necessity in which I was placed by the Government.—I never could be induced to give up the established practice of my profession, together with the office of Registrar of the Court of Vice-Admiralty, which I held at the time, for the emoluments of a District or Circuit Judgeship. My engagement with the Government was to relinquish for £666 yearly, with a promise of promotion, my former pursuits—and, upon the abolition of the Court of Requests, not having my former practice and office to fall back upon, I was forced, from necessity, to accept of that which was not an equivalent

to what I had surrendered, and which, therefore, cannot be considered a fulfilling of the engagement.

5th Paragraph.—“The duties of both these offices were of the same nature, but not quite so arduous as those of the office which you had first accepted, and for that reason were as well remunerated, though, by a salary somewhat inferior.”

The duties of District Judge were doubly, and those of Circuit Judge, were five times more extensive and important than those of the Court of Requests—as explained by me in the paper of observations, accompanying my memorial. Although the labor of travelling was diminished, the Judicial labor was increased in the proportions mentioned.

6th Paragraph.—“The promise on which you rely could not have meant that, under any circumstances, you would be maintained precisely in the same position as to salary, otherwise, the claim to an indemnity, which the Government evidently intended to avoid, would have existed to its fullest extent. All that you could have expected under the promise, was to be appointed to another Judicial office under the new arrangements such as they would be made.”

I never thought that, under any circumstance, I would be maintained precisely in the same position, as to salary, because my understanding of the promise to promote my interest, was, that promotion was synonymous with augmentation of salary; but the promise upon which I relied, could not have meant that under every circumstance that occurred during twelve years, I should continue reduced to a salary less than that which had been at first allowed me; otherwise that promise would have been given in bad faith, which I cannot admit.

The Government in appointing to the office *evidently* intended to avoid granting a pension or taking any sum from the public chest, to indemnify the Incumbent of the office, upon its abolition—and, knowing that no qualified lawyer would abandon his practice and accept the office under such circumstance, made the promise, and I *did* believe that the promise of the Government ought to be relied upon with as much certainty as the *written promise* of any man. I considered that with this promise, for which I relinquished my practice, I ran no greater risk than does the holder of the promissory note of an honorable and solvent maker. *Most certainly* when I did receive that promise, all that I expected from it was to be ap-

pointed to another judicial office, under the new arrangements, such as they would be made, and under those new arrangements (*"favorable opportunities"* to fulfil the promise,) a new Court of Queen's Bench and a Superior Court were created, and Seats have been given from time to time in these Courts to no less than eleven new Judges, many of whom were my juniors, with salaries exceeding £666. It was to one of those Courts that I expected to be appointed—and I was the more justified in this expectation, because, under the old *regime*, at the time the promise was made, the usage was to promote Chairmen of the Court of Quarter Sessions to be Judges of the Court of King's Bench, as in the cases of the gentlemen whose names I mentioned in my memorial; and the Government and myself could have meant nothing else by the promise except promotion to a higher Court.

7th Paragraph.—“The extraordinary amount of labor and of travelling which had to be gone through by the Judge of the Court of Requests, to which you allude as the cause of the death of your predecessor, was precisely one of the evils of the Judiciary System, to which a remedy was intended; and it was natural to anticipate that a reduction of salary, proportionate to the diminution of labor, would be among the proposed changes. The fact is that three Judges were appointed to administer justice over the same extent of territory which was formerly under the jurisdiction of a single Judge. The reduction from £666 to £550 (the present salary) does not seem out of proportion with the relief afforded by the diminution of labor.”

It was natural to suppose that a diminution of labor would be among the proposed changes, but the fact is incontrovertible that my labor and responsibility were very much increased by them. Being most ambitious to draw the attention of the Government to this point, I solicited an inquiry into the amount of business which was yearly performed by me, but the Government did not think proper to make the inquiry. I then, of my own accord, procured and transmitted to Mr. Secretary Morin, in support of my claim, authentic statements in the form of Tables, shewing the share which I had performed in the business of the Courts. I selected the last two years as the most convenient time for which those statements could be procured, and they exhibit an extraordinary amount of

labor performed by me within that period. I cannot conceal my disappointment that the answer is silent on this head, and I lament it the more, because I was very ambitious to obtain some acknowledgement, or encouragement, from the Government for those extraordinary services.

To have been honored for a long period of time with the transaction of such a large portion of important business, implied the confidence which the Government and public had in me, and this circumstance stimulated my zeal, and rendered me the more indefatigable in the performance of those duties. I can assure your Excellency that I never sought relief, neither has any been afforded me, by a diminution of labor; my idea being always, that the greater the labor, the greater the honor and profit; and if the share of business done by me, be the proper criterion, by which the amount of salary ought to be adjusted, then, I respectfully assert, upon reference to the Tables, that my salary would exceed the sum of £2000 in proportion to the sum paid for the whole business included in the Tables.

8th Paragraph.—“ His Excellency has therefore come to the conclusion that you have no right to an indemnity nor to promotion founded upon the terms of Mr. Secretary Daly’s letter.”

The 9th and concluding Paragraph states :—“ Upon the second ground His Excellency is of opinion that the principle of promoting Judges from one Court to another, according to their seniority, cannot be recognized, consistently with a good administration of public justice, and even if that principle was to be admitted, you will remark that Mr. Justice Thompson who was appointed Provincial Judge for the District of Gaspé in the year 1827, would have a better claim than yours.”

In the cases which I had the honor to cite in my memorial and also in the more recent cases of Mr. Burns, from a County Court in Upper Canada, and Mr. C. Mondelet from the Circuit Court in Lower Canada, the principle of promoting Judges from one Court to another, though not, I believe, strictly according to seniority, was admitted.

When I ventured to assert, that, with two exceptions seniority was a title, I could not imagine that Mr. Justice Thompson, (whom I esteem and consider my superior in many

respects) who has reached the stage of senescence and has been administering justice in a remote part of the Province, where but little litigation occurs, and who had the misfortune to be complained of to the Legislative Assembly previous to the union of the Provinces, and is naturally seeking to retire from Office, upon a suitable allowance, would be compared to a Judge not yet fifty-four years old, against whom no accusation was ever brought, and who has been constantly engaged upon the most active scene of labor, and has incontrovertibly performed within a given period more than the largest share of business allotted to any other Judge in this District.

I must confess that the answer from the Honorable Secretary is so discouraging and so calculated to subdue that confidence in the justice of my claim, with which I presented it, that, however strong and sincere my convictions are, it is possible my judgment on the subject may be blinded by my interest, and it would be, a satisfaction to me to have the advice of some of my friends in the matter; but having stated that the printed factum of the case would be strictly confined between the Honorable members of the Cabinet and myself, I am unwilling to communicate it to any other person, without the permission of the government.

I beg, therefore, most respectfully, of Your Excellency to be pleased to grant me the permission of the Government to communicate the printed factum of the case, and the correspondence in relation to it, to my friends—many of whom are also the friends of the present Administration.

Praying of Your Excellency to excuse me for the unavoidable length of this letter,

I have the honor to be, with profound respect,

Your Excellency's obliged, and

Most obedient humble servant,

(Signed,)

W. POWER.

SECRETARY'S OFFICE,

Quebec, 31st December, 1853.

SIR,

I have to convey to you by order of His Excellency the Administrator of the Government, the permission which you

have demanded, in your Memorial of the 22nd instant, of communicating to your friends the printed factum submitted by you to the Government, and the correspondence in relation to it.

I have the honor to be,

Sir,

Your most obed. servt.,

(Signed) PIERRE J. O. CHAUVEAU,

WILLIAM POWER, Esquire, }
&c. &c. &c., }

Secretary,

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VEAU,
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