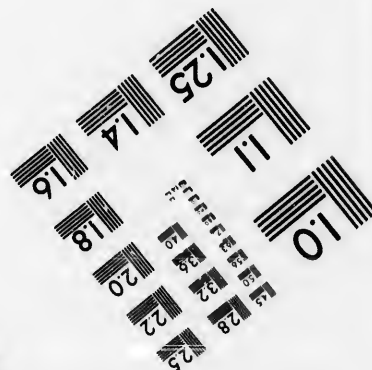
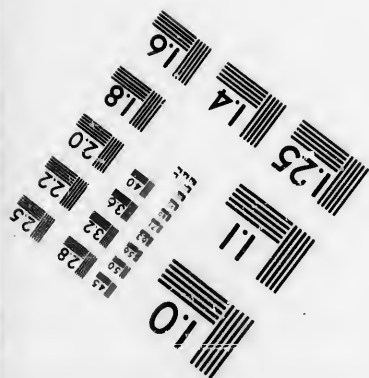
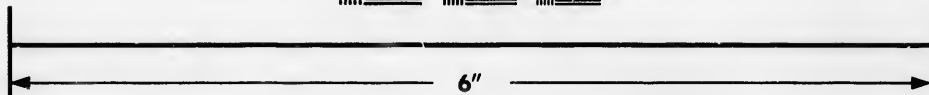
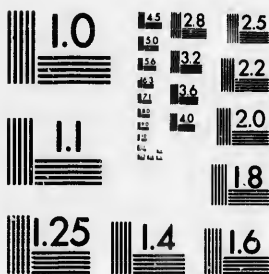


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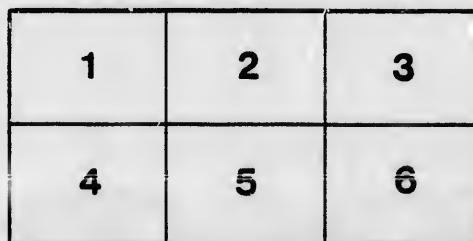
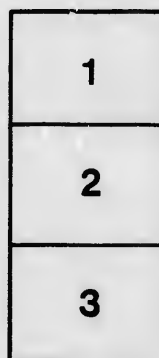
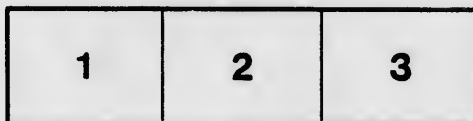
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AN EXPOSURE

OF THE LAW PRACTICE, OF CANADA

To the Legislative Assembly of Canada, in Session at St. Thomas, C. W.

Marcus Gunn, (Ed. Observer, St. Thomas, C. W.)

Humbly Sheweth,

That in July and August 1847, Mr. Joseph Cowley, of London, C. W., late proprietor of a paper called the *London Times*, was pressing upon your Memorialist to rent or purchase of him a Printing Press and materials then belonging to him at St. Thomas: Being always addressed by him on the subject whenever he happened to meet your Memorialist on the street, at length, about the beginning of the month of September, your Memorialist wrote him a note offering to rent the establishment, and conditionally to purchase, and giving him a month, and no more, to decide the question; that on the expiry of this month Mr Cowley was from home, the way of Hamilton, Toronto, &c., and not attending to this matter, your Memorialist considered the treaty about the Press, &c. abandoned; and advised him of the same on his return, sometime in October following. That on the 11th November afterwards, Mr. Cowley having met Mr. Joseph Forsyth, late merchant of London, and knowing him to be in your Memorialist's special confidence, brought him to his house, and introduced the subject of the St. Thomas printing establishment and began *de novo* to negotiate about it. That your Memorialist announced to him, briefly, that he was disinclined, and resolved to have no more intercourse on that subject. That, meanwhile, Mr. Forsyth began to advise your Memorialist to listen to some new proposition which Mr. Cowley might then advance. After a good while, of hesitation, your Memorialist stated, [Mr. C. being then present,] that he would commit any new treaty on the subject to the care of Mr. Forsyth, as your Memorialist's agent in the matter, to which all parties agreed. That in the course of the same day, Mr. Forsyth informed your Memorialist that he had concluded a bargain with Mr. Cowley by the purchase of the St. Thomas printing establishment, on your Memorialist's account, for £115 at twelve months, upon a conjoint note, approved by Mr. Cowley. That in pursuance of this, on Saturday the 13th day of November, Messrs Cowley, Forsyth, and your Memorialist went to St. Thomas and perfected the purchase by Mr. Cowley delivering possession of the said Printing Office and Materials to your Memorialist in presence of Mr. Forsyth. By this act the transaction was completed in a regular and business like manner. That in May or June, 1848, Mr. Forsyth went to reside in the United States, whereupon Mr. Cowley being apprized thereof; and thinking thereby that Mr. Forsyth's evidence to prove his agency for your Memorialist in the purchase of the Printing Office aforesaid, would be impossible for your Memorialist to procure: he seemed, hence, to scheme and speculate upon these premises. Some day in June, of the year mentioned, your Memorialist was astonished by the receipt of a letter at the post office from Mr. Horton, Mr. Cowley's law agent, demanding rent for the said printing office, under the threat of expenses, &c., &c. On this occasion your Memorialist could not think that he was really in earnest. Could not imagine that even Mr. Cowley would venture the exposure of a suit on premises so ridiculous and unprincipled: To pay rent for a thing after having bought it. On the approaching maturity of the Note for £115 given as payment, Mr. Cowley was offered payment; but he always insisted that he would appropriate, out of the £115, £26 for a year's rent, (meaning interest,) and credit the balance on the Note which he refused to give up. To get rid of this annoyance, your Memorialist told him that he might have the rent mentioned and the Printing Press, &c. if he would return the Promissory Note mentioned. This he would not do, but in a treacherous, mean manner, put the Note, for £115, in suit before the expiry of the usual days of grace. Your Memorialist then sought advice of Mr. Daniels, Solicitor, in London, who becoming acquainted with the circumstances of the case advised a defence—which he undertook—and expressed his certainty of non-suiting him in consequence of his, Mr. Cowley's, demand for rent, which was evidently a virtual negation of the sale and purchase for which the said promissory note was given. But shortly thereafter, it so happened, that Mr. Cowley's Attorney, (Mr. Horton,) by some inflexible or absolute rule of court, obtained what is termed a "snap judgment" against your Memorialist. This was occasioned by Mr. Daniel's sudden and unexpected call to Toronto on the occasion of his Father's accidental death, by which a certain item in the process was neglected, and which virtually sacrificed Truth, right and justice to court formality. This is your Memorialist's indelible impression. It entailed upon him about £65 of expenses. This snap judgment against your Memorialist was followed, instantly, by an execution which he had to satisfy. That shortly afterwards Mr. Cowley sued your Memorialist again, in the London District Court for the rent mentioned, £26, upon the premises of an advisory note of September 1847, referred to, offering 10s c'y. per week of rent for the printing establishment in question, which proposition was superseded, as will afterwards appear; but upon which he obtained another judgment against your Memorialist, with costs, by the verdict of as incompetent, ill educated and stupid looking a jury as ever could appear impanneled, under the hasty advice, to say the least of it, of the late Mr. Givins, Judge of the London District inferior Courts, then laboring under the disturbing effects of a malady which soon thereafter issued in his dissolution: Your memorialist became an innocent sufferer in these matters, by Mr. Cowley and his Attorney, Mr. Horton, taking advantage of Mr. Forsyth's absence from the province, and the absurd and unreasonable law which invalidates an affidavit made before a Judge of one of the courts of the United States. Mr. Forsyth's Affidavit was received by Mr. Daniels just at the time when it was to be used; but found inadmissible because not made in Canada. Thus frustrating the administration of truth and justice, and favoring, in this case, injustice and oppression.

The following is a copy of the affidavit alluded to. The facts stated therein will evince the unrighteous treatment which your Memorialist experienced in this matter, entailing upon him, on the whole, a loss of about £100.

IN THE DISTRICT COURT OF THE DISTRICT OF LONDON.

JOSEPH COWLEY, Plaintiff,
vs.
MARCUS GUNN, Defendant,

Joseph Forsyth, of the City of Buffalo, in the State of New York, one of the United States of America, Gentleman, late of the town of London, in the District of London, maketh oath and saith, that he is personally acquainted with the

Signature of Joseph Forsyth, of the City of Buffalo, in the State of New York, one of the United States of America, Gentleman, late of the town of London, in the District of London, maketh oath and saith, that he is personally acquainted with the

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Sworn b on the A. D. 1849.—

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Letter of J

M. GUNN,

United States leave for Bull

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* N. B. — T covert of law.

EXPOSITION

OF CANADA, BY WAY OF A MEMORIAL

Canada, in Session May, 1850.--- The Memorial of
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Plaintiff and Defendant in this cause. That upon the eleventh day of November, in the year of our Lord one thousand eight hundred and forty-seven, he, deponent was employed as an agent of the defendant to purchase from the plaintiff a Printing Press with the Types and apparatus then in the town of St. Thomas; that deponent at that time purchased the same for the defendant for the price of One hundred and Fifteen pounds, for which sum a promissory note was given by the defendant, jointly, with John Sutherland, Donald McPherson and the Deponent, payable one year after date without interest. Deponent further saith, that One hundred pounds was the sum which was to have been paid in cash for said Press, Types and apparatus; but as the time of payment was extended for one year, the sum of fifteen pounds was added. Deponent further saith, that it was then and there positively understood between the Plaintiff and Defendant, that all former agreements between them should be canceled, and that the same were canceled and done away with. Deponent further saith, that he has been informed that this action has been brought to recover rent alleged to be due from the Defendant to the Plaintiff for the use of said Press, Type and apparatus above mentioned. Deponent swears positively that at the time of the sale, above mentioned, that no agreement was made between the parties for rent; but on the contrary thereof, the said Press, and materials thereto belonging, were sold absolutely by the Plaintiff to the Defendant: and it was expressly understood that all former agreements between them were done away with; and that no sum greater than that for which the said note was given should be paid to the said Joseph Cowley by the Defendant for the said Press and Materials.

Sworn before me, at Buffalo,
on the day of October,
A. D. 1849.—[Signed.] x . }

[Signed.] JOSEPH FORSYTH.

In conclusion, your Memorialist pleads you will be pleased to apply such legislative remedy as will prevent the formality and rules of courts from obstructing and suppressing the developments of truth, justice, and righteousness as the narrative of the case now submitted may suggest: and if possible, to indemnify your Memorialist, by passing an act granting a new trial of the whole matter; or by any other expedient as may relieve him from the robbery perpetrated upon him by two judgments achieved against him by fraudulent means, and your Memorialist as in duty bound, &c,

MARCUS GUNN.*

Letter of James Daniels, Esq., the Defendant's Attorney, about the application of the foregoing Affidavit:—

(COPY.)

LONDON, OCTOBER 23, 1849.

M. GUNN, Esq.,
Dear Sir:

The Affidavit I gave you for Mr. Forsyth has been returned to me sworn before a Judge of the United States Court, instead of a court of our country. This is wrong, and one must be obtained properly sworn. I leave for Buffalo to-day.

Yours truly,

JAMES DANIELS.

This instance would seem to indicate some extraordinary mystery in the administration of our Canadian justice. It is incomprehensible why an Affidavit made in Buffalo, by a competent person, before a Judge of the United States Court, should not be as valid as if made on our side of the water. Truth is Truth whenever, and wherever related or pronounced! Why should the ends of justice become frustrated by such arbitrary and irrational exceptions? Our Canadian Legislature should examine into, and purge the gross absurdities of many of our Statute Laws, and the rules and ridiculous usages of our courts. What an ample field does Law Reform present?

The undersigned begs to exhibit, in way of an appendix, the following extract of a letter from Mr. Forsyth, expressive of his recollection and readiness to make affidavit as to the fact of his agency in the purchase of the Printing Office alluded to from Mr. Cowley. It is as follows:—

"You surprise me about old Cowley. The Old Cock must have been dreaming, or possibly he might have had the rent scheme so deeply impressed in his mind—especially from having had some words on the subject before—that now at this long date, I dare say, he really and honestly believes it was actually a part of the treaty. No doubt he wishes from the depth of his poor little avaricious heart it were so. I have, however, the whole transaction fresh in my mind, as if it transpired yesterday; and have great pleasure in putting a stopper on the old man's dishonest attempt, which in my estimation, is an attempt at swindling or obtaining money under false pretences. I hope the delay caused by my absence will not in the least defeat your efforts at defence. As I have said the transaction is perfectly fresh before me. I thought \$100 would be a high price for the establishment under ordinary circumstances; but from the consideration that the opening at St. Thomas was quite an object, and furthermore, that he exacted no cash down, and offered a year to meet it, I thought you could afford to pay him the handsome bonus of £15—at which enhanced price we stipulated.

I think, I never was more certain of my own existence, that however much Mr. Cowley might have brooded on the story in his mind, the subject never escaped his lips, even in the most inaudible kind of whisper. I am really positive, because my sense of hearing is very acute, he could not have breathed it. If he had even cogitated it, it must have kept gurgling away down in that cavernous depth of that vast concern of his, anatomically styled abdomen.

To this, with a clear conscience, I must unequivocally attest,—of course, if he persists in his suit you can have no difficulty in defeating him. It would, of course, likewise, be your part to use every effort to dissuade him from the rash act. . . .

[Signed.] JOSEPH FORSYTH.

*N. B. — The Memorialist would deem it wrong to digest and endure, in secret, such atrocious injustice under the covert of law.

M. G.

New York, one of the
London, in the District
acquainted with the

*McDonald left the original with the Forsyth in Buffalo, they so much
came to Canada to execute the affidavit, as stated, I found the
exact spelling of the Judge's name & the exact date. Therefore
am a witness and in reality!*

