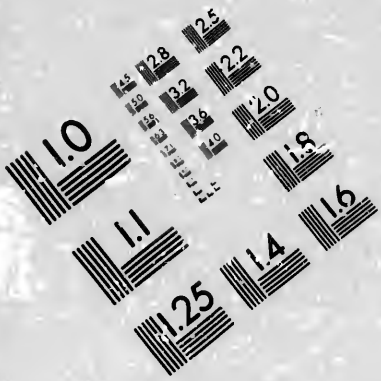

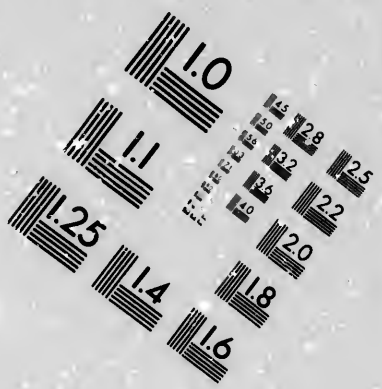

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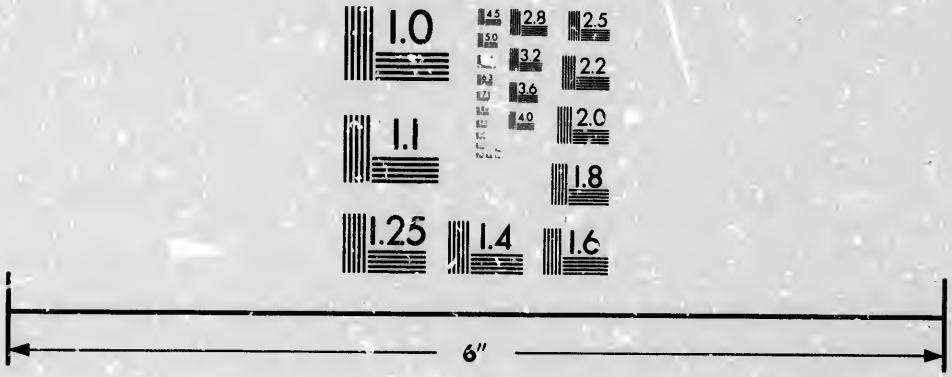

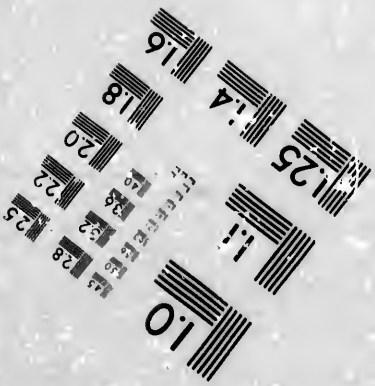

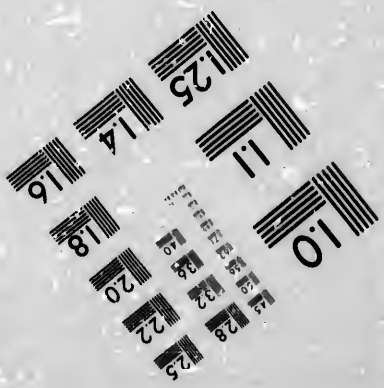

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LEGAL INTELLIGENCE.

CHIEF JUSTICE DUVAL.

PREFACE.

THE People of the City and District of Montreal cannot all have forgotten me; yet it may not be generally known that I repaired suddenly, hurriedly, and without leave-taking, to the neighborhood of Quebec to protect my property.* I arrived in October 1852, hoping that a year or two would suffice to vindicate my right, after which I proposed to have returned to live in Montreal.

This is, however, the twentieth winter, the twentieth year, during which I have devoted myself to the task. It is not, however, yet accomplished, and from present appearances, described *in part* in the episode which follows, will not, cannot be, during my life or that of Chief Justice Duval. Without ascribing motives, I submit the facts; and having played a part which is yet, I hope, remembered, out of the depths of affliction, I appeal to the citizens of Montreal for sympathy and moral support.

A. GUGY.

* It was by turning the current of a river against it that I was injured. Now it should be noted that the injury was continuous, by night as well as by day, on Sundays and holidays, when, had my adversary employed laborers, some intermission could not have been avoided.

CHIEF JUSTICE DUVAL.

THIS public functionary has interest, has at least a powerful friend, at Court, and the link which binds the one to the other is not inexplicable. But as no explanation is immediately necessary, I shall, with the avowed intention of bringing about the removal of one whom I hold to be quite unfit for the position which he occupies, revert to the conduct of the Judge as Judge.

He was one of a minority unfavorable to me, and he opened as follows:—"The Appellant (Gugy) would not, I think, "have succeeded in his action even in the Courts in France. "Domat, who cites the ordinance of 1539, says that ordi- "nance had gone almost out of use. It appears, however, "to have been revived for vexatory actions."

On the last occasion on which I wrote, much hurried by the approaching departure of the mail, I did not direct public attention to the discrepancy between the language of the Judge and that of the author whom he named, nor did I affirm as I now do that the inference which he drew from Domat was the very *reverse* of the doctrine which that author inculcates. In this matter I am perfectly conscious of the disadvantage under which, in thus setting up my opinion in opposition to that of the head of the law, I labor. But putting myself, as it were, on "my country"—addressing myself to the whole community as to a jury—I shall place the words of the Judge and those of the author in juxtaposition. The rule on which

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

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

" going of the *ordinance* almost out of use," there is a wide chasm. On this point then, I venture to contradict Chief Justice Duval; nor can I affect an iota of respect for a Judge who ascribes to an author words *which he never used*, and assigns, the words so untruly ascribed as a sufficient reason for ruining my family.

What the author does say is, that " the rule was so seldom enforced, that it seemed as if it had been abolished." Of course such a rule would be a very unpopular rule at the Bar; but non user is not abolition, nor can an ordinance, a statute, be *abolished*, except by another ordinance, another statute. Chief Justice Duval is presumed to know something of legal distinctions, and if he does not, there are very many lawyers who do. Now, truthfully reporting the words of Chief Justice Duval, and offering a translation of those of the author, relying, too, upon the signification of the word *seems*, which is by *no means an affirmation* of an existing fact as the Chief Justice has assumed, I shall leave this branch of the case, not, however, without claiming the verdict of the country.

But what will it say of a great legal functionary who so incorrectly cites a public writer on law, and who, attributing to him language that he does not use, deliberately, or at least knowingly, ignores the spirit of the book and the evident intention of the author. Thus Domat inculcates the duty of enforcing the rule, at which the Chief Justice, apparently indifferent to the sufferings of " the victims," not only of the law's proverbial delay but of its mal-administration, evidently sneers. Here follow the *words* on which I rely to prove, without *travelling out of the record*, the sort of Chief Justice that we have:

" *Inasmuch as it* " (the rule onwhich my action was founded) " *is founded in equity as it is a principle of natural law, and* " *inasmuch as it has been re-enacted by the ordinances, it is* " *the duty of the judges to enforce the rule whenever the injustice,*

" *the chicane, the vexation have been such as to call for repres-*
" *sion.*"*

Again, I put it to the *country* to weigh in the balance the words of Chief Justice Duval. According to him the ordinance (in the singular) *had gone out of use.* Now the words of the author by whom he affects to be guided, are " re-enacted by the *ordinances*," in the plural. It seems to me, in despite of Chief Justice Duval, that the verb to re-enact is not without signification and there is probably still some difference between the singular and the plural.

Now, for another charge.

By judgment of the Court of Queen's Bench, appeal side,

* French text of Domat, Livre III., Tit. V., Sect. II., page 271 :—

Parmi toutes les causes dont il peut naitre des dommages et intérêts, il y en a peu d'aussi fréquentes que l'injustice de ceux qui, entreprenant ou soutenant des procès injustes, causent à leur parties, et des frais que les condamnations des dépens ne reparent presque jamais, et encore d'autres dommages dont ces procès sont les seules causes; comme de la perte du temps surtout de ceux qui vivent de leur travail, et plusieurs autres suites de l'injustice de la chicane des mauvais plaideurs. Ce qui rend très juste la condamnation des dommages et intérêts, lorsque la vexation est telle qu'elle y donne lieu. Et quoique cette règle ne s'observe que si rarement qu'il semble qu'elle est abolie ; comme elle a pour principe l'équité, qu'elle est du droit naturel, et qu'elle avait été renouvelée par les ordonnances ; il est de la prudence des juges de la mettre en usage dans les occasions où l'injustice, la chicane, la vexation peuvent le meriter. x.

" Among all the causes in which a condemnation to pay damages may
" originate, there are but few of such frequent occurrence as the injustice
" of those, who, by undertaking and supporting unjust lawsuits, entail
" upon their adversaries not merely an expenditure which a judgment for
" costs seldom makes good, but other evils of which such lawsuits are the
" sole cause. For example, the loss of time, especially for those who
" cannot live without labor, and several other results of the injustice and
" of the chicane of evil-disposed litigants. In such cases, when the vexa-
" tion is such as to cause damage, it is very just that the wrongdoer should
" be condemned to make compensation. And though this rule is so seldom
" enforced that *it seems* as if it had been abolished, yet, *inasmuch as it is*
" *founded in equity as it is a principle of natural law, and inasmuch as it has*
" *been re-enacted by the ordinances, it is the duty of the Judges to enforce the*
" *rule whenever the injustice, the chicane, the vexation have been such as to call*
" *for repression.*"

dated seventh of December last, my adversary Brown, who had failed, was allowed to appeal to Her Majesty the Queen, in Her Privy Council. The permission was granted, upon condition that my adversary should give security according to law within six weeks. It was a condition, *sine qua non*, and costs were awarded to me.

By the 1179th article of the code, it is competent to a successful litigant, in every case in which security is not given within the time prescribed by the judgment, to cause it to be executed.

This necessarily implies that the record, in the possession of the Clerk of the Court of Appeals, shall be remitted to the Prothonotary of the Superior Court, for the latter Court alone can issue a writ of execution.

The delay expired on the eighteenth of January last, and as the Chief Justice, the organ of the Court, never promulgated a rule applicable to the subject, and as the Clerk would not remit the record, I was obliged to pray by petition that the article might be enforced.

This Petition reached Montreal, where the Court was then sitting, as I understood, on the nineteenth. It was presented, but, having been obliged to rely on a friend to present it, I shall not speak of what occurred there. The nineteenth fell on a Friday, and before I had received any information touching the fate of my petition, Chief Justice Duval had returned to Quebec. I then called upon him, I believe on the Monday following, but he was at dinner, and was denied. I may or should remark that he dines at one o'clock, an unreasonable and improper hour for a judge. I called again, however, when he desired me to repeat my visit on the following day. I complied, but after some earnest entreaty on my part and some churlish remarks on his, he directed me to request the officer of the Court to wait on him. I did so, and called on the ensuing day, but was again unsuccessful, for the Chief Justice was at meat. I repeated my visit, and on my pressing my

suit, he intimated that he had seen a notice of mine dated 26th December, accompanying an official copy of the judgment,* and that the six weeks' delay for giving security must be computed from the 26th of December, the date of the notice, instead of the seventh, the day of the judgment. Supplying in a note a copy of the judgment, I must add that Chief Justice Duval would listen neither to demonstration nor to entreaty, and, as usual, behaved offensively. I thereupon left him, and, having understood from Judge Caron that he would take the trouble to see the Chief Justice, I waited until the ensuing day. Having then called again on Chief Justice Duval, I was told that, being sick, he could not be seen.

Then, obtaining a small piece of paper, I wrote at his table below stairs, and sent to him by his servant, the following words

"Being unable to see you, I take the liberty to submit: "The period fixed by *your judgment and by law*, was six "weeks, ending on 18th inst.

* COURT OF QUEEN'S BENCH.

APPEAL SIDE.

THE 7TH DECEMBER, 1871.

Present:
The Five Judges.

B. C. A. GUGY,

Appellant;

vs.

WILLIAM BROWN AND GEORGE HARTE,
Judicial Adviser to said William Brown,
Respondents.

The Court, on motion of J. B. Parkin, Esquire, on behalf of the said Respondents in this cause, by and with the consent of the said Appellant, doth permit the said Respondents to appeal to Her Majesty in her Privy Council, in that part of the United Kingdom of Great Britain and Ireland, called England, from the final judgment of the Court here rendered in this cause, this day, upon the said Respondents *giving the security required by law within six weeks from this date.*

" Now, on the 20th, he could not under any circumstances " whatever be admitted to put in security. The time is irre- " vocably passed, why then do you reject my petition? Please " accede to my prayer."

ANSWER OF CHIEF JUSTICE.

" The six weeks limited in our judgment for giving security " must be computed from the 26th of December, the day on " which notice was given to Mr. Parkin. This delay has not " yet expired. I see no reason to change my opinion. J. D."

The article 1179 of the Code is cited * in a note, so is the judgment, and I lay the facts before the country as evidence that Chief Justice Duval is unfit for the position which he occupies. He may oppress me, but he individually sitting at table in his dining room cannot change the terms of a judgment, cannot prolong a delay fixed by the whole court in Banc.

Now, he never in any way deigned to notice my first petition, presented, as I presume, on the nineteenth of December, when he was in Montreal, and I have never seen it since. But that fact compelled me not only to beg the interposition of Mr. Justice Caron, but to transmit a second petition to Montreal, to the three judges residing there. One, his Honor Mr. Justice Monk, was absent; another, Judge Badgley, of course agreed with Judge Duval; but the third, Mr. Justice Drummond, taking the law for his rule of conduct, immediately and effectually telegraphed for my relief.

Thus, then, owing to the peculiar idiosyncrasy of Chief Justice Duval, I both wrote and telegraphed to Montreal. Then I received from thence one telegram dated 27th January, and another dated the 31st. I also received two letters of the latter dates, but as yet no formal answer to my

* The execution of a judgment of the Court of Queen's Bench cannot be prevented or stayed unless the party aggrieved gives good and sufficient sureties *within the delay fixed by the Court.*

petition. Then the transmission of the record was, contrary to law, delayed, nor could I avail myself of the decision in my favor until the first instant. I incurred some expense, labored considerably, went to the house of the Chief Justice six times at least. Then, to protect my property, I have been obliged to reside upon it; and as the distance from my residence to the Court House is almost four miles, I have certainly been forced, by the conduct of Chief Justice Duval, to travel at this season some sixty odd miles, or perhaps more: thus losing much time, and travelling and laboring to accomplish an object which ought to have been *a matter of course*, a mere matter of routine devolving on the clerk. It was, indeed, the duty of the clerk to have remitted the record at the expiration of six weeks, without any application on my part or the interposition of any judge—a duty which he could have performed in five minutes. Confining myself strictly to the publication of facts which I can prove, I refrain from assigning what I believe to have been the cause by which he was deterred from acting. As every judge is bound to administer the law, and as it is a very bad compliment to thank a judge for pronouncing in one's favor, I neither thank Judge Caron nor Judge Drummond, who, if I did, would probably reply that they had done no more than their duty.

It has been my unhappy fate to be often present in the Court over which Chief Justice Duval presides, and, closing this notice of him with my own evidence, I affirm that whatever may have been the nature of the discussion at the bar, I have never seen him make a note.

While causes have been argued before him, I have remarked him sitting generally with his two hands on his desk (especially on the approach of one o'clock, the hour at which the Court adjourns for refreshment), as if in some pain. He has then, too, appeared to be more or less impatient. I have also, while standing close in front of him, ascertained that his digestion, after he had eaten, was more or less laborious.

But whatever may have been the number of the causes called and heard ; whatever their dissimilarity, or the variety of subjects and complications involved therein ; whatever the conflicting statements of the witnesses, or the incompatible propositions urged by Counsel, I have never seen him write a memorandum. To those unacquainted with our system it may be necessary to add, that in this section the Court deciding upon the fact as well as the law has to *deal with the evidence*.

The motive of the Chief Justice is a matter on which I must not dilate, but the omission herein above noticed may account for the universal dissatisfaction excited by the decisions of the Court. It may account also for the absence of all concord among its members, for Judge Badgely, being deaf and unable to hear the arguments, cannot, when they deliberate, supply or act upon the information which the Chief Justice is (apparently) unwilling to record.

Now, people of the Province of Quebec, who are subject to the jurisdiction of Chief Justice Duval—what think you of Chief Justice Duval ?

And if I have been truthful and have not exaggerated, you, being Christian men, loving liberty, for your own sakes, from patriotism and a desire to transmit to posterity the freedom which is our birthright, should give me some moral support ?

For what is freedom but a just administration of the law ?

But, if a Judge can treat me, who am understood to be more or less disposed to defend myself, in so cruel and tyrannical a manner, he can with impunity oppress every man, woman and child in the community. My cause, then, is the cause of the public at large.

A. GUGY.

P.S.—Hoping that the Temperance Societies will hear and act upon my cry for succor, I submit the following

credentials. My habits certainly should entitle me to their sympathy:

Copy of a resolution of the Committee of the Montreal Temperance Society, passed at the monthly meeting, 3rd February, 1844.

Resolved,—That the thanks of this Committee are due and be presented to B. C. A. Gugy, Esq., chairman of the Special Sessions, and to the Magistrates of Montreal, for their courteous reception of the petition of this Committee on the subject of granting Tavern Licenses, and for the patriotic and fearless manner in which they have undertaken a reform of vast importance to the welfare of the community.

MONTREAL, 6th February, 1844.

SIR,—It gives me great pleasure to be the medium of conveying to you the inclosed humble but cordial testimonial of approbation from the Committee of the Montreal Temperance Society to yourself and the Magistrates of Montreal, for your exertions to diminish the deeply injurious traffic in intoxicating drinks.

I have the honor to be,

Your most obedient Servant,

(Signed,) JOHN DOUGALL,

President M. T. S.

B. C. A. GUGY, Esq.,

Chairman Special Sessions.

To COL. GUGY, M.P.P.,

For the Town of Sherbrooke,

SIR,—At a meeting of the Sherbrooke Total Abstinence Society, held last evening, the following resolutions were adopted, viz.:

Resolved,—That the thanks of this Society be tendered to Col. Gugy, the member for this Town, for bringing before the Legislature the subject of intemperance with a view to its suppression.

(Signed,) J. S. WALTON,
President S. T. A. S.